

No. _____

In the
Supreme Court of the United States

Mary Ann Lara,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in prosecutions brought under Title 21, Section 841, the Government must prove a defendant's knowledge of drug type and quantity?

PARTIES TO THE PROCEEDING

Petitioner is Mary Ann Lara, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mary Ann Lara seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is located at 23 F.4th 459 (5th Cir. Jan.11, 2022). It is reprinted in Appendix A to this Petition. The district court's judgement and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on January 11, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

21 U.S.C. § 841(a) provides in relevant part:

(a) UNLAWFUL ACTS. Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

And

(b) Penalties Except as otherwise provided in section 849 , 859 , 860 , or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows...

LIST OF RELATED PROCEEDINGS

1. *United States v. Mary Ann Lara*, 3:17-CR-0570-K(01). United States District Court, Northern District of Texas. Judgment entered October 11, 2018.
2. *United States v. Mary Ann Lara*, Fifth Circuit No. 18-11352, opinion dated May 15, 2019. *United States v. Hicks*, 770 Fed. Appx. 215 (5th Cir. 2019) (unpublished).

STATEMENT OF THE CASE

On May 9, 2018, a grand jury for the Western District of Texas—Del Rio Division, handed up a 4-count indictment alleging that Mary Lara (Lara), her sister Melissa Lara (Melissa Lara), and Priscilla Ramirez (Ramirez): (1) conspired amongst themselves and others: (a) to distribute methamphetamine (Count One) and (b) to import methamphetamine (Count Three); (2) possessed with intent to distribute methamphetamine (Count 2); and (3) imported methamphetamine (Count 4).

On October 31, 2018, the grand jury handed up a superseding indictment in which it: (1) repeated the original 4 charged counts against the three women; (2) named all three of them in an additional count of conspiracy to witness tamper (Count 5); and (3) added a fourth named co-defendant by the name of Ashley Trinidad (Trinidad) and charged her with the first four drug trafficking counts.

Lara and her sister elected not to plead; on July 16th and 17th, 2019, the district court presided over a jury trial which ended with the jury: (1) convicting Lara of all four charged drug offenses; and 2) convicting Melissa Lara on three of the four (the jury acquitted Melissa Lara of conspiracy to distribute methamphetamine charge (Count One)). On July 29, 2019, Lara's trial counsel filed his written renewal of Lara's earlier (oral) motion for judgment of acquittal, which the district court subsequently denied.

The trial:

In the realm of activities giving rise to federal criminal prosecutions, Mary Ann Lara’s older sister, Carla Lara, of San Antonio, Texas, has acted in troubling fashion: she has been implicated not only an alien-smuggling but also drug trafficking. It is the latter activity giving rise to the trial and appeal below.

Carla’s drug-trafficking activities involved *inter alia* recruiting couriers to travel to Nava, Mexico—a border-ish town about 25 miles from the border—where the couriers would meet with Carla’s husband, Rogelio Flores (“Flaco”), a known “facilitator” in drug trafficking in that area. Flaco would supply the couriers with a drug-laden vehicle: at the time of the events in this case, Flaco was hiding the drugs in the vehicles’ wheels.

The record demonstrates that, while Carla and Flaco each recruited couriers, their approaches varied: Flaco, on at least one occasion, used Facebook Messenger to tell a recruit that she would be bringing back a “clean” truck, whereas his wife, Carla, told a recruit that the recruit would be bringing back a truck with a kilo of cocaine secreted in it.

Flaco recruits his sister-in-law Mary Ann Lara

On or about April 10, 2018, Flaco and his sister-in-law, Mary Ann, talked using Facebook Messenger. During the conversation, Flaco—who was in Nava, the Mexican town near the border—asked Mary Ann whether she knew anyone who could ferry a truck north from Nava to San Antonio. Flaco was offering to pay \$500 for the job.

