22-5751

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Marc Shipley — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marc Shipley, Reg#26103-208
(Your Name)

F.C.I.-La Tuna, PO BOX 3000
(Address)

Anthony, NM 88021
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

DOES THE KNOWINGLY ELEMENT APPLY TO U.S.C. §921(a)(20)?

DOES A STIPULATION AT THE TIME OF TRIAL THAT A DEFENDANT HAD AT SOME POINT IN THE PAST COMITTED A FELONY, PREVENT THAT DEFENDANT FROM PRESENTING A DEFENSE TO A JURY "THAT HE DID NOT KNOW THAT HE WAS A FELON," ACCORDING TO §921(a)(20), DO TO HIS RIGHTS BEING RESTORED BY THE STAT OF ARIZONA?

[BOTH QUESTIONS ARE BASED ON REHAIF]

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

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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 2022 U.S. App. Lexis 8221; 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[ ] is unpublished.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 & C to the petition and is

[■] reported at 2021 US Lexis 84534; 2020 Lex 205050; 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 March 29, 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: March 29, 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 September 25, 22 (date) on July 22, 2022 (date) in Application No. 22 A66.

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

STATEMENT OF THE CASE

While not all of the information provided is necessary to decide the issue that is before the court. This information is provided to give the court the full picture of the circumstances surrounding this case. Both, to demonstrate the Petitioner's desire to be in full compliance with both State and Federal law and to show the governments attempt to circumvent the Petitioners rights to Due Process in this case.

On March 24, 2008 I was sentenced for one count of Bribery of a Public Offical, (I was the Official), however the incident occured back in 2002. The time before my arrest and after I served my sentence, I was a law abiding citizen, even to the point of starting a business and giving back to my community.

On October 12, 2015 I petitioned the Arizona Superior Court for Pima County, via legal counsel, to restore my civil rights including the right to bear arms, pursuant to **A.R.S. §13-909,** which was approved. After my rights were restored, I applied for and was issued a Conceal Carry Weapons permit, **(CCW)**, which goes through a Federal background check.

A.R.S. §13-909 is a Arizona State Law, allowing individuals who have been charged in Federal Court to restore the rights lost for that conviction. At the time of these proseedings, I did not know the difference between Federal and State Jurisdiction. I was told by my retained counsel that I was good to go.

From October 13, 2015 until my arrest on April 26, 2016 I worked as a armed security officer, in which I carried a firearm. No question in my mind that I was in compliance with Federal law.

On January 10, 2016 I was stopped for speeding, and issued a speeding ticket which required me to report to traffic court at a later date.

In March of 2016, I reported to the court house in Benson, Arizona to deal with my speeding ticket from my January 10, 2016 traffic stop. At the hearing I was in my work uniform, which cleary states: "Security" on the shirt. In fact, the County prosecutor clearly seen the word "Security" on my uniform.

Part of my uniform is a Duty Belt which includes a firearm. Upon my entrance to the court house I did not see a "NO WEAPONS" sign on the outside door of the court house as is required pursuant to Arizona State Law. Furthermore, the security officer maning the metal detector/check point, allowed me to carry my firearm past the checkpoint, even after identifing myself as a private security officer.

After my hearing for my speeding ticket, the county prosecutor told the Officer that pulled me over back in January for speeding, that I showed up in court wearing a security uniform allong with a firearm. (Which is compleatly legal under Arizona Law.) The officer whom the prosecutor told, in his words "Googled me", which resulted in a Department of Justice document speaking about the events in which resulted in my Federal conviction back in 2008.

On March 25, 2016 I was involved in a traffic accident, and while waiting for the police to arrive, the other driver and myself spoke with our insurance company, thereby, no longer needing Tucson Police Department. (**TPD**) So, when the Police Officer showed up, she ran our Driver Licenses'. After the

Officer handed me my license back, she turned around and was about to head back to her car, when she noticed a firearm in my car through a partially open door. She then opened the door all of the way open and reached in my car and grabbed the firearm. After she took my fireamr, she asked if I had any more firearms, and I answered yes I do, in the small of my back. (Pursuant to Arizona Law once asked if you have a weapon on your person you must answer the question, as I did once asked). Since the weapon was concealed she couldn't see it, so after I said yes, she demanded that firearm as well, so I turned that firearm over.

