

No. 20-7355

IN THE SUPREME COURT OF THE UNITED STATES

CLEOPHUS REED, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner appears to contend (Pet. 2, 9) that his conviction for possessing firearms as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2), is infirm because the evidence adduced at his trial did not adequately establish his knowledge of his status as a felon.¹ The petition could further be understood to request (Pet. 2, 9) that this Court grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand

¹ The petition and petition appendix are not paginated. This brief refers to the pages of the petition in consecutive order as 1 through 11, and the pages of the petition appendix in consecutive order as 1a-58a.

for further proceedings (GVR) in light of this Court's decision in Rehaif v. United States, 139 S. Ct. 2191 (2019), which held that the mens rea of knowledge under Sections 922(g) and 924(a)(2) applies "both to the defendant's conduct and to the defendant's status." Id. at 2194.

That course is not warranted in this case. 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. App. 10a.

This Court has sometimes entered a GVR order 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, which was three weeks before petitioner filed his notice of appeal in the district court, and nearly four months before petitioner filed his opening brief in the court of appeals. But petitioner failed to raise any Rehaif-based contentions when challenging his conviction, and the court of appeals did not address any Rehaif issues. 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. The Court has accordingly denied petitions for writs of certiorari raising Rehaif claims in a similar posture. See, e.g., James v. United States, No. 20-6492 (Mar. 8, 2021); Golden v. United States, 140 S. Ct. 2521 (2020) (No. 19-7011); Mohr v. United States, 140 S. Ct. 961 (2020) (No. 19-6289); Leach v. United States, 140 S. Ct. 964 (2020) (No. 19-6722) (same). It should follow the same course here.²

Respectfully submitted.

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.