

IN THE
UNITED STATES SUPREME COURT

No. 18-8911

GERALD HUMBERT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION PURSUANT TO S. Ct. RULE 15(8)
IN LIGHT OF Rehaif v. United States, No. 17-9560- U.S.

S. Ct. Rule 15(8)

Any party may file a supplemental brief at any time while a petition for writ of certiorari is pending, ... calling attention to new cases, new legislation, or — other intervening matter not available at the time of the party's last filing.

Rehaif v. United States, No. 17-9560

I.

PETITIONER'S - INDICTMENT OR PLEA COLLOQUY
OMITTED WHETHER HE "KNEW" HE WAS A CONVICTED
AT THE TIME OF THE POSSESSION A CRITICAL
ELEMENT OF THE § 922(g) OFFENSE

Petitioner moves this Honorable Court to remand his case in light of the Supreme Court's decision in Rehaif v. United States. First, Petitioner is housed within the Eleventh Circuit and is precluded from ... bringing a motion pursuant to 28 U.S.C. § 2241, on a new substantive rule. See Montgomery v. Louisiana, 136 S. Ct. 718 (2016) ("when a new substantive rule of of constitutional law controls the outcome of a

case, the Constitution requires state collateral review courts to give retroactive effect to that ... rule."). Second, Section 922(g) prohibits certain — individuals, including **convicted felons**, from possessing a firearm or ammunition. Section § 924(a)(2) ... provides that any person who "knowingly violates" § 922(g) is punishable by up to 10 years in prison. By its terms, the "knowingly violates" provision in § 924(a)(2) applies to both the possession element and status element (convicted felon) of a § 922(g) offense. See Rehaif v. United States, No. 17-9560. Petitioner maintains that to prosecute an individual under § 922(g), the indictment must charge, and the Government must prove, that the defendant knew he was a convicted felon at the time of the possession of the firearm or ammunition. Here, in Petitioner's case, the indictment did not allege that he **knew** he was a convicted felon at the time of the possession and therefore failed to state an essential element of the offense, in contravention of Petitioner's (1) Fifth Amendment Right .. guaranteeing that a "grand jury found probable cause to support all the necessary elements of the crime," and (2) Sixth Amendment right guaranteeing that he be informed "of the nature and cause of the accusation." United States v. Martinez, 800 F.3d 1293, 1295

(11th Cir. 2015). Petitioner's jury instructions omitted a critical element of § 922(g)(1). They were not advised that he could only be guilty of the § 922(g) offense unless the indictment charged and the jury found beyond a reasonable doubt that Petitioner knew at the time of the possession that he was a convicted felon. For these reasons Petitioner's conviction as to the § 922(g) should be vacated.

June 25, 2019

R/s/ Gerald Humbert

FCI, COLEMAN FLORIDA 33521

CERTIFICATE OF SERVICE

I certify that a copy of was served on the U.S. Solicitor General, pursuant to 28 U.S.C. § 1746.

/ss/ Gerald Humbert