With both of my forearms, she went back to her car and investigated the serial numbers. Not only did she violate this courts ruling in **"Rodriguez" (575 U.S. 348(2015))**, the Police officer also violated my **Fourth Amendmet**, by first, "seizing my firearms" without probable cause, since this encounter was NOT a **"Terry Stop"** (The Police Officer's own testimony confirmed that she had no probable casue). Second, she violated the **"search"** clause of the **Fourth Amendment**, by searching the firearms for their serial numbers, which went into a police report, which allowed the officer, (who pulled me over back in January 10, 2016) to turn over that information to the **A.T.F.**, violating the **"Silver Platter"** Doctrine, and since that information was illegaly obtained, it thereby, negates the Nexus to Interstate commerce.

Through out the encounter I followed all rules and laws, while remaining professional.

At a latter Federal hearing, the Federal Magistrate would determine that the serial numbers were illegaly obtained.

Durring this time, Officer Drumond (the officer who pulled

me over on January 10, 2016), took it upon himself to contact the **A.T.F.** and provide them the 2 serial numbers from the report of my traffic accident, dated March 25, 2016 and the DOJ document mentioned earlier.

After being provided with this information, the **A.T.F.** ran a tracer report (using the illegally seized serial numbers), which came back that the two firearms were manufactured outside the state of Arizona, therefore, the **A.T.F.** assumed jurisdiction based on interstate commerce.

Armed with that information, **A.T.F.** agents showed up on April 26, 2016 at my traffic court hearing. to speak with me about the March 25, 2016 traffic accident. During our talk, I stated that my civil rights were restored including my right to bear arms. At that point, one of the agents explained the two jurisdictions (State and Federal). He then told me that only my state rights were restored, and that I was therefore prevented from owning firearms that had traveled across state lines. Had I known that, I would have respected Federal Law and only owned/ possess firearms manufactured in the state of Arizona.

After my arrest, based on my clear lack of Mens Re, my attorney, **Jonn Kauffman**, attempted to present a defense of Apparent Authority, and entrapment by Estoppel. During this time the Attorney who represented me at my restoration of civil rights hearing, contacted **Mr. Kauffman** and informed him that it was his legal opinion that I was in compliance with Federal Law at the time of my arrest. Going as far as sending an email to my prosecutor stating as much.

Even after the federal judge disallowed my defense, I

proceeded to trial where I was prevented from presenting any evidence as to my state of mind. I was also denied the opportunity to introduce expert testimony (from a widely respected and often quoted, even by this court, expert), as to what makes Arizona's restoration of civil rights different, the process of obtaining a **CCW**, and the rational of my belief that I was not a prohibited possesser.

As a result of the District court's misunderstanding of **18 U.S.C. §922(g)(1-9) and §924(a)(2)** and their denial of my ability to present a defense, I was found guilty on January 31, 2018. At this time, I was appointed a new attorney and filed a Direct Appeal. On appeal, the Ninth Circuit affirmed the judgment of the District Court.

My attorney then filed a motion for reconsideration, during this time, this court ruled on **"REHAIF" 139 S CT 2191** (2019), which dirrectly applied to me. The Ninth Circuit was notified of this decision by my attorney (**Eric Manch**), yet chose to not reconsider my appeal.

After the appeals court, I filed a **§2255** stating 9 grounds. Due to prosecutorial misconduct (i.e. the government never served me a copy of their response, for me to reply, claiming they emailed it to me which is not possible, as the government was aware from my initial brief, that I'm incarcerated. The District Court Judge denied my **§2255** "For the reasons given by the prosecutor" I then filed a **§59(e)** Motion to which the district judge ordered the government to properly serve me so I could respond.

