

No. 20-1167

In the Supreme Court of the United States

JOSE SUSUMO AZANO MATSURA, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 26-29) that the court of appeals erred in rejecting his claim that *Rehaif v. United States*, 139 S. Ct. 2191 (2019), entitled him to vacatur of his conviction under 18 U.S.C. 922(g)(5)(B) on plain-error review following trial and sentencing. Review of the decision below is unwarranted because the decision is interlocutory. See, *e.g.*, *American Constr. Co. v. Jacksonville, Tampa & Key W. Ry. Co.*, 148 U.S. 372, 384 (1893). Although the court of appeals denied petitioner’s request for plain-error relief based on *Rehaif*, it separately vacated petitioner’s conviction on a count charging falsification of campaign records, in violation of 18 U.S.C. 1519, and remanded the case for resentencing. See Pet. App. 29, 58.

The decision’s interlocutory posture “alone furnishe[s] sufficient ground for the denial of” the petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S.

(1)

251, 258 (1916); see *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam); *Virginia Mil. Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari); see also Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18 & n.72, at 282-283 (10th ed. 2013) (noting that the Court routinely denies interlocutory petitions in criminal cases). If petitioner ultimately is dissatisfied with the district court’s disposition on remand, and if that disposition is upheld in any subsequent appeal, petitioner will be able to raise his current claim, together with any other claims that may arise with respect to his proceeding, in a single petition for a writ of certiorari. See *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating that this Court “ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent” judgment). This case presents no occasion for this Court to depart from its usual practice of awaiting final judgment before determining whether to review a challenge to a criminal conviction.

In the alternative, the Court may wish to hold the petition for a writ of certiorari pending its decision in *Greer v. United States*, No. 19-8709 (argued Apr. 20, 2021), and then dispose of it as appropriate in light of that decision. In *Greer*, the Court will consider a potentially analogous *Rehaif* challenge to a defendant’s conviction under 18 U.S.C. 922(g)(1) and 924(a)(2) on plain-

error review following trial and sentencing. Accordingly, the Court’s decision in *Greer* may conceivably affect the proper disposition of this petition.*

Respectfully submitted.

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