

No.

**IN THE SUPREME COURT OF THE UNITED STATES**

---

**DYLAN JAMES VASQUEZ,**

*Petitioner,*

v.

**UNITED STATES OF AMERICA,**

*Respondent.*

---

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

---

**PETITION FOR WRIT OF CERTIORARI**

---

FAY ARFA, A LAW CORPORATION  
Fay Arfa, Attorney - CA SBN 100143  
1901 Avenue of the Stars #200  
Los Angeles, CA 90067  
Tel.: (310) 841-6805  
Fax : (310) 841-0817  
fayarfa@sbcglobal.net

Attorney for Appellant  
DYLAN JAMES VASQUEZ

## **QUESTION PRESENTED**

- I. Did the Ninth Circuit Properly Deny, via a Summary Affirmance, Vasquez' Challenge to the Constitutionality of 18 U.S.C. § 922(g)(1)?**

## **PARTIES TO THE PROCEEDING**

Petitioner is Dylan James Vasquez, an individual who was the defendant-appellant in this case. Respondent is United States of America, who was the plaintiff-appellee in this case. None of the parties listed above are a corporation. Accordingly, no party has a stock ticker symbol to report under Rule 14.1(b)(i).

## **CORPORATE DISCLOSURE STATEMENT**

Since petitioner Vasquez is an individual, no corporate disclosure statement is required under this Court's Rule 29.6.

## **RELATED PROCEEDINGS**

United States Court of Appeals (9<sup>th</sup>):

*United States of America v. Dylan James Vasquez*,  
Case No. 24-493 (June 24, 2026)

United States District Court, Eastern District:

*United States of America v. Dylan James Vasquez*,  
Case No. 2:22-cr-00464-RGK (January 23, 2024)

## TOPICAL INDEX

|                                                                                                                            | Page |
|----------------------------------------------------------------------------------------------------------------------------|------|
| <b>QUESTION PRESENTED</b> .....                                                                                            | i    |
| <b>PARTIES TO THE PROCEEDING</b> .....                                                                                     | ii   |
| <b>CORPORATE DISCLOSURE STATEMENT</b> .....                                                                                | ii   |
| <b>RELATED PROCEEDINGS</b> .....                                                                                           | ii   |
| <b>OPINION BELOW</b> .....                                                                                                 | 1    |
| <b>JURISDICTION</b> .....                                                                                                  | 2    |
| <b>CONSTITUTIONAL PROVISIONS AND<br/>REGULATIONS INVOLVED</b> .....                                                        | 2    |
| <b>CUSTODY STATUS OF PETITIONER</b> .....                                                                                  | 2    |
| <b>STATEMENT OF THE CASE</b> .....                                                                                         | 2    |
| <b>A. The Indictment</b> .....                                                                                             | 2    |
| <b>B. The Motion to Dismiss</b> .....                                                                                      | 3    |
| <b>C. Vasquez' Conditional Guilty Plea</b> .....                                                                           | 4    |
| <b>STATEMENT OF FACTS ELICITED<br/>FROM VASQUEZ' PLEA</b> .....                                                            | 4    |
| <b>REASONS TO GRANT CERTIORARI</b> .....                                                                                   | 5    |
| <b>I. THIS COURT SHOULD GRANT CERTIORARI TO<br/>DECIDE IF VASQUEZ' APPEAL QUALIFIED FOR<br/>A SUMMARY AFFIRMANCE</b> ..... | 5    |

|    |                                                                                                                                                 |                                                         |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| A. | Introduction .....                                                                                                                              | 5                                                       |
| B. | Qualifications for a Summary<br>Affirmance .....                                                                                                | 6                                                       |
| C. | Vasquez’ Appeal Involved Second<br>Amendment Issues that Cannot Be Resolved<br>Via a Summary Affirmance .....                                   | 7                                                       |
| D. | Adverse Precedent Does Not Eliminate the<br>Need for Merits Briefing .....                                                                      | 8                                                       |
| E. | Vasquez Preserved the Constitutional Issue<br>for Appellate Review .....                                                                        | 8                                                       |
| F. | The Judicial Disagreement in <i>Duarte</i><br>Proves that Vasquez Raises Substantial<br>Questions .....                                         | 10                                                      |
| G. | The Facts Involved in Vasquez’ Case Differ<br>from the <i>Duarte</i> Case .....                                                                 | 11                                                      |
| H. | The Ninth Circuit Erred by Granting a<br>Summary Affirmance Because the <i>Bruen</i><br>Framework Continues to Evolve .....                     | 12                                                      |
| I. | 18 U.S.C. § 922(g)(1) on its Face and as<br>Applied, Unconstitutionally Deprived<br>Vasquez of his Second Amendment Right to<br>Bear Arms ..... | 15                                                      |
|    | CONCLUSION .....                                                                                                                                | 16                                                      |
|    | APPENDIX A .....                                                                                                                                | Ninth Circuit Order<br>Summary Affirmance (DktEntry 46) |

