NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JONATHAN BEASLEY
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 20-60113

PETITION FOR WRIT OF CERTIORARI

Omodare B. Jupiter (MB #102054)
Federal Public Defender
N. and S. Districts of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510
Attorney for Defendant-Petitioner

QUESTION PRESENTED FOR REVIEW

Whether, in a federal prosecution for possession of a firearm by a convicted felon pursuant to 18 U.S.C. Section 922(g)(1) that occurred after the decision in *Rehaif v. United States*, 139 S.Ct. 2191 (2019), the government is required to prove that the defendant knew that his prior state prosecution placed in a category of prohibited persons under the federal statute.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

statutes:

rules:

I. OPINIONS BELOW

This petition for certiorari seeks to correct the interpretation of the opinion in *Rehaif* as it pertains to prosecutions of persons who are barred from possessing firearm under 18 U.S.C. § 922(g) due to their status as convicted felons. The United States Court of Appeals for the Fifth Circuit affirmed the district court's ruling in this case that *Rehaif* only requires that the government prove that Mr. Beasley knew that he was convicted of a crime, not that he knew the consequences of that conviction. The actual knowledge element is required by the Supreme Court's ruling in *Rehaif v. United States*.

This case arises out of a conviction in the Southern District of Mississippi for felon in possession of a firearm in violation of 18 U.S.C. § 922(g). The district court entered the Final Judgment on January 24, 2020. The Judgment is attached hereto as Appendix 1.

On November 6, 2020, the Fifth Circuit entered an Order affirming the district court's rulings. It entered a Judgment on the same day. The Fifth Circuit's Order and Judgment are attached hereto as composite Appendix 2.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on November 6, 2020. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Order as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's COVID-19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

The provisions of 18 U.S.C. § 922(g)(1) is at issue. In relevant part, this statute states:

> (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.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal prosecution for a violation of federal statute, 18 U.S.C. §§ 922(g)(1) and 924. The prosecution originated in the United States District Court for the Southern District of Mississippi. A jury trial in that court resulted in a conviction. Mr. Beasley appealed his conviction to the United States Court of Appeals for the Fifth Court. That Court affirmed the conviction. The Fifth Circuit had jurisdiction over the case under 18 U.S.C. § 3231 because the underlying criminal conviction against Mr. Beasley arose from the laws of the United States of America.

B. Statement of material facts.

A Federal Grand Jury for the Southern District of Mississippi indicted Mr. Beasley for knowingly, having been convicted previously of a felony, possessing a firearm in and affecting interstate and foreign commerce on December 12, 2018. Jury selection began in this matter on October 16, 2019, with trial following on the same day.

Most of the facts relating to law enforcement's initial arrest of Mr. Beasley and their initial discovery of a firearm are not relevant to this petition. In summary, a local police officer, Devonta Recio of the Jackson Police Department, responded to a call from Mr. Beasley's ex-girlfriend, Shunta Shepard. She reported that

Beasley threatened her on the phone and in a text message. Ms. Shepard's friend reported she saw Beasley put his hand on a weapon while passing him in a car. Recio then received a call from the police department's dispatch that Beasley was located at a nearby gas station. Recio went to the gas station, and detained Beasley at that scene. Recio opened the door to Beasley's disabled car after smelling burnt marijuana he found a firearm inside the car. Mr. Beasley was then transported to Jackson Police Department Headquarters, and he spent the next day in custody.

Jackson Police Department Detective Sharon Jordan interviewed Mr. Beasley the day after he was arrested. During the interview, Mr. Beasley admitted that he was intoxicated on the night of his arrest and that he did not know why he was arrested.

Detective Jordan told Mr. Beasley that he had a gun in his car. In an attempt to get Mr. Beasley to guess why he was arrested, Jordan then told Beasley that if he had a gun *and* he was arrested, then what did he think. Beasley responded by asking, "The gun was stolen?" When Jordan asked Beasley about whether he had ever been convicted of a felony, Beasley told her that he had not.

Derrick Patton, a field officer with the Mississippi Office of Probation and Parole, testified that he was the intake processing officer for Mr. Beasley after Beasley received probation in a state court prosecution. Patton indicated that he was assigned to do intake on January 6, 2017, and that he and Mr. Beasley both signed a

document, marked as Government's Exhibit 5, Notice of How Firearms and Voting Laws Affect You. The notice indicated that the person who was convicted was prohibited from possessing a firearm. On cross-examination, Officer Patton admitted that he did not have any independent recollection of this meeting with Mr. Beasley, but that his testimony was based on what happens in his regular practice and because he recognizes the signatures on the document.

The government's final witness was an ATF agent who testified on the interstate nexus element. The government then rested. Mr. Beasley moved for a judgment of acquittal which was denied. The defense rested without putting on a case.

