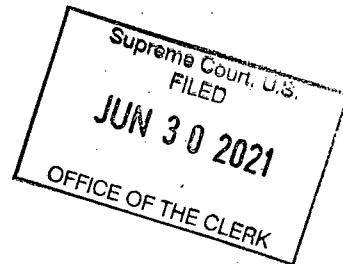


21-5062

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Ricardo Burgos — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS--EASTERN DIVISION
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ricardo Burgos
(Your Name)

U.S. Penitentiary
P.O. Box 1000

(Address)

Leavenworth, Kansas 66048
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

In Light of this Court's holding in United States v. Gary, (20-444)(S.Ct. June 14, 2021) regarding plain error under Rehaif v. United States, 139 S.Ct. 2191 (2019) did the United States District Court err in refusing to Grant an evidentiary hearing under 28 U.S.C. § 2255, where, on appeal, Mr. Burgos asserted that he did not know he was a felon for the purposes of 18 U.S.C. § 922(g)--as he had successfully completed state probation, had never served a prison sentence, and believed his civil rights to have been restored?

LIST OF PARTIES

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

[X] 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:

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
Everett McKinley Dirksen United States Courthouse
Room 2722-- 219 S. Dearborn Street
Chicago, Illinois 60604

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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<u>United States v. Burgos</u> , No. 16-CR-165 (N.D. Ill.) Plea deal, at dkt# 25 at 3.....	5
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STATUTES AND RULES

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OTHER

N/A

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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 B 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 C to the petition and is

reported at 2020 U.S. Dist LEXIS 76910; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**: N/A

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

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

N/A

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

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 March 19, 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: No response, and a copy of the order denying rehearing appears at Appendix N/A.

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

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

[] For cases from **state courts** N/A

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT VI of the US Constitution.

TITLE 28 U.S.C. § 2255

STATEMENT OF THE CASE

See attached Three (3) Pages

On Direct appeal, the United States Court of Appeals affirmed Mr. Burgos' convictions under Title 21 U.S.C. § 841(a)(1) and Title 18 U.S.C. § 922(g)(1), although this Court's holding in Rehaif v. United States, 139 S.Ct. 2191 (2019) was pending, and Mr. Burgos had entered a plea of GUILTY to the § 922(g)(1) count without knowledge of the necessary mens rea for completing the crime of being a felon in possession of a firearm.

Mr. Burgos' appointed appellate counsel filed an Anders brief without raising the issue of whether Mr. Burgos' plea of GUILTY was accepted with his client's awareness as to the mens rea the United States would have to prove in order to obtain a valid conviction under the law. The district Court's Judgment was AFFIRMED.

Mr. Burgos timely filed a Motion to Vacate, Set Aside, or Correct Sentence under Title 28 U.S.C § 2255, raising in his Traverse, the claim that his Appellate counsel was ineffective for not Raising a claim that under Rehaif, his guilty plea was invalid. Mr. Burgos had not been previously informed as to the significance of the Rehaif holding or it's pertinence to his circumstance--either by any appointed counsel, or the Court--when he was provided the option to withdraw his plea during direct appeal (See Appx. C, p.3 n.1).

Although in his § 2255 motion, Mr. Burgos asserted that he did not know he was a felon for the purposes of a § 922(g)(1) offense and believed his civil rights had been restored, the District Court refused to Grant an evidentiary

hearing and Denied Mr. Burgos' § 2255 motion, citing Floyd v. United States, although that case is not analogous to Mr. Burgos's circumstance where Mr. Floyd claimed actual innocence but has served several prison sentences for his crimes. Mr. Burgos had never been to prison prior to the instant offense and had successfully completed state-imposed probation previous to the conduct causing this current conviction; and so, Mr. Burgos could and did, reasonably believe that his civil rights had been restored at the time he was charged with the instant offense of § 922(g)(1) violation. **He was never advised that the government would have to prove that he possessed the mens rea to sustain a conviction under § 922(g)(1).** Mr. Burgos had only been advised that the government need only prove the fact of a prior conviction and that the firearm was possessed in order to obtain a conviction in trial under § 922(g)(1).

Had Mr. Burgos been properly advised by Counsel, **he would have proceeded to trial**, since Mr. Burgos stands squarely within the threshold of a man who believed his civil rights had been restored at the time he possessed a firearm during a music video, and not any drug sales or other illicit conduct.

Mr. Burgos received the District Court's denial of his § 2255 Motion over 180 days after its issuance during the COVID-19 pandemic and outside of the timelines for filing a Notice of Appeal or for a Certificate of Appealability--divesting the Appellate Court of any Jurisdiction to Grant an Appeal in this matter (See Appx. B). Mr. Burgos submitted a petition for rehearing, however he

received no response, and the MANDATE has issued in the case (See, Appx. A).

On June 14, 2021, this Court held that "in felon-in-possession cases, a Rehaif error is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon" (See, United States v. Gary, (20-444)(June 14, 2021)(Bold mine).

This petition for Certiorari, or a Granted, Vacate, and Remand order follows.

REASONS FOR GRANTING THE PETITION

This petition should be Granted as it pertains to a denial of a constitutional Right, to the effective Assistance of Counsel and when appropriate, the Right to a Trial on each element of the offense by a Jury. Mr. Burgos was denied his Sixth Amendment Right when he was never properly advised during his pre-trial process and especially his Appellate process of the actual elements and mens rea which needed to be proven by the United States in order to sustain a conviction under the Title 18 U.S.C § 922(g)(1) statute violation.

Because Mr. Burgos had never served a prison sentence, had successfully completed probation, and believed he retained his civil rights, he reasonably would have proceeded to trial had he been advised that there is a mens rea element to the § 922(g)(1) offense that must be proven by the Government in order to sustain a conviction under that statute.

Mr. Burgos, as a defendant, stands within the scope for Granting relief under both Rehaif and Gary, id. He has been prejudiced by his Counsel's action in not advising him as to the elements of the 922(g)(1) statute, as expressed in Rehaif, as he is serving a sentence of 120 months of imprisonment when he was unaware that he had a reasonable defense to the elements of the offense. Each of the above referenced holdings were decided during the pendency of Mr. Burgos' appellate process, but have not been Rightly adjudicated in Accord with Supreme Court holdings regarding the matter.

Presently, the District Court's decision in Mr. Burgos' timely-filed § 2255 motion is in discord with this Court's holdings in the aforementioned cases, and Mr. Burgos respectfully Asks that he be able to present his defense to the Title 18 U.S.C. § 922(g)(1) statute violation based upon current judicial interpretation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard Burgos

Date: June 29, 2021