

No. _____

In the Supreme Court of the United States

Daniel Loyola, Jr.
Petitioner,

v.

United States of America,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Mr. Loyola pleaded guilty to violating 18 U.S.C. § 922(o), which criminalizes the transfer or possession of a machinegun. On appeal, Mr. Loyola attacked the statute of conviction as unconstitutional. Applying the plain-error standard of review, the Fifth Circuit declared the error alleged to be insufficiently clear. To support the point, it cited a pre-*Bruen* opinion upholding § 922(o) as constitutional based on the fact machineguns do not receive Second Amendment protections due to their dangerous and unusual nature. The Court's decision in *United States v. Rahimi*, No. 22-915, could clarify and further explain its holding in *New York State Rifle & Pistol Ass'n v. Bruen*, and thus impact the Fifth Circuit's plain-error analysis regarding § 922(o)'s constitutionality.

The question presented is:

Whether a ruling in Mr. Rahimi's favor would affect the Fifth Circuit's plain-error analysis concerning the constitutionality of § 922(o).

LIST OF PARTIES

Daniel Loyola, Jr., petitioner on review, was the Defendant-Appellant below. The United States of America, respondent on review, was Plaintiff-Appellee. No party is a corporation.

RELATED PROCEEDINGS

- *United States v. Daniel Loyola, Jr.*, No. 4:22-CR-356-O(01), U.S. District Court for the Northern District of Texas. Judgment entered on March 24, 2023.
- *United States v. Daniel Loyola, Jr.*, No. 23-10323, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on March 10, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Daniel Loyola, Jr. respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's unreported opinion is available on Westlaw's electronic database at 2024 WL 1025135 and reprinted at Pet.App.a1-a4. The district court's judgment in *United States v. Loyola, Jr.*, No. 4:22-CR-356-O(01) (N.D. Tex.), is attached as Appendix B. The Factual Resume is attached as Appendix C.

JURISDICTION

The Court of Appeals issued its panel opinion on March 10, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This Petition involves the offense defined at 18 U.S.C. § 922(o):

[I]t shall be unlawful for any person to transfer or possess a machinegun.

This petition also involves the Second Amendment to 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.

U.S. CONST., amend. II.

STATEMENT OF THE CASE

Mr. Loyola pleaded guilty to violating 18 U.S.C. § 922(o). He pleaded guilty to the offense alleged in a one-count information but did not enter into a plea agreement with the government. *See* Factual Resume at Pet.App.a10, *United States v. Daniel Loyola*, Case No. 4:22-CR-356-O (N.D. Tex. Mar. 24. 2023), ECF No. 18. Mr. Loyola did not raise a Second Amendment challenge to the constitutionality of § 922(o) before the district court.

Mr. Loyola raised a plain-error Second Amendment claim on appeal. He argued that § 922(o) failed constitutional muster under *Bruen*'s framework. *See* Appellant's Initial Brief at 11-22, *United States v. Daniel Loyola*, Case No. 23-10323 (5th Cir. Mar. 10, 2024), ECF No. 27. Specifically, Mr. Loyola argued that the Second Amendment's plain text covers individual possession of machineguns and that the government could not demonstrate that § 922(o) is consistent with the country's historical tradition of firearm regulation. *Id.* Mr. Loyola acknowledged Fifth Circuit precedent rejecting his contention that machineguns are protected by the Second Amendment, but asked the court to revisit its prior—pre-*Bruen*—holding in light of the watershed ruling this Court announced in *Bruen*. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022).

The Fifth Circuit acknowledged Mr. Loyola's assertion that *Bruen* mandated a different outcome than the Fifth Circuit had previously reached, but ultimately declined to further analyze the merits of the issue. Pet.App.a.2. Instead, the court determined that Mr. Loyola's challenge to § 922(o) failed to show error in the

“straightforward applications of existing cases” and that he “fail[ed] to show the requisite clear-or-obvious error” required. Pet.App.a.2. As a result, the Fifth Circuit found that Mr. Loyola’s claim failed the first and second prongs of the court’s plain error analysis. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

As this Court is aware, a panel of the Fifth Circuit recently declared 18 U.S.C. § 922(g)(8) unconstitutional after analyzing the statute under the *Bruen* framework. *See United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023). The court concluded that “*Bruen* require[d] us to re-evaluate our Second Amendment jurisprudence” because “*Bruen* clearly fundamentally changed our analysis of laws that implicate the Second Amendment, rendering our prior precedent obsolete.” *Id.* at 448, 450 (cleaned up).

The Court granted the government’s petition for certiorari and recently heard argument in *United States v. Rahimi* to address the Fifth Circuit’s analysis. *See* No. 22-915. The Court’s opinion in *Rahimi* could further expound upon *Bruen* and provide guidance as to the scope of the Second Amendment’s protection.

REASONS FOR GRANTING THIS PETITION

I. The Court should hold this petition pending its decision in *United States v. Rahimi*.

a. The Court’s opinion could affect the clarity of the error alleged by Mr. Loyola.

The Court’s opinion in *Rahimi* is likely to discuss *Bruen*. *See New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). As the government conceded in *Rahimi* while the case was before the Fifth Circuit, this Court’s opinion in *Bruen* “fundamentally change[d] the focus of the relevant analysis” when examining laws

that might impact the Second Amendment. *See Rahimi*, 61 F.4th at 450. The Court’s opinion, regardless of whether *Rahimi* or the government prevails, will likely shed additional light on how lower courts should analyze the constitutionality of statutes that strip Americans of their right to possess firearms.