Mr. Beasley requested a jury instruction that was patterned after the language found in *Rehaif v. United States*. The defense argued that the court had to instruct the jury that the government had to prove that Beasley specifically knew that he was prohibited from possessing a firearm. The court refused to give any instruction that would have required the government to prove that Beasley specifically knew of his prohibition. Rather the court instructed the jury that the government had to prove that "at the time the defendant possessed the firearm, he knew that he had previously been convicted in a court of a crime punishable by imprisonment for a term in excess of one year." After deliberation, the jury found Mr. Beasley guilty of the single charge in the indictment.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." The single issue presented in this petition is a matter of national interest because it seeks to clarify this court holding in *Rehaif v. United States*, 139 S.Ct. 2191 (2019). In that case, this court vacated a conviction for a violation of 18 U.S.C. 922(g)( ), i.e. alien in possession of a firearm. This Court found that "the word knowingly [within 18 U.S.C. § 922(g)] applies both to the defendant's conduct and to the defendant's status." *Id.* at 2191. The court specifically stated that "the Government must prove both that the defendant knew he possessed a firearm *and that he knew he belonged to the relevant category of persons barred from possessing a firearm*". *Id.* at 2200 (emphasis added). There are not many cases that have reviewed the district courts' post-*Rehaif* jury instructions in 18 U.S.C. § 922(g)(1) cases. In fact, "the Supreme Court made clear that it was 'express[ing] no view ... about what precisely the Government must prove to establish a defendant's knowledge of status in respect to other § 922(g) provisions not at issue here.'" *United States v. Hollingshed*, 940 F.3d 410, 415 (8th Cir. 2019), *cert. denied*, 206 L. Ed. 2d 483 (Mar. 23, 2020). Nevertheless, the *Rehaif* opinion specifically speaks of knowledge of prohibited status.

The element of "knowledge of prohibited status" is a meaningless element if the government does not have to prove an awareness that the felony conviction prohibits them from possessing a firearm. Practically speaking, the knowledge requirement bears no qualitative difference than proving the objective fact that the person is prohibited.

The word "knowingly" requires a step further than just the blanket statement that one is a felon. The defendant's prohibited status in the "crucial element" separating innocent from wrongful conduct, so the *mens rea* of "knowingly" attaches to that element. *Rehaif*, 139 S.Ct. at 2197. Therefore, due to *Rehaif*, under 18 U.S.C. § 922(g) the government is required to prove more, and the defense is entitled to an instruction that supports his theory that the government failed to prove this element.

This Court noted in *Rehaif* that "the well-known maxim that ignorance of the law ... is no excuse .... normally applies where a defendant has the requisite mental state in respect to the elements of the crime but claims to be unaware of the existence of a statute proscribing his conduct." 139 S. Ct. at 2198 (quotations omitted). The Court went on to explain that this maxim **does not apply** where a mistake "concerning the legal effect of some collateral matter ... negat[es] an element of the offense." *Id.* (quotations omitted). Thus, for instance, an individual who mistakenly believes he is not within a prohibited class—such as a "defendant who does not know

that he is an alien 'illegally or unlawfully in the United States' "—"does not have the guilty state of mind that the statute's language and purposes require." *Id.* at 2198; In *United States v. Robinson*, 982 F.3d 1181 (8th Cir. 2020), the Eighth Circuit remarked that "[a]fter Rehaif, it may be that a defendant who genuinely but mistakenly believes that he has had his individual rights restored has a valid defense to a felon-in-possession charge." *Id.* at 1186. Ironically, that Court did not go on to find that a defendant has to understand that a consequence of his conviction is that he is barred from possessing a firearm.

The Fifth Circuit has misinterpreted *Rehaif* in other "felon in possession" cases. *See United States v. Lavalais*, 960 F.3d 180, 184 (5th Cir. 2020) (interpreting Rehaif to require "not only that the felon knows he is possessing a firearm—but that the felon also knows he is a convicted felon"), petition for cert. filed (U.S. Aug. 20, 2020) (No. 20-5489); *United States v. Huntsberry*, 956 F.3d 270, 281 (5th Cir. 2020) (considering under *Rehaif* whether defendant "knew his status as [a] felon when he possessed the guns"). *See also United States v. Trevino*, 989 F.3d 402, 405–06 (5th Cir. 2021).

Four other circuits have also interpreted *Rehaif* in the same manner as the Fifth Circuit. *See United States v. Maez*, 960 F.3d 949, 954–55 (7th Cir. 2020) (rejecting argument that defendants must "know that it was a crime to possess a firearm as a result of their prohibited status" (emphasis omitted)); *Robinson*, 982

F.3d at 1187 ("Rehaif did not alter the well-known maxim that ignorance of the law (or a mistake of law) is no excuse."(quotations omitted)); *United States v. Singh*, 979 F.3d 697, 728 (9th Cir. 2020) ("[T]he Government must prove only that [defendant] knew, at the time he possessed the firearm, that he belonged to one of the prohibited status groups."); *United States v. Johnson*, 981 F.3d 1171, 1189 (11th Cir. 2020) ("[T]hat a defendant does not recognize that he personally is prohibited from possessing a firearm under federal law is no defense if he knows he has a particular [prohibited] status."); *see also United States v. Bryant*, 976 F.3d 165, 172–73 (2d Cir. 2020) (noting that "a felon need not specifically know that it is illegal for him to possess a firearm under federal law"). We respectfully submit that these holdings are misinterpretations of this Court's holding.

