

No. _____

In the Supreme Court of the United States

SEAN WAYNE THOMPSON,

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

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Question Presented for Review

Did the Fifth Circuit err in denying petitioner's argument that his federal firearms-related conviction violated the Second Amendment, even after recent Second Amendment opinions from this Court that substantially altered this area of law, and which is partly based upon a Fifth Circuit opinion that is awaiting a decision on whether to grant certiorari?

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. David Counts, United States District Judge for the Western District of Texas, Midland-Odessa 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Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, which considered petitioner's appeal and issued an unpublished *per curiam* opinion, consisted of Fifth Circuit Judges Jerry E. Smith, Carl E. Stewart, and Stuart Kyle Duncan.

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Opinion Below

The opinion sought to be reviewed was issued on November 27, 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 Sean Wayne Thompson’s conviction and 15 months sentence for being a felon in possession of firearms, arising from the January 22, 2024 Judgment in a Criminal Case entered by the U.S. District Court for the

Western District of Texas, Midland-Odessa Division, which is attached as Appendix Tab B. *See also* Fifth Cir. ROA.24-50045.99-105. The Fifth Circuit affirmed the judgment and sentence, holding that its decision in *United States v. Diaz*, 116 F. 4th 458 (5th Cir. 2024), *cert. filed* Feb. 18, 2025 as Sup. Ct. No. 24-6625 (response due by March 26, 2025), foreclosed whether petitioner Thompson’s firearms-related conviction was facially invalid under the Second Amendment. The Fifth Circuit also held that Thompson’s “as applied” challenge was forfeited by inadequate briefing, even though Thompson’s briefing was based on the same reasoning as in the district court’s opinion, which denied his claim based upon its two prior decisions on this issue. There was with no other explanation stated in the order denying Thompson’s Motion to Dismiss Indictment, Fifth Cir. ROA.24-50045.75-76, and no evidentiary hearing was held on this issue. One of those two district court decisions, *United States v. Collette*, 630 F.Supp.3d 841 (W.D. Tex. 2022), *aff’d.*, Oct. 10, 2024 (5th Cir. No. 22-51062) (unpublished op.), *cert. filed* filed Feb. 3, 2025 as Sup. Ct. No. 24-6497 (response due by March 10, 2025), is awaiting a decision on whether to grant certiorari. The other decision, *United State v. Charles*, 633 F.Supp.3d 874 (W.D. Tex. 2022), *aff’d.*, Feb. 6, 2025 (Fifth Cir. No. 23-50131) (unpublished op.), was affirmed by the Fifth Circuit in an unpublished Feb. 6, 2025 opinion, with any certiorari petition due by May 7, 2025.

Petitioner Thompson timely filed a petition for panel rehearing on December 10, 2024, which was denied by the Fifth Circuit on December 23, 2024. This

certiorari petition will be due within 90 days after the Fifth Circuit’s December 23, 2024 order denying rehearing, or by March 23, 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 Sean Wayne Thompson 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 Judgment in a Criminal Case. Appendix Tab B.

Statement of Procedural History

The Fifth Circuit affirmed the judgment and sentence in its November 27, 2024 unpublished opinion, attached at Appendix Tab A. Petitioner Thompson timely filed

a petition for panel rehearing on December 10, 2024, which was denied by the Fifth Circuit on December 23, 2024.

Question Presented for Review (Restated)

Did the Fifth Circuit err in denying petitioner's argument that his federal firearms-related conviction violated the Second Amendment, even after recent Second Amendment opinions from this Court that substantially altered this area of law, and which is partly based upon a Fifth Circuit opinion that is awaiting a decision on whether to grant certiorari?

Argument Amplifying Reasons for Granting the Writ

Certiorari should be granted because the Second Amendment issue presented in this case, whether petitioner's firearms-related conviction is barred by the Second Amendment, is likely to recur in future criminal prosecutions, and it is being raised in at least three other certiorari petitions recently filed in this Court. Alternatively, this Court should hold Thompson's certiorari petition pending a resolution of the Second Amendment issues that are also presented in: (1) *Collette v. United States*, Sup. Ct. No. 24-6497 (cert. filed Feb. 3, 2025, response due March 10, 2025); (2) *Diaz v. United States*, Sup. Ct. No. 24-6625 (cert. filed Feb. 18, 2025, response due March 26, 2025); and (3) *French v. United States*, Sup. Ct. No. 24-6623 (cert. filed Feb. 18, 2025, response due March 26, 2025). If review is granted and a decision reached in any of those cases, then this Court should grant, vacate and remand this case for further proceedings consistent with the opinion issued in any of those cases.

Discussion of Facts Related to this Ground: The facts concerning petitioner Thompson's arrest and underlying procedural history were stated in the Fifth Circuit's slip opinion, as follows:

In April 2014, Thompson was convicted in Texas state court of two counts of aggravated sexual assault of a child and two counts of indecency with a child. . . .

On June 29, 2023, a police officer with the Midland Police Department responded to a call at an outdoor shooting range. When the officer arrived, he was informed that a convicted felon was shooting firearms at the range. The officer conducted a criminal history check on Thompson and confirmed that he was a convicted felon. Thompson was subsequently interviewed and admitted to being a convicted felon. He further admitted to possessing and shooting four firearms at the gun range. . . . Magazines and ammunition were also discovered with the firearms.