Mary Ann said she knew someone who might be willing to make the 2.5-hour drive down to Nava and then drive the truck back up. But she eventually opted to do

it herself. Because she didn't have a driver's license, Mary Ann asked her sister, Melissa, who did have a license, to come with her to do the actual driving back to San Antonio.

Mary Ann then contacted Priscilla Martinez, who was one of her sister, Carla's, friends, to take the two sisters down to Nava to pick up the truck. (Mary Ann eventually paid Priscilla \$200 to drive them down.) Priscilla envisioned driving Mary Ann and Melissa down; dropping them off; then getting back to San Antonio in time for Priscilla to pick up her own children in school later that afternoon.

The journey back from Nava

Priscilla, her two young daughters, the two sisters, and their toddler-nephew, Alexander, made the drive down from San Antonio uneventfully: Priscilla dropped off Mary Ann and Melissa and their nephew in Nava at Flaco's. After a 20-minute wait, Flaco gave the sisters a Ford F-150 truck and the women began their trek back to San Antonio.

The trip back toward the border was also uneventful but the border crossing was not: Priscilla was flagged for secondary inspection after border patrol officers thought that she appeared nervous. As soon as she was sent that way, the two sisters proceeded next in line. But the Border Patrol computer flagged the truck—it registered a “hit”—and directed the officer(s) to do a full inspection on the vehicle. So, the officer referred the truck to secondary inspection.

As the three women were sitting and waiting for their cars to be inspected, they initially acted as though they didn't know each other. But the agents noticed that the three children began playing with each other and "sharing Cheetos."

Eventually, the Customs agents detected 38.22 kilograms of methamphetamine hidden in the F-150 truck's wheels. The Lara sisters and Ramirez were charged by criminal complaint with conspiring to import methamphetamine.

The PSR Account. The Presentence report detailed the offense as follows:

The Offense Conduct.

9. On April 11, 2018, a gray 2003 Ford F-150- truck, bearing Texas license plates, arrived at the Eagle Pass, Texas, Port of Entry, Bridge No. 1. The driver, Melissa Janet Lara, and her sister, **Mary Ann Lara**, applied for entry into the United States, from Mexico. The vehicle and the two subjects were referred to secondary inspection due to a possible "hit" for the presence of narcotics in the F-150. Of note, the previous vehicle, a black Chevrolet Trailblazer, driven by Priscilla Ramirez, was also referred to secondary inspection due to Ramirez's nervous behavior. During the trial, two minor children were identified as being present in the vehicle driven by Melissa Janet Lara. The children were later identified as Priscilla Ramirez's two minor daughters. Additionally, one minor child was also present in Priscilla Ramirez's vehicle.

10. During secondary inspection, both vehicles provided a negative declaration. A trained and certified canine was deployed and alerted to the presence of narcotics in the Ford F- 150. Both vehicles were subjected to x-ray imaging. Ramirez's vehicle, the Trailblazer, yielded negative results. The x-ray imaging system revealed anomalies in the Ford F-150's tires. The tires of the F-150 were removed and an iron encased compartment was discovered, welded directly to the interior diameter of all four rims. A drill was utilized to probe the compartments. A total of 24 packages, wrapped with cellophane and brown electric tape, were recovered from the four tires. A field test identified the packages' contents as crystal methamphetamine. The DEA laboratory report later determined the packages contained d-methamphetamine hydrochloride (Ice), with a net weight of 38.22 kilograms and a purity level of 97%+/- 4%.

