

No.

---

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

---

GIANNI MONTAY MINNERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

---

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

---

Chance Cammack  
(Counsel of Record)  
Assistant Federal Public Defender

Malia Castillo  
Research and Writing Specialist

Julia L. O'Connell  
Federal Public Defender

Office of Federal Public Defender  
Northern District of Oklahoma  
One West Third Street, Ste. 1225  
Tulsa, OK 74103  
(918) 581-7656  
fax (918) 581-7630

Counsel for Petitioner

June 25, 2024

## **QUESTION PRESENTED**

The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures. To be reasonable, an officer's investigative detention must be justified at its inception.

The question presented is: Is it reasonable for an officer to conduct an investigative detention where there are insufficient facts in the record to conclude that an individual is gang member, where there are insufficient facts that an area may be considered a high crime area, and where a person was spotted with a gun six days earlier?

## **PARTIES TO THE PROCEEDINGS**

Gianni Montay Minners was the defendant and appellant in the proceedings below.

The United States of America was the plaintiff and appellee in the proceedings below.

## RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

*United States v. Minners*, Case No. 4:22-CR-00214-GKF, Dkt. No. 43 (N.D. Okla. November 03, 2022), *aff'd*, No. 23-5066 (10th Cir. Apr. 2, 2024).

**TABLE OF CONTENTS**

<b><u>Page</u></b>	
QUESTION PRESENTED .....	i
PARTIES TO THE PROCEEDINGS .....	ii
RELATED PROCEEDINGS .....	iii
TABLE OF AUTHORITIES .....	vi
PREVIOUS OPINIONS AND ORDERS .....	1
JURISDICTION.....	1
APPLICABLE LEGAL PROVISIONS .....	2
STATEMENT OF THE CASE.....	3
1.    FACTUAL BACKGROUND.....	3
2.    DISTRICT COURT PROCEEDINGS .....	4
3.    TENTH CIRCUIT APPEAL PROCEEDINGS .....	6
REASONS FOR GRANTING A WRIT:	
I.    THE TENTH CIRCUIT'S DECISION IS INCORRECT AND SEVERELY FLAWED.....	9
A. THERE WERE INSUFFICIENT FACTS TO FIND REASONABLE SUSPICION.....	9
B. THE CONCLUSION REACHED BY THE TENTH CIRCUIT DIRECTLY CONTRADICTS ITS PRECEDENT AND INADEQUATELY EXPLAINS A NEW HOLDING.....	11
CONCLUSION.....	14

APPENDIX (SUBMITTED UNDER SEPARATE COVER):

A: *United States v. Minners*, No. 23-5066 (10th Cir. April 2, 2024)

B: Order Denying Suppression (District Court Doc. 43)

C: District Court Judgment (District Court Doc. 72)

D: Transcript of Suppression Hearing Order

E: Pertinent Constitutional and Statutory Provisions

**TABLE OF AUTHORITIES**

<u>Cases</u>	<u>Page</u>
<i>Illinois v. Wardlow</i> , 528 U.S. 119 (2000) .....	11
<i>United States v. Daniels</i> , 101 F.4th 770 (10th Cir. 2024) .....	9, 11, 13
<i>United States v. Davis</i> , 94 F.3d 1465 (10th Cir. 1996).....	11-13
<i>United States v. Lazos</i> , 314 Fed. App'x 127 (10th Cir. 2009).....	13
<i>United States v. McHugh</i> , 639 F.3d 1250 (10th Cir. 2011) .....	7, 9
<i>United States v. Madrid</i> , 713 F.3d 1251 (10th Cir. 2013).....	9
<i>United States v. Minners</i> , No. 23-5066 (10th Cir. April 2, 2024).....	passim
<i>United States v. Sokolow</i> , 490 U.S. 1 (1989).....	6, 9, 10
 <u>Statutes and Federal Rules</u>	 <u>Page</u>
18 U.S.C. § 922(g)(1) .....	2, 4
18 U.S.C. § 924(a)(2) .....	2, 4
28 U.S.C. § 1291.....	1, 6
28 U.S.C. § 1254(1) .....	1
 <u>Supreme Court Rules</u>	 <u>Page</u>
S. Ct. R. 10(a).....	9

## **PREVIOUS OPINIONS AND ORDERS**

The United States Court of Appeals for the Tenth Circuit issued an Order and Judgment on April 2, 2024, denying a direct appeal in which the Petitioner was the Appellant/Defendant. *See United States v. Minners*, No. 23-5066 (10th Cir. 2024). (Appendix A).<sup>1</sup>

The direct appeal sought reversal of a Judgment in a Criminal Case filed in the United States District Court for the Northern District of Oklahoma, in *United States v. Gianni Montay Minners*, Case No. 22-CR-214-GKF-1. (Appendix C).

