NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2020

Jevonne Martell Coleman - Petitioner,

vs.

United States of America - Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) When it is undisputed that a defendant's plea was not knowingly and intelligently made in violation of the Due Process Clause, is automatic reversal required?

(2) Relatedly, what prejudice inquiry (if any) applies to appellate review of an unknowing and involuntary guilty plea?

(3) Whether the constitutional error satisfied the substantial-rights prong of plain error as applied by the court?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

United States v. *Coleman*, 2:18-CR-001017-CJW-MAR (N.D. Iowa May 14, 2019).

United States v. Coleman, 961 F.3d 1024 (8th Cir. 2020). (en banc denied July 21, 2020).

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases:

Statutes and Rules:

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The petitioner, Jevonne Martell Coleman, through counsel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Case No. 19-2068, entered on June 8, 2020. Mr. Coleman's petition for rehearing en banc and petition for rehearing by the panel were denied on July 21, 2020.

OPINION BELOW

On June 8, 2020, a panel of the Eighth Circuit Court of Appeals affirmed Mr. Coleman's conviction and sentence under 18 U.S.C. § 922(g). The published decision, *United States v. Coleman*, 961 F.3d 1024 (8th Cir. 2020), is included as an appendix.

JURISDICTION

The Court of Appeals entered its judgment on June 8, 2020 and denied Mr. Coleman's petition for rehearing en banc and petition for rehearing by the panel on July 21, 2020. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides:

> No person shall be held to answer for a . . . crime, unless on a presentment or indictment of a Grand Jury . . . nor be deprived of life, liberty, or property, without due process of law . . . .

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury and to be informed of the nature and cause of the accusation . . . .

18 U.S.C. § 922(g) states in relevant part:

> 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 . . . possess in or affecting commerce, any firearm or ammunition . . . .

18 U.S.C. § 924(a)(2) states in relevant part:

> Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

STATEMENT OF THE CASE

This petition arises from this Court's decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which clarified the required elements of 18 U.S.C § 922(g). That commonly prosecuted statute criminalizes certain classes of prohibited individuals from possessing firearms, including felons. Contrary to the prior uniform understanding, *Rehaif* held that individuals convicted under § 922(g) must not only knowingly possess the firearm but also must have knowledge of the status that prohibits them from possessing it. Thus, *Rehaif* created a large class of litigants who previously pleaded guilty to § 922(g) offenses, but were never notified of—and did not admit to—this critical *mens rea* element. Because they were not on notice of the nature of the charge against them, their pleas were not knowing and voluntary, as the Constitution requires.

A circuit split quickly emerged over how to treat *Rehaif*-based challenges to the validity of § 922(g) pleas and resulting convictions. *Compare United States v. Gary*, 954 F.3d 194 (4th Cir. 2020) *with United States v. Coleman*, 961 F.3d 1024 (8th Cir. 2020), *United States v. Lavalais*, 960 F.3d 180 (5th Cir. 2020), *United States v. Williams*, 946 F.3d 968 (7th Cir. 2020), *and United States v. Trujillo*, 960 F.3d 1196 (10th Cir. 2020). The dispute boils down to whether the unknowing and involuntary pleas resulting from *Rehaif* error constitute structural constitutional defects subject to automatic reversal or whether they should instead be characterized as mere plea colloquy defects subject to the review framework described by this Court in *United States v. Dominguez Benitez*, 542 U.S. 74 (2004).

At the heart of that issue is the question of prejudice—namely, whether defendants raising unpreserved challenges to the missing *mens rea* element must show prejudice to be entitled to relief and, if so, precisely what that prejudice inquiry demands.

District Court Proceedings

On May 10, 2018, a grand jury in the Northern District of Iowa indicted Mr. Coleman with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) & 924(a)(2) . (DCD 2).[1] The single count indictment alleged that on or about August 9, 2017, Mr. Coleman possessed a Hi-Point .45 caliber handgun. (DCD 2). The charge was based on recovery of the firearm from an apartment bedroom shared by Mr. Coleman and his girlfriend. (PSR ¶ 7). Officers of the Dubuque Police Department seized the firearm as part of their response and investigation of a reported shooting that same date. Mr. Coleman entered a plea of guilty to the charge.

