

21-8041

No. \_\_\_\_\_

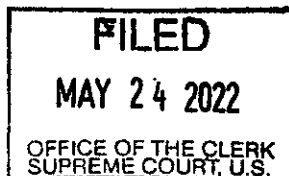
IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

Markentz Blanc — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Markentz Blanc reg. 04830-104  
(Your Name)

Coleman FCI-Medium P.O. Box 1032  
(Address)

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

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

1. Whether an unaddressed constitutional claim not affirmatively contradicted by the record deserves relief, and if so, should review under Due process clause guarantee an evidentiary hearing?
2. Whether the now properly interpreted elements of §922(c) and §924(a)(2) as clarified in *Rehail*, require correction under Due process because petitioners exercised right to a fair trial was deprived by the governments long-standing misinterpretation of its burden to prove mens rea to all elements beyond a reasonable doubt, violates both the 5th amendment Due process and 6th amendment right to a fair trial?
3. Whether the vagueness doctrine extends to the 18 USC §924(c)(1)(A)'s language of "in furtherance of", as it fails to give notice of what element or conduct is required to violate the statute, violates Due process?

## 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:

## TABLE OF CONTENTS

|                                                        |     |
|--------------------------------------------------------|-----|
| OPINIONS BELOW.....                                    | 1   |
| JURISDICTION.....                                      | 2   |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... | 3-6 |
| STATEMENT OF THE CASE.....                             | 7   |
| REASONS FOR GRANTING THE WRIT .....                    | 8   |
| CONCLUSION.....                                        | 22  |

## INDEX TO APPENDICES

APPENDIX A United States Court of Appeals decision 2/10/22

APPENDIX B United States Court of Appeals decision 4/27/22

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

## Table of Authorities Cited

| Cases:                                                                                                       | Page Number |
|--------------------------------------------------------------------------------------------------------------|-------------|
| Aguilar v Texas<br>378 U.S. 108, 84 S.Ct 1509, 12 L.Ed. 2d 723 (1964) . . . . .                              | 11          |
| Flores-Figueroa<br>556 U.S. 640 (2009) . . . . .                                                             | 17          |
| Johnson v United States<br>192 L.Ed. 2d 569 (2015) . . . . .                                                 | 19          |
| Rehaif v United States<br>139 S.Ct 2191, 2205 (2019) . . . . .                                               | 15, 16, 17  |
| Truehill v Florida<br>198 L.Ed. 2d 272, ____ U.S. ____ (2017) . . . . .                                      | 9           |
| Whitely v Warden, Wyoming State Penitentiary<br>401 U.S. 560, 91 S.Ct 1031, 28 L.Ed. 2d 306 (1971) . . . . . | 11          |
| United States v Davis<br>139 S.Ct 2319 (2019) . . . . .                                                      | 13, 20      |
| Clisby v Jones<br>960 F.2d 925 (11th Cir. 1992) . . . . .                                                    | 9           |

|                                     |    |
|-------------------------------------|----|
| Rhode v United States               |    |
| 583 F.3d 1289 (11th Cir. 2009)      | 9  |
| United States v Bailey              |    |
| 123 F.3d 1381 (11th Cir. 1997)      | 10 |
| United States v Brown               |    |
| 117 F.3d 471 (11th Cir. 1997)       | 16 |
| United States v Foskey              |    |
| 570 Fed. Appx. 878 (11th Cir. 2014) | 10 |

#### Statutes and Rules:

|                     |                               |
|---------------------|-------------------------------|
| 18 USC § 922(g)     | 3, 14, 15, 17                 |
| 18 USC § 924(a)(2)  | 3, 14, 15, 17                 |
| 18 USC § 924(c)     | 4, 13, 14, 18, 19, 20         |
| 18 USC § 2518(8)(a) | 4, 12                         |
| 28 USC § 2254       | 9                             |
| 28 USC § 2255       | 5, 10, 11, 12, 13, 15, 17, 18 |

|                                |                       |
|--------------------------------|-----------------------|
| Fed. R. Civ. P. 56 . . . . .   | 5, 10, 13, 15         |
| Fifth Amendment . . . . .      | 3, 8, 14              |
| Fourth Amendment . . . . .     | 3, 8                  |
| Rules governing 2255 . . . . . | 6, 10, 11, 12, 13     |
| Rule 5 . . . . .               | 6, 10, 11, 12, 13, 14 |
| Rule 12 . . . . .              | 6, 10                 |
| Sixth Amendment . . . . .      | 3, 8, 14, 17          |

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 N/A to the petition and is

☒ reported at 2021 U.S. Dist. Lexis 97899 (S.D. Fla 5/24/21); or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ 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 February 10th, 2022.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 27, 2022, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

☐ 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).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Amendment 4:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Amendment 5:

No person shall... be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

### Amendment 6:

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,... and to be informed of the nature and cause of the accusation;... and to have the Assistance of Counsel for his defence.

