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APPENDIX A

PUBLISHED

United States Court of Appeals for the Eleventh
Circuit, Opinion, February 17, 2026.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10358

In re: ABEL DIAZ,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before JILL PRYOR, LUCK, and HULL, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Abel Diaz has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if we certify that the second or successive motion contains a claim involving:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing

evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). “The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.” *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec’y, Dep’t of Corrs.*, 485 F.3d 1351, 1357–58 (11th Cir. 2007) (explaining that our determination that an applicant has made a prima facie showing that the statutory criteria have been met is simply a threshold determination).

Diaz is a federal prisoner serving a 240-month sentence for conspiracy to possess with intent to distribute 5 kilograms or more of cocaine, using and carrying a firearm during and in relationship to a drug trafficking crime, and conspiracy to possess, use, and carry firearms during and in relation to a drug trafficking crime.

As a brief factual background, Diaz filed his original § 2255 motion in 2003, and the district court denied it with prejudice.

In his application, Diaz writes that his claims are not based on a new rule of constitutional law nor based on newly discovered evidence. He argues that he requests for a determination that his motion “is not ‘second or successive’” as held in *United States v. Bowe*, No. 24-5438 (U.S. Jan. 9, 2026), which he asserts held that a § 2255 motion is not second or successive if it relies on a new

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Supreme Court decision that substantively narrows the elements of a criminal offense, even if the petitioner had previously litigated related constitutional claims. He argues the inquiry is whether his motion challenges sentencing procedure, which is successive, or his motion challenges the jury's finding of a crime that Congress actually defined, which is not successive. He asserts that his prior *Apprendi v. New Jersey*, 530 U.S. 466 (2000), claim challenged who determines the sentencing facts and that his current motion challenges whether the jury ever found the mens rea and offense elements that now define a violation of 21 U.S.C. §§ 841(a)(1) and 846 after *Ruan v. United States*, 597 U.S. 450 (2022), and *Rehaif v. United States*, 588 U.S. 225 (2019). He argues that *Ruan* requires that "knowingly or intentionally" applies to every material element of § 841(a)(1) and that *Rehaif* requires that the government must prove the defendant knew the facts that made his conduct unlawful. He asserts that the jury was not instructed to find that he intended to distribute cocaine unlawfully nor did the jury find the drug type and quantity. He argues that the jury only returned a general verdict form and that no jury ever found him guilty of the offense as now defined. He argues that such claim is not second or successive.

He further argues that, as in *United States v. Bailey*, 516 U.S. 137 (1995), he "was convicted under a broader understanding of the statute than the law now allows." He asserts, under *Bousley v. United States*, 523 U.S. 614 (1998), such convictions "violate due process and must be vacated on collateral review." He argues that the verdict does not establish his guilt of a federal crime.

In the alternative, he asserts that, even if his application is deemed successive, it should be granted because *Ruan* and *Rehaif*, like *Bailey*, establishes that substantive rules that narrow the scope of criminal liability apply retroactively. He cites *Welch v. United States*, 578 U.S. 120 (2016), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), in support along with *Bousley*, which he asserts held that a defendant is actually innocent when convicted of conduct that does not constitute a crime under current law. He reiterates that his convictions cannot stand because the jury never found the following: (1) intent to distribute cocaine unlawfully, (2) knowledge of the facts rendering the conduct criminal, and (3) the drug type and quantity.

Diaz attaches the following exhibits to his application: (1) the original indictment against him; (2) the superseding indictment against him; (3) portions of the trial transcript; (4) the jury's verdict form; and (5) his proffered § 2255 motion and memorandum of law.

In *In re Baptiste*, we held that the bar under § 2244(b)(1) applies to claims that were raised in a prior unsuccessful successive application filed by a federal prisoner with this Court. 828 F.3d 1227, 1339-40 (11th Cir. 2016). In *Bowe*, the Supreme Court overruled our opinion in *In re Baptiste*, and the Supreme Court clarified that federal prisoner application must be evaluated under the two standard criteria in § 2255(h), which is whether the proposed claim relies on either (1) a new rule of constitutional law or (2) newly discovered evidence. *Bowe*, No. 24-5438 (U.S. Jan. 9, 2026).

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In *Apprendi*, the Supreme Court held that any fact, other than the fact of a prior conviction, that increases the statutory maximum penalty to which a criminal defendant is exposed is an element of the crime and must be found by a jury beyond a reasonable doubt. 530 U.S. at 490. We held that *Apprendi* does not satisfy the criteria in § 2255(h)(2) because the Supreme Court has not declared that it applies retroactively to cases on collateral review or applied it in a case on collateral review. *In re Joshua*, 224 F.3d 1281, 1283 (11th Cir. 2000).

In *Rehaif*, the Supreme Court held that the government must prove the defendant knew both that (1) he possessed a firearm and (2) belonged to a class of persons prohibited from possessing a firearm to sustain a § 922(g) conviction. 588 U.S. at 237. We concluded that *Rehaif* did not announce a new rule of constitutional law and, even if it did, any such rule was not made retroactive to cases on collateral review by the Supreme Court. *In re Palacios*, 931 F.3d 1314, 1315 (11th Cir. 2019).

