

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

MAURICE MONTRAE PARKS,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Whether a new trial is warranted where the District Court failed to instruct the jury that, in order to convict a person under 18 U.S.C. § 922(g), it must find that the Government proved beyond a reasonable doubt that he knew he possessed a firearm and “knew he had the relevant status when he possessed it.” *Rehaif v. United States*, 139 S. Ct. 2191 (June 21, 2019).

## LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit, No. 18-4369, *United States v. Parks* (April 24, 2019)

United States District Court for the Eastern District of North Carolina, No. 5:17-CR-190-1BR, *United States v. Parks* (May 27, 2018)

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Petitioner Maurice Montrae Parks respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

**OPINIONS BELOW**

The Fourth Circuit's opinion is unreported, but is available at 767 F. App'x 509 (4th Cir. 2019). Pet. App. 1a-3a. The District Court's judgment is available at Pet. App. 4a-11a.

**JURISDICTION**

The Fourth Circuit issued its opinion on April 24, 2019. Pet. App.1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the United States Constitution provides, in relevant part:

No person shall . . . be deprived of life, liberty, or property, without due process of law.

18 U.S.C. § 922(g) provides, in relevant part:

It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924(a)(2) provides:

Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

## INTRODUCTION

In June 2017, Maurice Parks was charged with possessing a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year. He went to trial and the jury was instructed, consistent with Circuit precedent, that the Government would need to prove only three things beyond a reasonable doubt to secure a guilty verdict: (1) that Mr. Parks has previously been convicted of a crime punishable by a term of imprisonment exceeding one year; (2) that, thereafter, he knowingly possessed a firearm; and (3) that his possession of the firearm was in or affecting commerce. The jury was never instructed that the Government had to prove that Mr. Parks knew he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year. Mr. Parks was convicted and sentenced to ninety months of imprisonment, to be followed by three years of supervised release.

After the Fourth Circuit affirmed that judgment, this Court decided *Rehaif v. United States*, which reversed longstanding Fourth Circuit precedent and confirmed that the jury in Mr. Parks's case was wrongly instructed.

This Court should grant the petition, vacate the Fourth Circuit's decision, and remand for further proceedings.

### STATEMENT

On September 5, 2015, Maurice Parks was serving a term of federal supervised release in the Eastern District of North Carolina stemming from a 2010 conviction. CAJA465. On that date, he was arrested and charged in state court with, among other things, being a felon in possession of a firearm. *United States v. Parks*, No. 5:10-CR-127-1BR, DE 58 (E.D.N.C. Sept. 10, 2015); CAJA466. Three days later, the United States Probation Office cited that conduct in a motion to revoke Mr. Parks's supervised release. *Id.* The District Court granted the motion and sentenced Mr. Parks to twenty-four months of imprisonment. *United States v. Parks*, No. 5:10-CR-127-1BR, DE 74 (E.D.N.C. Aug. 3, 2016).

In June 2017, that same conduct formed the basis of a federal indictment: For possession of the same gun, on the same day, Mr. Parks was charged with knowingly possessing a firearm after having been convicted of a crime punishable by a term of imprisonment exceeding one year, in violation of 18 U.S.C. §§ 922(g) and 924. Pet. App. 17a-19a.

Mr. Parks moved to dismiss that indictment as violating the Double Jeopardy Clause of the Fifth Amendment in light of his prior supervised-release revocation,

but the District Court denied that motion, citing *Johnson v. United States*, 529 U.S. 694 (2000), and *United States v. Woodrup*, 86 F.3d 359 (4th Cir. 1996).

At trial, Mr. Parks and the Government stipulated that “prior to September 5, 2015 Maurice Montrae Parks, the defendant sitting before you today, had previously been convicted of a felony that is punishable by imprisonment for a term exceeding one year. His right to possess a firearm had not been restored. The jury must accept as proven that Maurice Montrae Parks is a felon.” Pet. App. 15a. The jury was instructed as follows:

In order to sustain its burden of proof for this offense, the government must prove the following three essential elements beyond a reasonable doubt: First, that the defendant has previously been convicted of a crime in a court which was punishable by a term of imprisonment exceeding one year; second, that, thereafter, the defendant knowingly possessed a firearm; and, third, that his possession of the firearm was in or affecting commerce.

Pet. App. 12a; *see also* Pet. App. 14a. The jury convicted Mr. Parks. CAJA20. The District Court sentenced Mr. Parks to ninety months of imprisonment, to be followed by three years of supervised release. Pet. App. 4a-11a.

On appeal, the Fourth Circuit held that Mr. Parks’s double-jeopardy argument was foreclosed by its decision in *United States v. Woodrup*. Pet. App. 2a (quoting 86 F.3d 359, 361 (4th Cir. 1996)). It held that “[b]ecause the punishment imposed on a defendant for violating his supervised release terms is considered punishment for his original offense, not for his subsequent offense, ‘the punishment imposed for this later offense is not barred by the Double Jeopardy Clause.’” *Id.* (quoting *Woodrup*, 86 F.3d at 362).

