

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

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