No. 20-6492

IN THE SUPREME COURT OF THE UNITED STATES

CALVIN JAMES, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner appears to contend (Pet. 5-7) that his conviction for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because the government at trial failed to prove his knowledge of his status as a felon at the time of the possession. See Rehaif v. United States, 139 S. Ct. 2191, 2194 (2019) (holding that the mens rea of knowledge under Section 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status").

This Court's "traditional rule * * * precludes a grant of certiorari * * * when 'the question presented was not pressed or

passed upon below.'" United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted); see, e.g., Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 8 (1993); Adickes v. S. H. Kress & Co., 398 U.S. 144, 147 n.2 (1970). Applying that rule here would preclude a grant of certiorari because petitioner did not challenge his conviction below on the ground that he lacked knowledge regarding his status as a felon. See Pet. C.A. Br. 4-7 (statement of issues). Indeed, in its brief to the court of appeals, the government observed that "[petitioner] did not raise a Rehaif claim on appeal." Gov't C.A. Br. 33 n.4. Petitioner did not dispute that point in his reply brief. See Pet. C.A. Reply Br. 3-12.

This Court has sometimes entered an order granting the petition for a writ of certiorari, vacating the decision of the court of appeals, and remanding for further proceedings (GVR) to allow a lower court to consider a previously unraised claim that acquired new vitality as a result of an "intervening" event. See Lawrence v. Chater, 516 U.S. 163, 167-168 (1996) (per curiam) (describing this Court's "intervening development" GVR practice); see also id. at 180-181 (Scalia, J., dissenting) (explaining that the Court's "intervening event" GVR practice involves "a postjudgment decision of this Court" or, occasionally, a decision of this Court that "preceded the judgment in question, but by so little time that the lower court might have been unaware of it") (emphasis omitted). Here, however, this Court decided Rehaif on June 21, 2019, while petitioner's direct appeal was pending, and

ten months before petitioner filed his opening brief on May 5, 2020. Petitioner accordingly had ample time to raise any Rehaif-based contentions to the court of appeals, but he failed to do so. In these circumstances, nothing warrants a departure from this Court's ordinary practice of granting certiorari with regard only to claims that were pressed or passed upon below. See, e.g., Mohr v. United States, 140 S. Ct. 961 (2020) (No. 19-6289) (denying petition for a writ of certiorari raising Rehaif claim in similar posture); Leach v. United States, 140 S. Ct. 964 (2020) (No. 19-6722) (same); Golden v. United States, 140 S. Ct. 2521 (No. 19-7011) (same).

The petition for a writ of certiorari should be denied.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting 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.