11. Melissa Janet Lara was read her Miranda rights by Homeland Security Investigations (HSI) special agents and voluntarily waived them. She provided the following information regarding her involvement in smuggling methamphetamine into the United States, from Mexico. Melissa Janet Lara told agents she and her sister borrowed the Ford F-150 from their friend, Kimberly's aunt. Melissa and her sister planned to visit her cousin, Rogelio Flores, in Nava, Coahuila, Mexico. Melissa Janet Lara stated she was the only driver and she was in possession of the truck the entire day. Melissa later retracted her story and told agents that she was asked by her sister, **Mary Ann Lara**, to drive a truck from Mexico, to San Antonio, Texas. Melissa stated that Priscilla Ramirez took Melissa and her sister, **Mary Ann**, to Mexico, to pick up a truck from their sister, Carla Lara's husband, Rogelio Flores. Melissa told agents, her sister, **Mary Ann**, would be paid \$500 to take the truck to San Antonio, and Priscilla Ramirez would be paid \$200 to take the sisters to Mexico, and guide them back into the United States. Melissa told agents she believed her sister, **Mary Ann**, may have known about the drugs in the vehicle. Melissa believed the truck would be used to haul building material.

12. **Mary Ann Lara** was read her Miranda rights by Homeland Security Investigations (HSI) special agents and voluntarily waived them. **Mary Ann Lara** initially told agents her friend, Priscilla Ramirez, drove her and her sister, Melissa, to Nava, Coahuila, Mexico, to visit an aunt. **Mary Ann** later retracted her story and told agents her brother-in-law, Rogelio Flores, asked her to drive a truck from Mexico, to San Antonio, because he was starting a company in Mexico, and he needed to transport material from Alabama, to Mexico, in the truck. **Mary Ann** asked Flores if the truck contained drugs or if it was stolen. Flores assured her there was nothing in the truck which could get her in trouble. Flores paid **Mary Ann** \$500. **Mary Ann** paid Priscilla Ramirez \$200 for driving them to Mexico, to pick up the truck. **Mary Ann's** sister, Melissa, drove because **Mary Ann** does not know how to drive.

13. Contact with the case agent confirmed the defendant debriefed with the Government; however, according to the case agent, **Mary Ann Lara** was not truthful regarding her involvement in the instant offense.

14. Priscilla Ramirez was read her Miranda rights by Homeland Security Investigations (HSI) special agents and voluntarily waived them. Priscilla Ramirez told agents **Mary Ann Lara** offered her \$200 to take her and her sister, Melissa Janet Lara, to Nava, Coahuila, Mexico, to pick up a truck. Ramirez told agents she travelled from San Antonio, Texas, to Mexico, with her two minor daughters, Carla Lara's minor son, and the Lara sisters. Ramirez dropped the Lara sisters off at

their brother-in-law's house in Nava. Ramirez knows Lara's brother-in-law by "Flaco." The Lara sisters followed Ramirez back from Mexico, because they did not know how to get back to the United States. **Mary Ann** assured Ramirez the truck was "clean." According to Ramirez, she did not know the truck contained any narcotics; however, she knew **Mary Ann** and Melissa Janet Lara were to drive the truck to San Antonio, Texas, and await further instructions. During the post-arrest interview, Ramirez received several phone calls from Carla Lara, **Mary Ann** and Melissa Janet Lara's other sister, and "Flaco's" wife.

15. The following is a detailed summary of Ashley Lynn Trinidad's arrest on April 18, 2018, for importation of methamphetamine.

16. On April 18, 2018, Ashley Lynn Trinidad arrived at the Del Rio, Texas, Port of Entry, and attempted to gain entry into the United States, from Mexico. She was the sole passenger in a silver, 2005 Ford Expedition, bearing Texas license plates. Trinidad provided a negative declaration to Customs and Border Protection (CBP) officers. A systems query of Trinidad and the vehicle revealed the vehicle only had one crossing, an outbound exit at the Eagle Pass, Texas, Port of Entry, on April 17, 2018. Trinidad and the vehicle were referred to secondary inspection.

17. Once at secondary inspection, Trinidad told CBP officers the vehicle belonged to her boyfriend. During the inspection, a trained and certified canine alerted to the presence of drugs in the vehicle. An x-ray imaging system revealed anomalies in all four tires. The tires were removed, and an iron encased compartment was discovered, welded directly to the interior diameter of all four rims. A drill was utilized to probe the compartments. As a result, a total of 24 bricks were extracted from the four tires. A field test identified the bricks' contents as crystal methamphetamine. The DEA laboratory report later determined the packages contained d-methamphetamine hydrochloride (Ice), with a net weight of 38.9 kilograms and a purity level of 95%+/-4%.

