No. 21-5432

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IN THE SUPREME COURT OF THE UNITED STATES

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DEANGELO LENARD JOHNSON, 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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# BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether the court of appeals correctly determined on plain-error review 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.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (M.D. Fla.):

United States v. Johnson, No. 18-cr-90 (Feb. 26, 2019)

United States Court of Appeals (11th Cir.):

United States v. Johnson, No. 19-10915 (Dec. 2, 2020)

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A58)[1] is reported at 981 F.3d 1171. The order of the district court is not published in the Federal Supplement but is available at 2018 WL 5766346.

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[1] The first appendix to the petition for a writ of certiorari (labeled Appendix A, see Pet. ii), which contains the court of appeals' opinion, contains an unpaginated cover sheet. For clarity, this brief treats Appendix A as if it were separately paginated beginning on the first page of the opinion (i.e., with page 1 of the opinion as Pet. App. A1). This brief treats the second appendix, which is not labeled, as Appendix B.

## JURISDICTION

The judgment of the court of appeals was entered on December 2, 2020. A petition for rehearing en banc was denied on March 24, 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 August 17, 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 time served plus one day, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A58.

1. On January 31, 2018, a police officer in Jacksonville, Florida, conducted a traffic stop of a vehicle driven by petitioner. Presentence Investigation Report (PSR) ¶ 6. A computer query revealed an active arrest warrant for petitioner,

and the officer instructed petitioner to exit the vehicle. Ibid. When petitioner stepped out, the officer observed a handgun on the floorboard near the driver's seat. Ibid. The officer retrieved the firearm, a .380-caliber pistol, which was loaded with three rounds in the magazine and one round in the chamber. Ibid. After he was advised of his Miranda rights, petitioner stated that he had purchased the firearm on the street for protection. PSR ¶ 7.

In May 2018, a federal grand jury in the Middle District of Florida returned an indictment charging petitioner with 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). 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:

> (g) It shall be unlawful for any person * * *
>
> * * *
>
> (9) 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 Pet. App. A23-A24 & n.10 (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").

The predicate offense alleged in the federal indictment was a 2010 Florida conviction for "Domestic Battery." Indictment 1. That conviction arose from a February 2010 incident in which a law-enforcement officer had "responded to a call and found that [petitioner] had 'punched, strangled, and threatened to pistol

whip' his wife," who had "numerous bruises and scratches all over" her body when the officer arrived. Pet. App. A3. Petitioner was originally charged with a felony offense of domestic violence by strangulation and assault. Id. at A4. In June 2010, following plea negotiations in which petitioner was represented by counsel, petitioner pleaded guilty to misdemeanor domestic battery, in violation of Fla. Stat. § 784.03(1) (2001). Pet. App. A4; see D. Ct. Doc. 49, ¶ 1 (Nov. 19, 2018). Petitioner was sentenced to two days of imprisonment, to be followed by 12 months of probation. Pet. App. A4 n.1; PSR ¶ 26. After petitioner twice violated the terms of his probation, the Florida trial court revoked petitioner's probation and sentenced him to six months of imprisonment. Ibid.

Petitioner moved to dismiss the federal indictment, asserting that his Florida offense did not qualify as a misdemeanor crime of domestic violence for purposes of 18 U.S.C. 922(g)(9) because he had never lost his civil rights, and Section 921(a)(33)(B)(ii) renders Section 922(g)(9) inapplicable to any person who has been convicted of a misdemeanor crime of domestic violence but had his civil rights "restored." 18 U.S.C. 921(a)(3)(B)(ii); Pet. App. A4-A5. The district court denied the motion, and the parties proceeded to a stipulated-facts bench trial. Id. at A5. The court found petitioner guilty, and sentenced him to time served plus one

day of imprisonment, to be followed by three years of supervised release.[2] Judgment 1-3.

