

No. _____

In the
Supreme Court of the United States

DARIUS KING,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

1. Mr. King was found guilty of being a felon in possession of a firearm after a stipulated facts bench trial where the only stipulated fact related to his prohibited status was that “on February 26, 2017, the Defendant Darius King, was a felon, who was prohibited from possessing a firearm.” In *Rehaif v. United States*, the Court held that the in a prosecution for 18 U.S.C. 922(g), the government must prove that the defendant had knowledge of his prohibited status. Should this Court vacate the decision of the Ninth Circuit affirming the conviction and remand for reconsideration in light of *Rehaif*?

TABLE OF CONTENTS

Questions Presented	i
Table of Authorities	iii
Opinion Below	1
Jurisdiction	1
Statutory Provisions Involved	1
Statement of the Case	1
I. Background.	1
II. Appeal.	2
Reasons for Granting the Petition	2
I. This Court should grant the petition, vacate the Ninth Circuit’s opinion, and remand for reconsideration in light of Rehaif v. United States.	2
Conclusion	3

APPENDIX

Memorandum Decision	2a
Transcript of finding of guilt	6a
Order denying rehearing	12a
U.S.C. § 922(g)	13a
Stipulated Facts	15a
Judgment	18a

TABLE OF AUTHORITIES

Cases

<i>Lawrence v. Chater</i> , 516 U.S. 163, 167 (1996)	3
<i>Neder v. United States</i> , 527 U.S. 1 (1999).....	3
<i>Rehaif v. United States</i>	passim

Statutes

18 U.S.C. § 922(g)	1
28 U.S.C. § 1254.....	1
28 U.S.C. § 1254(1)	1

OPINION BELOW

The memorandum disposition of the U.S. Court of Appeals for the Ninth Circuit is reproduced on pages 2a through 5a of the appendix. The court's denial of Petitioner's petition for rehearing can be found on page 12a of the appendix.

JURISDICTION

The court of appeals entered judgment on June 5, 2019. Pet. App. 2a-5a. The court denied the petition for rehearing on December 3, 2019. Pet. App. 12a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The appendix contains the following statutory provisions: (1) 18 U.S.C. § 922(g), Pet. App. 13a-14a.

STATEMENT OF THE CASE**I. Background.**

Petitioner was charged in a one-count indictment with being a felon in possession of a firearm. After his motion to suppress evidence was denied, he agreed to a stipulated facts bench trial. The only fact related to Petitioner's status as a felon was that "on February 26, 2017, the Defendant Darius King, was a felon, who was prohibited from possessing a firearm." Pet. App. 15a-171. Based on the stipulated facts, the district court found Petitioner guilty and sentenced him to 48 months in custody. Pet. App. 18a-19a.

II. Appeal.

On appeal, Petitioner challenged the district court's denial of his suppression motion and his sentence. Petitioner did not raise any issue related to the government's failure to prove that he was aware of his prohibited status. On June 5, 2019, the Ninth Circuit issued a memorandum and order affirming the judgment and sentence of the district court. Pet. App. 2a-51. Mr. King filed a timely petition for rehearing, which the Ninth Circuit denied on December 3, 2019. Pet. App. 12a.

On June 21, 2019, this Court issued its decision in *Rehaif v. United States* in which it held that in a prosecution under 18 USC 922(g), the government must prove that the defendant was aware of his prohibited status. 139 S.Ct. 2191 (2019).

REASONS FOR GRANTING THE PETITION

I. **This Court should grant the petition, vacate the Ninth Circuit's opinion, and remand for reconsideration in light of *Rehaif v. United States*.**

In *Rehaif*, this Court held that to convict a defendant under 922(g) 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.” 139 S.Ct. at 2194. Mr. King was charged under 922(g). As a result, the government was required to prove that Mr. King was aware of his relevant status—here, being a felon. The district court was unaware of this requirement when it found Petitioner guilty because, at the time, binding Ninth Circuit precedent provided to the contrary. Moreover, the stipulated facts did not contain any evidence from which the district court could have concluded

that Petitioner was aware of his prohibited status. This Court has held that it will issue a GVR order where there is “a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity.” *Lawrence v. Chater*, 516 U.S. 163, 167 (1996). Here, it is clear that Petitioner’s conviction is inconsistent with the Court’s opinion in *Rehaif*. The case should be remanded to the Ninth Circuit to determine whether that error requires reversal of Petitioner’s conviction. Here, it is unlikely that the error would be deemed harmless because Petitioner was convicted at a stipulated facts bench trial, which included no evidence that could constitute the incontrovertible evidence required to render an omitted element harmless. *See Neder v. United States*, 527 U.S. 1 (1999). This Court should therefore GVR this case.

CONCLUSION

The Court should grant this petition for a writ of certiorari vacate the Court of Appeals decision, and remand for reconsideration in light of *Rehaif*.

March 3, 2019

Respectfully submitted,

Joshua J. Jones