

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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ANTHONY FISHER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA

Respondent-Appellee.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES  
COURT OF APPEALS FOR THE 8<sup>TH</sup> CIRCUIT

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PETITION FOR *CERTIORARI*

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## QUESTION PRESENTED FOR REVIEW

1. Whether, in reviewing Mr. Fisher’s conviction for possession of ammunition as a convicted felon under 18 U.S.C. § 922 (g)(1) and 18 U.S.C. § 924 (a)(2), the Panel’s decision conflicted with *Rehaif v. United States*, *Rehaif v. United States*, 588 U.S. 225 (2019) since it affirmed without any evidence in the record to show that Mr. Fisher knew a deferred judgment qualified as a “conviction” for purposes of the federal firearms and ammunition restriction?

## **PARTIES**

Anthony Fisher is the Petitioner; he was the Defendant-Appellant below before the 8<sup>th</sup> Circuit. The United States of America is the respondent and was the Plaintiff-Appellee below.

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## **CITATIONS TO OFFICIAL AND UNOFFICIAL OPINIONS BELOW**

### **8th Circuit Court of Appeals - *United States v. Anthony Fisher*, 23-2738**

A– Order Denying *En Banc* Review (October 24, 2024)

B – Order Extending *En Banc* Deadline to October 2, 2024 (Sept. 19, 2024)

C – Judgment (Sept. 4, 2024)

D – Panel Opinion Affirming Conviction (Sept. 4, 2024)

E – Order Appointing Criminal Justice Act Counsel (July 28, 2023)

### **District Court in the Northern District of Iowa (Cedar Rapids) - *United States v. Anthony Fisher*, No. 1:22-CR-13-LTS-MAR**

F – Notice of Appeal (July 28, 2023)

G – Judgment (July 26, 2023)

## **JURISDICTION**

This is an appeal from a federal criminal judgment arising in the Northern District of Iowa. On July 26, 2023, Mr. Fisher received a 120 month sentence after a jury found him guilty of unlawful possession of ammunition as a convicted felon in violation of 18 U.S.C. §§ 922 (g) (1) and 18 U.S.C. 924 (a) (2). Judgment, pp. 1, 3; App. G. On July 28, 2023, Defendant filed a timely notice of appeal. Notice of Appeal, App. F. See Fed. R. App. Proc. 4 (b) (1) (A) (i) (appeals must be filed within 14 days of final judgment).

The District Court had jurisdiction pursuant to 18 U.S.C. § 3231.

The 8<sup>th</sup> Circuit had jurisdiction over all federal criminal judgments and sentences. See 28 U.S.C. § 1291.

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

### **TIMELINESS**

The 8<sup>th</sup> Circuit affirmed the conviction on September 4, 2024. Judgment and Panel Decision; Appx. C and D. Mr. Fisher filed a timely motion to extend the *en banc* deadline to October 2 and the Court granted the Motion to extend the *en banc* deadline to October 2, 2024. Appx. B. On October 24, 2024, this 8<sup>th</sup> Circuit denied *en banc* review and petition for rehearing. Order, Appx. A. The 90 day deadline expires on January 22, 2025. See US Supreme Court Rule 13 (3) (If a petition for rehearing is filed, the 90 day deadline “runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.”). The 90<sup>th</sup> day falls on January 22, 2025.

A document is considered timely filed if it were delivered on “if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing, or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.” Supreme Court Rule 29.2. This document was mailed via United States

Postal Service on January 8, 2025, and thus is timely filed.

## **STATUTORY PROVISIONS INVOLVED**

18 U.S.C. §§ 922 (g) (1) and 18 U.S.C. 924 (a) (2) – set forth verbatim in Appendix H.

## **STATEMENT OF THE CASE**

### **Relevant Procedural History before the District Court**

- **United States v. Anthony Fisher, No. 1:15-CR-31 (Original Criminal Proceedings Subject to Section 2255 Motion)**

On February 1, 2023, a Grand Jury Indicted Mr. Fisher for Possession of Ammunition as a Felon. Indictment, R. Doc. 2. On January 27, 2023, a jury convicted Mr. Fisher. Verdict, R. Doc. 80. On February 9, 2023, Mr. Fisher filed a Motion for Judgment of Acquittal, raising the same argument made herein. Motion, R. Doc. 84. On March 9, 2023, the District Court filed an order denying Motion for Judgment of Acquittal. Order, R. Doc. 93. On July 26, 2023, Mr. Fisher was sentenced to 120 months in prison. Minutes, Roc. 109. Final judgment entered on July 26, 2023. Judgment, R. Doc. 110. On July 28, 2023, Mr. Fisher filed a notice of appeal. Notice, R. Doc. 112.