18. Ashley Lynn Trinidad was read her Miranda rights by Homeland Security Investigations (HSI) special agents and voluntarily waived them. She provided the following information about the instant offense. Trinidad told agents, she went to Carla Lara's cousin's house, where two individuals, she knows only as "Antonio" and "Cesar", told her she would be smuggling cocaine concealed in the tires of a vehicle. Trinidad and "Antonio" drove a Ford Expedition from San Antonio, Texas, to Nava, Coahuila, Mexico. Upon arrival, the expedition's tires were removed and replaced with the tires that were loaded with what the defendant

believed to be cocaine. “Antonio” told Trinidad she would be paid \$300 to smuggle the drugs. During the post-arrest interview, Trinidad placed a consensually recorded telephone call to “Antonio” wherein she told “Antonio” she had crossed and asked him where she should take the vehicle. “Antonio” told Trinidad to take the vehicle to the intersection of United States Highway 90 and 36th Street, in San Antonio, Texas, where he would pick it up. “Antonio” would be driving a black car.

19. According to the arrest report and the case agent’s notes, Trinidad was previously apprehended as part of an alien smuggling venture associated with Carla Lara. Trinidad also admitted to accompanying Carla Lara to Laredo, Texas, where Lara paid an unknown individual with proceeds from smuggling illegal aliens. Additionally, while in route to the Val Verde County jail, Trinidad admitted Carla Lara is in charge of the smuggling organization and also set up a narcotics load where Lara’s two sisters were arrested in Eagle Pass, Texas. Trinidad was shown Carla Lara’s driver’s license photo and positively identified her. Trinidad also identified 242 Estrella Street, in San Antonio, Texas, as the residence the Ford Expedition is registered to. She advised that Carla Lara, “Antonio”, and “Cesar” frequent that residence.

20. The defendant, **Mary Ann Lara**, and her codefendants, Melissa Janet Lara, Priscilla Ramirez and Ashley Lynn Trinidad, were in custody at the same detention center. While in custody, Melissa Janet Lara, **Mary Ann Lara** and Priscilla Ramirez verbally threatened Ashley Lynn Trinidad for cooperating with law enforcement agents regarding their pending criminal case. They told Trinidad that if she continued cooperating with law enforcement, she would see what they would do.

Lara elected jury trial

On July 16-17, 2019, Lara and her sister were tried by jury. The jury convicted Lara of all four drug offenses set out in the indictment.

Appeal:

The court of appeals rejected Petitioner’s evidentiary-sufficiency arguments, including her argument that this Court’s caselaw, applied to drug trafficking offenses,

should require proof of a defendant's knowledge as to drug type and/or drug quantity.
23 F.4th at 470-72.

REASON FOR GRANTING THIS PETITION

This Court's reasoning in *Rehaif v. United States*, 588 U.S. ___, 139 S.Ct. 2191 (2019) and other decisions compels the need for the Government, in drug trafficking cases, to establish a defendant's "knowledge" of drug quantity and drug type.

In *Alleyne v. United States*, this Court explained that a fact that legally increases the penalty for a crime is an "element" that must be submitted to the jury and established by proofs beyond a reasonable doubt:

The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an "element" or "ingredient" of the charged offense. We [have] held that a fact is by definition an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed. While [we had] declined to extend this principle to facts increasing mandatory minimum sentences, [our] definition of "elements" necessarily includes not only facts that increase the ceiling, but also those that increase the floor. Both kinds of facts alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment. Facts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt.

570 U.S. 99, 107-08 (2013) (internal citations omitted).

Because mandatory minimum sentences increase the penalties for drug crime, a fact that increases such mandatory minimums must be "element" provable by proofs beyond a reasonable doubt.

