

No. 18-9574

**IN THE
SUPREME COURT OF THE UNITED STATES**

**FAYEZ ABU-AISH,
Petitioner**

v.

**UNITED STATES OF AMERICA,
Respondent.**

**On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit**

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

**Kenneth S. Siegel, Counsel of Record
2102 West Cleveland Street
Tampa, Florida 33606
Florida Bar No. 746053
Telephone No. 813-503-0099
E-mail: kensiegel21@gmail.com
Attorney for Petitioner,
Fayez Abu Aish**

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The Recent Decision in *Rehaif v. United States* Provides a Further Basis for Granting Certiorari

The Petitioner, Fayez Abu Aish, has argued in his Petition for a Writ of Certiorari that the Government failed to prove that Abu Aish had any knowledge of XLR-11.

The recent decision in *Rehaif v. United States*, No. 17-9560 (decided June 21, 2019) provides further justification for granting Abu Aish's petition. *Rehaif* involved a prosecution under 18 U.S.C. §922(g) and §924(a)(2) against an alien for possessing a firearm while illegally in the United States.

The question in *Rehaif* concerned “the scope of the word ‘knowingly.’” The Supreme Court held that the “word ‘knowingly’ applies both to the defendant’s conduct and to the defendant’s status. To convict a defendant, the Government therefore must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it.” See *Rehaif*, slip opinion, page 1.

Throughout its decision, the Supreme Court emphasized the importance of endowing criminal statutes with the element of knowledge. “Whether a criminal statute requires the Government to prove that the defendant acted knowingly is a question of congressional intent. [citation omitted]. In determining Congress’ intent, we start from a longstanding presumption, traceable to the common law,

that Congress intends to require a defendant to possess a culpable mental state regarding ‘each of the statutory elements that criminalize otherwise innocent conduct.’ [citations omitted]. We normally characterize this interpretive maxim as a presumption that criminal statutes require the degree of knowledge sufficient to ‘mak[e] a person legally responsible for the consequences of his or her act or omission.’ Black’s Law Dictionary 1547 (10th ed. 2014).” See *Rehaif*, slip opinion, page 3. (underscoring added)

The Supreme Court “appl[ies] the presumption in favor of scienter even when Congress does not specify any scienter in the statutory text. [citation omitted]. But the presumption applies with equal or greater force when Congress includes a general scienter provision in the statute itself. ...” See *Rehaif*, slip opinion, page 3.

“As ‘a matter of ordinary English grammar,’ we normally read the statutory term ‘knowingly’ as applying to all the subsequently listed elements of the crime.’ [citations omitted].” See *Rehaif*, slip opinion, page 4.

The Supreme Court’s “reading of §922(g) and §924(a)(2) is consistent with a basic principle that underlies the criminal law, namely, the importance of showing what Blackstone called ‘a vicious will.’ [citation omitted]. As this Court has explained, the understanding that an injury is criminal only if inflicted

knowingly ‘is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.’ [citation omitted]. Scien- ter requirements advance this basic principle of criminal law by helping to ‘separate those who understand the wrongful nature of their act from those who do not.’ [citation omitted].” See *Rehaif*, slip opinion, p. 5 (underscoring added).

Given the primacy of knowledge in criminal cases, Abu Aish’s petition is worthy for review on the merits. The trial of his case demonstrated all too clearly that he was convicted of dealing in a drug which was unknown to him. The alleged substance, XLR-11, was never mentioned in any conversation or activity in which Abu Aish was involved. Because Abu Aish has been found guilty of a crime without proof of his knowledge, the Supreme Court should grant this petition and vacate Abu Aish’s conviction and sentence.

CONCLUSION

For the reasons set forth in his Petition and this Supplemental Brief, Fayeز Abu-Aish respectfully requests that his Petition for Writ of Certiorari be granted.

Kenneth S. Siegel

Kenneth S. Siegel, Esquire
2102 West Cleveland Street
Tampa, Florida 33606
Tel. 813-503-0099
Fla. Bar No. 746053
Email: kensiegel21@gmail.com
Attorney for Petitioner,
Fayeز Abu-Aish