

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2021

JOSHUA RODNEY MEECH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT**

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SUBMITTED: May 24, 2022

QUESTIONS PRESENTED

At a sporting goods store Petitioner was considering the purchase of a firearm. The store clerk asked Petitioner to identify himself and fill out the Alcohol, Tobacco, and Firearms (ATF) Form 4473. Petitioner complied and checked the “No” box in answer to Question 11.h, which inquires whether the individual is “subject to a court order restraining [him] from harassing, stalking, or threatening your child or an intimate partner or child of such partner?” (*Id.*). After Petitioner filled out the form the clerk called into the National Instant Criminal Background System, *aka*, NICS. The response initially (first) provided by NICS was “Delayed”. So, Petitioner promptly left the store neither having paid for any firearm, nor leaving a deposit. Days later, NICS contacted the store again stating that for unspecified reasons Petitioner’s background check was “Denied”. In turn the store clerk called Petitioner to inform him of the NICS result. When Petitioner asked why the NICS check was denied the clerk said he did not know and that it could be for any number of reasons.

The questions presented are:

FIRST, SINCE THE RECORD SHOWS PETITIONER NEVER POSSESSED A FIREARM, ACQUIRED A FIREARM, PAID FOR A FIREARM OR EVEN LEFT A DEPOSIT FOR A FIREARM, BUT ONLY PROMPTLY LEFT THE STORE, WAS THIS PROSECUTION LAWFULLY BROUGHT UNDER 18 USC §922(a)(6) IN LIGHT OF THIS COURT’S DECISIONS IN *Huddleston v. United States*, 415 U.S. 814 (1974) and *United States v. Bailey*, 444 U.S. 394, 405 (1980).

SECOND, SINCE THE 18 USC §922(a)(6) ALLEGATIONS DEPEND UPON PETITIONER’S ACTUAL STATUS AS A §922(g)(8) OFFENDER WHETHER THIS COURT’S DECISION IN *Rehaif v. United States*, 139 S.Ct. 2191 (2019) REQUIRES THAT THE GOVERNMENT PROVE BEYOND A REASONABLE DOUBT THAT PETITIONER KNEW HIS LEGAL STATUS AS A §922(g)(8) OFFENDER.

STATEMENT OF RELATED CASES

United States of America v. Joshua Rodney Meech, CR 20-13-BU-DLC, U.S. District Court for Montana. Pretrial Order published at 487 F.Supp.3d 946 (D. Mont 2020).

United States of America v. Joshua Rodney Meech, CR 20-13-BU-DLC, U.S. District Court for Montana. Findings of Fact, Conclusions of Law, and Order convicting Petitioner for violation of 18 USC §922(a)(6) dated October 1, 2020.

United States of America v. Joshua Rodney Meech, CR 20-13-BU-DLC, U.S. District Court for Montana. Judgment and sentence of 13-months prison dated January 21, 2021.

United States of America v. Joshua Rodney Meech, No. 21-30025. United States Court of Appeals for the Ninth Circuit. Final Judgment entered on direct appeal January 14, 2022. Rehearing and rehearing *en banc* denied February 28, 2022.

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**PETITION FOR WRIT OF CERTIORARI
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Petitioner, Joshua Rodney Meech, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

1. The memorandum disposition of the Ninth Circuit Court of Appeals styled as *United States v. Meech*, (9th Cir. 2022) is unpublished. A copy of the decision is attached in the Addendum to this petition at pages 1-7.

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2. The district court's pretrial motion order is published and styled as *United States v. Joshua Rodney Meech*, 487 F.Supp.3d 946 (Dist. MT 2020) and is set forth in the Addendum at pages 8-14.

3. The district court's written findings and judgment are not published and are set forth in the Addendum at pages 15-49.

JURISDICTION AND TIMELINESS OF THE PETITION

The Ninth Circuit's memorandum disposition affirming Petitioner's conviction and 13-month prison sentence was filed on January 14, 2022. This Court's jurisdiction arises under 28 USC §1254(1). Petitioner's petition is timely because it was both electronically filed and placed in the United States mail, first class postage pre-paid, on May 24, 2022, within the 90 days for filing under the Rules of this Court (*see Rule 13, ¶¶ 1 and 3) as amended* by the Court's July 19, 2021, order.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person shall be deprived of . . . liberty, or property, without due process of law; . . .

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of

the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATUTORY PROVISIONS INVOLVED

Title 18, United States Code, Section 922(a)(6) - Unlawful Acts.

(a) It shall be unlawful—

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

Title 18, United States Code, Section 922(g)(8) - Unlawful Acts.

(g) It shall be unlawful for any person—

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

...

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Title 18, United States Code, Section 922(s)(3) - Unlawful Acts.

(s)

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1) [4]) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

- (vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;
- (C) the date the statement is made; and
- (D) notice that the transferee intends to obtain a handgun from the transferor.

