

No. __ - _____

THE SUPREME COURT OF THE UNITED STATES

RUSTAM YUSUPOV,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

1. Whether Rustam Yusupov's conviction for unlawful possession of ammunition under 18 U.S.C. § 922(g)(8) violates the Second Amendment?
2. Whether the appeal waiver Rustam Yusupov signed as part of his plea agreement bars relief where his conviction is unconstitutional?

LIST OF PARTIES

Petitioner: Rustam Yusupov was the Appellant on the above issues in the United States Court of Appeals for the Ninth Circuit.

Respondent: The United States was the Appellee on the above issues in the United States Court of Appeals for the Ninth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

Rustam Yusupov respectfully petitions for a writ of certiorari to review the dismissal order of the United States Court of Appeals for the Ninth Circuit in *United States v. Rustam Yusupov*, No. 23-859.

OPINION BELOW

The Court of Appeals for the Ninth Circuit entered an order dismissing Yusupov’s appeal “in light of the valid appeal waiver.” The order is attached as Appendix A to this petition at A1.

JURISDICTION

The district court had jurisdiction over this criminal matter pursuant to 18 U.S.C. § 3231. The Ninth Circuit had jurisdiction over the appeal under 28 U.S.C. § 1291. The circuit court denied Yusupov’s motion for reconsideration on June 11, 2024. This order is attached as Appendix C at A9. This Petition for a Writ of Certiorari is filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Second Amendment to the U.S Constitution 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.

18 U.S.C. § 922(g)(8) provides:

(g) It shall be unlawful for any person—

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

INTRODUCTION

Rustam Yusupov plead guilty to a charge of unlawful possession of ammunition under 18 U.S.C. 922(g)(8). This conviction violates his Second Amendment rights because no judge found Yusupov to be a credible threat to the physical safety of another. Pursuant to *United States v. Rahimi*, his conviction should be reversed.¹

Yusupov waived his right to appeal as part of his plea agreement, but this waiver should not bar relief. His unlawful conviction is a miscarriage of justice that warrants reversal.

This Court should grant certiorari.

¹ 144 S. Ct. 1889 (2024).

STATEMENT OF THE CASE

1. Rustam Yusupov spent his childhood in a war zone in Afghanistan during Soviet Union occupation. PSR ¶ 47²; ER 14.³ At a tender age, he witnessed significant violence and death. ER 14. When he was just nine years old, his father gave him a firearm so he could protect himself. PSR ¶ 47.

As a teenager, Yusupov moved with his family to Uzbekistan. PSR ¶ 48. Life was much easier, but the death and destruction he grew up with haunted him. *Id.* When Yusupov was eighteen years old, his father was killed by political rivals who trapped him in the family home and set the house on fire. PSR ¶ 49.

His mother fled Uzbekistan and was granted asylum in the United States. PSR ¶ 50. Left behind, Yusupov moved to Russia to attend school. *Id.* But he was treated as a Russian citizen and conscripted into the Russian military. *Id.* Yusupov

² PSR refers to the Presentence Report filed under seal in the Court of Appeals.

³ ER refers to the excerpts of record filed in the Court of Appeals.

was forced into heavy combat and most of his platoon was killed. *Id.* He was discharged from the military after being shot in the right lung and hit with an explosive device. PSR ¶¶ 50-51.

2. Yusupov arrived lawfully in the United States as his mother's dependent when he was 21 years old. PSR ¶ 51. Shortly after his arrival, he began working as an apprentice for a marble mason. PSR ¶ 63. This led to a career as a marble mason, a job he held until the time of his arrest. *Id.*

He married and had a son, who is now a teenager. PSR ¶ 51. He later divorced and remarried a woman with whom he had a tumultuous relationship. PSR ¶ 52. After they divorced, she obtained a no-contact order against him. *Id.*

Yusupov has no prior convictions involving violence, threats of violence, or firearms. ER 15, 43. When his ex-wife obtained a protective order against him, she alleged abusive conduct but specifically noted it had not involved firearms. ER 15.

