

No. _____

In the Supreme Court of the United States

CHADWICK SMITH,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Fifth Circuit at New Orleans, Louisiana

PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

GREGORY SHERWOOD

Attorney

P.O. Box 200613

Austin, Texas 78720-0613

(512) 484-9029

Texas Bar # 18254600

Counsel of Record for
Petitioner Chadwick Smith

Question Presented for Review

Did the Fifth Circuit err in holding that petitioner's argument that his federal firearms-related conviction violated the Second Amendment, both on its face and as applied to him, could not survive plain error review, even after recent Second Amendment holdings from this Court that substantially altered this area of law?

List of Parties

The names of the parties are listed in the caption of this case. The amended judgment in a criminal case was imposed by the Hon. Reed O'Connor, United States District Judge for the Northern District of Texas, Wichita Falls Division. The panel of the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, which considered petitioner's appeal and issued an unpublished *per curiam* opinion, consisted of Fifth Circuit Judges Jacques L. Wiener, Jr., James C. Ho, and Irma Carrillo Ramirez.

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Opinion Below

The opinion sought to be reviewed was issued on October 7, 2024 by the United States Court of Appeals for the Fifth Circuit sitting in New Orleans, Louisiana, and is included in the Appendix at Tab A.

Statement of Jurisdiction

This is an appeal of petitioner Chadwick Smith’s conviction and 27 months sentence for being a felon in possession of firearms, arising from the October 30, 2023 Amended Judgment of Conviction entered by the U.S. District Court for the Northern

District of Texas, Wichita Falls Division, which is attached as Appendix Tab B. *See also* Fifth Cir. ROA.88-91. The Fifth Circuit affirmed the judgment and sentence, holding that its prior case law foreclosed whether petitioner’s unpreserved firearms-related conviction is barred by the Second Amendment – both on its face and as applied to him – based on the test set forth in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), under the plain error standard of review.

This certiorari petition will be due within 90 days after the Fifth Circuit’s October 7, 2024 opinion was issued, or by January 6, 2025. Sup. Ct. Rule 13.1.

Relevant Constitutional Provision and Statute

The constitutional right to bear arms is contained in the Second Amendment of the U.S. Constitution: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

18 U.S.C. § 922(g)(1) provides:

(g) It shall be unlawful for any person –

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . .

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Statement of the Case

Petitioner Chadwick Smith seeks review of the unpublished opinion of the Fifth Circuit, attached as Appendix Tab A, which affirmed the trial court’s judgment of

conviction and sentence contained in the Amended Judgment in a Criminal Case. Appendix Tab B.

Statement of Procedural History

The Fifth Circuit affirmed the judgment and sentence in its October 7, 2024 unpublished opinion, attached at Appendix Tab A.

Question Presented for Review (Restated)

Did the Fifth Circuit err in holding that petitioner’s argument that his federal firearms-related conviction violated the Second Amendment, both on its face and as applied to him, could not survive plain error review, even after recent Second Amendment holdings from this Court that substantially altered this area of law?

Argument Amplifying Reasons for Granting the Writ

Certiorari should be granted because the Second Amendment issue presented in this case, whether plain error review forecloses reviewing the merits of whether a firearms-related conviction is barred by the Second Amendment, both on its face and as applied, based on the test set forth in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), is likely to recur in future criminal prosecutions.

Discussion of Facts Related to this Ground: The facts concerning petitioner Smith’s arrest were explained in the Appellee’s Brief filed by the government on July 8, 2024 in the underlying Fifth Circuit appeal, as follows:

I. Smith is charged with being a felon in possession of a firearm after getting into an altercation and shooting someone in the hip.

Smith lived and worked at a motel in Wichita Falls, Texas. (ROA.159.) He asked a man to leave his room for making a disturbance,

and their interaction escalated into a verbal confrontation. (ROA.159.) Smith ultimately removed his firearm from his waistband and fired a shot at the man, striking him in the hip. (ROA.159.) When officers responded to the scene, they saw Smith in the parking lot unloading a Model PT140, .40-caliber handgun. (ROA.159.) The other man was laying in the parking lot with a gunshot wound. (ROA.159.) Smith was detained without incident and released on bond. (ROA.159.)

Investigators later learned that Smith had a prior felony conviction for domestic violence. (ROA.159.) Smith was arrested on a federal warrant and charged by criminal complaint. (ROA.158-60.) When police went to his motel room to execute the arrest warrant, Smith tried to shut the door on them, but they pushed into the room. (ROA.160.) They discovered in plain view a box of .32-auto ammunition; a box of .45-caliber ammunition; a box of .30-06 ammunition; 87 rounds of assorted ammunition; a handgun; a digital scale; and less than one gram of methamphetamine. (ROA.160.) Thereafter, a federal grand jury charged Smith with one count of felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) & 924(a)(2). (ROA.12-14.)

