

No. 20-5742

---

---

IN THE SUPREME COURT OF THE UNITED STATES

---

DAVID TACHAY HEARD, PETITIONER

v.

UNITED STATES OF AMERICA

---

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

---

MEMORANDUM FOR THE UNITED STATES

---

JEFFREY B. WALL  
Acting Solicitor General  
Counsel of Record  
Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

---

---

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 20-5742

DAVID TACHAY HEARD, PETITIONER

v.

UNITED STATES OF AMERICA

---

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

---

MEMORANDUM FOR THE UNITED STATES

---

Petitioner contends (Pet. 36-41) that the court of appeals erred in 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. For the reasons explained on pages 8 through 12 and 15 through 17 of the government's brief in response to the petition for a writ of certiorari in Greer v. United States, No. 19-8709 (Oct. 9, 2020) (Gov't Greer Br.), that contention lacks merit and does not warrant

this Court's review at this time.<sup>1</sup> In particular, while petitioner alleges (Pet. 37-38) that the decision below conflicts on this issue with the Fourth Circuit's decisions in United States v. Medley, 972 F.3d 399 (2020), and United States v. Green, 973 F.3d 208 (2020), the Fourth Circuit recently granted the government's petition for rehearing en banc in Medley to reconsider its approach to plain-error review in this context. See Order, Medley, supra (No. 18-4789) (Nov. 12, 2020). Accordingly, 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 issue that requires this Court's immediate intervention. See id. at 13-17.

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 question presented here. The petition in this

---

<sup>1</sup> We have served petitioner with a copy of the government's response in Greer.

case should accordingly be held pending the Court's 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>2</sup>

Respectfully submitted.

JEFFREY B. WALL  
Acting Solicitor General

NOVEMBER 2020

---

<sup>2</sup> The government waives any further response to the petition unless this Court requests otherwise.