

IN THE  
Supreme Court of the United States

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LONNIE ALONZO HOWARD,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent,*

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

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REPLY BRIEF OF PETITIONER

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REPLY BRIEF

1. *Rehaif and Greer* issues.

The first of four issues raised by Petitioner in his Petition for a Writ of Certiorari involve this Court's rulings in *Rehaif and Greer*.

In *Rehaif*, this Court held that to convict a Defendant of felon in possession of a firearm, the United States must prove that the Defendant knew he belonged to the relevant category of persons barred from possessing a firearm.

*Greer* had not been decided at the time Petitioner filed his Petition for a Writ. Subsequently, this Court decided *Greer* and held that, when applying plain-error review based upon an intervening United States Supreme Court decision – being *Rehaif v. United States* – a circuit court of appeals may review matters outside the trial record to determine whether the error affected a defendant's substantial rights or impacted the fairness, integrity, or public reputation of the trial. *Greer* was necessitated by a split amongst the circuit courts of appeal on that issue.

Now that *Greer* has been decided, Petitioner requests this Court to proceed with a decision on that issue in this case. The United States, however, argues in its Memorandum that the *Rehaif* claim was not properly submitted below, and therefore this Court should deny Petitioner's Petition for a Writ.

Petitioner disagrees and requests this Court to grant relief to Petitioner pursuant to 28 U.S.C. § 2106, which states:

The Supreme Court or any other court of appellate jurisdiction may . . . vacate . . . any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances.

This procedure of granting certiorari, vacating the judgment below, and remanding the case (GVR) so that a lower court can consider a previously unraised claim that acquired new vitality as a result of an “intervening” event is the perfect solution in this case, at least with respect to this first issue. As noted in *Lawrence v. Chater*, 516 U.S. 163 (1996):

Where intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate. Whether a GVR order is ultimately appropriate depends further on the equities of the case.

*Chater* at 167-68.

Neither of the lower courts in this case addressed the *Rehaif* issue. Now that *Greer* has been decided, clarification has been made relative to the *Rehaif* issue, and either court below would now be in a position to determine the extent to which Petitioner’s *Rehaif* issue has any merits.

## 2. Other three issues.

The United States’ Memorandum addressed only Petitioner’s first issue and did not address Petitioner’s other three issues. Even if this Court rules against

Petitioner on the *Rehaif* issue, it continues to be Petitioner's position that this Court should grant certiorari with respect to the remaining three issues.

Respectfully submitted this 24th day of September, 2021.

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