Unsurprisingly, post-*Alleyne*, the various circuits courts have recognized that because the drug type and quantity delineated in Title 21, Section 841(b) increase

applicable mandatory minimum sentences, they are therefore elements of the crime that must be submitted to the jury and proved beyond a reasonable doubt. *See, e.g., United States v. Pizarro*, 772 F.3d 284, 293 (1st Cir. 2014); *United States v. Curbelo*, 726 F.3d 1260, 1267-69 (11th Cir. 2013).

An unresolved question lingers

The question that remains is whether the remaining elements in the Title 21, Section 841 scheme---more specifically, drug quantity and drug type—are equally susceptible to a requirement of submission to a jury and proof beyond a reasonable doubt.

**This Court’s decision in *Rehaif v. United States*
tacks a different direction than all the circuit courts**

Recently this Court decided in *Rehaif v. United States*, 588 U.S. ___, 139 S. Ct. 2191, 2195 (2019), that a *mens rea* requirement should apply to each element of a statute prohibiting illegal aliens from possessing firearms. This, notwithstanding the fact that no circuit split on the question had presented itself to this Court. To the contrary, all the circuit courts to have considered the question had reached the *opposite* conclusion ultimately reached by the Rehaif Court, namely, that there was no *mens rea* requirement with respect to the defendant's immigration status. *Id.* at 2210 & n.6 (Alito, J., dissenting).

In opposition to the circuit court cacophony, this Court found there was a scienter requirement. This Court observed that “[w]hether a criminal statute requires the Government to prove that the defendant acted knowingly is a question of congressional intent,” and that in determining Congressional intent, there is a

longstanding presumption in favor of scienter. *Rehaif*, 139 S.Ct. at 2195, 2199. The Court further noted that interpreting the statute to require a *mens rea* element with respect to alien status was also “consistent with a basic principle underlying the criminal law: the importance of showing what Blackstone called ‘a vicious will.’” *Id.* at 2191, 1296. Against this backdrop, the Court concluded that there was “no convincing reason to depart from the ordinary presumption in favor of scienter.” *Id.* at 2195.

This same scienter requirement should apply to all Section 841 elements

Rehaif’s principles are equally weighty in the context of scienter requirements for “drug type” and “drug quantity” in Section 841 federal drug trafficking offenses. As a threshold matter, “drug type/quantity” has already been recognized as an element of such offenses. *See, e.g. United States v. Dado*, 759 F.3d 550, 570 (Sixth Cir. 2014) (“holding that drug quantity is an element of the offense in Section 841 cases”).¹

¹ The *Dado* court then went on to say the defendant had confused “quantum of proof” with *mens rea*:

Defendant’s argument confuses two distinct concepts—quantum of proof and *mens rea*. The Sixth Amendment mandates that the quantum of proof the government must satisfy in a criminal trial is “beyond a reasonable doubt,” as opposed to a preponderance of the evidence, clear and convincing evidence, or some other standard. *Alleyne*, 133 S.Ct. at 2156. By contrast, the *mens rea* requirement is a creature of statute. To convict a defendant of a Section 841(a) offense, the government must prove that the defendant committed the criminal act “knowingly or intentionally,” as opposed to negligently or recklessly, for example. Following *Alleyne*, a jury must find beyond a reasonable doubt that Defendant’s crime “involved” 1,000 or more marijuana plants. But *Alleyne* did not rewrite Section 841(b) to add a new *mens rea* requirement. Under our precedent, [§ 841\(b\)](#) still allows

See also Office of General Counsel, U.S. Sentencing Commission, *Primer: Drug Guidelines 5* (May 2018), available at https://www.ussc.gov/sites/default/files/pdf/training/primers/2018_Primer_Drugs.pdf (observing that under Section 841 drug type is a fact that must be submitted to the jury and proved beyond a reasonable doubt). Applying *Rehaif*, one is hard-pressed not to recognize a scienter requirement that a defendant *knew* of the drug type/quantity involved. Cf. *United States v. Jefferson*, 791 F.3d 1013, 1022 (9th Cir. 2015) (Fletcher, J., concurring) (“[I]f both the fact of importation and the type of drug are ‘elements’ of the crime - it should be required to prove not only that Jefferson knew he was importing an illegal drug, but also that he knew what that drug was.”).

