

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SAVANNAH ROLLE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Donna Lee Elm
Federal Defender

Rosemary Cakmis
Senior Litigator

Conrad Kahn, Counsel of Record
Assistant Federal Defender
201 South Orange Avenue, Suite 300
Orlando, Florida 32801
Telephone: (407) 648-6338
Facsimile: (407) 648-6765
Email: Conrad_Kahn@fd.org

QUESTION PRESENTED

Whether a defendant's guilty plea entered before *Rehaif v. United States*, 139 S. Ct. 2191 (2020), in which the defendant was not advised of the essential elements of the crime with which he was charged, constitutes a due process violation requiring vacatur of the guilty plea.

LIST OF PARTIES

Petitioner, Savannah Rolle, was the defendant in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the plaintiff in the district court and the appellee in the court of appeals.

TABLE OF CONTENTS

Question Presented.....	i
List of the Parties	ii
Table of Authorities	iv
Petition for a Writ of Certiorari	1
Opinion and Order Below	1
Jurisdiction	1
Relevant Constitutional and Statutory Provisions	1
Statement of the Case	2
Reasons for Granting the Writ.....	6
I. The circuits are split on whether a constitutionally invalid guilty plea in light of Rehaif is reversible per se.....	6
Conclusion	8
Appendices	
Eleventh Circuit Opinion <i>Rolle v. United States</i> , Case No. 19-10726	A
District Court’s Final Judgment <i>Rolle v. United States</i> , Case No. 8:18-cr-350-T-23JSS	B

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Rehaif v. United States</i> , 139 S. Ct. 2191 (2020).....	<i>passim</i>
<i>United States v. Coleman</i> , 961 F.3d 1024 (8th Cir. 2020).....	6
<i>United States v. Gary</i> , 954 F.3d 194 (4th Cir.), <i>reh’g en banc denied</i> , 963 F.3d 420 (4th Cir. 2020)	6, 7
<i>United States v. Hicks</i> , 958 F.3d 399 (5th Cir. 2020)	6
<i>United States v. Jackson</i> , 120 F.3d 1226 (11th Cir. 1997)	6
<i>United States v. Lavalais</i> , 960 F.3d 180 (5th Cir. 2020)	6
<i>United States v. Olano</i> , 507 U.S. 725 (1993)	5
<i>United States v. Ross</i> , 807 F. App’x 984 (11th Cir. 2020), <i>pet for cert. filed.</i> , No. 20-5404 (U.S. Aug. 14, 2020).....	7
<i>United States v. Stokeling</i> , 798 F. App’x 443 (11th Cir. 2020), <i>pet. for cert.</i> <i>filed</i> , No. 20-5157 (U.S. July 24, 2020).....	7
<i>United States v. Trujillo</i> , 960 F.3d 1196 (10th Cir. 2020).....	6
Constitutional and Statutory Provisions	
U.S. Const. amend V.....	1
18 U.S.C. § 922(g)	1, 3
18 U.S.C. § 924(a)(2)	2, 3
18 U.S.C. § 3553(a)	5
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291.....	1

PETITION FOR A WRIT OF CERTIORARI

Savannah Rolle respectfully petitions for a writ of certiorari to review the judgment of the Eleventh Circuit.

OPINION AND ORDER BELOW

The Eleventh Circuit's unpublished opinion is in Appendix A. The district court's final judgment is in Appendix B.

JURISDICTION

The Middle District of Florida had original jurisdiction over Mr. Rolle's criminal case under 18 U.S.C. § 3231. The Eleventh Circuit had jurisdiction to review the district court's final judgment under 28 U.S.C. § 1291, and on March 26, 2020, the Eleventh Circuit affirmed the district court's final judgment. Appendix A. This Court may review the Eleventh Circuit's judgment under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the U.S. Constitution provides, in relevant part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

Section 922(g) of Title 18 of the U.S. Code provides, in relevant part:

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.

Section 924(a)(2) of Title 18 provides:

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

On the morning of June 26, 2018, in Plant City, Florida, Savannah Rolle was sitting in the front passenger seat of a parked car.¹ A nearby officer with the Plant City Police Department smelled marijuana coming from the vehicle's passenger compartment and approached the car. Mr. Rolle got out of the car with a black backpack and ran away.² He ran for several blocks, and through several yards, until another officer captured him.

The officers found two small plastic baggies on Mr. Rolle—one in his front shirt pocket that contained synthetic cannabis and one in his pants pocket that contained 2.6 grams of actual cannabis.³ In the backpack, the officers found several empty clear plastic baggies, a metal grinder with marijuana residue, a digital scale with marijuana residue, an Amazon tablet, three cell phones, \$112 in cash, and a handgun

¹ The car was parked next to a closed business, and an unknown woman was in the driver's seat.