## **JURISDICTION**

The Tenth Circuit reviewed the Petitioner’s conviction under the authority of 28 U.S.C. §1291. On April 2, 2024, the Order and Judgment now presented for review was filed. No rehearing or additional form of review was conducted. The ruling is mandated and final.

Jurisdiction for a writ of certiorari lies in this Court pursuant to 28 U.S.C. §1254(1), applicable to cases in the courts of appeals, which permits a writ of certiorari to be “granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.” Petitioner was the Appellant in *United States v. Minners*, No. 23-5066 (10th Cir. 2024). (Appendix A).

---

<sup>1</sup>Records required to be furnished with this Petition per Supreme Court rule are provided in a single-volume Appendix under separate cover.



## APPLICABLE LEGAL PROVISIONS

The Fourth Amendment of the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

18 U.S.C. § 922(g)(1):

(a) It shall be unlawful-

(1) for any person-

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

18 U.S.C. § 924(a)(2):

(2) Whoever knowingly violates subsection (a)(6), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

## STATEMENT OF THE CASE

### **1. FACTRUAL BACKGROUND**

In the late afternoon hours on June 15, 2022, Gianni Minners was outside of the Savanna Landing apartment complex speaking with a group of women. Tulsa police officer Colton Martin observed Mr. Minners in front of the apartments and wanted to speak to him about a shooting that occurred at a nearby liquor store on June 11. Officer Martin believed that Mr. Minners was the victim of that shooting.

After seeing Mr. Minners, Officer Martin activated his body camera, exited his patrol vehicle, and approached Mr. Minners. While walking towards Mr. Minners, Officer Martin says, “What’s up? You Gianni?” Mr. Minners asks, “Who?” and Officer Martin responds by asking, “What’s your name man?” Mr. Minners immediately hands Officer Martin his tribal identification with his legal name on it. Officer Martin, believing that Mr. Minners has denied that his name is Gianni, asks why Mr. Minners has handed him an I.D. with the name Gianni on it. Mr. Minners responds, “Who?”

Mr. Minners is engaged in a conversation with a woman, and she is reaching into her bag appearing to be looking for something for Mr. Minners when Officer Martin asks Mr. Minners to “step back here.” Officer Martin grabs Mr. Minners by the arm and Mr. Minners pulls away saying “I ain’t doing nothing sir.” Mr. Minners attempts to light his cigarette when Officer Martin grabs Mr. Minners by the shoulders with both hands telling him to “stop.” Mr. Minners pulls away, runs, and is tackled to the ground seconds later. Officers place Mr. Minners in handcuffs, search his person, and locate a firearm in Mr. Minners’s waistband.

## 2. DISTRICT COURT PROCEEDINGS

On July 18, 2022, Mr. Minners was charged by indictment in the Northern District of Oklahoma in case number 22-CR-214-GKF with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Mr. Minners filed a motion to suppress on October 14, 2022. In his motion, Mr. Minners asked the Court to suppress all evidence obtained from the search and seizure of his person in violation of his Fourth Amendment right. Mr. Minners argued that the officers lacked a reasonable suspicion of criminal activity to justify the search and seizure.

The Government filed a response in opposition to Mr. Minners's motion. It argued that Officer Martin had reasonable suspicion of criminal activity to justify the investigative detention and subsequent search of Mr. Minners. According to the Government, Officer Martin reasonably suspected Mr. Minners was in possession of a firearm based on his knowledge that Mr. Minners was a convicted felon, a gang member, had possessed a firearm six days prior, and was observed in a high crime area.

A suppression hearing was held on November 2, 2022. Officer Martin was the only witness called to testify. In addition to testifying about the events contained on the body cam video, Officer Martin testified that when he confronted Mr. Minners, he was "blading" away from him, meaning he was not showing the officer the front of his body which gave him a belief that Mr. Minners was armed with a firearm or another weapon.