3. Yusupov became the sole caretaker for his mother, who suffered from Alzheimer's disease. ER 56; PSR (Yusupov letter). This caretaking was daunting and required Yusupov's attention

at all hours. PSR (Yusupov letter). He would often forgo eating, sleeping, and showering in order to take care of his mother's needs instead. *Id.*

After three years of providing dementia care for his mother, Yusupov began to hear the footsteps of children on the ceiling and in the walls around him. ER 41. It became so disabling that he checked into a hotel to try to get some sleep. *Id.* But when he arrived in his hotel room he believed a child was in the room with him. *Id.* Yusupov called the front desk to inform them an unknown child was in his bed and the hotel manager responded to the room to find it in a state of disarray. ER 40. Officers arrived to the hotel room to find Yusupov in crisis, sweating profusely and extremely restless. ER 40-41. Yusupov told them it had been days or weeks since he last slept and repeatedly asked the officers to check under a mattress for a child. ER 41.

4. Officers found two firearms in the hotel room and Yusupov admitted to owning several. ER 42, 45. Officers later discovered a number of firearms, magazines, ammunition, and other firearm accessories in his car after the valet who parked

the car alerted the officers to the weapons. ER 44. Because of the order protection obtained against Yusupov by his ex-wife, he was prohibited from possessing firearms and ammunition. *Id.* Yusupov was taken to the hospital but quickly released. ER 43; ER 54. Later that night, he flagged down an officer and told him there was a baby inside of a motorcycle. ER 54. The officer told him to go home and talk to someone. *Id.*

5. A grand jury indicted Yusupov on two counts of unlawful possession of a firearm and one count of unlawful possession of ammunition under 18 U.S.C. § 922(g)(8). ER 32-33. He pleaded guilty to the possession of ammunition count and the government dismissed the possession of firearms counts. ER 19, 28, 80. As part of the plea agreement, he signed an appeal waiver in which he waived his right to appeal his conviction or sentence and his right to collaterally attack his conviction except as related to the effectiveness of his legal representation. ER 30.

At sentencing, Yusupov expressed deep remorse for his actions. PSR (Yusupov letter); ER 56. Yusupov's mother passed away after his arrest and he was unable to say goodbye or

attend her funeral. PSR (Yusupov Letter). He is certain she died because he was no longer present to care for her. *Id.*

The court sentenced Yusupov to 51 months of incarceration and three years of supervised release. Appendix B at A3-A4. Yusupov appealed, challenging his conviction as a violation of the Second Amendment, and asked the Court of Appeals to stay his appeal until after this Court decided *United States v. Rahimi*.⁴ The Court of Appeals denied the stay and dismissed his appeal “in light of the valid appeal waiver.” Appendix A at A1. Yusupov filed a motion for reconsideration, which the Court of Appeals also denied. Appendix C at A9.

REASONS FOR GRANTING THE PETITION

I. Rustam Yusupov’s conviction for possession of ammunition violates the Second Amendment.

This Court has repeatedly “held that the right to keep and bear arms is among the ‘fundamental rights necessary to our system of ordered liberty.’” *United States v. Rahimi*, 144 S. Ct. 1889, 1897 (2024) (quoting *McDonald v. Chicago*, 561 U.S. 742, 778 (2010)). Codified in the Second Amendment, this “right

⁴ 144 S. Ct. 1889 (2024).

secures for Americans a means of self-defense” and the inalienable right of defending both life and liberty. *Id.* (citing *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 17 (2022); Cong. Globe 40th Cong., 2d Sess. 1967 (1868) (statement of Rep. Stevens)); Const. amend. II.

This Court’s standard for applying the Second Amendment is straightforward: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Bruen*, 597 U.S. at 24. In order to justify a regulation, the government must demonstrate the regulation “is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* “Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* (quoting *Konigsberg v. States Bar of California*, 366 U.S. 36, 50, n. 10 (1961)).