### **Appeal Proceedings before 8<sup>th</sup> Circuit of Appeals**

On September 4, 2024, a three judge panel reached the merits and rejected Mr. Fisher's sufficiency argument relating to his knowledge that a deferred



judgment counted as a conviction. Appx. D. On October 24, 2024, the 8<sup>th</sup> Circuit denied rehearing and rehearing *en banc*. Appx. A.

### **Facts Relevant to Petition**

Mr. Fisher was charged and convicted of possession of ammunition while knowing he had been “convicted” of a felony. The “conviction” rested on a state felony deferred judgment, a form of relief in which a defendant is placed on probation and the conviction is dismissed upon successful completion of probation. If the Defendant fails probation, probation is revoked, and the conviction becomes final. Mr. Fisher possessed the ammunition while on probation for a deferred judgment. It had not yet been revoked or dismissed. It remained “deferred.”

During trial, 99% of the Government’s case consisted of Mr. Fisher’s possession while very little focused on knowing that deferred judgment counted as a conviction.

The Government presented testimony from 16 witnesses and entered 55 exhibits into evidence. See Doc. 77-1. The defense entered two exhibits into evidence. *Id.* At trial, the evidence established that on the evening of February 16, 2021, Phoenix Sims-McGlothlin and De’andrew Berry picked up Fisher and Elisha Brooks in Sims-McGlothlin’s vehicle. R. Doc. 91, p. 1. They drove to S.M.’s residence on Keyes Court in Marion, Iowa. *Id.* At some point, Berry, Brooks and Fisher entered S.M.’s residence without authority or invitation. Almost

immediately after Fisher entered the residence, he shot S.M. several times using a 9 mm firearm. R. Doc. 93, p. 1. Berry, Brooks and Fisher then ran back to Sims-McGlothlin's vehicle and drove away. S.M. called 911 and received emergency services. S.M. survived but sustained significant injuries. R. Doc. 93, p. 1.

Law enforcement recovered eight rounds of Blazer 9 mm Luger ammunition at the scene. R. Doc. 93, p 2. An expert with the Bureau of Alcohol, Tobacco, Firearms and Explosives examined the shell casings and determined they had been transported across a state line prior to Fisher's possession of them. R. Doc. 93, p.

At the time Fisher possessed the ammunition at issue, he had previously received a deferred judgment on a felony, specifically Interference with Official Acts – Dangerous Weapon in violation of Iowa Code §§ 719.1(1)(a), and 719.1(1)(f). He was advised that this offense was punishable by “0 days – 5 years prison.” Doc. 77-39 at 1. R. Doc. 93, p. 2. As part of his plea of guilty to that offense, Fisher admitted: “On or about February 14, 2020, in Linn County Iowa I did unlawfully and willfully knowingly resist or obstruct peace officers, in the performance of their lawful duty, while armed with a firearm, at 1500-1st Avenue SE, Cedar Rapids, Linn County, Iowa.” R. Doc. 92, p. 2. Fisher received a deferred judgment and was placed on supervised probation for three years. Doc. 77-40.

On July 31, 2020, Fisher signed a probation agreement stating he had been placed on probation for the offense of “Interference w/ Official Acts – Dangerous

Weapon,” a class “D Felony.” Doc. 77-41 at 1. In paragraph 13 of the agreement, Fisher agreed that “If I am on probation for a felony . . . I will not own, possess, use or transport a firearm or other dangerous weapon until that right is restored to me.” *Id.* at 2. By signing the agreement, Fisher certified that he had read it, understood it and agreed that it was “in full force and effect” until he “received [his] final discharge from probation.” *Id.* at 3. Fisher’s probation officer, Rashar Morgan, testified at trial that he had multiple conversations with Fisher about his inability to secure a job because of his criminal history. Doc. 91 at 7-8.

## **REASONS FOR GRANTING THE WRIT**

**I. THIS COURT SHOULD GRANT THE WRIT TO ENSURE UNIFORMITY OF THIS COURT’S PRECEDENT BECAUSE, CONTRARY TO REHAIF V. UNITED STATES, 588 U.S. 225 (2019), THE PANEL UPHELD A POSSESSION OF AMMUNITION CONVICTION UNDER 922 (g) WITHOUT ANY EVIDENCE IN THE RECORD TO SHOW THAT MR. FISHER KNEW THAT A DEFERRED JUDGMENT COUNTED AS A CONVICTION.**

**A. Rule 10 (c)**

The Writ should be granted to uniform application of this Court’s precedents. See Supreme Court Rule 10 (c) (writ may be granted where the “United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or **has decided an important federal question in a way that conflicts with relevant decisions of this Court.**”) (emphasis added). The Panel decision conflicts with *Rehaif v.*

*United States*, and as a result, this Court should grant, vacate, and remand for further consideration under *Rehaif*.