### 18 USC § 922:

(g) It shall be unlawful for any person-

(i) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

### 18 USC § 924:

(a)(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (k) of section 922 [18 USC § 922] shall be fined as provided in this title, imprisoned not more than 10 years or both.

## Constitutional and Statutory Provisions cont'd

18 USC § 924:

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

(i) be sentenced to a term of imprisonment of not less than 5 years;

18 USC § 2518:

(8)(a) the contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years.

## Constitutional and Statutory Provisions cont'd

28 USC § 2255;

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

Fed. R. Civ. P 56:

(c) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another's party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials - including the facts considered undisputed - show that the movant is entitled to it; or

(4) issue any other appropriate order.

## Constitutional and Statutory Provisions cont'd

### Rules Governing Section 2255:

#### Rule 5- The answer and the Reply

(b) Contents. The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.

#### Rule 12- Applicability of the Federal Rule of Civil Procedure and the Federal Rules of Criminal Procedure

The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.

## STATEMENT OF THE CASE

January 15, 2014- a criminal complaint was filed in the Southern District of Florida. case # 14-CR-20104-RLR/DLG (CR-DE# 1)

February 20, 2014- a 25 count indictment was returned; Petitioner was charged with 16 of the 25 counts. (CR-DE# 32)

February 25, 2015- a motion to suppress wire recordings was filed (CR-DE# 185), a hearing was held March 4, 2015 (CR-DE# 225/251).

April 13, 2015- District Court adopted Magistrates Report (CR-DE# 201) to deny motion to suppress wire recordings (CR-DE# 259).

April 21, 2015- Jury found petitioner guilty on all but 1 Count (Count 10). (CR-DE# 277)

July 6, 2015- Petitioner sentenced to 300 months, 5 years supervision (CR-DE# 331).

July 15, 2015- Petitioner filed a timely Notice of Appeals to the 11th Circuit (CR-DE# 338), case # 15-13182-GG and was denied April 5th, 2018.

June 26, 2018- Petitioner submitted a Writ of Certiorari to the United States Supreme Court, case # 18-5215 and was denied October 1st, 2018.

October 16, 2019- Petitioner submitted habeas petition under 28 USC § 2255, case # 19-CV-22725-DLG and was denied May 24, 2021

August 10, 2021- Petitioner sought a Certificate of Appealability to the 11th Circuit Court of Appeals and was affirmed without an opinion and was unpublished, case # 21-12842. Reconsideration was also denied on April 27, 2022.

This petition now follows:

## REASONS FOR GRANTING THE PETITION

Several constitutional violations occurred and remains so, thereby requiring this Courts intervention authority as it is both necessary and appropriate. There is jurisdiction to review the judgment because the grounds are neither inadequate to bar review nor independent of federal and constitutional law.

Petitioners Due process right as guaranteed by the 5th Amendment was deprived as claims raised remained unaddressed but adjudicated by other means, which ultimately allowed his 4th, 5th, and 6th amendment rights to be continuously violated.

Petitioners 5th and 6th amendment rights were violated, where the government utilized a misinterpreted statute that failed to satisfy the necessary elements to obtain a guilty verdict, thereby compromising the judicial process and violating Due process and petitioners right to a fair trial.

Petitioners Due process right is again deprived, where his conviction under a vague language of a statute resulted in an enhanced sentence and an invalid jury verdict, violating both his 5th and 6th amendment.

The Eleventh Circuit Court of Appeals affirmed the matter and did not provide an opinion. Resolving this matter would set a precedent on the above-mentioned errors for its legal and public importance and relevancy. Petitioner moves this Honorable Court to grant Certiorari on the questions presented in the interest of justice and constitutional enforcement, and prays this Court deems his reason just.

