

IN THE
Supreme Court of the United States

LONNIE ALONZO HOWARD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

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

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.

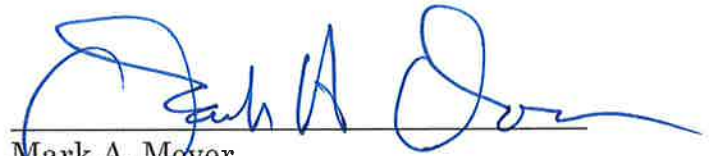
2. Other three issues.

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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