

No. 20-8071

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IN THE SUPREME COURT OF THE UNITED STATES

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DELSON MARC, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 19-32) that his conviction following a guilty plea for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1), should be vacated on plain-error review because knowledge of his felon status was not understood to be an element of his offense during the proceedings in the district court. See Rehaif v. United States, 139 S. Ct. 2191 (2019). Petitioner argues in particular (Pet. 21-23, 31-32) that he would be entitled to relief under the logic of the Fourth Circuit's decision in United States v. Gary, 954 F.3d 194 (2020), which held that omission of the mens rea element recognized in Rehaif from

the plea colloquy is a structural error that entitles a defendant to relief without a showing of case-specific prejudice.

In Greer v. United States, 141 S. Ct. 2090 (2021) (Nos. 19-9709, 20-444), however, this Court rejected the Fourth Circuit's reasoning and conclusion in Gary. The Court instead held that a defendant who raises a forfeited Rehaif claim following a guilty plea "must satisfy the ordinary plain-error test," id. at 2100, including by establishing a "'reasonable probability'" that if the district court "had correctly advised him of the mens rea element of the offense, \* \* \* he would not have pled guilty," id. at 2097. The Court further explained that, "if a defendant was in fact a felon, it will be difficult for him to carry the burden on plain-error review of showing a 'reasonable probability' that, but for the Rehaif error, the outcome of the district court proceedings would have been different." Ibid.

Petitioner does not dispute that he is "in fact a felon," Greer, 141 S. Ct. at 2097, or meaningfully develop any argument that he would be entitled to relief under the standard that the Court articulated in Greer. He instead primarily contends (e.g., Pet. 20, 30-31) that Rehaif error invalidates his indictment and automatically entitles him to relief. But he identifies no court of appeals that would have granted substantive relief in these circumstances based solely on indictment error even before Greer, and the Court has recently denied petitions raising similar claims. See, e.g., Moore v. United States, No. 20-7800 (June 21, 2021).

The petition for a writ of certiorari here should likewise be denied.\*

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Acting Solicitor General

JULY 2021

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\* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.