

ORIGINAL

No. 20-572

Supreme Court, U.S.
FILED

OCT 19 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES R. YOUNG — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE 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

JAMES R. YOUNG
(Your Name)
Federal Correctional Complex-Medium
P.O. Box 1032
Coleman, Florida 33521
(Address)

Coleman, Florida 33521
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- (1) - Whether 18 U.S.C. § 924(a) provides for criminal penalties to felons who possess firearms in interstate commerce absent proof that they knew of their felon status, or of the firearm's movement in interstate commerce.
- (2) - Whether denial of 'retroactive' habeas corpus Rehaif review is inconsistent with the doctrinal underpinnings like those held in Bailey pursuant to § 924(c)(1) compared to § 922(g)(1). [in the Eleventh Circuit].
- (3) - Whether the Supreme Court's opinion in Rehaif determined that Rehaif's new rule of statutory law was 'retroactively' applicable under Teague v. Lane's conclusion establishing the retroactivity of new substantive rules.
- (4) - Whether Rehaif is 'retroactive' to cases already closed in the lower courts from further habeas review prior to its decision. ('retroactive' for collateral constitutional or suspension clause review).
- (5) - Whether Rehaif's "status" (or priors) element created a 'retroactive' Sixth Amendment right to a jury trial for closed cases; or would Almendarez-Torres v. United States, 533 U.S. 224 (1998), being reheard, resolve the consistent questioning about the use of "status" of priors before a trial jury concerning the instant "conviction" and not a defendant's sentencing.

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:

RELATED CASES

N/A

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-6
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

- APPENDIX A - The decision of the United States Court of Appeals for the Eleventh Circuit
- APPENDIX B - The decision of the United States District Court and the findings and recommendations of the United States magistrate judge
- APPENDIX C - Copy of Petitioner's Appeal to the Eleventh Circuit
- 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.

N/A - ☐ 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 August 19, 2020.

☒ No petition for rehearing was timely filed in my case.

N/A - ☐ 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 _____.

N/A - ☐ 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).

N/A - ☐ 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).

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

(1)- Bailey v. United States, 516 U.S. 137, 116 S.Ct. 501, 133 L. Ed. 2d 472 (1995)	4, 5,
(2)- Bousley v. United States, 523 U.S. 614, 118 S.Ct. 1604, 140 L. Ed. 2d 828 (1998)	4, 5,
(3)- Ex parte Siebold, 100 U.S. 371, 25 L. Ed. 717 (1880)	5, 6,
(4)- Mackey, Supra, at 692-693, 91 S.Ct. 1160, 28 L. Ed. 2d 404 (1971)	5,
(5)- Montgomery v. Louisiana, 136 S.Ct. 718, 729-31, 193 L. Ed. 2d 599 (2016)	5, 6,
(6)- Penry v. Lynaugh	6,
(7)- Reed v. Ross	4,
(8)- Rehaif v. United States, 139 S.Ct. 2191 (2019)	4, 5, 6, 7,
(9)- Stathiropoulos v. Summerlin, 542 U.S. 348, 351-52, 124 S.Ct. 2519, 2522, 159 L. Ed. 2d 442 (2004)	6, 7,
(10)- Teague v. Lane	5, 6,
(11)- United States v. United States Coin & Currency, 401 U.S. 715, 724, 91 S.Ct. 1040, 28 L. Ed. 2d 434 (1971)	6,
(12)- Almendarez-Torres v. United States, 523 U.S. 224 (1998)	7

STATUTES AND RULES

(1) § 922(g)	4, 5, 6, 7,
(2) § 922(g)(1)	4, 7,
(3) § 924(a)(2)	4, 5, 6, 7,
(4) § 924(c)	5,
(5) § 924(c)(1)	4, 5,

OTHER - Constitutional And Statutory Provisions Involved

- (1)- 4th Amendment of the U.S. Constitution
- (2)- 5th Amendment of the U.S. Constitution.

STATEMENT OF THE CASE

"Jury Trial Case"

Before this Court I would first like to say that I am not a lawyer and can only present my case to my best layman ability. In addition, I write from prison lock-down.

