

ORIGINAL

No. 20-8267

FILED
MAY 27 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher Kelley — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Jermaine Kelley # 25165-075
(Your Name)

P.O. Box 4000
(Address)

Manchester Ky, 40962
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- ① Did The United States District Court for the middle district of Tennessee and The United States Court of appeals for the Sixth Circuit err in denying the petitioner, Christopher Kelley, relief pursuant Rehaif v. United states, 139 Sct 2191 (2019); United States v. Guzman-Merced (No. 18-2141) (1st Cir. December 22, 2020), and a pending Supreme Court Case, United states v. Michael Andrew Chary (954 F.3d 198).?
- ② Was Mr. Christopher Kelley denied Due process of law and fundamental fairness guaranteed by the fifth and Sixth amendments to the United States Constitution, in that Kelley was denied relief pursuant to Rehaif, Guzman-Merced, and Chary?
- ③ Was MR. Kelley's guilty plea voluntary and intelligent?
- ④ Does a negation of an essential element of an offense voids a Judgment?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States v. Rehaif, 139 Sct 2191 (2019),	
United States v. Guzman-Merced	
United States v. Micheal Gary	
United States v. Lockhart, 947 F.3d 187 (4 th Cir 2020)	

STATUTES AND RULES

18 U.S.C.S. 922(g)(1)

18 U.S.C.S. 924

OTHER

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	10.

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[*✓*] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[*✓*] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 5, 2021.

[] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th amendment to the United States Constitution

6th amendment to the United States Constitution

18. U.S.C.S. 922 (g) (1)

18 USC 924

STATEMENT OF THE CASE

On or around the month of June, 2016, Mr Christopher Jermaine-Kelley was indicted of One Count of being a felon in possession of a firearm, (Indictment, Crim. R. 13, Page I.D. #22) Approximately 11 months later, Kelley pleaded guilty via a binding plea agreement pursuant to Rule 11(c)(1)(B) and (c). (Plea Agreement, Crim. R. 46). As part of the plea agreement, the parties agreed, under Rule 11(c)(1)(C), to an effective 100 months' imprisonment effective from the date of the guilty plea, (Id at page I.D. #79) On May 16, 2017, the district court accepted Kelley's guilty plea, while reserving acceptance of the parties' plea agreement.

On September 24, 2018, Kelley filed a pro se motion to vacate his sentence, in which he primarily argued that his attorney was constitutionally ineffective for failing to challenge the jurisdictional nexus of the charge and for pressuring Kelley to plead guilty rather than requiring the government to prove that he in fact possessed the firearm. (Motion to Vacate, R. I, page I.D. # 1-19). In addition, Kelley argued that his guideline range had been miscalculated. (Id at page I.D. # 20-29.) On December 16, 2019, Kelley filed a supplemental brief and added that his conviction must be set

aside Under Rehaif v. United States, 139 S. Ct 2191 (2019), because he purportedly did not know that he belonged to the relevant category of persons barred from possessing a firearm. (Supplemental Brief, R. 27, Page I.D. # 123).

The district court rejected Kelley's argument and denied his motion, (Memorandum, R. 29, Pge I.D. # 138-155), the district court presumed that Rehaif did not "afford Kelley any grounds for relief," Id. at page I.D. # 155, because "the Sixth Circuit has not addressed Rehaif's retroactivity," Id., and that such claims of retroactivity consistently have been rejected by courts in this circuit, including this court. The district court did not grant a certificate of appealability ("COA") because Kelley failed to make a substantial showing of the denial of a constitutional right. (Order, R.-30, Page I.D. # 157). The district court subsequently granted a COA on Kelley's Rehaif claim, after finding that reasonable jurist could debate the district court's determination that Rehaif is not retroactively applicable on collateral review. (Order granting COA, R. 34, Page I.D. # 166). This appeal follows. On February 05, 2021, The United States Court appeals for the Sixth Circuit affirmed the judgment of the district. Mr Kelley subsequently filed a motion for rehearing en banc. This petition for a writ of certiori follows:

REASONS FOR GRANTING THE PETITION

The Supreme Court in *Pechlaff v. United States*, 139 S Ct 2191 (2019), held that the government must prove not only that a defendant charged pursuant to 18 U.S.C.S. §§ 922(g), 924 (a)(2) knew they possessed a firearm, but also that they belonged to a class of persons barred from possessing a firearm. Mr Kelley's guilty plea was not knowingly and intelligently made because he did not understand the essential elements of the offense to which he plead guilty, because the district Court accepted Mr. Kelley's plea of guilty without giving him notice of an element of the offense. The government's error was structural and the district Court should have vacated Kelley's guilty plea, Conviction, and Sentence, and set his Case for a new trial. See, e.g., *United States v. Lockhart*, 947 F.3d 187 (4th Cir. 2020); and *United States v. Gary*, No. 18-4578 (4th-Circuit March 25, 2020),

Additionally, a conviction based on a Constitutionally invalid guilty plea cannot be saved even by overwhelming evidence that the defendant would have pleaded guilty regardless. A guilty plea is Constitutionally valid only to the extent it is voluntary and intelligent. Quoting *United States v. Gary*, Sup. Ct 20-444 (Guilty pleas). A plea does not qualify as intelligent unless a criminal defendant first receives real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.