## TABLE OF AUTHORITIES

### FEDERAL CASES

|                                                                                  |               |
|----------------------------------------------------------------------------------|---------------|
| <i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) . . . . .            | 15            |
| <i>In re Thomas</i> , 508 F.3d 1225 (9th Cir. 2007) . . . . .                    | 7             |
| <i>New York State Rifle v. Bruen</i> , 597 U.S. 1(2022) . . . . .                | <i>passim</i> |
| <i>Page v. United States</i> , 356 F.2d 337<br>(9th Cir. 1966) . . . . .         | 6, 7, 8, 13   |
| <i>Range v. AG United States</i> , 124 F.4th 218<br>(3rd Cir. 2024) . . . . .    | 14            |
| <i>United States v. Alaniz</i> , 69 F.4th 1124<br>(9th Cir. 2023) . . . . .      | 12            |
| <i>United States v. Chavez-Diaz</i> , 949 F.3d 1202<br>(9th Cir. 2020) . . . . . | 10            |
| <i>United States v. Cockerham</i> , 162 F.4th 500<br>(5th Cir. 2025) . . . . .   | 15            |
| <i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024) . . . . .           | 15            |
| <i>United States v. Duarte</i> , 137 F.4th 743<br>(9th Cir. 2025) . . . . .      | <i>passim</i> |
| <i>United States v. Hooton</i> , 693 F.2d 857<br>(9th Cir. 1982) . . . . .       | 6, 7, 8, 13   |
| <i>United States v. Rahimi</i> , 602 U.S. 680 (2024) . . . . .                   | 14, 15        |
| <i>United States v. Smith</i> , 640 F.3d 580 (4th Cir. 2011) . . . . .           | 9             |

|                                                                          |        |
|--------------------------------------------------------------------------|--------|
| <i>United States v. Williams</i> , 616 F.3d 685<br>(7th Cir. 2010) ..... | 14, 16 |
|--------------------------------------------------------------------------|--------|

|                                                                   |    |
|-------------------------------------------------------------------|----|
| <i>United States v. Zamora</i> , 37 F.3d 531 (9th Cir. 1994) .... | 12 |
|-------------------------------------------------------------------|----|

## STATE CASES

|                                                          |   |
|----------------------------------------------------------|---|
| <i>Flood v. Riggs</i> , 80 Cal. App. 3d 138 (1978) ..... | 3 |
|----------------------------------------------------------|---|

## FEDERAL CONSTITUTION

|                        |               |
|------------------------|---------------|
| Second Amendment ..... | <i>passim</i> |
|------------------------|---------------|

## FEDERAL STATUTES

|                       |               |
|-----------------------|---------------|
| 18 U.S.C. § 922 ..... | <i>passim</i> |
|-----------------------|---------------|

|                        |   |
|------------------------|---|
| 28 U.S.C. § 1254 ..... | 2 |
|------------------------|---|

|                        |   |
|------------------------|---|
| 18 U.S.C. § 3353 ..... | 2 |
|------------------------|---|

No.

---

DYLAN JAMES VASQUEZ,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

---

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

---

Petitioner, DYLAN JAMES VASQUEZ, petitions for a writ of certiorari to review the United States Court of Appeals for the Ninth Circuit’s Order granting a summary affirmance to Vasquez’ challenge of the constitutionality of 18 U.S.C. §922(g)(1) and dismissing Vasquez’ appeal.

(Appendix A)

**OPINION BELOW**

Vasquez challenged the constitutionality of 18 U.S.C.

§922(g)(1). On June 24, 2026, the Ninth Circuit Court of Appeals entered an order granting summary affirmance and dismissing Vasquez appeal. (Appendix A)

### **JURISDICTION**

The Court has jurisdiction. 28 U.S.C. § 1254(1) because Vasquez appealed his guilty plea, challenged the constitutionality of 18 U.S.C. §922(g)(1), and the Ninth Circuit Court of Appeals entered an Order granting summary affirmance and dismissing Vasquez’ appeal. (Appendix A)

### **CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED**

18 U.S.C. § 3353(a), 18 U.S.C. §922(g)(1).

### **CUSTODY STATUS OF PETITIONER**

Vasquez is on supervised release.

