No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JESUS EDER MORENO ORNELAS, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, through counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis. Counsel was appointed in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b). This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

December 29, 2020

s/ Carlton F. Gunn
CARLTON F. GUNN
Attorney at Law

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JESUS EDER MORENO ORNELAS, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Attorney for the Petitioner

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QUESTIONS PRESENTED

A. The government failed to overcome the presumption of innocence when the jury could not reach a verdict on an attempted murder count. Did it violate the Due Process Clause and the Sixth Amendment right to trial by jury for the district court to, despite the government's failure to overcome the presumption of innocence at trial, apply the attempted murder sentencing guideline through a cross reference from the guideline for convictions on two firearms counts?

B. Petitioner was convicted of being a felon in possession of a firearm and being an illegal alien in possession of a firearm in violation of 18 U.S.C. § 922(g), but the indictment did not allege, the jury instructions did not require a finding of, and the government did not attempt to prove the knowledge of status required by *Rehaif v. United States*, 139 S. Ct. 2191 (2019).

1. Does failure to make a specific *Rehaif* argument in a general motion for judgment of acquittal limit review of a sufficiency of evidence claim to review for plain error?

2. To the extent plain error review does apply, is a reviewing court permitted to look to evidence outside the trial record in determining whether there was an effect on substantial rights and/or an effect on the fairness, integrity or public reputation of judicial proceedings?

3. Is a stipulation to the fact of status, as there was in the present case and there is in most 18 U.S.C. § 922(g) cases, sufficient evidence to establish the knowledge of status that *Rehaif* requires?

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