

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MANUEL MOYA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

- I. Because the restriction contained in 18 U.S.C. § 922 (g)(1) implicates the right to bear arms and lacks historical analog, is the lifetime ban of possession of a firearm by all felons facially unconstitutional?
- II. Does a district court plainly error when it enters a judgment of conviction for an offense under 18 U.S.C. § 922 (g)(1) as the unconstitutional nature of this statute affects the substantial rights of a criminal defendant?

LIST OF PARTIES

All parties to the petitioner's Fifth Circuit proceedings are named in the caption of the case before this Court.

DIRECTLY RELATED PROCEEDINGS

United States District Court for the Northern District of Texas

United States of America v. Manuel Moya,
No. 2:22-CR-00290 (October 18, 2022)

United States Court of Appeals for the Fifth Circuit

United States of America v. Manuel Moya,
No. 22-40714 (August 8, 2024)

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PRAYER

Petitioner Manuel Moya (“Mr. Moya”) prays that a writ of certiorari be granted to review the judgment entered by the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported *United States v. Moya*, 2024 U.S. App. LEXIS 19968, 2024 WL 3723900 (5th Cir. 2024). No petition for rehearing was filed.

JURISDICTION

The United States Court of Appeals entered a decision on August 8, 2024.

The petition is timely filed within 90 days of August 8, 2024, order of the court of appeals denying Mr. Moya's appeal. *See* Sup. Ct. R. 13.3 (Jan. 1, 2023).

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment of the United States Constitution:

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, an 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

A. The indictment and plea.

On May 11, 2022, a federal grand jury returned a three-count true bill indictment charging Mr. Moya with two of violations of Title 21 U.S.C. Sections 841(a)&(b)(1)(B) and one violation of Title 18 U.S.C. Sections 922(g)(1) and 924(a)(2). On July 27, 2022, pursuant to a plea agreement, Mr. Moya pleaded guilty to one offense under Title 21 U.S.C. Section 841(a)&(b)(1)(B) and an offense under Title 18 U.S.C. Sections 922(g)(1) and 924(a)(2), representing Counts One and Three respectively.

Also on July 27, 2022, the United States magistrate judge entered a *Findings and Recommendation on Plea of Guilty*. See 28 U.S.C. § 636. On August 11, 2022, the district court entered its *Order Accepting Guilty Plea*; finding that neither party objected within the fourteen-day period pursuant to 28 U.S.C. 626(b)(1); accepting Mr. Moya's plea of guilty; and adjudging Mr. Moya guilty of the offenses.

B. Sentencing

Regarding counts one and three, the presentence report and its addenda (hereinafter "PSR") calculated Mr. Moya's total offense level as being level 37 and his Criminal History Category as being V. Under the United States Sentencing Guideline in effect on October 17, 2023, those calculations result in a Guideline sentencing range of 324 to 405 months of incarceration. USSG Ch. 5 Pt. A.

During the sentencing hearing, Mr. Moya did not present objections. The district court imposed a sentence of 240 months of incarceration on Count One and 60 months on Count Three, the 18 U.S.C. § 922 (g)(1) charge, to run consecutively to Count One. Further, the government dismissed Count Two of the indictment pursuant to the plea agreement.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve whether the framework set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2126 (2022) renders Title 18 U.S.C. Section 922 (g)(1) unconstitutional. See *U.S. Const. amend. II*.

A. The plain text of the Second Amendment covers Mr. Moya's conduct.

The text of the Second amendment covers Mr. Moya's conduct as the right of the people to keep and bear arms. On April 20, 2022, law enforcement officers in Corpus Christi, Texas executed an arrest and search warrant for Mr. Moya and his residence. During the execution of this warrant, Officers recovered eight firearms from Mr. Moya's residence. Mr. Moya's charges stem from the execution of this warrant. The Second Amendment guarantee is *inter alia* a right to self-defense and is even more important in the home. *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3036 (2010). Further, *Bruen* extended this right of self-defense beyond the home. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2122-23S (2022). Thus, Mr. Moya's conduct falls within the plain text of the Second Amendment as Mr. Moya possessed firearms within his own home.