On August 9, 2017, police responded to a shooting incident, during which Titus Jarmon sustained gunshot wounds to his right thigh and left buttock. (PSR ¶ 5). Mr. Coleman had experienced recent problems with Mr. Jarmon, including previous verbal altercations. (PSR ¶ 5). On this date, Mr. Jarmon approached and

[1] In this petition, the following abbreviations will be used:
"DCD" - district court clerk's record, followed by docket entry and page number, where noted;
"PSR" - presentence report, followed the paragraph number, where noted; and
"Sent. Tr." – Sentencing hearing transcript, followed by page number.
"App. B." – Appendix B, followed by the page number.

initiated a confrontation with Mr. Coleman who was seated with his friend, Robert Cole, on the porch in front of Mr. Coleman's apartment. (PSR ¶ 5). Following a verbal exchange, Mr. Cole struck Mr. Jarmon in the face. (PSR ¶ 5; Sent. Tr. p. 94). At some point after this physical contact, Mr. Jarmon ran away on foot. (PSR ¶ 5; Sent. Tr. p. 94). Mr. Coleman followed, firing shots at Mr. Jarmon. (Sent. Tr. pp. 93-94). Mr. Coleman later explained that he perceived Mr. Jarmon as a serious threat and was acting defensively. However, sentencing arguments related to an imperfect self-defense were rejected by the district court. (Sent. Tr. pp. 94-95). Nonetheless, the court noted a number of related mitigating considerations, including Mr. Jarmon's initiation of the initial confrontation, the lack of violence in Mr. Coleman's history, and the court's belief that Mr. Coleman felt harassed and helpless at the time of his offense. (Sent. Tr. p. 110). As a result of the two gunshot wounds, Mr. Jarmon was admitted to the hospital for medical care and released two days after the incident. (PSR ¶ 5).

Further investigation led to the conclusion that the Hi-Point .45 caliber handgun recovered by Dubuque Police Department officers was the firearm involved in the shooting. Traffic camera footage retrieved from the area showed Mr. Coleman firing shots at Mr. Jarmon and then returning to the apartment, where he was captured in camera footage, placing an object in bushes directly south of the apartment. (PSR ¶ 8). Another individual was subsequently observed in the video, appearing to retrieve the object, before returning to the apartment. (PSR ¶ 8). Laboratory analysis of spent casings recovered at the scene, in comparison to test

fired bullets and casings from the firearm, concluded that the recovered casings were fired from the same handgun seized by police. (PSR ¶ 10). This firearm is charged in the single count indictment filed against Mr. Coleman.

It is undisputed that Mr. Coleman is, in fact, a felon. His record contains several prior felony convictions. However, he has not served a continuous term of imprisonment greater than one year with respect to any of these convictions. He has five prior convictions for felony possession of a controlled substance. (PSR ¶¶ 26-28, 31, 35). Three of these convictions were disposed of in 2003. (PSR ¶¶ 26-28). With respect to the first two of these convictions, he was sentenced separately to distinct terms of probation and conditional jail time in the amount of 180 days. (PSR ¶¶ 26, 27). In December 2003, when Mr. Coleman was convicted of the third possession of controlled substance offense, for which he received a sentence of 18 months' imprisonment, he was also sentenced, on this same date, to a term of 18 months' imprisonment for revocation of the two earlier probationary sentences. (PSR ¶¶ 26-28). However, Mr. Coleman was paroled from his sentence in February of 2004, serving less than one year of imprisonment. (PSR ¶ 28). Although he was returned to prison and paroled on two additional occasions, in May and October, each time he served a term of imprisonment less than one year. (PSR ¶ 28).

This is also true of Mr. Coleman's two additional possession of controlled substance convictions. In 2007, he received a 12 month sentence of imprisonment, but was paroled before serving the full year of imprisonment. (PSR ¶ 31). In 2011, he received a probationary sentence that was satisfactorily discharged in 2013.

(PSR ¶ 35).

Likewise, his 2004 and 2009 felony convictions did not result in Mr. Coleman serving a single period of actual incarceration greater than one year. (PSR ¶¶ 29, 33). He received a sentence of two years' imprisonment for his 2004 conviction for manufacturing or distributing 2.5 to 10 grams of cannabis near a school, but he was paroled after serving less than one year of incarceration. (PSR ¶ 29). In 2009, his conviction for criminal damage to property resulted in a probationary sentence, with a period of 180 days conditional jail time (167 of those days stayed). (PSR ¶ 33). Thus, neither sentence resulted in the actual service of a single term of imprisonment exceeding one year.

