No. 21-857

In the Supreme Court of the United States

MARCUS DEANGELO JONES,
PETITIONER,

v.

DEWAYNE HENDRIX

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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REPLY TO THE GOVERNMENT'S BRIEF IN OPPOSITION

1. The government concedes, as it must, the depth of the split and the importance of the question presented. See Br. in Opp. 9 (noting the "circuit conflict and its importance"); see generally Br. in Opp. 8-9. Yet, in a stunning inversion of logic and its own prior position, see Pet. 13, *United States* v. *Wheeler*, 139 S. Ct. 1318 (2019) (No. 18-420) (arguing that "[t]he conflict on the scope of the saving clause has produced, and will continue to produce, divergent outcomes for litigants in different jurisdictions on an issue of great significance"), the government claims that review is unwarranted. See Br. in Opp. 8. It suggests, most remarkably, that review should be denied because "this case does not appreciably deepen th[e] conflict." Br. in Opp. 8. That is true, of course. The Eighth Circuit was the only remaining court of appeals that had not precedentially addressed the question presented. Br. in Opp. 12, *Ham* v. *Breckon*, No. 21-763 (U.S. 2021). But the government's logic is exactly backwards. According to it, the deeper a circuit split becomes (and the less it can deepen further), the less review is called for. Taken to its logical conclusion, the government's position would counsel against ever granting certiorari once the last court of appeals has weighed in. Common sense and this Court's practice show just how deeply wrong that reasoning is. The conflict is as deep as it can get and ripe for this Court's intervention.

2. The government also suggests that because this Court has denied certiorari in other cases presenting the same issue, the Court has no appetite for the question at all. See Br. in Opp. 7-9 (listing other cases denying review). But all the cases the government cites involved serious vehicle problems absent here. In some, it was not clear whether the petitioner's claim was completely foreclosed by circuit precedent. See, *e.g.*, Br. in Opp. 14, *Lewis* v. *Hendrix*, 142 S. Ct. 126 (2021) (No. 20-7863); Br. in Opp. 14-15, *Davis* v. *Quay*, 141 S. Ct. 1658 (2021) (No. 20-6448); Br. in Opp. 14, *Williams* v. *Coakley*, 141 S. Ct. 908 (2020) (No. 20-5172). In others, it was not clear whether a later holding by this Court had truly reversed the foreclosing circuit precedent. See, *e.g.*, Br. in Opp. 17-18, *Walker* v. *English*, 140 S. Ct. 910 (2020) (No. 19-52); Br. in Opp. 16, *Lewis*, 141 S. Ct. 910. In some, it was not clear that the case would remain justiciable or actually require relief. See, *e.g.*, Br. in Opp. 12, *United States* v. *Wheeler*, 139 S. Ct. 1318 (explaining respondent would likely be released before this Court could render a decision); Br. in Opp. 11, 16, *Davis*, 141 S. Ct. 1658 (petitioner already on supervised release); Br. in Opp. 28, *McCarthan* v. *Collins*, 138 S. Ct. 502 (2017) (No. 17-85) (petitioner had a § 2255(h)(2) motion pending that could "give him the very relief he presently seeks through his habeas application."). Still others involved the "complicated scenario, which courts of appeals have not fully addressed, in which a prisoner seeks to rely on a change in the law in one circuit to seek habeas relief in another." Br. in Opp. 6, *Walker* v. *English*, 140 S. Ct. 910; see Br. in Opp. 10, *Hueso* v. *Barnhart*, 141 S. Ct. 872 (2020) (No. 19-1365)

(same); Br. in Opp. 21-22, *Jones* v. *Underwood*, 140 S. Ct. 859 (2020) (No. 18-9495). That "complicated scenario" is not present here.

In truth, the government's real argument seems to be that because its own petition on this issue was denied, *United States* v. *Wheeler*, 139 S. Ct. 1318 (2019) (mem.), petitioner's should be too. But the denial of certiorari in *Wheeler*, which featured intractable mootness problems, see Br. in Opp. 9; Br. in Opp. 11-14, *Wheeler*, *supra* (No. 18-420) (because respondent would likely be released from confinement before resolution of his case on the merits, voluntary dismissal of his petition was likely as his release date approached), does not make this case less suitable for certiorari.

