No. 21-5060

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN BROWN, 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 correctly determined that, in a prosecution for possession of a firearm following a conviction for a "misdemeanor crime of domestic violence," in violation of 18 U.S.C. 922(g)(9) and 924(a)(2), the trial evidence was sufficient to establish that petitioner knew of his status as a person who had been convicted of such an offense.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is not published in the Federal Reporter but is reprinted at 822 Fed. Appx. 878.

JURISDICTION

The judgment of the court of appeals was entered on July 21, 2020. A petition for rehearing en banc was denied on February 3, 2021 (Pet. App. B1). On March 19, 2020, this Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment, order denying discretionary review, or order

denying a timely petition for rehearing. The petition for a writ of certiorari was filed on July 2, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Middle District of Florida, petitioner was convicted on one count of possessing a firearm following a conviction for a misdemeanor crime of domestic violence, in violation of 18 U.S.C. 922(g)(9) and 924(a)(2). Judgment 1. Petitioner was sentenced to two years of probation. Judgment 2. The court of appeals affirmed. Pet. App. A1-A6.

1. On March 26, 2015, Daytona Beach police met with a confidential informant to plan a controlled purchase of two grams of methylmethcathinone (a psychoactive narcotic similar to Ecstasy) from petitioner. Presentence Investigation Report (PSR) ¶ 7. The informant made contact with petitioner, who instructed the informant to come to petitioner's residence for the transaction. PSR ¶ 8. After the informant arrived, petitioner brought the informant into his kitchen, where petitioner retrieved the drug from a plastic bag, weighed out two grams, and accepted $60 as payment. Ibid. The informant then left to meet with police, who conducted a field test on the substance and confirmed the presence of methylmethcathinone. PSR ¶ 9.

On May 21, 2015, the informant conducted a second controlled purchase of two grams of methylmethcathinone from petitioner. PSR ¶ 11. The second transaction proceeded in much the same manner as the first, except that petitioner charged the informant only $55 for the second sale. PSR ¶ 12. The informant again then brought the substance to police, who conducted a field test and confirmed the presence of methylmethcathinone. PSR ¶ 13.

On May 27, 2015, the informant conducted a third controlled purchase of two grams of methylmethcathinone -- and, this time, arranged also to purchase a handgun from petitioner. PSR ¶ 14. The informant arrived at petitioner's residence and followed him inside, where a .380-caliber Smith & Wesson pistol was sitting on the coffee table. PSR ¶ 15. Petitioner picked up the handgun, used a shirt to wipe off his fingerprints, and handed it to the informant. Ibid. Petitioner then measured out two grams of the drugs, which he gave to the informant in a plastic bag. Ibid. The informant paid petitioner $460 for the gun and the drugs. Ibid.

2. In July 2016, a federal grand jury in the Middle District of Florida returned an indictment charging petitioner with one count of possessing a firearm -- namely, the Smith & Wesson pistol that petitioner sold to the informant on May 27, 2015 -- following

a conviction for a misdemeanor crime of domestic violence, in violation of 18 U.S.C. 922(g)(9) and 924(a)(2). Indictment 1.

Section 924(a)(2) provides that "[w]hoever knowingly violates," inter alia, Section 922(g) "shall be fined as provided in this title, imprisoned not more than 10 years, or both." 18 U.S.C. 924(a)(2). Section 922(g)(9) provides that

> [i]t shall be unlawful for any person * * * who has been convicted in any court of a misdemeanor crime of domestic violence[] 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. 922(g)(9). Under 18 U.S.C. 921(a)(33)(A), the term "misdemeanor crime of domestic violence" is defined as follows:

> (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that --
>
> (i) is a misdemeanor under Federal, State, or Tribal law; and
>
> (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Ibid. (footnotes omitted). Section 921(a)(33) does not contain a subparagraph (C); it does contain a subparagraph (B), which specifies certain circumstances in which "[a] person shall not be considered to have been convicted of such an offense" defined in

subparagraph (A). 18 U.S.C. 921(a)(33)(B); see United States v. Johnson, 981 F.3d 1171, 1185 & n.10 (11th Cir. 2020) (construing "the reference to subparagraph (C) to be a typographical error intended to refer to subparagraph (B)," which in turn "articulat[es] what are effectively affirmative defenses"), petition for cert. pending, No. 21-5432 (filed Aug. 17, 2021).