² To be more specific, when Mr. Rolle got out of the car, he began to walk backwards away from the officer. The officer said, "Savannah Rolle, don't even think about running." But Mr. Rolle ran. And when he did, the officer yelled for him to stop. Mr. Rolle, however, does not remember the officer telling him not to run or to stop.

³ Mr. Rolle told police he ran because he has "K2" on him.

holster with the “Punisher” logo on it. In Mr. Rolle’s flight path, the officers found a fourth cell phone, another baggie containing synthetic cannabis, and Mr. Rolle’s wallet.

Unbeknownst to Mr. Rolle or the officers, a concerned citizen captured part of the flight on his home surveillance camera. In the video, Mr. Rolle is seen tossing a handgun on to the citizen’s roof and the officer chasing Mr. Rolle come into view seconds later. The citizen called the PCPD later that same day, and the handgun was retrieved from the roof.⁴ The handgun—a Glock 17 9mm—had been reported stolen, and the magazine in the gun could hold 17 rounds of ammunition.⁵ The gun also had a cloth “Punisher” logo around its grip, matching the logo on the holster in Mr. Rolle’s backpack.

The government charged Mr. Rolle with possessing a gun as a felon, in violation of §§ 922(g)(1) and 924(a)(2). Count one (the only count) stated:

On or about June 26, 2018, in the Middle District of Florida, the defendant,

SAVANNAH ROLLE,

having been previously convicted in any court of a crime punishable by imprisonment for a term exceeding one year, including

1. **Robbery**, on or about June 5, 2005;
2. **Grand Theft Motor Vehicle**, on or about October 1, 2007;
3. **Fleeing and Attempting to Elude**, on or about September 7, 2010;

⁴ The citizen was at work when Mr. Rolle ran through his yard. He learned about the incident from a friend who called him at work and told him about the police activity in his neighborhood earlier that morning.

⁵ The magazine was loaded with only 16 rounds.

4. **Burglary of an Unoccupied Conveyance**, on or about September 7, 2010; and
5. **Grant Theft Motor Vehicle**, on or about September 7, 2010,

Did knowingly possess, in and affecting interstate and foreign commerce, a firearm and ammunition, that is, a 9-millimeter Glock pistol loaded with 16, 9-millimeter rounds of ammunition.

Mr. Rolle pled guilty without a plea agreement. As to the elements of the offense, the following colloquy occurred:

The District Court: Now I need to explain to you the essential elements the Government would need to prove if your case went to trial. And those are the following:

First, the Government would be required to prove that you knowingly possessed a firearm or ammunition in or affecting interstate or foreign commerce; and, second, before possessing the firearm or ammunition, you had been convicted of a felony, which is a crime punishable by imprisonment for more than one year.

Having said that, do you understand what the Government would be required to prove if your case went to trial?

Mr. Rolle: Yes, Your Honor.

The government then set forth a factual basis for the offense, including much of the offense conduct discussed above.⁶ Mr. Rolle, however, agreed only that he possessed a firearm and ammunition that traveled in interstate commerce, and before doing so, he had been convicted of a felony. He then pled guilty as charged.

Mr. Rolle's sentencing was on February 25, 2019. After hearing Mr. Rolle's allocution and argument from the parties about the applicability of the 18 U.S.C.

⁶ The government's factual basis also included that: (1) the firearm and ammunition were examined and determined to have been manufactured outside Florida; and (2) before possessing the gun and ammunition, Mr. Rolle had been convicted of the felonies listed in the indictment.

§ 3553(a) factors, the district court imposed the statutory maximum sentence—120 months’ imprisonment and three years’ supervised release. *See* Appendix B.

On appeal, Mr. Rolle argued that given this Court’s then-recent decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), his plea was constitutionally invalid and violated Rule 11’s core concerns. Therefore, the district court plainly erred in accepting it.

Under plain-error review, Mr. Rolle had to show: (1) there was error; (2) the error was plain; and (3) the error affected his substantial rights. *United States v. Olano*, 507 U.S. 725, 732 (1993). If Mr. Rolle satisfies those three requirements, the appellate court could remedy the error only if the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.*

Mr. Rolle argued that when it comes to infirm guilty pleas such as his, automatic reversal was required if he satisfied the first two prongs of plain-error review, without the need to show how the error prejudiced him. But the Eleventh Circuit disagreed. In affirming his conviction, the Eleventh Circuit found Mr. Rolle satisfied the first two prongs of plain error review, but it found Mr. Rolle needed to show the error affected his substantial right, which Mr. Rolle could not do. *See* Appendix A.

