

NO:

IN THE  
SUPREME COURT OF THE UNITED STATES

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CARLOS MIGUEL PEREZ,

*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 Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTION PRESENTED FOR REVIEW**

Mr. Perez respectfully requests that his 18 U.S.C. § 922(g) conviction be reversed and remanded in light of *Rehaif v. United States*, 139 S.Ct. 2191 (June 21, 2019).

## **INTERESTED PARTIES**

There are no parties to the proceeding other than those named in the caption of the case.

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**PETITION FOR WRIT OF CERTIORARI**

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Carlos Miguel Perez respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 18-14388 in that court on May 14, 2019, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

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## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on May 14, 2019. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## STATUTORY AND OTHER PROVISIONS INVOLVED

### 18 U.S.C. § 922(g)

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 . . . possess in or affecting commerce, any firearm or ammunition.

### 18 U.S.C. § 924(a)(2)

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

## STATEMENT OF THE CASE

Mr. Carlos Miguel Perez (“Perez”) was born in Miami, Florida, but resided for much of his earlier years in Santa Domingo with his parents. In 2004 at the age of 13, Mr. Perez’s mother passed away, and a year later, his father also died. Mr. Perez stayed in Santa Domingo for approximately one year after they passed away, but moved to Miami in 2007. At that time, he entered high school, but he did not finish the ninth grade at Miami Jackson Senior High.

On May 2, 2018 an indictment issued against Perez charging him with the following offenses: **(1)** Count I: conspiracy to possess with intent to distribute 28 grams or more of crack cocaine in violation of 21 U.S.C. § 846; **(2)** Count II: possession with intent to distribute 28 grams or more of crack in violation of 21 U.S.C. § 841(a)(1) and (b)(1)B(iii); **(3)** Count III: possession of a firearm in furtherance of a drug trafficking crime [possession with intent to distribute 28 grams or more or crack as set out in count II], in violation of 18 U.S.C. § 924(c)(1)(A)(i), (2); **(4)** Count IV: maintaining a drug-involved premises, in violation of 18 U.S.C. § 856(a)(1); and **(5)** Count V: possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1).

With respect to Count V, the indictment stated:

On or about March 1, 2018, in Miami-Dade County, in the Southern District of Florida, the defendant, CARLOS MIGUEL PEREZ, 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, Section 922(g)(1).

Mr. Perez went to trial on July 23, 2018. On July 24, 2018, the jury returned a guilty verdict against Perez on all counts. With respect to the felon-in-possession charge, the verdict read as follows:

**Count 5: Felon in Possession of a Firearm**

We, the Jury in the above-captioned case, unanimously find the Defendant, as to Count 5 of the Indictment:

GUILTY ✓ NOT GUILTY \_\_\_\_\_

After the trial, the United States Probation Office prepared a Presentence Investigation Report (“PSI”). According to the PSI, Perez qualified for an enhanced sentence as a career offender based on two prior Florida convictions: (1) cocaine/sell/man/deliver/possess w/intent (2013); and (2) aggravated battery (2016). Mr. Perez received 150 days’ incarceration for the Florida drug crime and 75 days’ imprisonment for the Florida aggravated battery.

The district court imposed sentence on the instant federal indictment on October 10, 2018. The court varied down from the career offender guideline and sentenced Mr. Perez to 120 months with an additional consecutive term of 60 months for Count III, the § 924(c) conviction, which gave Mr. Perez a total sentence of 180 months’ imprisonment.

Mr. Perez appealed his conviction and sentence, and the Eleventh Circuit affirmed the judgment on May 14, 2019. On June 21, 2019, this Court issued *Rehaif v. United States*, 139 S.Ct. 2191, holding that a knowing *mens rea* was

required for the defendant's status that made possessing the firearm a crime. In Mr. Perez's case, whether he knew he was a convicted felon at the time of his firearm possession was neither charged in the indictment nor proven to the jury beyond a reasonable doubt. Accordingly, the Court should grant Mr. Perez's petition in light of *Rehaif*.

## REASON FOR GRANTING THE WRIT

Mr. Perez respectfully requests that his 18 U.S.C. § 922(g) conviction be reversed and remanded in light of *Rehaif v. United States*, 139 S.Ct. 2191 (June 21, 2019).

In *Rehaif v. United States*, this Court held, contrary to every circuit court in the country, that the term “knowingly” in 18 U.S.C. § 924(a)(2) applies to both the possession and status elements of an 18 U.S.C. § 922(g) crime. 139 S. Ct. 2191, 2200 (June 21, 2019). The Court explained that “the term ‘knowingly’ in § 924(a)(2) modifies the verb ‘violates’ and its direct object, which in this case is § 922(g).” *Id.* at 2196. And “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. As this Court explained, those “material elements” include not only the prohibited conduct (the firearm possession itself), but also the prohibited status that makes the possession illegal. *Id.* Therefore, where as here the prohibited status is having been previously “convicted of a crime punishable by imprisonment for a term exceeding one year” under 18 U.S.C. § 922(g)(1), the indictment must charge, and the government must prove beyond a reasonable doubt, that at the time the defendant knowingly possessed a firearm, he also knew that he had previously been “convicted of a crime punishable by imprisonment for a term exceeding one year.”

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*Rehaif* has clarified that there is no prosecutable, stand-alone violation of § 922(g). Rather, a valid “prosecution” under United States law, has to be “under [both] 18 U.S.C. § 922(g) and § 924(a)(2).” *Id.* at 2200. In such a prosecution, “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.” *Id.* Mr. Perez was convicted after a jury trial of being a convicted felon who knowingly possessed a firearm. The indictment did not charge, and the government did not prove to the jury beyond a reasonable doubt, that Mr. Perez also knew he was a convicted felon at the time of the possession. Because this Court decided in *Rehaif* that the knowing provision of § 924(a)(2) applies to the status elements of § 922(g), Mr. Perez’s conviction cannot stand.

This Court has granted GVR’s in several cases in light of *Rehaif*. *Reed v. United States*, S. Ct. No. 18-7490 (*Rehaif* claim raised for first time in petition for writ of certiorari resulted in GVR) (June 28, 2019); *Hall v. United States*, S. Ct. No. 17-9221 (after petition for writ of certiorari was filed and government filed response, petitioner raised *Rehaif* issue for first time in letter to Court which resulted in GVR) (June 28, 2019); *Moody v. United States*, S. Ct. No. 18-9071 (*Rehaif* claim raised for first time in petition for writ of certiorari resulted in GVR) (June 28, 2019); and *Allen v. United States*, S. Ct. No. 18-7123 (*Rehaif* claim raised for first time in petition for writ of certiorari resulted in GVR) (June 28, 2019). Thus, this Court should grant petitioner’s request.

## CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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August 9, 2019