

Nos. 20-5939 and 20-5949

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IN THE SUPREME COURT OF THE UNITED STATES

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KADEEM BURDEN, PETITIONER

v.

UNITED STATES OF AMERICA

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TIMMY SCOTT, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITIONS FOR WRITS OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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

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Petitioners contend (Burden Pet. 12-20; Scott Pet. 4-14) that the court of appeals erred in rejecting, based on an examination of the record as a whole, their claim that Rehaif v. United States, 139 S. Ct. 2191 (2019), entitled them to vacatur of their

convictions under 18 U.S.C. 922(g)(1) and 924(a)(2) following trial and sentencing.<sup>1</sup> 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 (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 issue that requires this Court's immediate intervention.<sup>2</sup>

The petitions for writs 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

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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); Smith v. United States, No. 20-5558 (filed Aug. 24, 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. 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 petitioners with a copy of the government's brief in opposition in Greer.

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. Cf. Burden Pet. 15. The petitions in these cases 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>3</sup>

Respectfully submitted.

JEFFREY B. WALL  
Acting Solicitor General

NOVEMBER 2020

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