REASONS FOR GRANTING THE WRIT

I. The circuits are split on whether a constitutionally invalid guilty plea in light of *Rehaif* is reversible *per se*

Before *Rehaif*, the courts of appeals had uniformly held that the government had to prove the defendant's knowledge only as to his possession, not as to his status. See, e.g., *United States v. Jackson*, 120 F.3d 1226, 1229 (11th Cir. 1997); *Rehaif*, 139 S. Ct. at 2210 n.6 (Alito, Thomas, JJ., dissenting) (citing decisions, including *Jackson*). In guilty pleas entered before this Court's decision in *Rehaif*, the lower courts therefore did not advise the defendant of an additional, essential element of the offense—knowledge of status. Following *Rehaif*, the circuits are divided on whether such guilty pleas are reversible *per se*. The Fourth Circuit has held that such guilty pleas violate due process and constitute “structural error” requiring reversal. See *United States v. Gary*, 954 F.3d 194, 200-08 (4th Cir.), *reh'g en banc denied*, 963 F.3d 420 (4th Cir. 2020) (en banc). Other circuits have disagreed, acknowledging the circuit split that has resulted.⁷

⁷ See, e.g., *United States v. Lavalais*, 960 F.3d 180, 184 (5th Cir. 2020) (“The circuits are already split over how *Rehaif* claims should be analyzed for plain error. The Fourth Circuit has held that *Rehaif* error is structural error, warranting reversal even in the absence of evidence of prejudice. See *United States v. Gary*, 954 F.3d 194, 203 (4th Cir. 2020). But we have held the opposite—that defendants must show that any error under *Rehaif* actually prejudiced the outcome. See *United States v. Hicks*, 958 F.3d 399 (5th Cir. 2020).”); *United States v. Coleman*, 961 F.3d 1024, 1029–30 & n.3 (8th Cir. 2020) (“The circuit courts that have considered the issue are split, with the Fifth, Sixth, and Tenth Circuits holding that a constitutionally invalid plea is not structural error, while the Fourth Circuit holds otherwise”) (citations omitted); *United States v. Trujillo*, 960 F.3d 1196, 1205 (10th Cir. 2020) (disagreeing with the Fourth Circuit's decision in *Gary*).

The Eleventh Circuit, including in Mr. Rolle’s case, has repeatedly affirmed pre-*Rehaif* guilty pleas based on its determination that the error was harmless.⁸ The Eleventh Circuit’s decision below thus conflicts with the Fourth Circuit’s decision in *Gary*. Indeed, had Mr. Rolle’s case been before the Fourth Circuit, his guilty plea would have been vacated. *See Gary*, 954 F.3d at 200–01.

The Fourth Circuit’s decision in *Gary* is binding precedent in that circuit, as the Fourth Circuit denied the government’s petition for rehearing en banc. *See United States v. Gary*, 963 F.3d 420 (4th Cir. 2020). Mr. Rolle therefore requests this Court’s review of this important issue that has intractably divided the circuits. Alternatively, Mr. Rolle asks that this Court hold his petition pending resolution of the other petitions raising this issue.⁹

⁸ *See, e.g., United States v. Stokeling*, 798 F. App’x 443, 446–47 (11th Cir. 2020), *pet. for cert. filed*, No. 20-5157 (U.S. July 24, 2020); *United States v. Ross*, 807 F. App’x 984, 987–88 (11th Cir. 2020), *pet. for cert. filed.*, No. 20-5404 (U.S. Aug. 14, 2020).

⁹ *See, e.g., Gary*, 963 F.3d at 420 (Wilkinson, Niemeyer, Agee, Quattlebaum, Rushing, JJ., concurring in the denial of rehearing en banc) (“I concur in the denial of rehearing en banc for one reason and one reason only. The panel’s holding is so incorrect and on an issue of such importance that I think the Supreme Court should consider it promptly. Any en banc proceedings would only be a detour. Many, many cases await the resolution of this question.”).

CONCLUSION

For the above reasons, Mr. Rolle respectfully requests that this Court grant his petition.

Respectfully submitted,

James T. Skuthan
Acting Federal Defender

Rosemary Cakmis
Senior Litigator

/s/ Conrad Kahn

Conrad Kahn
Assistant Federal Defender Attorney
201 S. Orange Avenue, Suite 300
Orlando, FL 32801
Telephone 407-648-6338
Facsimile 407-648-6095
Email: Conrad_Kahn@fd.org
Counsel of Record for Petitioner