NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

FRANK TRUJILLO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Frank Trujillo pleaded guilty to one count of knowingly possessing a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). At the time of his plea, he did not understand that knowledge of his status at the time of the offense was an element of the crime. *See Rehaif v. United States*, 139 S. Ct. 2191 (2019). On appeal, he argued for the first time that his plea should be vacated because it was not knowing and voluntary, in violation of the due process clause.

The following question is presented: When a defendant argues for the first time on appeal that his guilty plea was not knowing and voluntary because he was not informed of the elements of the offense, what standard of review applies?

RELATED PROCEEDINGS

- *United States v. Trujillo*, No. 19-2057, United States Court of Appeals for the Tenth Circuit. Judgment entered May 27, 2020.

- *United States v. Trujillo*, No. 1:17-cr-02238-WJ-1, United States District Court for the District of New Mexico. Judgment entered April 2, 2019.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Frank Trujillo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINION BELOW

The decision of the United States Court of Appeals for the Tenth Circuit is reported at *United States v. Trujillo*, 960 F.3d 1197 (10th Cir. 2020), and can be found in the Appendix at 1a.

JURISDICTION

The court of appeals issued its decision on May 27, 2020. App. 1a. On March 19, 2020, this Court extended the deadline to file petitions for writs of certiorari in all cases due on or after that date to 150 days from the date of the lower court judgment. In this case, that is Saturday, October 24, 2020. Pursuant to Supreme Court Rule 30.1, the deadline to file this petition is Monday, October 26, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

U.S. Const., Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; 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; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 922(g)(1)

> **(g)** 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 ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 924(a)(2)

Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

Rule 52. Harmless and Plain Error

> **(a) Harmless Error.** Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.
>
> **(b) Plain Error.** A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

STATEMENT OF THE CASE

On September 25, 2018, Petitioner Frank Trujillo pleaded guilty to one count of knowingly possessing a firearm following a conviction for a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. §§ 922(g)(1) and (a)(2). At his plea hearing, he was advised that the elements of the offense were as follows:

> First, the Defendant knowingly possessed a firearm or ammunition;
>
> Second, that the Defendant was convicted of a felony, that is, a crime punishable by imprisonment for a

> term exceeding one year before he possessed the firearm or ammunition; and
>
> Third, the firearm or ammunition had moved at some time from one state to another.

At no point prior to entering his plea was Mr. Trujillo informed that knowledge that he had been convicted of a crime punishable by imprisonment for a term exceeding one year at the time he possessed the firearm was an element of the offense. That was consistent with existing Tenth Circuit precedent, which had rejected the existence of such an element. *See United States v. Capps*, 77 F.3d 350, 352 (10th Cir. 1996).

Mr. Trujillo timely appealed.

Meanwhile, on June 19, 2019, the Supreme Court overturned the prior consensus reached by the courts of appeal and held that, in order to convict a defendant for violating 18 U.S.C. § 922(g), "the Government . . . must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." *Rehaif v. United States*, 139 S. Ct. 2191, 2194 (2019).

For the first time on appeal, and in light of *Rehaif*, Mr. Trujillo argued that his plea was not knowing and voluntary and should be vacated. Relying on *Bousley v. United States*, 523 U.S. 614 (1998), he contended that his plea was not knowing and voluntary because he had been deprived of "real notice of the true nature of the charge against him" because he did not understand that knowledge of his status as a felon was an element of the offense. *Id.* at 618 (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)).

Relevant here, Mr. Trujillo further argued that this error, standing alone, rendered the plea invalid, regardless of the strength of the evidence against him or whether he could show that the error affected his decision to plead guilty. He relied on *Henderson v. Morgan*, 426 U.S. 637 (1976), in which this Court deemed a similarly involuntary plea invalid regardless of the strength of the evidence against the defendant or the apparent wisdom of the decision to plead guilty. *See id.* at 644. He also emphasized that when this Court held that defendants raising unpreserved challenges to their guilty pleas are required to prove that the alleged error affected the decision to plead guilty, it expressly exempted "the constitutional question whether a defendant's guilty plea was knowing and voluntary." *United States v. Dominguez Benitez*, 542 U.S. 74, 84 n.10 (2004).