As my statement of the case Petitioner contends that his conviction for possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2), is infirm because the courts below did not recognize that knowledge of status is an element of that offense. The lower courts, therefore, used a partial or incomplete statute in this case to uphold its conviction and sentence in this case. Such an act is unconstitutional and denied a fair trial. In Rehaif v. United States, 139 S. Ct. 2191 (2019), this Court held that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." Id. at 2194. This fact warrants reason for granting the petition for writ.

The "knowingly" mens rea in the instant case was applied only to the possession element and not to the status element, contrary to Rehaif. 139 S. Ct. at 2194, 2196. A fair trial under the Constitution was again denied.

Further, In Reedy v. Ross, the Supreme Court explained for procedural default purposes that a claim is not "reasonably available" where a Supreme Court decision overturns "a longstanding and widespread practice to which the [Supreme] Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved." 468 U.S. 1, 17 (1984) (internal quotation marks omitted). Before the Supreme Court's decision in Rehaif, the claim that the indictment failed to state an offense was not "reasonably available" to the Petitioner; the Circuit Courts had unanimously held that knowledge of status was not an element at that time. See Rehaif, 139 S. Ct. at 2210 n.6 (Alito, J., dissenting). That fact has now changed. Therefore, Petitioner was denied constitutional due process in this matter and the right to a fair trial. It is because of these facts and all the facts above, that it is shown Petitioner and similarly situated individuals, are entitled to retroactive habeas corpus Rehaif review and relief. Moreover, Petitioner has never served more than a year previously.

To even further understand why Petitioner feels he should be able to bring a claim based on a retroactively applicable new rule of statutory law, we need to look no further than Bailey v. United States, 516 U.S. 137, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995), and Bousley v. United States, 523 U.S. 614, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998). In Bailey, the Supreme Court construed 18 U.S.C. § 924(c)(1), which, at the time, imposed a prison term upon a person who "during and in relation to any... drug trafficking crime... uses or carries a firearm," to require evidence that the defendant actively employed the firearm during and in relation to the predicate crime. Bailey, 516 U.S. at 142-43. Previously, some courts had interpreted the provision to require evidence of only accessibility and proximity of a firearm during a drug-trafficking crime, not of active employment.

Based on Bailey's reading of § 924(c)(1), the Supreme Court identified Bailey as a decision of the 11th Circuit Court holding "that a substantive federal criminal statute does not reach certain conduct" and determined that pre-Bailey applications of § 924(c)(1) "necessarily carried] a significant risk that a defendant (good) convicted of an act that the law does not make criminal." Bousley, 523 U.S. at 620.

That, the Supreme Court explained, presented a constitutional problem, "[f]or under our federal system it is only Congress, and not the courts, which can make conduct criminal." *Id.* at 620-21. So, the Supreme Court summarized, "it would be inconsistent with the doctrinal underpinnings of habeas review to preclude [a prisoner] from relying on our decision in Bailey in support of his claim that his guilty plea [to 3924(c)(1)] was constitutionally invalid. *Id.* at 621. As a result, the Supreme Court determined that Bailey's new rule of statutory law was necessarily retroactively applicable under Teague v. Lane's conclusion establishing the retroactivity of new substantive rules. *See id.* at 620-21.

Precisely the same is true of a Rehaif claim. In Rehaif, the Supreme Court considered what the government must prove in a prosecution under 18 U.S.C. §§ 922(g) and 924(a)(2). As relevant here, 3924(a)(2) provides that "[w]hoever knowingly violates" § 922(g) "shall be" subject to penalties of up to 10 years' imprisonment. Section 922(g) then states it "shall be unlawful for any person.... being a felon and convicted of a crime punishable by more than one year in prison.... to possess in or affecting commerce, any firearm or ammunition." 18 U.S.C. § 922(g). Before the Supreme Court issued Rehaif, some courts, including the Eleventh Circuit, construed these provisions to mean that the government didn't have to prove that the defendant knew his status as a felon to obtain a conviction. But in Rehaif, the Supreme Court concluded that the statutory text requires the government does have to prove that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." *Id.* at 2194.