The district judge denied grounds Two, Four, Five, Six,

Eight, and Nine for being procedurally precluded. Then the district court denied grounds One and Seven, which are my **"rehaif"** claims, on the merits and then denied me a **Certificate of Appealability.** In the courts response regarding my **"Rehaif"** claim, the judge denied my aurgument because the judge relied on false information presented to the court by the prosecution.

However, the court failed to consider all the evidence I tried to present at trial, and the evidence I presented with my **§2255** motion. In the courts ruling the judge stated "the court rejected this aurgument (ground one)(**Rehaif**), because the state court issued this order (restoration of rights), on December 14, 2006 which was prior to the 2008 Federal felony conviction relied on by the government as the predicate felony element for the **§922(g)(1)** offense," which was clear error.

The judge relied on false information, as my Federal conviction was in 2008 and my rights were restored on October 12, 2015, not December 14, 2006. This caused extreme prejudice, because at a evidentory hearing, not only could I prove the court's order with the correct date, I then could present all my evidence in regards to my Mens Rea Claim **(Rehaif)**, therefore, the court would have to vacate and remand for new trial, this time I'd be able to show the jury evidence of my innocence and the government would now have to prove the required additional element of **§922(g)(1)** and **§924(a)(2).**

Because of that clear error, my entire **§2255** proceedings were prejudicial, which is why I filed a motion to correct the record, however, I have not been notified of any change as of yet.

After the district courts denile, I requested a **C.O.A.** with

the Ninth Circuit, after waiting 11 months without any notice, and after I've sent 6 letters requesting an update, I was sent a denile, with no real reason as to why. I then requested a rehearing and En Banc review based on this courts ruling in **"Gary & Greer"**, which was also denied.

On July 22, 2022 Justice Kagan granted my motion for an extension of time, which extended my due date to September 25, 2022. I now submit the following Writ with great hope that this Honorable Court will in the interest of Justice provide relief in this case, by ordering the district court, in light of this courts ruling in **"Rehaif, Greer, & Gary"**, to grant the Petitioner's **§2255** motion, and hold a new evidentiary hearing and new trial or else, order the district court to coorect the record and grant a **C.O.A.**, so my arguments may be considered on the merits.

REASONS FOR GRANTING THE PETITION

THIS CASE IS OF EXCEPTIONAL IMPORTANCE BECAUSE..,

First, it deals with the length of the courts holdings in **REHAIF** as to the extention of the word knowingly, to **18 U.S.C. §921(a)(20)** something that can only be answered by this court.

Second, the petitioner in this case was still in the process of his direct appeal when REHAIF was decided and therefore this ruling should be applied to his case. See **UNITED STATES Vs. ESCALANTE-REYES 689 F.3D 415, 423** (5TH Circuit 2012 (En Banc)) "We conclude, therefore that where the law is unsettled at the time of trial but settled by the time of appeal, the plainness of the error should be judged by the law at the time of appeal."

Third, in accordance with the courts holding in **GREER**, there are times that a defendant can prove he did not know his status, as in this case before the court. See Page 17.

Fourth, Unlike in **GREER** and **GARY**, the petitioner in this case has substantial evidence as to his state of mind in regards to his status. See Page 21 & 22

Fifth, the petitioner was preventted by the lower court of presenting any evidence as to his state of mind, therefore denying him the right to present a defense which Due Process requires. See **UNITED STATES Vs GRACE, 439 F.SUPP 2D 1125** (9th Circuit 2006) Though not expressly stated in the text of the **Sixth Amendment**, a defendant's right to present evidence in his defense is protected by the Federal Constitution. **ROCK Vs ARKANSAS, 483 US 44, 107 S CT 2704, 97 L ED 37** "Whether rooted directly in the Due Process clause of the **Fourteenth Amendment**, or in the compulsory process or confrontation clause of the Sixth Amendment, the Constitution guarantees criminal defendants a meainful opportunity to present a complete defense." **CRANE Vs KENTUCKY**

106 S CT 2142 (1986)(Citations, internal quotations omitted); see also **PENNSYLVANIA Vs RITCHIE, 107 S CT 989** (1987)("Our cases establish at a minimum that criminal defendant's have the right to put before a jury evidence that might influence the determination of guilt.") **TAYLOR Vs ILLINOIS, 108 S CT 646** (1988)(Holding that the **Sixth Amendment** protects "the right to present the defendant's version of the facts as well as the prosecutions.")

