No. _____

In the
Supreme Court of the United States

JORGE RANGEL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

Petition for Writ of Certiorari

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Questions Presented

1. Does the provision of the First Step Act, Pub. L. 115-391, 132 Stat. 5194 (Dec. 21, 2018), that amended 21 U.S.C. § 841(b)(1) to reduce mandatory-minimum sentences for drug-case defendants with certain qualifying prior convictions apply to defendants whose cases were on direct appeal at the time of its enactment?

2. Should the Court should hold this petition pending disposition of *Greer v. United States*, No. 19-8709—which will address whether courts may consider matters outside the trial record when deciding plain-error claims based on *Rehaif v. United States*, 139 S. Ct. 2191 (2019)—and then grant this petition, vacate the judgment, and remand for reconsideration in light of that decision (GVR)?

Related Proceedings

United States Court of Appeals for the Ninth Circuit

United States v. Jorge Rangel, Case No. 18-50406.

Memorandum Decision Entered: August 4, 2020; Mandate Entered: October 22, 2020.

United States District Court for the Central District of California

United States v. Jorge Rangel, Case No. CR-17-00354-AB.

Judgment Entered: November 6, 2018.

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

Jorge Rangel petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

Opinions Below

The Ninth Circuit's memorandum decision in *United States v. Rangel*, Case No. 18-50406, was not published. App. 1-9a.[1] The district court did not issue any relevant written decision.

[1] "App." refers to the attached appendix. "ER" refers to the appellant's excerpts of record electronically filed in the Ninth Circuit on August 8, 2019 (Docket No. 11). "PSR" refers to presentence report and related documents electronically filed in the Ninth Circuit on August 8, 2019 (Docket No. 12). "AOB" refers to the appellant's opening brief electronically filed in the Ninth Circuit on September 17, 2019 (Docket No. 16). "GAB" refers to the government's answering brief electronically filed in the Ninth Circuit on November 18, 2019 (Docket No. 21). "ARB" refers to the appellant's reply brief electronically filed in the Ninth Circuit on February 7, 2020 (Docket No. 38). "PFR" refers to the appellant's petition for panel rehearing / rehearing en banc electronically filed in the Ninth Circuit on September 17, 2020 (Docket No. 59).

Jurisdiction

The Ninth Circuit issued its memorandum decision on August 4, 2020. App. 1a. It denied Rangel's petition for panel rehearing / rehearing en banc on October 14, 2020. App. 10a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).[2]

Constitutional and Statutory Provisions Involved

U.S. Const., Amend. V provides:

> 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 offence 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.

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[2] On March 19, 2020, the Court (due to the pandemic) issued an order providing that "the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing."

U.S. Const., Amend. VI provides:

> 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 defence.

18 U.S.C. § 922(g)(1) provides:

> It shall be unlawful for any person ... 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. § 924(a)(2):

> 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.

The First Step Act, Pub. L. 115-391, § 401(c), 132 Stat. 5194 (Dec. 21, 2018), provides:

> APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

Statement of the Case

A jury found Jorge Rangel guilty of possessing methamphetamine with intent to distribute (Count 1), possessing a firearm in furtherance of that crime (Count 2), and possessing that firearm and ammunition as a convicted felon (Count 3).[3] Given the jury's drug-quantity finding, the mandatory-minimum sentence for Count 1 was ten years, but—under the version of the charging statute in effect at the time of sentencing (21 U.S.C. § 841(b)(1)(A)(viii) (2016))—that increased to 20 years because Rangel purportedly had a prior conviction for a "felony drug offense."[4] An additional mandatory consecutive sentence of five years was required for Count 2.[5]

At sentencing, the district court announced up front that a 25-year sentence is "extreme" given Rangel's background.[6] Unsuccessfully "struggling with any legal means" to "deviate from

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[3] ER 80-83, 758-61, 774-76; AOB 4, 11.

[4] ER 62-65, 71, 80, 84-85, 759, 774-75; PSR 29; AOB 4-5, 11.

[5] ER 71, 81; PSR 29; AOB 11.

