

IN THE
Supreme Court of the United States

ODELL LAMECHE OVERBY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

SUPPLEMENTAL BRIEF

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QUESTION PRESENTED

Where, in light of this Court's intervening decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), Petitioner was never informed of the essential elements of the crime to which he pled guilty, whether the plea is knowing and voluntary.

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SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8 of this Court, Petitioner Odell Lameche Overby hereby submits this Supplemental Brief in light of this Court's intervening decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019). There, this Court held that to convict a defendant under 18 U.S.C. § 922(g), the government "must show that the defendant knew he possessed a firearm *and also* that he knew he had the relevant status when he possessed it." *Id.* at 2194 (emphasis added). *Rehaif* overturned well-established precedent in the Fourth Circuit holding that the government need *not* prove knowledge of prohibited status to secure a § 922(g) conviction. *United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995). *Rehaif* did not issue until June 21, 2019, after Petitioner had already filed his petition for writ of certiorari. Thus, Petitioner's present claim under *Rehaif* was not available to him at the time of his original filing.

SUPPLEMENTAL STATEMENT OF THE CASE

Petitioner pled guilty on May 16, 2018 in the Eastern District of North Carolina to one count of being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). Joint Appendix 11. The indictment against Petitioner fails to allege, however, that at the time he possessed the firearm, Petitioner knew that he had been convicted of a crime punishable by more than one year. *Id.* at 8. Likewise, at his Rule 11 hearing, Petitioner was never informed that the government would have to prove his knowledge of the prohibited status. And the government proffered no factual basis showing Petitioner's knowledge of his prohibited status to support the plea. Joint Appendix at 11-33.

SUPPLEMENTAL ARGUMENT

Rehaif's clarification of § 922(g)'s scienter requirement applies to Petitioner's case. “[W]hen this Court construes a statute, it is explaining its understanding of what the statute has meant continuously since the date when it became law.” *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 313 n.12 (1994). “Thus, it is not accurate to say that the Court’s decision in [Rehaif] ‘changed’ the law. . . . Rather, given the structure of our judicial system, the [Rehaif] opinion finally decided what [18 U.S.C. § 922(g)] had *always* meant and explained why the Courts of Appeals had misinterpreted the will of the enacting Congress.” *Id.* (emphasis in original). Thus, at the time of Petitioner’s Rule 11 hearing, knowledge of his prohibited status was one the essential elements of the § 922(g)(1) offense to which he pled guilty. But

because no one understood § 922(g)(1) to require knowledge of the prohibited status, this essential mens rea element was never addressed.

A guilty plea is “constitutionally valid only to the extent it is ‘voluntary’ and ‘intelligent.’” *Bousley v. United States*, 523 U.S. 614, 618 (1998) (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)). A district court violates due process when it accepts a guilty plea “without an affirmative showing that it was intelligent and voluntary.” *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). This Court has identified two ways that a defendant’s guilty plea may be involuntary in a constitutional sense:

A plea may involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving, or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilty. Without adequate notice of the nature of the charge against him, or proof that he in fact understood the charge, the plea cannot be voluntary in this latter sense.

Henderson v. Morgan, 426 U.S. 637, 645 n.13 (1976). Thus, it is well-established that a plea is not voluntary and intelligent “unless a criminal defendant first receives ‘real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.’” *Bousley*, 523 U.S. at 618 (quoting *Smith v. O’Grady*, 312 U.S. 329, 334 (1941)). When the record shows that “neither [the defendant], nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged,” the plea is constitutionally invalid. *Id.* at 618-19. That is precisely what happened here.

At the time of the Rule 11 hearing, no one—neither Petitioner, nor his counsel, nor the government, nor the district court—understood § 922(g) to require that Petitioner “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif*, 139 S. Ct. at 2199. The indictment charging Petitioner with violating § 922(g)(1) does not allege that he knew he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year and thus understood that he could not possess a firearm. Likewise, the factual basis entered in this case and accepted by the district court does not show that Petitioner knew his prohibited status. And Petitioner was not advised at the plea hearing that the government was required to prove that he knew his prohibited status. As a result, Petitioner’s plea is constitutionally invalid because he did not receive “notice of the true nature of the charge.” *Bousley*, 523 U.S. at 618-619.

Because Petitioner was never informed of the essential elements of the crime to which he pled guilty, the plea is not voluntary and intelligent and thus violates due process. *Boykin*, 395 U.S. at 243. The plea likewise violates Rule 11 of the Federal Rules of Criminal Procedure because there is no factual basis to support the plea. The district court thus erred in accepting the guilty plea. Such fundamental constitutional error is structural and also seriously affects the fairness, integrity, and public reputation of the judicial proceedings. This Court should therefore grant the petition for writ of certiorari and remand this case to the Fourth Circuit, for further remand to the district court to vacate Petitioner’s plea and allow him to

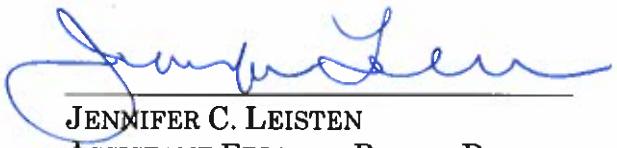
plead anew. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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