

No. 19-6757

IN THE SUPREME COURT OF THE UNITED STATES

JAMAL BOWENS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 9-20) that his conviction for possession of a firearm as an unlawful user of a controlled substance, in violation of 18 U.S.C. 922(g)(3) and 924(a)(2), is infirm in light of Rehaif v. United States, 139 S. Ct. 2191 (2019), which held that the mens rea of knowledge for a violation of Sections 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." Id. at 2194. Specifically, petitioner argues (Pet. 16) that, under Rehaif, conviction for that offense requires proof that the defendant "kn[e]w that his status as an unlawful user prevent[ed] him from

possessing a firearm while he [wa]s in possession." Alternatively, petitioner requests (Pet. 20) 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) so that the court below may once again consider Rehaif's application to his case. Neither course is warranted here.

1. The court of appeals correctly rejected petitioner's argument that Rehaif requires the government to prove not only a defendant's knowledge of his own status but also his knowledge of the statutory firearms prohibition contained in Section 922(g). See Pet. App. A11-A12 ("Rehaif did not graft onto § 922(g) an ignorance-of-the-law defense by which every defendant could escape conviction if he was unaware of this provision of the United States Code. * * * That is, in a prosecution under § 922(g)(3), the Government arguably must prove that defendants knew they were unlawful users of a controlled substance, but not, as defendants appear to argue, that they knew unlawful users of controlled substances were prohibited from possessing firearms under federal law."). That determination does not conflict with any decision of this Court or of any other court of appeals and does not warrant certiorari.

In Rehaif, this Court held that, "in a prosecution under 18 U.S.C. § 922(g) and § 924(a)(2), 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." 139 S. Ct. at 2200. In so holding, the Court noted that it was not disturbing "the well-known maxim that 'ignorance of the law' (or a 'mistake of law') is no excuse," which "normally applies where a defendant has the requisite mental state in respect to the elements of the crime but claims to be 'unaware of the existence of a statute proscribing his conduct.'" Id. at 2198 (citations omitted). The Court instead emphasized that the maxim did not relieve the government of its burden to prove that the defendant in Rehaif was aware that he was "illegally or unlawfully in the United States," 18 U.S.C. 922(g)(5), simply because such proof involved a "'collateral' question of law." Rehaif, 139 S. Ct. at 2189. Contrary to petitioner's contention (Pet. 16), the Court in Rehaif did not suggest that the government must prove that the defendant had the additional knowledge "that his status * * * prevents him from possessing a firearm" -- the type of "[awareness] of the existence of a statute proscribing his conduct," 139 S. Ct. at 2198 (citation omitted), that would convert Section 924(a)(2)'s "knowingly" mens rea into a willfulness requirement. Cf. id. at 2204-2205 (Alito, J., dissenting) (noting that neither party advocated such an interpretation and that "the pointed use of the term 'knowingly,' as opposed to 'willfully,' in § 922(g), provides a ground to infer that Congress did not mean to require knowledge of illegality").

In any event, even if petitioner had raised a colorable argument in support of his interpretation of Rehaif, he could not establish that relief is appropriate under Federal Rule of Criminal Procedure 52(b). As he acknowledged below (see C.A. Doc. 43, at 2 (June 26, 2019)), because he did not argue in the district court that knowledge of the statutory firearms prohibition is an element of an offense under 18 U.S.C. 922(g)(3) and 924(a)(2), his Rehaif claim was reviewable only for plain error. See Fed. R. Crim. P. 52(b); see also United States v. Cotton, 535 U.S. 625, 631 (2002) (applying plain-error review to forfeited claim of omission from indictment). To establish reversible plain error, petitioner must demonstrate that (1) the district court committed an “error” and that the error (2) was “plain,” meaning “clear” or “obvious”; (3) “affect[ed] [his] substantial rights,” which is to say that it “must have affected the outcome of the district court proceedings”; and (4) “seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.” United States v. Olano, 507 U.S. 725, 732-736 (1993) (citations omitted). Here, petitioner’s Rehaif claim would, at a minimum, fail to satisfy the second requirement, as he himself disclaims any argument that his reading of Rehaif is clear on the face of the Court’s decision (see Pet. 15) and he identifies no authority supporting his interpretation.

2. To the extent that petitioner raises any additional factbound arguments challenging the decision below, they do not

warrant this Court's review. See Sup. Ct. R. 10. Petitioner's suggestion (Pet. 20) that this Court enter a GVR order so that he can relitigate his rejected Rehaif claim in the court of appeals is likewise without merit.

As petitioner acknowledges (Pet. 6), he raised his Rehaif claim in the court of appeals, arguing that his conviction should be set aside because the government did not prove "that [petitioner] knew [he] was prohibited from possession because he was an unlawful user of a controlled substance." See C.A. Doc. 43, at 1. The court squarely considered his claim and denied relief. See Pet. App. A10-A12.

No sound basis exists for this Court to remand for further consideration of that claim. This Court has stated that "a GVR order" is "potentially appropriate" where "intervening developments, or recent developments that [this Court] ha[s] reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation." Lords Landing Vill. Condo. Council of Unit Owners v. Continental Ins. Co., 520 U.S. 893, 896 (1997) (per curiam) (citation omitted). Because the decision below makes clear that the court of appeals did consider (and correctly reject) his Rehaif

claim, petitioner cannot satisfy that standard. The petition for a writ of certiorari should accordingly be denied.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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