After arguments from the parties, District Court Judge Gregory K. Frizzell issued a ruling from the bench finding that Officer Martin engaged in a consensual encounter with Mr. Minners which shifted to an investigative detention at the point that the officer grabbed Mr. Minners's arm. (Appendix D). The district court found that based on the officer's knowledge that six days prior to the arrest Mr. Minners possessed a firearm, that the Savanna Landing Apartments are in a high-crime area, that Mr. Minners hid the front of his body from the officer, and that Mr. Minners was a gang member, the officer "had a particularized and objective basis for suspecting Mr. Minners of criminal activity." (*Id.*) The district court denied Mr. Minners's motion to suppress. (*Id.*) The district court, sua sponte, issued a written order expounding its verbal ruling on the motion to suppress clarifying that "no seizure occurred until Officer Martin directed Mr. Minners where to stand and grabbed his arm. ..." (Appendix, B). The district court fully incorporated its verbal rulings made on the record during the suppression hearing into the written order. (*Id.*)

After the district court's ruling, Mr. Minners entered a conditional plea of guilty to Count One of the Indictment. The plea was the result of a written agreement between Mr. Minners, his counsel, and counsel for the Government. In exchange for Mr. Minners's plea of guilty to the indictment, the Government filed a motion for the defendant to receive a third-point reduction for his acceptance of responsibility. Mr. Minners agreed to waive his appellate and post-conviction rights, as well as his departure and variance rights. However, Mr. Minners reserved his right to appeal the issues raised in his motion to suppress filed on October 14, 2022. The district

court sentenced Mr. Minners to twenty-seven months imprisonment and two years of supervised release upon Mr. Minners's release from custody. (Appendix C). The Bureau of Prisons released Mr. Minners on March 1, 2024.

### **3. TENTH CIRCUIT APPEAL PROCEEDINGS**

After the Judgment in a Criminal Case was filed, the Petitioner filed a Notice of Appeal. Jurisdiction over the indictment was exercised pursuant to 28 U.S.C. § 1291. The case was submitted on the briefs to the Tenth Circuit Court of Appeals on March 21, 2024. The Panel affirmed in an unpublished Order and Judgment on April 2, 2024. *United States v. Minners*, 23-5066 (10th Cir. 2024); (Appendix A.) It rejected Mr. Minners's claim the District Court improperly erred when it denied his motion to suppress, because the arresting officer did not have reasonable suspicion that Mr. Minners was engaged in criminal activity which justified the seizure and search of his person.

In the Order and Judgment, the Panel evaluated only “whether the officer had reasonable suspicion that criminal activity was afoot — here, possession of a weapon by a felon — to justify the investigatory detention.” (Appendix A, p. 5); *see United States v. Sokolow*, 490 U.S. 1, 7 (1989). The Tenth Circuit acknowledged that Mr. Minners was seized at the time that the officer grabbed Mr. Minners arm and that the detention must have been “‘justified at its inception’ by reasonable suspicion.” (Appendix A, p. 5) (quoting *United States v. McHugh*, 639 F.3d 1250, 1255 & n.3 (10th Cir. 2011)). However, the Panel concluded, based on the totality of the circumstances, the facts that “(1) Mr. Minners's possession of a gun as a felon [on

June 9], (2) Savanna Landing’s location in a high-crime area, (3) Mr. Minners’s furtive or evasive movements, and (4) [the] officer’s knowledge that Mr. Minners was a gang member and the suspected target of a shooting four days earlier,” provided an objected basis for the officer to suspect Mr. Minners of possessing a gun on June 15, 2022, after being convicted of a felony. (*Id.* at 6).

In his argument regarding the gun possession factor, Mr. Minners argued that the information that he possessed a gun on June 9 could not contribute to a reasonable suspicion that he possessed a gun on June 15 because the information was stale and gun possession is “transitory or momentary,” i.e., not ongoing. In response, the Tenth Circuit, without citing published precedent, reasoned that gun possession falls somewhere between ongoing and continuous conduct and transitory criminal conduct:

“While gun possession could be transitory, it is not a crime like jaywalking, where entering and existing the street clearly bookends the crime. Possession can also be actual or constructive. Viewing the evidence most favorable to the government, however, timeliness is less relevant, and a reasonable officer could certainly suspect that Mr. Minners still possessed a firearm as a felon.”

(Appendix A, p. 7).

The Panel also denied Mr. Minners’s claims as it related to his supposed gang affiliation and his victim status in a shooting four days earlier, which the Tenth Circuit framed as “involvement” in the shooting. Mr. Minners argued that his assumed gang affiliation should not be included in a reasonable suspicion analysis because there was virtually no explanation of how he became certified as a gang member in the Tulsa Police Department’s records. The Panel noted that:

[T]he reliability of the certification process is irrelevant to the reasonable suspicion calculus. This evidence, together with the reported gun possession six days earlier, and the fact that Mr. Minners was the alleged target of a shooting four days earlier, only strengthens the inference that Mr. Minners likely possessed a gun on June 15. It is reasonable to infer that anyone, let alone a gang member, would more likely possess a firearm if they were actively targeted.