3. The government then tries to press a new vehicle argument against a grant of certiorari—that "[t]he record unequivocally establishes that petitioner knew he was a felon at the time he possessed a firearm." Br. in Opp. 10. It does not. The record reveals that although Jones freely admitted he knew he had been convicted of a felony and testified that he had answered the felony question on the pawnshop owner's background check form with "a cursive yes," App., *infra*, 4a, he thought, consistent with discussions he had had at the time of his plea agreement, that the conviction had been later expunged. *Ibid.* (testifying that the state "gave me the [least time] that they could possibly give me and told me that in like five years from that day, that it could be possible that my record would be wiped clean"); see *id.* at 7a (testifying that, "once I finished [probation, I thought that the

conviction] can be expunged from my record"). He directly testified, in fact, that he "thought [expungement] would be automatically done. * * * I thought it would be automatically done * * * through the agreement." *Ibid.*

Expungement would have effectively negated Jones's knowledge of his felon status. See 18 U.S.C. § 921(a)(20) ("Any conviction which has been expunged[] or set aside * * * shall not be considered a conviction for purposes of this chapter, unless such * * * expungement * * * expressly provides that the person may not ship, transport, possess, or receive firearms."). So too would have just sincere, if mistaken, belief in it. As this Court has recognized time and again, an individual who "has a mistaken impression" about his felon status generally "does not have [a] guilty state of mind that" rises to the level of knowledge. *Rehaif* v. *United States*, 139 S. Ct. 2191, 2198 (2019) (cleaned up); *Liparota* v. *United States*, 471 U.S. 419, 425 n.9 (1985) (holding same); *Morissette* v. *United States*, 342 U.S. 246, 255-256 (1952). Numerous courts of appeals have thus held that an individual who believes he is not a felon lacks the *mens rea* required by this Court's decision in *Rehaif*. See, *e.g.*, *United States* v. *Trevino*, 989 F.3d 402, 405 (5th Cir. 2021) ("[A]n individual who mistakenly believes he is not within a prohibited class * * * 'does not have the guilty state of mind that [18 U.S.C. § 922(g)'s] language and purposes require.'") (quoting *Rehaif*, 139 S. Ct. at 2198); *United States* v. *Robinson*, 982 F.3d 1181, 1186 (8th Cir. 2020) ("After *Rehaif*, it may be that a defendant who genuinely but mistakenly

believes that he has had his individual rights restored has a valid defense to a felon-in-possession charge."); *United States* v. *Boyd*, 999 F.3d 171, 181 (3d Cir. 2021) (explaining that under *Rehaif*, "a defendant may rebut the knowledge requirement of [18 U.S.C. § 922(g)] by arguing a *bona fide* mistake of law"); *United States* v. *Balde*, 943 F.3d 73, 96 (2d Cir. 2019). Jones's knowledge of his status was thus a central point of dispute at his trial, despite his acknowledgment that at the time he filled out the background check form he was "aware that [he] had been convicted of a felony." App., *infra*, 4a.

The original trial court, however, considered such evidence legally irrelevant. Following then-prevailing Eight Circuit precedent, see *United States* v. *Kind,* 194 F.3d 900, 907 (8th Cir. 1999) ("[I]t is well settled in this circuit that the government need only prove defendant's status as a convicted felon and knowing possession of the firearm."), the district court instructed the jury to consider only whether (1) Jones had been convicted of a crime; (2) Jones had knowingly possessed the gun; and (3) the firearm was transported across state lines. App., *infra*, 9a. The jury accordingly made no finding on whether Jones "knew he had the relevant status when he possessed [the gun]," *Rehaif* v. *United States*, 139 S. Ct. 2191, 2194 (2019). See App., *infra*, 10a-11a (verdict form).

On direct appeal, Jones challenged the sufficiency of the evidence for his felon-in-possession conviction, again arguing that he did not have knowledge of his prior conviction. *United States* v. *Jones*, 266 F.3d 804, 810 n.5 (8th Cir. 2001). The Eight Circuit dismissed

this contention, reasserting then-settled Eight Circuit doctrine that knowledge of status was not an element of the crime. *Ibid.* ("The only argument Jones makes concerning the sufficiency of the evidence [of his felon-in-possession conviction] is that he did not have knowledge of his prior felony convictions. The government need not prove knowledge, but only the fact of a prior felony conviction.").

The record discloses that petitioner consistently maintained that he sincerely, if perhaps mistakenly, believed that he was not a felon when he purchased and possessed a firearm. Thus, if this Court holds that petitioner can raise his *Rehaif* claim under 28 U.S.C. § 2241, he will be able to argue—and potentially establish—that "he is in prison for conduct that the law does not make criminal." Br. in Opp. 9. The government's claims to the contrary misunderstand the record and rely largely on one single, eye-catching statement of dicta pulled out of context from a long-ago court of appeals opinion.[1]

4. The government also argues that review would be futile because Jones's 18 U.S.C. § 922(a)(6)

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[1] The government also cites the pre-sentence report in support of its claim that Jones knew he was felon. See Br. in Opp. 10. At trial, however, the government introduced evidence only of the felonies Jones believed had been expunged. See Trial Tr. I-154-155 (testimony of Paul Reed discussing only Tennessee convictions). And those were the only ones Jones addressed in his own testimony. The government cannot now cite evidence as to crimes it did not produce evidence of at trial to support a claim about Jones's knowledge of his possible felon status.

conviction necessarily required a jury to find that he knew he was a felon. Br. in Opp. 10. That is mistaken.

