

NO.
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

DEION SHAWN HESTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT**

**TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE ELEVENTH CIRCUIT**

Pursuant to Supreme Court Rules 13.5, 22, and 30.3, Petitioner Deion Shawn Hester respectfully requests a 30-day extension of time, to and including January 6, 2025, within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit. Mr. Hester has not previously sought an extension of time from this Court.

Petitioner is filing this Application at least ten days before the filing date, which is December 5, 2024. *See* S.Ct. R. 13.5. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

In July 2022, Mr. Hester was charged with knowingly possessing a firearm and ammunition, knowing he was previously convicted of a crime punishable by imprisonment exceeding one year, in violation of 18 U.S.C. § 922(g)(1).

In December 2022, Mr. Hester filed a Motion to Dismiss the Indictment under the Second Amendment. Mr. Hester argued, among other things, that § 922(g)(1) was facially unconstitutional because his alleged conduct—possession of a handgun—was protected by the plain text of the Second Amendment, and because the Government could not (and still cannot) meet its heavy burden under *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), to affirmatively prove that § 922(g)(1) is consistent with the nation’s historical tradition of firearm regulation.

On January 19, 2023, the district court held a hearing on the motion to dismiss. A week later, in a two-page order, the district court denied Mr. Hester’s motion to dismiss. The district court agreed with Mr. Hester that, under *Bruen*, felons are “part of the people protected by the plain language of the Second Amendment.” At step two, however, the court concluded that § 922(g)(1) is “nonetheless consistent with the historical tradition of our nation’s firearm regulations.”

After the court's denial of his motions to dismiss and suppress, Mr. Hester agreed to plead guilty to the indictment. He is currently serving a 37-month prison sentence.

Mr. Hester appealed his conviction and sentence to the United States Court of Appeals for the Eleventh Circuit, making two arguments. First, he argued that 18 U.S.C. § 922(g)(1) is unconstitutional under the Second Amendment, according to a strict application of the two-part, text-and-historical tradition test set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022) as confirmed and clarified by *United States v. Rahimi*, 144 S.Ct. 1889 (June 21, 2024) (22-915). Second, while acknowledging adverse circuit precedent, Mr. Hester also preserved both a facial and as-applied challenge to § 922(g)(1) under the Commerce Clause, because that provision criminalizes the intrastate possession of a firearm without requiring a substantial effect on interstate commerce.

On August 20, 2024, the government filed a motion for summary affirmance, arguing that both Mr. Hester's Second Amendment and Commerce Clause arguments were "foreclosed by binding precedent." Mr. Hester responded in opposition, acknowledging that his Commerce Clause arguments are currently foreclosed by binding circuit precedent, but arguing that his post-*Bruen* Second Amendment arguments were a matter of first impression in the Eleventh Circuit and ripe for a decision.

The Eleventh Circuit affirmed his conviction in a per curiam Opinion issued on September 6, 2024, which is attached as Appendix A hereto. The petition for certiorari is due on December 5, 2024.

Undersigned counsel will not have sufficient time to file the petition for writ of certiorari for Mr. Hester by December 5, 2024, because he has several other competing case matters due during this same time period. He currently has three initial briefs due before the Eleventh Circuit during the first week of December. He also has a sentencing on November 15, 2024, and a jury trial scheduled to start on November 18, 2024.

As noted, Mr. Hester is serving a 37-month term of imprisonment. No party will be prejudiced by the granting of a 30-day extension.

Since the time within which to file a petition for writ of certiorari in this case will expire on December 5, 2024, unless extended, Petitioner respectfully requests that an order be entered extending his time to file a petition for writ of certiorari by 30 days, up to and including January 6, 2025.

Respectfully Submitted,

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FEDERAL PUBLIC DEFENDER

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October 30, 2024

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11938

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEION SHAWN HESTER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20333-RNS-1

Before WILLIAM PRYOR, Chief Judge, and WILSON and LUCK, Circuit Judges.

PER CURIAM:

Deion Hester appeals his conviction for possession of a firearm and ammunition. 18 U.S.C. § 922(g)(1). He argues that section 922(g)(1) violates the Second Amendment facially and violates the Commerce Clause, both facially and as applied to him. The government moves for summary affirmance. We grant that motion and affirm.

Summary disposition is appropriate when “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). We review the constitutionality of a statute *de novo*. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). But challenges raised for the first time on appeal are reviewed for plain error. *Id.*

The prior-precedent rule requires us to follow a precedent unless it is overruled by this Court *en banc* or by the Supreme Court. *United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016). “To constitute an overruling for the purposes of this prior panel precedent rule, the Supreme Court decision must be clearly on point[,]” and it must “actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel.” *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2009) (quotation omitted). And to do that, “the later Supreme Court decision must

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‘demolish’ and ‘eviscerate’” each of the prior precedent’s “fundamental props.” *United States v. Dubois*, 94 F.4th 1284, 1292 (11th Cir. 2023) (quotation omitted).

Because Hester did not raise his Commerce Clause challenge in the district court, we review his argument for plain error. See *Wright*, 607 F.3d at 715. As Hester concedes, our precedent holds that section 922(g)(1) is constitutional under the Commerce Clause. *United States v. McAllister*, 77 F.3d 387, 390 (11th Cir. 1996); *United States v. Scott*, 263 F.3d 1270, 1273-74 (11th Cir. 2001). We have rejected as-applied challenges to section 922(g)(1) when the government proved a “minimal nexus” to interstate commerce by establishing—as provided in Hester’s plea agreement—that the firearms were manufactured outside of the state where the offense occurred and necessarily traveled in interstate commerce. *Wright*, 607 F.3d at 715-16. Because our precedent forecloses Hester’s argument, he cannot establish plain error. See *id.* at 715.

Our binding precedents also foreclose Hester’s argument that section 922(g)(1) violates the Second Amendment. In *United States v. Dubois*, we reaffirmed our precedents holding that, under *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), section 922(g)(1) does not violate the Second Amendment. 94 F.4th at 1291-93 (citing *United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010)). We rejected the argument that *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), abrogated *Rozier* because *Bruen* “repeatedly stated that its decision was faithful to *Heller*.” *Id.* at 1293. And the recent decision in *United States v. Rahimi*, does not

change our analysis. 144 S. Ct. 1889 (2024). *Rahimi* did not “demolish” or “eviscerate” the “fundamental props” of *Rozier* or *Dubois*. *Dubois*, 94 F.4th at 1292. *Rahimi* did not discuss section 922(g)(1) or undermine our interpretation of *Heller*. To the contrary, *Rahimi* reiterated that prohibitions on the “possession of firearms by ‘felons and the mentally ill,’ are ‘presumptively lawful.’” *Rahimi*, 144 S. Ct. at 1902 (quoting *Heller*, 554 U.S. at 626, 627 n.26).

Because the government is “clearly correct as a matter of law” that section 922(g)(1) is constitutional under the Second Amendment and the Commerce Clause, we GRANT its motion for summary affirmance. See *Groendyke Transp.*, 406 F.2d at 1162.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.call.uscourts.gov

September 06, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-11938-JJ
Case Style: USA v. Deion Hester
District Court Docket No: 1:22-cr-20333-RNS-1

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard.** See 11th Cir. R. 35-5(k) and 40-1.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.call.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@call.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

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OPIN-1 Ntc of Issuance of Opinion