[6] ER 59.

the mandatory minimums[,]" this case caused the district court "some heartburn[.]"[7] The court repeated: "It's a tough case. It's a tough case."[8] In the end, the district court found "no wiggle room" around the mandatory minimums because it was "bound" by its "oath" to follow the then-existing statutes.[9] But it made its position absolutely clear: "I believe that this sentence is excessive for this offense. If for some reason the Ninth Circuit" reverses, "I would certainly sentence Mr. Rangel to a lesser sentence. But based on the evidence before me, I don't have any other option."[10] Thus, the district court "reluctantly" found that it had to impose the 25-year sentence—a mandatory minimum 20 years on Count 1, plus a mandatory consecutive five years on Count 2, and a concurrent five years on Count 3—even as it said, "I do believe that this sentence is greater than necessary given the facts and circumstances of this case."[11]

Several weeks after Rangel's sentencing, Congress passed, and the President signed, the First Step Act, Pub. L. 115-391, 132 Stat. 5194 (Dec. 21, 2018). The Act amended § 841(b)(1)(A) to reduce the mandatory-minimum sentence for defendants with a qualifying prior conviction (now called a "serious drug felony") from 20 to 15 years. 21 U.S.C. § 841(b)(1)(A) (2019); First Step Act, § 401(a)(2)(i). Therefore, if Rangel is resentenced under the First Step Act, he will face (at

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7 ER 59.

8 ER 60.

9 ER 59-60, 71-73.

10 ER 72.

11 ER 72-73; AOB 11-12.

most) a total mandatory-minimum sentence of 20 (not 25) years, assuming his prior conviction even qualifies as a "serious drug felony."[12]

While Rangel's case was on appeal, this Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (2019). It held that to obtain a conviction under 18 U.S.C. § 922(g)—one of the crimes for which Rangel was convicted (Count 3)—the government "must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status [prohibiting such possession] when he possessed it." *Id*. at 2194.

On appeal, Rangel raised several issues challenging his conviction and sentence,[13] a few of which are relevant to this petition. First, he argued that the Court should reverse his felon-in-possession-of-a-firearm conviction (Count 3) and direct entry of a judgment of acquittal because the government failed to prove that he knew he was a felon, as required by *Rehaif*.[14] Rangel alternatively argued that *Rehaif* at least required a new trial on Count 3 because the indictment did not allege, and the district court did not instruct the jury on, the essential element recognized in that case.[15] Finally, Rangel argued that the First Step Act required resentencing because it applies to sentences on direct appeal.[16]

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[12] AOB 71-72.

[13] AOB 18-72; ARB 2-35.

[14] AOB 18-20; ARB 20-26.

[15] AOB 20-22; ARB 24-26.

[16] AOB 67-69; ARB 33.

In an unpublished memorandum decision, the Ninth Circuit affirmed Rangel's convictions and sentence, except for an error declaring him permanently ineligible for federal benefits.[17] It concluded that the plain-error standard applied to his *Rehaif* claims and that—given evidence outside the trial record—he could not satisfy that standard.[18] The Ninth Circuit also held that the First Step Act does not apply to a case on direct appeal when it was enacted.[19] Rangel filed a petition for panel rehearing / rehearing en banc, but the Ninth Circuit denied it.[20]

Reasons for Granting the Writ

1. The Court should grant review to address the important question of whether the provision of the First Step Act, Pub. L. 115-391, 132 Stat. 5194 (Dec. 21, 2018), that amended 21 U.S.C. § 841(b)(1) to reduce mandatory-minimum sentences for drug-case defendants with certain qualifying prior convictions applies to defendants whose cases were on direct appeal at the time of its enactment.

In sentencing Jorge Rangel, the district court reluctantly imposed 20 years for Count 1 (possession of methamphetamine with intent to distribute) because, given the jury's drug-

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[17] App. 1-9a.

[18] App. 2-3a; GAB 29; ARB 25.

[19] App. 8a.

[20] App. 10a.

quantity finding and his prior conviction for (purportedly) a "felony drug offense," that was the minimum allowed by 21 U.S.C. § 841(b)(1)(A)(viii) (2016).[21] But shortly after Rangel's sentencing, Congress enacted, and the President signed, the First Step Act, Pub. L. 115-391, 132 Stat. 5194 (Dec. 21, 2018). Among other things, the Act amended § 841(b)(1) to reduce the mandatory-minimum sentence for drug-case defendants with certain prior convictions. 21 U.S.C. § 841(b)(1)(A) & (B) (2019); First Step Act, § 401(a)(2). In particular, the amendment of the provision under which Rangel was sentenced, § 841(b)(1)(A), reduced the mandatory-minimum sentence for defendants with a qualifying prior conviction from 20 to 15 years. 21 U.S.C. § 841(b)(1)(A) (2019); First Step Act, § 401(a)(2)(i). The Court should grant review to decide whether that part of the Act applies to those—like Rangel—whose cases were on direct appeal at the time of its enactment.

