

SCOTUS Opinion: Government Must Prove Immigrant Had Knowledge Of Unlawful Residence For Gun Possession Conviction

21 Jun 2019

Under [18 U.S.C. sec. 922\(a\)\(2\)](#), it is illegal for an immigrant “illegally or unlawfully in the United States” to possess firearms and “knowingly violates” that prohibition. In [Rehaif v. United States](#), an immigrant entered the country on a nonimmigration student visa, but was dismissed for poor grades, making his further residence unlawful. He then went to a firing range to shoot two firearms. At trial, the jury was instructed that the government did not have to prove that the immigrant knew he was unlawfully in the country—only that he knew he possessed a firearm. The immigrant was convicted, and the Eleventh Circuit affirmed. The Court, in a 7-2 decision by Justice Breyer, reversed, holding that the prosecution had to prove both that the immigrant knew he was in the country unlawfully and that he possessed a firearm in order to be guilty under the statute. The majority noted the longtime requirement of scienter to show “a vicious will” that separated wrongful acts from innocent acts, and that an immigrant who is unaware of his or her legal status does not reflect the necessary criminal scienter necessary for conviction. Justice Alito, joined by Justice Thomas, dissented, accusing the majority of “casually overturn[ing] the long-established interpretation” of the statute, which all the lower courts had consistently applied, and warned that the effect of the decision would be “far reaching” and deleterious. A link to the opinion is [here](#).

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TAGGED: scotus, SCOTUS opinion, 18 U.S.C. sec. 922, knowingly violates, Rehaif v. United States, scienter