

SALAZAR V. UNITED STATES

APPENDIX TO
PETITION FOR WRIT OF
CERTIORARI

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

January 29, 2026

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERSON ARMANDO ROMERO
SALAZAR,

Defendant - Appellant.

No. 25-5035
(D.C. No. 4:24-CR-00125-JFH-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON, MURPHY, and FEDERICO**, Circuit Judges.

Gerson Armando Romero Salazar was indicted on one count of being an alien in possession of a firearm in violation of 18 U.S.C. § 922(g)(5)(A). He moved to dismiss the indictment on the ground that § 922(g)(5)(A) is

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

facially unconstitutional under the Second Amendment. The district court denied the motion. Mr. Salazar pled guilty and was sentenced to eighteen months imprisonment and three years supervised release.

On appeal, Mr. Salazar again raises an argument that § 922(g)(5)(A) is facially unconstitutional under the Second Amendment, citing *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). We have recently rejected an as-applied Second Amendment challenge brought under *Bruen* to § 922(g)(5)(A) in *United States v. Duque-Ramirez*, No. 24-6257, --- F.4th ---, 2025 WL 3637480 (10th Cir. Dec. 16, 2025).

For a facial challenge to be successful, the challenger must “establish that no set of circumstances exists under which the [statute] would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). Mr. Salazar cannot do so considering *Duque-Ramirez*. See *United States v. Rahimi*, 602 U.S. 680, 693 (2024). The parties now agree that *Duque-Ramirez* forecloses Mr. Salazar’s facial challenge.

We therefore AFFIRM the district court’s judgment.

Entered for the Court

Richard E.N. Federico
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERSON ARMANDO ROMERO SALAZAR,

Defendant.

Case No. 24-CR-125-JFH

OPINION AND ORDER

Before the Court is a Motion to Dismiss Indictment (“Motion”) filed by Defendant Gerson Armando Romero Salazar (“Defendant”). Dkt. No. 20. The United States of America (“Government”) filed a response in opposition to Defendant’s Motion.¹ Dkt. No. 27. After seeking leave from the Court, Defendant filed a reply. Dkt. No. 33. For the following reasons, Defendant’s Motion [Dkt. No. 20] is DENIED.

BACKGROUND

On April 16, 2024, Defendant was charged by indictment with one count of Alien Unlawfully in the United States in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(5)(A) and 924(a)(8). Dkt. No. 2. This matter is currently set on the Court’s July 15, 2024 jury trial docket. Dkt. No. 24.

ANALYSIS

Defendant moves to dismiss the indictment [Dkt. No. 2] arguing that the alien in possession statute, 18 U.S.C. § 922(g)(5)(A), violates the Second Amendment in the wake of the United States Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111

¹ The Court granted the Government an extension of time to file its response. Dkt. No. 25.

(2022). Dkt. No. 20 at 1. Specifically, Defendant argues that § 922(g)(5)(A) is unconstitutional on its face because unlawful aliens are included within the “people” protected by the Second Amendment following the framework established in *Bruen*. *Id.* at 5-8.

In 2022, *Bruen* examined the Second Amendment’s constitutional protection of the right to keep and bear arms. 142 S. Ct. 2111. *Bruen* did not concern a criminal statute. Rather, it involved a challenge to federal firearms licensing regime, which required an individual applying for a license to carry a handgun outside his or her home to demonstrate “proper cause,” or a “special need for self-protection distinguishable from that of the general community.” *Id.* at 2123. The *Bruen* decision included a nuanced discussion of Second Amendment caselaw and announced a new two-prong test for evaluating the constitutionality of firearms regulation. *Id.* at 2126. Under the first prong, the Court must determine whether the plain text of the Second Amendment covers the conduct at issue. *Id.* at 2129, 2134–35. If so, the second prong requires the Government to establish that the regulation is consistent with the historical tradition of firearms regulation in the United States. *Bruen*, S. Ct. 2111, 2129–30.