Furthermore, A defendant has the right to make an informed choice on whether to plead guilty or to exercise his right to go to trial. In accepting a defendant's guilty plea after misinforming him of the

nature of the offense with which he was charged, the plea Court deprives him of his right to determine the best way to protect his liberty. The defendant need not demonstrate prejudice resulting from the error because harm to a defendant is irrelevant to the principles underlying his autonomy right and liberty interest. Thus, the error is structural regardless of the strength of the prosecution's evidence or whether the error would have affected the ultimate outcome of the proceedings. Any conviction resulting from a Constitutionally invalid plea cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment based on such a plea may be regarded as fundamentally fair.

The Fifth amendment guarantees a criminal defendant due process in the course of criminal proceedings that could deprive him of life, liberty, or property. U.S. Constitution Amend. V. Although trial by jury is guaranteed specifically by the Sixth Amendment, the right is often waived through the Court's acceptance of a guilty plea. A guilty plea is by far the most common criminal proceeding, rendering it indispensable in the operation of the modern criminal justice system. Indeed, the vast majority of federal criminal cases are resolved through guilty pleas.

The impact of a guilty plea upon a defendant's rights cannot be overstated. An individual's choice to plead guilty is his alone to make - after he has been fully informed by the nature of the charges against him and the consequence of his plea.

THE WAIVER OF FIFTH AND SIXTH AMENDMENT TRIAL rights based on a Constitutionally invalid plea undermines the credibility and public reputation of judicial proceedings and fails to foster confidence that they will result in a fair and reliable determination of guilt rather than a conviction obtained contrary to constitutional principles. Even where evidence in the record might tend to prove a defendant's guilt, his right to due process when pleading guilty remains paramount.

In the instant case, Mr. Kelley was denied fundamental fairness and due process of law guaranteed by the fifth amendment to the United States Constitution, in that his plea agreement was involuntary and unintelligent. Mr. Kelley was never informed that the government was required to prove that Mr. Kelley was part of a prohibited class of persons barred from possessing a firearm (See Rehaif, cites omitted), an essential element necessary to maintain a conviction for 922(g)(1) and 924(a). The government's contention is that there is evidence in the record tending to show Kelley's guilt and that based on the same evidence, Kelley knew that he was a part of a prohibited class of persons barred from possessing a firearm. In essence, the government has taken the position of judge, jury, and prosecution, making a determination of Kelley's guilt and knowledge of his status as a felon prohibiting him from possessing a firearm. But it is reasonable under American jurisprudence that Mr. Kelley maintains the right to decide the best way to protect his liberty interest. It is also reasonable that when this honorable

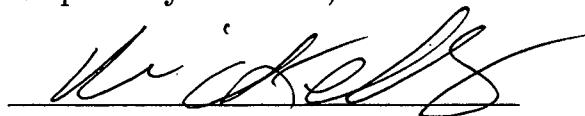
Court decided Rehairf, that all the Plea agreements pursuant to 18. U.S.C.s 922 (g)(1) and 924 (a) that occurred prior to Rehairf is null and void due to a negation of one of the elements of the 922 (g) and 924 (a) offense necessary to charge and or maintain a conviction. Yet the district Courts and some appellate Courts has adopted a process that robs defendants of the Constitutional right to have there knowledge of their status as a felon barred from possessing a firearm decided by a jury of their peers. Being a freestanding claim pursuant to Rehairf, Mr Kelley's petition for a Writ of Certiori to this honorable Court embraces and relies on the same principles and rationale in United v. Gary, (cites omitted), now pending before this Court. Mr Kelley prays that this Court grants Certiori based on Kelley's own rationale, or in the alternative, hold this petition in abeyance until this honorable Court makes its' decision pursuant to "United States v. Gary", Because the principles, Constitutional and Statutory, embodied in this petition are paramount to protect Mr Kelley's rights, Kelley humbly invokes the power and jurisdiction of this honorable Court to make a determination whether the district court committed reversible error when it denied Mr Kelley fundamental fairness, and affected his substantial rights.

CONCLUSION

Mr Kelley is humbly requesting that this Honorable Court protect his rights by Granting Certiorari

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 5/26/2021