

IN THE SUPREME COURT OF THE UNITED STATES

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Edgar Espinoza,

*Petitioner,*

v.

United States of America,

*Respondent.*

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

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**RESPONSE TO GOVERNMENT’S MEMORANDUM  
BY PETITIONER EDGAR ESPINOZA**

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February 18, 2020

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## Response

In the wake of this Court’s decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the United States Court of Appeals for the Ninth Circuit has adopted a controversial position in cases involving defective criminal prosecutions for prohibited firearm possession under 18 U.S.C. §§ 922(g) and 924(a). With the Ninth Circuit routinely affirming §§ 922(g) and 924(a) convictions obtained by guilty pleas pre-*Rehaif*, the court has created irreconcilable inter- and intra-Circuit conflicts, misapplied this Court’s precedent, and effectively stymied relief for an untold number of defendants convicted of these offenses in violation of the Constitution.

This Court recently granted certiorari in *United States v. Gary*, which raises an issue similar to Petitioner Edgar Espinoza’s third Question Presented in his Petition for Certiorari: whether a defendant’s pre-*Rehaif* guilty plea made without the essential knowledge-of-status mens rea element constitutes structural error, requiring relief. Pet. at 20-26; *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020), *cert. granted*, No. 20-444 (Jan. 8, 2021). In light of *Gary*, Espinoza agrees with the government that a stay in this case is appropriate, as this Court’s ultimate decision in *Gary* may affect resolution of Espinoza’s third Question Presented. Gov. Mem. at 1-2 (requesting the petition in this case “be held pending the decision in *Gary*”). A stay pending decision in *Gary* may further permit appropriate resolution of Espinoza’s first Question Presented, whether and when a defective indictment deprives the federal court of jurisdiction, Pet. at 9-13, and second Question Presented, whether a defendant cannot waive violations of a his Fifth Amendment

right to indictment by grand jury and Sixth Amendment right to notice of the charge by entering a guilty plea, Pet. at 13-19, should this Court be inclined.

February 18, 2021

Respectfully submitted,

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