DOES THE KNOWINGLY ELEMENT APPLY TO U.S.C. §921(a)(20)?

It is the petitioner's contention that in accordance with the ruling in **REHAIF** and further explained in **GREER** that under **18 U.S.C §924(a)(2)** and **§922(g)(1)**, the government must now prove that the defendant knew that he was a prohibited possessor according to the definition set forth in **§921(a)(20).**

The inpari-materia cannon of statutory construction states "that statutes addressing the same subjuct matter generally should be read as if they were one law." **UNITED STATES Vs KNAPP, 2021 APP. LEXIS 16267** (9TH Circuit) "[W]e assume without deciding that **REHAIF** extends to the restoration exception in **§921(a)(20)** and evaluate claim on the merits."

[REMAINDER OF PAGE LEFT BLANK]

As the court explained in **REHAIF Vs UNITED STATES, 139, S CT 2191** "The maxim "ignorance of law is no excuse" which "normally applies where a defendant has the requisite mental state in respect to the elements of the crime, but claims to be unaware of the existence of a statute proscribing his conduct." **1 W. LaFave & A. Scott, Substantive Criminal Law 5.1 (P.575)**

In Contrast, the maxim does not normally apply where a defendant "has a mistaken impression concerning the legal effect of some collateral matter and that mistake results in his misunderstanding the full significance of his conduct" thereby negating an element of the offense. ("A mistake of law is a defense if the mistake negates the "knowledge required to establish a material elements of the offense.")

"Much of the confusion surrounding the ignorance-of-the-law maxim stems from the failure to distinguish [these] two quite different situations." **LaFave Substantive Criminal Law 5.1(d) at 585."REHAIF Vs UNITED STATES, 139 S CT 2191, 2198.**(some internal citations omitted)

This is one of those cases. In this case the facts are clear, the petitionr was unaware of his status as a prohibited possessor. While he was aware of the exsistening laws; **18 U.S.C. §921(a)(20), 18 U.S.C. §922(g)(1), 18 U.S.C. §924(a)(2),** and **ARIZONA REVISED STATUTES (ARS) 13-909.** (See attached statutes)(These are highly technical statutes)

[REMAINDER OF PAGE LEFT BLANK]

He missunderstood the facts as they related to the restoration of his civil rihgts. And therefore did not know of his status as a prohibited possessor under Federal Law.

At the time of the petitioner's trial, based on the facts and evidence of this case and the defense counsel along with the district courts, misunderstanding of the Mens Rea element, the petitioner's lawyer attemted to introduce a defense of Apperent Authority & Entrapment by Estoppel, which are both affirmative defenses, based on defendants state of mind.

An Affirmative defense requires the defendant to prove their defense by 50.1%. The District Court determined that the defense counsel did not meet this burden and therefore forbid the petitioner from introducing any evidence as to his state of mind at the time of the possession or to his sincere belief based upon legal counsel's guidence and explanation of relevent statutes, as well as his own understanding based upon his reading of the relevent statute and other Laws that he had in good faith followed all the correct steps and was no longer a prohibited possessor under Federal Law.

After the court's ruling in **REHAIF**, the meaning of the statute is clear. Knowledge of ones status is a required element of the **§922** Statute. This change in understanding of the statute reverses the burden of proof as to intent, in **§922** Cases.

