

No. 19-6871

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IN THE SUPREME COURT OF THE UNITED STATES

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JUSTIN VAZQUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Petitioner appears to contend (Pet. 2)<sup>1</sup> that his conviction for possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because the courts below did not recognize that knowledge of status is an element of that offense. In Rehaif v. United States, 139 S. Ct. 2191 (2019), this Court held that the mens rea of knowledge under Sections

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<sup>1</sup> Neither the petition for a writ of certiorari nor the appendix thereto is paginated. This brief refers to the pages in each document as if they were separately and consecutively paginated.

922(g) and 924(a)(2) applies “both to the defendant’s conduct and to the defendant’s status.” Id. at 2194.

The petition for a writ of certiorari was filed substantially out of time. The court of appeals issued its opinion and judgment affirming petitioner’s sentence on April 17, 2019. Pet. App. 1-5. This Court’s Rules provide in pertinent part that a petition for a writ of certiorari “is timely when it is filed \* \* \* within 90 days after entry of the judgment.” Sup. Ct. R. 13.1. Based on the date of the judgment, petitioner’s deadline for filing a petition for a writ of certiorari was July 16, 2019, and he did not file his petition for a writ of certiorari until October 31, 2019. Now acting pro se, petitioner claims that his appellate counsel “never advised [him] that an opinion had been handed down by the [court of appeals]”; that the court of appeals “did not notify or serve [its] opinion-judgment on [him] at all”; and that he “did not become aware of the judgment of the [court of appeals] until September 24, 2019.” Pet. 11-12 (capitalization altered).

This Court has discretion to consider an untimely petition if “the ends of justice so require.” Schacht v. United States, 398 U.S. 58, 64 (1970); see Bowles v. Russell, 551 U.S. 205, 212 (2007). Petitioner’s unsupported assertions would not ordinarily meet that standard, particularly given the availability of collateral review to resolve any relevant factual questions concerning the adequacy of appellate counsel’s representation.

See 28 U.S.C. 2255. In this specific case, however, the most expedient course would be to allow the lower courts simply to determine whether petitioner's forfeited Rehaif claim would even provide the basis for relief. See Woodberry v. United States, No. 19-5501 (Nov. 12, 2019) (granting untimely pro se petition for a writ of certiorari, vacating judgment below, and remanding for further proceedings on forfeited Rehaif claim). The Court should accordingly grant the petition for a writ of certiorari, vacate the decision below, and remand the case for further consideration in light of Rehaif.<sup>2</sup>

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General

JANUARY 2020

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<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.