In general, a court must "apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." *Bradley v. School Board of City of Richmond*, 416 U.S. 696, 711 (1974) (citing *United States v. Schooner Peggy*, 1 Cranch 103 (1801) (Marshall, C.J.)). Consider, for example, *Hamm v. City of Rock Hill*, 379 U.S. 306 (1964). There, the Court considered the convictions of defendants who had staged sit-ins at lunch counters that refused to provide services based on race. *Id*. at 307. After the defendants were convicted of trespass, but before their convictions became final, Congress passed the Civil Rights Act of 1964, which prohibited prosecution for

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[21] ER 62-65, 71, 80, 84-85, 759, 774-75; PSR 29; AOB 4-5, 11.

their conduct. *Id*. at 308-12. In vacating the defendants' convictions, the Court explained the principle at issue here:

> [I]f subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. ... In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside.

Id. at 312-13 (quoting *Schooner Peggy*, 1 Cranch at 110) (quotation marks omitted). This principle, the Court said, "imput[es] to Congress an intention to avoid inflicting punishment at a time when it can no longer further any legislative purpose" and is to be "read wherever applicable as part of the background against which Congress acts." *Id*. at 313-14.

There is no clear contrary statutory direction in this case. The amendment of § 841 was made by subsection (a)(2) of § 401 of the First Step Act. Subsection (c) of § 401 provides:

> APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

Reading this provision in its entirety, the final clause should not be construed to prohibit application to cases on direct appeal. A case does not become final until "a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for

certiorari elapsed or a petition for certiorari finally denied." *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987). It follows that a sentence should not be deemed finally "imposed" until the case itself is final. To put it another way, during a criminal defendant's direct appeal, his "case" is still "pending." *See* First Step Act, § 410(c) (titled "Applicability to Pending Cases").

When Congress intended a provision of the First Step Act not to apply to cases already on direct appeal on the date of enactment, it said so. For example, the Act's safety-valve modifications "shall apply only to a conviction entered on or after the date of enactment of this Act." First Step Act, § 402(b) (titled "Applicability"). A conviction is entered when the judgment of conviction and sentence are entered on the district court's docket. *See* Fed. R. Crim. P. 32(k)(1); Fed. R. App. P. 4(b)(6). Reading sentence "imposed" in § 401(c) to mean pronouncement of the sentence (rather than finality of the sentence after direct appeal) would require the Court to give the same meaning to both provisions, even though Congress clearly intended, by its deliberate use of different language, that there be a distinction. Because the Court strives to give effect to every word in a statute, it should read "imposed" to not include not-yet-final sentences on direct appeal. *See National Association of Manufacturers v. Department of Defense*, 138 S. Ct. 617, 632 (2018) ("[T]he Court is 'obliged to give effect, if possible, to every word Congress used.'"). To the extent a contrary reading is also plausible, the rule of lenity requires the Court to give defendants the benefit of the more "defendant-friendly" interpretation. *United States v. Santos*, 553 U.S. 507, 514 (2008); *see also Yates v. United States*, 574 U.S. 528, 547-48 (2015).

The Ninth Circuit nevertheless rejected this interpretation of § 401(c) in Rangel's case, concluding that a "sentence is deemed imposed when it is announced by the district judge in open court."[22] It subsequently reached the same conclusion in a published opinion without much analysis. *See United States v. Asuncion*, 974 F.3d 929, 934 (9th Cir. 2020) ("In the context of the First Step Act, a sentence is 'imposed' when the district court pronounces the sentence, and not, as Asuncion argues, when the conviction becomes final after appeal."). Other circuits have reached the same conclusion. *See United States v. Brunson*, 968 F.3d 325, 335-36 (4th Cir. 2020), *cert. denied*, 2021 WL 666526 (2021); *United States v. Staggers*, 961 F.3d 745, 753-54 (5th Cir. 2020); *United States v. Gonzalez*, 949 F.3d 30, 42-43 (1st Cir.), *cert. denied*, 141 S. Ct. 327 (2020); *Young v. United States*, 943 F.3d 460, 461-64 (D.C. Cir. 2019); *United States v. Aviles*, 938 F.3d 503, 510 (3d Cir. 2019); *United States v. Wiseman*, 932 F.3d 411, 417 (6th Cir. 2019), *cert. denied*, 140 S. Ct. 1237 (2020); *United States v. Pierson*, 925 F.3d 913, 927-28 (7th Cir. 2019), *vacated on other grounds*, 140 S. Ct. 1291 (2020).

Although there is not yet a circuit conflict, this issue still merits the Court's attention because it affects a significant number criminal defendants who collectively could serve many decades of additional prison time if the First Step Act's reduction of drug-case mandatory-minimum sentences are not applied to cases on direct appeal, as Congress intended. Delving into this issue will also allow the Court to provide guidance to the lower courts about how to interpret laws' applicability-to-pending-cases provisions, and to Congress on how to draft such provisions. The Court should therefore grant certiorari.

