No. 20-6226

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS MAEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 9-25) 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(c) following trial and sentencing. That contention lacks merit and does not warrant this Court's review at this time.

For the reasons 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.), the court of appeals analyzed petitioner's claim correctly.[1] And it correctly found that because of, inter alia, trial testimony that petitioner had been "incarcerated [for his daughter's] whole life" until she was 18, he cannot make the case-specific showings of prejudice or fundamental unfairness necessary for plain-error relief. Pet. App. 25a.

Petitioner argues (Pet. 9-25) that the decision below conflicts with the Fourth Circuit's decision in United States v. Medley, 972 F.3d 399 (2020). But the Fourth Circuit in Medley found error in both the indictment and jury instructions, see id. at 415, while petitioner does not challenge in this Court the court of appeals' determination that his indictment was not plainly erroneous. Pet. 6 n.2; see Pet. App. 26a-27a. In any event, after the filing of the petition for a writ of certiorari, the Fourth Circuit granted the government's petition for rehearing en banc in Medley, vacating the panel majority's decision in that case. See United States v. Medley, 828 Fed. Appx. 923 (2020). Medley accordingly provides no basis for granting review in this case.

An intervening decision of the Third Circuit does adopt an approach to plain-error review of Rehaif claims arising in the trial context that differs from the one employed by the Seventh Circuit here. See United States v. Nasir, 982 F.3d 144, 165-168 (2020) (en banc) (disagreeing with the Seventh Circuit and other

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[1] We have served petitioner with a copy of the government's response in Greer.

courts of appeals about whether a court may consider evidence outside the trial record in assessing whether to grant plain-error relief). However, this Court's plenary review is not warranted at this time. Instead, the better course would be to hold the petition for a writ of certiorari in this case 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 this case.

The petition for a writ of certiorari in this 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).[2]

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

JANUARY 2021

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