The indictment charged that Jones had

> knowingly made a false and fictitious written statement * * * in that [he had] represented at least one of the following: (i) * * * that he was not a felon, or more particularly, certified that he had not been convicted in any court of a crime for which the judge could have imprisoned him for more than one year, when in fact he had been convicted of more than one felony; and (ii) defendant stated * * * that he was Marcus D. Jones, when in fact his name was actually Marcus D. Lee.

Indictment 2-3. He was alleged, in other words, to have lied both about his name, in using his legal name "Jones" instead of his birth name "Lee," and about not being a felon. The judge, following the government's proposed instruction, see Government's Proposed Jury Instructions 34-35, accordingly instructed the jury that they could find Jones guilty if they unanimously agreed that he lied about one, the other, or both.[2] But the judge never asked them to say which statement

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[2] The judge instructed the jury as follows:

> The alleged false or fictitious and material statements made are one, the defendant was not convicted of a felony; and two, defendant's name. You may find defendant guilty if you unanimously agree–if you unanimously find both of the statements false and material. *You may also find the defendant guilty if you find that only one statement is false and material.* But in that case, you must unanimously agree which statement is false and material.

App., *infra*, 9a (emphasis added).

they concluded was false. The government likewise did not direct the jury to focus on one false statement or the other, see, *e.g.*, Trial Tr. II-266, and told the jury they could convict for either or both statements, *ibid.* The verdict form itself, moreover, did not indicate which statement the jury believed was false, see App., *infra*, 11a (verdict form), and the jury *never* offered up that information in any other way. Because of this intractable ambiguity, the government cannot claim that the jury necessarily found that Jones knew his felon status.

5. The government attempts to further muddy the waters by wrongly asserting that *Greer* v. *United States*, 141 S. Ct. 2090 (2021), precludes the availability of habeas relief here. Br. in Opp. 10-11. In doing so, it conflates the question of whether a prisoner is entitled to relief *on the merits* on direct appeal with the question of whether a prisoner is entitled to *bring a habeas petition* in the first place. The procedural posture of *Greer* renders its plain-error relief standard inapposite. Whether Jones could meet the trial court's required standard of review on collateral attack—a question of fact—ought not be considered when deciding whether Jones may make a collateral attack *at all*. The government furthermore cites no legal authority for its assertion that *Greer* controls in the habeas context and petitioner has found none.

In any event, Jones's habeas petition meets *Greer*'s "reasonable probability" standard even if it applies. His habeas petition, relying on his testimony at trial, meets "the burden of showing that, if the District

Court had correctly instructed the jury on the [mens rea] element * * * there is a 'reasonable probability' that he would have been acquitted." *Greer*, 141 S. Ct. at 2097. The habeas inquiry would focus on the central argument that he made there but which the courts of conviction and of direct appeal dismissed out of hand because they thought that knowledge of his felon status was legally irrelevant. As his habeas petition makes clear, his argument would focus on whether his belief that his felony conviction had been expunged effectively cleared his felon status. See App., *infra*, 17a-20a; see also *id.* at 21a-25a (supporting affidavit).

6. The government's glancing invocation of *Bousley* v. *United States*, 523 U.S. 614 (1998), see Br. in Opp. 11, is similarly misplaced. *Bousley* did not involve § 2255(e)'s safety valve at all. The prisoner never asserted any claim to safety valve relief and the Court discussed none. The "factual innocence" standard the government imports from that case governs relief from ordinary procedural default under § 2255, not access to the safety valve, which was intended as an exception to address the limits of ordinary § 2255 relief. The government cites no authority for its sweeping claim that *Bousley* applies to § 2255(e).

7. Unsurprisingly, the government's focus on this case as a vehicle ignores all of its advantages. In addition to those mentioned in the petition, see Pet. 33-35 (discussing vehicle advantages), it presents a fuller range of arguments, many of which have never been raised in prior petitions. It disaggregates the textual language, for example, to explain that

"inadequate" and "ineffective," § 2255(e)'s two key terms, have different meanings. See Pet. 16-19. In particular, the former derives from a technical term of equity jurisprudence that gives it broad scope. See *id.* at 16-18. The petition also mounts the full range of constitutional avoidance arguments, see *id.* at 23-30, which no prior petition has done. In particular, it shows how, even if one believes that the Suspension Clause protects the right of habeas corpus only as it existed at the Founding, see, *e.g.*, *Edwards* v. *Vannoy*, 141 S. Ct. 1547, 1567-1569, 1573 (2021) (Gorsuch, J., concurring), that clause supports petitioner here, see Pet. 25-30. Since "[a] habeas court could [always] grant relief if the court of conviction lacked jurisdiction over the defendant or his offense," *Edwards*, 141 S. Ct. at 1567, and conviction for a non-existent crime has always fallen outside a court's jurisdiction, see Pet. at 25-30, the original understanding of the Suspension Clause throws denial of safety valve relief here into serious constitutional doubt.

