

No. 22-\_\_\_\_\_

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**In the Supreme Court of the United States**

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MANUEL D. REYNOSO,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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APPLICATION FOR AN EXTENSION OF TIME  
IN WHICH TO FILE A PETITION  
FOR A WRIT OF CERTIORARI

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September 19, 2022

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the District of Columbia Circuit:

Manuel D. Reynoso respectfully requests a 60-day extension of time, to and including November 28, 2022, within which to file a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit in *Reynoso v. United States*, No. 19-3045 (D.C. Cir.). The court of appeals entered judgment on July 1, 2022. Unless extended, the time for filing a petition for writ of certiorari will expire on September 29, 2022. Pursuant to this Court's Rule 13.5, this application is being filed at least 10 days before that date. This Court has jurisdiction under 28 U.S.C. § 1254(1). A copy of the court of appeals' opinion is attached as Exhibit 1.

As explained below, the extension is necessary to permit counsel of record to exhaust research regarding a split in authority among the federal circuit courts on an issue raised by Mr. Reynoso in the court of appeals and decided by that court, to determine whether to file a petition for a writ of certiorari and, if one is to be filed, to see to its preparation and submission. Counsel of record also has been heavily engaged with the press of other matters.

1. On May 16, 2018, a uniformed officer with the United States Secret Service observed Mr. Reynoso driving a vehicle without its headlights on in the District of Columbia. The officer stopped Mr. Reynoso's vehicle and,

upon approaching, indicated that he smelled marijuana coming from the open driver's-side window. Mr. Reynoso denied that he or his two passengers were smoking marijuana in the vehicle, but handed the officer a rolled \$1 bill containing a marijuana bud and stated that was all they had. The officer ordered Mr. Reynoso and his passengers out of the vehicle.

During a search of the vehicle, a handgun and ammunition were discovered underneath the driver's side floor mat. Neither Mr. Reynoso's fingerprints nor his DNA were found on the firearm, and the ammunition was never tested for fingerprints nor swabbed for DNA. Indeed, it was undisputed that the firearm was purchased and owned by someone else who admitted that, a week before the traffic stop, he concealed his firearm and ammunition in the vehicle Mr. Reynoso was driving without Mr. Reynoso's knowledge. Mr. Reynoso was arrested.

At the time of the traffic stop, Mr. Reynoso previously had plead guilty to unrelated offenses. In 2011, he pleaded guilty in Virginia state court to distribution or possession with intent to distribute ecstasy and marijuana, for which the maximum sentence on each count was imprisonment for ten years or more. Although Mr. Reynoso was sentenced to two consecutive five-year terms of imprisonment, all but ten months of that sentence was suspended. In 2018, he pleaded guilty in Maryland state court to possession with intent to distribute marijuana and possession of a firearm. The plea colloquy

suggests the parties contemplated only a one-year term of imprisonment, and Mr. Reynoso had not yet been sentenced in that matter at the time of the traffic stop. As a result, at the time of the traffic stop at issue in this case, Mr. Reynoso had never served more than a year in prison.

2. On August 16, 2018, Mr. Reynoso was indicted in the U.S. District Court for the District of Columbia for, among other things, unlawful possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). That statutory provision states “[i]t shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year[] . . . [to] possess in . . . commerce[] any firearm or ammunition . . . .” *Id.* Mr. Reynoso pleaded not guilty.

Trial began on February 11, 2019. During the trial, Mr. Reynoso argued he did not possess the firearm and ammunition found in the vehicle he was driving, of which he testified he had no knowledge at the time of the traffic stop. Although he stipulated that he had been convicted of a crime punishable by imprisonment for a term exceeding one year, the stipulation did not state Mr. Reynoso knew of that fact at the time of the alleged possession. No evidence was presented at trial that Mr. Reynoso ever served more than a year in prison.

The district court instructed the jury as to most elements of the charged § 922(g) offense following presentation of the evidence, but it failed to instruct the jury that it must find beyond a reasonable doubt, among other things, that Mr. Reynoso knew of his felon status at the time of the purported possession in order to convict. The jury convicted Mr. Reynoso, and the district court sentenced him to a 7-year, 3-month term of imprisonment on the § 922(g)(1) count.

3. Mr. Reynoso timely appealed his conviction and sentence to the U.S. Court of Appeals for the District of Columbia Circuit. After the trial, but before Mr. Reynoso's opening brief was filed, the Supreme Court issued its decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), in which it held that a defendant can only be convicted under § 922(g) if the government proves both "that the defendant knew he possessed a firearm [or ammunition] and also that he knew he had the relevant status when he possessed it." *Id.* at 2194.