B. The current misinterpretation of *Rehaif* seriously impairs a defendant's ability to put on a defense.

District courts are currently instructing juries that the "knowledge" element in felon in possession cases only requires that the jury is convinced beyond a reasonable doubt that "at the time the defendant possessed the firearm, he knew that he had previously been convicted in a court of a crime punishable by imprisonment for a term in excess of one year." A defendant like Mr. Beasley, who was given probation on the date of his guilty plea, would not have a defense under this instruction, if the government can prove that he knew he was convicted of any crime, and that crime happened to be one for which he *could* have been sentenced to more than a year in

prison, even if Beasley thought he pled to a misdemeanor.

Mr. Beasley was not able to argue that he did not know that he was a person prohibited from possessing a gun. In an interview with law enforcement, Beasley guessed that he was arrested because the gun that was recovered was stolen. Beasley readily admitted that he had a firearm, but he demonstrated during the interview that he did not understand that he belonged to a class of persons who were prohibited from possessing a firearm. He admitted all of the other facts about his arrest, but also told the officer who was questioning him that he did not have a felony conviction.

Any argument that he did not know that the crime to which he pled guilty was one for which he could receive over a year in prison would be futile, due to the current misinterpretation of *Rehaif.* Under the district court's jury instruction, it did not make a difference that Mr. Beasley did not understand his prohibited status, even if a juror believed that Beasley honestly believed at the time of the offense that he was not a convicted felon, or that he was not prohibited from possessing a firearm, they could still find him guilty if they believed that he knew he was convicted of a crime, and the government proved that the crime was a felony. This impaired Mr. Beasley's ability to effectively argue that the jury must acquit if they believed that Beasley believed, at the time of the offense, that his status did not prohibit him from possessing firearms.

Certiorari is necessary in this matter because defendants are entitled to vacatur when an erroneous jury instruction impairs a defendant's ability to present his defense. This issue arose in the Fifth Circuit in the context of a district court's refusal to give a character instruction in *United States v. John*, 309 F.3d 298, 304 (5th Cir. 2002). Mr. John was charged with sexual abuse of a minor in violation of 18 U.S.C. § 2244(a)(1). At his trial, he testified as to his innocence and also presented witnesses who testified as to his good character. *Id.* at 300. At the conclusion of the trial, John requested a jury instruction on character. The district court refused it and the jury convicted. *Id.* On appeal, this Court found that the district court's refusal amounted to reversible error because it seriously impaired John's ability to present a defense. *Id.* at 304-05.

Similarly, the Fifth Circuit found reversible error in *United States v. Grissom*, 645 F.2d 461 (5th Cir. 1981). In that case, Grissom was charged with 30 counts of disposing property mortgaged to the Farmers Home Administration (the FHA) with intent to defraud in violation of 18 U.S.C. § 658. *Id.* at 462. In summary, Grissom admittedly sold his soybean crops in his father's name. Because Grissom had a loan with the FHA and used the crops as collateral, he was required to get consent from the FHA before selling the soybeans. *Id.* At trial, however, he contended that he sold the crops in his father's name to defraud his landlord, not the FHA, as he had an obligation to pay a percentage of his crop sales to his landlord. *Id.*

Grissom's counsel requested the district court to instruct the jury that they could not find a violation of § 658 unless they first found that Grissom intended to defraud the FHA. The court refused to give the instruction, choosing instead to charge that Grissom could be found guilty as long as he acted "with intent to defraud." *Grissom*, 645 F.2d at 464. The Fifth Circuit reversed stating "the requested instruction would be a correct and necessary part of the charge if, as a matter of law, § 658 cannot be read to punish a sharecropper who acts solely to deceive his landlord while utilizing crops mortgaged to the FHA in accomplishing his deed." *Id.* at 465. Because the prosecution was required to prove that Grissom intended to defraud the government, and not solely his landlord, this Court vacated his conviction and ordered a new trial with proper instructions. *Id.* at 657-58.

A new trial is also warranted here where, as shown above, Mr. Beasley was deprived of his ability to argue for acquittal based on the government failure to prove beyond a reasonable doubt that he knew he belonged to the class of persons who were prohibited from possessing firearms. Therefore, this Court should grant certiorari and vacate Mr. Beasley's conviction and remand this case to allow the district to give the proper jury instruction with respect to knowledge of prohibited status.

VI. CONCLUSION

Based on the arguments presented above, Mr. Beasley asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted April 5, 2021, by:

Omodare Jupiter
Federal Public Defender
Office of the Federal Public Defender
Southern District of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JONATHAN BEASLEY
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No.

CERTIFICATE OF SERVICE

I, Omodare Jupiter, appointed under the Criminal Justice Act, certify that today, April 5, 2021, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 7733 5176 3486, addressed to:

The Honorable Elizabeth Prelogar
Acting Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.

Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

Omodare B. Jupiter
Federal Public Defender