

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

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

UNITED STATES DISTRICT COURT

District of Colorado

UNITED STATES OF AMERICA

v.

JOSE ROSADO

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:23-cr-00019-RMR-1

USM Number: 43805-013

Matthew K Belcher

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1 of the Indictment
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1)	Possession of Ammunition by a Prohibited Person	01/09/2023	1

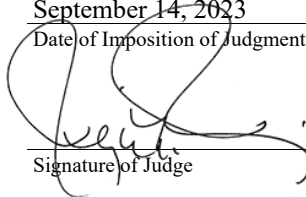
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 14, 2023

Date of Imposition of Judgment



Signature of Judge

Regina M. Rodriguez, United States District Judge

Name and Title of Judge

September 18, 2023

Date

DEFENDANT: JOSE ROSADO
CASE NUMBER: 1:23-cr-00019-RMR-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **One-hundred and thirty (130) months to run concurrent to the sentence imposed in District of Colorado Case Number 16-cr-00309-RMR.**

- The court makes the following recommendations to the Bureau of Prisons:
The Court recommends the defendant be designated to a facility in the Northern District of California appropriate to his security classification.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____ .
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____ .
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE ROSADO
CASE NUMBER: 1:23-cr-00019-RMR-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **Three (3) years.**

MANDATORY CONDITIONS

- 1. You must not commit another federal, state or local crime.
- 2. You must not unlawfully possess a controlled substance.
- 3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and a maximum of 20 tests per year of supervision thereafter.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JOSE ROSADO
CASE NUMBER: 1:23-cr-00019-RMR-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JOSE ROSADO
CASE NUMBER: 1:23-cr-00019-RMR-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and/or treatment for substance abuse approved by the probation officer and follow the rules and regulations of such program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program as to modality, duration, and intensity. You must abstain from the use of alcohol or other intoxicants during the course of treatment. You must not attempt to obstruct, tamper with or circumvent the testing methods. You must pay for the cost of testing and/or treatment based on your ability to pay.
2. You must submit your person, property, house, residence, papers, or office, to a search conducted by a United States probation officer. Failure to submit to search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
3. You must not knowingly associate with or have contact with any individuals you know to be or have reason to believe are gang members and must not participate in gang activity, to include displaying gang paraphernalia.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the following page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____
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Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the following page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Publ. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ due immediately, balance due
B Payment to begin immediately (may be combined with C, D, or F below); or
C Payment in equal installments of \$ over a period of
D Payment in equal installments of \$ over a period of
E Payment during the term of supervised release will commence within
F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Table with 4 columns: Case Number, Defendant and Co-Defendant Names, Total Amount, Joint and Several Amount, Corresponding Payee, if appropriate

- The defendant shall pay the cost of prosecution.
The defendant shall pay the following court cost(s):
The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 9, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ROSADO,

Defendant - Appellant.

No. 23-1294
(D.C. No. 1:23-CR-00019-RMR-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH, McHUGH, and FEDERICO**, Circuit Judges.

This appeal follows Jose Rosado’s entry of a guilty plea to one count of being a felon in possession of a firearm as proscribed by 18 U.S.C. § 922(g)(1). Mr. Rosado challenges his conviction on grounds that § 922(g)(1) is both facially unconstitutional and unconstitutional as applied to him under the framework announced in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). Because our precedent is settled “that *Bruen* did not indisputably and pellucidly abrogate” our

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

precedent confirming the constitutionality of the ban on convicted felons' possession of firearms, we affirm Mr. Rosado's conviction. *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *petition for cert. filed* (U.S. Dec. 21, 2023) (No. 23-683).

I. BACKGROUND

On January 9, 2023, following a report that an unknown male had threatened a security guard with a firearm, police officers responded to a McDonald's in Denver, Colorado. After obtaining a description of the individual from the security guard, Denver police searched the area adjacent to the restaurant and located an individual matching that description, who would later be identified as Mr. Rosado. Denver police arrested Mr. Rosado and found a 9mm magazine loaded with eight rounds of ammunition in his right front pocket.¹

On January 12, 2023, the Government, through an information, charged Mr. Rosado with one violation of § 922(g)(1), and on January 17, 2023, a grand jury returned an indictment for the same charge. On April 3, 2023, Mr. Rosado tendered and the district court accepted his guilty plea, and on September 14, 2023, the district court sentenced Mr. Rosado to a term of 130 months' imprisonment followed by three years of supervised release. This timely appeal followed.

¹ Upon encountering Mr. Rosado in their patrol vehicle, Denver police saw his right hand dip to his side at which point they heard a metallic "clank." ROA Vol. I at 86. After Mr. Rosado's arrest, the police located a 9mm "privately manufactured firearm" (i.e., a so-called "ghost gun" devoid of any serial number) where they had heard the metallic sound "with a round chambered and three additional rounds in the seated magazine." *Id.* at 87. Mr. Rosado's guilty plea admits only that he possessed the 9mm magazine found in his front pocket.

II. ANALYSIS

On appeal, Mr. Rosado asserts both a facial and an as-applied challenge to the constitutionality of § 922(g)(1), arguing that under *Bruen*, that statute cannot withstand Second Amendment scrutiny. Mr. Rosado’s as-applied challenge appears to rest on a contention that under *Bruen*, § 922(g)(1) is unconstitutional as applied to persons whose prior felony convictions were for “nonviolent offense[s].” Appellant’s Br. at 6 (citing *Range v. Att’y Gen.*, 69 F.4th 96, 105–06 (3d Cir. 2023) (en banc), *petition for cert. filed sub nom. Garland v. Range* (U.S. Oct. 5, 2023) (No. 23-374)).

Mr. Rosado concedes that because he did not raise this argument before the district court, we may review it only for plain error. *See* Fed. R. Crim. P. 52(b). And Mr. Rosado further concedes that he cannot meet that standard because under existing law, any constitutional defect in § 922(g)(1) is not “plain”—that is, neither this court nor the Supreme Court has found that statute unconstitutional in any measure. *See United States v. Koch*, 978 F.3d 719, 726 (10th Cir. 2020) (“In general, for an error to be contrary to well-settled law, either the Supreme Court or this court must have addressed the issue.” (quotation marks omitted)); *Vincent*, 80 F.4th at 1202 (holding that *Bruen* did not abrogate our precedent concluding that § 922(g)(1) was constitutional in *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009), and that “[u]nder *McCane*, we have no basis to draw constitutional distinctions based on the type of felony involved”). Mr. Rosado therefore “brings this argument for preservation only.” Appellant’s Br. at 3.

Given Mr. Rosado's concessions and the prevailing law, we affirm his conviction for a violation of § 922(g)(1).

III. CONCLUSION

For the foregoing reasons, we AFFIRM Mr. Rosado's conviction.

Entered for the Court

Carolyn B. McHugh
Circuit Judge