The predicate offense alleged in the federal indictment was petitioner's 2004 Florida conviction for "Domestic Battery." Indictment 1. In May 2004, petitioner had pleaded no contest to Florida battery, in violation of Fla. Stat. § 784.03(1) (2001). Pet. App. A2. That conviction arose from an incident in which petitioner threatened his cohabitating domestic partner, who was pregnant at the time, at knifepoint. Ibid. The original charge for that conduct had been felony aggravated assault with a deadly weapon. Ibid. The state information and judgment in petitioner's case identified the crime as "domestic battery." Ibid. (citing Fla. Stat. § 784.03(1) (2001)).

Petitioner moved to dismiss the indictment, asserting that the Second Amendment barred his conviction under 18 U.S.C. 922(g) and that his guilty plea in the 2004 Florida domestic-battery case was not knowingly made. Pet. App. A2-A3. The district court denied the motion, and the parties proceeded to a bench trial on stipulated facts. Id. at A3. While preserving his arguments,

petitioner "otherwise stipulated that the facts were sufficient to find him guilty of the charged offense beyond a reasonable doubt." Ibid. The court found petitioner guilty. Ibid.

Petitioner subsequently made a renewed motion for a judgment of acquittal, contending that the government was required, but had failed, to prove that he knew he had been convicted of a misdemeanor crime of domestic violence when he possessed the firearm. Pet. App. A3. The district court denied the motion, finding that it contradicted petitioner's earlier stipulation. Ibid. The court sentenced petitioner to two years of probation. Ibid.

3. The court of appeals affirmed in an unpublished per curiam disposition. Pet. App. A1-A6.

As relevant here, the court of appeals rejected petitioner's renewed contention that the government was required, but had failed, to prove that petitioner "knew he possessed the status of a convicted domestic violence misdemeanant." Pet App. A5. The court recognized that, after judgment was entered in petitioner's case, this Court held in Rehaif v. United States, 139 S. Ct. 2191 (2019), that conviction under Sections 922(g) and 924(a)(2) requires "that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." Id. at 2194; see id. at 2195-2200. And "[a]fter closely considering Rehaif," the court of appeals determined that "the

binding stipulation" in petitioner's case "contained sufficient evidence to uphold [his] conviction because it demonstrate[d] [petitioner's] knowledge of his status." Pet. App. A5. The court observed that the Court in Rehaif -- which had "express[ed] no view * * * about what precisely the Government must prove to establish a defendant's knowledge of status in respect to other § 922(g) provisions" beyond the unlawful-presence provision at issue there, 139 S. Ct. at 2200 -- had expressed "doubt[] [that] the obligation to show knowledge would be particularly burdensome" and had cited "caselaw holding that knowledge may be shown through circumstantial evidence." Pet. App. A6 (citing Rehaif, 139 S. Ct. at 2198). The court of appeals found that, in this case, "the direct and circumstantial evidence of [petitioner's] knowledge of his status as a domestic violence misdemeanant contained in the stipulation [wa]s overwhelming." Ibid.

