

23-5998
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
NOV 03 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Gilberto A. Chavez — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Southern District of Iowa - Central
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gilberto A. Chavez
(Your Name)

U.S.P. Hazelton, P.O. box 2000
(Address)

BRUCETON MILLS WV 26325
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) DID THE EIGHTH CIRCUIT DENY THE PETITIONER A CONSTITUTIONAL RIGHT AND ERR WHEN THE PETITIONER SHOWED ON A COA THAT REASONABLE JURIST COULD DEBATE THAT PURSUANT TO BORDEN, 141 S.C.T 1817 - (2021) AND UNITED STATES VS. FRAZIER, 48 F.4th 884 (2022) HIS CONVICTION FOR INTIMIDATION WITH A DANGEROUS WEAPON IN VIOLATION OF IOWA CODE 708.6(2) DID NOT QUALIFY AS A "VIOLENT FELONY" UNDER THE 18 U.S.C. § 924(F) (ACCA) AND HE WAS ACTUALLY INNOCENT OF AN ARMED CAREER OFFENDER SENTENCE ?

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BORDEN, 141 S.CT 1822 (2021)

UNITED STATES VS. FRAZIER, 48 F.4th 884, 2022 U.S. (2022)

STATUTES AND RULES

18 U.S.C. § 922(E)

18 U.S.C. § 924(E)

IOWA § 708.6(2)

OTHER

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

UNITED STATES VS. GILBERTO ARREOLA CHAVEZ
CASE # 4:19-CR-00064-001 - REB-CFB
22SS# 4:21-CV-00146-RGE
CENTRAL DISTRICT OF IOWA

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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 A to the petition and is

reported at _____; 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 is unpublished.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 B to the petition and is

reported at _____; 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 is unpublished.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 _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; 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 _____.

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: 10-20-2023, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (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 _____. A copy of that decision appears at Appendix _____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
INCLUDE 18 U.S.C § 922(G) AND § 924(E) AND THE
PETITIONERS 5TH AND 14TH AMENDMENTS UNDER DUE PROCESS
OF THE CONSTITUTION.

STATEMENT OF THE CASE

THE PETITIONER WAS INDICTED UNDER 18 U.S.C § 922(G)
AND 924(E), THE PETITIONER HAD EXACTLY 3 prior's
THAT THE GOVERNMENT AND P.S.R. CONSIDERED ACCA
PREDICATES, ONE OF THOSE WAS AN INTIMIDATION
WITH A DANGEROUS WEAPON IN VIOLATION OF IOWA
[REDACTED] STATUTE § 708, 6(2).

THE DISTRICT COURT FOUND THE FORGOING PREDICATE
A VIOLENT FELONY FOR ACCA PURPOSES AND SENTENCED
THE PETITIONER TO 180 MONTHS.

REASONS FOR GRANTING THE PETITION

EXAMINING § 708.6 IN LIGHT OF Borden, 141 S.Ct 1822 (2021) SHOWS THAT A VIOLATION CLASS C OF THE IOWA STATUTE DOES NOT SATISFY THE FORCE CLAUSE, SPECIFICALLY FOR THE SAME REASONS ARTICULATED IN UNITED STATES VS. FRAZIER - 48 F.4th 884; 2022 U.S.

THAT IS THAT THE "THREATENS" ALTERNATIVE OF § 708.6 DO NOT CONSTITUTE A USE, ATTEMPTED USE, OR THREATENED USE OF FORCE AGAINST THE PERSON OF ANOTHER.

THREATENING TO COMMIT AN ACT THAT DOES NOT SATISFY THE FORCE CLAUSE LIKEWISE, DOES NOT SATISFY THE FORCE CLAUSE, EVEN IF THAT THREAT ITSELF IS INTENTIONAL. THE BEST EVIDENCE OF IOWA LAW ALSO SUGGESTS THAT THE "THREATENS" ALTERNATIVE DOES NOT REQUIRE PROOF THAT THE OFFENDER'S THREAT ITSELF PLACED SOMEONE IN REASONABLE APPREHENSION OF SERIOUS INJURY.

NOTHING CHANGES WITH THE LANGUAGE CONTAINED IN A CLASS (C) FELONY, BECAUSE THE LAST ALTERNATIVE WITH "INTENT TO PROVOKE ANGER" IN ANOTHER IS STILL A GENERAL INTENT CRIME BECAUSE AN INTENT TO PROVOKE ANGER, DOES NOT IMPOSE STRICT LIABILITY ON THE DEFENDANT AND RATHER TAKES THE FORM OF RECKLESSNESS. FURTHERMORE, THERE IS NOTHING IN THE APPELLANT'S SHEPARD DOCUMENTS THAT CAN SHOW THAT HIS CONVICTION RESTED ON NOTHING OTHER THAN AN INTENT TO PROVOKE ANGER IN ANOTHER.

BECAUSE REASONABLE JURIST COULD DEBATE THAT Borden -
S.C.T 1817, 1825 (2021) AND Frazier, 48 F.4th 884, 887-
(8th Cir 2022), HOLDINGS STILL APPLY TO A CLASS (C) VERSION OF
IOWAS INTIMIDATION WITH A DANGEROUS WEAPON § 708.6 AND THE
PETITIONER HAS SHOWED A SUBSTANTIAL SHOWING OF A DENIAL
OF A CONSTITUTIONAL RIGHT, SPECIFICALLY, HIS 5TH AMENDMENT
RIGHT UNDER DUE PROCESS. MOREOVER, THE PETITIONER IS ACTUALLY
INNOCENT OF A ARMED CAREER CRIMINAL SENTENCE AND WAS
SENTENCED TO AN ABOVE STATUTORY MAXIMUM SENTENCE OF
10 YEARS UPON THE DENIAL OF HIS CONSTITUTIONAL RIGHT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gilberto Areola

Date: 10-31-23