* * * * *

The question presented cries out for review. "The circuits are already split. The rift is unlikely to close on its own," and, "so long as it lasts, the vagaries of the prison lottery will dictate how much post[-]conviction review a prisoner gets." *Wright* v. *Spaulding*, 939 F.3d 695, 710 (6th Cir. 2019) (Thapar, J., concurring). Every regional circuit has now weighed in; there is nothing more to wait for. This Court should grant certiorari and resolve the issue now.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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APRIL 2022

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	**Case No.**
	)	**00-4010-CR-**
	)	**C-SOW**
Plaintiff,	)	
	)	
	)	**Jefferson**
	)	**City,**
	)	**Missouri**
	)	**July 25, 2000**
v.	)	
	)	
MARCUS DEANGELO JONES,	)	
	)	
Defendant.	)	

VOLUME II
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE
SCOTT O. WRIGHT
UNITED STATES DISTRICT JUDGE
and A JURY

APPEARANCES:

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* * *

[II-212]

MARCUS JONES, DEFENDANT, SWORN:

DIRECT EXAMINATION

* * *

[II-216]

BY MR. HENDRICKS:

Q. You went into the pawnshop?

A. Yes, sir.

Q. And did you, at that time, fill out an application to purchase the gun?

A. Well, yeah. I filled it out. Well, I didn't fill it all the way out, but I filled some parts out and then he told

me to leave, he going do a check, and he'll call me and to come back, put down a down payment.

Q. Okay. I'm going to hand you what the state has previously introduced as -- or the Government has introduced as #4 and show you what is a firearms transaction record. Are you familiar with that document?

[II-217]

A. Yes, sir.

Q. And what is that document?

A. This is the form that I was -- filled half -- I filled out some of here.

Q. Okay. What part of the document did you fill out?

A. Practically, I filled out like from 1 through, I think there's I or 5I or, I don't know, 5 -- you know or L.

Q. Okay. Mr. Jones, in this document under 9C it asks if you'd ever been -- well, let me start first. At the time that you filled this out, where were you residing?

A. 229 Sycamore, Fulton, Missouri.

Q. Okay. And also at the time you filled out that document, there's a question there that asks if you'd ever been convicted of a felony in which you served more than a year or had a penalty of more than a year. Were you familiar with that question?

A. Yes, sir.

Q. And did you answer that question when you filled it out?

A. I had wrote a cursive yes, and he -- the pawnshop owner looked at me because he had questioned me before I had picked up the form about felonies. And I told him, well, I had been arrested and been incarcerated in the state of Tennessee. But I pled to some statute were they said I'm not pleading guilty because I'm guilty, but because of the circumstances and the offer that they was offering me.

[II-218]

Q. Is that, I mean, is that -- I know no one's familiar with it, but there is such a plea to where you actually enter a plea without actually saying that you're guilty, is that what you're saying?

A. Yes, sir.

Q. And did you understand anything as far as what you would received as punishment for that?

A. Yes, I mean, I had to do a jail sentence, but the jail sentence that I would have normally get for the crime, the state dropped it or -- well, gave me the lowest that they could possibly give me and told me that in like five years from that day, that it could be possible that my record would be wiped clean.

Q. Okay. Are you, at the time that you filled out that application, did you, were you aware that you had been convicted of a felony?

A. Yeah.

Q. Okay.

A. And I had wrote also in this 9C, it was a cursive yes.

Q. Okay.

A. I did not put this circle there. That's when he was like, well, you been -- I was like, well, you know, he said I'm just going to run it anyway just to see what happened because I was explaining to him how the plea agreement and stuff went and he said, well, if you've been convicted, it's

[II-219]

going to come back when I run it through this nationwide check, it's going to come back that you've been convicted anyway if you've been convicted. So, I was like, all right, and he said, I'll call you and let you know, so.