The court of appeals noted that Section 921(a)(33)(A) "defines 'misdemeanor crime of domestic violence' as a misdemeanor offense that (1) 'has, as an element, the use of force,' and (2) is committed by a person who has a specified domestic relationship with the victim." Pet. App. A5 (quoting United States v. Hayes, 555 U.S. 415, 426 (2009), in turn quoting 18 U.S.C. 921(a)(33)(A)) (brackets omitted). The court further noted this Court's holding in United States v. Hayes that, "while the domestic relationship

'must be established,' it 'need not be denominated an element of the predicate offense.'" Ibid. (quoting Hayes, 555 U.S. at 426). And the court of appeals observed that "the stipulation that [petitioner] entered into stated that he 'committed a battery' -- showing his knowledge that his predicate offense involved the use of force," ibid. (brackets omitted); further stated that "the battery was 'against Sherry Lynette Brown, who [petitioner] cohabitated with and [wa]s similarly situated to a spouse' -- showing knowledge of the specified domestic relationship," ibid.; clarified that, "[a]lthough [petitioner] was convicted of battery under [Fla. Stat.] § 784.03(1), the Information and Judgment title the charge as 'domestic battery,'" ibid.; and incorporated petitioner's express acknowledgment "that these same facts were 'sufficient to allow' the district court 'to find beyond a reasonable doubt that [petitioner] committed the offense charged in the [federal] indictment.'" Id. at A5-A6.

The court of appeals contrasted petitioner's case with a hypothetical that this Court in Rehaif had offered as illustrating why a defendant might be unaware of his status as a person prohibited by Section 922(g) from possessing a firearm. Pet. App. A5. The Court in Rehaif had posited "a person who was convicted of a prior crime but sentenced only to probation, who does not know that the crime is 'punishable by imprisonment for a term

exceeding one year.'" 139 S. Ct. at 2198 (quoting 18 U.S.C. 922(g)(1)). The court of appeals noted that, "[i]n that case, the absence of an ordinary feature of felonies -- that they are punishable by more than a year in prison -- might weaken the inference that a defendant knew his crime was a felony." Pet. App. A5. "By contrast," the court observed, "the stipulation here show[ed] that [petitioner] knew that all of the defining features of misdemeanor crimes of domestic violence were present in his case." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 8-22) that the trial evidence was insufficient to establish that he knew that he had been convicted of a "misdemeanor crime of domestic violence," 18 U.S.C. 922(g)(9), when he possessed a firearm. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of another court of appeals. Further review is not warranted.

1. Federal law prohibits possession of a firearm or ammunition by certain categories of people, including those who have previously been convicted of "misdemeanor crime[s] of domestic violence." 18 U.S.C. 922(g)(9). A separate provision, 18 U.S.C. 924(a)(2), specifies criminal penalties for anyone who "knowingly violates" one of the prohibitions contained in Section 922(g).

In Rehaif v. United States, 139 S. Ct. 2191 (2019), this Court held that the word "knowingly" in Section 924(a)(2) modifies "both * * * the defendant's conduct" -- i.e., his possession of a firearm -- "and * * * the defendant's status" as a member of a particular restricted group, id. at 2194. The petitioner in Rehaif had challenged his conviction for possessing a firearm as a noncitizen not lawfully present in the United States, in violation of Section 922(g)(5). Ibid. The Court reversed the judgment affirming the defendant's conviction under that provision, but it "express[ed] 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 [t]here." Id. at 2200. The Court expressed "doubt," however, "that the obligation to prove a defendant's knowledge of his status" would be particularly "burdensome," because "'knowledge can be inferred from circumstantial evidence.'" Id. at 2198 (quoting Staples v. United States, 511 U.S. 600, 615 n.11 (1994)).

The court of appeals properly applied Rehaif to the circumstances of this case in determining that the trial evidence was sufficient to establish petitioner's knowledge of his "status as a domestic violence misdemeanant" when he possessed (and sold) a handgun. Pet. App. A6; see id. at A5-A6. As the court recognized, the "direct and circumstantial evidence of

[petitioner's] knowledge of [that] status * * * [wa]s overwhelming." Id. at A6. The term "misdemeanor crime of domestic violence" is defined in relevant part to include "a misdemeanor offense that (1) 'has, as an element, the use of force,' and (2) is committed by a person who has a specified domestic relationship with the victim." United States v. Hayes, 555 U.S. 415, 426 (2009) (quoting 18 U.S.C. 921(a)(33)(A)) (brackets omitted). And the stipulation of facts into which petitioner entered for purposes of his federal bench trial both "show[ed] his knowledge that his predicate offense involved the use of force" by "stat[ing] that he 'committed a battery,'" and "show[ed] knowledge of the specified domestic relationship" by stating "that the battery was 'against'" a person "who [petitioner] cohabitated with and is similarly situated to a spouse." Pet. App. A5 (brackets omitted).

