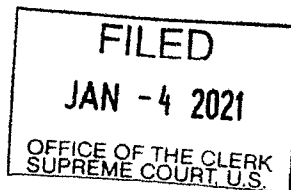


No. 19-8679



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IN THE  
**Supreme Court of the United States**

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**DAN REED,**  
*Petitioner,*

v.

**UNITED STATES OF AMERICA,**  
*Respondent.*

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

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**SUPPLEMENTAL BRIEF OF PETITIONER**

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## SUPPLEMENTAL BRIEF OF PETITIONER

In *United States v. Gary*, No. 20-444, the government has asked this Court to resolve the circuit conflict arising from the plain-error review of guilty pleas entered before *Rehaif v. United States*, 139 S. Ct. 2191 (2019). But as to trials held before *Rehaif*, such as Petitioner Reed's, the government has contended that this Court's review is not warranted "at this time," because the government has sought rehearing en banc of the "outlier" decision in *United States v. Medley*, 972 F.3d 399 (4th Cir. 2020). Br. Opp. 7-9.

After the parties' briefs were filed in Mr. Reed's case, the Third Circuit held en banc that its plain-error review of a pre-*Rehaif* trial would "consider only what the government offered in evidence at the trial." *United States v. Nasir*, 982 F.3d 144, 162 (3d Cir. 2020) (en banc); see Supreme Court Rule 15.8. The Third Circuit's decision expressly conflicts with other circuits' decisions, including the Eleventh Circuit's published decision in Mr. Reed's case. *Nasir*, 982 F.3d at 164-70 & nn.23, 25 (disagreeing with the Second, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits, citing *inter alia* *United States v. Reed*, 941 F.3d 1018 (11th Cir. 2019)). Unlike the Eleventh Circuit, the Third Circuit rejected the government's request that it, as an appellate court, find an element of the offense based on information never admitted at trial, recognizing the Fifth and Sixth Amendment problems with such an approach. *Id.* at 161-64. As the Third Circuit explained:

To rule otherwise would give us free rein to speculate whether the government *could have proven* each element of the offense beyond a reasonable doubt at a *hypothetical* trial that established a different trial record. But no precedent of the Supreme Court or our own has ever sanctioned such an approach.

*Id.* at 163. And having confined its review to the trial evidence in Nasir's case, the Third Circuit found plain error, vacated the defendant's conviction, and remanded for a new trial. *Id.* at 170-76 & n.29.

The circuits are thus intractably divided on the question presented in Mr. Reed's petition. Mr. Reed's case remains a good vehicle to resolve this conflict. The Eleventh Circuit found the element that Mr. Reed knew his felon status by relying on information never admitted at his trial. Pet. App. 4a. *Nasir* validates Mr. Reed's contention that the Eleventh Circuit's decision below is not supported by any decision of this Court. See Pet. 11-12; Reply to Br. Opp. 3-5; *Nasir*, 982 F.3d at 162-67. Mr. Reed accordingly maintains his request for this Court's review.

Respectfully submitted,

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