## ARGUMENT

I. Whether an unaddressed constitutional claim not affirmatively contradicted by the record deserves relief, and if so, should review under Due process clause guarantee an evidentiary hearing?

Petitioner provides that in his post-conviction habeas process, several of his raised claims were not addressed and remains so, despite being material in nature and waived by the government. Petitioner raised several ineffective counsel claims, that the district court either found to be procedurally barred or never resolved the claim on its merit about whether counsel was ineffective. Petitioner raises several of the claims below to establish the district courts erroneous findings on his unaddressed claims. The 11th Circuit has held that it will vacate the district courts denial of a §2254 habeas petition and remand for consideration of unaddressed claims. see Clisby v Jones, 960 F.2d 925, 938 (11th Cir. 1992) (en banc); This also applies to motions filed under §2255. see Rhode v U.S., 583 F.3d 1289, 1291-92 (11th Cir. 2009) and Justice Breyer, in a dissent, held that "This Court has not in the past hesitated to vacate and remand a case when a Court has failed to address an important question that was raised below" Truehill v Florida, 198 L.Ed.2d 272, 273, — US — (2017).

The Court of Appeals for the 11th Circuit did not provide an opinion in its denial of the Certificate of Appealability and thus remained silent on the matter.

Listed are the claims in question:

(a) In ground 3 of petitioners §2255 motion, petitioner alleged counsel failed to object at the suppression hearing to the government misconduct of knowingly allowing the governments agents to testify to information known to be false, under Giglio, as the record establishes the falsehood. see CV-DE#18:8.

To obtain a reversal on the grounds that the government relied on perjured testimony, the following must be shown: (1) the contested statements were actually false; (2) the statements were material; and (3) the prosecution knew that they were false. US v Foskey, 570 Fed. Appx. 878, 881 (11th Cir. 2014), quoting US v Bailey, 123 F.3d 1381, 1395 (11th Cir. 1997).

The government did not provide an answer and thus waived their position. Rule 5 governing section 2255 states that the governments "answer must address the allegations in the motion" id at (b). Petitioner sought to invoke Fed. R. Civ. P. Rule 56(e). see CV-DE#26:10 ¶7. Rule 12 governing Section 2255 allows Federal Civil rules to be applied to habeas motions. see Rules governing section 2255, Rule 12.

The district court in its order held that the petitioner failed to demonstrate that the government suborned perjury at the suppression proceeding see CV-DE#33:31, but does not establish whether counsels performance was deficiently prejudicial to the outcome of the hearing. Counsels performance was deficient as counsel did not object the governments use of perjured testimony and the court did not address this issue.

(b) In ground 4 of petitioners §2255 motion, petitioner alleged counsel failed to object the suppression hearing's Magistrate's report and recommendation (CV-DE# 201), where the magistrate relied on information known but not included in the affidavit for the wiretap. see CV-DE# 18:9. This Court has held that "It is elementary that in passing on the validity of a warrant, the reviewing court may consider only information brought to the magistrates attention." Aguilar v Texas, 378 US 108, 109 n.1, 84 S.Ct 1509, 12 L.Ed. 2d 723, 725 (1964) and also held that "an otherwise insufficient affidavit cannot be rehabilitated by testimony concerning information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate." see Whitely v Worden, Wyoming State Penitentiary, 401 US 560, 565 n.8 (1971).

The government did not provide an answer and thus waived their position. Rule 5 governing §2255 states that "the answer must address the allegations in the petition." (emphasis added). see Rules governing post-conviction remedies, §2255 rule 5(b).

The district court in its order held that this ineffective claim should be denied for the same reasons as grounds 1 through 3. See CV-DE# 33:34, and furthers that the magistrate courts findings were supported by the evidence (agents testimony) adduced at the evidentiary hearing. id, the same evidence the petitioner challenges.

The district failed to address this claim as he sought to rely on the denial of the other claims to do so.

(c) In ground 5 of petitioners §2255 motion, petitioner

alleged that counsel failed to challenge the sealing delay of the June wiretap recordings that exceeded its statute. see CV-DE# 18:14. (18 USC § 2518(8)(a))

The government did not provide an answer and thus waived their position. Rule 5 governing §2255 applies and was violated.

The district court in its order procedurally denied the claim expressing failing to state a claim and lack of factual proof, thereby never reaching the merit of this claim. see CV-DE# 33:35-36.

