

DEC 16 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILLIP GREENE,

Defendant - Appellant.

No. 14-10359

D.C. No. 2:13-cr-00289-LDG

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Lloyd D. George, District Judge, Presiding

Submitted December 9, 2015\*\*

Before: WALLACE, RAWLINSON, and IKUTA, Circuit Judges.

Phillip Greene appeals from the district court's judgment and challenges the 262-month sentence imposed following his jury-trial conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Greene challenges the district court's conclusion that his conviction under Nevada Revised Statutes § 199.305 is a violent felony under the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii). We agree with the parties that the judgment should be vacated and the case remanded in light of *Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015), which held that the residual clause is unconstitutionally vague.

**VACATED and REMANDED for resentencing.**