2. The court of appeals affirmed. Pet. App. A1-A58.

On plain-error review, the court of appeals rejected petitioner's contention that vacatur of his conviction for violating 18 U.S.C. 922(g) and 924(a)(2) was required on the theory that the indictment and the stipulated facts at the bench trial "failed to allege and prove," respectively, that petitioner "knew he was a domestic-violence misdemeanant." Pet. App. A6; see id. at A7-A35. The court recognized that, during the pendency of petitioner's appeal, this Court had 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. The court of appeals stated that in light of Rehaif petitioner satisfied the

[2] In October 2019, while petitioner's appeal was pending, the district court revoked his supervised release, finding that petitioner had violated the conditions of his supervised release by testing positive three times for cocaine and failing to participate in required mental-health counseling. See D. Ct. Doc. 94, at 1 (Oct. 8, 2019). The court required six additional months of imprisonment. Id. at 2. Petitioner did not appeal the court's judgment revoking his supervised release and requiring that additional term of imprisonment.

first two elements of plain-error review -- namely, showing that an error occurred and that the error was plain. Pet. App. A11-A14.

The court of appeals determined, however, that petitioner was not entitled to relief because he had not satisfied the third plain-error element, which required him to show that the deficiencies in the indictment and stipulated facts affected his substantial rights by "demonstrating a reasonable probability that, without th[ose] error[s], the outcome of the proceeding would have been different." Pet. App. A15 (citing, inter alia, Molina-Martinez v. United States, 578 U.S. 189, 194 (2016)); see id. at A15-A35. The court explained that petitioner could make that showing if, and only if, "the evidence of record showing whether [petitioner] knew his status -- domestic-violence misdemeanant -- when he possessed the gun * * * [wa]s lacking." Id. at A15.

In determining whether petitioner had made that showing, the court of appeals "beg[a]n by identifying what Rehaif's knowledge-of-status requirement demands." Pet. App. A16. After reviewing this Court's scienter case law, the court of appeals explained that a statutory knowledge requirement obligates the government to prove that "the defendant 'must know the facts that make his conduct illegal'" but not that the defendant was aware of "the statutory definition" implicated by those facts or of the prohibition itself. Id. at A18 (citation omitted). "Applying

th[ose] principles * * * to Section 922(g)(9)'s status requirement," the court reasoned that the government is required to prove that, "at the time he possessed the firearm, the 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." Ibid.

The court of appeals noted a "slight twist" in Section 922(g)(9), in that "one of the facts that makes a crime qualify as a misdemeanor crime of domestic violence is that the crime must categorically require the use or threatened use of physical force," which could "create the misimpression that Rehaif requires technical knowledge of the law." Pet. App. A18-A19. But the court rejected that approach as misguided, observing that this Court in Rehaif "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.'" Id. at A19 (citing Descamps v. United States, 570 U.S. 254 (2013)).

Instead, the court of appeals explained that "the knowledge-of-status requirement" requires that the defendant have known 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 for purposes of a misdemeanor crime of domestic violence under Section 922(g)(9)." Pet. App. A19. Accordingly, the court explained that, in this case, proof of knowledge would require that petitioner "knew all the following: (1) he had been convicted of a misdemeanor under state law, 18 U.S.C. § 921(a)(33)(A)(i); (2) to be convicted of that misdemeanor, he must have knowingly or recklessly engaged in at least 'the slightest offensive touching'; and (3) the victim was his current or former spouse at the time he committed the crime, 18 U.S.C § 921(a)(33)(A)(ii)." Id. at A19-A20 (footnotes omitted).

"[L]ook[ing] * * * to [petitioner]'s stipulation at trial and the undisputed facts in his" presentence report, the court of appeals found that the record here did not support plain-error relief on petitioner's Rehaif claim. Pet. App. A28-A29. As to the first knowledge component, the court identified evidence demonstrating petitioner's awareness of his misdemeanor conviction -- including petitioner's stipulation in this case that he had pleaded guilty to domestic battery under Florida law; petitioner's having "ultimately spent six months in jail as a result of that conviction -- an[] indication that he must have been aware of" the conviction; and petitioner's "admi[ssion]" in this case that "he knew he was a misdemeanant." Id. at A29-A30.