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[22] App. 8a (quotation marks omitted).

2. At a minimum, the Court should hold this petition pending disposition of *Greer v. United States*, No. 19-8709—which will address whether courts may consider matters outside the trial record when deciding plain-error claims based on *Rehaif v. United States*, 139 S. Ct. 2191 (2019)—and then grant this petition, vacate the judgment, and remand for reconsideration in light of that decision (GVR).

If the Court does not grant certiorari on the First Step Act issue, it should hold this petition pending disposition of *Greer v. United States*, No. 19-8709, which presents the following question: "Whether, when applying plain-error review based upon an intervening United States Supreme Court decision, a circuit court of appeals may review matters outside the trial record to determine whether the error affected a defendant's substantial rights or impacted the fairness, integrity, or public reputation of the trial?" The intervening decision at issue in *Greer* is the same one at issue in Rangel's appeal: *Rehaif v. United States*, 139 S. Ct. 2191 (2019). Therefore, after the Court decides *Greer*, it should grant Rangel's petition, vacate the judgment, and remand for reconsideration in light of that decision (GVR).[23]

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[23] The Court has also granted certiorari in *United States v. Gary*, No. 20-444, another *Rehaif* case presenting a related issue: "Whether a defendant who pleaded guilty to possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a), is automatically entitled to plain-error relief if the district court did not advise him that one element of that offense is knowledge of his status as a felon, regardless of whether he can show that the district court's error affected the

Count 3 charged Rangel with violating 18 U.S.C. § 922(g).[24] That statute makes it unlawful for certain categories of individuals to possess a firearm or ammunition. The category at issue here (and in *Greer*) encompasses any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year. 18 U.S.C. § 922(g)(1). But it is 18 U.S.C. § 924(a)(2) that establishes a criminal penalty for someone who "knowingly" violates § 922(g). In *Rehaif*, the Court held that "the word 'knowingly' applies both to the defendant's conduct and to the defendant's status[,]" so to obtain a conviction, 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." 139 S. Ct. at 2194. Thus, it is "the defendant's *status*, and not his conduct alone, that makes the difference. Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful." *Id*. at 2197 (emphasis in original).

In light of *Rehaif*, three significant errors occurred in Rangel's case.

First, the Constitution precludes trial on felony charges absent indictment by a grand jury. U.S. Const., Amend. V; *Stirone v. United States*, 361 U.S. 212, 215 (1960). It also guarantees a defendant's right to be informed of the nature and cause of the accusations made in criminal prosecutions. U.S. Const., Amend. VI; *Russell v. United States*, 369 U.S. 749, 761 (1962). Thus, "an indictment must set forth each element of the crime that it charges." *United States v.*

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outcome of the proceedings." To the extent the decision in *Gary* (which presumably will be considered and decided in concert with *Greer*) is relevant to the *Rehaif* issues in Rangel's case, the GVR order should encompass that case as well.

[24] ER 82-83.

Resendiz-Ponce, 549 U.S. 102, 107 (2007) (quotation marks omitted). Rangel's indictment didn't include the element discussed in *Rehaif*.[25]

Second, omission of an element in the jury instructions is constitutional error. *Neder v. United States*, 527 U.S. 1, 8-9 (1999). Rangel's jury was not instructed on the *Rehaif* element.[26]

Finally, the Due Process Clause required the government to prove beyond reasonable doubt "every fact necessary to constitute the crime" charged. *In re Winship*, 397 U.S. 358, 364 (1970). The evidence at Rangel's trial was insufficient to prove the *Rehaif* element because, even viewing the trial evidence in the light most favorable to the government, a rational factfinder could not have found that element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "[E]vidence is insufficient to support a verdict where mere speculation, rather than reasonable inference, supports the government's case[.]" *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010) (en banc). The only trial evidence concerning Rangel's criminal history was this stipulation: "At the time of the offenses alleged in the Indictment, Defendant Jorge Rangel had been convicted of at least one felony crime punishable by a term of imprisonment exceeding one year."[27] That stipulation did not permit a reasonable inference that Rangel *knew* his status as someone who had been convicted of a crime punishable by

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[25] ER 82-83.

[26] ER 715-16.

[27] ER 699-700.

imprisonment for a term exceeding one year.[28] Nor did anything else in the trial evidence support such an inference. Therefore, the evidence as to this element was insufficient, which required reversal of the conviction and entry of a judgment of acquittal. *Burks v. United States*, 437 U.S. 1, 18 (1978).