(d) In ground 6 of petitioners §2255 motion, petitioner alleged that counsel failed to object to the subsequent search warrant obtained on November 22nd, 2013 for the unlawful continued authority by law enforcement. see CV-DE# 18:14.

The district court in its order, fails to address that the issue, that counsel did not contest, by way of suppression attempt, the search warrant despite law enforcement lacking probable cause to remain on the property after the initial search warrant ended, thereby never resolving the ineffective counsel claim. see CV-DE# 33:36-38.

(e) In ground 7 of petitioners §2255 motion, petitioner alleged that counsel failed to object the subsequent search warrant obtained on November 22nd, 2013 for the questionable exigent circumstances used by law enforcement. see CV-DE# 18:15.

The district court in its order, failed to address that the

issue, that counsel did not object, by way of suppression attempt, that the search warrant lacked probable cause to justify the entry for a misdemeanor arrest despite arguable exigent circumstances: hot pursuit that began on private property; now wanted by the FBI; possible armed confrontation; and threat to the destruction of evidence. The district court denied the claim without the benefit of an evidentiary hearing, thereby never resolving the ineffective counsel claim. see CV-DE#33:38-39.

□

(f) In ground 10 of petitioners §2255 motion, petitioner alleged a Rehaif claim alleging the newly ruled case applied. see CV-DE#18:17.

The government did not provide an answer and thus waived their position. Rule 5 governing §2255 applies and was violated.

The district court procedurally denied the Rehaif claim for not being retroactive despite the governments waiver and petitioners timely filed motion under 28 USC §2255. see CV-DE#33:43-44.

The district court, in response to the governments waiver, should have held an evidentiary hearing at the request of the invocation of Fed. R. Civ.P 56 (CV-DE#22:1097) by the petitioner.

(g) In ground 11 of petitioners §2255 motion, petitioner alleged a void for vagueness claim for the "in furtherance of" language of his 18 USC §924(c) conviction as made in Davis (2019). see CV-DE#18:17.

The government did not provide an answer and thus waived

their position to present an argument. Rule 5 governing §2255 applies and was violated.

The district court did not address the void for vagueness doctrine, but declared the petitioners attack was on the predicate offense. see CV-DE # 33:44-48. For from petitioners attack on the "in furtherance of" language.

The district court, in response to the governments waiver, should have held an evidentiary hearing to determine whether the language of the §924(c)'s "in furtherance of" was vague as alleged. The district court never addressed nor reached the merits of the vagueness claim.

So to conclude, in the interest of justice and reparation of the Due process violation, Petitioner seeks this Honorable Court to grant certiorari, for the above-mentioned facts and remand this case so the unaddressed claims can be properly resolved, so the reviewing court may conduct their function of review for an abuse of discretion.

II. Whether the now properly interpreted elements of 18 USC §922(c) and §924(a)(2) as clarified in Rehaif, require correction under Due process because petitioner exercised right to a fair trial was deprived by the governments long-standing misinterpretation of its burden to prove mens rea to all elements beyond a reasonable doubt, violates both the 5th amendment Due process and 6th amendment right to a fair trial?

Petitioner provides that his 18 USC § 922(g) offense and conviction, post Rehaif, is not valid under the Due process clause, where the burden of establishing all elements were not met by the government. Furthermore, the indictment lacked its penalty notice, 18 USC § 924(a)(2) to give notice of the consequence for § 922's unlawful act, as without a penalty, the offense is not a crime.

Petitioner was arrested for possession of a firearm by a convicted felon. During the execution of a search warrant, law enforcement found a firearm between the seat cushions of a sofa in the living room area of the residence. The petitioner and two others were found in the residence, and all three individuals were charged with felon in possession of a firearm. Petitioner was found guilty in a trial by jury and the other two individuals pled guilty to the firearm offense.

The Supreme Court made the Rehaif ruling in June of 2019, and the petitioner timely filed his § 2255 claiming a Rehaif violation.

Petitioner alleges in his § 2255 motion, that the government failed to establish the jurisdiction element beyond a reasonable doubt that the firearm, knowingly by the petitioner, affected interstate commerce. See CV-DE#18:17.

The government did not provide a response, thus waiving their argument, and the petitioner sought to invoke Fed. R. Civ. P. 56.