Petitioner himself had "clearly stipulated that these same facts were 'sufficient to allow' the district court 'to find beyond a reasonable doubt that [petitioner] committed the offense charged in the indictment,'" and the court of appeals thus correctly found them to be more than sufficient evidence that petitioner had knowledge of that fact. Pet. App. A5-A6. As it correctly recognized, petitioner's circumstances differed starkly from those that this Court hypothesized in Rehaif in which a person might understandably lack knowledge of the fact that disqualified him

from possessing a gun. Id. at A5. Unlike a defendant who was "convicted of a prior crime but sentenced only to probation" -- and who might be unaware "that the crime [wa]s 'punishable by imprisonment for a term exceeding one year,'" Rehaif, 139 S. Ct. at 2198 (quoting 18 U.S.C. 922(g)(1)), making it unlawful for him to possess a firearm following that conviction -- petitioner's stipulation shows that he knew he had been convicted of battering his domestic partner, a crime that satisfies the definition of "misdemeanor crime of domestic violence." 18 U.S.C. 921(a)(33)(A).

2. Petitioner contends (Pet. 17-19) that the government was required, but failed, to prove that he knew his "conviction qualifie[d] as a 'misdemeanor crime of domestic violence'" as a legal matter -- including that the legal definition of the offense "had, as an element, 'the use or attempted use of physical force.'" Pet. 17 (citation omitted). Under petitioner's theory, the proof must show not only a defendant's conviction for a violent misdemeanor offense against a domestic partner, but also that the defendant knew that the offense for which he was convicted categorically matches the definition of "'misdemeanor crime of domestic violence'" under this Court's precedent applying a "categorical approach" to that statutory term. E.g., United States v. Castleman, 572 U.S. 157, 168 (2014). That contention -- which

would immunize domestic abusers who are not subjectively aware that every other offense under the state statute of conviction would likewise involve physical force -- lacks merit.

As the court of appeals explained in a published opinion issued after its unpublished disposition in this case, this Court's prior decisions have drawn a clear line between a defendant's knowledge of the facts that make his conduct criminal and knowledge that the conduct gives rise to criminal liability upon conviction. See United States v. Johnson, 981 F.3d 1171, 1181-1182 (11th Cir. 2020), petition for cert. pending, No. 21-5432 (filed Aug. 17, 2021). The Court has, in particular, "explained that," under its mens rea precedents, "a defendant generally must 'know the facts that make his conduct fit the definition of the offense,'" but need "'not know that those facts give rise to a crime.'" Elonis v. United States, 575 U.S. 723, 735 (2015) (quoting Staples, 511 U.S. at 608 n.3); see id. at 735-736 (discussing prior cases); Johnson, 981 F.3d at 1182.

For example, in Liparota v. United States, 471 U.S. 419 (1985), on which Rehaif relied, see 139 S. Ct. at 2198, the Court addressed the mens rea required under a statute prescribing criminal penalties for someone who "knowingly uses, transfers, acquires, alters, or possesses" food stamps "in any manner not authorized by" applicable statutes or regulations, Liparota,

471 U.S. at 420 (citation omitted). The Court held that the statute required proof that the defendant knew that those provisions did not authorize his conduct, see id. at 423-433, but made clear that the government need not prove that the defendant knew that his unauthorized possession was a crime, see id. at 425 n.9. The Court emphasized that "the Government need not show that he had knowledge of specific regulations governing food stamp acquisition or possession," nor need it "introduce any extraordinary evidence that would conclusively demonstrate petitioner's state of mind." Id. at 434. Instead, the Court explained, "the Government may prove by reference to facts and circumstances surrounding the case that petitioner knew that his conduct was unauthorized or illegal." Ibid.

