

No. 20-7083

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY BROWN, PETITIONER

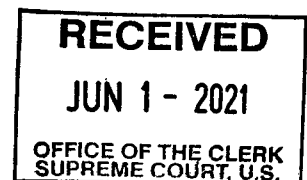
v.

UNITED STATES OF AMERICA

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

REPLY BRIEF

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Argument

In the United States brief in opposition to petitioner writ of certiorari, pet. 20-7083, the United States questioned whether, on collateral review, the court of appeals erred in denying petitioner a certificate of appealability on his unpreserved claim that his conviction and sentence for possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), should be vacated based on *Rehaif v. United States*, 139 S.Ct. 2191 (2019). Br. Opp. at (I).

In support of its question, the United States argued that because petitioner did not demonstrate cause and prejudice or actual innocence so as to overcome a procedural default in a collateral attack, the court of appeals did not err in denying a COA. *Id.* at pp. 7.

1. Section 2255 of Title 28, United States Code, provides:

A prisoner in custody under sentence of a

court establish by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set-aside or correct the sentence. 28 U.S.C. 2255(a).

In the case at issue, petitioner claimed, amongst other constitutional and trial errors, that his "Due Process Rights that's guaranteed to him under the Fifth Amendment has been infringed upon." 18-cv-02568. In support of that claim, petitioner argued and demonstrated cause and prejudice to overcome a procedural default, and that the due process clause

require the government to prove every element of the crime beyond a reasonable doubt relying on *In re Winship*, 397 U.S. 358, 364 (1970), and that his presumption of actual innocence has not been overcome, and that the new substantive rule announced in *Rehaif* applies retroactively to cases on collateral review. *Id.* at Memo. pp. 39-42.

2. The United States contended that petitioner has not demonstrated cause and prejudice to overcome a procedural default. Br. Opp. at pp. 7. However, the United States has waived this defense when it failed to preserve it at both the district court, 18-cv-02568, and court of appeals, 20-5090. This Court has repeatedly held that habeas corpus defenses are not jurisdictional and can be waived, either expressly or by neglect. See e.g. *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (Procedural default

defense is not jurisdictional)); *Trest v. Cain*, 522 U.S. 87, 88 (1997) (procedural default is normally a defense that the 'government' is obligated to raise and preserve if it is not to lose the right to assert the defense thereafter) (emphasis added); *Amadeo v. Zant*, 486 U.S. 214, 228 n.6 (1988) (same).

3. The United States contended that petitioner has not satisfied the COA requirements under 28 U.S.C. 2253(c)(2). Br. Opp. at pp. 7-9. Under 28 U.S.C. 2253(c)(2), a COA may issue only if the prisoner has made "a substantial showing of the denial of a constitutional right," 28 U.S.C. 2253(c)(2).

In the case at issue, petitioner demonstrated that his "substantial right to due process guaranteed under the Fifth Amendment of the U.S. Constitution has been denied, when the United States failed to prove

every element of the charged crime." 18-cv-02568 and 20-5090. Both the district court and court of appeal completely ignored petitioner claims and arguments. *Id.* at Decisions.

4. The United States joins the court of appeals in concluding that petitioner prior convictions, "which was not presented before the jury as required under the Sixth Amendment of the U.S. Constitution," is sufficient to sustain petitioner conviction. *Br. Opp.* at pp. 8-9.

However, this Court in *United States v. Haymond* stated that: those who wrote our Constitution considered the right to trial by jury "the heart and lungs, the mainspring and the center wheel" of our liberties, without which "the body must die; the watch must run down; the government must become arbitrary." letter from Clarendon to W. Pym (Jan. 27, 1766).

In 1 Papers of John Adams 169 (R. Taylor ed. 1977)... the right to a jury trial sought to preserve the people's authority over its judicial functions. J. Adams, Diary Entry (Feb. 12, 1771), in 2 Diary and Autobiography of John Adams 3 (L. Butterfield ed. 1961); SEE also 2 J. Story, Commentaries on the Constitution 1779, pp. 540-541 (4th ed. 1873).

Toward that end, the framers adopted the Sixth Amendment's promise that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury." In the Fifth Amendment, they added that no one may be deprived of liberty without "due process of law." Together, these pillars of the Bill of Rights ensure that the government must prove to a jury every criminal charge beyond a reasonable doubt, an ancient rule that has "extended

down centuries." Apprendi v. New Jersey, 530 U.S. 466, 477 (2000). See United States v. Haymond, 139 S.Ct. 2369, 2376 (2019).

Therefore, the United States along with every district court and court of appeals that's sustaining convictions using evidence that was not presented before the jury, is Unconstitutional and Invalid under the strictures of the Fifth and Sixth Amendments as shown above.

5. Interestingly, the United States failed to present law, facts, and evidence that oppose petitioner questions and arguments presented in petitioner writ of certiorari. Br. Opp. Essentially, petitioner writ of certiorari has not been contested.

b. Because *Rehain* is a statutory interpretation the "Stare Decisis" doctrine shall apply to all this Court precedents cited in petitioner writ of certiorari and reply brief. See *Gamble v. United States*, 139 S.Ct. 1960 (June 17, 2019) (stare decisis promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. Even in constitutional cases, a departure from precedent demands special justification. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). This means that something more than ambiguous historical evidence is required before the U.S. Supreme Court will flatly overrule a number of major decisions of the Supreme Court. *Welch v. Texas Dep't of Highways + Public Transp.*, 483 U.S. 468, 479 (1987). And the strength of the case for adhering to such

decisions grows in proportion to their "antiquity."
Montejo v. Louisiana, 556 U.S. 778, 792 (2009)).

Principles of stare decisis... demand respect for precedent whether judicial methods of interpretation change or stay the same. Were that not so, those principles would fail to achieve the legal stability that they seek and upon which the rule of law depends. CBOCS West, Inc. v. Humphries, 553 U.S. 442, 457 (2008). And "considerations of stare decisis have special force" over an issue of statutory interpretation, which is unlike constitutional interpretations owing to the capacity of Congress to alter any reading we adopt simply by amending the statute. Patterson v. McLean Credit Union, 491 U.S. 164, 172-173 (1989). Once we have construed a statute, stability is the rule, and "we will not depart from

it without some compelling justification." Hilton v. South Carolina Public Railways Comm'n, 502 U.S. 197, 202 (1991).

In light of the law, facts, and evidence shown above, this Court shall grant petitioner a writ of certiorari.

lyB

5-20-21