Title 18, United States Code, Section 924(a)(1)(A) - Penalties.

(a)

- (1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—
 - (A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter.

Title 18, United States Code, Section 924(a)(7) - Penalties.

(a)

- (7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

Title 18, United States Code, Section 931(a)(1) - Prohibition on purchase, ownership, or possession of body armor by violent felons.

(a) In General.—Except as provided in subsection (b), it shall be unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is—

- (1) a crime of violence (as defined in section 16); or

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an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.

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Montana Code Annotated 2019 - Title 40. Family Law, Chapter 15, Partner And Family Member Assault, Sexual Assault, And Stalking -- Victim Protection, Part 2. Order Of Protection - Written Orders Of Protection.

40-15-204(7). Written orders of protection. (1) The court may, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, determine that to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

...

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

STATEMENT OF THE CASE

Petitioner's now ex-wife sued *ex parte* for an order of protection to be free from harm and harassment. This resulted in a boiler-plate order scheduling a hearing on the motion, which order was personally served upon Petitioner. (Addendum at pages 50-54). Subsequently, Petitioner retained counsel and on February 25, 2020, stipulated to entry of an order of protection which both amended the original *ex parte* order and vacated the previously scheduled hearing. (Addendum at pages 55-57). Although Petitioner signed the stipulation, there was no proof at Petitioner's bench trial that he was personally served with the amended order generated by the stipulation. The amended order of protection, which Petitioner was not served with,

was entered on February 26, 2020, and terminated on May 20, 2020. (Addendum at page 58).

On April 4, 2020, while the unserved stipulated order of protection was in place, Petitioner visited a local sporting goods store in Bozeman, Montana, where he shopped firearms. Petitioner displayed interest in a handgun and a shotgun. Apparently displaying a more significant interest in the handgun the clerk working the counter handed Petitioner the ATF Form 4473 and directed him to fill out the first two sections on the first two pages of the form and to sign and date it. Petitioner answered “No” to Question 11.h asking whether he was then subject to an outstanding order of protection. (Addendum at pages 59-61).

In due course Petitioner was charged in a single count indictment for violating 18 USC §922(a)(6). (Addendum at pages 62-63). After arraignment, appointment of counsel and pretrial motions were denied, Petitioner elected to waive jury and proceed before the district court at a bench trial. Trial briefs and proposed findings, to include argument concerning identification of the elements of the offense charged, were filed by the parties. Importantly, about a month before the indictment issued, the order of protection that had been entered in Petitioner’s domestic relations case on February 26, 2020, was terminated. Because it will be relevant later, we take a moment here to describe the domestic relations pleadings of record in this case. We begin with the ATF Report of Investigation (Addendum at pages 64-65).

The Agent who prepared this report isolates three dates. First, January 10, 2020, which is the date on the “Temporary Order of Protection” in the record. Next, the ATF Report of Investigation refers to the “Stipulated Order of Protection” dated February 27, 2020, and “signed by . . . MEECH on February 25, 2020”. (Addendum at page 57). There is no order in the record that fits this exact description. There is a stipulation signed by Petitioner and his now ex-wife on February 25, 2020; but that order was not adopted and approved by the Court until February 26, 2020, not February 27, 2020. Critically, there is no proof in the record that Petitioner was ever served a copy of this order “in writing”, which is a requirement under Montana law. Mont. Code Ann. §40-15-204(7) (2019).

Against this background Petitioner filed a motion to dismiss the indictment on several grounds. First, that the indictment both lacked specificity and failed to state an offense “because the indictment neither describes nor specifies any court order to which Petitioner was subject”. And second, that the court order furnished in the discovery dated February 26, 2020 “does not fit the profile of [the term] ‘court order’ described in §922(g)(8) either”. Furthermore, and relevant to this Petition, Petitioner’s motion and brief argued that as a matter of law Petitioner’s “No” answer on the ATF Form 4473 was not “material” to the offense charged in the indictment (18 USC §922(a)(6)).

Answering Question 11.h in the negative is not “material” to the sale of the firearm by the Federal Firearms Licensee (FFL) because it is the National Instant Criminal Background Check System (NICS) on which the FFL relies to make any firearms transfer, not the answer to Question 11.h itself. Therefore, a false answer to Question 11.h should not be confused with an FFL’s independent duty to run the NICS check thereby rendering an incorrect answer the determinating factor in the transaction. Hence the claim was that the district court should have dismissed the indictment because the putative transferor of the firearm (in this case FFL Bob Wards & Sons) was not persuaded to furnish the firearm by the filled-out version of the ATF Form 4473. Nor does the form show that a false answer to Question 11.h foiled any sale, because under §922(s)(3) the FFL is not required under §922(s)(3) to determine whether the transferee is subject to a restraining order or not; nor in any case was there adequate proof of sale or attempted acquisition of any firearm on Petitioner’s part.

