



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

December 20, 2023

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *United States v. Torres-Pavon*, No. 22-cr-1120 (S.D. Tex. 2023)

Dear Speaker Johnson:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to appeal in the above-referenced case. A copy of the decision of the U.S. District Court for the Southern District of Texas is enclosed.

A federal grand jury indicted the defendant for possessing a firearm as an unlawful drug user, in violation of 18 U.S.C. 922(g)(3). After it did so, the Fifth Circuit held in *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), that certain applications of Section 922(g)(3) violate the Second Amendment. Applying *Daniels*, the district court concluded that Section 922(g)(3) violates the Second Amendment as applied to the defendant and dismissed the indictment.

The Department of Justice does not agree with the Fifth Circuit's decision in *Daniels* or with the district court's decision in this case. The Department has filed a petition for a writ of certiorari in *Daniels*, and it is committed to defending Section 922(g)(3)'s constitutionality. The Department has determined, however, that an appeal is not appropriate in the particular circumstances of this case. When the district court dismissed the case, the defendant had already served 14 months in pretrial custody—nearly as much time as the high end of his potential sentencing range under the United States Sentencing Guidelines. In addition, the defendant faces state charges based on the same underlying conduct. The Department has concluded that, in these circumstances, further expenditure of federal prosecutorial resources is not warranted.

The Department filed a protective notice of appeal on December 4, 2023, but plans to dismiss the appeal on January 3, 2024. Please let me know if we can be of any further assistance in this matter.

Sincerely,

Elizabeth B. Prelogar
Solicitor General

Enclosure