As to the second knowledge component, the court of appeals identified evidence that petitioner "knew that the misdemeanor to which he pled guilty -- battery -- required that he had, at a minimum, recklessly engaged in at least 'the slightest offensive touching.'" Pet. App. A30 (quoting United States v. Castleman, 572 U.S. 157, 163 (2014)). The court observed that petitioner's "Florida conviction identified the statute of conviction as Florida Statute § 784.03(1)(a)," which "requires that the defendant have 'actually and intentionally touched or struck another person against the will of the other'" -- conduct that entails, "at a minimum, recklessly committing at least 'the slightest offensive touching.'" Id. at A29-A30 (brackets and citation omitted). It further observed that petitioner "stipulated at his bench trial here that with the assistance of counsel, he 'knowingly and intelligently waived his right to a jury trial and pled guilty' to the offense" -- which petitioner could not have done without "hav[ing] been informed of the crime's elements." Id. at A30. The court accordingly determined that petitioner necessarily "knew that one of the elements of that offense required him to have 'actually and intentionally touched or struck another person against the will of the other.'" Id. at A30-A31 (brackets and citation omitted). And as to the third knowledge component, the court noted that petitioner had

stipulated that "the victim of [his] prior Florida misdemeanor battery was his wife," a fact petitioner "[o]bviously" knew. Id. at A31.

The court of appeals rejected petitioner's contrary arguments, which "rest[ed] mainly" on petitioner's assertion that "he did not 'know he was prohibited from federal possession of a firearm.'" Pet. App. A32. The court observed that those contentions "pertain to whether [petitioner] knew he personally was prohibited from possessing a firearm under federal law, not whether he knew he committed a misdemeanor crime of domestic violence." Ibid. "[U]nder Rehaif's knowledge-of-status requirement," the court explained, "that a defendant does not recognize that he personally is prohibited from possessing a firearm under federal law is no defense if he knows he has a particular status and that status happens to be one prohibited by § 922(g) from possessing a firearm." Id. at A32-A33 (citing United States v. Maez, 960 F.3d 949, 954-955 (7th Cir. 2020), cert. denied, 141 S. Ct. 2813, 141 S. Ct. 2814, and 141 S. Ct. 2838 (2021)).

Judge Martin dissented, taking the view that, "under Rehaif, in order for a person to be convicted of possessing a firearm under section 922(g)(9), he must have known that he was convicted of a misdemeanor crime of domestic violence that had, 'as an element,

the use or attempted use of physical force, or the threatened use of a deadly weapon'" as a technical matter. Pet. App. A41 (citation omitted); see id. at A39-A58.

ARGUMENT

Petitioner renews his claim (Pet. 8-16) 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 denied plain-error relief on that claim, and its decision does not conflict with any decision of this Court or of another court of appeals. This Court has recently denied a petition for a writ of certiorari presenting the same question, also arising from a decision of the Eleventh Circuit, see Brown v. United States, No. 21-5060 (Oct. 12, 2021), and should follow the same course here.

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). Id. at 2195. 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 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 neither the omission from the indictment of an allegation, nor the omission from the stipulated facts of an explicit statement, that petitioner knew of his status as a domestic-violence misdemeanant affected petitioner's substantial rights because the record evidence "establish[ed] that [petitioner] had the requisite knowledge of his status as a domestic-violence misdemeanant when he was found

with the gun in his possession." Pet. App. A29; see id. at A28-A33. The term "'misdemeanor crime of domestic violence'" is defined in relevant part to include "[1] a misdemeanor offense [2] that * * * 'has, as an element, the use of force,' and * * * [3] 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). The court correctly determined that the record demonstrated petitioner's knowledge of all of the facts that caused his 2010 Florida domestic-battery conviction to satisfy that definition.

