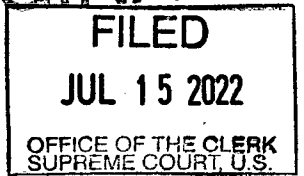


22-5529 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

ANHTONY LETT

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Anthony Lett # 54850-060

(Your Name)

U.S.P. Florence - High

P.O. Box 7000

(Address)

Florence, CO, 81226

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Did Court of appeals error when denying Petitioner's Rehaif v. United States , 139 S.Ct. 204.

2. Was Petitioner 's ineffective assistance claim denied in error.

3. Petitioner will supplement the foregoing under provisions established in Fed. Fed.R. Crim.Pro. Rule 52(b).

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:

RELATED CASES

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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In re Winship, 397 U.S. 358.....	1
Jones v. United States, 529 U.S. 848, 859(2000).....	1
Kuban.....	2
Lopez, Lopez.....	2

Rawls - 85 F.3d 240, 243-43 (5th Cir. 1996)
 Rawls - 85 F.3d at 243
 Rehaif v. United States, 139 L.Ed. 2d.
 Scarborough v. United States, 431 U.S. 563 (1977)
 Staples v. United States, 511 U.S. 600, 618-619 (1994)

STATUTES AND RULES

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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☒ is unpublished.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 B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**: N/A

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 01-18-2022.

☐ 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: 04-20-2022, and a copy of the order denying rehearing appears at Appendix A.

☐ 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: NA

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

Sixth Amendment of the Constitution
Fifth Amendment Of the constitution

STATEMENT OF THE CASE

On June 19, 2020, Petitioner appeared before the U.S. District Court for the Northern District of Ohio, Cleveland division in relation with the Court's May 15, 2018, Judgement and Conviction, 150 months, being charged with, Count(1), violation of 18 U.S.C. § 922(g)(1), Felon in possession of a Firearm. Count(2), being in violation of 18 U.S.C. § 922(j), Possession of a Stolen Firearm. Petitioner's Pro-Se filings of his 28 USC § 2255 were deemed timely.

Petitioner presented that he was currently serving an illegal sentence and conviction using *Rebain v. U.S.*, 139 S.Ct. 2191, 201 L.ed. 2d 594, in support of issue one (1), and Insufficient evidence to establish that he actually or constructively possessed a firearm as stated by the government. On issue (3), that the grand jury determination of the gun possession was the same firearm introduced during trial evidence and sentencing. In issue (4), his counsel was ineffective at every phase of the proceedings. Issue (5), Appellate counsel was ineffective.

The District Court denied each issue and petitioner moved for appeal with the Sixth Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION

At Stake in this case are constitutional protections of of historic and critical importance to Anglo-American jurisprudence: The prohibition of any deprivation of liberty without "process of law", the requirement in a criminal proceeding of proof beyond a reasonable doubt and the guarantee that "in all criminal prosecutions the right to a speedy and public trial, by an impartial jury" after notice and presentment in an indictment by a grand jury. U.S. Const., amend s, V and VI. The Fifth And Sixth Amendment guarantees of notice and jury trial indisputably entitles a criminal defendant to "a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." United States v. Guadin, 515 U.S. 506, 510(1995); See also Sullivan v. Louisiana, 508 U.S. 275, 278 (1993), In re Winship, 397 U.S. 358, 364 (1970) ("The Due process clause protects the accused against convictions except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.")

This case squarely presents constitutional issues addressed by ----see below;

Rehaif v. United States, 139 S.Ct. 204.

The Petitioner concedes thatm Grant Of Writ Of Certiorari is warranted in his case where the 18 U.S.C. §922(g)(1) charges against him is contrary to current Sixth Circuit law, and the issue warrants Supreme Court review. See United States v. Luna, 165 F.3d 316, 319-322, (5th Cir. 1999), and United States v. Daugherty, 264 F. 3d 513, 518(5th Cir. 2001).

Petitioner, Anthony Lett respectfully moves In Propria Persona pleading with this honorable Court to dismiss the indictment against him or reverse and remand the matter back to the lower court s with directives compelling them to do so because the charging instrument, grand jury indictment; (1), is based on an unconstitutional statute; (2), it failed to state a federal offense, lacking in federal jurisdiction; (3), it violates Petitioner's right to a grand jury finding on the elements in support.

Mr. Lett will show that:

INTRODUCTION

Petitioner is charged with being felon possessing a weapon as prescribed by 18 U.S.C. §922(g)(1). Mr. Lett now attacks the constitutionality of this statute and the sufficiency of the indictment based on the lack of a sufficient connection to interstate commerce.

The thrust of Petitioner's argument is that the constitutionality of 18 U.S.C. §922(g)(1) is doubtful following the Supreme Court's decision in United States v. Morrison, 529 U.S. 598, 627 (2000), and Jones v. United States, 529 U.S. 848, 859(2000). And, consequently, the Fifth Circuit's decisions in United States v. Rawls, 85 F.3d 240, 242-43, (5th Cir. 1996) and United States v. Kuban, 94 F. 3d 971, 973-74(5th Cir. 1996), which have upheld the statute's constitutionality, no longer good law.

A n a l y s i s

A. 18 U.S.C. §922(g)(1) is unconstitutional. Mr. Lett uses the Fifth Circuit's decision where he lacks the means to further

research because the prison institution is on lock down , and no law library access is provided while on lock down.

In proceeding , Rawls and Kuban, the Fifth Circuit held that , despite the Supreme Court's landmark decision in United States v. Lopez, 514 U.S. 549(1995), 18 U.S.C. § 922(g)(1) is constitutional and that the statute was constitutionally applied (in those cases) because the "in or affecting commerce" element can be satisfied if the firearm possessed by a convicted felon had previously traveled in interstate commerce . But the Court's opinions were hardly a ringing endorsement of these propositions.