Similarly, in Staples v. United States, the Court concluded that, to support a conviction for possession of a machinegun that is not properly registered with the federal government, the government must prove only that the defendant "knew the weapon he possessed had the characteristics that brought it within the statutory definition of a machinegun." 511 U.S. at 602; see id. at 604-619. "In other words," Staples held that "the defendant 'must know the facts that make his conduct illegal,'" but a "defendant d[oes] not need to know the statutory definition of a

machinegun to be convicted." Johnson, 981 F.3d at 1182 (quoting Staples, 511 U.S. at 619).

Likewise here, to be convicted under 18 U.S.C. 922(g)(9) and 924(a)(2), a defendant "must have known that he was convicted of a misdemeanor, and he must have known the facts that made that crime qualify as a misdemeanor crime of domestic violence," but need not know "that [this] Court had defined the term ['misdemeanor crime of violence'] and what that definition was" or the legal consequences that would flow from his possession of a firearm following his conviction. Johnson, 981 F.3d at 1182-1183.

Instead, "the knowledge-of-status requirement demands that the defendant have known only that, to be convicted of his misdemeanor crime, he must have engaged in or threatened to engage in conduct that constitutes 'physical force' as the Supreme Court has defined it." Johnson, 981 F.3d at 1182-1183. Rehaif did not adopt an approach that "requires technical knowledge of the law." Id. at 1182. As the court of appeals observed, "[t]he Court did not conclude that Congress expected a person to have performed a Descamps analysis on his misdemeanor crime of conviction to determine whether any element of the statute under which he was convicted categorically required the use or threatened use of 'physical force.'" Ibid. (citing Descamps v. United States, 570 U.S. 254 (2013)) (footnote omitted). It is highly implausible

that Congress confined criminal liability for possession of a firearm by a person previously convicted of a domestic-violence offense to a small, possibly null subset of defendants with the perspicacity and legal acumen to anticipate the application of this Court's case law to their particular prior crimes. Indeed, construing Sections 922(g)(9) and 924(a)(2) to require proof that a defendant had analyzed his prior conviction under this Court's categorical-approach precedents would likely make prosecutions based on Section 922(g)(9) prohibitively difficult. At a minimum, that approach would impose an "unduly heavy burden on the Government" in proving offenses under that provision -- a burden of the kind the Court has repeatedly disavowed. Liparota, 471 U.S. at 433-434; see Rehaif, 139 S. Ct. at 2198.

In contending that Rehaif compels construing Sections 922(g)(9) and 924(a)(2) to require proof that the defendant knew that his prior offense categorically qualifies under this Court's precedent as a "misdemeanor crime of domestic violence," petitioner relies on a passage in the dissenting opinion in Rehaif. Pet. 18; see ibid. (quoting 139 S. Ct. at 2208 (Alito, J., dissenting)). In that passage, the dissent posed a rhetorical question about the potential application of the Court's holding to Section 922(g)(9): "If the Justices of this Court, after briefing, argument, and careful study, disagree about the meaning of a 'crime

of domestic violence,' would the majority nevertheless require the Government to prove at trial that the defendant himself actually knew that his abuse conviction qualified?" Rehaif, 139 S. Ct. at 2208 (Alito, J., dissenting). Petitioner appears (Pet. 18-19) to assume that the Court intended to require such proof despite the dissent's suggestion that it would rarely if ever be forthcoming.

The Court, however, expressly reserved judgment on that question. Rehaif, 139 S. Ct. at 2200. Citing that passage of the dissent, the Court's opinion

> express[ed] 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. See post, at 2207-2208 (ALITO, J., dissenting) (discussing other statuses listed in § 922(g) not at issue here).

