

No. 20-7330

IN THE SUPREME COURT OF THE UNITED STATES

JAMES MARCUS LLOYD, III, PETITIONER

v.

J. HUTCHINSON, WARDEN

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner principally contends (Pet. 9-12) 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, at the time of his trial, the district court did not recognize that knowledge of status is an element of that offense. See Rehaif v. United States, 139 S. Ct. 2191, 2194 (2019) (holding 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”). Petitioner did not raise that claim during his trial, on direct appeal, or in his first motion for post-conviction relief under 28 U.S.C. 2255.

See Section 2241 Pet. 7 (arguing that petitioner's failure to "invoke[] Rehaif in [his] trial, appeal, or first 2255 motion" should be excused on futility grounds). In March 2020, petitioner invoked Rehaif as one ground for relief in a petition for a writ of habeas corpus under 28 U.S.C. 2241. See Section 2241 Pet. 4-20. A magistrate judge in the District of South Carolina issued a report recommending that petitioner's Section 2241 petition be denied, Pet. App. 3a-6a, and petitioner attempted to take an appeal from that recommendation, see id. at 2a.¹ In an unpublished per curiam opinion, the court of appeals dismissed petitioner's appeal for lack of jurisdiction because "[t]he report and recommendation [petitioner] s[ought] to appeal [was] neither a final order nor an appealable interlocutory or collateral order." Id. at 1a-2a. That decision was correct and does not warrant this Court's review.

Moreover, this case would not warrant this Court's review even if petitioner's appeal had been procedurally proper. As explained on pages 17 to 19 of the government's brief in opposition in Hueso v. Barnhart, No. 19-1365 (filed Sept. 11, 2020), the courts of appeals are divided on the availability of relief under Section 2255's "saving clause," 28 U.S.C. 2255(e), with respect to claims arising from intervening statutory decisions for which Section 2255(h) does not permit second or successive post-

¹ Petitioner's appendix is not paginated. This brief refers to the pages in consecutive order as 1a through 11a.

conviction motions.² To the government's knowledge, however, no court of appeals has granted a federal prisoner collateral post-conviction relief under Section 2255 or Section 2241 based on Rehaif in circumstances like those present here.

Even in circuits that permit reliance on Section 2241 for statutory claims, a prisoner still must generally show that recent legal developments establish that he is in prison for conduct that the law does not make criminal. See, e.g., Alaimalo v. United States, 645 F.3d 1042, 1047-1048 (9th Cir. 2011); Triestman v. United States, 124 F.3d 361, 379 (2d Cir. 1997). Petitioner made no such claim in support of his Section 2241 petition. He instead simply contended that his conviction is invalid under Rehaif because "the government never proved beyond a reasonable doubt to[] the jury that [petitioner] actually knew he was barred from possessing a firearm and ammunition." Section 2241 Pet. 11 (internal quotation marks omitted); see also id. at 14 (acknowledging that petitioner "signed supervised release papers that informed him that he was prohibited from possessing firearms" but arguing that "any person of intelligence [would] believe that these conditions end[ed] at the end of the set term" of supervised release). As the magistrate judge correctly determined, however, "Rehaif requires only that the Government prove that a person

² We have served petitioner with a copy of the government's brief in opposition in Hueso.

charged under 18 U.S.C. § 924(a)(2) & [922](g) knew he was a felon" -- not that he was "[] aware of a statute proscribing his conduct." Pet. App. 5a-6a. Because "[p]etitioner provide[d] no indication here that he did not know he was a felon, * * * Rehaif is not a change in the law that would allow him to meet the saving[] clause" even under the most prisoner-favorable approach to post-conviction relief adopted in the courts of appeals. Id. at 6a.³

Respectfully submitted.

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³ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.