No. 21-1082

In the Supreme Court of the United States

TARRESSE LEONARD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals was required to set aside petitioner's conviction for possessing a firearm and ammunition as a felon based on petitioner's claim that the indictment allegedly omitted the statutory element that petitioner knew of his status as a felon at the time of the offense, notwithstanding the court's determination that any such omission was harmless beyond a reasonable doubt.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-24) is reported at 4 F.4th 1134. The order of the district court and the report and recommendation of the magistrate judge are not published in the Federal Supplement but are reprinted at 2019 WL 2428081 and 2019 WL 3407257.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 2021. A petition for rehearing was denied on November 3, 2021 (Pet. App. 37). The petition for a writ of certiorari was filed on February 1, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner

was convicted of one count of possessing a firearm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. 25. The district court sentenced him to 240 months of imprisonment, to be followed by five years of supervised release. *Id.* at 26-27. The court of appeals affirmed. *Id.* at 1-24.

1. On May 18, 2018, a Miami police detective observed Emanuel Jackson walk toward a street corner, raise a gun to eye level, and point it at a small crowd. Pet. App. 2. People screamed, shouted, and tried to get out of Jackson's way. *Ibid.* Jackson then tucked the gun into his waistband, walked back across the street, and joined two other men—petitioner and Dexter Franklin. *Ibid.* A second detective arrived on the scene, and both detectives approached the men with their badges displayed. *Ibid.* Petitioner, Jackson, and Franklin raced towards a nearby house. *Ibid.* Petitioner reached into his waistband and discarded a small bag containing what police suspected was marijuana. *Id.* at 2-3.

The detectives pursued the men into the house and ordered them to the ground. Pet. App. 3. Jackson and Franklin complied, but petitioner fled to a bedroom in the back of the house. *Ibid.* The detectives ordered petitioner out of the room, arrested him, and found $1000 in cash and an electric scale in his pockets during a search incident to the arrest. *Ibid.* A subsequent warrant-authorized search of the house turned up a loaded handgun and narcotics in the back room where petitioner had attempted to hide. *Ibid.* DNA on the gun matched petitioner's profile. *Ibid.*

2. A grand jury in the Southern District of Florida charged petitioner with one count of possessing a fire-

arm and ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1); one count of possessing a controlled substance with intent to distribute, in violation of 21 U.S.C. 841(a)(1); and one count of possessing a firearm in furtherance of a drug-trafficking offense, in violation of 18 U.S.C. 924(c)(1)(A)(i). Indictment 3-4. With respect to the felon-in-possession count, the indictment alleged that petitioner, "having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce." Indictment 3.

After the grand jury charged petitioner, this Court granted a writ of certiorari in *Rehaif* v. *United States*, 139 S. Ct. 914 (2019) (No. 17-9560), to consider whether, in a prosecution against a noncitizen who possessed a firearm while unlawfully in the United States, see 18 U.S.C. 922(g)(5)(A), 924(a)(2), the government must prove that the defendant knew that he was in the United States unlawfully—*i.e.*, whether one element of the crime was the defendant's knowledge of the status that made his firearm possession unlawful. "[T]o be safe," Pet. App. 5, the government in this case obtained a superseding indictment alleging that petitioner "possessed a firearm and ammunition in and affecting interstate and foreign commerce, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and did so knowingly," Superseding Indictment 3.

This Court's subsequent decision in *Rehaif* made clear that a mens rea of knowledge for a felon-in-possession crime applies "both to the defendant's conduct and to the defendant's status." *Rehaif* v. *United States*, 139 S. Ct. 2191, 2194 (2019). Petitioner then

moved to dismiss the superseding indictment, arguing as relevant here that the felon-in-possession count was, notwithstanding the amendment, legally insufficient under *Rehaif*. Pet. App. 6. The district court denied the motion. *Ibid.* The jury subsequently found petitioner guilty of the felon-in-possession count and acquitted him of the other charges. *Ibid.*

3. The court of appeals affirmed. Pet. App. 1-24.

The court of appeals first rejected petitioner's contention that the district court lacked jurisdiction over his case because the indictment did not cite 18 U.S.C. 924(a)(2), which specifies a ten-year maximum penalty for "[w]hoever knowingly violates" various provisions of Section 922(g). Pet. App. 8-10. The court of appeals stated that "[Section] 922(g) is still a criminal prohibition on its own terms" and that "an indictment that alleges violations of [Section] 922(g) confers subject matter jurisdiction." *Id.* at 10 (citing *United States* v. *Morales*, 987 F.3d 966, 979 (11th Cir.), cert. denied, 142 S. Ct. 500 (2021)).

The court of appeals also rejected petitioner's contention that he was entitled to have his conviction vacated on the ground that the indictment had omitted an element of the offense. Pet. App. 10-16. The court observed that "[a]n indictment is legally sufficient if it (1) contains the 'essential elements' of the charged offense, (2) notifies the defendant of the charges to be defended against, and (3) protects the defendant from double jeopardy." *Id.* at 10 (citation omitted). And the court noted that petitioner's "indictment may meet that benchmark" because "[i]t tracks the language of [Section] 922(g), and adds the phrase 'did so knowingly.'" *Id.* at 11. The court explained that the "extra phrase could be enough to extend the knowledge requirement

to all the material elements of [Section] 922(g)—including felon status." *Ibid.*

The court of appeals ultimately found it unnecessary to render a definitive determination of the indictment's sufficiency, however, because it determined that "any error in [the indictment's] wording was harmless" to petitioner. Pet. App. 11. The court acknowledged that some "'structural' errors" are "so fundamental that [courts] presume prejudice." *Id.* at 11-12 (citation omitted). But it observed that "[this] Court has made clear that a *Rehaif* omission * * * need not be structural" and that the court of appeals' own precedents have "applie[d] harmless-error review to the omission of an element from an indictment." *Id.* at 13 (citing *Greer* v. *United States*, 141 S. Ct. 2090, 2100 (2021), and *United States* v. *Sanchez*, 269 F.3d 1250, 1273 (11th Cir. 2001), cert. denied, 535 U.S. 942 (2002)).

Applying that standard to the facts here, the court of appeals found that any alleged omission from the superseding indictment "did not contribute—at all—to the verdict." Pet. App. 14; see *id.* at 13 (recognizing that the government bore "the burden of showing that [the alleged] error was 'harmless beyond a reasonable doubt'") (quoting *Chapman* v. *California*, 386 U.S. 18, 24 (1967)). The court observed that petitioner's trial occurred after this Court's decision in *Rehaif*; the parties had discussed the *Rehaif* decision before trial; and petitioner had moved to amend his knowledge-of-status stipulation following that decision. *Id.* at 15. The court of appeals further noted that petitioner "had more than one prior conviction" and "d[id] not even attempt to argue that he did not know he was a felon at the time he possessed the gun or that he would have offered the jury evidence to prove this point." *Ibid.*

The court of appeals accordingly found that any error in the indictment language caused "no prejudice to [petitioner's] ability to defend himself against the felon-in-possession charge." Pet. App. 15. The court also credited the government's unchallenged representation that "the grand jurors were 'presented with evidence' that [petitioner] knew his status as a felon" when the government sought an amended indictment. *Id.* at 16. It thus found that any concern about "the right to have the public determine whether there was probable cause to charge the missing element * * * [was] not * * * in play." *Id.* at 15-16 (citations omitted).

