

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTWAN R. CRAY — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antwan R. Cray, Reg.#53343-018

(Your Name)
FCI Coleman-Medium, Unit A-3
P.O. Box 1032

(Address)

Coleamn, Florida 33521-1032
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

**Whether Petitioner Is actually, Factually, Legally, and Lawfully
Innocent of his Rehaif v. United States, 139 S. Ct. 2191 (2019)
recently decided by The U.S. Supreme Court?**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

	PAGE NUMBER
CASES	
Rehaif v. United States , 139 S. Ct. 2191 (2019)	
United States v. Hubert , 909 F.3d 335 (11th Cir. 2018)	
United States v. Izurieta , 710 F.3d 1176 (11th Cir. 2013)	
United States v. Peter , 310 F.3d 709 (11th Cir. 2002)	
United States v. Meacham , 626 F.2d 503 (5th Cir. 1980)	
United States v. Bousley , 523 U.S. 614 (1998)	
Boumediene v. Bush , 553 U.S. 723 (2008)	
McQuiggins v. Perkins , 133 S. Ct. 1924 (2013)	
House v. Bell , 547 U.S. 517 (2006)	
In re Dorsainvil , 147 F.3d 605 (1998)	
Hill v. United States , 368 U.S. 333 (1974)	
Triestman v. United States , 124 F.3d 361 (2nd Cir. 1997)	
Baisley v. United States , 516 U.S. 137 (1995)	
STATUTES AND RULES	
28 U.S.C. § 2241(c)(3)	
18 U.S.C. § 922(g)(1)/ (a)(2)	
18 U.S.C. § 32231	
28 U.S.C. § 2255(h)(2)	
18 U.S.C. § 924(c)	
28 U.S.C. § 2255(e)	
OTHER	

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	14

INDEX TO APPENDICES

APPENDIX A : United States Court of Appeals Decision

APPENDIX B : United States District Court Decision

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix "B" to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was
April 14, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- + Fifth Amendment Rights to the United States Constitution
- + Sixth Amendment Rights to the United States Constitution
- + Title 18 U.S.C. Section 922(g)(1) and Section 924(a)(2)
- + Title 28 U.S.C. Section 2241(c)(3), and Section 2255(e)

STATEMENT OF THE CASE

Petitioner was arrested for a Title 18 U.S.C. Section 922(g)(1). He has appealed and exhausted all of his remedies and now pursues this Title 28 U.S.C. Section 2241(c)(3) motion, based on his Actual Innocence in Rehaif v. United States, 139 S. Ct. 2191 (2019).

REASONS FOR GRANTING THE PETITION

Petitioner understands that the Honorable United States Supreme Court has the discretion to accept whatever cases it wants to review before its Honorable Court. Petitioner requests that his case be heard based on a Circuit conflict with the Circuit Courts that seems to agree and/or disagree with Rehaif v. United States, 139 S. Ct. 2191 (2019), a recent United States Supreme Court case.

Petitioner's lower courts refuse to even accept his case period, in regards to the filing of his Title 28 U.S.C. Section 2241(c)(3) motion, and to even rule on the Petitioner's Actual Innocence. in the Eleventh Circuit, it denied Petitioner's Section 2241(c)(3) motion, stating that Petitioner did not meet the four prongs in his Section 2241(c)(3) requirements for his Rehaif claim.

Petitioner states the following argument in this Writ of Certiorari to the Honorable U.S. Supreme Court:

ARGUMENT ONE

Whether Petitioner is Actually, Factually, Legally, and Lawfully Innocent of his Rehaif v. United States, 139 S. Ct. 2191 (2019) recently decided, U.S. Supreme Court Decision

In order to prosecute the Petitioner under Title 18 U.S.C. § 922(g), the indictment in Petitioner's case was required to

charge, and the Government was required to prove, that the Petitioner knew he was a convicted felon when he possessed the firearm. The Government was required, according to Rehaif, to prove four prongs:

1. Status Element
2. Possession Element
3. Jurisdictional Element
4. Firearm Element

Petitioner's indictment was and still is inadequate, insufficient and statute defective. Rehaif states that a plea is unknowing and involuntary under Title 18 U.S.C. § 922(g)(1), and a trial is unconstitutional in violation of the Petitioner's Fifth Amendment Rights to Due Process in violation of the element prongs to a jury beyond a reasonable doubt in violation of the Petitioner's Sixth Amendment Rights to the element clause. A plea is unknowing and involuntary not only because it lacks the four required prongs to be identified and known before pleading guilty. But also because it has to be known at a trial or bench trial or a plea that the absence of the element Title 18 U.S.C. § 924(a)(2) along with § 922(g)(1) was tantamount to failing to charge a -- criminal offense in Petitioner's indictment and to an unknowing plea, or a trial or a bench trial. Charged conduct is essential in Petitioner's case, it is required. but the Government failed to charge even an offense. It lacked the mandatory required four prongs, it therefore, lacked statute matter jurisdiction to pursue a and or prosecute a case against Petitioner. An indictment

defects in the elements not being presented to a jury, in a plea agreement, in a structural jury instruction, and in a bench trial. Because the indictment was therefore, defective in Petitioner's case in point, then there was no statute jurisdiction to pursue this case against the Petitioner. Because he was not statutory charged with violating the laws, statutes, and or Constitution of the United States -- in this case.

