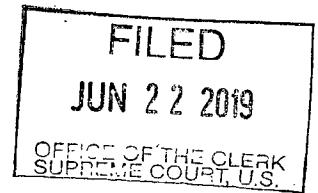


*BB*  
No. 18-7581

IN THE  
SUPREME COURT OF THE UNITED STATES

Brandon Erwin,  
petitioner,

versus  
United States of America,  
respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

**MOTION FOR RECONSIDERATION OF THIS COURT'S  
MAY 28, 2019 ORDER DENYING A WRIT OF CERTIORARI**

This Court denied Brandon Erwin's petition for a writ of certiorari on the question of whether a district court has jurisdiction under 28 U.S.C. § 2241 to adjudicate a petition for habeas corpus that presents a ground for relief based on an intervening change in the governing law and which sounds in actual innocence. This Court ordered the Solicitor-General's response, which suggested this case was not a proper vehicle in which to address the otherwise certiorari-worthy question.

On June 21, 2019, this court decided **Rehaif v. United States**, No. 17-9560 (2019). In **Rehaif**, this Court held that as drafted, the mens rea element, knowingly, applied to every element of the criminal statute. "We apply the presumption in favor of scienter even when Congress does not specify any scienter in the statutory text." **Rehaif**, 588 U.S. \_\_\_\_ at \_\_\_\_\_. The statutory construction rule announced by this Court in **Rehaif** extends to 21 U.S.C.

§ 841(a)(1), which also contains a knowing scienter. The primary component of Mr. Erwin's conviction<sup>1</sup> is 841(a), thus this Court's **Rehaif** ruling further indicates that Mr. Erwin's conviction is invalid.

Mr. Erwin recognizes that the question of the § 841(a)(1), (b)(1)(C) scienter requirements cannot be resolved by this Court. He has not presented the question or facts to the lower courts. The reason for this motion is not the substantive, but rather the jurisdictional and procedure to sue. What the **Rehaif** rule illuminates the questions at the heart of the current certiorari petition: when and how does a prisoner raise a claim of actual innocence based on a non constitutional, but retroactive, change in the law?

In the absence of this Court defining the scope and reach of 28 U.S.C. § 2255(e), Mr. Erwin will be forced to file a new § 2241 motion, the district court will deny for lack of jurisdiction, and the Eleventh Circuit will affirm the district court, based on it lacking subject-matter jurisdiction—this means the litigation cycle will repeat itself, and three years from now Mr. Erwin will be back before this Court not with a **Rehaif** claim, not with a **Burrage**<sup>2</sup> claim, but with a so-called saving clause claim, just as he is today.

This Court should reconsider the denial of Mr. Erwin's petition in order to resolve the issue of whether habeas corpus applies to a wrongful detention when the wrongfulness is made apparent by a subsequent change in the law. A decision that every federal circuit has addressed but upon which no consensus has developed.

Mr. Erwin respectfully request this Court reconsider its May 28, 2019 ruling and grant a writ of certiorari, and such other relief as this Court deems appropriate or fair.

<sup>1</sup> 21 U.S.C. § 841(a)- Unlawful acts—Except as authorized by this subchapter, it shall be unlawful for any person knowingly—or intentionally—(1) to manufacture, distribute or dispense a controlled substance ...." 21 U.S.C. § 841(b)(1)(C)-In case of a controlled substance ... "if death or bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years ...."

<sup>2</sup> *Burrage v. United States*, 571 U.S. 204 (2014).

Respectfully submitted on this 22 day of June, 2019 by:



Brandon Erwin  
Reg. No.: 48424-018  
FCI Coleman Low  
P.O. Box 1031  
Coleman, FL 33521-1031

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have mailed, via U.S. Mail, this motion to:

United States Supreme Court  
Office of the Clerk  
1 First Street, NE  
Washington, D.C. 20543

United States Solicitor General  
Department of Justice  
950 Pennsylvania Ave., NW Room 5616  
Washington, DC 20530-0001

on this 22 day of June, 2019.

  
Brandon Erwin

VERIFICATION

Under the penalty of perjury pursuant to 28 U.S.C. § 1746, I declare  
that the factual allegations contained in this motion are true and correct  
to the best of my knowledge.

  
Brandon Erwin

IN THE  
SUPREME COURT OF THE UNITED STATES

RECEIVED

JUL 23 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Brandon Erwin,

Petitioner,

versus

United States of America,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MR. ERWIN'S MOTION OF GOOD FAITH BELIEF  
AND FILING NOT FOR DELAY

I, Brandon Erwin, certify that I have a good faith belief that this Court's decision in **Rehaif v. United States**, No. 18-7581 (June 21, 2019) casts a different light upon my petition, which warrants reconsideration.

Initially, Mr. Erwin states that the petition is in good faith and not for delay. It arises from the Eleventh Circuit denying a 28 U.S.C. § 2241 motion, thus the date of this Court's resolution has no legal statute of limitations, et cetera.

This Court found that in the context of criminal statutes a presumption in favor of scienter exists. *Id.* Further, this Court found that every element of the crime, which appears after the word knowingly should have knowingly as default state of intent, that is, scienter.

Mr. Erwin's crime, like Mr. Rehaif's, is codified into separate statutory subsections: §§ 922( )(1); § 924(a)(2) for Mr. Rehaif; 21 U.S.C. § 841(a)(1), (b)(1)(C) for Mr. Erwin. If the same presumption and constructive canon apply, then Mr. Erwin's argument (and the record as set forth in Mr. Erwin's reply) show that his **Burrage v. United States**, S.Ct. (2013) claim would merit consideration in circuits such as the Second, Third, Sixth and Seventh.

Mr. Erwin respectfully requests this Court reconsider his petition in light of its decision in **Rehaif**.

Respectfully submitted on this 11th day of July, 2019 by:



Brandon Erwin  
Reg. No.: 48424-018  
FCI Coleman Low  
P.O. Box 1031  
Coleman, FL 33521-1031

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have mailed, via U.S. Mail, this motion to:

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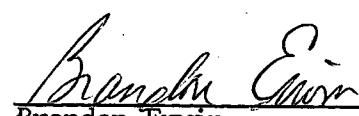
on this 11th day of July, 2019.



Brandon Erwin

#### VERIFICATION

Under the penalty of perjury pursuant to 28 U.S.C. § 1746, I declare that the factual allegations contained in this motion are true and correct to the best of my knowledge.



Brandon Erwin

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Brandon Erwin,

petitioner,

versus

United States of America,

respondent.

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PROOF OF SERVICE

I, Brandon Erwin, do swear and declare that on this date, June 22, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR RECONSIDERATION on each party to the above proceeding by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served as follows:

United States Supreme Court, Office of the Clerk, One First Street N.E., Washington, D.C. 20543.

United States Solicitor General, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2019.

  
Brandon Erwin