No. 19-6722

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IN THE SUPREME COURT OF THE UNITED STATES

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ROBIN LEACH, JR., 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 FOURTH CIRCUIT

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# MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 11-12)[1] that his conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because at the time he pleaded guilty he did not understand that knowledge of status is an element of that offense. Petitioner asks that this Court grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand for further proceedings (GVR) in light of this Court's decision in Rehaif v. United States, 139 S. Ct. 2191

[1] Neither the petition for a writ of certiorari nor the appendix thereto is paginated. The government refers to the pages in each document as if they were consecutively paginated.

(2019), which held that the mens rea of knowledge under Section 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." Id. at 2194.

That course is not warranted in this case. This Court's "traditional rule * * * precludes a grant of certiorari * * * when 'the question presented was not pressed or passed upon below.'" United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted); see, e.g., Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 8 (1993); Adickes v. S. H. Kress & Co., 398 U.S. 144, 147 n.2 (1970). Applying that rule here would preclude a grant of certiorari because petitioner did not challenge his conviction below on the ground that he lacked knowledge regarding his status as a felon.

This Court has sometimes entered a GVR order to allow a lower court to consider a previously unraised claim that acquired new vitality as a result of an "intervening" event. See Lawrence v. Chater, 516 U.S. 163, 167-168 (1996) (per curiam) (describing this Court's "intervening development" GVR practice); see also id. at 180-181 (Scalia, J., dissenting) (explaining that the Court's "intervening event" GVR practice involves "a postjudgment decision of this Court" or, occasionally, a decision of this Court that "preceded the judgment in question, but by so little time that the lower court might have been unaware of it") (emphasis omitted). Here, however, this Court decided Rehaif on June 21, 2019, while

petitioner's direct appeal was pending, and petitioner thus had nearly four weeks to raise any Rehaif-based contentions before the court of appeals rendered its decision on July 18, 2019. See Pet. App. 1-2. He failed to do so, and he then failed to seek panel rehearing or rehearing en banc in order to raise a belated Rehaif-based claim before the mandate issued on August 9, 2019 -- seven weeks after Rehaif was decided. In these circumstances, nothing warrants a departure from this Court's ordinary practice of granting certiorari with regard only to claims that were pressed or passed upon below. Cf. Leon v. United States, 139 S. Ct. 56 (2018) (No. 17-8008) (denying petition for writ of certiorari invoking, inter alia, a recently decided Supreme Court case that was available but not brought to the attention of the court of appeals while petitioner's direct appeal remained pending).

The petition for a writ of certiorari should be denied.[2]

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

DECEMBER 2019

[2] The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.