As the court of appeals recognized, the stipulation of facts into which petitioner entered for purposes of his federal bench trial and "the undisputed facts in the [presentence report], which the district court adopted as factual findings," made clear that petitioner was aware he had been convicted of misdemeanor battery under Florida law. Pet. App. A28; see id. at A28-A30. Specifically, petitioner stipulated "that he had pled guilty to the charge of 'domestic battery'" under Florida law; his "Florida conviction identified the statute of conviction as Florida Statute § 784.03(1)(a), Florida's battery statute"; his presentence report "state[d] that he was originally charged with domestic battery by strangulation and assault, which Florida Statute § 784.041 renders a felony," but "eventually pled to the misdemeanor instead"; and

petitioner "ultimately spent six months in jail as a result of that conviction -- another indication that he must have been aware of it." Id. at A29-A30. Moreover, "during this case, [petitioner] admitted he knew he was a misdemeanant." Id. at A30.

The court of appeals likewise catalogued substantial evidence that petitioner was aware that his Florida battery conviction required at minimum the "slightest offensive touching" that United States v. Castleman, 572 U.S. 157 (2014), held sufficient to qualify as physical force under 18 U.S.C. 921(a)(33)(A). Pet. App. A30-A31; see Castleman, 572 U.S. at 163. The court of appeals noted that "[t]he offense of battery under Florida law requires that the defendant have 'actually and intentionally touched or struck another person against the will of the other,'" Pet. App. A30 (quoting Fla. Stat. § 784.03(1)(a)(1) (2001)) (brackets omitted), which a person cannot do without, "at a minimum, recklessly committing at least 'the slightest offensive touching,'" ibid. The court additionally explained that petitioner had stipulated that, with the assistance of counsel, he had knowingly and intelligently pleaded guilty to that offense, which necessarily implied that petitioner had been "informed of the crime's elements" -- including that he actually and intentionally touched or struck another person against that

person's will. Ibid. (citing Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005)).

Finally, as the court of appeals observed, petitioner stipulated that the victim of his 2010 Florida battery was his wife, and "[o]bviously[] [petitioner] knew she was his wife." Pet. App. A31. Petitioner could not (and does not) contest his knowledge that he had the requisite domestic relationship with his victim under Section 922(g)(9). See Hayes, 555 U.S. at 418 ("We hold that the domestic relationship, although it must be established beyond a reasonable doubt in a § 922(g)(9) firearms possession prosecution, need not be a defining element of the predicate offense.").

2. Petitioner contends (Pet. 11-13) that the government was required, but failed, to prove that he understood that his conviction qualified as a "misdemeanor crime of domestic violence" as a legal matter -- including that he knew the legal definition of the offense "had, 'as an element, the use or attempted use of physical force,'" Pet. 12, and that he "knew how Castleman defined" the term "'physical force,'" Pet. 13 (quoting Castleman, 572 U.S. at 163). 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., Castleman, 572 U.S. at 168. 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 as defined by this Court -- lacks merit.

As the court of appeals explained, this Court's 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 Pet. App. A16-A19. This 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); Pet. App. A17.

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.

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." Pet. App. A18 (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 and what that definition was" or the legal consequences that would flow from his possession of a firearm following his conviction. Pet. App. A18-A19. As the court of appeals correctly explained, "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." Id. at A19.

Contrary to petitioner's contention (Pet. 12-13), Rehaif did not adopt an approach that "requires technical knowledge of the law." Pet. App. A19. 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). And 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. 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.

Petitioner errs in contending (Pet. 13) that the court of appeals' holding "essentially transform[s] § 922(g)(9) into a strict-liability offense, in direct contrast to Rehaif's teachings on proving mens rea." This Court's emphasis in Rehaif on the necessity of a knowledge requirement to ensure a sufficiently culpable state of mind, see 139 S. Ct. 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.