Petitioner’s arguments were rejected both pretrial and in the district court’s post bench trial findings of fact and conclusions of law declaring him guilty. (Addendum at page 41). The Ninth Circuit Court of Appeals affirmed the district court’s written decisions (Addendum at pages 1-7); and denied rehearing and rehearing *en banc* (Addendum at page 66).

REASONS FOR GRANTING THE WRIT

Under this Court’s decisions in *Huddleston v. United States*, 415 U.S. 814, 820 (1974) and *United States v. Bailey*, 444 U.S. 394, 405 (1980) when the government alleges that the accused “attempted” to acquire a firearm by making a false statement the attempted acquisition must be proved up in the common law sense. In other words, the government must prove beyond a reasonable doubt that the defendant had the specific intent to engage in the attempt to acquire a firearm; together with proof of an overt act, which is a substantial step towards commission of the crime. Both the district court and the Ninth Circuit ruled that neither *Huddleston* nor *Bailey* apply in this case. Therefore, this important matter should be reconsidered by the Court in order to maintain fidelity to its decisions.

If the government wanted to avoid the burden of having to prove that Petitioner’s alleged false statement was made while attempting to acquire a firearm, it needed only charge instead a violation of 18 USC §924(a)(1)(A). In fact, the Ninth Circuit’s ruling in this case collapses into one offense a violation of §922(a)(6) and §924(a)(1)(A). This implied conclusion likewise ought to be considered and corrected for this reason. *Cf. United States v Abramski*, 573 U.S. 169, 191-192 (2014) (distinguishing by contrast the elements of a charge brought under 18 USC

§922(a)(6) and a charge brought under §924(a)(1)(A) and noting these violations each contain an element that the other does not)¹.

The Ninth Circuit’s decision is also inconsistent with this Court’s ruling in *Rehaif v. United States*, 139 S.Ct. 2191 (2019) and the Ninth Circuit’s reasoning in *United States v. Door*, 996 F.3d 606 (9th Cir. 2021). In *Door* the Ninth Circuit extended this Court’s *Rehaif* ruling to a different statutory context involving possession of body armor, a violation of 18 USC §924(a)(7) and §931(a)(1). *See* 996 F.3d at 615-616. The reasoning in *Door* extending *Rehaif* to a different statutory context is applicable here because the government alleged that Petitioner was “attempting” through his false statement to violate 18 USC §922(g)(8). Granted, Petitioner was not formally charged with a §922(g)(8) violation. However, absent proof that Petitioner was subject to a qualifying domestic violence restraining order as defined by §922(g)(8) Petitioner could not be held accountable under §922(a)(6).

¹ Although not necessary to resolve this case, were Petitioner charged under §924(a)(1)(A) for causing the FFL’s records to be false Petitioner would challenge any such charge on the ground that for NICS check purposes the *only* information the transferee is required to furnish the FFL is set forth in 18 USC §922(s)(3) (emphasis added). That data set makes no reference to the transferee being subject to a restraining order. *Ergo* in line with Justice Scalia’s *ultra vires* analysis in *Abramski* (573 U.S. at 206-207) Question 11.h is both beyond the scope of ATF’s statutory mandate and the information to be collected by the transferor under §922(s)(3).

In this connection, offenses can and do arise from related transactions where commission of one offense may lead to or depend upon another; or when proof of one crime necessarily depends upon proof of another. *See e.g., United States v. Jawara*, 474 F.3d 565, 573-574 (9th Cir. 2007) (common scheme or plan for joinder purposes involves situation where “commission of one of the offenses either depended upon or necessarily led to the commission of the other; [or] proof of the one act either constituted or depended upon proof of the other”), *cites omitted*.

Here, Petitioner’s alleged status as a putative §922(g)(8) offender is what supposedly rendered his “no” answer on the ATF Form 4473 to Question 11.h false. But neither the district court, nor the Ninth Circuit, sees this as relevant for *Rehaif* purposes. Yet in the wake of the Ninth Circuit’s holding in *Door* there is no discernable distinction to draw between Mr. Door’s and Petitioner’s situations. Knowledge of status as a prohibited person is what drives the analysis in both instances. The question put to Petitioner on the ATF Form 4473 was whether he was a prohibited person under §922(g)(8). To prove its case the government ought to have been required under *Rehaif* to prove that Petitioner was aware of his status as a prohibited person under §922(g)(8). Which, circling back to Petitioner’s previous argument, only serves to reinforce Petitioner’s conclusion that it was the government’s obligation to prove beyond a reasonable doubt that Petitioner was

“attempting to acquire” a firearm as a prohibited person in the common law sense.

Again, a contention both courts below categorically rejected.

CONCLUSION

WHEREFORE, Petitioner prays the Court will grant this petition and set the case down for full briefing and argument.

RESPECTFULLY SUBMITTED this 24th day of May, 2022.

/s/ Michael Donahoe

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