

No. 21-5540

ORIGINAL

Supreme Court, U.S.
FILED

JUL 23 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

In re: URBINA-RODRIGUEZ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GUADALUPE URBINA-RODRIGUEZ

(Your Name)

FCI-TEXARKANA
P.O. Box 7000

(Address)

Texarkana, Texas 75505-7000

(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I.

Because Urbina-Rodriguez was never actually sentenced to serve a term of imprisonment that exceeds **one year**, by the State of Missouri's court based on criminal history. Did the Eighth Circuit's panel correctly determine it was proper for the district court to consider his prior offenses a felony for purpose of 18 U.S.C. §§922(g)(1); 924(a)(2) enhanced sentence?

Specifically, Count 3 charged that he possessed the firearm after having been previously convicted of an offense punishable by a sentence more than **one year** term of imprisonment, in violation of 18 U.S.C. §922(g)(1). Id. (Doc.1).

II.

Based upon **pro se** Petitioner's judgment, the evidence in the record is silent regarding the actually term of imprisonment served by the Petitioner. Is the Panel decision contrary to this Court's precedent cases decision(s): Carachuri-Rosendo v. Holder, 130 S.Ct. 2277 (2010); Haltiwanger v. United States, 139 S.Ct. 81 (2010); Rehaif v. United States, 139 S.Ct. 2191 (2019)? And or [Is] the district court's judgment in conflict and contrary to the Eighth Circuit's precedent cases decision(s) in: United States v. McDonald, 826 F.3d 1066, 1072 (8th Cir. 2016); United States v. Warren, 951 F.3d 946, 951 (8th Cir. 2020).

III.

Should **Second Amendment Rights** be advanced to permit ex-convicted-felon to possess firearm for ['personal protection'] of their home in the inter-city, or their home on their farm, or their home on the ranch?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 5, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 31, 2021, and a copy of the order denying rehearing appears at Appendix A-7, A-8.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I

The Fifth Amendment to the United States Constitution provides in pertinent part: No person shall be deprived of life, liberty, or property without due process of law." U.S. Const. amend. V. An "essential feature" of the due process guarantee is "[t]he prohibition of vagueness in criminal statutes." Sessions v. Dimaya, 138 S. Ct. 1204, 1212, 200 L.Ed.2d 549 (2018). A law is unconstitutional vague if it (1) "fails to provide a person of ordinary intelligence fair notice of what is prohibited," or (2) "is standardless that it authorizes or encourages seriously discriminatory enforcement."

II

The Due Process Clause of the Fourteenth Amendment prohibits states government from depriving "any person of life, liberty, or property, without due process of law" This clause has two components: the procedural due process and the substantive due process components. "Analysis of either a procedural or substantive due process claim must begin with an examination of the interest allegedly violated," and "[t]he possession of a protected life, liberty, or property interest is ... a condition precedent" to any due process claim. "[W]here no such interest exists, there can be no due process violation." Merely labeling a governmental action as arbitrary and capricious, in the absence of the deprivation of life, liberty, or property, will not support a substantive due process claim. Singleton v. Cecil, 176 F.3d 419, 424 (8th Cir. 1999). U.S. Const. amend. 14, §1. The touchstone of due process is the protection of individuals against arbitrary actions by the government. See Cty of Sacramento v. Lewis, 523 U.S. 833, 845, 118 S. Ct. 1708, 140 L.Ed.2d 1043 (1998). "[t]he Due Process Clause protects individuals only from governmental and not from private action." Lagar v. Edmondson Oil Co., 457 U.S. 922, 930, 102 S. Ct. 2744, 73 L.Ed.2d 482 (1982).

III

The Second Amendment provides, "[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."

STATEMENT OF THE CASE

1. On or about November 6, 2021, in the United States District Court of Missouri, Joplin Division (3:19-CR-05005-MDH-1), a jury convicted defendant Guadalupe Urbina-Rodriguez of: (1) possessing 50 grams or more of methamphetamine with intent to distribute, 21 U.S.C. §§841(a)(1) & (b)(1)(A); (2) possessing a firearm in furtherance of a drug trafficking crime, 18 U.S.C. §924(c)(1)(A); and (3) possessing a firearm as a previously convicted felon, in violation of 18 U.S.C. §§922(g)(1) & 924(a)(2).