The district court commented that the government failed to address this claim see CV-DE#33:1 and 43, but nonetheless, provided that the petitioner procedurally defaulted as he failed to

raise it on appeal id at 43-44. The district court overlooks that a defendant does not receive real notice of the nature of the charge against him unless he is informed of the elements of the charged offense, making the indictment and conviction void. see U.S. v Brown, 117 F.3d 471, 476 (11th Cir. 1997).

According to the jurisdictional element, affecting interstate commerce invokes federal jurisdiction which differs from a State firearm offense, because the jurisdictional element is necessary for the federal government to prosecute that offense, that element is required to be presented to the jury so they can establish whether the firearm affected commerce, and that the petitioner possessed the firearm knowing that it affected commerce. An example on how the government can establish this element is either by the offender purchasing the firearm across state lines or from a prior federal firearm offense.

Justice Alito dissented by stating "if positioning the term knowingly at the beginning of a list of elements means that it applies to every element, then it would have to apply to the interstate-commerce element just like the others." see Rehaif v U.S., 139 S.Ct 2191, 2205 (2019). Petitioner relies on this.

Congress intended that by including the interstate-commerce element, it assures the crime of firearm possession violates federal law invoking federal jurisdiction, as without the interstate commerce the firearm possession is or becomes a state offense.

Rehaif clarified that the government must bear the burden of establishing knowingly to the elements to satisfy the unlawful possession of a firearm. The elements consist of (1) a status element (a convicted felon); (2) a possession element (to

possess); (3) a jurisdictional element (in or affecting commerce); and (4) a firearm element (a firearm or ammunition), see 139 S.Ct at 2195-96. The Court in Flores-Figueroa add that "As a matter of ordinary english grammar, we normally read the statutory term knowingly as applying to all the subsequently listed elements of the crime." id at 139 S.Ct 2196, quoting Flores-Figueroa v U.S., 556 US 646, 650 (2009).

The government could not convict the petitioner, under Due process, for the conduct of the §922(g) criminal statute, when properly interpreted, for the limited elements brought before the jury. This Court and the parties can agree that the government presented no evidence to prove that the petitioner knowingly violated the jurisdictional element and other elements beyond a reasonable doubt.

The petitioner exercised his right to a fair trial as guaranteed by the 6th amendment and the government's reliance on the misinterpretation of the firearm statute deprived him of that right.

The district court ruled that Rehaif can not be applied retroactively. The 'district court mistakenly applies the standard for a second or successive §2255 to deny the petitioners timely filed §2255 under the AEDPA. Furthermore, because the Supreme Court clarified the statute, which narrowed the scope of the statute by interpreting its terms, as well as constitutional determinations that places a particular conduct or persons covered by the statute beyond the governments power to punish, invokes retroactivity. Rehaifs "new rule" alters the range of conduct or class of persons §922(g) and §924(a)(2)

are understood to punish.

Petitioner's conviction, post-Reh'g, is inconsistent with the Due process clause and makes clear that the petitioner did not knowingly violate the federal statute and the government failed to meet its burden beyond a reasonable doubt.

For the reasons expressed above, petitioner seeks this Honorable Court to grant Certiorari and remand this case back for further review in the interest of justice.

III. Whether the vagueness doctrine extends to the 18 USC § 924(c)(1)(A)'s language of "in furtherance of", as it fails to give notice of what element or conduct is required to violate the statute, violates Due process?

Petitioner provides that his 18 USC § 924(c) conviction is void for vagueness as it fails to inform any ordinary person as to what conduct or element it requires to violate the statute, to impose the 5 year enhanced consecutive sentence.

Petitioner filed a § 2255 motion, Post-Davis, alleging that the § 924(c)'s in furtherance of language is vague see CV-DE#18:17 and fails to offer any guidance on what it takes to violate the statute. The government waived its position and the district court provided that the petitioners challenge was on the predicate offense. see CV-DE#33:44-48.

Davis, 139 S.Ct 2319, 2325 (2019). As in this case, to protect the drugs, but the elements does not specify protection as an element or conduct.

So to conclude, petitioner alleges 18 USC § 924(c) language is vague and fails to provide the necessary conduct or element needed to invoke its 5 year enhanced penalty. Because this Court has the authority and jurisdiction to correct this manifest injustice, this Court should grant Certiorari as to this claim in the interest of justice.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mary Blair

Date: May 24th, 2022