

In the
Supreme Court of the United States

CARLOS MAEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED	iii
PETITIONER’S REPLY BRIEF	1
I. This Court should settle the conflict among the Circuit courts regarding the implications of an <i>Old</i> <i>Chief</i> stipulation on the substantial rights analysis at prong 3 of plain error review.	3
II. This Court should also settle the circuit split regarding the application of prong 4 of the plain error test, and give the lower courts guidance regarding a determination as to whether an error seriously impugns the fairness, integrity, and public reputation of judicial proceedings where fundamental constitutional rights are in play.	4
CONCLUSION.....	6

TABLE OF AUTHORITIES CITED

Cases

<i>Battiste v. United States</i> , No. 20-6227	2
<i>Greer v. United States</i> , No. 19-8709	1, 2, 3, 7
<i>Jones v. United States</i> , No. 20-6129	2
<i>Old Chief v. United States</i> , 519 U.S. 172 (1997)	1, 3, 4
<i>Rosales-Mireles v. United States</i> , 138 S. Ct. 1897 (2018)	4
<i>United States v. Gary</i> , No. 20-444	1, 2, 3
<i>United States v. Greer</i> , 798 Fed. Appx. 483 (11th Cir. 2020)	3, 4
<i>United States v. Maez</i> , 960 F.3d 949 (7th Cir. 2020)	3, 4, 5
<i>United States v. Medley</i> , 972 F.3d 399 (4th Cir. 2020), vacated by 828 Fed. Appx. 923 (4th Cir. Nov. 12, 2020)	1
<i>United States v. Nasir</i> , 982 F.3d 144 (3d Cir. 2020)	1, 4, 5
<i>United States v. Olano</i> , 507 U.S. 725 (1993)	4, 5

Statutes

18 U.S.C. § 922(g)	3
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PETITIONER’S REPLY BRIEF

Since Mr. Maez’s initial petition was filed, several developments have altered the landscape and premises upon which the petition was based. However, the petition remains relevant and, for the reasons set forth below, should be granted and consolidated with *Greer v. United States*, No. 19-8709, or considered on its own merits.

As the government has pointed out, the Fourth Circuit has agreed to rehear *United States v. Medley*, a decision that was in direct conflict with the Seventh Circuit’s decision in Mr. Maez’s case, *en banc*. 972 F.3d 399 (4th Cir. 2020), *vacated by* 828 Fed. Appx. 923 (4th Cir. Nov. 12, 2020). However, the Third Circuit Court of Appeals has since held that, when considering the third and fourth prong of the plain error test, the Court of Appeals may only consider that evidence that was put before the jury. *United States v. Nasir*, 982 F.3d 144 (3d Cir. 2020). The *Nasir* court forcefully rejected the government’s argument that the defendant’s *Old Chief* stipulation that he had a prior conviction was evidence that he knew at the time of possession that he was a convicted felon. *Id.* at 172–73; *Old Chief v. United States*, 519 U.S. 172 (1997). “All the stipulation demonstrates is that he knew he was a felon at the time he signed the stipulation,” the court held. *Nasir*, 982 F.3d at 173.

Even more recently, this Court has granted certiorari in two cases that touch on the issues raised here. On January 8, 2020, the Court agreed to hear *United States v. Gary*, No. 20-444, and *Greer v. United States*, No. 19-8709. In line with

those decisions, the Court should grant certiorari in this case, too.¹ The government asks this Court to hold this case pending a decision in *Gary*, and presumably would have also asked for the case to be held pending *Greer* if it had known this Court would decide to hear *Greer*. Compare Gov't Response in *Maez v. United States*, No. 20-6226, with Gov't Response in *Jones v. United States*, No. 20-6129.

The question presented in *Gary* is whether a defendant who pleaded guilty to possessing a firearm as a felon is automatically entitled to plain error relief if the district court did not advise him that one element of the offense is knowledge of his status as a felon. Though this is tangentially related to Mr. Maez's case, Mr. Maez went to trial and the issues are, therefore, materially distinct, as he has raised issues under the Fifth and Sixth Amendments relating to his right to a jury trial on all elements of a charge.

The question presented in *Greer* relates to the scope of material that a court can consider at prongs three and four of the plain error test. In considering Greer's claims of error, the Eleventh Circuit cited to evidence in the presentence investigation report regarding the length of his prior sentences and determined that the record as a whole did not support a conclusion that his substantial rights had been affected nor that the errors in his indictment and jury trial affected the

¹ The other two cases addressed in the Seventh Circuit's *Maez* decision both have pending petitions for certiorari: *Matthew Jones v. United States*, No. 20-6129, and *Cameron Battiste v. United States*, No. 20-6227. Given that each of these petitions arose from a single Seventh Circuit opinion, consolidation of the cases would be appropriate, though each petitioner has unique circumstances.

fairness, integrity, or public reputation of his trial. *United States v. Greer*, 798 Fed. Appx. 483, 486 (11th Cir. 2020). Mr. Maez raises related, but not identical, issues that each warrant consideration by this Court and which are unlikely to be addressed in either *Gary* or *Greer*.

