

No. 20-5558

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IN THE SUPREME COURT OF THE UNITED STATES

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ANTHONY SMITH, 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 contends (Pet. 5-11) that the court of appeals erred rejecting, based on an examination of the record as a whole, his claim that Rehaif v. United States, 139 S. Ct. 2191 (2019), entitled him to vacatur of his conviction under 18 U.S.C. 922(g)(1) and 924(a)(2) following trial and sentencing.<sup>1</sup> For the reasons

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<sup>1</sup> Other pending petitions raise similar questions. See Greer v. United States, No. 19-8709 (filed June 8, 2020); Reed v. United States, No. 19-8679 (filed June 8, 2020); Kachina v. United States, No. 20-5400 (filed June 11, 2020); Pugh v. United States, No. 20-5037 (filed July 15, 2020); Mack v. United States, No. 20-5407 (filed Aug. 14, 2020); Nickens v. United States, No. 20-5645 (filed Sept. 4, 2020); Owens v. United States, No. 20-5646 (filed Sept. 4, 2020); Heard v. United States, No. 20-5742 (filed Sept.

explained on pages 8 through 12 of the government's brief in response to the petition for a writ of certiorari in Greer v. United States, No. 19-8709 (Gov't Greer Br.), that contention lacks merit and does not warrant this Court's review at this time. Although courts have not adopted identical approaches to reviewing plain error in the context of Rehaif claims following trials, no conflict currently exists on that question that requires this Court's intervention.<sup>2</sup>

The petition for a writ of certiorari should nevertheless be held pending the Court's consideration of the government's petition in United States v. Gary, No. 20-444 (filed Oct. 5, 2020). Gary presents the question whether a defendant who pleaded guilty after a plea colloquy during which he was not informed of the knowledge-of-status element discussed in Rehaif is automatically entitled to relief on plain-error review, without regard to whether the error affected the outcome of the proceedings. Although the guilty plea and trial contexts are not identical, resolution of the question presented in Gary could potentially affect the resolution of the petition here. Cf. Pet. 11. The petition in this case should accordingly be held pending the Court's

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8, 2020); Haynes v. United States, No. 20-5747 (filed Sept. 15, 2020); McGee v. United States, No. 20-5773 (filed Sept. 17, 2020).

<sup>2</sup> We have served petitioner with a copy of the government's brief in opposition in Greer.

disposition in Gary and then disposed of as appropriate in light of Gary. See Gov't Greer Br. at 17-18, supra (No. 19-8709).<sup>3</sup>

Respectfully submitted.

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NOVEMBER 2020

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<sup>3</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.