This standard is rooted in the “text, as informed by history.” *Id.* at 19. While this Court has not provided “an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment,” it has pointed to “at least two metrics: how and why the regulations burden a

law-abiding citizen’s right to armed self-defense.” *Id.* at 29. The “*central component*” of the Second Amendment right to bear arms is “individual self-defense.” *Id.* at 29 (quoting *McDonald*, 561 U. S. at 767) (emphasis in original). “Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are ‘*central*’ considerations when engaging in an analogical inquiry.” *Id.* (quoting *McDonald*, 561 U.S. at 767) (internal quotation marks omitted) (emphasis in original).

To place a regulation in our historical tradition, the government need not find a “historical twin.” *Rahimi*, 144 S. Ct. at 1903 (citing *Bruen*, 597 U.S. at 30). However, it must identify a “historical analogue.” *Id.*

Here, Yusupov was indicted for two counts of unlawful possession of a firearm and one count of unlawful possession of ammunition under Section § 922(g)(8) on the basis that his possession was unlawful because he was subject to a protection order. Appendix E at A23. He pleaded guilty to the ammunition count and the government dismissed the firearm counts. ER 19, 28, 80.

Following the entry of his plea, the Fifth Circuit held Section 922(g)(8) unconstitutional in its entirety. *United States v. Rahimi*, 61 F.4th 443, 461 (5th Cir. 2003). In *Rahimi*, the defendant was convicted of possessing a firearm while subject to a restraining order in violation of 18 U.S.C. § 922(g)(8). *Id.* at 449. *Rahimi* challenged Section 922(g)(8) on its face. *Id.* at 461. Applying the Second Amendment test from *Bruen*, the Fifth Circuit rejected the government’s proposed historical analogues and held the statute violated the Second Amendment because its ban on the possession of firearms “is an ‘outlier that our ancestors would never have accepted.’” *Id.*

This Court granted review of *Rahimi* after Yusupov appeared for his sentencing. ER 3 (sentenced on May 2, 2023); *Rahimi*, 61 F.4th at 443, *cert. granted*, No. 22-915, 2023 U.S. LEXIS 2830 (June 30, 2023). On appeal, Yusupov challenged his conviction based upon *Rahimi*, but the Court of Appeals denied his request for a stay pending this Court’s decision in *Rahimi* and dismissed Yusupov’s appeal “in light of the valid appeal waiver.” Appendix A at A1.

This Court later reversed in *Rahimi* in a narrow ruling. The Court held the statute constitutional on its face because Section 922(g)(8)(C)(i) “bars an individual from possessing a firearm if his restraining order includes a finding that he poses ‘a credible threat to the physical safety’ of a protected person.” *Rahimi*, 144 S. Ct. at 1898 (quoting Section 922(g)(8)(C)(i)). The Court found this prohibition “fits neatly within the tradition the surety and going armed laws represent,” because under Section 922(g)(8)(C)(i)—as with historical surety and going armed laws—a judge must determine “whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* at 1901-02. Because Rahimi posed a credible threat to the safety of others, the Court found the statutory provision was constitutional as applied to him, and therefore constitutional on its face. *Id.* at 1889 (citing *United States v. Solerno*, 481 U.S. 739, 745 (1987) and explaining the statute need only be constitutional in some of its applications to survive a facial challenge).

However, Section 922(g)(8)(C)(ii), under which the protection order was entered against Yusupov, does not provide

for this requirement. *See* Exhibit D at A16 (plea agreement citing language from Section 922(g)(8)(C)(ii)). Under Section 922(g)(8)(C)(ii), it is unlawful for a person to possess a firearm if that person is subject to a court order that “by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.”

Thus, the judicial finding upon which this Court’s decision rested in *Rahimi* was not made before imposing the protection order against Yusupov. A judge did not find Yusupov would likely threaten someone with a weapon or had threatened someone with a weapon. Instead, as the defense explained in their sentencing memorandum and the government did not dispute, Yusupov’s ex-wife alleged abusive conduct but specifically noted Yusupov had not used firearms against her. *See* ER 15 (defense sentencing memorandum).