The Fifth Circuit, pre-*Bruen*, squarely rejected Mr. Loyola’s contention that § 922(o) violates the Second Amendment. *See Hollis v. Lynch*, 827 F.3d 436 (5th Cir. 2016). In Mr. Loyola’s case, the Fifth Circuit summarily determined that *Hollis* remains good law after *Bruen*. Pet.App.a.2. The Court’s discussion of historical analogues and statistical information in *Rahimi* could impact how the Fifth Circuit should have analyzed Mr. Loyola’s claim that *Bruen* required that court to revisit *Hollis*. *See* Appellant’s Initial Brief at 14-15, *United States v. Daniel Loyola*, Case No. 23-10323 (5th Cir. Mar. 10, 2024), ECF No. 27. This discussion may warrant granting certiorari and remanding this case so that the Fifth Circuit can re-examine *Hollis*’s holding in light of *Bruen* and *Rahimi*.

Lastly, the Court may discuss plain error in detail in *Rahimi* if it chooses to discuss *Rahimi*’s argument that Congress lacked the power to enact 18 U.S.C. § 922(g)(8). *See Rahimi*, 22-915, Respondent’s Brief at 40-41 (filed September 27, 2023), available at https://www.supremecourt.gov/DocketPDF/22/22-915/280662/20230927174948653_Rahimi%20-%2022-915%20-%20Respondent%20Brief%20-%20FINAL.pdf, last visited June 2, 2024. As the government explains in its reply brief to *Rahimi*, *Rahimi*’s argument would be analyzed under a plain error standard because *Rahimi* failed to raise this argument

in the lower courts. *Rahimi*, 22-915, Government’s Reply Brief at 19 (filed October 25, 2023), available at https://www.supremecourt.gov/DocketPDF/22/22-915/286059/20231025143939624_22-915%20USA%20v.%20Rahimi%20reply.pdf, last visited June 2, 2024. The Court’s discussion of plain error would be particularly instructive in Mr. Loyola’s case and could warrant the Court granting this petition and remanding for the Fifth Circuit to determine whether the district court’s error was sufficiently “clear-or-obvious” to meet its plain error standard based on this Court’s discussion of the issue in *Rahimi*. See Pet.App.a.2. The Fifth Circuit’s plain error analysis could “conflict[] with [a] relevant decision[] of this Court,” and, in that circumstance, certiorari would be appropriate. Rule 10, RULES OF THE SUPREME COURT OF THE UNITED STATES.

b. On plain-error review, the clarity of the error alleged is judged at the time of appellate disposition.

The Court’s decision in *Rahimi* could affect the Fifth Circuit’s plain error analysis in this case. Whether an error is plain depends on the state of the law “at the time of appellate consideration.” *Johnson v. United States*, 520 U.S. 461, 468 (1997). Mr. Loyola’s judgment is not yet final. *Gonzalez v. Thaler*, 565 U.S. 134, 149 (2012) (quoting *Clay v. United States*, 537 U.S. 522, 527 (2003)). The Court’s potential discussion of *Bruen* and how courts are to determine what conduct is protected by the Second Amendment may well require a reassessment of the Fifth Circuit’s plain error analysis.

This has happened before. In *Johnson v. United States*, this Court declared the Armed Career Criminal Act’s residual clause unconstitutionally vague. 576 U.S.

591, 597 (2015). A district court in the Southern District of Texas had previously imposed an ACCA-enhanced sentence against a defendant named Antonio Maldonado based in part on the residual clause. *United States v. Maldonado*, 638 F. App'x 360, 362 (5th Cir. 2016). The Fifth Circuit initially affirmed the sentence. *United States v. Maldonado*, 608 F. App'x 244, 244 (5th Cir. 2015). This Court then issued its opinion in *Johnson*, granted Mr. Maldonado's petition for certiorari, and vacated the Fifth Circuit's judgment. *Maldonado v. United States*, 136 S. Ct. 510, 511 (2015). Mr. Maldonado had not challenged the district court's application of the residual clause at his sentencing hearing, so the plain-error standard applied. *Maldonado*, 638 F. App'x at 362. The Fifth Circuit nevertheless recognized on remand its duty to reassess Mr. Maldonado's sentence in light of *Johnson*: "The judgment against Maldonado was not final when *Johnson* was decided, and the *Johnson* decision announced law that applies in Maldonado's case." *Id.* The Fifth Circuit declared the district court's error sufficiently clear and reversed on plain-error review. *Id.* at 363.

The Court's opinion in *Rahimi* could well impact how laws are analyzed under the Second Amendment in the post-*Bruen* landscape. If that occurs, the Court's opinion could likewise affect the Fifth Circuit's plain error analysis in this case. Since Mr. Loyola's judgment is not yet final, he could take advantage of a ruling announcing law that applies to his case, and the Fifth Circuit would be obliged to consider that ruling upon remand. *Maldonado*, 638 F. App'x at 362.

CONCLUSION

Petitioner respectfully submits that this Court should grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted 7th day of June, 2024.

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