Although Mr. Coleman's § 922(g)(1) indictment alleged that he knowingly possessed a firearm, the grand jury did not charge that he knew of the relevant status—having a felony conviction punishable by more than one year imprisonment—that prohibited him from possessing that firearm. In other words, the indictment failed to allege that Mr. Coleman knew he was among that class of individuals that cannot possess a weapon under federal law.

On November 21, 2018, Mr. Coleman entered a plea guilty to the sole count of the indictment at a Rule 11 proceeding before Magistrate Court Judge Mark Roberts. (DCD 19). On December 6, 2018, the district court issued an order accepting the plea. (DCD 20). At his May 14, 2020 sentencing hearing, the court imposed a 108 month term of imprisonment, concurrent to a potential future term of imprisonment imposed by the Iowa District Court of Dubuque County. (DCD 46).

After judgement was entered and Mr. Coleman had filed a notice of appeal, this Court decided *Rehaif*, which overturned decades of unanimous circuit precedent, which previously had held that the government was *not* required to prove that a defendant accused of a § 922(g) violation *actually knew* that he belonged to one of the listed categories of individuals the statute prohibited from possessing a firearm, but instead only had to prove knowledge of the possession itself. 139 S. Ct. at 2194. Contrary to this former understanding of the statute, *Rehaif* held that the circuits' erroneous application missed a critical, required element—mandated *mens rea* with respect to prohibited status. The Court explained that the government "must show that the defendant knew he possessed a firearm *and also* that he knew he had the relevant status when he possessed it." *Id*. Therefore, where—as here—a defendant's prohibited status arises from having been previously "convicted of a crime punishable by imprisonment for a term exceeding one year" under § 922(g)(1), the indictment must charge, and the government must prove beyond a reasonable doubt, that at the time the defendant knowingly possessed a firearm, he *also knew* that he belonged to that class of individuals.

In coming to this conclusion, the Court emphasized the critical importance of scienter, noting the "basic principle of criminal law" that "an injury is criminal only if inflicted knowingly[,]" which "is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." *Id*. at 2196.

Eighth Circuit Affirmance

Because *Rehaif* was not decided until after entry of the judgment against him, Mr. Coleman's trial counsel did not object to the now plainly defective indictment, factual basis, or court explanations—all of which omitted a required element of the offense. Indeed, at the time, the issue was soundly foreclosed, including in the Eighth Circuit. Normally, an issue not raised in the district court would be reviewed on appeal for plain error, which requires a showing that the unpreserved error was clear or obvious and affected the defendant's substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). On appeal, however, Mr. Coleman argued that the constitutional error in his case—namely, lack of notice of a mandated element of the offense and a resulting involuntary and unintelligent plea—was structural, and therefore reversal was automatic, without regard to prejudice or harm. Or, put another way, the "substantial rights" requirement of plain error review was satisfied by the nature of the constitutional defect itself.

The Eighth Circuit dismissed Mr. Coleman's argument, finding his constitutionally invalid plea did not constitute structural error. App. B at 14. The court rejected Mr. Coleman's structural error argument—which already had been adopted by the Fourth Circuit—concluding that unknowing and involuntary pleas arising from *Rehaif* error should not be considered structural defects requiring automatic reversal because the resulting harm is not unquantifiable or immeasurable. *Id.*

Reviewing under a plain error standard, the court found that the error did

not satisfy the requisite showing that Mr. Coleman's substantial rights were affected because he did not demonstrate "a reasonable probability that, but for the error, he would not have entered his plea." *Id*. The court concluded the record contained evidence that he knew of his felony status at the relevant time, based on multiple prior sentences to a term of imprisonment exceeding one year. *Id*. However, the multiple terms of imprisonment referenced in the decision, as outlined above, only exceed one year of *actual* time served if separate periods of incarceration for the underlying sentence, conditional jail time and parole violations are cumulated. (PSR ¶ 26-29). Mr. Coleman did not serve a single continuous period of incarceration that exceeded one year. Although he ultimately received an 18 month sentence for all three possession of controlled substance convictions, the sentences were pronounced on the same date following a revocation of his probation for the first two convictions and the sentencing for the third. (PSR ¶ 28). Likewise, his two year sentence for manufacturing or distributing cannabis resulted in a parole before he had served a year of imprisonment. The Eighth Circuit relied on these previous sentences in support of its findings as to Mr. Coleman's knowledge of his prohibited status.