In the absence of judicial finding that Yusupov had threatened someone with a weapon or was likely to do so, his conviction is unconstitutional under the Second Amendment. In *Rahimi*, this Court explained “Section 922(g)(8) provides two

independent bases for liability” and because Rahimi challenged the provision in its entirety on its face, the Court needed to find only that Section 922(g)(8)(C)(i) was valid under the Second Amendment. *Rahimi*, 144 S. Ct. at 1898; *Salerno*, 481 U.S. at 745 (the party challenging the statute “must establish that no set of circumstances exists under which the Act would be valid”). The Court ended its analysis there. *Rahimi*, 144 S. Ct. at 1898. It did not determine whether regulation of conduct under Section 922(g)(8)(C)(ii) was permissible. *Id.* at 1898-99.

The Court has the opportunity to answer this important question of law in this case. No court found that Yusupov presented a credible threat to the physical safety of another. The protection order simply prohibited him from using force against another in the future. *See* Appendix D at A16. Both on its face and as applied to Yusupov, Section 922(g)(8)(C)(ii) is unconstitutional. The charges brought against Yusupov, and the charge to which he pleaded guilty, violate his Second Amendment rights. *See District of Columbia v. Heller*, 554 U.S. 570, 632 (2008) (making no differentiation between regulations

governing ammunition and those governing firearms). This Court should grant certiorari.

II. Yusupov’s appeal waiver does not bar him from obtaining relief.

As part of the plea agreement, Yusupov agreed to waive his right to appeal, including “all rights to appeal” from his conviction, any right to challenge his sentence on direct appeal under 18 U.S.C. § 3742, and any right to bring a collateral attack except as related to the ineffectiveness of his counsel. ER 30.

Yusupov waived these rights unaware the charges against him were unconstitutional. He did not have the benefit of the Fifth Circuit’s decision in *Rahimi* when he accepted the government’s plea agreement. ER 19, 81 (plea agreement signed February 2, 2023); *Rahimi*, 61 F.4th at 443 (decided March 2, 2023). This Court did not grant review of *Rahimi* until after Yusupov appeared for his sentencing. ER 3 (sentenced on May 2, 2023); *Rahimi*, 61 F.4th at 443, cert. granted, No. 22-915, 2023 U.S. LEXIS 2830 (June 30, 2023). The Court of Appeals denied Yusupov’s request for a stay and dismissed his appeal before the

Court issued its decision in *Rahimi*, finding dismissal appropriate “in light of the valid appeal waiver.” Appendix A at A1; Appendix at A9 (denial of reconsideration denied June 11, 2024); *Rahimi*, 144 S. Ct. at 1889 (decided June 21, 2024).

The waiver Yusupov signed as part of the plea agreement should not bar relief from his unconstitutional conviction now. A plea agreement is essentially a contract. *Garza v. Idaho*, 586 U.S. 232, 238 (2019); *Puckett v. United States*, 556 U.S. 129, 137 (2009). As this Court has acknowledged, “all jurisdictions appear to treat at least some claims as unwaivable.” *Garza*, 586 U.S. at 238. “Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself is valid and enforceable—for example, on the grounds that it was unknowing and involuntary.” *Id.*

Some circuits have held that a waiver may not be enforced where doing so would result in a miscarriage of justice. For example, in circumstances similar to those presented here, the Fourth Circuit held that when a defendant is actually innocent of the charge against him, the court should consider the defendant’s claim on the merits despite a valid appeal

waiver in order to avoid a miscarriage of justice. *United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016). “Actual innocence’ means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998) (government permitted to rely on any admissible evidence to show guilt on remand, not just the evidence previously made part of the record).