Mr. Reynoso challenged the sufficiency of the evidence with respect to the § 922(g) count on both predicates—*i.e.*, that there was insufficient evidence to show he knew (1) he possessed a firearm and ammunition and (2) he previously had been convicted of a crime punishable by imprisonment for a term exceeding one year. He also separately argued, among other things,

that the conviction was infected with trial error caused by the district court's incomplete jury instruction on the § 922(g) charge in view of *Rehaif*.

The government conceded that a *Rehaif* error plainly occurred because the district court did not instruct the jury that it must find Mr. Reynoso knew of his felon status at the time of the purported possession. It also did not dispute in its response brief that this plain error affected Mr. Reynoso's substantial rights. It disputed only whether that error seriously affected the fairness, integrity, or public reputation of the judicial proceedings under the plain-error test established in *United States v. Olano*, 507 U.S. 725 (1993).

The court of appeals heard oral argument on December 2, 2020. Several weeks after argument, the court of appeals issued an order *sua sponte* holding the case in abeyance pending the Supreme Court's decision in *Greer v. United States*, in which the Court had granted certiorari to determine whether an appellate court may look outside the trial record to determine whether an error affected a defendant's substantial rights or impacted the fairness, integrity, or public reputation of judicial proceedings on plain-error review. Order Granting Pet. for Writ of Cert., *Greer v. United States*, No. 19-8709 (U.S. Jan. 8, 2021). The Court issued its decision in *Greer* on June 13, 2021, holding appellate courts “may consider the entire record—not just the record from the particular proceeding where the error

occurred”—when conducting plain-error review of a *Rehaif* instructional error. 141 S. Ct. 2090, 2098 (2021) (emphasis omitted).

Mr. Reynoso and the government both filed supplemental briefs addressing the impact of the *Greer* decision. Each maintained their positions with respect to the § 922(g)(1) conviction and sentence. Mr. Reynoso supplemented the evidentiary record on appeal with additional evidence from his prior Virginia and Maryland state court convictions, which Mr. Reynoso argued showed he had a plausible defense that he did not know of his felon status at the time of the alleged possession.

The court of appeals affirmed Mr. Reynoso’s conviction and sentence. It held, among other things, that there was sufficient evidence supporting the jury’s verdict with respect to § 922(g) and that the plain *Rehaif* error based on the district court’s erroneous jury instructions on that count did not require a new trial because it did not impact the fairness, integrity, or public reputation of judicial proceedings. But the court of appeals refused to consider Mr. Reynoso’s challenge to the sufficiency of the evidence due to the lack of evidence from which the jury could have found Mr. Reynoso knew he had been convicted of a crime punishable by imprisonment for a term exceeding one year. It held that such challenges to the evidence categorically are unavailable in cases where there is also a *Rehaif* instructional error. In so holding, the court of appeals recognized its decision deviated from the law

in other federal appellate courts, but concluded the substantive result effectively is the same.

4. Mr. Reynoso respectfully requests that an extension of time be granted. The additional time is necessary to determine whether to file a petition for a writ of certiorari and, if one is to be filed, to see to its preparation and submission. Counsel of record has been diligently assessing a split in authority among the federal circuit courts relating to issues raised by Mr. Reynoso in the court of appeals and decided by that court, including whether a sufficiency-of-the-evidence challenge is available based on jury instruction errors stemming from intervening law. Counsel requires additional time to review this complex issue. Counsel of record also has been heavily engaged with the press of other matters.<sup>1</sup> Accordingly, Mr. Reynoso respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari.

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<sup>1</sup> These include preparing for and presenting oral argument in *Chen v. D'Amico*, Case Nos. 20-35118, -35119, -35241 (9th Cir.) (argued August 30, 2022); preparing opening and responsive briefs for multiple dispositive motions and Daubert motions in *Global Tubing, LLC v. Tenaris Coiled Tubes, LLC*, Case No. 4:17-cv-03299 (S.D. Tex.); multiple depositions in *Deere & Co. v. Kinze Mfg., Inc.*, Case No. 4:20-cv-00389-RGE-SHL (S.D. Iowa); preparation for a jury trial in *In re Namenda Indirect Purchaser Antitrust Litig.*, Case No. 15-cv-06549-CM-RWL (S.D.N.Y.); and preparing a responsive appeal brief in *Tippins v. United States*, Case No. 22-1462 (Fed. Cir.) (due November 4, 2022).



Respectfully submitted,

/s/ Nathan S. Mammen

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