Q. Okay. What Social Security number did you use?

A. XXX-XX-XXXX.

Q. Okay. And is that the one that you'd used previously when you were under the -- using the name of Lee?

A. Yes, sir.

Q. And were you advised what happened as far as that record check was concerned?

A. Yes, sir.

Q. And what happened? I mean, did they --

A. He called me back on my cellular phone and told me that I'd been approved, that if I want the gun, that I need to come down there because he don't hold it. He wasn't going to hold it until I had all the money, that if I just come and put a down payment, and as of the down payment, I brung him some

items. And I think like $25 cash and a couple of items. And he was like, okay, now you need to go out fill out an application at the Callaway County Sheriff's Department and see if give you a permit.

Q. Okay. Did you fill out an application for the Callaway County Sheriff's Department?

A. I don't think I filled it out, but I was talking to a

[II-220]

woman. I gave the clerk my IDs and was talking to her through a glass.

Q. And did -- you went to the Sheriff's Department and you requested that you be issued a permit.

A. Uh-huh.

Q. And what name did you use on that?

A. Marcus Deangelo Jones.

Q. And did you use the same Social Security number?

A. Yes, sir.

Q. And do you know the result? Were you issued a permit to have a weapon?

A. Yes, sir. Because three days -- they told me to come back in like three days, or just call in three days that they would have the results or whatever back from the permit.

Q. And did you go back in three days?

A. Yeah, I called first to see what was going on.

Q. And were you issued the permit?

A. Yes, he told me to bring $10 and pick up my permit.

Q. And did you do that?

A. Yes, sir.

Q. And did you the possession of the gun?

A. Yes, sir.

Q. You had previously been convicted of crimes, is that correct?

A. Yes, sir.

[II-221]

Q. And those all happened in the state of Tennessee?

A. Yes, sir.

Q. And those were several years ago?

A. Yeah, like in '95.

Q. Okay. And at least, it was your understanding that once you'd finish your probation, that that was it?

A. Yeah. Well, once I finished the time that they sentenced me to, that like so many years afterwards, the day I was convicted that it would be, you know, probably can be expunged from my record.

Q. Okay. And did you do anything to expunge your record?

A. Well, when I moved up here, I didn't -- I never just checked to see nothing about it, because I thought it would be automatically done. I didn't never know that I had to go file some papers or get an attorney to go into court and speak with a judge, and I thought it would be automatically done because -- through the agreement.

Q. Mr. Jones, I've asked you some questions, and of course, you've sat through these proceedings for the last day or so. Is there anything else that you feel that's important to your case that you want to tell the jury?

MR. GONZALEZ: Judge, I'm going to object. He's got an attorney. The attorney can ask him questions. I mean, he can't just sit up there an give a story, an endless story.

[II-222]

THE COURT: Well, overruled. I'll let him tell it.

THE WITNESS: Well, first, when I went in to fill out this application, the store owner, he never, he looked at the -- I think it's 9C. And that right there he just overlooked and like well, if you've been convicted of it, it's still on your record, the machine, the computer will pick it up. And the second question he asked me was about my Social Security number. And he only asked me about one number on there because he had my ID in front of me, you know. He was like, well, is this a 9 or a 4. He said that's the only -- he was like, well, apparently the way he said it that was the only number that he just looked at when he had my ID in his hand, because, you know, he read off my ID. And I was like, that's a 4. And he was like okay. And he marked a 4 up over the 4, up over whatever he thought was a 9 rather. And he took my IDs and did the same thing on that and he asked me did I have any more IDs and I gave him my Social Security card.

* * *

[II-256]

[THE COURT:] Instruction No. 12. The crime of being a felon in possession of a firearm * * * has three essential elements, which are, one, the defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year. Two, the defendant, therefore, knowingly possessed a firearm, that is a Makarov .9mm pistol. And three, the firearm was transported across state line [sic] at some time prior to the defendant's possession of it.

* * *

[II-258]

The alleged false or fictitious and material statements made are one, the defendant was not convicted of a felony; and two, defendant's name. You may find defendant guilty if you unanimously agree– if you unanimously find both of the statements false and material. You may also find the defendant guilty if you find that only one statement is false and material. But in that case, you must unanimously agree which statement is false and material.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 00-04010-01-CR-C-SOW
	)	
	)	
	)	
MARCUS DEANGELO JONES,	)	
a/k/a "Marcus Deangelo Lee"	)	
	)	
Defendant.	)	

VERDICT FORM

COUNT ONE

We the jury in the above-styled case find the defendant **MARCUS DEANGELO JONES**

Guilty

(Guilty/Not Guilty)

of the offense of felon in possession of a firearm, as charged in Count 1 of the Indictment.

COUNT TWO

We the jury in the above-styled case find the defendant **MARCUS DEANGELO JONES**

Guilty

(Guilty/Not Guilty)

of the offense of making a false statement in the aquisition [sic] of a firearm, as charged in Count 2 of the Indictment.