B. 18 U.S.C. § 922 (g)(1) is not founded in the historic tradition of firearm regulation.

Restriction of the rights guaranteed by the Second Amendment will only be upheld if the restriction is consistent with the historic tradition of regulation in the United States. *Bruen*, 142 S. Ct. at 2126. 18 U.S.C. § 922(g)(1) applies broadly to every individual convicted of an offense that carries a maximum penalty exceeding one year of incarceration. Any appropriate restriction must be founded in a historical tradition of such regulation. *Bruen*, 142 S. Ct. at 2126. Although the onus is on the government, the undersigned has undertaken a review of the tradition of firearms regulation. See *Id.* At 2127. The undersigned has been unable to find statutes, laws, or ordinances from the founding of this country which demonstrate a historical tradition of such lifetime bans for firearm possession. As noted by then Judge Barrett, “[a]t least thus far, scholars have not been able to identify any such laws.” *Kanter v Barr*, 919 F.3d 437, 454 (7th Cir. 2019) (Barrett, J., dissenting). Mr. Moya was previously convicted of four felony drug offenses, each carrying with it a sentencing range exceeding one year. As with many defendants subject as with many defendants subject to prosecution under 18 U.S.C. § 922 (g)(1), these offenses were not violent in nature.

Although *Rahimi* rejected a facial challenge to 18 U.S.C. § 922(g)(8)(C)(i), this decision noted its application to cases where the restricted person poses a credible threat to the physical safety of others. 144 S. Ct. 1889, 1898-99 (2024). Conversely, 18 U.S.C. § 922 (g)(1) presents a different case. Such a bar applies categorically to every person who has previously been convicted of an offense that carries a maximum

punishment exceeding one year. Further, the interpretation of the historical analog in *Rahimi* focused on the temporary nature of such restriction. *Id.* at 1901-02. Conversely, 18 U.S.C. § 922 (g)(1) presents permanent bans to the exercise of the rights guaranteed by the Second Amendment. Extending *Rahimi's* reasoning to 18 U.S.C. § 922 (g)(1) would be misplaced because of these differences.

Because of the lack of historical tradition of such regulation of felons in possession of a firearm, the government cannot carry its burden as set forth in *Bruen*. 142 S. Ct. at 2127. Thus, the infringement imposed by 18 U.S.C. § 922 (g)(1) is unconstitutional. Review should be granted to address and resolve the differences between *Bruen* and *Rahimi*.

C. Entering a judgment of conviction and sentence under 18 U.S.C. § 922 (g)(1) is plain error.

Relying on *Jones*, the Court of Appeals found that plain-error did not apply. *United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023).

The Court of Appeals should have found plain error. As such error was clear and obvious to the district court as Mr. Moya was sentenced four months after the Supreme Court released *Bruen*. Fed. R. Crim. P. 52 (b) It is similarly clear today that, under the *Bruen* analysis, 18 U.S.C. 922 (g)(1) is impermissibly restrictive as it is not subject to reasonable debate. The test announced in *Bruen* demonstrates that 18 U.S.C. § 922 (g)(1) was unconstitutional at the time of Mr. Moya's re-arraignment and sentencing. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2126 (2022).

Finally, this error affects Mr. Moya's substantial rights as the district court imposed a 60-month sentence under 18 U.S.C. §§ 922 (g)(1) and 924 (a) consecutive to the other count of conviction.

The district court plainly erred when it accepted Mr. Moya's plea to count three of the indictment. Moreover, the district court plainly erred when it imposed a 60-month sentence consecutive to the other count of conviction. Furthermore, the district court erred by entering a judgment of convicting Mr. Moya under 18 U.S.C. § 922 (g)(1). Thus, the Court of Appeals should have remedied this error as conviction for conduct that is not criminal offends basic notions of justice. *United States v. Jackson*, 7 4th 261, 264 (5th Cir. 2021). The Court should grant certiorari to confirm the application of the plain-error standard to convictions and sentences imposed under 18 U.S.C. § 922 (g)(1).

CONCLUSION

The Court should grant the petition for a writ of certiorari and review the judgment of the Court of Appeals.

Respectfully submitted,

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