2. On or about November 20, 2020, Mr. Urbina-Rodriguez, filed a timely appeal in the United States Court of Appeals for the Eighth Circuit (case number. 19-3022). See (Id. at APPENDIX B-4). He appeals: (1) the sufficiency of the evidence (Id. at APPENDIX B-pg.2-4) as to Count-Two, element, whether possession of the firearm was in furtherance of drug trafficking. Specifically, because he needed a firearm(".22 caliber rifle) to protect the live stock on his ("farm") from dangerous predatory wild animals that lives on his farm; and (2) Mr. Urbina-Rodriguez appeal,(Id. at APPENDIX B-pg.4), that his prior Missouri's conviction for trafficking methamphetamine shouldn't have been used to convict him as a felon under 18 U.S.C. §§922(g)(1) & 924(a)(2). Specifically, because he didn't actually serve no sentence in excess of five months term of imprisonment in the Missouri's detention center.

3. On February 5, 2021, the Eighth Circuit affirmed the opinion and judgment of the district court.

4. On March 8, 2021, Mr. Urbina-Rodriguez, filed a timely, (Id. at APPENDIX A-pg.1-7), Petition for Rehearing En Banc.

Specifically, because the Panel's decision is contrary to the precedent cases of the United States Supreme Court's decisions in Carachuri-Rosendo v. Holder, 130 S. Ct. 2277, 177 L.Ed.2d 68 (2010) and Rehaif v. United States, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019). And that the Panel's decision were in conflict and contrary to precedent in the United States Court of Appeals for the Eighth Circuit's ruling in United States v. Haltiwanger, 637 F.3d 881 (8th Cir.2011)..

5. On or about May 30, 2021, the Eighth Circuit Court of Appeals dismissed without a hearing, Mr. Urbina-Rodriguez's petition for en banc rehearing.

REASONS FOR GRANTING THE PETITION

1. The Eighth Circuit's Judges, Colloton, Melloy, and Kelly, panel decision conflicts with decisions of the United States Supreme Court's binding precedents cases: Carachuri-Rosendo v. Holder, 130 S. Ct. 2277, 177 L.Ed.2d 68 (2010); and Rehaif v. United States, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019). Based upon evidence in the record that show Mr. Urbina-Rodriguez was never actually sentence under the State of Missouri's law to serve more than one year, for violating Missouri's drug law. Therefore, he did not meet to requirements set forth in Rehaif(2019), because he haven't been previously convict of an offense punishable by a term of imprisonment that exceeds [one-year] in a state or federal prison system. Specifically, the Eighth Circuit's Panel judgement is contrary to, and in conflict with this Court's Supreme Court's remanded decision in Haltiwanger v. United States, 131 S. Ct. 81, 178 L.Ed.2d 2 (2010).

2. The Eighth Circuit's ruling to affirm the district court's judgment regarding, (Id. at APPENDIX B-pg.1-2), "the sufficiency of the evidence as to one element of one charge: whether possession of the firearm was in furtherance of drug trafficking." The Eighth Circuit didn't consider the evidence in the record that show, Mr. Urbina-Rodriguez's resident is ['farm-land']. And the so called ["varmints"] came in two forms, which is the predatory ['human being and wild animals'], that passes by or come on to his ['50 acre-farm-land'] all the time.

The reasons for this Court to grant the petition, is based upon the founding corner stone and principle of the United States of America, that family farmer or rancher ['needed firearm'] to protect his farm or ranch from the predatory varmints human being and predatory wild animals'] on or about his or her acres of farmland or ranch, unwanted or uninvited. Because there are ample evidence in America's history that show that ['quiet, clean-living farmer and rancher families'] which were ['slaughter'] by insane persons traveling on the highways and byways across these United States of America. Mr. Urbina-Rodriguez, raised argument before the lower courts and jury, that he only needed his .22 caliber rifle to protect his family members who live with him on his ['50-acres-farm-land'] from predatory traveling insane human and wild animals varmints that may stop by his farm to cause him and his family members bodily harm or to steal or kill him or his live stock. Mr. Urbina-Rodriguez's farm is about ['60-minutes'] from the nearest police station or metropolis city.