Ibid. Petitioner errs in imputing to the Court's opinion an answer to a question that was not presented and that it explicitly declined to reach. Indeed, the majority's emphasis on the necessity of a knowledge requirement to ensure a sufficiently culpable state of mind, see id. at 2195, 2197-2198, cuts squarely against petitioner's parsing-the-legal-elements approach. A defendant's awareness that his own domestic-violence crime involved force renders him culpable without regard to his irrelevant knowledge or ignorance of the legal conclusion that every violation of the statute would.

Moreover, to the extent petitioner contends (Pet. 20) that he could not be convicted under Sections 922(g)(9) and 924(a)(2)

absent proof that he knew he was "prohibited" by his domestic-violence-misdemeanant status from possessing a firearm or ammunition, his approach would transform the knowledge element identified by this Court in Rehaif into a willfulness requirement. See Pet. 20-21 ("[I]ndividuals often plead guilty to misdemeanor offenses without ever being told a conviction will forever bar them from possessing a gun. * * * [I]ndividuals often plead guilty to misdemeanor offenses that qualify as 'misdemeanor crime[s] of domestic violence' without ever knowing they are doing so, let alone the Second Amendment consequences of their decision." (citations omitted)); cf. Rehaif, 139 S. Ct. at 2205 (Alito, J., dissenting) ("[T]he pointed use of the term 'knowingly,' as opposed to 'willfully,' in § 922(g), provides a ground to infer that Congress did not mean to require knowledge of illegality."). Every court of appeals to have passed on that

contention has correctly rejected it.[1] Petitioner identifies no sound basis to disturb that settled consensus.

3. Petitioner asserts (Pet. 21) that this Court's review is warranted to resolve a conflict in the courts of appeals. Specifically, petitioner asserts (Pet. 8-11) that the Seventh Circuit has adopted his position on the knowledge required, and the "Ninth Circuit would likely rule the same way as the Seventh Circuit." Pet. 10 (emphasis omitted); see Pet. 8-11 (citing United States v. Triggs, 963 F.3d 710 (7th Cir. 2020); United States v. Door, 996 F.3d 606 (9th Cir. 2021)). Petitioner misapprehends those decisions and overstates the tension in the circuits' approaches.

a. In United States v. Triggs, the Seventh Circuit considered a forfeited claim of Rehaif error in the context of a

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[1] See, e.g., United States v. Austin, 991 F.3d 51, 59 (1st Cir. 2021); United States v. Bryant, 976 F.3d 165, 172-173 (2d Cir. 2020), cert. denied, No. 20-7300 (June 21, 2021); United States v. Moody, 2 F.4th 180, 197-198 (4th Cir. 2021); United States v. Trevino, 989 F.3d 402, 405 (5th Cir. 2021); United States v. Bowens, 938 F.3d 790, 797 (6th Cir. 2019), cert. denied, 140 S. Ct. 814, and 140 S. Ct. 2572 (2020); United States v. Maez, 960 F.3d 949, 954-955 (7th Cir. 2020), cert. denied, Nos. 20-6129, 20-6226, and 20-6227 (June 21, 2021); United States v. Robinson, 982 F.3d 1181, 1187 (8th Cir. 2020); United States v. Singh, 979 F.3d 697, 727 (9th Cir. 2020), cert. denied sub. nom. Matsura v. United States, No. 20-1167 (May 24, 2021); United States v. Benton, 988 F.3d 1231, 1237-1238 (10th Cir. 2021); Johnson, 981 F.3d at 1181-1182 (11th Cir.); United States v. Brown, 845 Fed. Appx. 1, 3 (D.C. Cir. 2021) (per curiam).

defendant's pre-Rehaif guilty plea to possessing a firearm following a misdemeanor crime of domestic violence. 963 F.3d at 714. Applying plain-error review, the Seventh Circuit vacated the defendant's conviction, finding a reasonable probability that he would not have pleaded guilty if he had known that the government had to prove the Rehaif knowledge element. Id. at 717. That finding rested on two grounds.