COUNT THREE

We the jury in the above-styled case find the defendant **MARCUS DEANGELO JONES**

Guilty

(Guilty/Not Guilty)

of the offense of felon in possession of a firearm, as charged in Count 3 of the Indictment.

7-25-2000
Date

/s/ Robert Schwaller
FOREPERSON OF THE JURY

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JUL 29 2019
JAMES W. McCORMACK, CLERK
BY: /s/ DEP CLERK

UNITED STATES DISTRICT COURT
for the
DISTRICT OF ARKANSAS

MARCUS DEANGELO JONES *Petitioner*	)	
v.	)	Case No. 2:19-cv-00096-KGB-JTR *(Supplied by Clerk of Court)*
DEWAYNE HENDRIX, (Warden) *Respondent* *(name of warden or authorized person having custody of petitioner)*	)	

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

* * *

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

(1) Name of court: U.S. District Court Western District of Missouri

(2) Case number: 02-0775 and 07-4142

(3) Date of filing: in 2000 and in 2007

(4) Result: Denied and later reversed on Appeal, and denied

(5) Date of result: 1/29/ 2003 and then 1/31/2008

(6) Issues raised: Multiple Claims of ineffective Assistance of Counsel and sufficiency of proof

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

Not related to the issue presented in this petition

* * *

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

(1) §2255 is inadequate or ineffective to allow me to assert my innocence of the crime I am illegally held in custody, where I did not violate and act of Congress in light of Rahaif v. United States, No. 17-9560 Supreme Court Decided June 21, 2019, a new interpretation of Statutory law. See, Rahaif, Slip Opinion at pages 3-7;

(2). The Supreme Courts Decision in Rahaif v. United States, for which my claim is based, is not a Constitutional case, but clearly a Statutory

(Continue on Attached page 1)

* * *

ATTACHED PAGE 1

CONTINUATION OF PAGE 6 PARAGRAPH 10(c) OF APPLICATION

INTERPRETATION so I cannot invoke it by means of a Second or Successive 2255 motion, Because the Second or Successive review is limited to New Rules of Constitutional Law. I am not relying on a new rule of Constitutional law. The Rehaif decision was not issued until June 21, 2019, well over 10 years after the filing of my first 2255 motion, so I could not have invoked it in the first 2255 or on my Direct Appeal, which was decided in 2001. I was never afforded a meaningful forum of review to incorporate the new interpretation of the Statutory law, explaining Congress intent and what the Statute meant when it was enacted. I will be denied a opportunity to be heard if not considered because of an inadequacy in 2255;

(3). The Decision of the United States Supreme Court on a matter of Statutory interpretation as announced in Rehaif, interpreting Congresses intent in writing the criminal statute, and altering the range of conduct or class of person that the law punishes. is retroactive. I was charged with in an indictment and convicted for a non existant [sic] crime. My conviction and punishment were for an act that the law did not punish or make criminal. The Decision by the Supreme Court interpreting an act of congress applies retroactively; AND

(4). I am factually innocent of the offense of conviction in light of a New statutory Interpretation by the United States Supreme Court, inaddition [sic] to new facts not previously available or considered by the petit Jury or the Court in a merits determination, for which the indictment in this case ommitted [sic] a material element of the offense, which deprived my of notice of the crime charged, and as such in light of the Supreme Court ruling and evidence, the jury on the record convicted me of innocent possession of a firearm. It is more likely than not that no reasonable juror would haver [sic] convicted my for "knowingly" being a felon in possession of a firarm [sic], in light of the Statutory interpretation and facts presented herein.

Ergo, I pray that the Court would find that the remedy under 2255 is inadequate or ineffective in this case.

* * *

Grounds for Your Challenge in This Petition

13. **State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.**

GROUND ONE: I AM IN CUSTODY IN VIOLATION OF THE LAWS AND CONSTITUTION BASED ON A INDICTMENT WHICH FAILS TO CHARGE A MATERIAL ELEMENT OF A FEDERAL OFFENSE. I AM FACTUALLY INNOCENT OF THE OFFENSE OF CONVICTION FOR BEING A FELON IN POSSESSION OF A FIREARM IN LIGHT OF A NEW STATUTORY INTERPRETATION BY THE SUPREME COURT AN NEW FACTS, WHICH MAKES MY CONTINUED INCARCERATION FOR A NON-EXISTANT [sic] OFFENSE.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

In Counts One and Three of the indictment charged me with being a felon in possession of a firearm. The elements set forth in the indictment fail to allege or put me or the Court on notice, "expressly" or through words or import that I acted "knowingly" in either possessing a firearm, or that I "knew" I belonged to the category of person barred from possessing a firearm.

(CONTINUE [sic] OF ATTACHED PAGES 2-3)

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes x☒ No

ATTACHED PAGE 2

CONTINUATION OF PARAGRAPH 13(a) GROUND ONE FACTS

Declaration of M. Jones Para. 2, Exhibit #A).

