

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA §
 §
v. § Crim. No. 4:23-cr-18-ALM-KPJ-1
 §
ALI DANIAL HEMANI (1) §

AGREED ORDER

A grand jury charged Defendant Ali Danial Hemani in a single-count indictment charging him with a violation of 18 U.S.C. § 922(g)(3), possession of a firearm by a user of a controlled substance. Hemani originally filed a motion to dismiss the indictment on the ground that 18 U.S.C. § 922(g)(3) is unconstitutional on its face. Dkt. No. 12. Hemani later filed an amended motion to dismiss the indictment on the ground that 18 U.S.C. § 922(g)(3) is unconstitutional as applied to Hemani. Dkt. No. 71. The government filed a response to the amended motion stating that, in light of the Fifth Circuit’s decision in *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023),¹ dismissal of the indictment is appropriate on the ground raised by Hemani’s amended motion — that 18 U.S.C. § 922(g)(3) is unconstitutional as applied to Hemani but that the government believes that *Daniels* was wrongly decided and that 18 U.S.C. § 922(g)(3) is valid under the Second Amendment. Dkt. No. 72. The government further reserved the right to file a notice of appeal in the case to preserve for further review the argument that *Daniels* was wrongly decided. *Id.*

¹ The United States has filed a petition for writ of certiorari before the Supreme Court in *Daniels*, No. 23-376, which remains pending.

The parties agree, and the Court ORDERS, as follows:

The Court GRANTS Hemani's amended motion to dismiss the indictment on the ground that 18 U.S.C. § 922(g)(3) is unconstitutional as applied to Hemani (Dkt. No. 71). In light of this finding, the Court DENIES without prejudice as moot Hemani's motion to dismiss the indictment on the ground that 18 U.S.C. § 922(g)(3) is unconstitutional on its face (Dkt. No. 12).

The Court accordingly DISMISSES the indictment (Dkt. No. 1).

The government preserves its right to file a notice of appeal in this case and preserves the argument that *Daniels* was wrongly decided and that 18 U.S.C. § 922(g)(3) is valid as applied to Hemani.

SIGNED this 1st day of February, 2024.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE