

IN THE
Supreme Court of the United States

DAN REED,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

SUPPLEMENTAL BRIEF OF PETITIONER

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SUPPLEMENTAL BRIEF OF PETITONER

Petitioner Dan Reed respectfully requests that this Court grant his petition, vacate the Eleventh Circuit's judgment, and remand his case for further consideration in light of this Court's decision in *Greer v. United States*, No. 19-8709, slip op. (June 14, 2021). *See* Supreme Court Rule 15.8.

Before the Eleventh Circuit and this Court (Pet. 7, 14-16), Mr. Reed argued that he "would have presented evidence at trial that he did not in fact know he was a felon." *Greer*, slip op. 10. Indeed, as Mr. Reed contended, he is not the typical 18 U.S.C. § 922(g)(1) defendant. Pet. 7. He has a full-scale IQ of 61, a score lower than 99.5% of the population, and suffers from significant mental health conditions. *Id.* at 7, 14-16. Mr. Reed sought to introduce this evidence at his trial, held before the Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (2019), but it was excluded on the then-ground that his subjective beliefs were irrelevant to the offense. Pet. 15-16. This information as to Mr. Reed's intellectual disability and mental health conditions was included on the district court record through the proffer of his expert at trial and in his PSR. *See id.*

Mr. Reed argued below that this information established a reasonable probability the jury could find that he did not have the requisite knowledge of his status at the time of the offense. The Eleventh Circuit, however, did not address this contention. *See id.* at 3-5, 7, 14-16; Pet. App. 1a-4a.

In his petition for a writ of certiorari, Mr. Reed's second question presented thus asked "[w]hether, even if the courts of appeals may consider the entire record," including the PSR, "a court of appeals errs by considering only certain non-trial evidence, and not considering evidence on the record tending to show that the defendant lacks the requisite knowledge of his status." Pet. i. Mr. Reed argued that the Eleventh Circuit erred by not considering the record evidence concerning his intellectual disability and mental health conditions to which he had pointed. Pet.

14-16. Notably, the government opposed review of this question as “factbound” and “case-specific,” but the government agreed that the Eleventh Circuit “did not expressly discuss the evidence on which petitioner now focuses.” Br. Opp. 9-10.

In *Greer*, this Court held that, “In felon-in-possession cases, a *Rehaif* error is not a basis for plain-error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon.” Slip. op. 10. Here, the parties have agreed that the Eleventh Circuit did not address the information on the record to which Mr. Reed pointed. Mr. Reed accordingly asks this Court to grant his petition, vacate the Eleventh Circuit’s judgment, and remand this case for further consideration in light of *Greer*.

Respectfully submitted,

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