
NO. _____

IN THE

Supreme Court of the United States

_____ TERM, 20__

Kevin Paul Cantu - Petitioner,

vs.

United States of America - Respondent.

APPENDIX TO PETITIONER'S APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Heather Quick
Appellate Chief
First Assistant Federal Public Defender
222 Third Avenue SE, Suite 290
Cedar Rapids, IA 52401
TELEPHONE: 319-363-9540
FAX: 319-363-9542

ATTORNEY FOR PETITIONER

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United States Court of Appeals
For the Eighth Circuit

No. 24-2338

United States of America

Plaintiff - Appellee

v.

Kevin Paul Cantu

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Central

Submitted: March 21, 2025

Filed: April 18, 2025

[Unpublished]

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Kevin Cantu was charged with one count of being a prohibited person in possession of a firearm, *see* 18 U.S.C. §§ 922(g)(1), (g)(9), and 924(a)(8), and one count of possession of a firearm with an obliterated serial number, *see id.* §§ 922(k) and 924(a)(1)(B). Cantu moved to dismiss both counts, arguing that the underlying

statutes violate his Second Amendment right to possess firearms. The district court¹ denied his motion to dismiss. Cantu then entered into a plea agreement in which he pleaded guilty to the prohibited person in possession of a firearm count in exchange for the Government's agreement to dismiss the obliterated serial number count. In the plea agreement, Cantu reserved his right to appeal the denial of his motion to dismiss.

On appeal, Cantu reiterates his argument that the statutes underlying the counts violate the Second Amendment following the Supreme Court's recent decisions in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). We review this argument *de novo*. *United States v. Hoeft*, 128 F.4th 917, 921 (8th Cir. 2025).

We first dispense with Cantu's challenge to the second count. He argues that § 922(k), which prohibits the possession of a firearm with an obliterated serial number, is unconstitutional. However, the Government agreed to dismiss the § 922(k) count as part of the plea agreement, so Cantu's challenge is moot. *See United States v. Askia*, 893 F.3d 1110, 1122 (8th Cir. 2018) (holding that if "an intervening circumstance deprives the [litigant] of a personal stake in the outcome" such that resolution of an issue on appeal would no longer have any "direct consequence" on the litigant, the issue is moot) (internal quotations omitted). Accordingly, we do not address the merits of Cantu's § 922(k) challenge.

We now turn to the first count, which charged Cantu with violating both § 922(g)(1), which prohibits convicted felons from possessing firearms, and also (g)(9), which prohibits individuals convicted of misdemeanor domestic violence from possessing firearms. In *United States v. Jackson*, we held that § 922(g)(1) is facially constitutional under the Supreme Court's Second Amendment jurisprudence, including *Bruen* and *Rahimi*. 110 F.4th 1120, 1125 (8th Cir. 2024).

¹The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

We also rejected attempts at “felony-by-felony litigation” challenging the statute’s constitutionality as applied to individual felons. *Id.*; *see also United States v. Sharkey*, 131 F.4th 621, 622 (8th Cir. 2025) (noting that *Jackson* forecloses both facial and as-applied challenges to § 922(g)(1)). Cantu acknowledges that his interpretation of *Bruen* and *Rahimi* conflicts with *Jackson* and urges us to overturn that decision. However, we are bound by *Jackson* unless and until an *en banc* panel of our court overturns it or the Supreme Court issues a decision inconsistent with it. *See United States v. Flynn*, 969 F.3d 873, 882 (8th Cir. 2020).

We need not consider the constitutionality of § 922(g)(9), which is charged in the same count as (g)(1). *See Hoeft*, 128 F.4th at 921 (having upheld a § 922(g)(1) conviction under *Jackson*, declining to consider the defendant’s challenge to (g)(9)); *see also United States v. Marin*, 31 F.4th 1049, 1054 n.2 (8th Cir. 2022) (stating that when a defendant’s “conviction can be sustained on any one of the § 922(g) categories, this court need not address” whether the conviction can also be sustained under a different § 922(g) category).

We affirm the judgment of the district court.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-2338

United States of America

Plaintiff - Appellee

v.

Kevin Paul Cantu

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:23-cr-00133-RGE-1)

JUDGMENT

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

April 18, 2025

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.