The indictment fail to allege elements of the scienter that are required or contained in the statute that describes the offense. The citation of the statute did not provide me with notice and did not ensure that the grand jury considered and found all the elements of the offense.

I did not have knowledge of my status as a convicted felon that prohibited the possession of the firearm was illegal. I was not informed that I could not do so by a state Judge who entered the judgment, I believed that my record was automatically expunged upon the completion of the sentence and probation. Further based on the information provided to my by the Cheif [sic] Law Enforcement Officer, Callaway County sheriff, and the Liscenced [sic] Dealer, with other evidence demonstrating that I lacked knowledge or that I lacked the necessary intent or State of mind required to violate the Law. This Evidence Consist of:

1. I di dnot [sic] change my name. My Name is marcus DeAngelo Jones and not Marcus DeAngelo Lee, pursuant to an order issued by the Memphis and Shelby County Juvenile Court in 1978. See (Declaration of M. Jones, para. 8, Exhibit #D pgs. 1-3, State Court Order and Letters from the Tennessee Vital Records); Also See (Decl. Of M. Jones Para. 6-9)

2. I did not know of the existance [sic] of the prior convictions until my arrest in December of 1999, when the Arresting Officers informed my that I had prior conviction, which made my possession of the Firearm illegal. (See (Decl. Of M. Jones, para. 10).

3. I did not complete or sign the Firearms Application until both the Firearms Dealer and the Sheriff of Callaway County, conducted the Criminal background Checks, and informed me whether I had prior convictions or whether I could possess a firearm. Because I believed that my record was expunged. (Dec. of M. Jones para. 11, Exhibit #E pgs. 1-6, Trial Testimony Excerpt).

4. I was never informed by a State Judge that My State Guilty plea would prohibit me from possessing a firearm. (Decl. Of M. Jones Para. 19, Exhibit #F, excerpt of guilty plea Transcript)

5. I never concealed the firearm, but in good faith notified Law enforcement, that I was in possession of the Firearm. Because, I believed that my possession of the firearm was legal, lawful and did not violate any laws. (Decl. of M. Jones, Para. 4-5, Exhibit B pgs. 1-7, Tesimony [sic] of Officer M. Buckner of the Columbia Police Department)

6. The Pawnshop Owner Larry O'Neal, testified that he sold me the firearm after he and the sheriff conducted a Criminal background Check and alleged that I passed the Background Check that was done on my True Social security Number XXX-XX-XXXX. as reflected iin [sic] his Testimony and verified by my identification as provided to the Agencies. See (Decl. of

ATTACHED PAGE 3

CONTINUATION OF FACT ON GROUND ONE

M. Jones, Para. 15, Exhibit #B pgs. 8-17, at pgs. 11-12, Excerpt of Larry O'Neal, Firearms Dealer; and Exhibit #C pg. 1)

7. I discovered, that I was mislead [sic] and lied to by the Pawshop [sic] Owner and Callaway County Sherif [sic], who conducted the background checks, at the tim eof [sic] my arrest. (Decl. of M. Jones para. 15-16)

8. The evidence that was obtained after my trial through the Freedom of Information Act, shows, that the Criminal Background Checks were done under my true name: Marcus DeAngelo Jones, and my True Social security number XXX-XX-XXXX, and It informed the Pawnshop dealer and the Callaway County Sheriff of other names used and of prior convictions. See (Decl. of M. Jones, para. 15, Exhibit #C pgs. 2-13, Criminal background Checks)

9. These Reports and my actions affirmed my Trial Testimony and belief that I did not knowingly possess a firearm with knowledge of my status.

10. Based on the evidence and the actions of the Sheriff and other persons involved, negates the "Knowing" requirement to establish a material element of the offense. I possessed a sincere belief that my prior record had been expunged, no longer existed and that I sould [sic] lawfully possess a firearm in any event. (Decl. of M. Jones para. 4-18)

11. The Trial Courts instruction to the petit jury on the Felon in Possession Count(s) only required the

Government to prove the existence of a prior conviction and "NOT that I knew I belong to the relevant category of persons barred from possessing a firearm. See (Decl. Of M. Jones, para. 3, Exhibit #E pgs. 7-8, Excerpt of Jury Instructions by Court)

12. In light of the facts and evidence I am convicted for the innocent possession of a firearm as charged. My Continued incarceration on the 327 month sentence for the innocent possession of a firearm a non-existant [sic] offense in light of the Subsequent Statutory interpretation, new facts, show that my custody violates the laws and the Constitution that if uncorrected would result in a miscarriage of justice.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
ARKANSAS

MARCUS DEANGELO JONES, A/k/A
MARCUS DEANGELO LEE,

Petitioner,

vs. Case No. 2:19-cv-
00096-KGB-JTR

DEWAYNE HENDRIX, Warden,

Respondent.

