

No. 21-5060

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN BROWN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner Kevin Brown respectfully suggests that there are “intervening circumstances of a substantial . . . effect” that arose after the filing of Petitioner’s petition for writ of certiorari, and that these intervening circumstances support granting rehearing and holding this petition in abeyance pending disposition of *Johnson v. United States*, No. 21-5432 (U.S.). As grounds for this petition for rehearing, Petitioner states the following:

1. On October 12, 2021, the Court denied Petitioner’s petition for writ of certiorari,¹ which presented the following merits question: Whether, in a 18 U.S.C. § 922(g)(9) prosecution, *Rehaif v. United States*, 139 S. Ct. 415 (2019), requires the government to prove that a defendant knew his conviction qualified as a “misdemeanor crime of domestic violence,” including that his prior offense had, as an element, the use or attempted use of physical force. See Pet. for Writ of Cert. at i, *Brown v. United States*, No. 21-5060 (U.S. July 2, 2021).

¹ In accordance with the Court’s Rules, this petition for rehearing is filed within 25 days of denial of certiorari in Petitioner’s case. See Sup. Ct. R. 44.2.

2. After Petitioner filed his petition for a writ of certiorari but before the Court denied it, Deangelo Johnson also petitioned for a writ of certiorari seeking review of the Eleventh Circuit’s published decision in *United States v. Johnson*, 981 F.3d 1171 (11th Cir. 2020). See Pet. for Writ of Cert., *Johnson*, No. 21-5432.

3. Mr. Johnson’s petition presents a merits question that is substantively identical to the merits question raised by Petitioner: “Whether, to support *Rehaif*’s knowledge-of-status element in a prosecution for unlawful possession of a firearm by a person convicted of a misdemeanor crime of domestic violence, 18 U.S.C. § 922(g)(9), the government must prove that the defendant knew that he had: (1) been convicted of an offense that has ‘as an element, the use or attempted use of physical force’ and thus qualifies as a misdemeanor crime of domestic violence as defined under federal law; or (2) merely engaged in conduct that constitutes ‘physical force’ as defined in *United States v. Castleman*, 572 U.S. 157, 163 (2014), whether or not the defendant knew how Castleman defines the term.” *Id.* at i.

4. The Court may have denied Petitioner's petition for writ of certiorari because of a preference to address the same issue in a published case like *Johnson*.

5. The Solicitor General responded in *Johnson* on October 20, 2021, and the Court will likely conference the case soon.

6. Petitioner therefore respectfully requests that the Court hold his petition for rehearing in abeyance pending the disposition of *Johnson*.

CONCLUSION

For the above reasons, Petitioner respectfully asks the Court grant rehearing of its order denying the petition for writ of certiorari, vacate that order, and hold this case in abeyance pending resolution of *Johnson v. United States*, No. 21-5432.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I, Conrad Kahn, counsel for Kevin Brown, certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I also certify that the petition for rehearing is presented in good faith and not for delay.

/s/ Conrad Kahn
Conrad Kahn, Esq.