The burden of proving that the defendant possessed knowledge as to the status element, rests on the Government. See **OLD CHIEF Vs UNITED STATES, 117 S CT 644** (1997)"The Constitution requires a criminal conviction to rest upon a jury determination that the defendant is guilty of every element of the crime of which he is charged, beyond a reasonable doubt. **UNITED STATES Vs GAUDIN, 115 S CT**

2310 (1995)(Citing **SULLIVAN Vs LOUISIANA, 113 S CT 2078** (1993)) see also **COURT OF ULSTER CTY Vs ALLEN, 99 S CT 2213** (1997)("[I]n criminal cases, the ultimate test of any device's constitutional validity in a given case remains constant: the device's must not undermine the factfinders responsibility at trial based on evidence adduced by the state, to find the ultimate facts beyond a reasonable doubt.") "A simple plea of not guilty, **FED. R. CRIM. PROC 11**, puts the prosecution to its proof as to all elements of the crime charged."

18 U.S.C. §922(g) lists 9 subclasses of people who are prohibited from owning firearms. The first one; anyone who has been convicted of a crime punishable by imprisonment for a term exceeding one year, is the focus of this case before the Court. The court then presented a non exhaustive list of circumstances in which this may be possible.

"There are <u>many</u> reasons a defendant might not know a prior conviction could have led to a sentence of more than a year in prison." Most obviously as the court recognized in **REHAIF**, "a person who was convicted of a prior crim but sentenced only to probation [may] not know that the crime [was] punishable by imprisonment for a term exceeding one year." **139 S CT 2191.** "Even if a defendant was incarcerated for over a year, moreover that does not necessarily eliminate reasonable doubt that he knew of his felon status. For example, a defendant may not understand that a misdemeanor under state law can be a felony for purpose of Federal Law or that a conviction in juvenile court also can be considered a felony. Or the likewise might not understand that pre-trial detention was included in his ultimate sentence. Confusion along these lines becomes more likly as time passes."

The petitioner agrees in practice with the courts conclusion

but contends that there is more to this analysis than the court in **'GREER'** consisered. In spite of the courts sugestion in **'GREER'** the statute in question does not use the term **"FELON"** nor does it prohibit all "felons" or even prohibit those "convicted of a felony punishable for a term over one year", as the phrase would ordinary be understood.

The statute prohibits "anyone who had been convicted of a crime punishable by imprisonment for a term exceeding one year." **§922(g)(1)**, according to the phrases statutorily created definition. When Congress defines a word or a phrase, courts are to apply that definition.

The definition of this phrase is listed under statute **18 U.S.C. §921(a)(20)**. For instance, none of the following individuals would be a prohibited possessor, according to **§921(a)(20)** which states:

> **(A)** "any federal or state offenses pertaining to antitrust violations, unfair trade, or other similar offenses relating to the regulation of business practices."
>
> **or**
>
> **(B)** "any state offenses classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less."

Additionally "any conviction which has been expunged, or set aside, or for which has been pardoned or has had their civil rights restored, shall not be considered a conviction for purposes of this chapter, unless such pardon, expungment, set aside, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

This demonstrates that the phrase "crime punishable by imprisonment for a term exceeding ony year" is not to be

understood to common vernacolar, but rather as a term defined by a complex statutory scheme. (eg...Tax Code)

This requires more than general knowledge of a conviction as one who falls under subsection (A) or (B) or had their case expunged, or set aside or has had civil rights restored, would not be guilty of violating the law.

The question therefore is, did the defendant know his status as one "convicted" of a "crime punishable by imprisonment for a term exceeding one year" in accordence with the meaning defined by the statutory scheme.

DOES A STIPULATION AT THE TIME OF TRIAL THAT A DEFENDANT HAD AT SOME POINT IN THE PAST COMITTED A FELONY, PREVENT THAT DEFENDANT FROM PRESENTING A DEFENCE TO A JURY "THAT HE DID NOT KNOW THAT HE WAS A FELON, ACCORDING TO §921(a)(20), DO TO HIS RIGHTS BEING RESTORED BY THE STATE OF ARIZONA?

