DOCKET NUMBER: _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL ANGELO WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether this honorable Court should grant *certiorari* to review whether Mr. Williams should have been permitted to withdraw his guilty plea, which request was filed less than three weeks after Mr. Williams received new counsel?

Whether this honorable Court should grant *certiorari* to review the Sixth Circuit's determination that harmless error subsumed Mr. Williams' arguments regarding his U.S.S.G. §2D1.1(b)(1) sentencing enhancement?

Whether this honorable Court should grant *certiorari* to review the substantive reasonableness of Mr. Williams' sentence?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings, both in the Federal District Court for the Eastern District of Kentucky, Northern Division, as well as in the United States Court of Appeals for the Sixth Circuit, included the United States of America, Respondent herein, and Michael Angelo Williams, the Petitioner herein. There are no parties to these present proceedings other than those named in the Petition.

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PETITION FOR A WRIT OF CERTIORARI

Mr. Michael Angelo Williams (hereinafter, Mr. Williams) hereby respectfully petitions for a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit issued April 23, 2021.

OPINIONS BELOW

The Decision of the Sixth Circuit in this matter was issued on April 23, 2021. It was not selected for full-text publication, and is reproduced at Petitioner's Appendix A.

The relevant District Court Judgment underlying Mr. Williams' conviction was not published, but, is reproduced at Petitioner's Appendix B.

STATEMENT OF JURISDICTION

Because the underlying cases involved a federal indictment against Mr. Williams for violations of federal law, the United States District Court for the Eastern District of Kentucky, Northern Division, had jurisdiction pursuant to 18 U.S.C. §3231. Because Petitioner Williams timely filed a notice of appeal from the final judgment of a United States District Court, the United States Court of Appeals for the Sixth Circuit had jurisdiction pursuant to 28 U.S.C. §1291. Because Petitioner Williams is timely filing this Petition for Writ of Certiorari within the time allowed by the Supreme Court Rules from the Sixth Circuit's Decision on April 23, 2021, this honorable Court has jurisdiction pursuant to 28 U.S.C. §1254. *See also*, Supreme Court Rule 13.1.

STATUTORY PROVISIONS AND RULES OF COURT INVOLVED

The relevant Rules and statutory provisions are Federal Rule of Criminal Procedure 11(d), U.S.S.G. § 2D1.1(b)(1), and 18 U.S.C. §3553(a), all of which are set forth, respectively, in the attached Petitioner's Appendix C, D, and E.

STATEMENT OF THE CASE

On August 8, 2019, Petitioner Williams was named as the sole Defendant in a five-count Indictment issued by a federal grand jury in the Eastern District of Kentucky. (Indictment) (RE: 3) (Page ID#3-7). Count One of that Indictment charged Mr. Williams with having conspired with others to distribute (and possess with intent to distribute) 50 grams or more of methamphetamine between January 1, 2019, and August 8, 2019, in violation of 21 U.S.C. §846 (Count 1). *Id.* The remaining four Courts charged Mr. Williams with having knowingly and intentionally distributed methamphetamine on March 11, 2019 (alleging 50 or more grams), March 26, 2019 (alleging 5 or more grams), April 17, 2019 (alleging 5 or more grams), and May 6, 2019 (alleging 5 or more grams), in violation of 21 U.S.C. §841.

Through his first appointed counsel, Mr. Williams requested to enter a guilty plea to the Indictment, and a hearing on that request was held on October 9, 2019. *See*, (Motion for Rearraignment); (RE: 15)(Page ID: 35); *see also*, Transcript of Rearraignment (hereinafter T.p. RAR) at 2; Page ID 323. After a colloquy, the District Court found that Mr. Williams was competent to enter an informed plea, that he was aware of the nature of the charges, and that his plea of guilty had been knowing and voluntary. *Id*. at 25-26; Page ID 346-347. The Court therefore accepted Mr. Williams' plea and found him guilty. *Id*. at 26; Page ID 347.

Prior to sentencing, Mr. Williams' original trial counsel moved to withdraw from representation, stating that "the attorney/client relationship has deteriorated, and Counsel cannot continue to represent Defendant effectively." Motion to

Withdraw; RE: 19; Page ID 43. At a hearing on that Motion, it became clear that not only was Mr. Williams' first counsel seeking to withdraw from representation, but Mr. Williams was also seeking to withdraw his guilty plea to Count 1 of his Indictment based on his assertion that he could not be charged and tried with conspiracy because he had no co-defendants. *See*, Transcript of Motion Hearing (hereinafter, T.p. MH); RE: 57; Page ID 248; 251-252. New counsel was appointed, and Mr. Williams was ordered to file, through counsel, a Motion to Withdraw his guilty plea to Count One, if ever, by February 18, 2020. *Id*. at 7, 13-14; Page ID: 254, 260-261.