Rehaif, therefore, announced the same type of new rule of statutory law that Bailey did. In both cases, the Supreme Court issued a "decision [...] holding that a substantive federal criminal statute does not reach certain conduct" that, before the applicable Supreme Court decision, courts routinely applied to reach the non-covered conduct. *See Bousley*, 523 U.S. at 620. As a result, as the Court determined in Bousley with respect to pre-Bailey applications of § 924(c)(1), pre-Rehaif applications of §§ 922(g) and 924(a)(2) "necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal." *Id.* And "it would be [just as] inconsistent with the doctrinal underpinnings of habeas review to preclude [a prisoner] from relying on [the Supreme Court's] decision in [Rehaif] in support of his claim that his [conviction under §§ 922(g) and 924(a)(2)] was constitutionally invalid," *id.* at 621, as the Supreme Court determined it would be to preclude a prisoner from invoking Bailey to support his habeas claim that his conviction under § 924(c) was invalid.

Therefore, as a matter of fact, Bailey and Bousley demand the conclusion that Rehaif announced a new rule of substantive law that is necessarily retroactively applicable under Teague. *See also Montgomery v. Louisiana*, 136 S. Ct. 718, 729-31, 193 L. Ed. 2d 599 (2016) ("substantive rules must have retroactive effect regardless of when the defendant's conviction became final"). Wherefore, a prisoner with a Rehaif claim must be able to seek habeas relief to avoid serving decades in prison for a conviction or sentence that violates a substantive rule.

A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. *See Siebold*, 100 U.S. at 376, 25 L. Ed. 717. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

By holding that new substantive rules are, indeed, retroactive, Teague continued a long tradition of giving retroactive effect, regardless of when the defendant's conviction became final, to constitutional rights that go beyond procedural guarantees. *See Mackey*, *supra*, at 692-693, 91 S. Ct. 1160, 28 L. Ed. 2d 404 (opinion of Harlan, J.) ("[T]he writ has historically been available for attacking convictions on [substantive] grounds"). Even in the pre-1953 era of restricted federal habeas, however, an exception was made "when the habeas petitioner attacked the constitutionality of the state statute under which he had been convicted. Since in this situation, the state had no power to proscribe the conduct for which the petitioner was imprisoned, it could not constitutionally insist that he remain in jail." *Id.* at 261, n. 2, 89 S. Ct. 1030, 22 L. Ed. 2d 248 (Harlan, J., dissenting) (citation omitted).

In Ex parte Siebold, 100 U.S. 371, 25 L. Ed. 717 (1880), the Court addressed why substantive rules must have retroactive effect regardless of when the defendant's conviction became final. At the time of that decision, (mere error in the judgment or proceedings, under and by virtue of which a party is imprisoned, constitute[d] no ground for the issue of the writ. "Id., at 375, 25 L. Ed. 717. In Siebold, however, the petitioners attacked the judgments on the grounds that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." Id., at 376, 25 L. Ed. 717. A conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But... if the laws are unconstitutional and void, the circuit court acquired no jurisdiction of the causes." Id., at 376-377, 25 L. Ed. 717. Petitioner is, therefore, warranted the requested relief due to the partial use of the § 922(a) statute at his trial requiring the government to only prove "possession" of a firearm and not the mens rea of Petitioner's status as a felon.

This Court's precedents addressing the nature of substantive rules, their differences from procedural rules, and their history of retroactive application establish that the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final.

In Perry v. Lynaugh, decided four months after Teague, the Court recognized that "the first exception set forth in Teague should be understood to cover not only rules forbidding criminal punishment of certain primary conduct but also rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." 492 U.S., at 330, 109 S. Ct. 2934, 106 L. Ed. 2d 256. For the instant § 922(a)(1) conviction, Petitioner's true "status" as a known felon in violation of the requirements of that statute was never a burden given to the government nor one instructed or charged for the jury to find. Only the "possession" part (use of a partial statute) was the government's burden and charged to the jury. Such act was unconstitutional according to Rehaif.

