

IN THE
SUPREME COURT OF THE UNITED STATES

21 - 6514

JORGE HERNANDEZ RIVERA-PETITIONER

vs.

UNITED STATES OF AMERICA-RESPONENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO:
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED

NOV 24 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

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QUESTION(S) PRESENTED

WHETHER AN INFORMATION IS DEFECTIVE FOR FAILING TO STATE THE PROPER ELEMENTS FOR THE CRIME OF FELON IN POSSESSION OF A FIREARM

WHETHER THE ACCA CAN BE APPLIED TO A DEFENDANT WHERE THE INFORMATION IS DEFECTIVE FOR FAILING TO STATE THE PROPER ELEMENTS FOR THE CRIME OF FELON IN POSSESSION OF A FIREARM

LIST OF PARTIES

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

TABLE OF AUTHORITIES CITED

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APPENDIX B	Petition for rehearing denied September 7, 2021.

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

OPINIONS BELOW

The opinion of the United States court of Appeals for the Fourth Circuit's denial appears at Appendix A, and is an unpublished opinion.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 3, 2021. A timely petition for rehearing was denied by the United States Court of Appeals on September 7, 2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

On November 26, 2018, Petitioner (Jorge Hernandez Rivera) was indicted by the Government in a two-count indictment for being a Felon in Possession of a Firearm and being an Armed Career Criminal ("ACCA") on August 28, 2018, this in violation of 18 U.S.C.

§§ 922(g)(1) and 924(e) [Count One] and being a Felon in Possession of Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) [Count Two]. The indictment failed to properly allege the required element of the crime of being a Felon In Possession of a Firearm, as required by the Supreme Court of the United States of America.

On July 26, 2019, one month after the Supreme Court had announced in *Rehaif v. United States*, 588 U.S. ___, (2019), the Government filed an information charging Petitioner with being a Felon in Possession of a Firearm and being an Armed Career Criminal on August 28, 2018 in violation of 18 U.S.C. §§ 922(g)(1) and 924(e).

On August 21, 2019, Petitioner appeared in the district court and plead guilty to the Information pursuant to a plea agreement. Petitioner waived the 35-day time period for sentencing as provided by Fed.R.Crim.Proc. R. 32(e)(2) and proceeded with the sentencing hearing. Petitioner was found to be an Armed Career Criminal and sentenced to the statutory minimum sentence of 180 months in the Bureau of Prisons. The Judgment in the Criminal case was filed on October 11, 2019.

Notice of appeal of the district court's judgment was timely filed the same day.

Petitioner's direct appeal was denied on August 3, 2021 and a timely filed petition for rehearing was denied by the United States Court of appeals for the Fourth Circuit was denied on September 7, 2021.

REASONS FOR GRANTING THE PETITION

This is a Constitutionally compelled issue which resulted in fundamental unfairness of firmly established federal court proceeding against Petitioner, and a writ of certiorari grant by this United States Supreme Court would not alter the decision of the Fourth Circuit Court of Appeals but would only affirm that the federal question must be resolved by this Court. The federal question is deeply rooted in Supreme Court precedent and the United States District Court of North Carolina failed to follow this Court's ruling and that raises a significant question about the standard of review and will serve as precedent in other reviews of other courts decision making process.

The United States Court of Appeals for the Fourth Circuit has failed to ground its analysis in any particular provision of Constitution or in the United States Supreme Court precedent of *Rehaif v. United States*, 139 S.Ct. 2191 (2019), which required the Government to prove that the defendant knew he was barred from possessing a firearm by virtue of his §922(g) status, which was placed before them in Petitioner's direct appeal of right. This cause involves legal principles of major significance to the Fourth Circuit Court of Appeals jurisprudence and the decision below (District Court) was in probable conflict with precedent of other district court's. Therefore, it is imperative that this United States Supreme Court "grant" certiorari to resolve the dispute regarding whether the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a Firearm, and whether it is a jurisdictional defect in the proceeding when a defendant pleads guilty to an offense where the Government failed to list the elements required by this Supreme Court where the district court also failed to properly review Petitioner's prior state convictions as announced by this Court in a number of landmark holdings where Petitioner had a clearly established federal right.

The decisions of the Supreme Court on Petitioners rights

were recognized in the following cases, starting with Taylor v. United States, 495 U.S. 575 (1990); Shepard v. United States, 544 U.S. 13 (2005); Descamps v. United States, 570 U.S. 254 (2013); Mathis v. United States, 1365 S.Ct. 2243 (2016); and Rehaif v. United States, 139 S.Ct. 2191 (2019) and a host of other rulings that involve Armed Career Criminal enhancements. The failure of the District Court to recognize its responsibility to defendant's and the requirements that connect to the ACCA enhancement should be considered a unique constitutional defect where this very Supreme Court has consistently made rulings regarding how a court should review a defendant's prior state convictions and indictment where the focus should be on the elements, rather than the facts, of a prior conviction.

Although this request is focused basically on whether the Government's failure to list the elements in the charging indictment does not prevent this Honorable Supreme Court to re-explore some of its prior holding where the lower court continues to disregard or misinterpret the actual meanings of this Court's prior holdings.

Therefore, based on the confusing federal law that continues to come before this Supreme Court where the District Court's have continuously misapplied the application of the severe sentencing mandatory minimum of the Armed Career Criminal Act. Again, the question presented in this application should be reviewed where the issue not only affects petitioner, but others in similarly situated cases. The Fourth Circuit court of Appeals has ignored an important federal question in a way that petitioner believes, it conflicts with a number of this Court's prior decisions and holding that call for the exercise of this Court's supervisory power is warranted. This issue runs parallel to the ACCA and should be resolved by this Court.

CONCLUSION

Based on the foregoing reasons, and the fact that this Court has been grappling with provisions and interpretation of the Armed Career Criminal act provisions with the United States District courts and the United States Court of Appeals in just about every circuit. Therefore, this petition and federal question of law should be included in the conversation and the writ of certiorari should be granted.

Respectfully submitted,

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10-12-2021

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