No. ____

IN THE

Supreme Court of the United States

CHRISTOPHER STACY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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JULY 29TH, 2019

QUESTION PRESENTED

Whether the Court should grant certiorari, vacate the judgment below, and remand for reconsideration in light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019).

PARTIES TO THE PROCEEDINGS

The caption contains the names of all of the parties to the proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review a judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's opinion is reprinted at __ F. App'x __, 2019 WL 2024698 and is reproduced as Appendix ("App.") A. App. 1a–9a. The district court did not issue a written opinion.

JURISDICTION

The Eleventh Circuit issued its decision on May 8, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 922(g)(1) of Title 18 of the U.S. Code provides that "[i]t shall be unlawful for any person . . . who has been convicted" of a felony to possess a firearm. Section 924(a)(2) provides that "[w]hoever knowingly violates subsection . . . (g) . . . of section 922 shall be . . . imprisoned not more than 10 years."

STATEMENT

A grand jury in the Southern District of Florida returned an indictment charging Petitioner with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1), and an offense that was subsequently dismissed. The § 922(g) count alleged that Petitioner, "having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in

violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1)." App. 10a. Notably, the indicted alleged only that Petitioner knowingly possessed a firearm and ammunition; it did not allege that he knew of his status as a felon.

Consistent with the indictment, the court advised Petitioner at the plea colloquy that this count "charges you with being in possession of a firearm and ammunition after having previously been convicted of a felony." App. 17a–18a. The government also proffered facts that it would have proved at trial, which showed that Petitioner knowingly possessed a firearm and ammunition, and that Petitioner "was a convicted felon" at that time. App. 22a–24a. It did not proffer any facts showing that Petitioner knew he was a felon at the time. *See id.*

At sentencing, Petitioner was subject to the Armed Career Criminal Act ("ACCA"), which transformed his 10-year statutory maximum penalty into a 15-year mandatory minimum penalty, which he ultimately received. App. 26a–27a. Petitioner challenged the ACCA enhancement at sentencing and in the court of appeals, but binding circuit precedent foreclosed his arguments. *See* App. 1a–9a.

Less than two months after the court affirmed Petitioner's sentence, this Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which held that, to prove a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), 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 2191. Because this case is still on direct appeal, Petitioner now seeks the benefit of that intervening decision, which overruled circuit precedent. *See Griffith v. Kentucky*, 479 U.S. 314, 328 (1987).

REASONS FOR GRANTING THE PETITION

1. Under 18 U.S.C. § 922(g), nine categories of persons—felons being the first—are prohibited from possessing a firearm or ammunition by virtue of their status. But while § 922(g) prohibits felons (and eight other categories of persons) from possessing a firearm or ammunition, that provision does not actually criminalize such conduct. Rather, that work is done by 18 U.S.C. § 924(a)(2), which provides that whoever "knowingly violates" § 922(g) "shall be fined as provided in this title, imprisoned not more than 10 years, or both." *Rehaif* has now made clear that a valid prosecution depends on *both* § 922(g) and § 924(a)(2).

In *Rehaif*, this Court addressed "whether, in prosecutions under § 922(g) and § 924(a)(2), the Government must prove that a defendant knows of his status as a person barred from possessing a firearm." 139 S. Ct. at 2195. By a vote of 7–2, the Court answered affirmatively, "hold[ing] that the word 'knowingly' [in § 924(a)(2)] applies to both the defendant's conduct and to the defendant's status. To convict a defendant, the Government therefore 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; *see id.* at 2200 (repeating that holding).

The Court relied on the "longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct." *Id.* at 2195 (citation omitted). Rather than "find [any] convincing reason to depart from the ordinary presumption in favor of scienter," the Court found that the statutory text "support[ed] the presumption." *Id.* The Court emphasized that

"[t]he term 'knowingly' in § 924(a)(2) modifies the verb 'violates' and its direct object, which in this case is § 922(g)." *Id*. And the Court saw "no basis to interpret 'knowingly' as applying to the second § 922(g) element [on possession] but not the first [on status]. To the contrary, we think that by specifying that a defendant may be convicted only if he 'knowingly violates' § 922(g), Congress intended to require the Government to establish that the defendant knew he violated the material elements of § 922(g)." *Id*. at 2196.

2. In light of *Rehaif*, the indictment in this case was fatally flawed. It alleged that Petitioner, "having previously been convicted" of a felony, "did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Section 922(g)(1)." App. 10a. Those allegations do not state a federal offense.

