

No. 19-7388

IN THE SUPREME COURT OF THE UNITED STATES

AARON PEREZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 16) that his conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(e), is infirm because the courts below did not recognize that knowledge of status is an element of that offense. Petitioner asks that this Court grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand his case for further proceedings (GVR) in light of Rehaif v. United States, 139 S. Ct. 2191 (2019), which held that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." Id. at 2194.

That course is not warranted here. This Court has stated that "a GVR order" is "potentially appropriate" where "intervening developments, or recent developments that [this Court] ha[s] reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation." Lords Landing Vill. Condo. Council of Unit Owners v. Continental Ins. Co., 520 U.S. 893, 896 (1997) (per curiam) (citation omitted). No such "reasonable probability," ibid. (citation omitted), exists here, however, because petitioner has already presented his Rehaif claim to the court of appeals in a petition for rehearing, see Pet. for Reh'g and Reh'g En Banc 1-7, and the court of appeals has already denied relief on that basis, see Pet. App. 9a.

The court of appeals' rejection of petitioner's Rehaif claim was correct. Because petitioner did not argue, until his rehearing petition, that the district court erred in failing to recognize that knowledge of status is an element of an offense under 18 U.S.C. 922(g)(1) and 924(a)(2), his claim was reviewable, at most, for plain error. See Fed. R. Crim. P. 52(b). To establish reversible plain error, petitioner must demonstrate that (1) the district court committed an "error" and that the error (2) was

"plain," meaning "clear" or "'obvious'"; (3) "affect[ed] [his] substantial rights," i.e., that it "must have affected the outcome of the district court proceedings"; and (4) "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" United States v. Olano, 507 U.S. 725, 732-736 (1993) (citations omitted). Given that petitioner's criminal history included, among other things, two convictions for the California felony offense of recidivist vehicle theft, for which petitioner received sentences of imprisonment of two years, Presentence Investigation Report ¶¶ 28-31, petitioner could not show a reasonable probability of a different outcome if his proceedings had incorporated the requirement that he know his status as a felon when he possessed a firearm. The court of appeals accordingly did not err in declining to revisit the panel's decision following Rehaif.

Because the court of appeals considered petitioner's Rehaif claim, and appropriately rejected it, a GVR is not warranted in this case. The petition for a writ of certiorari should accordingly be denied.*

* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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