New counsel for Mr. Williams filed that Motion less than three weeks later, on February 18, 2020. *See*, Motion to Withdraw Guilty Plea to Count I of the Indictment; RE: 22; Page ID: 48-49. In that Motion, Mr. Williams asserted that "there is no indicted co-defendant with whom the Defendant could have engaged in this conspiracy. The Defendant asserts the United States i[s] unable to prove the conspiracy as there is no other individual charged with engaging in the conspiracy with him." *Id*. Further, Mr. Williams stated that "this is a defense of which he was not aware until he engaged in independent research on his own" and that "[o]nce he discovered this potential defense, the Defendant informed his counsel immediately upon discovering this potential defense and requested that a Motion be filed requesting his plea to Count I be withdrawn." *Id*. Finally, Mr. Williams stated that he had "never been under indictment for a conspiracy charge and ha[d] no

understanding of the potential defenses available to him," and that he had "never been a defendant in a federal case." *Id*. at 2; Page ID: 49.

The United States filed its reply in opposition on March 3, 2020, and the District Court denied Mr. Williams' Motion on April 7, 2020. *See*, Objection to Motion to Withdraw Guilty Plea; RE: 24; Page ID: 52; *see also*, Memorandum Opinion and Order; RE: 30; Page ID 81-88. The District Court analyzed Mr. Williams' claims primarily under F.R.Crim.P. 11(d)(2)(B) and *United States v. Bashara*, 27 F.3d 1174 (6th Cir. 1994) to determine whether a fair and just reason existed for withdrawing the plea. *Id*. at 3-4; Page ID 83-84. However, the Court denied the Motion finding that it was untimely, that there was no basis for the delay, and that the potential defense could have been brought to the Court's attention earlier. *Id*. at 5; Page ID 85. The Court also found that there had been no claim of actual innocence, and that Mr. Williams' proposed defense was "not a defense at all." *Id*. at 5-6; Page ID 85-86. Further, the Court found that the circumstances surrounding the guilty plea, the background of Mr. Williams, along with Mr. Williams' prior history of criminal convictions (and thus his "familiarity with the court system and the process of entering guilty pleas") favored denial of the Motion. *Id*. at 6-7; Page ID 86-87. The Court also found that there may be slight prejudice to the government, favoring denial of the Motion, and, that Mr. Williams had not raised a valid legal defense to his charge. *Id*. at 7-8; Page ID 87-88. The Court therefore denied Mr. Williams' Motion. Order; RE: 33; Page ID: 124.

Prior to sentencing, Mr. Williams again moved the District Court to allow him to withdraw his guilty plea to Count 1 in the Indictment. *See*, Second Motion to Withdraw Guilty Plea to Count 1 of the Indictment; RE: 41; Page ID 154. In that Motion, Mr. Williams stated that he had begun to realize, in a meeting with his first attorney on January 13, 2020, that he had not seen or understood all of the discovery in his case, which led to an "irreconcilable breakdown in the attorney client relationship." *Id*. That Motion also noted Mr. Williams' educational difficulties. *Id.* Further, Mr. Williams' new counsel indicated that during the course of "several conversations with Mr. Williams" which had occurred "within the past few weeks," she had determined that Mr. Williams "had either not seen all of the discovery in his case, or did not understand the discovery." *Id*. at 2; Page ID: 155. As such, Mr. Williams' second appointed attorney had provided him "with printed copies of all documents tendered by the United States and ha[d] discussed [the] same with Mr. Williams." *Id*. Further, Mr. Williams stated that he "believes he did not knowingly and voluntarily enter his guilty plea to Count I of the Indictment," and that there were "discrepancies relative to Count I which should have been explored but were not," and that there were "issues regarding the facts which Mr. Williams did not understand until he recently reviewed complete discovery." *Id*. Finally, it was noted that these issues were not brought to Mr. Williams' new counsel upon her appointment, and that Mr. Williams had asserted that he "did not know there were issues with the discovery until he realized he had not seen or understood the full discovery." *Id*.