AFFIDAVIT OR DECLARATION OF
MARCUS DEANGELO JONES

I Marcus Deangelo Jones a/k/a Marcus Deangelo Lee, do hereby depsoe [sic], declare and State the following:

1. I am the Petitioner in this Case. I am over the age of 18 years of age. I have been in the Custody of the Federal Bureau of Prisons since 2001. I am fully

competent and have personal knowledge of the facts in this Affidavit/Declaration.

2. I am currently serving a 330 month aggregated sentence to be followed by 5 years of Supervised release. The larger and relevant sentence is a 327 month sentence for being a felon in possession of a firearm in violation of 18 U.S.C. §922(g); 924(e); and making a false Statement in Connection with the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6) and 924(a). See (Exhibit #A pg.s 1-3, Indictment)

3. I plead not guilty to the charges and proceeded to trial. I was not put on notice by the indictment or the Court that the Government was required to prove that I "knowingly" violated the statute concerning my status and the Court did not require the Government to prove a "Knowing" violation of the law in giving the jury instructions. See (Exhibit #E pgs. 7-8, Jury Instruction except [sic] of the Trial Transcript).

4. Whenever I was stopped by the Police and was in possession of the Firearm. I notified the Police of my Possession. Because I did not believe that my possession of the firearm violated any laws. See (Exhibit #B pgs.1-7. Trial Transcript Excerpt of Testimony of Officer M. Buckner).

5. On 8-16-99, I was stopped by Police Officer Buckner and other Officers of the Columbia Police Department. I did not coceal [sic] the firearm, because I thought my actions were legal. Again on 10/9/99, I informed the Officer of my possession of the firearm, during an act of self-defense.

6. I never changed my name with the intent to deceive anyone. My name change was out of my control.

7. In 1978, the State Juvenil [sic] Court ordered my name to be changed from Marcus DeAngelo Lee to "Marcus Deangelo Jones". (Exhibit #D pg. 3).

8. The Tennessee Department of Health Vital Record Division did not issue a New birth Certificate or Execute the name change until 1999. See (Exhibit #D pgs. 1-2)

9. I had no control over my name change that was ordered in 1978. I had no knowledge of that order. I was only 3 years old at that time.

10. I had no knowledge of the existence of my prior conviction until I was informed that they existed at the time of my arrest at my place of employment by Officer Ben White of the Clombia [sic] Police Department.

11. When I went to inquire about the purchase of the Firearm, I informed the Pawnshop Owner that, my prior conviction were suppose to have been expunged when we discussed a question on the firearms application in which I wrote a yes on the firarms [sic] form. I was then told, not to complete the form, and go through the background check, and if the prior convictions were expunged the background check would not show the conviction and I could purchase the weapon, but If the prior convictions exist that I could not purchase the weapon. See (Exhibit #E pgs. 3-6)

12. I provided the Pawnshop Owner and the Sheriff's Office a copy of My State Identification containing my Social Security number.

13. Both the Pawnshop Owner and Sheriff's Department conducted background checks and informed me that I could legally and lawfully possess a firearm.

14. The Pawshop [sic] Owner and sheriff informed me that I was no longer a convicted felon, and I believed the Law Enforcement Officer.

15. I was mislead [sic] by the Sheriff of the Callaway County, Missouri Sheriff's Department. I did not obtain a copy of the Criminal Background checks until the years of 2005 and 2003 from the Freedom of Information Acts.

16. The records reflects that The pawnshop Owner and sheriff conducted the Criminal Background checks with my Social securty [sic] Number and it reveiled [sic] that I have a prior criminal record. (Exhibit #C pgs.1-13).

17. I relied on the affirmation of the Callaway County Sheriff, the Chief Law Enforcement Officer of the County in which I lived, responsible for enforcing the law. If I sould [sic] not believe the Police/Sheriff who could I believe.

18. If the Sheriff told me that I could not possess a firearm. I would not have possessed that firearm.

19. Even in considering my case from hindsight, the State Court Judge, Prosecutor, of Lawyer never informed my that by pleading guilty to the State charged in 1995, that those convictions would prohibit

me from possessing a firearm. I had no knowledge that a conviction for non-violent crimes prohibited the possession of a firearm.

I declare under the penalty of perjury pursant [sic] to 28 U.S.C. 1746, that the above statements are true and correct.

Executed on this 26 day of July, at Forrest City, Arkansas.

/s/ Marcus DeAngelo Jones
Signature of Affiant
Marcus DeAngelo Jones