

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

No. 17-30298

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

BRET BROUSSARD,

Defendant - Appellant

---

Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 6:16-CR-36

---

ON PETITION FOR REHEARING EN BANC

Before REAVLEY, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:

Bret Broussard filed a Petition for Rehearing En Banc. He argued that the panel erred in holding that his guilty plea waived his later discovered argument that his conviction was void *ab initio* under the Federal Vacancies Reform Act. After his petition was filed, the Supreme Court restated its earlier holdings that a guilty plea does not bar a defendant from appealing the constitutionality of the statute of conviction. *See Class v. United States*, 138 S.Ct. 798, 803 (2018). We requested supplemental letter briefing from the

No. 17-30298

parties concerning the effect of *Class* on Broussard's argument that his conviction was void based on the Vacancies Act.

We conclude that *Class* has no effect on the panel holding that Broussard waived his Vacancies Act argument when he pled guilty to violating 18 U.S.C. § 242. Broussard's counsel acknowledges that *Class* is "not directly on point," which was a proper admission. Unlike *Class*, who argued the Constitution prohibited criminalizing the conduct for which he had pled guilty, Broussard does not challenge the constitutionality of Section 242. He argues instead that the statutory authority of the specific governmental official authorizing his prosecution did not exist because of the operation of the Vacancies Act. That argument, which seeks to extract from a statute based on the Appointments Clause a constitutional defect to his conviction, is instead an argument that the specific terms of a statute were not followed. Such an argument is not one preserved by the doctrine discussed most recently in *Class*.

No member of the panel nor judge in regular active service of the court having requested that the court be polled on rehearing, the Petition for Rehearing En Banc is DENIED. We recast that Petition as one for panel rehearing. The Petition as so cast is DENIED.