

NO: 20-6486

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

RAKEEM DAVIS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

---

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

---

REPLY MEMORANDUM FOR PETITIONER

---

Jacqueline E. Shapiro  
40 N.W. 3rd Street, PH 1  
Miami, Florida 33128  
Tel. 305-403-8207  
shapiro.miamilaw@gmail.com  
Counsel for Petitioner

---

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 20-6486

---

RAKEEM DAVIS

v.

UNITED STATES OF AMERICA

---

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

---

REPLY MEMORANDUM FOR PETITIONER

---

In his petition for writ of certiorari, Petitioner presents a single question regarding the application of *Rehaif v. United States*, 139 S.Ct. 2191 (2019): When determining whether a defendant's substantial rights were affected by an indictment and jury instructions that omitted an essential element of a 18 U.S.C. § 922(g)(1) offense, *i.e.*, that the defendant knew he previously had been convicted of a crime punishable by imprisonment for a term exceeding one year, may a reviewing court consider facts about a defendant's criminal history that were not admitted at trial, including facts culled from a presentence report?

Respondent has filed a memorandum in which it asks the Court to hold the petition in this case pending a decision in *Greer v. United States*, No. 19-8709. The Court granted a petition for writ of certiorari in *Greer* on January 8, 2021.

Petitioner urges the Court to grant review in this case and to consolidate this case with *Greer* for consideration of the merits. In any event, Petitioner agrees that review should not be denied in this case before a decision is reached in *Greer*.

Finally, Petitioner brings to the Court's attention a recent decision that supports the position taken in his petition for writ of certiorari: *United States v. Nasir*, 982 F.3d 144, 160–76 (3d Cir. 2020) (en banc). In *Nasir*, the en banc Third Circuit Court of Appeals held that when considering an unpreserved claim that *Rehaif* error occurred at trial, an appellate court's plain error analysis must be "confined to the trial record and the evidence the government actually presented to the jury." *Id.* at 170.

Respectfully submitted,

JACQUELINE E. SHAPIRO, ESQ.  
Counsel for Petitioner

Miami, Florida  
February 2021