(Appendix A, pp. 8-9).

Finally, the Tenth Circuit also rejected the high-crime area and evasive body language claim brought by Mr. Minners. In denying the argument against “blading away” supporting probable cause presented by Appellant, the Panel characterized Mr. Minners’s answers as evasive and inconsistent, because he first handed the police officer his identification but said his name was not Gianni. (*Id.* at 9). The Tenth Circuit did acknowledge that it was unclear if Mr. Minners was shielding the front portion of his body from the police or if he was ignoring the officer. (*Id.*)

The Panel concluded its Order and Judgment stating that it considered the combination of Mr. Minners’s behavior along with his possession of a gun six days prior, that he had been the victim of an attempted shooting, that he was a reported gang member, and that he was present in a high-crime area to, in total, amount to reasonable suspicion, even if the parts themselves, standing alone, did not.

## REASONS FOR GRANTING A WRIT

### I. THE TENTH CIRCUIT'S DECISION IS INCORRECT AND SEVERELY FLAWED

Certiorari review is appropriate when “a United States court of appeals has . . . so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power[.]” S. Ct. R. 10(a). The order submitted for review failed to comply with the Circuit’s own rule of law that an investigatory detention must be justified at its inception.

#### A. THERE WERE INSUFFICIENT FACTS TO FIND REASONABLE SUSPICION

“To be ‘reasonable’ a police officer’s investigatory stop must be ‘justified at its inception,’ and the ‘officer’s actions must be reasonably related in scope to the circumstances which justified the interference in the first place.’” *United States v. Daniels*, 101 F.4th 770, 776 (10th Cir. 2024) (quoting *United States v. Madrid*, 713 F.3d 1251, 1256 (10th Cir. 2013)). “An investigatory detention is justified at its inception if the specific and articulable facts and rational inferences drawn from those facts give rise to a reasonable suspicion that a person has or is committing a crime,” *Madrid*, 713 F.3d at 1256 (quoting *McHugh*, 639 F.3d at 1255), or that “criminal activity may be afoot.” *Sokolow*, 490 U.S. at 7. The Tenth Circuit failed to adequately analyze the facts leading to its finding of reasonable suspicion that Mr. Minners was a felon in possession of a gun. In its view, the Tenth Circuit found facts sufficient to support a finding of reasonable suspicion for Mr. Minners’s possible possession of a firearm on its own, but it did not reach the same conclusions for



(1) his victim status in a shooting four days earlier, (2) his gang status, (3) his behavior towards the officer, or (4) his presence in a high crime area.

First, the Tenth Circuit mischaracterized Mr. Minners’s role in the previous shooting that occurred four days before he was seized by the officer. The Tenth Circuit describes this as his “involvement in a shooting four days earlier,” Appendix A, p. 8, but he was not involved in the shooting—he was the intended *victim* of that shooting. The Court evaluated this fact in tandem with Mr. Minners’s supposed gang affiliation, for which facts are also absent in the record.

Second, the Court noted that reasonable suspicion must be supported by “articulable facts that criminal activity may be afoot,” but that is not supported in the record as it pertains to Mr. Minners’s alleged gang involvement. (*See id.* at 5) (quoting *Sokolow*, 490 U.S. at 7). The Court stated that “the reliability of the certification process is irrelevant to the reasonable suspicion calculus.” (*Id.* at 8). The Court does not point to *any* facts that support this conclusion on the record. It inappropriately evaluated this fact in conjunction with his possession of a gun six days before and his victim status in another attempted shooting four days before his interaction with the officer. The Court concluded: “It is reasonable to infer that anyone, let alone a gang member, would more likely possess a firearm if they were actively targeted.” (*Id.* at 9).

Lastly, the Tenth Circuit did not point to specific, articulable facts—or even inferences—to conclude that the Savanna Landing Apartments were located in a high crime area. The Court combined this fact with Mr. Minners’s actions when

approached by the officer, but the analysis focuses almost solely on his actions. The Court tellingly stated that “[e]ven if it is not alone sufficient to support reasonable suspicion, *see Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), we view it as a factor in the totality of the circumstances analysis that adds to reasonable suspicion.” (Appendix A, p. 10).

Each of these evaluations, without the finding of reasonable suspicion from Mr. Minners’s possession of a gun six days before his interaction with the officer, *see infra* I.B., fails to support reasonable suspicion for the fact that there are not specific, articulable facts that Mr. Minners possessed a gun at the time he was approach by the officer.