### **STATEMENT OF THE CASE**

#### **A. The Indictment**

The Government charged Vasquez with a single count

of ex-felon<sup>1</sup> with a gun. 18 U.S.C. 922(g)(1). (ER 115)

**B. The Motion to Dismiss**

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court held that modern firearm regulations must align with the nation's historical tradition of gun regulation. After *Bruen*, multiple provisions of 18 U.S.C. § 922(g) have faced Second Amendment challenges.

On July 27, 2023, based on this Court's decision in *Bruen*, Vasquez filed a motion to dismiss his 18 U.S.C. 922(g)(1) charge. (ER 83) Vasquez' motion to dismiss alleged that, based on the two step analysis in *Bruen* 18 U.S.C. 922(g)(1) did not apply to ex-felons. (ER 115) The Government opposed the motion and argued that the Second Amendment's right to bear arms extended only to "law-

---

<sup>1</sup> The commonly accepted definition of "ex-felon" means a person previously convicted of a felony who is no longer serving either a term of imprisonment or a period of parole by reason of such conviction. *Flood v. Riggs*, 80 Cal. App. 3d 138, 143 n.2 (1978).

abiding citizens” and did not historically, nor traditionally, protect ex-felons. (ER 62)

On August 8, 2023, the district court denied Vasquez’ motion to dismiss the § 922(g)(1) charge and held that *Bruen* did not find § 922(g)(1) unconstitutional as to ex-felons. (ER 38) The district court held that the Second Amendment protected “ordinarily, law-abiding, adult citizens” and § 922(g)(1) was “consistent with this Nation’s historical tradition of firearm regulation.” (ER 43)

### **C. Vasquez’ Conditional Guilty Plea**

On August 8, 2023, Vasquez entered into a plea agreement that allowed him to conditionally plead guilty to the charge of ex-felon with a gun so he could appeal the district’s adverse ruling. § 922(g)(1) (ER 44-45)

### **STATEMENT OF FACTS ELICITED FROM VASQUEZ’ PLEA**

On or about June 8, 2021, Vasquez, an ex-felon, knowingly possessed a Glock Model 22 caliber pistol and ammunition in his bedroom. The firearm and ammunition

affected interstate commerce because they had been shipped or transported from one state to another or between a foreign nation and the United States. (ER 28-29)

When Vasquez knowingly and unlawfully possessed his firearm and ammunition, he knew he had been convicted of crimes punishable by imprisonment for a term exceeding one year. (ER 28)

## **REASONS TO GRANT CERTIORARI**

### **I. THIS COURT SHOULD GRANT CERTIORARI TO DECIDE IF VASQUEZ' APPEAL QUALIFIED FOR A SUMMARY AFFIRMANCE**

#### **A. Introduction**

Vasquez entered a guilty plea on a condition that enabled him to challenge the constitutionality of 18 U.S.C. 922(g)(1) on appeal. Vasquez appealed and, after partial briefing, the Ninth Circuit summarily affirm the district court's order upholding the constitutionality of 18 U.S.C. § 922(g)(1) (Appendix A)

## B. Qualifications for a Summary Affirmance

A court may grant a summary affirmance in rare cases where the insubstantiality of the questions presented is manifest from the face of the record and briefing. *United States v. Hooton*, 693 F.2d 857 (9th Cir. 1982); *Page v. United States*, 356 F.2d 337, 339 (9th Cir. 1966). Vasquez' claims cannot be deemed "obviously controlled by precedent." *Hooton*, 693 F.2d at 858. By substituting a summary disposition for a merits briefing, the Ninth Circuit exceeded the narrow scope of the summary affirmance doctrine. (Dkt. 36 at 1-2)

Unlike *Page* and *Hooton*, Vasquez does not raise "manifestly insubstantial" issues. Vasquez raises issues that require further argument because Vasquez' appeal involves a new and unsettled area of a law involving the Second Amendment. Not only have several other circuits expressed conflicting interpretations of precedent, the judges in *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025) could not

reach a unanimous decision.

