

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM RANDALL BRANNAN,
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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QUESTIONS PRESENTED FOR REVIEW

This Court should resolve the circuit split that has developed by finding that a general motion under Rule 29 preserves a challenge to venue.

STATEMENT REGARDING PARTIES TO THE CASE

The names of all parties to the case are contained in the caption of the case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, William Randall Brannan, respectfully petitions for a Writ of Certiorari to the United States Supreme Court from the United States Circuit Court of Appeals for the Fifth Circuit in *United States v. Brannan*, No. 21-40534, 2022 WL 3153813 (5th Cir. May 21, 2022).

OPINIONS BELOW

In 2019, after being convicted at the conclusion of a trial by jury, the United States District Court for the Eastern District of Texas Sherman Division (District Court) sentenced William Randall Brannan (“Brannan”) to a total of 272 months imprisonment. The Fifth Circuit Court of Appeals (Fifth Circuit) affirmed Brannan’s conviction and sentence via Unpublished Opinion on August 8, 2022. (Appendix A). On that same day, the Judgment was entered and filed. (Appendix B).

STATEMENT OF JURISDICTION

This Petition is being filed within 150 days after entry of the Judgment, pursuant to Supreme Court Emergency Orders (Order List: 589 U.S. and Order List: 594 U.S.). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Rule 29 of the Federal Rules of Criminal Procedure provides that a upon a defendant’s motion for acquittal the court must enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. Fed. R. Crim. P. 29.

INTRODUCTION

Mr. Brannan's trial counsel made a Rule 29 motion at the close of the government's case. Mr. Brannan's counsel then advanced in his appellate brief that the evidence was insufficient to establish venue. The 5th Circuit ruled as follows: "Because Brannan did not specifically challenge venue in his motions for judgments of acquittal, we review his challenge to the sufficiency of the evidence to prove proper venue for plain error, meaning that Brannan must show a clear and obvious error that affected his substantial rights. *United States v. Brannan*, No. 21-40534, 2022 WL 3153813, at *1 (5th Cir. Aug. 8, 2022)"

This case provides the Court an opportunity to review a circuit split that has been created and to resolve it so criminal defendants are afforded the more deferential *de novo* standard of review as to venue if a general Rule 29 motion is made. This would ensure that defendants are treated equally across the country and that attorneys will know how to preserve error without the concern of waiver.

STATEMENT OF THE CASE

On March 14, 2019, the Appellant, William Richard Brannan, was indicted by a Grand Jury in the Eastern District of Texas, in a three-count indictment charging him in Count One of possession of a firearm by a felon, (18 U.S.C 922(g)), in Count Two of brandishing and discharging a firearm in furtherance of

a drug trafficking crime (18 U.S.C. 924(c)), and in Count Three of possession of a firearm in furtherance of a drug trafficking crime (18 U.S.C. 924(c)). Mr. Brannan plead not guilty. A superseding indictment was returned on August 14, 2019, alleging the same three violations of federal law, the only change was alleging that Mr. Brannan specifically knew he was a prohibited person. Mr. Brannan plead not guilty to the superseding indictment.

On February 18, 2021, Mr. Brannan proceeded to jury trial. At the conclusion of the government's case in chief, undersigned counsel on behalf of Mr. Brannan moved for a judgment of acquittal under Rule 29. Mr. Brannan testified on his own behalf and presented another witness in his defense. At the close of all evidence, undersigned counsel renewed Mr. Brannan's motion for acquittal under Rule 29. Both motions for acquittal were denied. On February 21, 2021, a jury returned a guilty verdict on all counts. The court ordered a Presentence Report. On July 8, 2021, Mr. Brannan appeared before the Court for sentencing. The district court adopted the PSR and sentenced Brannan to 92 months on Count One; 120 months on Count Two, to run consecutively with all other counts; and 60 months on Count Three to run consecutively with all other counts as well. This was an aggregate sentence of 272 months. The final Judgment was signed on July 9, 2019. A Notice of Appeal was filed on July 9, 2021. The Fifth Circuit affirmed Brannan's conviction and sentence via an unpublished opinion on August 8, 2022.

REASONS FOR GRANTING THE WRIT

This Court should resolve the circuit split whether a general motion under Rule 29 preserves a challenge to venue.

ARGUMENT AND AUTHORITIES

There is a circuit split that has emerged concerning whether a general motion under Rule 29 preserves a challenge to venue.

There is a significant circuit split on whether a general Rule 29 motion for a judgment acquittal preserves a challenge to venue which is then subject to a de novo review versus the more difficult standard of plain error review. There are circuits that are aligned with the 5th Circuit in holding that a general motion for acquittal does not preserve a challenge to venue. See *United States v. Brown*, 347 Fed. Appx. 634, 636 (2d Cir. 2009); *United States v. McLean*, 695 Fed. Appx. 681, 683 (4th Cir. 2017); *United States v. Knox*, 540 F.3d 708, 716 (7th Cir. 2008); *United States v. Chi Tong Kuok*, 671 F.3d 931, 948 (9th Cir. 2012).

There are circuits that hold that a general motion under Rule 29 is sufficient to preserve a challenge to venue. *United States v. Marston*, 694 F.3d 131, 134 (1st Cir. 2012); *United States v. Ramer*, 883 F.3d 659, 682 (6th Cir. 2018); *United States v. Unpradit*, 35 F.4th 615, 627 (8th Cir. 2022); *United States v. Kelly*, 535 F.3d 1229, 1234–35 (10th Cir. 2008); *United States v. Hammoude*, 51 F.3d 288, 291 (D.C. Cir.

1995) Finally, there is at least one circuit who has not addressed the issue. (*see* *United States v. Williams*, 974 F.3d 320, 361 (3d Cir. 2020))

This Court needs to resolve this circuit split in order that Defendant's challenges to the sufficiency of the evidence are treated the same across the circuits but also that attorney have a consistent standard of preservation of error when it comes to venue challenges.

CONCLUSION

For the forgoing reasons, Mr. William Randall Brannan respectfully asks the Court to grant a Writ of Certiorari and definitively resolve the circuit split

Respectfully submitted this 5th day of January 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAILING

I hereby certify that, on the 5th day of January 2023, the original Petition and its Appendix, **as well as the Motion to Proceed in Forma Pauperis**, were sent to the Court by overnight mail.

I also certify that on the same day, one copy of both the Petition and its Appendix were sent to William Randall Brannan, at:

Oklahoma City FTC
P.O. Box 898801
Oklahoma City, OK 73189

Lastly, I hereby certify that, on the same day, a true and correct copy of this Petition and Appendix was sent by overnight mail, as well as email, to:

Solicitor General of the United States
950 Pennsylvania Ave., N.W.; Room 5616
Washington, DC 20530-0001

/s/ Rafael De La Garza, II
RAFAEL DE LA GARZA, II

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a Writ of Certiorari contains 1,703 words, excluding the parts of the Petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

SIGNED THIS THE 5TH DAY OF JANUARY 2023.

/s/ Rafael De La Garza, II
RAFAEL DE LA GARZA, II