Appellee’s Brief (Dkt. 53 in Fifth Cir. No. 23-11110), pp. 1-2, pdf 6-7. Bold in original. (The record references in this petition are to the Fifth Circuit’s record).

Petitioner Chadwick Smith agreed to plead guilty without a plea agreement. ROA.171, ¶ 80. The sentencing hearing was heard by U.S. District Judge O’Connor, and is reported at ROA.138-154. The sentencing judge adopted the presentence report (“PSR”), found it to be accurate, and announced that the total offense level was 21 and the criminal history category was III, which resulted in a guideline range of 46 to 57 months, a supervised release range of one to three years, no eligibility for probation, and a fine range of \$15,000 to \$150,000. ROA.141-142.

Judge O’Conner asked the government for its “take on the facts here,” and its “take on the sentencing memo that this is really self-defense . . . because [the victim]

threatened and charged at the defendant.” ROA.142:7-21. The prosecutor replied that the government was unable to make contact with the victim, and the only evidence on self-defense came from Mr. Smith’s own statement saying that it was self-defense. ROA.142-143.

The district court then asked petitioner Smith’s sentencing counsel for his sentencing recommendation, and counsel replied that Chadwick Smith grew up in a good home, he was attempting to try out with a National Football League (“NFL”) team when he sustained an injury that ended his NFL career, and that the PSR overstated Smith’s offense level by adding five levels without considering that self-defense was a factor. ROA.143-144. Sentencing counsel stated that Mr. Smith accepted responsibility for the offense, and asked for a below-guidelines sentence. ROA.144:1-10.

Judge O’Connor then asked petitioner Chadwick Smith what he would like to say at the sentencing hearing, and Mr. Smith replied by thanking God and Jesus Christ, thanking the district court for its time and service, admitting that he made a mistake and should have called the proper authorities at the time of the offense, apologized to his family, and asked for mercy so that he could return to his family as soon as possible. ROA.145:8-21.

The district judge thanked Mr. Smith for his statement, and imposed a sentence of 27 months, which was a downward variance based on the unique circumstances of this case as set out in Smith’s sentencing memorandum at sealed ROA.198-210.

ROA.145-146. The verbal terms of sentencing are contained in the amended judgment at ROA.89-91, which corrected a clerical error in the original judgment to state that the federal sentence would run concurrently with any state sentence imposed. ROA.88 (bottom of page).

Appellant appealed to the Fifth Circuit raising two grounds: (1) that harmful plain error occurred at the arraignment hearing when Smith objected to losing his valuable rights of citizenship by pleading guilty to a felony, and the district court refused to further inquire on this subject to see if appellant understood that he would lose those rights by pleading guilty, but instead proceeded to take appellant's guilty plea; and (2) that Mr. Smith's firearms-related conviction was unconstitutional under the Second Amendment as interpreted by *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and perhaps *United States v. Rahimi*, 144 S.Ct. 1886 (June 21, 2024), which had not been decided when Smith filed his Appellant's Brief in the Fifth Circuit on June 12, 2024 (filed as Dkt. No. 48 in Fifth Cir. No. 23-11110). Smith noted at pages 2-4 (pdf 5-7) of his July 29, 2024 Appellant's Reply Brief (filed as Dkt. No. 63 in Fifth Cir. No. 23-11110), that this Court's June 12, 2024 *Rahimi* opinion did not provide any further guidance for deciding Smith's appeal.

Under Fifth Circuit precedent, since Smith did not make a Second Amendment objection in the district court, plain error review applied, but this standard could not be satisfied. *United States v. Jones*, 88 F.4th 571, 572-573 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024). Smith argued in the Fifth Circuit that this Court's

recent Second Amendment cases altered the reasoning on whether firearms-related convictions violated the Second Amendment, so its prior cases on whether plain error review could be satisfied were no longer authoritative, but the Fifth Circuit disagreed:

Smith also argues, for the first time on appeal, that § 922(g)(1) violates the Second Amendment – both on its face and as applied to him – based on the test set forth in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). However, his unpreserved *Bruen* challenges are foreclosed. See *United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024).

Appendix Tab A, p. 2 (pdf 4 of 9). Petitioner now seeks review in this Court.

Why Certiorari Should be Granted: Certiorari should be granted because this Court’s recent Second Amendment decisions have greatly altered the legal standard on whether firearms-related convictions violate the constitutional right to bear arms for self-defense, that the merits of these unpreserved claims should be decided under plain error review. Prior case law declining to review the merits of these claims under plain error review should be disregarded so that these Second Amendment claims can be decided on their merits.