REASONS FOR GRANTING THE WRIT

I. This issue is the subject of a firmly rooted circuit split—implicating unanswered questions at the intersection of plain error review and the structural error doctrine.

The premise of Mr. Coleman's claim is beyond dispute: his guilty plea was not knowing and voluntary, as the Constitution requires. He received no notice of, and therefore did not understand, the essential elements of the offense to which he pleaded guilty—nor did the prosecutor, the defense attorney, or the presiding judge. "A plea of guilty is constitutionally valid only to the extent it is 'voluntary' and 'intelligent'" *Bousley v. United States*, 523 U.S. 614, 618 (1998) (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)). Indeed, the "first and most universally recognized requirement of due process" is that a guilty plea cannot be knowing and voluntary unless the defendant receives "real notice of the true nature of the charge against him." *Henderson v. Morgan*, 426 U.S. 637, 645 (1976) (internal quotation marks omitted). Thus, when a defendant never receives notice of the true nature of the offense to which he pleads—and therefore cannot enter a voluntary and intelligent plea—his conviction has been entered without due process of law. The only question is remedy—specifically, whether this category of constitutional defect mandates automatic reversal or whether a defendant must make a specific showing of prejudice before being entitled to relief.

As the Fourth Circuit recently found, this Court's precedent counsels for an automatic reversal rule. *Gary*, 954 F.3d at 201. In fact, it appears that straight-forward application of this Court's decision in *Henderson v. Morgan* would dictate

that result. There, as here, it was undisputed the defendant was not informed of one of the elements of the offense—incidentally, the required *mens rea* element. Indeed, no charging instrument contained the element, and nothing in the record demonstrated a voluntary admission of that element. "Defense counsel did not purport to stipulate to that fact; they did not explain to [the defendant] that his plea would be an admission of that fact; and he made no factual statement or admission necessarily implying that he had such intent." *Henderson*, 426 U.S. at 646. Thus, the guilty plea "was involuntary and the judgment of conviction was entered without due process of law" because "respondent did not receive adequate notice of the offense to which he pleaded guilty[.]" *Id.* at 647.

Importantly, in *Henderson*, the relief was automatic based on the nature of the error—reversal was required regardless of whether information in the record might point toward the defendant's actual guilt. Indeed, the Court assumed "that the prosecutor had overwhelming evidence of guilt available." *Id.* at 644. Nonetheless, the Court held that "nothing in this record"—not even the defendant's admission that he did indeed kill the victim—could "serve as a substitute for *either a finding after trial, or a voluntary admission, that [the defendant] had the requisite intent*." *Id.* at 646 (emphasis added). The Court explained: "In these circumstances, it is impossible to conclude that [the defendant's] plea to the unexplained charge . . . was voluntary." *Id.* And it makes sense that evidence of guilt would be irrelevant to the question of reversal under those circumstances. The bedrock due process requirement of a knowing and intelligent plea does not

just guard against erroneous conviction, but safeguards "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." *Gary*, 954 F.3d at 204. In other words, the deprivation itself is the harm—not just the resulting conviction.

Although *Henderson* did not call upon the structural error doctrine by name, the error there—and in this case too—would seem to fall squarely within that category of constitutional defects. Structural errors are those that deprive defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair." *Rose v. Clark*, 478 U.S. 570, 577–78 (1986). As this Court has explained:

> The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it affect[s] the framework within which the trial proceeds, rather than being simply an error in the trial process itself.

Weaver v. Massachusetts, 137 S. Ct. 1899, 1908 (2017) (citations and internal quotation marks omitted). Structural errors are intrinsically harmful and therefore require "automatic reversal without any inquiry into prejudice." *Id.* at 1905. In fact, structural errors must be corrected even if there exists "strong evidence of a petitioner's guilt" and no "evidence or legal argument establishing prejudice." *Id.* at 1906.