There is a line of case to show cause why Mr. Urbina-Rodriguez needed a rifle to protect his family members on his 50-acres farmland. See Holsombach v. Kelley, 2016 U.S. Dist. LEXIS 166676, at *4 (E.D. Ark, June 2, 2016). On February 28, 2004, Anne Throneberry's husbands Theodore (Ted), was attacked and killed after returning home from work. The victim was struck in the head with a large hammer, bound with duct tape, and held against his will. He was subsequently killed, his body burned, and his remains scattered on a farm road on his property. Holsomback v. State, 368 Ark 415, 245 S.W.3d 871 (2007); Copeland v. Washington, 1999 U.S. Dist. LEXIS

22404,at *9 (W.D. MO., Aug.4, 1999). Acting on tips from local residents, the police discovered several shallow graves in a barn on a farm near Ludlow, Missouri, where Ray had done odd jobs and where defendant had been seen. On yet another farm, police discovered the body of Wayne Warner buried in a shallow grave beneath thousands of large bales of hay. At the same farm, police found the body of Dennis Murphy chained to a forty-pound concrete block at the bottom of a well; see also, Coleman v. Kemp, 778 F.2d 1487, 1501, 1985 U.S. App. LEXIS 25545,at *42-43 (11th Cir.1985). Another Front-page article in the May 16 Albany Herald was entitled "Couldn't Think of Nobody Disliking Them." The article began by noting that the "slaughter of a quiet, clean-living farm family has left their southwest Georgia neighbors in enraged shock."

Based upon the above aforementioned cases are a few reasons why Mr. Urbina-Rodriguez, had purchased a rifle many-years prior to his arrest in this instant offense. Mr. Urbina-Rodriguez, argues that he has a **Second Amendment Right** to possess a firearm to protect his family members home and his 50 acres farm-land from insane predatory human persons varmints and predatory wild animals varmints, as well. Petitioner Urbina-Rodriguez, argues that the Eighth Circuit's decision to affirm the district court's and the jury's verdict, to convict him on Count-Two, possessing a firearm in furtherance of a drug trafficking crime a Marlin .22 caliber rifle in violation of 18 U.S.C. §924(c)(1).

In re Urbina-Rodriguez, argument is that 18 U.S.C.
§§922(g)(1); 924(a)(2) is ['a Constitutional Jurisdictional
Element'] under the **Second Amendment** to the United States
Constitution. Accordingly, this Supreme Court of the United
States, held that the right to bear arms is an individual one.
See District of Columbia v. Heller, 554 U.S. 570, 592, 128 S.Ct.
2783, 171 L.Ed.2d 637 (2008); McDonald v. City of Chicago, 561
U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010)(the Second
Amendment right to possess a handgun in the home for self-defense
is incorporated in the Due Process Clause of the **Fourteenth**
Amendment and thereby is applicable to the State).

The Second Amendment guarantees "the right of citizens to use
arms in defense of the heart and home."

Wherefore, based upon the above aforementioned cited binding precedent cases by this Honorable United States Supreme Court, and Eighth Circuit's Court of Appeals authorities, Mr. Urbina-Rodriguez, respectfully requests this this Court set in to resolve the controversy created by the Eighth Circuit's Panel decision, which is contrary and in conflict with this Supreme Court's rulings in: Rehaif(2019), Carachuri-Rosendo, and Haltiwanger. Petitioner, Urbina-Rodriguez, prays that this Court remand the Eighth Circuit's decision. Because Urbina-Rodriguez was not classified as a recidivist, no sentence in excess of five months term of imprisonment in Missouri.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Guadalupe Urbina Rodriguez

Date: 7-23-21