

IN THE SUPREME COURT OF THE UNITED STATES

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Randolph Burleson,

*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 RANDOLPH BURLESON**

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March 3, 2020

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## Response

Following 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 controversial positions 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 Ninth Circuit has misapplied this Court's precedent, created irreconcilable inter- and intra-Circuit conflicts, 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 Randolph Burleson'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 17-28; *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020), *cert. granted*, No. 20-444 (U.S. Jan. 8, 2021). Given *Gary*, Burleson agrees with the government that a stay in this case is appropriate, as this Court's ultimate decision in *Gary* may affect resolution of Burleson'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 Burleson's first Question Presented, whether and when a defective indictment fails to confer jurisdiction on the federal courts, Pet. at 8-13, and second Question

Presented, whether violations of an accused's Fifth Amendment right to indictment by grand jury and Sixth Amendment right to notice of the charge cannot be waived by guilty plea, Pet. at 13-16, should this Court be inclined. Accordingly, a stay in this case pending this Court's decision in *Gary* is appropriate.

March 3, 2021.

Respectfully submitted,

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