Mr. Smith argued in the Defendant’s Sentencing Memorandum that he was acting in self-defense for the reasons stated at sealed ROA.200, which quotes ¶ 9 of the PSR, also at ROA.159, ¶ 9. The sentencing memorandum also argued that these factors that could support a self-defense argument should be considered mitigating evidence, that the five level enhancement in the PSR overstated appellant’s role in the offense, and therefore a sentence below the guidelines range should be imposed.

Sealed ROA.200-201. However, even though there were facts that might support a self-defense argument, and there were numerous cases then in the federal appellate system involving whether firearms-related prosecutions violate the Second Amendment, no pretrial motion to dismiss the indictment based upon the prosecution violating Mr. Smith’s Second Amendment right to possess firearms for self-defense was filed, meaning plain error review would have to be met, which cannot occur under current Fifth Circuit precedent. *See United States v. Jones*, 88 F. 4th 571, 572-573 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024).

The relevant portion of 18 U.S.C. § 922(g)(1) provides, “It shall be unlawful for any person – (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . . to . . . possess in or affecting commerce, any firearm or ammunition. . . .” Additionally, the government must prove both that the defendant knew he possessed a firearm, and that he knew he belonged to the relevant category of persons barred from possessing a firearm. *Rehaif v. United States*, 139 S.Ct. 2191, 2194, 2200 (2019).

The Second Amendment to the United States Constitution states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” This Court held in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S.Ct. 2111, 2122 (U.S. 2022), that the Second Amendment protects an individual’s right to carry a handgun for self-defense outside

the home. *Bruen* also enumerated a new standard for courts to follow to determine whether a statute regulating firearms possession violates the Second Amendment:

[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

Bruen, 142 S.Ct. 2111, 2129-2130.

Since no Second Amendment objection was made to the statutory violation pleaded in Smith’s indictment, review of this issue would be for plain error only under Fifth Circuit precedent. *United States v. Jones*, 88 F.4th 571, 572-573 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024). To demonstrate plain error in this context, the appealing party must show a clear or obvious error that affected his or her substantial rights, and if that occurs, then the appellate court may correct the error, but should do so only if it seriously affects the fairness, integrity or public reputation of judicial proceedings. *Jones*, 88 F.4th at 572-573. However, the Fifth Circuit held in *Jones* that plain error review cannot be satisfied in this situation because: (1) it had held before *Bruen* that this 18 U.S.C. § 922(g)(1) did not violate the Second Amendment, (2) it had not yet addressed whether *Bruen* should change Fifth Circuit precedent on this issue, and (3) that this was an unsettled question that is not clear or obvious error. *Jones*, 88 F.4th at 573-574. Based upon *Jones*, the Fifth Circuit in the appeal at bar also held that petitioner Smith could not satisfy plain error review, declined to address

the merits of his constitutional challenge to his conviction, and affirmed. Appendix A, p. 2 (pdf 4 of 9).

This Court's recent opinions interpreting the Second Amendment have created a "sea change" in determining whether firearms-related convictions violate the constitutional right to bear arms, particularly when self-defense is involved. Smith's PSR noted that he acted in self-defense, yet his trial attorney did not raise a Second Amendment objection to the prosecution, even though this issue was being heavily litigated in the federal courts then. As a result, the merits of Smith's Second Amendment challenge to his conviction was not evaluated on its merits since plain error review does not permit that evaluation under Fifth Circuit precedent. This Court should revisit those line of cases and determine whether unpreserved Second Amendment challenges to firearms-related convictions should continue to be denied without considering their merits under plain error review, or whether the merits of these challenges should be considered, even when that objection is not raised in the district court.

For these reasons, petitioner Chadwick Smith asks this Court to grant this petition for a writ certiorari to decide this important federal constitutional issue which is likely to recur in future criminal prosecutions, request briefs on the merits to determining the merits of the case at bar, and hold that the opinion of the Fifth Circuit should be reversed, and that a judgment of acquittal should be rendered because

petitioner's firearms-related conviction is barred by the Second Amendment, either facially or as applied to him.

Conclusion and Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, petitioner CHADWICK SMITH respectfully prays that this Court grant this petition for a writ of certiorari, set this cause for oral argument and for briefing on the merits, reverse the October 7, 2024 opinion of the Fifth Circuit affirming appellant's conviction and sentence, and render judgment that petitioner's firearms-related conviction is barred by the Second Amendment, either facially or as applied to him.

Respectfully submitted,

/s/ Gregory Sherwood

GREGORY SHERWOOD
ATTORNEY
P.O. Box 200613
Austin, Texas 78720-0613
(512) 484-9029
Texas Bar # 18254600

Counsel of Record for
Petitioner Chadwick Smith

Date E-Filed: November 25, 2024