On May 13, 2020, the parties appeared before the District Court for sentencing and for consideration of Mr. Williams' most recent Motion to withdraw his plea. T.p. Sentencing; RE 58; Page ID 264. As to that Motion, Mr. Williams, through counsel, indicated that he believed there was only one cooperating source, whereas the United States had identified three. *Id*. at 6; Page ID 269. Counsel further indicated that this had not arisen until Mr. Williams and counsel had discussed their sentencing memorandum, and that between the first Motion and the scheduling of a sentencing hearing, Mr. Williams had been moved to a different location in the jail, where he "had been given access to books and reading materials and federal inmates." *Id*. at 7; Page ID: 270. Through these conversations, trial counsel indicated that she had discovered that Mr. Williams had not "seen or reviewed all of the discovery," although he had reviewed "the vast amount of the discovery and he watched the videos, listened to the audios of the transactions. . .". *Id*. Thus, while Mr. Williams acknowledged the late date of his Second Motion, it was "based on the premise that he felt like he was not fully informed when he entered the guilty plea." *Id*. at 7-8; Page ID: 270-271.

After argument, the Court below denied Mr. Williams' Second Motion to Withdraw the Plea. The Court found that the Defendant's answers (presumably at the plea hearing) had been and were truthful, and that there was not a legitimate basis under the *Bashara* factors which would allow for a withdrawal of a guilty plea at such a late date. *ID*. at 12; Page ID 275. The Court therefore proceeded to sentencing.

First, the Court considered whether an additional sale should be added as relevant conduct, and whether a gun enhancement should be applied. On these items, the District Court received testimony from an FBI Task Force Officer. After the conclusion of the testimony from the Officer, and after receiving the arguments of counsel, the District Court found that the two-level gun enhancement was appropriate. *Id*. at 35; Page ID 298.

The Court below ultimately sentenced Mr. Williams to 150 months in prison, along with GED, RDAP, and job skills/vocational programming and a 5-year period of supervised release with mandatory, additional, and special conditions. *Id*. at 48-49; Page ID 311-312. Fines and community restitution were waived, but a $100 special assessment on each count was ordered. *Id*. at 51; Page ID 314.

As to the sentence itself, the District Court offered the following explanatory statements:

> Now, I'm going to make a statement quickly because I think it's significant here. Whether or not the Court enhanced the two levels or not, if I had sustained your objection, the guideline range would be 120 to 150. I overruled it for the reasons previously stated so the guideline range now is 140 to 175. That advisory range is one of the factors, among these others, that I have to consider, and I have done so.
>
> Because of your individual circumstances with your background, despite all the problems that you've encountered, I am going to sentence within the overlapped range. And the reason I'm making a statement about it is even if the Court of Appeals, upon reviewing my determination here, were to find that -- you know what? -- we don't think collectively, as a three-judge panel, that there was enough for Judge Bunning to impose the two-level enhancement for the gun, and we think that the guidelines should have been 120 to 150, well, ultimately, the sentence I'm imposing is 150. It is the high end of that range. It is in the middle of the 140 to 175 range.

> So even if they were to reverse that enhancement and find that I made a legal error in doing that, the sentence I'm imposing would be in the range that would be the range without the enhancement.

Id. at 46-47; Page ID 309-310.

Further, the Court stated:

> I think a sentence at the high end of that range, in the middle of the actual range I'm using, is appropriate because of your history of using and possessing handguns, that you have a substantial recidivism behavior, a history of violating conditions of release, and the fact that you had that handgun at the time in your vehicle.
>
> All of those support a sentence toward the higher end of the 140 to 175. But because of your individual circumstances as described by your attorney, I'm choosing to sentence within the 140 to 175; actually, toward the bottom, if you want to do the math.

Id. at 47-48; Page ID: 310-311.

Mr. Williams timely appealed, asserting three arguments: (1) that the District Court had erred when it denied him leave to withdraw his plea; (2) that the District Court had erred in imposing the gun enhancement under U.S.S.G.§2D1.1(b)(1); and, (3) that the District Court's sentence was substantively unreasonably under 18 U.S.C. §3553(a). *See generally*, Appellant Brief filed October 28, 2020. The United States responded, arguing that the District Court had properly rejected Mr. Williams' attempts to withdraw his plea, that the 2D1.1 enhancement was properly applied and, in any event, would have amounted to nothing more than harmless error given the District Court's statements at sentencing, and that the sentence was substantively reasonable. *See*, Appellee Brief filed December 23, 2020.

