

IN THE
SUPREME COURT OF THE UNITED STATES

ANDERSEN RABEL,

Petitioner,

vs.

Number 24-5700

UNITED STATES OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI REPLY TO UNITED STATES BRIEF
IN OPPOSITION ON PETITION TO THE UNITED STATES COURT OF APPEALS
IN AND FOR THE ELEVENTH JUDICIAL CIRCUIT

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REPLY PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
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ANDERSEN RABEL respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Eleventh Judicial Circuit rendered and entered in Case No. 22-13854 of that Honorable Court as a mandate on AUGUST 24, 2024, which affirmed the judgement and sentence of the United States District Court for the Southern District of Florida and files this Reply to the Government's Brief in Opposition.

QUESTIONS PRESENTED

1. Reply to whether the court of appeals correctly rejected petitioner's challenges to the sufficiency of the evidence supporting his conviction for knowingly possessing an unregistered firearm silencer, in violation of 26 U.S.C. 5861(d).
2. Reply to whether the court of appeals correctly found that the district court did not abuse its discretion in excluding certain evidence proffered by petitioner regarding asserted federal agency practice and in admitting evidence from petitioner's cell phone to show knowledge that the kits he sold were firearm silencers.

LIST OF PARTIES

The parties in this proceeding or persons who have an interest in the outcome of this case are as follows:

1. Andersen Rabel, Appellant.
2. United States of America, Appellee.
3. Karla Albite, AUSA

4. Manuel Reguiera, Codefendant
5. Joe Rosenbaum, Atty. for Codefendant
6. Gregory A. Samms, Esq., Attorney for Appellant.
7. Bureau of Alcohol, Tobacco, Firearms and Explosives
8. Kimberly Acevedo, Atty. for Codefendant
9. Miami Gun Shop
10. Lisa Tobin Rubio, Counsel for USA on appeal
11. Patrick Hayden O’ Byrne, Counsel for USA
12. Hon. Edwin G. Torres
13. Hon. Kathleen Williams
14. Hon. Alicia M. Otazo-Reyes
15. Hon. Chris M. McAliley
16. Hon. Jacqueline Becerra
17. Hon. Melissa Damien
18. Markenzy Lapointe United States Attorney Southern District of Florida
19. Jason Wu Counsel for USA on appeal.

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I. THE GOVERNMENT MISAPPLIES THE MENS REA STANDARD

The government contends that the Petitioner's conviction under 26 U.S.C. § 5861(d) should stand because he knew the "features" of the device he sold. However, Supreme Court precedent requires more than just awareness of an object's physical characteristics; the government must prove that Petitioner knew the device met the legal definition of a firearm under the National Firearms Act (NFA). *Staples infra*.

In *Staples v. United States*, 511 U.S. 600 (1994), this Court held that the government must prove that a defendant knew of the characteristics that made his weapon subject to registration under the NFA. Similarly, in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Court reaffirmed that "knowingly" applies to both the possession and status elements of a criminal offense. Thus, the government was required to prove not only that Petitioner knew he possessed a solvent trap but that he knew it was legally classified as a silencer.

The government attempts to satisfy this requirement through text messages and an undercover agent's coded language. This circumstantial evidence, however, does not establish beyond a reasonable doubt that Petitioner knew the device met the statutory definition of a silencer. Without such proof, the conviction cannot stand.

The Eleventh Circuit erred in affirming the conviction because the government failed to present sufficient evidence that Petitioner knowingly possessed an unregistered silencer. The government's case relied heavily on circumstantial evidence, including an ambiguous text message exchange and the term "soda cans" used by an undercover agent.

However, these elements do not conclusively establish that Petitioner knew the devices he sold were classified as silencers under federal law.

Moreover, the ATF's inconsistent enforcement history regarding solvent traps created substantial uncertainty, further weakening any inference of knowing possession. In *Staples*, the Supreme Court required proof that a defendant had knowledge of the specific characteristics bringing a device under the NFA's scope. The government here presented no direct evidence that Petitioner knew the legal status of the items sold. Accordingly, the appellate court's rejection of Petitioner's challenge to the sufficiency of the evidence was incorrect, and the conviction should not stand.

II. THE GOVERNMENT CANNOT RELY ON EXCLUDED EVIDENCE WHILE DEFENDING EXCLUSION OF DEFENSE EVIDENCE

The government argues that Petitioner's own statements and messages demonstrate knowledge that the device was a silencer. At the same time, it defends the exclusion of evidence showing that ATF failed to provide adequate public notice of its change in enforcement policy. This inconsistency violates due process.

Evidence regarding the ATF's policy shift was crucial to Petitioner's defense. The government claims ATF's interpretation remained stable, yet it excludes congressional letters and expert testimony showing otherwise. In *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), this Court emphasized that due process requires fair notice before criminalizing conduct. Petitioner was denied the opportunity to argue that neither he nor the broader firearms community was given such notice. The district court's evidentiary

ruling prevented the jury from fully considering whether Petitioner had the requisite *mens rea*.

III. THE GOVERNMENT MISCONSTRUES THE ROLE OF THE FFL-07 LICENSE

The government dismisses Petitioner's argument that he was operating under the umbrella of a Federal Firearms Licensee (FFL-07). The Eleventh Circuit, however, overlooked key regulatory provisions. Under C.F.R. 27 § 479.103, an FFL-07 holder may possess and manufacture silencers, provided they follow proper registration procedures. Petitioner's role as a "Responsible Person" in the business was directly relevant to whether he lawfully possessed the devices. The jury was not permitted to consider this crucial context.

IV. CONCLUSION

The government's response fails to resolve the fundamental deficiencies in its case. The *mens rea* requirement was not met, critical defense evidence was improperly excluded, and Petitioner's lawful role in an FFL-07 business was ignored. For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully Submitted

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BY: s/Gregory A. Samms

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Reply Petition was served via U.S. Mail and electronic means at SUPREMECTBRIEFS@USDOJ.GOV upon the Solicitor General of the United States, U.S. Department of Justice, Washington D.C. 20530 and upon all counsel of record this 12th day of February, 2025.

BY: s/Gregory A. Samms

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