ARGUMENT

Petitioner renews his contention (Pet. 4-16) that he is entitled to have his conviction for possessing a firearm following a felony conviction set aside on the theory that the superseding indictment did not adequately allege that he knew of his own felon status, even though it is clear beyond a reasonable doubt that the alleged omission caused petitioner no prejudice. The court of appeals correctly rejected that contention. To the extent that another circuit might have reached a different conclusion, any circuit conflict is lopsided and stale. In any event, this case would not be a suitable vehicle for addressing the question presented because the superseding indictment here adequately alleged petitioner's knowledge of his felon status. This Court has repeatedly denied review of similar questions. See, *e.g.*, *Robinson* v. *United States*, 140 S. Ct. 1128 (2020) (No. 19-5535); *In re Allen*, 140 S. Ct. 2796 (2020) (No. 18-9554); *Lee* v. *United States*, 137 S. Ct. 2212 (2017) (No. 16-7317); *Barton* v. *United States*, 574 U.S. 1049 (2014) (No. 14-5354); *Gomez* v. *United States*, 571 U.S. 1096 (2013) (No. 13-5625); *Demmitt* v. *United States*, 571

U.S. 952 (2013) (No. 12-10116); *Hardy* v. *United States*, 571 U.S. 831 (2013) (No. 12-9527); *Acosta-Ruiz* v. *United States*, 569 U.S. 1031 (2013) (No. 12-6908). The same course is warranted here.

1. The court of appeals correctly determined that the alleged omission from petitioner's indictment was not a structural error and was therefore subject to harmless-error review. See Pet. App. 10-16.

Under Rule 52(a) of the Federal Rules of Criminal Procedure, "[a]ny error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." Fed. R. Crim. P. 52(a); see 28 U.S.C. 2111. That requirement of prejudice ensures that the "substantial social costs" that result from reversal of criminal verdicts will not be imposed without justification. *United States* v. *Mechanik*, 475 U.S. 66, 72 (1986).

This Court has recognized a "very limited" set of errors that are so intrinsically harmful to the framework of a prosecution that they require automatic vacatur of the defendant's conviction without regard to any case-specific showing of prejudice. *Neder* v. *United States*, 527 U.S. 1, 8 (1999) (citation omitted) (listing examples); see *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 148-149 (2006). That limited "category of structural errors," however, is "'highly exceptional.'" *Greer* v. *United States*, 141 S. Ct. 2090, 2100 (2021) (citation omitted). "'[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other errors that may have occurred' are not 'structural errors.'" *United States* v. *Marcus*, 560 U.S. 258, 265 (2010) (citation omitted).

The omission of an element from an indictment is not the type of highly exceptional error that warrants classification as structural. This Court held in *Neder* that

the omission of an offense element from jury instructions at trial, which prevents the petit jury from making a determination on that element necessary to a finding of guilt, does not constitute structural error and is subject to harmless-error review. 527 U.S. at 8-15. It logically follows that the omission of an offense element from the indictment also does not constitute structural error. Indeed, the type of omission alleged here constitutes an even weaker candidate for structural error than the type of omission in *Neder*.

Unlike the Sixth Amendment right to a trial by a petit jury, the Fifth Amendment right to an indictment by a grand jury has not been incorporated against the States through the Fourteenth Amendment as an essential requirement of fundamental fairness. See *Hurtado* v. *California*, 110 U.S. 516, 538 (1884). In addition, this Court has held that errors at the charging stage may be rendered harmless by subsequent developments in the prosecution. See *Mechanik*, 475 U.S. at 70-72 & n.1; see also *Bank of Nova Scotia* v. *United States*, 487 U.S. 250, 254-256 (1988). And although the grand jury serves an important protective function, that "is surely no less true" of the petit jury, which provides the accused even greater protection. *United States* v. *Cotton*, 535 U.S. 625, 634 (2002). Before the grand jury, the prosecutor has no obligation to present exculpatory evidence (and the accused has no right to present evidence at all), see *United States* v. *Williams*, 504 U.S. 36, 51 (1992); a finding of probable cause by a simple majority suffices, see Fed. R. Crim. P. 6(f); and a vote not to indict raises no bar to further proceedings akin to the effect of a jury acquittal under the Double Jeopardy Clause, see *Crist* v. *Bretz*, 437 U.S. 28, 38 (1978). Those considerations strongly support the conclusion that the

failure to submit an element to the grand jury does not stand on a higher plane than the failure to submit an element to a petit jury, which under *Neder* is subject to harmless-error review.