And, of course, Section 841(a) already manifests a “knowing” or “intentional” scienter requirement. This is important because, as *Rehaif* has explained, the presumption of a scienter requirement applies with even greater force when Congress includes a general scienter provision in the statute. *Rehaif*, 139 S.Ct. at 2195. In *Rehaif*, this Court extended Section 924’s scienter requirement onto Section 922. Here, the Court would simply be applying Subsection 841(a)’s scienter requirements to subsection (b), which immediately follows.

**The severity of the penalties also compels recognizing
a scienter requirement**

for strict liability as to the type and quantity of the drugs involved in a Section 841(a) offense.

Dado, 759 F.3d at 570. But Petitioner here is **not** “confusing” the two concepts. Rather, she is saying that the reasoning underlying *Alleyne* and *Rehaif* compels the understanding that a scienter requirement flows to Section 841(b)’s provisions.

A presumption of scienter can be refuted to be sure. But Section 841’s massive variation in penalty ranges support—if not compel—recognizing a scienter requirement for drug quantity/type. Why? Because in *Staples v. United States*, this Court already said so: “[a] severe penalty is a further factor tending to suggest that Congress did not intend to eliminate a *mens rea* requirement.” 511 U.S. 600, 618. *See also United States v. X-Citement Video, Inc.*, 513 U.S. 64, 71 (1994) (“Harsh” penalty of up to ten years in prison supported interpretation of statute to require *mens rea*).² If that is so, then what to make of Congress’s authorization of a 10-year-to-Life imprisonment penalty in a mine-run case like Petitioner’s, who ultimately received 288 months incarceration? Such a penalty is a “further factor” on steroids.

But steroids or not, the penalty imposed here was hardly the exception. If anything, it more resembled the rule. As the circuit courts have candidly acknowledged, their current interpretation of Section 841 in the context of drug type/quantity determinations is essentially one of strict-liability. *See, e.g., Dado*, 759 F.3d at 570 (acknowledging strict liability). So, if a “mule” such as Petitioner was found to have knowingly committed a Section 841(a) offense, it doesn’t matter

² At least one member of this Court has recognized this tethering. In *United States v. Burwell*, then-Judge Kavanaugh observed the relationship between the severity-of-penalty and a necessary *mens rea* requirement to achieve such a penalty.

whatsoever whether they knew *anything or nothing* about the secreted contraband's type or quantity.

Consider this: Petitioner's 288-month sentence was based on the attribution of 77 KG of "Ice" methamphetamine found in the truck's tires. The resultant statutory penalty range was 10 years-to-Life; the base offense Sentencing Guideline range was 235-293 months-to-Life. *See* 21 U.S.C. § 841(b)(1)(A)(viii) and U.S.S.C. § 2D1.1(C)(1) (Level 38). Assuming for the moment that the truck's secret compartments in the tires could even hold 77 KG of, say, *marijuana*, the resultant statutory range would have been 0-20 years with a base offense Guideline range of 33-41 months. 21 U.S.C. § 841(b)(1)(C) and U.S.S.C. § 2D1.1(C)(10) (Level 20). The effects of the "strict liability" could hardly be more dramatic. *Cf. Staples*, 511 U.S. at 616 ("[T]he penalty imposed under a statute has been a significant consideration in determining whether the statute should be construed as dispensing with *mens rea*.")

With respect, Petitioner suggest that her case presents a perfect opportunity for this Court to address whether a *mens rea* requirement does, indeed, arise to establish a defendant's knowledge of drug type/quantity.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 11th day of April, 2022.

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