

No. 20-6090

IN THE SUPREME COURT OF THE UNITED STATES

REGINALD FERGUSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

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Following a guilty plea in the United States District Court for the Northern District of Ohio, petitioner was convicted on one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g). See Pet. App. A3. He now contends (Pet. 24-28) that the district court lacked subject matter jurisdiction to adjudicate him guilty because the indictment did not charge the knowledge-of-status element recognized in Rehaif v. United States, 139 S. Ct. 2191 (2019). Petitioner identifies no decision of a court of appeals that accepts that contention, and no conflict among the courts of appeals that would warrant this Court's review.

The petition for a writ of certiorari should nevertheless be held pending the Court's consideration of the government's petition for a writ of certiorari 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 that question differs from the one presented in the pro se petition in this case, the Court's resolution of the question presented in Gary could potentially affect the resolution of petitioner's case. The petition in this case should accordingly be held pending the Court's disposition in Gary, supra, and then disposed of as appropriate in light of Gary.*

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

DECEMBER 2020

* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.