It is "impossible" to determine whether the error resulting from the failure to provide notice of an essential element was 'harmless beyond a reasonable

doubt.'" *Weaver*, 137 S. Ct. at 1908 (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). By virtue of the error, the defendant is not put on proper notice of the need to defend against the element. Because the issue never becomes a relevant consideration to his defense, there is no way to know what choice the defendant would have made, if properly advised as to whether to plead guilty or go to trial. *See Lee v. United States*, 137 S. Ct. 1958, 1966 (2017) (noting "there is more to consider" when deciding whether to plead guilty "than simply the likelihood of success at trial"). Further, the defendant would have no reason to make a record concerning his knowledge, or lack of knowledge, of the unnoticed element. With such a limited record, the court cannot accurately pronounce that a defendant in Mr. Coleman's position would not have gone to trial. This is of particular significance for a defendant, such as Mr. Coleman, who has never served a continuous sentence of more than one year of imprisonment.

Moreover, such fundamental constitutional error—inherently harmful and prejudicial—suggests that the automatic reversal rule should apply even when a structural defect is raised for the first time on appeal. Although this Court has stated that forfeited structural errors are at least subject to plain error review, *see Johnson v. United States*, 520 U.S. 461, 466 (1997), it has repeatedly reserved the question of whether "'structural' errors . . . automatically satisfy the third prong of the plain-error test." *Puckett*, 556 U.S. at 140; *accord United States v. Olano*, 507 U.S. 725, 735 (1993); *United States v. Cotton*, 535 U.S. 625, 632–34 (2002). The Courts of Appeals, though, appear to consistently find "[t]he third requisite of plain

error review is necessarily met where the error at issue is structural." *United States v. Becerra*, 939 F.3d 995, 1005 (9th Cir. 2019); *accord United States v. Ramirez-Castillo*, 748 F.3d 205, 215 (4th Cir. 2014) ("[I]f the error in the instant case is structural, the third prong of *Olano* is satisfied."); *United States v. McAllister*, 693 F.3d 572, 582 n.5 (6th Cir. 2012) ("When the error in question is structural, the defendant is not required to show that the putative error affected his substantial rights."); *see also United States v. Syme*, 276 F.3d 131, 155 n.10 (3d Cir. 2002) (assuming that structural error "would constitute per se reversible error even under plain error review"). Similarly, the Eighth Circuit, while rejecting Mr. Coleman's claim of structural error, assumed—without deciding—that unpreserved structural error would automatically satisfy the third prong of plain error review, and would dispense with the need to show the error affected the defendant's substantial rights. App. B at 13.

Rather than apply *Henderson*'s automatic reversal rule—and the accompanying structural error doctrine—the Eighth Circuit in this case instead drew upon earlier circuit cases reviewing *Rehaif* error strictly under a plain error analysis. Finding that the constitutional error was not structural, the court determined a showing of prejudice was necessary. However, this approach fails to distinguish the constitutional error from a Rule 11 violation, incorrectly placing it in a prejudice framework.

Technical, or procedural defects arising from violations of Federal Rule of Criminal Procedure 11 are distinct from structural errors—necessitating reversal.

Rule 11 is "meant to ensure that a guilty plea is knowing and voluntary, by laying out the steps a trial judge must take before accepting such a plea." *United States v. Vonn*, 535 U.S. 55, 58 (2002). Those steps include, for example, informing the defendant of various rights waived by a plea, as well as determining that the defendant understands the nature of the charges and ensuring that there is a factual basis for the plea. *See* Fed. R. Crim. P. 11(b).

In *United States v. Dominguez Benitez*, this Court established the review framework applicable to a district court's failure to comply with Rule 11, holding that a defendant who seeks reversal on that basis "is obliged to show a reasonable probability that, but for the error, he would not have entered the plea. . ." 542 U.S. at 76. That is the prejudice framework the Eighth Circuit determined should apply to the unknowing and involuntary guilty plea in this case—presumably because the district court failed to notify Mr. Coleman of *Rehaif's mens rea* element prior to accepting his plea.

But any violation of Rule 11 was merely incidental and distinct from the *constitutional* error in this case. Mr. Coleman sought relief based on the fact that his plea was inherently unknowing and involuntary in violation of due process, not the court's mere failure to scrupulously follow the Federal Rules of Criminal Procedure. Indeed, although the *purpose* of Rule 11 is to verify that a plea is knowing and voluntary as the Constitution requires, the rule's many technical requirements are themselves procedural—not inherently constitutional. *See United States v. Davila*, 569 U.S. 597, 609 (2013) (agreeing that "[e]rrors or

omissions in following Rule 11's plea-colloquy instructions . . . are properly typed procedural . . .). Of course, a plea may be voluntarily and intelligently made even if Rule 11 technically has been violated, and, conversely, a plea may be unknowing and involuntary even if the rule is carefully followed. Put another way, the rule seeks to "ensure" that constitutional standards are met, but its requirements are not themselves constitutional mandates. *Vonn*, 535 U.S. at 58. Thus, "[a] variance from the requirements of [Rule 11] is harmless error if it does not affect substantial rights." Fed. R. Crim. P. 11(h).