This Court's decisions in *United States* v. *Cotton* and *Greer* v. *United States* likewise indicate that omissions from an indictment are not structural errors. In *Cotton*, the Court determined that even though the Fifth Amendment requires sentence-enhancing facts to be charged in a federal indictment, the failure to allege drug quantity in the indictment (or to obtain a finding on drug quantity by the petit jury) did not constitute reversible plain error. 535 U.S. at 627, 631-634. Although the Court did not specifically decide the applicability of the third, explicitly prejudice-focused, component of the plain-error inquiry (which is analogous to the harmless-error inquiry for preserved errors), the Court found plain-error relief unwarranted because the error in the case before it did not seriously affect the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 632-633. The Court noted that the evidence concerning the sentence-enhancing fact there was "overwhelming" and "essentially uncontroverted." *Id.* at 633 (citation omitted). The Court's conclusion in *Cotton* that the omission of a sentence-enhancing fact from an indictment will not seriously affect the fairness, integrity, or public reputation of judicial proceedings "cuts against the argument that [an indictment omission] will always render a trial unfair" and should constitute structural error. *Neder*, 527 U.S. at 9 (emphasis omitted).

More recently, in *Greer*, this Court addressed felon-in-possession prosecutions that resulted in either a guilty plea or jury verdict prior to the Court's decision

in *Rehaif* v. *United States*, 139 S. Ct. 2191 (2019). See *Greer*, 141 S. Ct. at 2095-2096. In the two prosecutions at issue, neither the plea colloquy (for one defendant) nor the jury instructions (for the other) had mentioned the knowledge-of-status element that this Court subsequently recognized in *Rehaif*. *Id.* at 2096. This Court held that those omissions did not warrant plain-error relief where the defendant had made no showing that he was unaware of his own felon status at the time of the offense. In so holding, the Court explained that such "*Rehaif* error[s]" are "not structural" because they "do[] not affect the entire framework within which the proceeding occurs." *Id.* at 2100 (citing *Neder*, 527 U.S. at 8). Similarly here, the alleged omission of *Rehaif*'s knowledge element from the superseding indictment was at most a "discrete defect[] in the criminal process." *Ibid.* A court may accordingly analyze such an error for harmlessness.

Contrary to petitioner's suggestion (Pet. 10-11), *Weaver* v. *Massachusetts*, 137 S. Ct. 1899 (2017), does not suggest otherwise. The Court in *Weaver* cautioned that structural errors are only those errors that "affect[] the framework within which the trial proceeds." *Id.* at 1907 (citation omitted; brackets in original). And as the court of appeals' decision illustrates, see Pet. App. 14-16, the effect of any error here was not "too hard to measure," nor would such an error "always result[] in fundamental unfairness," *Weaver*, 137 S. Ct. at 1908.

2. As petitioner notes (Pet. 5), this Court granted a writ of certiorari in *United States* v. *Resendiz-Ponce*, 549 U.S. 102 (2007), to decide "whether the omission of an element of a criminal offense from a federal indict-

ment can constitute harmless error," *id.* at 103, but ultimately did not find it necessary to reach that issue, *id.* at 104. Petitioner identifies no sound reason to address the question in his case.