The Ninth Circuit has cautioned against granting a summary affirmance where an “extensive review of the record” is required or where the issues are not “obviously controlled by precedent.” *Hooton*, 693 F.2d at 858; *In re Thomas*, 508 F.3d 1225, 1227 (9th Cir. 2007); see also U.S.C. Ct. App. 9th Cir, Circuit R 3-6(a)(ii) (“Summary disposition of Civil Appeals”)

**C. Vasquez’ Appeal Involved Second Amendment Issues that Cannot Be Resolved Via a Summary Affirmance**

The district court’s decision to deny Vasquez’ motion to dismiss his indictment on Second Amendment grounds involves significant constitutional questions that cannot be considered manifestly insubstantial under *Page* and *Hooton*. Based on *Bruen*, Second Amendment issues require careful analysis to decide if modern regulations comply with the United States’ historical tradition of firearm regulation. See, *Bruen*, 597 U.S. 1, 35.

Vasquez’ appeal involved a Second Amendment constitutional challenge to § 922, a federal criminal statute. Vasquez’ constitutional challenges differ from the type of insubstantial questions considered by *Page* and *Hooton*. Vasquez’ motion to dismiss his indictment on Second Amendment grounds preserved significant constitutional questions that cannot be dismissed as manifestly insubstantial.

**D. Adverse Precedent Does Not Eliminate the Need for Merits Briefing**

Vasquez needed to present arguments about the limits of *Duarte*’s holding, the implications of the concurrence’s approach, and the dissent’s concerns about the majority’s methodology. The appellate process would help develop the full contours of *Duarte*’s precedent and its proper application to Vasquez’ circumstances.

**E. Vasquez Preserved the Constitutional Issue for Appellate Review**

Vasquez structured his conditional guilty plea to

preserve appellate review. Vasquez did not condition his plea on the *Duarte* decision. Vasquez entered a conditional plea that allowed him to appeal the district court's denial of his motion to dismiss the indictment on Second Amendment grounds. Based on Vasquez' conditional plea, the parties and the district court understood that the constitutional question warranted appellate consideration.

The conditional plea represents a deliberate allocation of appellate authority. It is the general rule that “[w]hen a defendant pleads guilty, he waives all non-jurisdictional defects in the proceedings conducted prior to entry of the plea’, and thus ‘has no non-jurisdictional ground upon which to attack that judgment except the inadequacy of the plea.’” *United States v. Smith*, 640 F.3d 580, 591 (4th Cir. 2011) (internal quotation marks omitted).

However, under Federal Rule of Criminal Procedure 11(a)(2), “With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo

contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.” *United States v. Chavez-Diaz*, 949 F.3d 1202, 1206 (9th Cir. 2020).

Because Vasquez entered a conditional guilty plea and preserved the right to appeal a pretrial ruling, he should be able to engage in the full briefing necessary to address the preserved issue. Summary affirmance effectively nullified the conditional plea’s protective function.

**F. The Judicial Disagreement in *Duarte* Proves that Vasquez Raises Substantial Questions**

*Duarte* does not control Vasquez appeal and does not foreclose Vasquez’ Second Amendment challenge. (Dkt. 36 at 2) *Duarte* did not result in a unanimous decision. *Duarte*’s split of opinion and reasoning shows that *Duarte* does not involve insubstantial issues that warrant summary disposition. *Duarte* contains a substantial dissent

disagreeing with the majority's analytical framework. The split in the opinion shows the legal questions are not insubstantial and that the precedent is not obviously controlling.

**G. The Facts Involved in Vasquez' Case Differ From the *Duarte* Case**

The *Duarte* case factually differs from Vasquez' case because Duarte had five prior non-violent state criminal convictions punishable for more than a year. Duarte was charged and convicted under § 922(g)(1) after police stopped a car that drove through a stop sign. Duarte, the passenger, threw a gun out of the car's rear window. The police asked the driver and Duarte to exit the car and found a loaded magazine within reach from the passenger compartment. *Duarte*, 137 F.4th 743, 748.

In contrast to *Duarte*, the police found a gun in Vasquez' bedroom while searching a residence where he and multiple other people lived. The police found drugs and other firearms that they could not attribute to Vasquez. (ER 28-29)

(PSR at 7-8 ¶ 34) Vasquez was not committing any separate felony, nor engaged in an activity that “pose[d] substantial risks of confrontation that can lead to immediate violence.” *United States v. Alaniz*, 69 F.4th 1124, 1130 (9th Cir. 2023); see *United States v. Zamora*, 37 F.3d 531, 533 (9th Cir. 1994) (“[T]he possession of a gun during a drug trafficking offense increases the risk of violence.”).

Unlike *Duarte*, Vasquez did not use the firearm during a contemporaneous criminal incident. Law enforcement did not even see Vasquez touch the firearm. Law enforcement found the firearm in Vasquez’ mere presence. Vasquez’ conduct fell squarely within the historical scope of the Second Amendment’s right of the People to keep and bear arms. See, *Bruen*, 597 U.S. 1.