In September of 2023, the Tenth Circuit issued an opinion addressing *Bruen*. *Vincent v. Garland*, 80 F.4th 1197 (10th Cir. 2023). In *Vincent*, the Tenth Circuit considered whether *Bruen* overruled its precedential decision in *United States v. McCane*, 573 F.3d 1037 (10th Cir. 2009), wherein the Tenth Circuit upheld the constitutionality of 18 U.S.C. § 922(g)(1), prohibiting the possession of firearms by previously convicted felons. *Id.* at 1202. The Tenth Circuit held that because *Bruen* did not “indisputably and pellucidly abrogate[]” its ruling in *McCane*, it was obligated to apply its prior precedent. *Id.*

Like the felon in possession statute, the Tenth Circuit has upheld the constitutionality of the alien in possession statute. *United States v. Huitron-Guizar*, 678 F.3d 1164, 1167-1170 (10th

Cir. 2012) (upholding the constitutionality of 18 U.S.C. § 922(g)(5)(A)). Like *McCane*, *Huitron-Guizar* is not expressly overruled by *Bruen*. Therefore, the Court is bound to apply *Huitron-Guizar* and find that § 922(g)(5)(A) is not facially unconstitutional. See *United States v. Spedalieri*, 910 F.2d 707, 709 n.2 (10th Cir. 1990) (“A district court must follow the precedent of this circuit.”). For this reason, Defendant’s argument is foreclosed by *Huitron-Guizar* and *Vincent*.

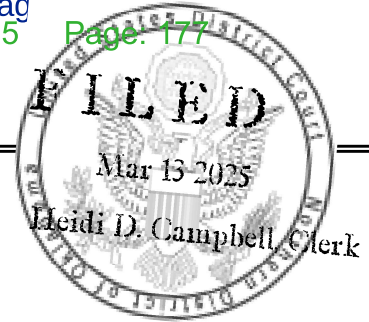
CONCLUSION

IT IS THEREFORE ORDERED that Defendant Gerson Armando Romero Salazar’s Motion to Dismiss Indictment [Dkt. No. 20] is DENIED.

DATED this 11th of June 2024.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

GERSON ARMANDO ROMERO SALAZAR

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24CR00125-1-JFH

USM Number: 11036-511

Jacquelyn N. Witt
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) One of the Indictment
- pleaded nolo contendere to count(s) which was accepted by the Court.
- was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(5)(A) and 924(a)(8)	Alien Unlawfully in the United States in Possession of a Firearm	2/1/24	1

The defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

March 12, 2025
Date of Imposition of Judgment

Signature of Judge

John F. Heil, III, Chief United States District Judge
Name and Title of Judge

March 13, 2025
Date

AO 245B (Rev. 10/17) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Gerson Armando Romero Salazar
CASE NUMBER: 4:24CR00125-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Eighteen (18) months. Said sentence shall run consecutively with any sentence imposed in the Wagoner County District Court Case CF-2024-26.

- The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends the Bureau of Prisons evaluate and determine whether the defendant is a suitable candidate for placement at the Federal Correction Institution, El Reno.

- The defendant is remanded to the custody of the United States Marshal.

- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____.
 - as notified by the United States Marshal.

- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Gerson Armando Romero Salazar
CASE NUMBER: 4:24CR00125-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Three (3) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Gerson Armando Romero Salazar
CASE NUMBER: 4:24CR00125-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervision, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: Gerson Armando Romero Salazar
CASE NUMBER: 4:24CR00125-1

SPECIAL CONDITIONS OF SUPERVISION

1. As a condition of supervised release, upon completion of his term of imprisonment, the defendant is to be surrendered to a duly-authorized immigration official for deportation proceedings in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. §§ 1101-1524. It is a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States until termination of the term of supervised release. If the defendant is not deported or should the defendant serve any portion of supervised release within the United States for any reason, the defendant shall report to the U.S. Probation Office in the district of his release or re-entry to begin his term of supervised release.
2. The defendant shall submit his person, property, residence, office, vehicle, cellular telephone, computer, or any other electronic communication device, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

U.S. Probation Officer Use Only

A U.S Probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this Judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: Gerson Armando Romero Salazar
CASE NUMBER: 4:24CR00125-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 100 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this Judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 90 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of \$50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
Firearm and ammunition are forfeited as directed in the Preliminary Order of Forfeiture, Dkt. No. 62.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.