The Tenth Circuit rejected Mr. Trujillo's argument on the applicable standard of review. It distinguished *Henderson* on the ground that the defendant in that case had a "low mental capacity" that "foreclose[d] the conclusion that the error was harmless," as well as on the ground that the defendant in that case had been "proceeding on collateral review, and thus" was not required to meet the plain error standard. App. 6a. The Tenth Circuit further confined the *Dominguez Benitez* footnote to the precise facts of *Boykin v. Alabama*, 395 U.S. 238 (1969), which was cited as an example of an involuntary plea. App. 8a. Because Mr. Trujillo's claim of involuntariness rested on the failure to advise him of the elements of the offense, rather than the failure to conduct a plea colloquy, the Tenth Circuit concluded that it did not present the "type of voluntariness in the *Dominguez Benitez* footnote." *Id.*

Applying instead the ordinary plain error standard used to assess forfeited Rule 11 claims, the Tenth Circuit affirmed the validity of the guilty plea on the ground that the strength of the government's evidence foreclosed success on either the third or fourth prongs of the test. "Given the strength of the Government's evidence," the court concluded, Mr. Trujillo could not show that "he would have proceeded to trial if he knew that the Government would be required to prove knowledge of his status." App. 17a. For essentially the same reason—*i.e.*, the strength of the government's evidence—the court further found that Mr. Trujillo could not show that the district court's error seriously affected the fairness, integrity or public reputation of judicial proceedings. App. 18a-19a.

REASONS FOR GRANTING THE WRIT

Certiorari is warranted because the question presented is recurring and important and has divided the courts of appeal—with the Tenth Circuit on the wrong side of that divide. Indeed, the United States agrees that this question requires review. It has filed a petition for certiorari on this precise question in the case *United States v. Gary*, No. 20-444, which is currently pending before this Court.[1]

[1] Other petitions raising the same or similar question include *Rolle v. United States*, No. 20-5499 (filed Aug. 21, 2020); *Lavalais v. United States*, 20-5489 (filed Aug. 20, 2020); *Ross v. United States*, No. 20-5404 (filed Aug. 14, 2020); *Hobbs v. United States*, No. 20-171 (filed Aug. 13, 2020); *Sanchez-Rosado v. United States*, No. 20-5453 (filed Aug. 6, 2020); *Stokeling v. United States*, No. 20-5157 (filed July 9, 2020); *Blackshire v. United States*, No. 19-8816 (filed June 22, 2020).

I. This question is recurring, important, and has divided the courts of appeal.

The question presented recurs frequently. The specific charge at issue in this case—unlawful possession of a firearm, in violation of 18 U.S.C. §§ 922(g) and 924(a)(2)—is a commonly prosecuted offense, accounting for 6,719 convictions in Fiscal Year 2018 alone. *See* U.S. Sentencing Commission, *Quick Facts: Felon in Possession of a Firearm* at 1 (2018).[2] Most of these convictions were the result of guilty pleas. *See* U.S. Courts, *U.S. District Courts – Criminal Defendants Disposed of, by Type of Disposition and Offense, During 12-Month Period Ending June 30, 2020* (reporting that over 98% of 74,056 federal criminal convictions in the prior 12-month period resulted from guilty pleas).[3]

Prior to *Rehaif*, essentially none of these guilty pleas were made by defendants who understood the elements of the offense. Until then, every court of appeals that had addressed the question of whether the government was required to prove that the defendant knew of his status at the time of the offense had mistakenly concluded that this was not an element of the offense. *See* 139 S. Ct. at 2210 n.6 (Alito, J., dissenting) (listing cases). Each such plea entered without knowledge of the elements of the offense was not knowing and voluntary in the constitutional sense: the defendant did not "receive 'real notice of the true nature of

[2] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY18.pdf

[3] https://www.uscourts.gov/file/28629/download

the charge against him, the first and most universally recognized requirement of due process.'" *Henderson*, 426 U.S. at 645 (quoting *Smith*, 312 U.S. at 334).

