

NO. 20-

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IN THE  
**SUPREME COURT  
OF THE UNITED STATES**

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LUIS SANABRIA-ROBRENO

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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December 3, 2020

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## QUESTION PRESENTED

1. When defendants plead guilty, this Court's precedent—consistent with due process—requires that they understand the offense's essential elements. In *Rehaif v. United States*, 139 S. Ct. 2191 (2019), this Court recognized that knowledge of one's status as a person prohibited from possessing a firearm is an essential element under 18 U.S.C. § 922(g). Can a court, as the Third Circuit did here, treat a plea as constitutionally valid when it was entered without knowledge of an offense element?

## **PARTIES TO THE PROCEEDINGS**

Petitioner, the defendant-appellant below, is Luis Sanabria-Robreno.

The Respondent, the appellee below, is the United States of America.

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## **PETITION FOR A WRIT OF CERTIORARI**

The Petitioner, Luis Sanabria-Robreno, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit, affirming the district court's order entered May 30, 2019.

### **OPINION BELOW**

The opinion of the court of appeals is non-precedential, *see United States v. Sanabria-Robreno*, 819 F. App'x 80 (3d Cir. 2020), and is in the appendix (“Pet. App.”) 1a-8a.

### **JURISDICTION**

The order sought to be reviewed was entered by the court of appeals for the Third Circuit on July 9, 2020. Pet. App. 7a. The deadline for a petition for a writ of certiorari is December 6, 2020. This Court has jurisdiction over this timely petition under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS

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 offense 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.

U.S. CONST. amend. V.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. CONST. amend. VI.

## STATUTORY PROVISIONS

(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. § 922(g).

## INTRODUCTION

No one disputes that the charging document filed against Mr. Sanabria-Robreno did not include the knowledge element required under *Rehaif* for a firearm possession offense. Likewise, no one disputes that the guilty plea colloquy did not include this essential element. And for these reasons, everyone agrees that this omission constituted an error that was clear or obvious. *See* Pet. App. 5a. Yet the Third Circuit held that, because the government could have proven the knowledge element and because Mr. Sanabria-Robreno received benefits by pleading guilty, his “substantial rights” were not affected by the omission of an offense element. *See* Pet. App. 5a-6a. But this holding contradicts this Court’s precedent in *Henderson v. Morgan*, 426 U.S. 637 (1976). And the Third Circuit’s opinion brings into sharper relief a split with the Fourth Circuit. For these reasons, this Court’s intervention is required.

## STATEMENT OF THE CASE

### 1. Factual background

In November 2017, an informant advised law enforcement that he could purchase heroin and cocaine from an individual later identified as Mr. Sanabria-Robreno. *See CA at 63.*<sup>1</sup> The same day, the informant and police arranged a controlled purchase with Mr. Sanabria-Robreno in Harrisburg. *See id.* The informant drove to the arranged location. Once there, Mr. Sanabria-Robreno entered the informant's vehicle and exchanged 2.62 grams of heroin and fentanyl for cash. *See id.*

In December 2017, the informant and police arranged a second controlled purchase from Mr. Sanabria-Robreno for cocaine and a handgun. *See id.* At the designated location in Harrisburg, Mr. Sanabria-Robreno entered the informant's vehicle, exchanging a nine-millimeter pistol and cocaine for cash. *See id.*

### 2. Procedural background

A grand jury indicted Mr. Sanabria-Robreno on several drug and firearm counts. *See Pet. App. 2a.* Based on a plea agreement, however, Mr. Sanabria-Robreno agreed to plead guilty to an information. The information charged him with possessing with the intent to distribute an unspecified amount of heroin and fentanyl, 21 U.S.C. § 841(a)(1) & (b)(1)(C), and possessing a firearm after being convicted of a crime punishable by more than one year, 18 U.S.C. § 922(g) & § 924(e). *See Pet. App. 2a.* The firearms count cited the Armed Career Criminal

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<sup>1</sup> “CA” refers to the appendix filed in the court of appeals.

Act (“ACCA”) in Section 924(e). The information did not, notably, reflect whether Mr. Sanabria-Robreno knew of his status as a person prohibited from possessing firearms.

In September 2018, Mr. Sanabria-Robreno pleaded guilty. During the guilty plea colloquy, the government outlined the proof supporting the firearm offense, noting that Mr. Sanabria-Robreno had been convicted before in state court of crimes punishable by more than one year, including four counts of unlawfully delivering heroin and one count of possessing with intent to deliver heroin. *See* Pet. App. 2a-3a. The drug convictions, in the government’s view, counted as qualifying predicates under the ACCA. *See id.*

The Probation Office prepared a presentence report, finding, among other things, that Mr. Sanabria-Robreno was subject to the ACCA enhancement, and that the advisory guideline range was 188 to 235 months. *See* (Presentence Investigation Report at ¶¶ 28, 70) (“PSR”). Mr. Sanabria-Robreno objected to the ACCA enhancement, arguing that the predicate offenses were committed close in time—eight days—and as part of a single episode. *See* CA at 91. Although observing that the Third Circuit had not yet applied—in a precedential opinion—the separate episode test to drug trafficking offenses, the district court found that it would apply and that the drug offenses were sufficiently distinct. *See id.* The district court then imposed a sentence of 180 months. *See* CA at 94.