Nearly all the courts of appeals to have addressed the issue have recognized that the omission of an element (or sentence-enhancing fact) from an indictment, even if subject to a timely objection, is subject to harmless-error review. See *United States* v. *Maez*, 960 F.3d 949, 958 (7th Cir. 2020) ("[P]rejudice is required to reverse based on a *preserved* challenge to the indictment.") (cataloging cases), cert. denied, 141 S. Ct. 2813, 141 S. Ct. 2814, and 141 S. Ct. 2838 (2021); see also *United States* v. *Corporan-Cuevas*, 244 F.3d 199, 202 (1st Cir.), cert. denied, 534 U.S. 880 (2001); *United States* v. *Stevenson*, 832 F.3d 412, 427 n.11 (3d Cir. 2016), cert. denied, 137 S. Ct. 674 (2017); *United States* v. *Higgs*, 353 F.3d 281, 304-306 (4th Cir. 2003), cert. denied, 543 U.S. 999 (2004); *United States* v. *Dentler*, 492 F.3d 306, 310 (5th Cir. 2007); *United States* v. *Cor-Bon Custom Bullet Co.*, 287 F.3d 576, 580-581 (6th Cir.), cert. denied, 537 U.S. 880 (2002); *United States* v. *Allen*, 406 F.3d 940, 945 (8th Cir. 2005), cert. denied, 549 U.S. 1095 (2006); *United States* v. *Prentiss*, 256 F.3d 971, 981-985 (10th Cir. 2001) (en banc) (per curiam), abrogated in part on other grounds by *United States* v. *Cotton*, 535 U.S. 625 (2002).

Petitioner suggests (Pet. 5-6, 8-9) that the D.C. Circuit has rejected application of the harmless-error doctrine to indictment errors, but that is incorrect. In *United States* v. *Verrusio*, 762 F.3d 1 (2014), cert. denied, 576 U.S. 1064 (2015), the D.C. Circuit determined that the indictment properly alleged every element of the charged offense. See *id.* at 13-15. It accordingly

had no occasion to consider, and did not address, whether the omission of an element would be subject to harmless-error review. See *ibid.* And in *United States* v. *Pickett*, 353 F.3d 62 (2004), the D.C. Circuit declined to "consider[] the question of whether an indictment flawed by omission of an essential element is subject to harmless error review." *Id.* at 68.*

Only the Ninth Circuit has taken the view that omission of an element from an indictment invariably requires reversal, even when it had no effect on the outcome. See *United States* v. *Du Bo*, 186 F.3d 1177, 1179 (1999) ("[I]f properly challenged prior to trial, an indictment's complete failure to recite an essential element of the charged offense is not a minor or technical flaw subject to harmless error analysis, but a fatal flaw requiring dismissal of the indictment."); see also *United States* v. *Qazi*, 975 F.3d 989, 992 (9th Cir. 2020) ("*Du Bo* requires automatic dismissal regardless of whether the omission prejudiced the defendant."). But the Ninth Circuit itself may choose to reconsider its outlier position following this Court's recent clarification of the structural-error category in *Greer*, which post-dated the decisions on which petitioner relies. No need exists

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* Petitioner is also incorrect in arguing (Pet. 6) that the court below has previously held that the omission of an element from an indictment is structural error. In *United States* v. *Martinez*, 800 F.3d 1293 (11th Cir. 2015) (per curiam), the government conceded that the indictment had omitted an essential element, agreed that a remand for dismissal was appropriate, and declined to argue harmless error. See *id.* at 1295 & n.1. The court accordingly did not itself address the question presented here. In any event, an intracircuit division of authority within the Eleventh Circuit would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

for intervention by this Court to address the question presented at this time.

3. In any event, this case would be an unsuitable vehicle for considering the question presented. Because the superseding indictment in this case contained no legal defect, a rule that such defects are not subject to harmless-error review when they arise would not benefit petitioner or change the disposition of the case. See *Dandridge* v. *Williams*, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below); cf. *Resendiz-Ponce*, 549 U.S. at 104 (determining that "respondent's indictment was in fact [not] defective" and therefore "revers[ing] without reaching the harmless-error issue" the Court had granted a writ of certiorari to decide).

