

NO. 20-7038

IN THE SUPREME COURT OF THE UNITED STATES

DAVID PAUL MARTINEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

This Court should grant certiorari to resolve whether the court of appeals erred under 18 U.S.C. §§ 922(a)(33), 922(g)(9) and 924(a)(2), in affirming Mr. Martinez's convictions on plain error review after *Rehaif v. United States*, 139 S.Ct. 2191 (2019).

The government does not contest that the questions presented by Mr. Martinez satisfy the considerations governing review on certiorari pursuant to Supreme Court Rule 10. Instead, the government argues that this Court should defer resolving whether the court of appeals erred, because the court of appeals “separately vacated and remanded the case for further consideration” regarding the vehicle search. Opp. 1-2. At the same time, the government does not dispute that this Court has authority to grant certiorari now, and suggests in the alternative that the Court may wish to hold the petition pending its decision in *Greer v. United States*, No. 19-8709.

Either “before or after rendition of judgment,” this Court may grant certiorari to review a case in the court of appeals. 28 U.S.C. § 1254(1). This Court has granted certiorari to review interlocutory decisions in cases where, for example, the court of appeals resolved questions of law that are fundamental to the further conduct of a case, and that would otherwise qualify as a basis for certiorari. *See* Stephen M. Shapiro et al., Supreme Court Practice § 4.18, at 283 (10th ed. 2013) (hereinafter “Supreme Court Practice”) (“where . . . there is some important and clear-cut issue of law that is fundamental to the further conduct of the case and that

would otherwise qualify as a basis for certiorari, the case may be reviewed despite its interlocutory status”); *see also Gillespie v. United States Steel Corp.*, 379 U.S. 148, 153 (1964) (granting certiorari to review legal issue that was fundamental to further conduct of the case, and where “the eventual costs . . . will certainly be less if we now pass on the questions presented . . . rather than send the case back with those issues undecided”).

In addition, the Court has granted certiorari prior to final judgment where the court of appeals’ decision was clearly erroneous under this Court’s precedent. *Mazurek v. Armstrong*, 520 U.S. 968, 975 (1997) (per curiam) (granting certiorari prior to final judgment because “the Court of Appeals’ decision [was] clearly erroneous under [Supreme Court] precedents”).

The Court has also granted certiorari prior to final judgment “where there was a conflict on a question of law with another court of appeals . . . that would justify review of a final decree or judgment.” Supreme Court Practice, § 4.18, at 284 (citing, *inter alia*, *United States v. General Motors Corp.*, 323 U.S. 373, 374, 377 (1945)).

Thus, in both criminal and civil cases, this Court has frequently granted certiorari to review questions of law resolved by the court of appeals, where the court had reversed or remanded on other grounds. *See, e.g., Honeycutt v. United States*, 137 S.Ct. 1626, 1630 (2017) (rejecting court of appeals’ interpretation of federal forfeiture statute, 21 U.S.C. § 853, where court of appeals had affirmed convictions in part and remanded for resentencing in part); *United States v. Sun-*

Diamond Growers of California, 526 U.S. 398, 403, 414 (1999) (rejecting court of appeals' interpretation of illegal gratuity statute, 18 U.S.C. § 201(c)(1)(A), where court of appeals had reversed and remanded for new trial); *United States v. Robertson*, 514 U.S. 669, 670 (1995) (rejecting court of appeals' interpretation of 18 U.S.C. § 1962(a) where court of appeals had reversed some counts of conviction, affirmed other counts, and remanded for resentencing); *United States v. Padilla*, 508 U.S. 77, 82 (1993) (rejecting court of appeals' analysis of standing under Fourth Amendment, where court of appeals had affirmed in part, reversed in part, and remanded in part for further proceedings); *see also Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 224 & n.4 (2014) (rejecting court of appeals' interpretation of 29 U.S.C. § 203(o), where court of appeals had reversed in part and remanded for further proceedings).

Here as well, the questions of law presented by Mr. Martinez warrant this Court's exercise of certiorari jurisdiction under each of the criteria set forth above. First, the questions presented are fundamental to further conduct of the case: specifically, whether Mr. Martinez's convictions under 18 U.S.C. §§ 922(g)(9) and 924(a)(2) should be reversed on plain error review after *Rehaif*. Second, Mr. Martinez has argued that the court of appeals clearly erred under this Court's precedents. Third, the circuits have split with respect to each of the questions presented, and this Court has already granted certiorari to review two related questions.

Accordingly, for the reasons set forth in Mr. Martinez's petition for writ of certiorari, and as set forth herein, Mr. Martinez respectfully asks this Court to issue a writ of certiorari with respect to the court of appeals' application of *Rehaif* to 18 U.S.C. §§ 921(a)(33) and 922(g)(9), or to hold his petition until the Court resolves *United States v. Gary*, No. 20-444 and *Greer*, and then dispose of his petition in a manner consistent with *Gary* and *Greer*.

Respectfully submitted,

Dated: March 17, 2021

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