In *Adams*, the defendant argued he was actually innocent of his conviction for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and that his claim of actual innocence should be considered on the merits because it was outside the scope of his valid appeal waiver. 814 F.3d at 182. In *Adams* the law changed after the defendant accepted the government’s offer and entered a guilty plea. *Id.* at 181. When the Fourth Circuit held the defendant must actually (rather than hypothetically) face the possibility of more than one year in prison under North Carolina’s sentencing act for the conviction to qualify as a felony, Adams contended that because none of his prior state convictions qualified as felonies, he was not a convicted felon under § 922(g)(1) and thus entitled to relief. *Id.*

The court agreed, refusing “to enforce an otherwise valid waiver if to do so would result in a miscarriage of justice.” *Id.* at 182 (citing *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005)). It held the miscarriage of justice requirement was satisfied by a “proper showing of ‘actual innocence’” and rendered Adams’ claim outside the scope of the valid appeal waiver. *Adams*, 814 F.3d at 182 (quoting *Wolfe v. Johnson*, 565 F.3d 140, 160 (4th Cir. 2009)). The court then considered Adams’ claim on the merits and held he had satisfied the criteria for “factual innocence” because the elements of the crime were not met and the government could not obtain a conviction against Adams under § 922(g)(1). *Id.* at 183 (citing *Bousley*, 523 U.S. at 623).

The court vacated Adams’ conviction and held:

Just as the criminal justice system must see the guilty convicted and sentenced to a just punishment, so too it must ferret out and vacate improper convictions. Because Adams was not a convicted felon at the time of the charged offense, it was not illegal under § 922(g) for him to possess a firearm. He should not remain convicted of a crime of which he is, under our precedent... actually innocent.

Adams, 814 F.3d at 185.

The Fourth Circuit reached the same conclusion in *United States v. McKinney*, 60 F.4th 188, 192-93 (4th Cir. 2023). In *McKinney*, the defendant plead guilty to Hobbs Act⁵ conspiracy and one count of using a firearm “during and in relation to a crime of violence, that is conspiracy to commit interference with commerce by threats and violence” in violation of 18 U.S.C. § 924(c). 60 F.4th at 191 (emphasis added in *McKinney*). The Hobbs Act conspiracy was the sole predicate offense alleged for the § 924(c) violation. 60 F.4th at 191. A few years after *McKinney* plead guilty, the Supreme Court struck down the residual clause of § 924(c)⁶ as unconstitutionally vague, leaving *McKinney* “convicted of a crime that no longer exists.” *Id.* at 191-92 (citing *United States v. Davis*, 139 S. Ct. 2319 (2019)).

⁵ The Hobbs Act, 18 U.S.C. §1951, prohibits attempted or actual robbery or extortion that affects interstate or foreign commerce.

⁶ Pursuant to 18 U.S.C. § 924(c), additional penalties are imposed for the possession, use, or carrying of a firearm in relation to a crime of violence. The residual clause, § 924(c)(3)(B), states that “the term ‘crime of violence’ means an offense that is a felony and that that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

The government conceded McKinney's conviction was invalid but argued his claim for relief was barred by his appeal waiver. *McKinney*, 60 F.4th at 192. The court disagreed, explaining that a waiver should not be enforced where doing so would result in a miscarriage of justice. *Id.* (citing *Adams*, 814 F.3d at 182). The court found *McKinney* "need only make 'a cognizable claim of actual innocence'" to establish a miscarriage of justice and he had clearly done so here. *McKinney*, 60 F.4th at 192 (quoting *Adams*, 814 F.3d at 182) (emphasis added in *McKinney*). It was undisputed that McKinney has been "convicted of, and imprisoned for, conduct that does not violate § 924(c) and in fact is not criminal." *McKinney*, 60 F.4th at 190. The court reversed and remanded the case to the district court. *McKinney*, 60 F.4th at 198.

However, when the Ninth Circuit considered this same issue in *United States v. Goodall*, and the defendant argued "he could not possibly have contemplated [the *Davis*] argument when he waived his appellate rights," the Ninth Circuit was unmoved. 21 F.4th 555, 562 (9th Cir. 2021). The court found he was suffering from nothing more than the equivalent of "buyer's

remorse” and concluded “[t]here is no do-over just because a defendant later regrets agreeing to a plea deal.” *Id.*

The Ninth Circuit’s reasoning in *Goodall* was based, in part, on the fact that the defendant was able to make the *Davis* argument only because the government had declined to pursue additional charges as part of the plea deal. *Id.* at 564. The Court concluded that Goodall, rather than accepting the benefit of his bargain, was now seeking merely to “parlay the plea agreement’s leniency into reversible error,” and dismissed the appeal. *Id.* at 564-65.