After the Fourth Circuit issued its decision, this Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (June 21, 2019). In *Rehaif*, the Court explained that “the word ‘knowingly’ [in 18 U.S.C. § 924(a)(2)] applies both to the defendant’s conduct and to the defendant’s status.” 139 S. Ct. at 2194. In other words, “[t]o convict a defendant, 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.* Because Rehaif had been convicted of violating 18 U.S.C. § 922(g) by a jury who was instructed that the “United States is not required to prove” that Rehaif “knew that he was illegally or unlawfully in the United States,” the Court reversed the judgment of the court of appeals and remanded the case for further proceedings consistent with its opinion. *Id.* at 2194, 2200.

This petition followed.

#### **REASONS FOR GRANTING THE PETITION**

##### **THE JURY WAS NOT PROPERLY INSTRUCTED ON A CRUCIAL ELEMENT OF 18 U.S.C. § 922(g) AND MR. PARKS’S CONVICTION IS CONSTITUTIONALLY INVALID**

The indictment charging Mr. Parks with violating section 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. Pet. App. 17a-19a. The stipulation entered into by the parties does not include an admission that Mr. Parks knew he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year. Pet. App. 15a-16a. And the jury was not instructed that the

Government had to prove that knowledge beyond a reasonable doubt. Pet. App. 12a-14a.

That was so because, at the time of Mr. Parks's trial, longstanding precedent of the Fourth Circuit held that a conviction for violating 18 U.S.C. § 922(g) required the Government to prove only that a person knowingly possessed a firearm, even if he did not know he qualified as a person prohibited from possessing a firearm.

*United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995). *Rehaif* reversed that longstanding precedent, holding that the Government must prove "both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." 139 S. Ct. 2191, 2200. The Court explained that, "[w]ithout knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful. His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach." *Id.* at 2197.

"When the Supreme 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 Express, Inc.*, 511 U.S. 298, 313 n.12 (1994) (cleaned up). *Rehaif* thus "finally decided what [§ 922(g)] had *always* meant and explained why the Courts of Appeals had misinterpreted the will of the enacting Congress." *Rivers*, 511 U.S. at 313 n.12; *see also id.* at 312-313 ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."). In other words, section 922(g)

has always required that the Government charge and prove as an element that the defendant “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif*, 139 S. Ct. at 2200.

Although Mr. Parks did not previously raise this argument in light of then-binding case law, the error is plain and requires correction. Federal Rule of Appellate Procedure 52(b) provides that “[a] plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.”

Here, the error is plain at the time of appellate review, as *Rehaif* was decided on June 21, 2019. *See Henderson v. United States*, 568 U.S. 266, 271, 279 (2013). By failing to instruct the jury that the Government must prove and the jury must find beyond a reasonable doubt that Mr. Parks knew he had been convicted of a crime punishable by more than a year of imprisonment, the District plainly erred in contravening *Rehaif*, which explains what section 922(g) always required.

This error also affected Mr. Parks’s substantial rights. Due process requires that a person may not be convicted except upon proof beyond a reasonable doubt. U.S. Const. amend. V; *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979). And proof beyond a reasonable doubt of a defendant’s knowledge of the status that renders firearm possession unlawful is the “‘crucial element’ separating innocent from wrongful conduct.” *Rehaif*, 139 S. Ct. at 2197 (quoting *United States v. X-Citement Video*, 513 U.S. 64, 73 (1994)). “‘It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate(s) due process.’” *Vachon v. New Hampshire*, 414 U.S.

478, 480 (1974) (per curiam) (quoting *Harris v. United States*, 404 U.S. 1232, 1233 (1971) (Douglas, J., in chambers)).

Finally, the error “seriously affects the fairness, integrity or public reputation of judicial proceedings.” *United States v. Olano*, 507 U.S. 725, 732 (1993). As noted above, the conviction below does not rest upon proof beyond a reasonable doubt of the “crucial element” that separates innocent conduct from wrongful conduct. Allowing such a conviction to stand would unquestionably impugn the fairness, integrity or public reputation of judicial proceedings: “To uphold a conviction on a charge that was neither alleged in an indictment nor presented to a jury at trial offends the most basic notions of due process.” *Dunn v. United States*, 442 U.S. 100, 106 (1979)

In dissent in *Rehaif*, Justice Alito recognized that prisoners serving sentences for violating 18 U.S.C. § 922(g) “for whom direct review has not ended will likely be entitled to a new trial.” *Rehaif*, 139 S. Ct. at 2213 (Alito, J., dissenting). Indeed, this Court recently granted the petition, vacated the judgment below, and remanded in a case where the petitioner had not raised a *Rehaif* claim prior to a letter filed the day the case was decided. *See Hall v. United States*, \_\_ S. Ct. \_\_, 2019 WL 2649770 (June 28, 2019).

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, the judgment below reversed, and the matter remanded for further proceedings.

Respectfully submitted,

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