In *Ruan*, the Supreme Court considered the mens rea requirement of 21 U.S.C. § 841, which makes it a federal crime, “[e]xcept as authorized[,] . . . for any person knowingly or intentionally . . . to manufacture, distribute, or dispense . . . a controlled substance.” 597 U.S. at 454 (alterations in original) (quotation marks omitted). The Supreme Court held that § 841’s “knowingly or intentionally” mens rea applies to the statute’s “except as authorized” clause, such that, once a defendant meets her burden of producing evidence that her conduct was “authorized,” the government must

prove beyond a reasonable doubt that she knowingly or intentionally acted in an unauthorized manner. *Id.* at 457.

In interpreting § 841, the Supreme Court started with the presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state and continued that the presumption is strengthened when a statute contains a general scienter provision, as § 841 does by requiring knowing or intentional conduct. *Id.* at 457-59. Then, the Supreme Court looked to analogous cases in which it had applied the term “knowingly” as used in one part of a statute to another element or section of that same statute, thus reinforcing its conclusion that § 841’s “knowingly or intentionally” mens rea applies to the statute’s “except as authorized” clause. *Id.* at 460-61 (citing *Liparota v. United States*, 471 U.S. 419 (1985); *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994); *Rehaif*, 588 U.S. 225).

The Supreme Court’s interpretation of a substantive criminal statute, using established rules of statutory construction, cannot announce a new rule of constitutional law under § 2255(h). *In re Blackshire*, 98 F.3d 1293, 1293-94 (11th Cir. 1996).

The Armed Career Criminal Act (“ACCA”) provides that a person who violates 18 U.S.C. § 922(g) and has 3 previous convictions for a violent felony or a serious drug offense, or both, committed on occasions different from one another, shall be imprisoned for at least 15 years. 18 U.S.C. § 924(e). In *Johnson*, the Supreme Court held that the residual clause of the definition of “violent felony” in the ACCA is unconstitutionally vague. *Johnson v.*

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United States, 576 U.S. 591, 596-602 (2015). In *Welch v. United States*, the Supreme Court held that *Johnson* announced a new rule of constitutional law that applied retroactively to cases on collateral review. 578 U.S. at 128-30. Still, in relying on a new retroactive rule of constitutional law that was previously unavailable, an applicant “must also show that there is a reasonable likelihood that he will benefit from the rule.” *In re Pollard*, 931 F.3d 1318, 1319-20 (11th Cir. 2019) (quotation marks omitted).

In *Montgomery*, the Supreme Court held as retroactively applicable to cases on collateral review *Miller v. Alabama*, 567 U.S. 460 (2012), for the holding that the Eighth Amendment prohibits sentencing juveniles to life without parole. 577 U.S. at 206-13.

Here, Diaz has not made a prima facie showing that his claims meet the statutory criteria in § 2255(h). See 28 U.S.C. § 2255(h)(1), (2). Diaz’s proposed reading of *Bowe* is inaccurate as *Bowe* does not state that a § 2255 motion is not second or successive if it relies on a new Supreme Court decision that substantively narrows the elements of a criminal offense. *Bowe*, No. 24-5438.

Next, we concluded that *Rehaif* did not announce a new rule of constitutional law and that, even if it did, the Supreme Court had not made the rule retroactively applicable on collateral review. See *In re Palacios*, 931 F.3d at 1315. Further, *Ruan* did not announce a new rule of constitutional law but merely clarified the mens rea that the government must prove to convict a defendant under § 841. *Ruan*, 597 U.S. at 454-61. The Supreme Court’s interpretation of § 841 using established rules of statutory construction in

Ruan did not announce a new rule of constitutional law within the meaning of § 2255. *Ruan*, 597 U.S. at 457-59; *In re Blackshire*, 98 F.3d at 1294.

To the extent Diaz relies on *Apprendi*, *Bousley*, and *Bailey*, as new rules of constitutional law, *Apprendi*, *Bousley*, and *Bailey*, were decided before he filed his initial § 2255 motion and thus were not previously unavailable to him. 28 U.S.C. § 2255(h)(2). Moreover, *Apprendi* does not apply retroactively on collateral review. *In re Joshua*, 224 F.3d at 1283. *Johnson* concerns the definition of a “violent felony” in the ACCA for individuals convicted under § 922(g), and Diaz was not convicted under § 922(g). 576 U.S. at 596-602. Diaz would not benefit from *Montgomery*, as he was not a juvenile sentenced to life without parole. *In re Navarro*, 931 F.3d at 1303; *Montgomery*, 577 U.S. at 206-13.

Accordingly, because Diaz has failed to make a prima facie showing of the existence of either of the grounds set forth in 28 U.S.C. § 2255, his application for leave to file a second or successive motion is hereby DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**