The Ninth Circuit reviewed Rangel's *Rehaif* claims for plain error.[29] Under that standard, an appellate court may grant relief if the district court erred, that error was plain, the error affected

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[28] In *Rehaif*, the Court recognized that a person might sustain a felony conviction without knowing it was a crime punishable by more than a year in prison. 139 S. Ct. at 2198. Accordingly, the Ninth Circuit has held that a mere stipulation of the historical fact that the defendant was convicted of a crime punishable by imprisonment for more than a year does not, without more (like the nature of the crime or the length of the sentence imposed), allow a rational factfinder to infer that he knew of his prohibited status as required by *Rehaif*. *United States v. Johnson*, 979 F.3d 632, 637 (9th Cir. 2020).

[29] App. 2-3a. Rangel maintains that the Ninth Circuit should have applied de novo review to his insufficient-evidence claim, which he preserved by making a Fed. R. Crim. P. 29 motion at trial. ER 701-03; AOB 19; ARB 23. This Court has recognized that it is claims that are deemed waived or forfeited, not arguments. In *Lebron v. National Railroad Passenger Corporation*, the plaintiff argued below that Amtrack was a private entity yet still subject to constitutional requirements because it was closely connected with federal entities. 513 U.S. 374, 378-79 (1995). When the case got to this Court, however, the plaintiff argued for the first time that Amtrack was itself a federal entity. *Id*. at 379. The Court said that was okay. It noted the "traditional rule" that "'once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.'" *Id*. (quoting *Yee v. Escondido*, 503 U.S. 519, 534 (1992)). It therefore concluded that

the defendant's substantial rights, and the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *United States v. Olano*, 507 U.S. 725, 732 (1993). Here, in light of *Rehaif*, the indictment and jury instructions were deficient and the trial evidence was insufficient. And those errors are plain. *See Henderson v. United States*, 568 U.S. 266, 279 (2013) (error must be plain at time of appellate review). The third and fourth prongs of the plain-error standard are also satisfied *if only the trial evidence is considered*.[30] But the Ninth Circuit concluded that Rangel could not satisfy the plain-error standard as to his *Rehaif* claims by looking to information *outside the trial record*, namely, documents presented at Rangel's sentencing purportedly showing that he "had been convicted of three crimes for which he was punished by imprisonment for terms exceeding one year, and he actually served over a year in prison for at least two of them."[31] In doing so, the Ninth Circuit relied on its published opinion in *United States v. Johnson*, which held that the Court may, as part of its plain-error review, "review the entire record on appeal—not just the record adduced at trial[.]" 979 F.3d 632, 637

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the contention about Amtrak being a federal entity was not a new claim but only a new argument to support the plaintiff's consistent claim that Amtrak violated his constitutional rights. *Id*. By the same token, Rangel has consistently claimed that the trial evidence was insufficient to prove any of the charges, including Count 3. He was therefore free to make any argument to support that claim on appeal, including new ones based on *Rehaif*.

[30] AOB 19; ARB 20-21, 24-26; PFR 16-17.

[31] App. 2-3a; GAB 29 (pointing to presentence report and records presented at sentencing for prior-sentence information repeated by Ninth Circuit in memorandum decision); *see also* ARB 25.

(9th Cir. 2020).[32] Again, the Court will decide in *Greer* whether that is true, thereby resolving a circuit conflict on the matter. *See United States v. Nasir*, 982 F.3d 144, 161-70 (3d Cir. 2020) (en banc).

"A GVR is appropriate when intervening developments"—like a new opinion from this Court—"reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the matter." *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (per curiam) (citing *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam)) (quotation marks omitted). "This practice has some virtues. In an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before [it] rules on the merits, and alleviates the potential for unequal treatment that is inherent in [its] inability to grant plenary review of all pending cases raising similar issues[.]" *Lawrence*, 516 U.S. at 167 (quotation marks omitted). This flexible approach "can improve the fairness and accuracy of judicial outcomes while at the same time serving as a cautious and deferential alternative to summary reversal in cases whose precedential significance does not merit [the Court's] plenary review." *Id*. at 168.

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[32] A petition for certiorari raising the same issue as *Greer* is pending in that case. *See Johnson v. United States*, Case No. 20-7194.

Here, "the equities of the case" support a GVR order after the Court decides *Greer* and *Gary*. *See Lawrence*, 516 U.S. at 167-68. If those decisions in any way undermine the Ninth Circuit's *Rehaif* analysis in Rangel's case, a GVR would "assist[]" that court "by flagging a particular issue" that it has not "fully considered[.]" *Id.* at 167.

Conclusion

For the foregoing reasons, the petitioner respectfully requests that this Court grant his petition for writ of certiorari.

March 5, 2021

Respectfully submitted,

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