Therefore, there is no dispute that Petitioner's indictment failed to allege a now requisite "mens rea element" of Title 28 U.S.C. § 922(g) / § 924(a)(2), requirement in this case to a jury, in a plea, in a trial and/or bench trial. The U.S. Supreme Court required in Rehaif, knowledge of Movant's status. That was not in the indictment, unknowing plea, involuntary plea, bench trial, or trial of structural jury instruction.

Petitioner's indictment falls outside the sweep of the statute. It simply fails to charge a crime. The U.S. District Court from the very start lacked statute matter jurisdiction to charge the Petitioner. Because of the lack of elements to a jury, which rendered Petitioner's indictment insufficient, inadequate. It striped the U.S.S District Court of statute matter jurisdiction of this case. It did not charge Petitioner with a valid federal offense as enacted under the laws, statutes, and Constitution of the United States Code, nor did it sufficiently nor legally even charge an offense against the United States. And thereby, denies the U.S. District Court statute matter jurisdiction of this case.

Petitioner's indictment did not just omit one element, it

omitted three other elements. Petitioner's indictment does not show facts alleging that Petitioner committed an offense against the United States, as far as requirements in Rehaif are concerned and required. Petitioner's indictment charges no crime at all. The elements in a criminal indictment must be alleged in the indictment, and proven in a plea, trial or through structural jury instructions beyond a reasonable doubt.

Petitioner's indictment failed to allege an offense against the laws of the United States, which was a statute jurisdictional defect. Established Circuit precedent still holds that an indictment's failure to charge an offense against the laws of the United States is a jurisdictional violation, Petitioner states statute matter jurisdictional in his case in point and violations of his Fifth and Sixth Amendment Rights to a jury determination beyond reasonable doubt, structural error in the jury instructions, the plea becomes unknowing and involuntary. **United States v. Hubert**, 909 F.3d 335, 341-44 (11th Cir. 2018); **United States v. Izurieta**, 710 F.3d 1176, 1182-85 (11th Cir. 2013); **United States v. Peter**, 310 F.3d 709, 712-15 (11th Cir. 2002); **United States v. Meacham**, 626 F.2d 503, 509-10 (5th Cir. 1980). This is what transpired in Petitioner's case in point.

Remember Honorable Justices of the United States Supreme Court, Petitioner's indictment did not charge nor cite Section 924(a)(2). Petitioner's indictment did not track the language of Section 924(a)(2). And Petitioner's indictment did not allege that Petitioner knew he was a felon at the time of the firearm

possession. Rehaif has made it clear Honorable Justices, that the Government may prosecute and convict a defendant only under both Sections 922(g) and 924(a)(2). Indeed the U.S. Supreme Court read the statutes together and held that the government must prove as required by Section 924(a)(2) that the defendant "knowingly violated Section 922(g)." 139 S. Ct. at 2194-96, 2200.

The Supreme Court explained that the question in Rehaif was what the word "knowingly" in Section 924(a)(2) requires the government to prove. Id. at 2194 ("A separate provision, Section 924(a)(2), adds that anyone who 'knowingly violates' Section 922(g) shall be fined or imprisoned for up to 10 years. The question in Petitioner's use in point concerns the scope of the word knowingly."); Id. at 2195 ("We granted certiorari to consider whether, in prosecutions under section 922(g) and section 924(a)(2), the Government must prove that a defendant knows of his status as a person barred from possessing a firearm."). The Supreme Court turned first to the statutory text:

The term 'knowingly' in Section 924(a)(2) modifies the verb 'violates' and its direct object, which in this case is § 922(g). The proper interpretation of the statute thus turns on what it means for a defendant to know that he has 'violated Section 922(g).'

Id. at 2195 (emphasis added). The Supreme Court answered that question by concluding:

[W]e think by specifying that a defendant

may be convicted only if he 'knowingly violates' Section 922(g), Congress intended to require the Government to establish that the defendant knew he violated the material elements of Section 922(g).

Id. at 2196. The Supreme Court thus interpreted what it means to "knowingly violate" Section 922(g). The phrase that appears in § 924(a)(2). The knowledge of status requirement thus derives from § 924(a)(2), not § 922(g).