I. This Court should settle the conflict among the Circuit courts regarding the implications of an *Old Chief* stipulation on the substantial rights analysis at prong 3 of plain error review.

The Seventh Circuit has held that it is only appropriate to consider the information that was before the jury in evaluating any effect of the errors on a defendant's substantial rights. *United States v. Maez*, 960 F.3d 949, 961 (7th Cir. 2020). Applying this standard, the court found that Mr. Maez's claim of plain error failed at prong three; however, integral to its decision was that Mr. Maez stipulated that he had previously been convicted of a felony under *Old Chief*. *Id.* at 964 ("A jury could reasonably think that a felony conviction is a life experience unlikely to be forgotten."). By relying on a stipulation to one element of the offense as "powerful circumstantial evidence" of another element, one which Mr. Maez had no notice the government had to prove, the Seventh Circuit improperly relieved the government of its burden of proof as to an entire element of the offense. It also effectively nullified the language in *Rehaif*, as simply having a felony conviction does not satisfy the mens rea requirement of 18 U.S.C. § 922(g). *Rehaif v. United States*, 139 S. Ct. 2191 (2019). This was not an issue contemplated by the Eleventh Circuit's decision in *Greer*, and is worthy of attention by this Court; given the prevalence of

Old Chief stipulations, this issue it is likely to arise many times and there is a circuit split on the issue. Compare *Maez*, 960 F.3d at 964, with *Nasir*, 982 F.3d at 173.

II. This Court should also settle the circuit split regarding the application of prong 4 of the plain error test, and give the lower courts guidance regarding a determination as to whether an error seriously impugns the fairness, integrity, and public reputation of judicial proceedings where fundamental constitutional rights are in play.

The Seventh Circuit found, in the alternative, that Mr. Maez’s plain error claim also failed on prong four of the plain error test on the basis of additional circumstantial evidence of his knowledge of his status as a felon present in the PSR. *Maez*, 960 F.3d at 964. In so ruling, the Seventh Circuit put itself in the position of fact-finder, holding that it was “confident that Maez knew he was a felon.” *Id.* In *Greer*, the Eleventh Circuit did not comment on judicial discretion, because it held that no substantial right had been violated in the first place. *Greer*, 798 Fed. Appx. at 486.

However, as the Third Circuit recognized, in articulating prong 4 of the plain error test, *Olano* rejected a narrower rule that would have afforded relief only in cases where a defendant is actually innocent of the offense charged. *Nasir*, 982 F.3d at 174 (quoting *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1906–07 (2018)); *United States v. Olano*, 507 U.S. 725 (1993). A comparison between the Seventh Circuit’s decision in *Maez* and the Third Circuit’s decision in *Nasir* lays bare a clear divide in how the Circuits approach prong four, extending all the way to the very

essence of what it means to seriously impugn “the fairness, integrity and public reputation of judicial proceedings.” *Olano*, 507 U.S. at 732. On the one hand, the Seventh Circuit found that, because it was convinced that Mr. Maez knew of his status as a felon, it would *harm* the fairness, integrity or public reputation of judicial proceedings to reverse his conviction. *Maez*, 960 F.3d at 964 (holding that affirmance in this situation protects those interests). On the other hand, the Third Circuit reversed the jury verdict in a similar situation to *protect* these interests, noting that the fundamental constitutional rights at the core of our criminal justice system (the guarantees of due process and trial by jury afforded by the Fifth and Sixth Amendments) were at issue. *Nasir*, 982 F.3d at 175.

This clear circuit split highlights a confusion among the Circuit courts regarding the application of the plain error test and the proper role of the court on appeal. The contrast between the approaches begs two related questions. First, when, if ever, is it appropriate for the Court of Appeals to step into the role of fact-finder? Second, when, if ever, is “the fairness, integrity or public reputation of judicial proceedings” protected by the expediency of reaching the “right result” in derogation of a defendant’s Fifth and Sixth Amendment rights?

The Seventh Circuit’s opinion in *Maez* presents these issues clearly and places them squarely before this Court. The clear contrasts with the Third Circuit’s opinion in *Nasir* makes this an excellent vehicle for review of these issues that cut to the core of the federal criminal justice system.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari and either consolidate this case with *Greer* or review it on its own merits.

Respectfully submitted,

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