The Court recognized this very distinction in *Dominguez Benitez*. The Court noted that, with respect to Rule 11 violations, "record evidence tending to show that a misunderstanding was inconsequential" or "evidence indicating the relative significance of other facts that may have borne on [the defendant's] choice regardless of any Rule 11 error" is relevant to the question of reversal. *Dominguez Benitez*, 542 U.S. at 84. But the Court also made clear that this is a "point of contrast with *the constitutional question whether a defendant's guilty plea was knowing and voluntary*." *Id.* at 84 n.10 (emphasis added). The implication being that, in *those* circumstances, record evidence of guilt is *not* relevant to reversal, because evidence of prejudice and harm is itself irrelevant. Indeed, the Court reaffirmed the well-known principle that "structural errors undermining the fairness of a criminal proceeding as a whole" will lead to reversal "without regard to the mistake's effect on the proceeding." *Id.* at 81. And the Court explained: "[W]hen the record of a criminal conviction obtained by guilty plea contains no

evidence that a defendant knew of the rights he was putatively waiving, *the conviction must be reversed*." *Id.* at 84 n.10 (emphasis added) (citing *Boykin v. Alabama*, 349 U.S. 238, 243 (1969)).

United States v. Davila—another Rule 11 case—recognized this important distinction as well. There, this Court determined that a violation of Rule 11(c)(1)—which bans judicial involvement in plea discussions—does not automatically mandate reversal, but instead requires an appellate court to consider whether, but for the improper comments, "it was reasonably probable" that defendant "would have exercised his right to go to trial." *Davila*, 569 U.S. at 612. In doing so, the Court placed Rule 11(c)(1) violations in the same category as simple Rule 11(b) omissions, observing: "Rule 11(c)(1) was adopted as a prophylactic measure, *not one impelled by the Due Process Clause or any other constitutional requirement*." *Id.* at 610 (emphasis added) (internal citation omitted). In other words, Rule 11's procedural mandates are preventative. Though the rule seeks to ensure the voluntariness of a plea, a violation of its terms does not automatically result in a plea being involuntary. Additional inquiry is necessary to determine the actual effect of any rule violation.

But no further inquiry is needed here. It is indisputable that Mr. Coleman's plea was not knowing and voluntary, as the Constitution requires. Indeed, no one involved in the proceedings—the court, defense counsel, the prosecutor, or Mr. Coleman—understood the true nature of the offense to which he was pleading guilty. Thus, the error was not a procedural defect that *could* have resulted in a

due process violation. The error itself was a due process violation—a grave and pervasive denial from the start to the finish of the proceedings. It is of no consequence that this error also incidentally violated the Federal Rules in the process.

At least four circuits now have expressly rejected this important distinction, shoehorning the constitutional error of an unknowing and involuntary plea into an ill-fitting Rule 11 prejudice framework. *See United States v. Coleman*, 961 F.3d 1024 (8th Cir. 2020); *United States v. Lavalais*, 960 F.3d 180 (5th Cir. 2020); *United States v. Williams*, 946 F.3d 968, 972 (7th Cir. 2020); *United States v. Trujillo*, 960 F.3d 1196 (10th Cir. 2020).

Mr. Coleman's case presents the ideal vehicle to address this critical issue, which affects not only defendants with *Rehaif*-based claims, but all future defendants whose criminal convictions rest on unknowing and involuntary admissions of guilt.

II. Even if *Rehaif* error does not mandate automatic reversal, this Court should clarify the prejudice framework applicable to unknowing and involuntary guilty pleas.

Even if this Court ultimately disagrees that an unknowing and involuntary plea is reversible per se, it should clarify the prejudice inquiry applicable to that special brand of constitutional error. In Mr. Coleman's case, the Eighth Circuit—like the Fifth, Seventh, and Tenth Circuits—simply squeezed the defect into an ill-fitting Rule 11 mold. But "the concept of prejudice is defined in different ways depending on the context in which it appears." *Weaver*, 137 S. Ct. at 1911. And

Dominguez Benitez—at the very least—made clear that its prejudice analysis was limited to the Rule 11 context and should not be stretched to encompass constitutional errors like the one in this case.

