



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

November 15, 2024

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Re: *United States v. Connelly*, No. 23-50312 (5th Cir. Aug. 28, 2024)

Dear Leader McConnell:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to file a petition for a writ of certiorari in the above-referenced case. A copy of the opinion of the U.S. Court of Appeals for the Fifth Circuit 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), and on an additional count that is not relevant here. The district court dismissed the Section 922(g)(3) count, holding that the statute violates the Second Amendment on its face and as applied to the defendant. The Department appealed. The Fifth Circuit rejected the defendant's facial challenge to Section 922(g)(3), but affirmed the district court's dismissal based on the defendant's as-applied challenge. The Fifth Circuit emphasized that the defendant was "non-violent" and that although the Department alleged that she was a regular marijuana user, "[t]here was no indication that [she] was intoxicated" when she possessed firearms. Op. 1.

The Department of Justice does not agree with the Fifth Circuit's decision. Indeed, the Department previously filed a petition for a writ of certiorari seeking review of a different Fifth Circuit decision holding Section 922(g)(3) unconstitutional as applied to a marijuana user. See *United States v. Daniels*, 144 S. Ct. 2707 (2024) (granting the Department's petition, vacating the Fifth Circuit's decision, and remanding for further consideration in light of *United States v. Rahimi*, 144 S. Ct. 1889 (2024)). The Department has also defended Section 922(g)(3)'s constitutionality in many cases in the lower courts. See, e.g., *United States v. Veasley*, 98 F.4th 906 (8th Cir. 2024). The Department remains committed to defending the statute.

The Department has determined, however, that a petition for a writ of certiorari is not warranted in this case. Because of factual developments since the filing of the appeal to the Fifth Circuit, the Department is no longer confident that it would be able to prove beyond a reasonable doubt that the defendant violated Section 922(g)(3). The Department would thus dismiss the Section 922(g)(3) charge even if the Fifth Circuit's Second Amendment holding were reversed.

The Department has concluded that, under these circumstances, further litigation about Section 922(g)(3)'s constitutionality as applied to the defendant is unwarranted.

A petition for a writ of certiorari would be due November 26, 2024. Please let me know if we can be of any further assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. B. Prelogar", with a stylized flourish at the end.

Elizabeth B. Prelogar
Solicitor General

Enclosure