Under these circumstances, it is unsurprising that the question of what appellate standard applies to a guilty plea that plainly is not knowing and voluntary has arisen in multiple circuits, with conflicting results. The Fifth and Eighth, and Tenth Circuits have concluded that these claims are subject to the same plain-error standard by which unpreserved Rule 11 claims are reviewed. *See United States v. Lavalais*, 960 F.3d 180 (5th Cir. 2020); *United States v. Coleman*, 961 F.3d 1024 (8th Cir. 2020). In the view of these circuits, an appellant raising such a claim can succeed on appeal only if he is able to show that his misunderstanding of the elements of the charge against him affected his decision to plead guilty, and that the error seriously affects the fairness, integrity, or public reputation of judicial proceedings—which he can do only if there is some dispute as to the strength of the government's evidence. *E.g.*, App. 15a ("[W]here the evidence supporting the defendant's knowledge-of-status is strong, or where the defendant admitted knowledge of his felony status, we can assume the defendant would have pleaded guilty" regardless of the error.").

The Fourth Circuit, by contrast, has held that straightforward application of *Henderson* requires an appellate court to vacate a guilty pleas that was not knowing and voluntary, "regardless of the strength of the prosecution's evidence or whether the error affected the ultimate outcome of the proceedings." *United States v. Gary*, 954 F.3d 194, 203 (4th Cir. 2020). That court has further held that, when a

defendant enters a plea that is not knowing and voluntary, "the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings" and will almost always warrant correction by the appellate court. *Id.* at 207. In reaching these conclusions, the Fourth Circuit noted that the vast majority of federal criminal convictions are the result of guilty pleas and accordingly reasoned that "the integrity of our judicial process demands that each defendant who pleads guilty receive the process he is due." *Id.*

II. The Tenth Circuit is wrong.

The Tenth Circuit was wrong to review Mr. Trujillo's claim that his plea was constitutionally invalid because it was not knowing and voluntary as if it were an ordinary Rule 11 error. Instead of basing its review on the strength of the evidence against Mr. Trujillo and the likelihood that he otherwise would have gone to trial, the Tenth Circuit's review should have been confined to determining whether he in fact received "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." *Bousley*, 523 U.S. at 618 (quoting *Smith*, 312 U.S. at 334). Because he was deprived of such notice, the Tenth Circuit should have vacated the plea, regardless of the strength of the evidence against him or the wisdom of his decision to plead guilty.

That is the rule mandated by this Court's precedents. In *Henderson v. Morgan*, 426 U.S. 637 (1976), this Court held that a guilty plea that had been entered without knowledge of the elements of the offense was constitutionally invalid—even if the "prosecutor had overwhelming evidence of guilt available" and

the decision to enter the plea had been "wis[e]." *Id.* at 644. This Court reaffirmed the continuing vitality of *Henderson* in *United States v. Dominguez Benitez*, 542 U.S. 74 (2004). That case holds that Rule 11 violations are reversible on plain error review only if there is a "reasonable probability that, but for the error, [the defendant] would not have entered the plea"—an inquiry that necessarily depends on "the overall strength of the government's case." *Id.* at 83, 85. In reaching that conclusion, however, this Court was deliberately exempted from that general requirement "the constitutional question whether a defendant's guilty plea was knowing and voluntary," emphasizing that it did not mean to suggest that an unknowing and involuntary plea "could be saved even by overwhelming evidence that the defendant would have pleaded guilty regardless." *Id.* at 84 n.10.

Finally, the Tenth Circuit rule is wrong because it undermines the integrity of judicial proceedings. Nearly all federal convictions result from guilty pleas. Particularly in this context, "the integrity of our judicial process demands that each defendant who pleads guilty receive the process to which he is due." *Gary*, 954 F.3d at 207. In order to ensure that the guilty pleas that form the backbone of our federal criminal system are constitutionally valid, the Tenth Circuit must be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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