At the very least, if this Court does intend to permit continued use of the *Dominguez Benitez* prejudice framework in this context, the contours of that standard must be carefully defined. The Eighth Circuit took liberties with its application—imposing an actual innocence standard that imagined the outcome of a theoretical trial, rather than focusing on the soundness of Mr. Coleman's decision-making at the time of his plea. In essence, the Eighth Circuit concluded that the constitutional validity of a guilty plea and resulting unlawful conviction is of no consequence so long as the defendant is unable to scrap together conclusive proof from an underdeveloped record that there is a reasonable probability he would have prevailed at trial. Importantly, "[t]he reasonable-probability standard is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for error things would have been different." *Dominguez Benitez*, 542 U.S. at 83 n.9.

Moreover, the Eighth Circuit's approach is particularly dangerous in this context, in which defendants are unaware of the government's additional burden and therefore have no reason to develop record evidence relevant to the missing element or dispute incorrect record evidence that may appear to support it. *See Descamps v. United States*, 570 U.S. 254, 270 (2013) ("A defendant, after all, often has little incentive to contest facts that are not elements of the charged offense.").

And, most fundamentally, the constitutional ill in this context is not the wrongful conviction, but instead the invalid adjudication itself. The Eighth Circuit's approach to constitutional error transforms reviewing courts into mere deciders of guilt or innocence, rather than custodians of fair process.

Accordingly, regardless of this Court's leanings on the structural error question, it is critical—at the very least—to clarify the prejudice standard applicable to appellate review of unknowing and involuntary guilty pleas.

III. Even under a Rule 11 framework, Mr. Coleman satisfied the substantial-rights prong of plain error review.

In addition to—or in lieu of—the issues raised above, this Court should clarify what constitutes a showing of prejudice, under the analysis applied, for defendants in Mr. Coleman's position—having never served a single continuous period of imprisonment greater than one year. Even if this case were governed by the plain error framework—and if this Court does not find automatic reversal is required—Mr. Coleman has made a showing of prejudice. Assuming the determinative question under this framework is whether there is a reasonable probability that, but for the error, Mr. Colman would not have entered the plea, he would still meet any fair application of this standard. Section 922(g) requires a defendant charged with possessing a firearm as a felon must know that he was previously convicted of a crime "punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1); *see also Rehaif*, 139 S. Ct. at 2194. The record here demonstrates a *reasonable probability* that, if properly advised, Mr.

Coleman would have chosen to contest this element.

A review of Mr. Coleman's prior convictions does not support the finding of knowledge attributed to him by the Eighth Circuit decision—that he knew he had been previously convicted of a crime *punishable by imprisonment for a term exceeding one year*. The court's emphasis on "multiple terms of imprisonment exceeding one year" is misplaced. App. B at 15. Although those prior sentences were relied upon by the court when it rejected that Mr. Coleman's assertion that he satisfied the reasonable-probability standard, they do not support this conclusion. The multiple sentences referred to in the decision consisted of 18 month sentences, imposed on the same date and a subsequent two year sentence. (PSR ¶¶ 28, 29). However, Mr. Coleman did not actually serve a continuous term of imprisonment greater than one year for any of these sentences. (PSR ¶¶ 26-28). Mr. Coleman's knowledge of these prior convictions do not definitively establish that he knew of his prohibited status, as he did not in fact serve a single corresponding uninterrupted term of imprisonment exceeding one year. Imputing knowledge of prohibited status on Mr. Coleman based on these convictions, ignores potential and, based on the length imprisonment he actually served, reasonable misunderstanding of his status.

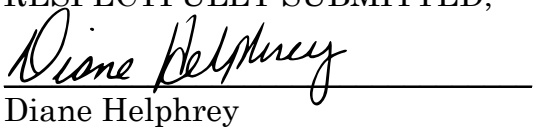
This court should intervene to clarify that defendants in Mr. Coleman's position—having never served a continuous sentence of imprisonment exceeding one year imprisonment—have sufficiently satisfied the substantial-rights prong

of plain error, under a Rule 11 framework.

CONCLUSION

For the foregoing reasons, Mr. Coleman respectfully requests that this Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,



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