UNITED STATES V ROBINSON, 982 F.3D 1181,1186 (8TH Circuit 2020) "After **REHAIF**, it may be that a defendant who genuiely, but mistakenly believes that he has had his individual rights restored, has a vaild defense to a felon-in-possession charge." see **BUCHMEIER V UNITED STATE 581, F.3D 561** (7TH CIRCUIT 2009) "When the state does send a document saying that civil rights have been restored, there is a potential for misunderstanding unless the document expressly provides that the person may not ship, transport, possess, or receive firearms." **UNITED STATES V SOUSA, 468 F.3D 42,44** (1st Circuit 2006) "[A]n otherwise qualifying conviction does not count as a predicate offense if the defendant has had his civil rights restored by the state, unless the restoration expressly provides that the person may not ship, transport possess, or recieve firearms" **UNITED STATES V HOWE, 736 F.3D 1,2**

(1st Circuit) (The circuit "has held that the civil rights that be restored to trigger the exception in **§921(a)(20)** are the rights to vote, to hold public office, and to serve on a jury".) The petitioner had all of these rights restored, including the right to bear arms.

As the district court acknowledge the Government faild to even establish that the petitioner knew he was a felon, let alone witin the meaning of the text of the statute. See exhibit 12 **(DOC 5, 11/03/20 PG. 3-4** "The Government did not prove the defendant knew he was a convicted felon".

The district court's contention, that "on a retrial the Government could show that he was sentenced to 24 months in prison and served at least 15 months in prison for his conviction. **(RESPONSE (DOC 4) AT 8** (Citing presentence report, 37)**)** There is, therefore, undisputable evidence that on retrial would establish the movant knew he was a convicted felon because he actually served a sentence for a felony conviction. **JOHNSON, 963 F.3D AT 851-54, UNITED STATES V BENAMOR, 937 F.3D 1182, 1185-86** (9th Circuit 2019)", fails on multiple fronts.

1.) It conflates 2 types of elements, the past action of the petitioner and the petitioner's state of mind (knowledge)

2.) It assumes facts not in evidence or even alledged by the Government up untill that point.

3.) The burden of proof as to each element of a crime is on the Government, regardless if defendant challenged that element; the Government in this case had their chance. **MATHEWS V UNITED STATES, 485 US 58, 64-65, 108 S CT 883** (1988) "Further a defendant's tactical decision not to contest an essential element of the crime does not remove the prosecution's burden to prove that element." **ESTELLE V McGUIRE, 112 S CT**

475 (1991)"At trial a defendant may thus choose to contest the Government's proof on every element; or he may concede some elements and contest others; or he may do nothing at all. What ever his choice, the Government still carries the burden of proof beyond a reasonable doubt on each element.

It follows from these principles that a defendant's stipulation to an element of an offense does not remove that element from the jury's consideration."

4.) The district courts conclusion takes the power of determing the facts of the case and the petitioner's guilt or innocence away from the jury and places it soly in the hands of the trial judge, in clear violation of due process. **UNITED STATES V MONTGOMERY, 2020 US DIST LEXIS 35670** After **REHAIF**, "courts now must instruct jurys that they must find beyond a reasonable doubt that defendant knew he belonged to a class of people who could not lawfully possess a firearm. Furthermore, the court would need to look at evidence the jury never saw and apply that evidence to an element the jury never considered. And that process does not allow a judge to in effect determine guilt by considering evidence never presented to the jury, in order to find an element not only omitted from the jury's instructions, but stated by the court to the direct opposite effect. That sort of power shift from jury to judge would seriously undermine the fairnes, integrity, and public reputation of the proceedings and it is simply inconsistent with our system of justice that assigns to ordinary citizens the immense responsibility of weighing evidence and adjudicating guilt. No direct evidence showed defendant waspart of the category of barred

people" see **GREER V UNITED STATES, 141 S CT 2090** (2021) (Concur by Sotomayor) "If the Government fails to carry its burden, over the defendant's objection,... courts cannot correct that short coming by looking to incriminating evidence the Government never submitted to the jury or by relying on the defendant's failure to demenstrate his own innocence."