### **3. The appeal and opinion**

During Mr. Sanabria-Robreno's appeal, this Court issued the opinion in *Rehaif*. Based on *Rehaif*, Mr. Sanabria-Robreno argued that he did not knowingly plead guilty because neither the charging document nor the plea colloquy included the element of knowledge. Because he had not raised this issue in the district court, the Third Circuit applied a plain error review standard. *See* Pet. App. 3a-4a & n.2. The court found that the first two prongs of the standard had been satisfied, that is, there was an error and it was clear or obvious. *See* Pet. App. 5a.

But the court declined to find that omitting an offense element affected Mr. Sanabria-Robreno's substantial rights. Rather, the court held that the government could have proven the missing element and that Mr. Sanabria-Robreno received benefits under the plea agreement. So, in the court's view, he was unlikely to have persisted in pleading not guilty. *See* Pet. App. 5a-6a.

## REASONS FOR GRANTING THE PETITION

1. **A guilty plea that is constitutionally invalid because it omits an essential offense element requires reversal under both this Court’s precedent and that of the Fourth Circuit.**

The Third Circuit’s ruling contradicts this Court’s long-held precedent and further widens a circuit split. To begin, this Court has repeatedly held that a guilty plea is constitutionally valid only if it is “voluntary” and “intelligent.” *Bousley v. United States*, 523 U.S. 614, 618 (1998). And as a matter of due process, a plea is not intelligent unless a defendant receives “real notice of the true nature of the charge against him . . .” *Smith v. O’Grady*, 312 U.S. 329, 334 (1941).

For example, in *Henderson*, this Court examined a plea to second-degree murder. There, the plea court had failed to inform the defendant on an element of the offense—intent to cause death. *See Henderson*, 426 U.S. at 645. This Court held that the defendant’s plea could not be voluntary in a constitutional sense absent notice of the nature of the charge against him. *See id.* at 645-46. And unlike the Third Circuit’s focus here, this Court framed the harmless error inquiry as whether the defendant had been informed of the missing element through some other means. *See id.* Thus, a constitutionally invalid plea cannot be salvaged “even by overwhelming evidence that the defendant would have pleaded guilty regardless.” *United States v. Dominguez Benitez*, 542 U.S. 74, 84 n.10 (2004).<sup>2</sup>

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<sup>2</sup> And here, the evidence concerning knowledge is not overwhelming clear. For example, Mr. Sanabria-Robreno had been convicted in state court for controlled substance offenses. Yet the arrest, plea, and sentencing for those offenses occurred at the same time, and he received only a county sentence of 5 to 23 months. *See* (PSR at ¶ 37). It is thus unclear that he would have understood this to satisfy the definition of a federal felony, particularly given the different definition in Pennsylvania. *Cf.* 18 Pa. C.S. § 1103 (defining felonies of the first, second, and third-degree).

The Fourth Circuit has adhered to the above precedent. In *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020), the court addressed a *Rehaif* error in the context of a guilty plea. In so doing, the court held that the omission of the knowledge of one's status element during the plea proceeding constituted structural error. *See id.* at 200. As a result, the error per se affected the defendant's substantial rights, requiring reversal. *See id.*

## **2. The question presented merits further review**

In *Rehaif* this Court construed Section 922(g) to require the government to prove "that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." *Rehaif*, 139 S. Ct. at 2194. For those like Mr. Sanabria-Robreno, whose convictions were not yet final, *Rehaif* applies on direct appeal. *See Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). As Justice Alito recognized in *Rehaif*, the government prosecutes thousands of individuals under Section 922(g). *See Rehaif*, 139 S. Ct. at 2212 & n.8 (Alito, J. dissenting). The issue thus affects many defendants on both direct and collateral review.

More important, there now exists a circuit divide of "yawning proportions on a frequently arising issue of significant practical importance." Petition for Writ of Certiorari at 21, *United States v. Gary*, No. 20-444 (quoting *United States v. Gary*, 963 F.3d 420 (4th Cir. 2020) (Wilkinson, J. concurring in the denial of rehearing en banc)). For instance, other circuits, including the Third, have held opposite of *Gary*. E.g., *United States v. Burghardt*, 939 F.3d 397, 403-05 (1st Cir. 2020).<sup>3</sup> And not

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<sup>3</sup> *Accord United States v. Balde*, 943 F.3d 73, 97 (2d Cir. 2019); *United States v. Lavalais*, 960 F.3d 180, 187-88 (5th Cir. 2020); *United States v. Hobbs*, 953 F.3d 853, 857-58 (6th Cir. 2020); *United*

surprisingly, there are several certiorari petitions on this issue pending before this Court. *See Petition for Writ of Certiorari at 24, United States v. Gary*, No. 20-444 (collecting petitions).

Accordingly, this Court's intervention is warranted.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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*States v. Williams*, 946 F.3d 968, 973-75 (7th Cir. 2020); *United States v. Coleman*, 961 F.3d 1024, 1029 n.3 (8th Cir. 2020); *United States v. Trujillo*, 960 F.3d 1196, 1205-07 (10th Cir. 2020); *United States v. Bates*, 960 F.3d 1278, 1296 (11th Cir. 2020).