First, the court of appeals noted that, "to convict Triggs at trial, the government had to prove that he knew he had been convicted of a 'misdemeanor crime of domestic violence' as that phrase is defined for purposes of § 922(g)(9) (though not that he knew he was barred from possessing firearms)." Triggs, 963 F.3d at 712 (emphasis omitted). The court recognized that, in prosecutions for possessing a firearm following a felony conviction under 18 U.S.C. 922(g)(1), "a defendant will have difficulty establishing prejudice from a Rehaif error because the new knowledge element is quite easy to prove, especially when the defendant previously served more than a year in prison." Triggs, 963 F.3d at 715. But the court took the view that "the comparative complexity of th[e] definition" of "misdemeanor crime of domestic violence" in Section 922(g)(9) changed "the guilty-plea calculus," such that Rehaif "improve[d] Triggs's trial prospects" by "giving

him at least a plausible argument that he was unaware that his 2008 battery conviction is a crime of this nature." Id. at 716.

Second, "[b]eyond the complexity of the statutory definition," the court of appeals found that "the messy nature of the proceedings that led to Triggs's 2008 conviction ma[de] the government's burden on the Rehaif element that much more challenging." Triggs, 963 F.3d at 716. Specifically, the court recounted that Triggs did not have a lawyer in his 2008 case; that the criminal complaint "was entirely conclusory and not quite correct"; that "the plea questionnaire that Triggs signed and submitted was woefully incomplete and unclear"; that "the judge conducted only a brief and perfunctory colloquy before accepting Triggs's no-contest pleas"; and that it was "unclear whether Triggs was ever properly notified of the nature of the battery charge or its required elements." Ibid. While acknowledging that "the record contains evidence that works against Triggs on the Rehaif element" as well, the court determined that it was "not necessary to weigh Triggs's likelihood of success at trial" but only whether he had "establish[ed] a reasonable probability that he would not have pleaded guilty had he known of the government's Rehaif burden." Id. at 717.

Triggs did not present, and did not address, whether admissions like the ones in petitioner's stipulation here would be

sufficient evidence at trial to establish knowledge. The Seventh Circuit did contrast the simplicity of defining the population of felons subject to restriction under Section 922(g)(1) with the "comparative complexity" involved in prosecuting domestic-violence misdemeanants under Section 922(g)(9). Triggs, 963 F.3d at 715-716. But no dispute exists that misdemeanor crimes of domestic violence constitute a more "complex[]" category of predicate offenses than felonies. Id. at 716. As the Seventh Circuit correctly recognized, in the mine-run Section 922(g)(1) case, the straightforward fact that "the defendant previously served more than a year in prison" makes knowledge of felon status "quite easy to prove." Id. at 915; see Greer v. United States, 141 S. Ct. 2090, 2097 (2021). And the decision below here applied a more complex knowledge requirement for a misdemeanor crime of domestic violence, consisting of three components, none of which can be proved by a simple incarceration record. See Pet. App. A5-A6. The Seventh Circuit did not articulate a different knowledge requirement, discuss whether or how the categorical approach (which it did not even mention) might or might not play a role, or even "weigh Triggs's likelihood of success at trial." Triggs, 963 F.3d at 717. Instead, the court's factbound assessment that Triggs had "establish[ed] a reasonable probability that he would not have pleaded guilty had he known of the government's Rehaif

burden," id. at 717, sheds little light on the contours of the government's burden in Section 922(g)(9) cases going forward, and offers no basis for inferring a circuit conflict on the question presented here.

b. Petitioner's reliance (Pet. 10-11) on the Ninth Circuit's decision in United States v. Door is similarly misplaced. There, the court considered a forfeited claim of Rehaif trial error arising from the defendant's conviction for possessing body armor following a conviction for a felony crime of violence, in violation of 18 U.S.C. 931(a)(1) and 924(a)(7).[2] Finding that Door had failed to "offer a plausible argument that he lacked the requisite knowledge of his status as a violent felon or that he would have proceeded differently at trial had the government been required to prove his knowledge of his prohibited statuses," the Ninth Circuit denied relief. Door, 996 F.3d at 620.