This is not true in Yusupov’s case. The grand jury indicted Yusupov on two counts of unlawful possession of a firearm and one count of unlawful possession of ammunition, all under § 922(g)(8). ER 32-33. The government dismissed the two counts of unlawful possession of a firearm as part of the plea agreement, but pursuant to the Fifth Circuit’s decision in *Rahimi*, all three of the charges were invalid. *Rahimi*, at 61 F.4th at 461; ER 28. While this Court has since reversed in *Rahimi*, it did so in a narrow ruling that still suggests that, because no judge determined Yusupov was a credible threat to

the physical safety of another, all of the charges brought against Yusupov, and his resulting conviction, are unconstitutional. *See Rahimi*, 144 S. Ct. at 1898.

The Ninth Circuit did not specifically consider the miscarriage-of-justice exception in *Goodall* before dismissing the appeal in that case. 21 F.4th at 565, n.6; *United States v. Goodall*, No. 18-10004, 2021 U.S. App. LEXIS 38394 (9th Cir. December 28, 2021) (adding a footnote to the opinion in its decision on rehearing stating it had not considered the applicability of the miscarriage-of-justice exception). But in Yusupov’s case, the Ninth Circuit relied upon *Goodall* to dismiss the appeal after finding Yusupov’s “arguments against enforcement of the waiver... unavailing,” and dismissing the appeal. Appendix A at A1. These arguments included that the court should consider his appeal to avoid a miscarriage of justice.

The Fourth Circuit’s embrace of the miscarriage-of-justice exception, and the Ninth Circuit’s refusal to apply it, demonstrates a conflict between the circuits that this Court should review.

Other circuits have recognized that when a defendant claims a miscarriage of justice, an appeal waiver does not bar the Court from considering that claim on the merits. *See United States v. Santiago*, 769 F.3d 1 (1st Cir. 2014) (sentencing condition vacated and case remanded for resentencing where appeal waiver was valid but court applied the miscarriage-of-justice exception); *United States v. Johnson*, 347 F.3d 412 (2nd Cir. 2003) (where a sentence is allegedly based upon a miscarriage of justice, the terms of the plea agreement cannot serve to waive the appeal); *United States v. Castro*, 704 F.3d 125, 139 (3rd Cir. 2013) (reversal of conviction where enforcing the appeal waiver would work a miscarriage of justice because there was “a complete failure of proof on an essential element of the charged crime”); *United States v. Litos*, 847 F.3d 906, 910 (7th Cir. 2023) (where restitution was vacated as to the codefendants, the court declined to enforce the appellate waiver as to the ordered restitution in order to avoid a miscarriage of justice); *United States v. Andis*, 333 F.3d 886 (8th Cir. 2003) (appeal waiver will not be enforced where doing so would result in a miscarriage of justice); *United States v. Hahn*, 359 F.3d

1315, 1327 (10th Cir. 2004) (discussing miscarriage-of-justice exception as a part of the appeal waiver enforcement analysis).

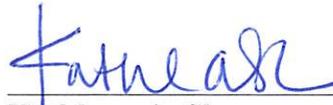
However, the Eleventh Circuit has declined to recognize such an exception. *See King v. United States*, 41 F.4th 1363, 1367 n.3 (11th Cir. 2022) (“our Circuit has never adopted a general ‘miscarriage of justice’ exception to the rule that valid appeal waivers must be enforced according to their terms”).

Yusupov made the decision to plead guilty without the benefit of this Court’s decision in *Rahimi*. His conviction under Section 922(g)(8)(C)(ii) is unconstitutional and therefore a miscarriage of justice. This Court should grant certiorari to resolve the circuit split on this important issue.

CONCLUSION

Rustam Yusupov's conviction violates the Second Amendment. His appeal waiver does not bar relief. The Court should grant certiorari in this case.

Respectfully submitted this 6th day of September, 2024.



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