

No. 20-7038

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IN THE SUPREME COURT OF THE UNITED STATES

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DAVID PAUL MARTINEZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 7-38) 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 convictions under 18 U.S.C. 922(g)(9) and 924(a)(2) 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 and remanded the case for further consideration

of whether the search of petitioner's car was permissible under the Fourth Amendment, and went on to address his Rehaif claim only because it would "remain relevant if the district court again denies the motion to suppress evidence from the car." Pet. App. 3a; see id. at 2a-3a.

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. 251, 258 (1916); see Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967) (per curiam); Virginia Military 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, cert. granted, No. 19-8709 (Jan. 8, 2021), and then dispose of it as appropriate in light of that decision. In Greer, the Court will consider an 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. Petitioner acknowledges (Pet. 39-40) that the Court's decision in Greer may affect the proper disposition of his petition.\*

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.