While grand jury alleged that Petitioner was in fact felon, it did not allege he *knew* he was a felon. *Rehaif* held that such knowledge is an essential element of the offense. Here, the only *mens rea* alleged was that Petitioner knowingly possessed a firearm and ammunition. Under *Rehaif*, that conduct is not a crime. Moreover, indictment cited § 922(g)(1) but not § 924(a)(2). However, *Rehaif* made clear that § 922(g) is not a free-standing offense. Rather, a valid prosecution must be brought under both § 922(g) (which prohibits certain conduct by certain persons) *and* § 924(a)(2) (which criminalizes the "knowing violation" of that prohibition). Those complementary deficiencies are fatal.

Admittedly, Petitioner did not raise this argument below. After all, the Eleventh Circuit had long held that knowledge of status was not an element, *United States v. Jackson*, 120 F.3d 1226, 1229 (11th Cir. 1997), and every other circuit had agreed, *Rehaif*, 139 S. Ct. at 2210 n.6 (Alito, J., dissenting) (citing cases). But his failure to raise the issue does not bar relief. This Court has held that it is "fatal error" to permit an individual to be "convicted on a charge the grand jury never made against him." *Stirone v. United States*, 361 U.S. 212, 219 (1960).

Moreover, all four prongs of plain-error review would be satisfied even if it applied: there is error; that error is now "plain" under *Rehaif*, *see Henderson v. United States*, 568 U.S. 266 (2013); it affected Petitioner's substantial rights, as "[t]he right to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken away with or without court amendment," *Stirone*, 361 U.S. at 219; and convicting him of an unindicted offense seriously affected the fairness, integrity, and public reputation of judicial proceedings.

Finally, the Eleventh Circuit Court has "established precedent recognizing that the failure to allege a crime . . . is a jurisdictional defect" that can be raised at any time. *United States v. Izurieta*, 710 F.3d 1176, 1179 (11th Cir. 2013); *see United States v. McIntosh*, 704 F.3d 894, 902–03 (11th Cir. 2013); *United States v. Peter*, 310 F.3d 709, 713–15 (11th Cir. 2002); *United States v. St. Hubert*, 909 F.3d 335, 342–44 (11th Cir. 2018) (re-affirming those precedents). Thus, the Eleventh Circuit should be given a chance to address Petitioner's claim in the first instance.

3. Not only was the indictment fatally flawed, but Petitioner's guilty plea was constitutionally invalid. "A plea of guilty is constitutionally valid only to the extent it is 'voluntary' and 'intelligent.' *Brady v. United States*, 397 U.S. 742, 748 (1970). [This Court] ha[s] long held that a plea does not qualify as 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.' *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)." *Bousley v. United States*, 523 U.S. 614, 618 (1998). Where neither the defendant, "nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged," his "plea would be . . . constitutionally invalid." *Id.* at 618–19 .

That is what happened here. Consistent with the indictment and the law of the circuit at the time, the district court advised Petitioner only that he was charged with possessing a firearm "after having previously been convicted of a felony." App. 18a. The court did not advise Petitioner that the government was required to prove that he knew he was a felon at the time of his possession. Nor did the government do so, or even proffer any evidence about Petitioner's knowledge of his status. Yet *Rehaif* makes clear that this was an essential element of the offense. Because nobody at the plea hearing, least of all Petitioner, understood the essential elements of the offense, his plea was involuntary and unconstitutionally invalid.

Again, while Petitioner did not raise this argument below, that is no bar to relief now. The Eleventh Circuit has repeatedly held that, where the district court fails to ensure that the defendant understood the nature of the charges, that failure

affects his substantial rights and "requires automatic reversal of the conviction and the opportunity to plea anew." *United States v. Symington*, 781 F.3d 1308, 1314 (11th Cir. 2015). This Court has also suggested that, where a defendant's guilty plea was neither knowing nor voluntary, and thus constitutionally invalid, the conviction could not "be saved even by overwhelming evidence that the defendant would have pleaded guilty regardless." *United States v. Dominguez Benitez*, 542 U.S. 74, 84 n.10 (2004). Thus, the Eleventh Circuit should be given the opportunity to address Petitioner's argument in the first instance.

4. Finally, after this Court decided *Rehaif*, it granted several petitions for certiorari, vacated the judgments below, and remanded for reconsideration in light of *Rehaif*. *See Reed v. United States*, __ S. Ct. __, 2019 WL 318317 (June 28, 2019) (No. 18-7490); *Allen v. United States*, __ S. Ct. __, 2019 WL 2649798 (June 28, 2019) (No. 18-7123); *Hall v. United States*, __ S. Ct. __, 2019 WL 2649770 (June 28, 2019) (No. 17-9221); *Moody v. United States*, __ S. Ct. __, 2019 WL 1980311 (June 28, 2019) (No. 18-9071). In light of the foregoing, the same result is warranted here.

CONCLUSION

For the foregoing reasons, the Court should grant the petition, vacate the judgment below, and remand for reconsideration in light of *Rehaif*.

Respectfully submitted,

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