This Court has identified "two constitutional requirements for an indictment: 'first, [that it] contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" *Resendiz-Ponce*, 549 U.S. at 108 (quoting *Hamling* v. *United States*, 418 U.S. 87, 117 (1974)) (brackets in original). The superseding indictment in this case satisfied those requirements. Section 922(g) makes it unlawful for a convicted felon "to * * * 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. 922(g); see 18 U.S.C. 922(g)(1). This Court's decision in *Rehaif* made clear that the mens rea of knowledge for a criminal felon-in-possession charge applies "both to the defendant's conduct and to the defendant's status." 139 S. Ct. at 2194; see 18 U.S.C.

924(a)(2). The superseding indictment adequately recited those statutory elements by alleging that petitioner "possessed a firearm and ammunition in and affecting interstate and foreign commerce, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and did so knowingly." Superseding Indictment 3.

Petitioner provides no sound basis for concluding (Pet. 15) that "[t]he phrase 'did so knowingly' modifies possession [and] cannot be construed as also referring to knowledge of status." The clause immediately before the "knowingly" phrase concerned petitioner's prior felony conviction, so it would be unnatural to read the "knowingly" modifier to apply only to the more remote clause concerning petitioner's possession of a firearm and ammunition. Cf. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 144-151 (2012). Moreover, the government amended petitioner's indictment specifically in anticipation of this Court's then-pending decision in *Rehaif*. See Pet. App. 5. While the original indictment alleged that petitioner "did knowingly possess a firearm," the superseding indictment moved the "knowingly" modifier to the end of the relevant sentence "[j]ust to be safe." *Ibid.* That context renders a reading of the "knowingly" modifier to apply only to the allegation regarding petitioner's possession especially unsound.

The Seventh Circuit's decision in *United States* v. *Maez*, which petitioner describes (Pet. 15) as "finding plain error where 'knowingly' came after the fact of the prior felony conviction," does not support a contrary reading. The indictment there used the same "did knowingly possess" phrase that appeared in petitioner's *original* indictment. *Maez*, 960 F.3d at 966 (citation

omitted); see Pet. App. 5. Taking the view that a "typical reader" would not read the "knowingly" modifier in that phrase—sandwiched between "did" and "possess"—to apply to a separate clause concerning felon status, the Seventh Circuit "assume[d] there was plain error," and denied relief on the ground that such an error had not been prejudicial. *Maez*, 960 F.3d at 966. That decision does not suggest that the superseding indictment in this case, obtained specifically to correct any potential deficiency, was inadequate.

Petitioner also contends (Pet. 15-16) that the superseding indictment was inadequate because it did not cite 18 U.S.C. 924(a)(2), which specifies that any violation of Section 922(g) must be done "knowingly." But that would not be an error of constitutional dimension, see *Resendiz-Ponce*, 549 U.S. at 108, and while Rule 7 of the Federal Rules of Criminal Procedure requires that an indictment "give the official or customary citation of the statute * * * that the defendant is alleged to have violated," it additionally specifies that, "[u]nless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction." Fed. R. Crim. P. 7(c)(1) and (2); see *Williams* v. *United States*, 168 U.S. 382, 389 (1897) ("We must look to the indictment itself, and if it properly charges an offense under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offense charged was covered by a different statute.").

In this case, petitioner was not misled to his prejudice by the omission of a Section 924(a)(2) citation. The indictment charged all the elements necessary for petitioner's conviction, including the "knowingly" element.

The record establishes that petitioner was aware of that element before trial, and in fact stipulated to knowledge of his status as a felon (thereby precluding the government from presenting additional evidence about his prior convictions to establish that knowledge). See Pet. App. 6, 15. Finally, petitioner provides "no reason to conclude * * * that he would have offered the jury evidence to prove" that he was unaware of his felon status had the indictment been worded differently. *Id.* at 15; see *Greer*, 141 S. Ct. at 2098 (recognizing that defendants cannot demonstrate that a *Rehaif* error affected their substantial rights where they failed to "argue[] or ma[ke] a representation that they would have presented evidence at trial that they did not in fact know they were felons when they possessed firearms").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2022