**B. The Panel’s legal analysis of Rehaif shows the need to grant, vacate and remand for further consideration of under Rehaif v. United States.**

The Panel’s analysis here cannot be reconciled with this Court’s scienter analysis from *Rehaif v. United States*, 588 U.S. 225, 237, 139 S. Ct. 2191, 2200, 204 L. Ed. 2d 594 (2019). In *Rehaif*, this Court addressed the intent requirement under 18 U.S.C. § 922(g) and § 924(a)(2), a criminal statute restricting access to firearms and ammunition based upon certain restricted statuses. Mr. Rehaif was an international student in the United States pursuant a nonimmigrant student visa to attend university. *Rehaif*, 588 U.S. at 237. After he received poor grades, the university dismissed him and told him that his “immigration status” would terminate unless he transferred to a different university or left the country, and *Rehaif* did neither. *Id.* at p. 238. After that dismissal, he went to a firearms range and possessed firearms. He was charged with the same charge as Mr. Fisher, albeit a different unlawful status, being in the country unlawfully.

In that case, it was clear that Mr. Rehaif knew the underlying facts triggering the unlawful status, i.e. that he would be expelled and that unless he transferred to another university or left that country, his “immigration status” would be terminated. On those facts, the Court reversed for further proceedings based upon

its express finding that the “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Id.* Fairly read, it is not enough that the Defendant knows the facts triggering the unlawful status, the expiration of his visa, *Rehaif* required that he *knew* that the expiration of that visa meant he was in the country illegally. To have the requisite mental intent, this Court required some underlying knowledge of the status and not just the underlying knowledge of the facts triggering that unlawful status. *Rehaif v. United States*, 588 U.S. 225, 235, 139 S. Ct. 2191, 2198, 204 L. Ed. 2d 594 (2019) (“A defendant who does not know that he is an alien ‘illegally or unlawfully in the United States’ does not have the guilty state of mind that the statute’s language and purposes require.”). Similarly, to be guilty here, the Government needed to show more than Mr. Fisher’s knowledge of the deferred judgment, it had to show that he *knew* a deferred judgment counted as a felony “conviction.”

In Mr. Fisher’s case, contrary to *Rehaif*, the Panel focused solely on the facts triggering the unlawful status, i.e. that he had pleaded guilty to a felony and that he received a deferred judgment on that felony. Mr. Fisher agrees those facts are sufficient to trigger the felon status to bar firearm and ammunition possession.

*United States v. Davies*<sup>1</sup>, 942 F.3d 871, 873 (8th Cir. 2019) (finding that Iowa’s

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<sup>1</sup> See Panel Decision at p. 3, n. 4 (citing 18 U.S.C. § 921(a)(20) (“What constitutes a conviction of [a felony] shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.”); *State v. Tong*, 805 N.W.2d 599, 603 (Iowa 2011) (“[A] deferred judgment constitutes a [felony] conviction . . . where the

deferred judgment statute qualifies as a “conviction” for purposes of federal firearm and ammunition restriction).

But, under *Rehaif*, it is not enough to show that the Defendant knew of the facts triggering the unlawful status. The Government must show that the Defendant knew he had received a deferred judgment to a felony **and** that he knew that a deferred judgment counted as a “conviction” for purposes of the federal firearm and ammunition, i.e. that Defendant knew he was a ***convicted*** felon. The Panel framed the issue as whether “he did not know that he was a felon.” It then, contrary to *Rehaif*, focuses its analysis entirely on those facts triggering the unlawful status:

1. when Fisher pleaded guilty to an Iowa felony in 2020, he signed a plea document that identified his crime as a felony;
2. Fisher made a remote appearance in an Iowa state court. The court accepted Fisher’s guilty plea, granted him a deferred judgment, and imposed a three-year term of probation;
3. Fisher signed an Iowa probation agreement, informing him that his crime was a felony. The agreement informed him that “If I am on probation for a felony, . . . I will not own, possess, use or transport a firearm or other dangerous

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defendant (as here) has not completed his term of probation.”)). Appx. D-3

weapon until that right is restored to me.” R. Doc. 77-41, at 2; and

4. Fisher’s Iowa probation officer appeared as a witness at trial and testified that Fisher’s 2020 Iowa deferred judgment hindered Fisher’s efforts to obtain and maintain employment.