The Supreme Court reinforced its conclusion based on the presumption that scienter separates innocent from criminal conduct. Id. at 2196-97. but the Supreme Court's opinion makes clear that § 922(g)(1) is not a freestanding criminal offense, as previously thought. Id. at 2195 ("prosecutions under § 922(g) and § 924(a)(2)"), Id. at 2197 ("defendants under § 922(g) and § 924(a)(2)"); Id. at 2200 ("a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2)").

Because the indictment in Petitioner's case in point does not track the language of § 924(a)(2), the indictment fails to charge an offense against the laws of the United States. 18 U.S.C. § 32231; see e.g., Izurieta, 710 F.3d at 1182-85. The indictment should have been therefore, dismissed.

After Rehaif, the lower courts in Petitioner's case should have dismissed his indictment. The lower courts should have respected the Honorable U.S. Supreme Court's decision in Rehaif v. United States, of the Petitioner being actual innocent of the Petitioner's Rehaif claim based on all of the above stated information in Rehaif, *supra*.

The lower courts in Petitioner's case in point stated that he did not meet the four requirements of his actual innocence claim. Petitioner states that he met the four required prongs of the Eleventh Circuit's Title 28 U.S.C. § 2241(c)(3) motion claims, because of the following reasons:

(1) Petitioner cannot pursue another Title 28 U.S.C. § 2255 motion because he exhausted all of those remedies. Petitioner cannot file a second or successive 2255(h)(2), because his claim in Rehaif is not a constitutional change in life, but a substantive change in law. Nor is Petitioner's claim a newly discovered claim that would have acquitted him at a trial. Therefore, a second or successive is ineffective to test the legality of Petitioner's Rehaif claim.

(2) Petitioner could not have brought this claim sooner because circuit precedence in the Eleventh Circuit in **United States v. Jackson**, 120 F.3d 1226 (11th Cir. 1997), from doing so. Rehaif, abrogated Jackson, and therefore, allowed the Petitioner to bring his Rehaif claim. However, the lower courts refused the Petitioner entry stating that he was not actual innocent of his Rehaif claim, and that his claim was not a substantive change in the law. And that he was therefore, attacking his Rehaif claim wrongly. Petitioner disagreed and pursues his actual innocent claim of Rehaif, all the way to the United States Supreme Court.

(3) Petitioner's only entry into the court, based on his actual innocence was through the portal avenue of a § 2255(e), the

savings clause of a § 2241(c)(3), such as in this case in point. Otherwise, Petitioner was prevented from pursuing his actual innocence claim.

(4) Petitioner is therefore serving an unconstitutional sentence in violation of the laws, Constitution, and U.S.S. Guidelines based on his actual innocence in Rehaif, and also, based on the lower courts, in the district, and Eleventh Circuits to allow him entry into the lower courts, based on his actual innocence. **Bousley v. United States**, 523 U.S. 614-620 (1998). Petitioner is incarcerated based on a non-criminal offense, an offense that the law does not make criminal. It is inconsistent with the doctrinal underpinnings of habeas review to preclude the Petitioner from relying on a decision in support of a claim challenging a sentence as constitutionally invalid, and holding that decision in **Bailey v. United States**, 516 U.S. 137 (1995) which narrowed the reach of 18 U.S.C. § 924(c), in Petitioner's Rehaif claim. **Bousley** states that Rehaif is a substantive change in the law. **Bailey v. United States**, 516 U.S. 137 (1995) agrees with Bousley, see also **Treistman v. United States**, 124 F.3d 366-372 (2nd Cir. 1997); **Hill v. United States**, 368 U.S. 333-346 (1974); **in re Dorsainvil**, 119 F.3d 245, 251 (3rd Cir. 1997); **ir re Davenport**, 147 F.3d 605, 609 (7th Cir. 1998); **Boumediene v. Bush**, 553 U.S. 723 (2008); **Schlup v. Delo**, 513 U.S. 298 (1995); **Mcquiggins v. Perkins**, 133 S. Ct. 1924 (2013); **House v. Bell**, 547 U.S. 517-522 (2206).

Petitioner is actually innocent of his Rehaif claim, and has just verified to the Honorable U.S. Supreme Court that he is

serving an unconstitutional conviction and sentence in violation of the laws and Constitution of the United States.

Petitioner challenged in the lower courts his actual innocence of his sentence and conviction. A Section 2255(e) through the portal avenue of a Section 2241(c)(3) motion/petition/memorandum of law was the only avenue through which he could pursue his actual innocence.

Honorable Justices, I pray that You accept and grant this writ of certiorari in this case,¹ so that we can finally overturn the Eleventh Circuit's unfair justice in denying so many prisoners their actual innocence rights for which the Eleventh Circuit has been denying for years under false pretense.

¹ This writ of certiorari was prepared by Donald G. Green, Reg.# 39747-019, an incarcerated federal prisoner at Coleman-Medium, Florida, whom has been incarcerated for 30 years in the federal prisons law library. We ask only for fairness, and justice Honorable U.S. Supreme Court Justices.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antwan Cray

Date: 6-19-2020