Notwithstanding that ultimate disposition, petitioner asserts (Pet. 11) that "Door is consistent with the Seventh Circuit's decision in Triggs" and that "both cases * * * held the defendant

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[2] Door was also convicted of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), and likewise challenged that conviction on Rehaif grounds. See Door, 996 F.3d at 618-619 (denying relief as to Section 922(g)(1) conviction). Petitioner does not rely on the court's analysis of that claim to support his assertion of a circuit conflict.

had to know his prior crime had [an] element" categorically qualifying it as a crime of violence. But the Ninth Circuit's comment that "Rehaif requires the government to prove that a defendant charged with violating § 931(a) knew he had a felony conviction and that the felony of which he was convicted had 'as an element the use, attempted use, or threatened use of physical force against the person or property of another,'" Door, 996 F.3d at 616 (quoting 18 U.S.C. 16(a)), is consistent with the Eleventh Circuit's opinion in Johnson, which noted that it did not "disagree with th[e] princip[le]" that "Rehaif requires the government to 'prove the defendant was aware that his prior conviction included the element of use or attempted use of force.'" 981 F.3d at 1183 n.7 (citation omitted).

And far from holding that the knowledge required under Rehaif could be satisfied only by a showing that the defendant knew the precise elements of his qualifying offense and understood the legal consequences that flowed from them, the Ninth Circuit in Door rejected the suggestion "that the government must prove that the defendant knew that he had been convicted of a crime that a court has specifically declared to be a 'crime of violence,'" which it stated "would be a nearly impossible burden for the government," and "would severely limit the scope of § 931(a)(1)." 996 F.3d at 615 (citation omitted). The Ninth Circuit instead reasoned that,

in evaluating a defendant's knowledge of the nature of his predicate conviction, "[t]he term 'physical force' should be given its ordinary meaning," and a scienter showing contingent on "the lay understanding of what constitutes a crime of violence" would thus be sufficient to sustain a conviction under Section 931(a)(1). Ibid.; see also id. at 615-616 (predicting that "a defendant may find himself pleasantly surprised to learn that a court has deemed his past crime not to be a crime of violence" (emphasis omitted)). The court was therefore satisfied that Door's Washington conviction for "felony harassment," Wash. Rev. Code. § 9A.46.020(1)(a)(i) and (2)(b) (1997), premised on a theory that he had "'threaten[ed] to kill' a person," adequately put him on notice that he had committed a violent felony, notwithstanding his "argu[ment] that the record contain[ed] no plea colloquy establishing that he understood the nature of felony harassment." Door, 996 F.3d at 620 (citation omitted). Little if any daylight exists between Door's reference to a defendant's "lay understanding" that his offense "constitute[d] a crime of violence," id. at 615, and the decision below's reference to a defendant's "knowledge that his predicate offense involved the use of force," Pet. App. A5, and the decisions do not conflict.

c. Even if petitioner's interpretation of Triggs and Door were sound, he has identified at most a shallow, recent, and narrow

divergence within a small fraction of the courts of appeals. Such modest variation would not warrant this Court's review at this time. Only the Seventh and Eleventh Circuits have even arguably confronted the scope of Section 922(g)(9)'s knowledge-of-status element in published decisions, and no court of appeals has considered the question presented en banc (as the Eleventh Circuit declined to do here, Pet. App. B1). Further consideration by the courts of appeals may resolve any nascent disagreement and could provide additional analysis that could benefit this Court if review became warranted at a later date.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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