Immunizing a defendant who knew he had committed (1) a misdemeanor offense (2) involving violence (3) against a domestic partner simply because he may have had a misapprehension -- or, more likely, no apprehension at all -- of the legal consequences of certain elements of that offense or definitions articulated in this Court's precedents would lie far afield of Rehaif's examples of excusable collateral mistakes of law by genuinely non-culpable defendants. See 139 S. Ct. at 2197-2198 (doubting that Congress intended to expose to criminal liability "an alien who was brought into the United States unlawfully as a small child and was therefore unaware of his unlawful status"; "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'"; or a defendant whose "trial judge had told him repeatedly -- but incorrectly -- that he would 'leave this courtroom not convicted of a felony.'" (citation and emphasis omitted)). Although the dissenting opinion in Rehaif posed a rhetorical question about whether the Court's approach would require proof that the defendant subjectively understood that his prior conviction qualified as a predicate under Section 922(g)(9), id. at 2208 (Alito, J., dissenting), the Court explicitly reserved judgment on that question, see id. at 2200 (observing that the Court "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," and citing the portion of the dissent posing that question).

Moreover, to the extent petitioner renews his primary contentions below -- which, as the court of appeals observed, "rest[ed] mainly on the fact that he did not 'know he was prohibited from federal possession of a firearm'" under Section 922(g)(9), Pet. App. A32 -- his approach would transform the knowledge element identified by this Court in Rehaif into a willfulness requirement. See Pet. 15-16 ("Congress expected the government to prove a defendant knew his/her prior conviction qualified within the unique federal definition under § 922(g)."); 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.[3] Petitioner identifies no sound basis to disturb that settled consensus.

3. Petitioner asserts that this Court's review is warranted to resolve a conflict in the courts of appeals -- and, specifically, that the decision below "creates 'a split with the Seventh Circuit.'" Pet. 8 (citation omitted); see Pet. 8-11 (citing United States v. Triggs, 963 F.3d 710 (7th Cir. 2020)); Pet. App. A57 & n.7 (Martin, J., dissenting). As the court of appeals explained, see Pet. App. A31 n.12, petitioner's contention misapprehends the Seventh Circuit's decision in Triggs and overstates the tension between the circuits' approaches.

In Triggs, the Seventh Circuit considered a forfeited claim of Rehaif error in the context of a 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,

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[3] 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, 141 S. Ct. 2825 (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, 141 S. Ct. 2813, 141 S. Ct. 2814, and 141 S. Ct. 2838 (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, 141 S. Ct. 2671 (2021); United States v. Benton, 988 F.3d 1231, 1237-1238 (10th Cir. 2021); Pet. App. A18-A20; United States v. Brown, 845 Fed. Appx. 1, 3 (D.C. Cir. 2021) (per curiam).

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 Seventh Circuit stated 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 715 (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 715-716.

Second, "[b]eyond the complexity of the statutory definition," the Seventh Circuit 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; see Pet. App. A31 n.12 ("Triggs's decision to remand rested on 'the complexity of the statutory definition' in combination with the 'messy' state-court-conviction record."). 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." Triggs, 963 F.3d at 716. 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 the Seventh Circuit there did not address, whether admissions like the ones in petitioner's stipulation here would be sufficient evidence at trial to establish knowledge. The court 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. But no dispute exists that misdemeanor crimes of domestic violence constitute a more "complex[]" (ibid.) category of predicate offenses than felonies. 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." Ibid.; see Greer v. United States, 141 S. Ct. 2090, 2097 (2021). And the court of appeals 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. A19-A20.

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. And 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 715, 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. Even if petitioner's interpretation of Triggs were sound, he has identified at most a shallow, recent, and narrow divergence between two 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. This Court's recent decision in Greer v. United States, supra, which addressed the application of plain-error review to claims under Rehaif, may bear on future cases like petitioner's own. 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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