



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

October 1, 2024

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

Re: *United States v. McDaniel*, No. 22-cr-176 (E.D. Wis. Aug. 28, 2024)

Dear Mr. Speaker:

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 order of the U.S. District Court for the Eastern District of Wisconsin is enclosed.

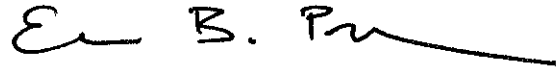
A federal grand jury indicted the defendant on one count of possessing a firearm as an unlawful drug user, in violation of 18 U.S.C. 922(g)(3); one count of receiving a firearm while under felony indictment or information, in violation of 18 U.S.C. 922(n); and two counts of making false statements in connection with the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6). The district court dismissed the Section 922(n) count, holding that the statute violated the Second Amendment as applied to the defendant, who had received a firearm after having been charged with child neglect.

The Department of Justice does not agree with the district court's decision. The Department has filed briefs defending Section 922(n)'s constitutionality in other appeals. See, e.g., *United States v. Yancey*, No. 23-1651, 2024 WL 317636 (8th Cir. Jan. 29, 2024); *United States v. Gomez Quiroz*, No. 22-50834 (5th Cir.) (argued Feb. 8, 2023). The Department remains committed to defending the statute in those and other cases.

The Department has determined, however, that the particular circumstances of this case do not merit appeal. Although the district court dismissed the Section 922(n) charge, the Section 922(g)(3) and Section 922(a)(6) charges against the defendant remain pending. The Department has determined that the reinstatement of the Section 922(n) charge would be unlikely to make a material difference to the outcome of the prosecution and that an appeal could needlessly delay the final resolution of this case. The Department has concluded that, in these circumstances, further expenditure of prosecutorial resources in pursuing the Section 922(n) charge is not warranted.

The Department filed a protective notice of appeal on September 20, 2024, but plans to dismiss the appeal on October 15, 2024. Please let me know if we can be of any further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "E. B. Prelogar". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elizabeth B. Prelogar
Solicitor General

Enclosure