#### **H. The Ninth Circuit Erred by Granting a Summary Affirmance Because the *Bruen* Framework Continues to Evolve**

The application of the *Bruen* framework to felon-in-possession statutes continues to have national importance.

Courts throughout the United States are dealing with how to apply the historical tradition test to 18 U.S.C. § 922.

Because *Duarte* involved a newly issued opinion addressing a hot-button constitutional issue that included concurring and dissenting opinions, the *Page* and *Hooton* decisions should not control. Unlike the significant pending issues Vasquez raises, a summary affirmance addresses appeals governed by well-established law. The recent *Duarte* en banc decision with contested reasoning cannot be considered to involve insubstantial issues and well-established law.

The *Duarte* dissent found “a cavalcade of errors” in the majority decision. *Duarte*, 137 F.4th at 775. The errors involve the standard of review, the majority’s incorrect conclusion that the Ninth Circuit’s pre-*Bruen* precedent upholding § 922(g)(1) against Second Amendment challenges follows intervening Supreme Court authority, that “legislatures have unilateral discretion to disarm anyone by

assigning the label ‘felon’ to whatever conduct they desire,” and that “legislatures can disarm entire classes of individuals, even absent a specific showing of individual dangerousness or propensity to violence.” *Duarte*, 137 F.4th at 774; see also *Duarte*, 137 F.4th at 773 (VanDyke’s dissent).

Similarly, other circuits have split on *Bruen*’s application. See, *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024) (*Bruen* and *Rahimi* require that a person subject to disarmament pursuant to § 922(g)(1) be "given an opportunity to make an individualized showing that he himself is not actually dangerous."); *Id.* at 662-63; *Range v. AG United States*, 124 F.4th 218 (3rd Cir. 2024) (en banc) (*Range II*), (Second Amendment entitles a person subject to § 922(g)(1) to file a declaratory judgment action where the government must make a showing that the "our Republic has a longstanding history and tradition of depriving people like [the plaintiff] of their firearms.") *Id.* at 232; see also

*Duarte*, 137 F.4th at 748.

**I. 18 U.S.C. § 922(g)(1) on its Face and as Applied, Unconstitutionally Deprived Vasquez of his Second Amendment Right to Bear Arms**

The blanket lifetime criminalization of the mere presence of a firearm by an ex-felon, under 18 U.S. § 922(g)(1), on its face and as applied, unconstitutionally deprived Vasquez of his Second Amendment right to bear arms. See, *Bruen*, 597 U.S. 1; see also *United States v. Cockerham*, 162 F.4th 500, 510 (5th Cir. 2025) (Case reversed after finding § 922(g)(1) violated the Second Amendment); *United States v. Diaz*, 116 F.4th 458, 469 (5th Cir. 2024) ("Simply classifying a crime as a felony does not meet the level of historical rigor required by *Bruen* and its progeny.")

The Supreme Court has specified that laws like § 922(g)(1) are only "presumptively lawful." *United States v. Rahimi*, 602 U.S. 680, 699, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024) (quoting *District of Columbia v. Heller*, 554 U.S.

570; 128 S. Ct. 2783; 171 L. Ed. 2d 637 (2008).)

Justice O'Connor and others have noted, “*Heller* referred to felon disarmament bans only as ‘presumptively lawful.’” *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010) (“[T]here must exist the possibility that the ban could be unconstitutional in the face of an as-applied challenge.”)

### CONCLUSION

Mr. Vasquez respectfully requests that this Court grant Certiorari to resolve the unsettled issues involving an ex-felon’s constitutional right to bear arms.

DATED: August 27, 2026

Respectfully submitted,  
FAY ARFA, A LAW CORPORATION

/s/ Fay Arfa

---

Fay Arfa, Attorney for Appellant

# APPENDIX

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 24 2026

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DYLAN JAMES VASQUEZ,

Defendant - Appellant.

No. 24-493

D.C. No.

2:22-cr-00464-RGK-2

Central District of California,  
Los Angeles

ORDER

Before: CANBY, BENNETT, and BADE, Circuit Judges.

The motion (Docket Entry No. 36) for summary affirmance is granted. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

Appellant's Second Amendment challenge to his conviction is foreclosed. *See United States v. Duarte*, 137 F.4th 743, 761 (9th Cir. 2025) (en banc), *cert. denied*, \_\_\_ S. Ct. \_\_\_, 2026 WL 135692 (U.S. Jan. 20, 2026).

**AFFIRMED.**

**APPENDIX A**