In Rawls, all three panel members observed that, had the Supreme Court not appeared to have addressed this issue in Scarborough v. United States , 431 U.S. 563(1977), which predated Lopez, Lopez might well have swung the constitutional question the other way .(1)

1. See Rawls, 85 F. 3d at 243("if the matter were res nova, one might well wonder how it could rationally be concluded that mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm in any meaningful way concerns interstate commerce simply because the firearm had perhaps previously before the charged possessor was even born, fortuitously traveled in interstate commerce " . The Gun presented to the jury differed from the gun said to have been possessed by the petitioner , the gun was an antique at the gun show , and the gun presented before the jury was an unknown caliber, never saying that it provided Mr. Lett's finger prints.

activity affecting interstate or even foreign commerce" for purposes of 18 U.S.C. § 844f1., the federal arson statute. See Jones, 529 U.S. at 850.

A. Unanimous Court held that the private home in the 10th Circuit has recently surveyed the law in applying the interstate commerce clause to the federal prohibition of felon from possession of a bullet proof vest found in 18 USC § 931. The court, like this concurring opinion in Kuban, found that the statute could not pass the test set forth in Lopez, but felt bound to follow Scarborough or least the circuit court decision's holding that Scarborough compels the findings that statutes prohibiting felons from the possession of weapons or body armor do confer jurisdiction upon the federal courts. See United States v. Patten, 451 F. 3d 615, 633-634 (10th Cir. 2006) (this type of statute "cannot be justified as a regulation of the channels of commerce, as a protection of the instrumentalities of commerce or as a regulation of intrastate activities that substantially affects interstate commerce.") &, 451 F. 3d at 635-636 ("Like our sister circuits, we see considerable tension between Scarborough and the three-category approach adopted by the Supreme Court in its recent commerce... We suspect the Supreme Court will revisit this issue in an appropriate case - maybe this one.") Note: Petitioner incorporates by reference the reasoning of the 10th Circuit's opinion, except to the extent the court found that Scarborough was authority for finding the statutes in question to be constitutional on their face or as applied.

B. Even if constitutional, the statute is unconstitutional as applied. Alternatively, if 18 U.S.C. § 922(g)(1) is read to be constitutional on its face, because it requires a substantial commerce, then it is unconstitutional as applied, because the indictment fails to allege a substantial effect on interstate commerce and grand jury did not find probable cause that there was a substantial effect on interstate commerce.

C. The indictment fails to allege the proper mens rea elements of the offense. The indictment fails to allege that Petitioner knew that he had the status that prohibited him from possessing a firearm, nor does it allege that he knew that possession of the weapon was in or affecting interstate commerce. These are particularly important elements in this case, thus the failure of the government to allege that the defendant knew that he was a felon is crucial.

In 1980, Congress passed the Firearms Owners Protection Act [FOPA]. A major thrust of legislation was to alter the previous federal criminal law governing firearms by explicitly doing away with strict liability or quasi strict liability for offenses. Thus Congress added the requirement in 18 USC § 924, that for a person to be liable for punishment, the government must prove that the person either willfully or knowingly violated the relevant section of § 922(g).

The explicit language of the relevant statute in this case allows the government to punish "whoever knowingly violates subsection... (g) of 922". The statute simply does not punish whoever "knowingly possesses a firearm" and happens to be a felon. Also, the statute simply does not punish whoever "knowingly possesses a firearm" if the firearm possession happens to be in or affecting interstate commerce. It punishes knowing violation of the statute. Knowing possession of a weapon is obviously not by itself a crime. The statute requires a knowing violation of § 922(g), thus, by the plain words of the statute, the petitioner must know that he is a felon and that the possession of a weapon was in or affecting interstate commerce.

The Supreme Court has held, In *Bryan v. United States*, 534 U.S. 184, 193 (1998), the court held that the knowing violation means that the government must prove that Mr. Lett did have knowledge of the facts that constituted the offense." In *Staples v. United States*, 511 U.S. 600, 618-619 (1994), the Supreme Court held that even when a statute has no explicit "knowing" element,

the government must prove that an accused had knowledge of "the facts that make his conduct illegal." In *Staple*, the Supreme Court noted that there is a "presumption that the accused must know the facts that make his conduct illegal" which "should apply" especially where the alternative is that the statute "would require him/her to have knowledge only of traditionally lawful conduct." Here the knowing possession of a firearm is traditionally lawful conduct. The Supreme Court noted that the "severe penalty" of a potential 10 year sentence suggested that Congress did not intend to jettison the usual requirement that the accused know the facts that make his conduct illegal.

The legislative history also directly supports the idea that Congress intended that the government must prove that Mr. Lett, knew the facts and circumstances that constitute the offense.

Congress explicitly said so, "it is the committee's intent, that unless otherwise specified, the knowing state of mind shall apply to circumstances and results." H.R. Rep. No. 99-495, 99 Cong., 2d Sess. 25-26, reprinted in 1986 U.S. Code Cong. and Ad. News 1327, 1351-52. As noted above a major thrust of the FOPA was to completely alter the gun laws to abolish or alter the perceived "strict liability" created by absence of any scienter requirement in the statute, and by the Supreme Court's decision in *United States v. Freed*, 401 U.S. 160, 1609 (1971).

Mr. Lett, uses how the fifth circuit court of appeals wrongfully decided an issue in *United States v. Percy*, 861 F.2d 77 (5th Cir. 1988), but in light of *Bryan* and *Staple* that decision is no longer valid.

Mr. Lett, contends that this matter equates that of the sixth circuit and ask that the court view his argument in the conjunction with the fifth circuit's holdings.

Executed on July 15, 2022

Anthony Lett

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony Lett

Date: July 15, 2022