**B. THE CONCLUSION REACHED BY THE TENTH CIRCUIT DIRECTLY CONTRADICTS ITS PRECEDENT AND INADEQUATELY EXPLAINS A NEW HOLDING**

In the Order and Judgment, the Tenth Circuit failed to abide by its own precedent in two ways. First, the totality of circumstances analysis does not support a finding of reasonable suspicion for his victim status in a shooting four days earlier, his gang status, his behavior towards the officer, or his presence in a high crime area. Second, the Panel did not adequately explain its reasoning for finding that possession of a gun six days prior was not too stale to find reasonable suspicion.

First, the totality of circumstances analysis does not support a finding of reasonable suspicion where the circumstances pointed to are not specific and articulated, or where they are not rational inferences. *United State v. Daniels*, 101 F.4th at 776. In *United States v. Davis*, the Tenth Circuit declined to apply the totality of circumstances evaluation where, taken together, the factual basis is for

each allegation was lacking. 94 F.3d 1465 (10th Cir. 1996). “Even considering the totality of the circumstances in this case, the government fails to show any specific factual basis for suspecting that a particular crime was being committed by Davis at the time he was detained.” (*Id.* at 1470). Like Mr. Minners, the defendant in *Davis* declined, prior to being seized, to give the officers his full attention, and the Court reasoned this did not contribute to a finding of reasonable suspicion. The *Davis* Court reasoned that there was no evidence presented that the officers noticed a suspicious bulge in Davis’s clothes, that he appeared to be hiding anything, or that he made any threatening moves. (*Id.*) “Here, the factual findings of the district court indicate that when Davis was instructed by the officers to stop, ‘he continued walking *in the same direction and same manner.*’” (*Id.*) (emphasis added).

By the same token, the factual findings in Mr. Minners’s case are that he was dismissive towards the officers, but he provided his identification immediately after the officer contacted him. He was also suspected to be a *victim* of a shooting four days earlier and suspected to have possessed a gun two days before that. But no finding was made on the record of why his victim status constituted reasonable suspicion, that the accusation of his gang affiliation was accurate, or that the place where officers contacted him was in fact a high crime area. By refusing to do this, the Tenth Circuit failed to apply its own precedent.

Second, the Panel did not cite any published, binding Tenth Circuit authority as to why possessing a gun six days before his interaction with the officer does not render that information stale for purposes of finding reasonable suspicion. The Tenth

Circuit merely stated that it was somewhere in between ongoing criminal activity and discreet criminal activity. The Panel explained that criminal conduct that is “ongoing and continuous,” such as driving without a license, drug dealing, or conspiracy to commit fraud, can extend the time for which the information is not considered stale. (Appendix A, p. 7). However, criminal conduct which is transitory, such as jaywalking or mugging, “which has a clear beginning and end point” may be considered untimely, although the Tenth Circuit did not elaborate on how short that timeframe might be. (*Id.*)

The Panel stated that illegal gun possession falls somewhere between ongoing and transitory criminal activity, but it did not adequately expand on what the bounds might be. It pointed to one unreported case in which the Tenth Circuit found that gun brandishing seventeen days before the search was not too stale to consider for reasonable suspicion. *See United States v. Lazos*, 314 F. App’x 127 (10th Cir. 2009) (unpublished). “It is reasonable to infer that one who brandishes a firearm will intermittently possess that firearm for some period of time afterwards.” (*Id.* at 133). But the Tenth Circuit only stated that Mr. Minners was seen “holding a gun,” not that he was brandishing it. (*See* Appendix, A, p. 2). The Panel accordingly misapplied its own (unpublished) reasoning.

Certiorari review should be granted to resolve the departure from the precedent established under the Tenth Circuit’s previous ruling in *Davis* and *Daniels*.

## CONCLUSION

Certiorari review is appropriate to overturn the Tenth Circuit's conclusion that the officer effectuating the investigatory detention had reasonable suspicion to do so despite the lack of specific and articulable facts to support that finding.

Respectfully submitted,

---

Chance Cammack  
Counsel of Record  
Okla. Bar. Assn. No. 31011  
Assistant Federal Public Defender  
Chance\_Cammack@fd.org

Malia Castillo  
Okla. Bar. Assn. No. 35572  
Research and Writing Specialist  
Malia\_Castillo@fd.org

Julia L. O'Connell  
Okla. Bar Assn. No. 13882  
Federal Public Defender

Office of Federal Public Defender  
Northern District of Oklahoma  
1 West 3rd St, Ste. 1225  
Tulsa, Oklahoma 74103  
(918) 581-7656  
Counsel of Record for Petitioner