The impact of the opinion in Rehaif, therefore, in specific reference to the particular facts in Petitioner's case, stands at its strongest where the substantive rule requiring that the mens rea of knowledge under sections 922(a) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." Id., at 2194, has eliminated the lower court's power to proscribe the defendant's conduct [sole legal "possession" of a firearm] (without mens rea proof of defendant's known status as a felon) or impose a given punishment. "Even the use of impeccable factfind procedures could not legitimate a verdict" where "the conduct being penalized is constitutionally immune from punishment." United States v. United States Coin & Currency, 401 U.S. 715, 724, 91 S. Ct. 1041, 28 L. Ed. 2d 434 (1971). Nor could the use of flawless sentencing procedures legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed. "No circumstances call more for the invocation of a rule of complete retroactivity." Ibid.

As noted above, under Teague, new rules are not typically applicable to cases on collateral review. Whorton, 549 U.S. at 416, 127 S. Ct. at 1180. However, the Supreme Court has established a general principle that new substantive rules and watershed rules of criminal procedure are not subject to this retroactivity bar. See Montgomery v. Louisiana, 577 U.S. —, 136 S. Ct. 718, 728, 193 L. Ed. 2d 599 (2016); Schiro v. Summerlin, 542 U.S. 348, 351-52, 124 S. Ct. 2519, 2522, 159 L. Ed. 2d 442 (2004); Teague, 489 U.S. at 307-09, 109 S. Ct. at 1073-74. New substantive rules include, for example, "decisions that narrow the scope of a criminal statute by interpreting its terms" and "constitutional determinations that place particular conduct or persons covered by the statute beyond the state's power to punish." See Schiro, 542 U.S. at 351-52, 124 S. Ct. at 2522. "Such rules apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." Id. at 352, 124 S. Ct. at 2522-23 (internal quotation marks omitted).

Wherefore, based on all the above, Petitioner asks this Court to grant his petition for a Writ of Certiorari, vacate the lower court's judgment, and remand Petitioner back to the lower court for further consideration in light of Rehaif and its retroactively applicable substantive rule. In the alternative, because Petitioner has served more than the statutory 10 year maximum at this time, this Court could also order him released because were he to be resentenced today (due to Johnson 2015) the ACCA wouldn't apply and he has already exceeded his statutory maximum sentence for § 922(a).

REASONS FOR GRANTING THE PETITION

Again, as my statement of the case, I, the Petitioner, contend that my conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because the courts below did not recognize [during my trial] that knowledge of status is an element of that offense.

The lower courts, therefore, used a partial or incomplete statute in this case to uphold its conviction and sentence by making reference 'only' to the "possession" element (and not "status") during Petitioner's trial for an alleged § 922(g) and 924(a)(2) violation. Such an act is unconstitutional because the Court's failure to require the government to charge and prove both elements in a § 922(g) and 924(a)(2) trial now necessarily carries a significant risk that Petitioner stands convicted of an act that the law does not make criminal, or he faces further punishment that "the law cannot impose upon him." *Id.* at 35a, 124 S. Ct. at 522-23. [Schrero].

In Rehaif v. United States, 139 S. Ct. 2191 (2019), this Court held that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies "both to the Defendant's conduct and to the defendant's status." *Id.* at 2194.

This fact warrants (not discounting the credibility of any of those above) reasons for granting the petition in its fullest view in light of Rehaif and new substantive rule standards held by this Supreme Court.

Lastly, there's an open question about the use of priors and their 'status' in combination with federal statutes, that unconstitutionally allows the government relief of its burden of proof. That question was left open in: "Almendarez-Torres v. United States, 523 U.S. 224 (1998)."

It has now again of type resurfaced in Petitioner's case pursuant to Rehaif; that question is: "Does Rehaif's 'status' (or priors) element create a 'retroactive' Sixth Amendment right to a jury trial for already closed cases or would Almendarez-Torres v. United States, 523 U.S. 224 (1998), being reheard, resolve the consistent question about the use of 'status' of priors before a trial jury concerning conviction."

Petitioner, therefore, presents this question to the Supreme Court as a reason it should grant the petition and finally resolve whether all or any priors used as an element of an offense, should be also found by a jury.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James R. Young

Date: October 19, 2020