Thompson was arrested on June 29, 2023, and released on a \$20,000 secured bond on July 10, 2023. On July 26, 2023, Thompson was indicted for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). He moved to dismiss the indictment, arguing that § 922(g)(1) violated the Second Amendment facially and as applied to him in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). The district court denied his motion. Thompson then pleaded guilty pursuant to a plea agreement in which he reserved his right to appeal the denial of his motion to dismiss the indictment.

Fifth Cir. slip op., pp. 2-3 (Appendix Tab A) (bracketing added).

Petitioner appealed to the Fifth Circuit, arguing that his firearms-related conviction was barred by the Second Amendment, either facially or as applied to him. After discussing this Court's opinions in *Bruen, supra*, and *United States v. Rahimi*, 144 S.Ct. 1889 (2024), the Fifth Circuit then discussed its recent opinion in *United*

States v. Diaz, 116 F. 4th 458 (5th Cir. 2024), *cert. filed* Feb. 18, 2025 as Sup. Ct. No. 24-6625, which is now pending in this Court:

. . . [T]he defendant, Ronnie Diaz Jr., raised both facial and as-applied challenges to § 922(g)(1) under the Second Amendment as Thompson does here. [Citation omitted]. After analyzing the Supreme Court’s decisions in *Bruen* and *Rahimi*, the [*Diaz*] panel rejected Diaz’s challenges to § 922(g)(1). [Citation omitted].

Fifth Cir. slip op., p. 5 (Appendix Tab A) (bracketing added). The Fifth Circuit then stated that petitioner Thompson’s facial challenge “is now squarely foreclosed by our decision in *Diaz*.” Fifth Cir. slip op., pp. 5-6 (Appendix Tab A) (bracketing added).

As for Thompson’s “as-applied” challenge, the Fifth Circuit held that this writer failed to adequately brief that issue, and forfeited that issue, by incorporating by reference the arguments made in the appellate briefs filed in both *United States v. Charles* and *United States v. Collette*, *supra*. These were the two district court decisions from the same district court as in the case at bar, and the district court’s order stated that these two decisions were the only reasons it was denying Thompson’s Second Amendment challenges raised in this appeal. Fifth Cir. slip op., p. 6 (Appendix Tab A). Instead of “cutting and pasting” the arguments from those two briefs into the Appellant’s Brief filed in the Fifth Circuit, this writer incorporated those arguments by reference in Thompson’s initial brief. The Fifth Circuit stated this was insufficient, and refused to consider the merits of petitioner’s “as applied” challenge to his conviction. Fifth Cir. slip op., p. 6 (Appendix Tab A).

Petitioner Thompson 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. There are three other pending certiorari petitions from the Fifth Circuit raising this same issue, which shows the importance of clarifying this recurring issue of whether the Second Amendment bars convictions under 18 U.S.C. § 922(g)(1). One of those petitions seeks review of the Fifth Circuit's *Diaz* opinion, which the Fifth Circuit held foreclosed petitioner Thompson's facial challenge that the Second Amendment barred his conviction in the case at bar.

Alternatively, this Court should hold Thompson's certiorari petition pending a resolution of the Second Amendment issues that are also presented in these three certiorari petitions filed in this Court in February 2025: (1) *Collette v. United States*, Sup. Ct. No. 24-6497 (cert. filed Feb. 3, 2025, response due March 10, 2025); (2) *Diaz v. United States*, Sup. Ct. No. 24-6625 (cert. filed Feb. 18, 2025, response due March 26, 2025); and (3) *French v. United States*, Sup. Ct. No. 24-6623 (cert. filed Feb. 18, 2025, response due March 26, 2025). If review is granted and a decision reached in any of those cases, then this Court should grant, vacate and remand this case for further proceedings consistent with the case that is granted and decided.

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.

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. The Fifth Circuit held that petitioner Thompson’s Second Amendment facial challenge to his

conviction was foreclosed by its opinion in *United States v. Diaz, supra*, but if this Court grants certiorari in that case, and then reverses or vacates the Fifth Circuit’s *Diaz* opinion, then this Court should also grant, vacate and remand the Fifth Circuit’s opinion holding that *Diaz* foreclosed Thompson’s facial Second Amendment challenge to his conviction, and remand for further proceedings.

Additionally, this Court should grant certiorari to decide whether petitioner Thompson’s “as applied” challenge was adequately briefed in the Fifth Circuit, and if so, then vacate that portion of the opinion, and remand to the Fifth Circuit for a consideration of the merits of petitioner’s “as applied” challenge to his conviction.

Conclusion and Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, petitioner SEAN WAYNE THOMPSON 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 November 27, 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.

Alternatively, this Court should hold Thompson’s certiorari petition pending a resolution of the Second Amendment issues that are also presented in these three certiorari petitions filed in this Court in February 2025: (1) *Collette v. United States*, Sup. Ct. No. 24-6497 (cert. filed Feb. 3, 2025, response due March 10, 2025); (2) *Diaz v. United States*, Sup. Ct. No. 24-6625 (cert. filed Feb. 18, 2025, response due March

26, 2025); and (3) *French v. United States*, Sup. Ct. No. 24-6623 (cert. filed Feb. 18, 2025, response due March 26, 2025). If review is granted and a decision reached in any of those cases, then this Court should grant, vacate and remand this case for further proceedings consistent with the case that is granted and decided.

Respectfully submitted,

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Date E-Filed: February 26, 2025