5.) A tatement as to ones knowledge or of an event, after arrest and advisment of counsel, says nothing of ones knowledge at the time of the crime. see **Mens Rea BLACK'S LAW DICTIONARY** (10TH ED 2014) "[T]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime." This MENS REA requirement is especially applicable when the crime, as here, is punished by imprisionment.

6.) The stipulation made at pre-trial says nothing as to the petitioner's knowledge of his status as a member of a prohibited class,only to whether an event had occured. As been demonstrated earlier. One can have comitted a felony and still not be a prohibited possessor, therefore this stipulation is not enough. see **GREER** "The Government must prove the knowledge-of-status element beyond a reasonable doubt, just like any other element. Standing alone, the fact of a prior felony canviction is hardly enough to meet that exacting standard."

7.) The historic principle that it is wrong to convict someone who acts with a clear conscious. see **WILLIAM BLACKSTONE'S COMMENTARIES 2 (1769)**(Stating that "to constitute a crime

against human laws, there must first be a vicious will.") see also, **EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND 6, 107** (London, E & Brooke **1797**)(1644) "[A]n act does not make a person guilty, unless the mind is guilty." (Translated from Latin) also, **FRANCIS BACON, THE ELEMENTS OF COMMON LAWS OF ENGLAND 65** (London, I. More 1630)(1596)("All crimes have their conception in a corrupt intent.")

An examination of all the evidence will affirmativly prove that the petitioner lacked any ill intent. See 21 & 22

8.) The district court made its determination based upon a clear error in facts (ie. the date and order of the petitioner's restoration of rights. see **DOC REHEARING EN BANC PG. 4-5)** and a clear misapplacation of law (ie..who decides if the prosecution has proven their case.)

9.) The district court faild to take into account that the interving case law (**REHAIF** and now **GREER**) changed the relevency of the evidence that petitioner was prohibited from presenting, therefore, requiring a new evidentory hearing. This evidence could have changed the out come of a trial and therefore, a new evidentory hearing and trial is warrented.

In the present case, the evidence is clear that the petitioner genuinely believed he was not apart of a prohibited class.

Both, before and after having his rights restored, petitioner strived to be a model citizen, including volunteering in his community see exhibit 1.

By consulting with a federal defense attorney about being in compliance with the law, and by going through the legal process to have petitioner's rights restored. Petitioner was unaware that in

regards to restoration of rights, there was a distinction between state and fedeal rights. Petitioner believed it to be one in the same, because that's how petitioner's federal practicing legal counsel explained it. See exhibit 2. Additionaly, the restoration order from the judge specificly stated that it included the restoration of petitioner's gun rights, See 3. and **Arizona** State Law **(A.R.S. §13-909)** which deals with the restoration of rights specicaly states that it restores rights "lost by felony conviction in a United States District Court." See exhibit 4.

In fact, even after petitioner's arrest, petitioner's attorney, who restored his civil rights was still under the impression that he was in compliance with the law. See exhibit 5.

Furthermore, petitioner passed a federal background check to obtain his Concealed Carry Weapons Permit **(CCW)**, even though a **CCW** is not required in the State Of Arizona to carry a concealed weapon. See exhibit 6 & 7.

And, all the statements made to investigators both before and after petitioner's arrest, see exhibit 8 & 9, also, the statements he made in court. See exhibit 12.

Petitioner's defense, which was rejected by the court, could have been allowed under **REHAIF**, see exhibit 11 & 12, because it goes to intent. **UNITED STATES v ESCALANTE-REYES, 689 F.3D 415.**

In all measurable ways, petitioner's actions and behavior support the conclusion, that he did not know he was in a class of individuals prohibited from possessing firearms.

In light of the facts of this case and the arguments presented, I therefore, ask this Court, in the intrest of Justice to grant the Petitioner relief and order the district court to

grant the Petitioner's §2255 motion, and hold a new evidentiary hearing and a new trial, or else, order the district court to correct the record and grant a **C.O.A.**, so my arguments may be considered on the merits.

[REMAINDER OF PAGE LEFT BLANK]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: September 22, 2022