Panel Decision at p. 4, Appx. D.

None of those facts addressed the central issue, that Mr. Fisher knew the deferred judgment qualified him as a **“convicted”** felon.

The Panel’s opinion cannot be reconciled with *Rehaif*. *Rehaif* offered two examples that it did not believe Congress intended to cover when it approved § 922(g) and § 924(a)(2).

**[EXAMPLE 1 FROM REHAIF]**

“If the provisions before us were construed to require no knowledge of status, they might well apply to an alien who was brought into the United States unlawfully as a small child and was therefore unaware of his unlawful status.”

**[EXAMPLE 2 FROM REHAIF]**

“Or these provisions might apply to 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.” § 922(g)(1) (emphasis added); see also *Games-Perez*, 667 F.3d at 1138 (defendant held strictly liable regarding his status as a felon even though the trial judge had told him repeatedly—but incorrectly—that he would “leave this courtroom not convicted of a felony”).”

Example 2 is particularly relevant to Mr. Fisher’s case. This Court provided a

specific illustration as to the type of case that Congress **did not** intend to cover when it passed these federal statutes. It cited *Gamez-Perez* as the type of case that Congress did not intend to cover when it passed this statute. His sentencing judge expressly informed Mr. Gamez-Perez that he was not a convicted felon. *United States v. Gamez-Perez*, 667 F.3d 1136 (10<sup>th</sup> Circ. 2012) (abrogated by *Rehaif dicta*).

Mr. Gamez-Perez' case is nearly identical to Mr. Fisher's case. Like Mr. Fisher, he received a deferred judgment, meaning he did not have a conviction under Colorado law if he successfully completed probation. Like Mr. Fisher, he possessed while still on probation pursuant to the deferred judgment. It qualified as a federal conviction for purposes of the federal firearm and ammunition statute. That Court placed significant weight on Mr. Gamez-Perez' plea colloquy and that, as part his probation agreement, he acknowledged that he could not possess firearms. *United States v. Gamez-Perez*, 667 F.3d 1136, 1137 (10th Cir. 2012) (noting that as part of probation agreement, Defendant signed probation agreement that "the Defendant shall not possess any firearms, destructive or dangerous devices or weapons.")). The *dicta* in *Rehaif* strongly suggested that it would have decided Gamez-Perez differently.

**C. The outcome of Mr. Fisher's case cannot be reconciled with Rehaif and its Example 2 (Gamez-Perez) that Rehaif expressly cited as a result that Congress did not intend in passing 922 (g) and § 924 (a)(2).**



This is not a case in which the law needs to be clarified or resolved by reference to a circuit split. Instead, it needs to grant the Writ and remand for further consideration under *Rehaif*. Mr. Fisher's case is nearly identical to *Gamez-Perez*, which the *Rehaif* majority specifically cited as beyond the scope of the type of conduct that Congress sought to prohibit when it enacted these statutes.

The Panel's error here is that it cited all the facts showing that Mr. Fisher possessed knowledge that he had received a deferred judgment, but zero facts, either direct or circumstantial, that Mr. Fisher had knowledge that a deferred judgment meant that he had a felony conviction. That is exactly what *Rehaif* case was about: actual knowledge of unlawful status, which in this case is a felony conviction.

### **CONCLUSION AND REQUESTED RELIEF**

The Court should grant the Writ, vacate the Panel judgment and remand for further consideration under *Rehaif*.

RESPECTFULLY SUBMITTED,



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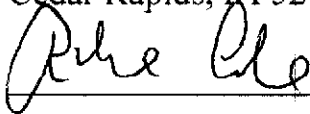
**CERTIFICATE OF SERVICE**

I, Rockne Cole, counsel for Petitioner, hereby certify that, on January 8, 2025, I mailed an original and 10 copies to the Supreme Court via United States Postal Service Express Mail to:

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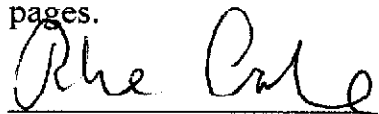
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**CERTIFICATE OF WORD COUNT**

I, Rockne Cole, certify that the above Petition includes 2895 words and was prepared in 14 Point New Times Roman and therefore, complies with US Supreme Court Rule 33.1, and it also complies with Rule 33.2 as it contains less than 40 pages.



Rockne Cole