The Sixth Circuit denied Mr. Williams' appeal on April 23, 2021. *See generally*, Opinion Below at Appx. A. First, the Court below found that District Court had

properly rejected Mr. Williams' attempts to withdraw his guilty plea. *Id*. at 4-8. Next, the Court rejected Mr. Williams' gun enhancement arguments, stating that "even if the district court did erroneously apply the dangerous-weapon enhancement, that error would have been harmless." *Id*. at 8. The Court below, therefore, did not analyze the substance of Mr. Williams' claims on this item, and instead based its decision on the District Court's statements at sentencing. *Id*. at 8-9. Finally, the Court rejected Williams' substantive reasonableness arguments, finding that he was arguing that the factors had been improperly balanced, and that the argument was therefore ""beyond the scope"" of the Court's review. *Id*. at 9-10.

The Court, therefore, affirmed the judgment of the District Court, and this Petition timely follows.

REASONS FOR GRANTING THE WRIT

I. *Certiorari* is requested to review whether Mr. Williams should have been permitted to withdraw his guilty plea, a request that was submitted less than three weeks after he was appointed new counsel in the District Court.

Federal Rule of Criminal Procedure 11(d) states that "a defendant may withdraw a plea of guilty or nolo contendere . . . after the court accepts the plea, but before it imposes sentence if. . . the defendant can show a fair and just reason for requesting the withdrawal." *Id*. The Sixth Circuit reviews a District Court's decision on a Motion to Withdraw a Guilty Plea for abuse of discretion. *See generally*, *United States v. Hockenberry*, 730 F.3d 645, 661-662 (6th Cir. 2013); *citing and quoting*, *United States v. Catchings*, 708 F.3d 710, 717 (6th Cir. 2013). Sixth Circuit precedent provides a non-exclusive list of factors for consideration when making a determination of whether a "fair and just reason" exists for withdrawing a plea, including:

> (1) the amount of time that elapsed between the plea and the motion to withdraw it; (2) the presence (or absence) of a valid reason for the failure to move for withdrawal earlier in the proceedings; (3) whether the defendant has asserted or maintained his innocence; (4) the circumstances underlying the entry of the guilty plea; (5) the defendant's nature and background; (6) the degree to which the defendant has had prior experience with the criminal justice system; and (7) potential prejudice to the government if the motion to withdraw is granted.

See, *Hockenberry* at 662; *citing Catchings*, at 717-718; *see also*, *United States v. Bashara*, 27 F.3d 1174, 1181 (6th Cir. 1994); *see also*, Memorandum Opinion and Order (denying Motion to Withdraw Plea); (RE: 30) (Page ID 84). Before the Sixth Circuit, Mr. Williams argued that these factors should have weighed in favor of

allowing him to withdraw his plea. *See*, Appellant Brief at 29–36; CM/ECF Pages 34–41.

Specifically, in his brief, Mr. Williams recognized that 132 days had passed between his guilty plea and the filing of his First Motion to Withdraw his plea, and that the Sixth Circuit (and others) had previously found far shorter delays to be problematic. *See*, App.Br. at 30; CM/ECF Page 35 (citing cases). However, Mr. Williams argued that his delay was mitigated by a number of facts, including (a) the timing of when Mr. Williams realized that he had not seen or understood all of the discovery in the case (which he calculated as 35 days prior to the filing of his motion); (b) the timing of his first attorney's request to withdraw from representation (which he calculated as 34 days prior to the filing of his Motion); and, (c) his first counsel's withdrawal and the appointment of new counsel, after which his Motion was filed only 20 days later. *Id*. at 30-31; CM/ECF pages 36-37. Mr. Williams also argued that his delay was further mitigated by the suggestions in the record that, even after the first Motion was filed, he still had not had full access to or understanding of the discovery in his case, that he had a limited educational background, and that he had recently been moved to a new location in his jail where he had access to different materials. *ID*. at 31-32; CM/ECF Pages 36-37. As such, and while acknowledging the significant, numerical length of the delay between plea and Motion, Mr. Williams argued that there were valid explanations for his delay, that his Motion had been filed by new counsel within three weeks of her appointment, and that this factor weighed in favor of granting leave to withdraw his plea.

The Sixth Circuit's decision did not address the full merits of these arguments. True, the Court did address the length of the delay, finding that this factor weighed in favor of the government. *See*, Opinion Below at Appx. A, page 5 (stating, "Our Court has denied motions to withdraw guilty pleas where less time has elapsed between the guilty plea and the motion to withdraw the plea."). And the Court addressed (and rejected) Mr. Williams' arguments regarding his meeting with his attorney and his discovery-related realizations on January 13, 2020 (and, presumably, the sub-issues raised therein). *Id*. at 5-6.

However, the Court below did not address the fact that Mr. Williams' new attorney had filed the Motion to Withdraw Mr. Williams' plea within three weeks of her appointment, a very brief period of time, and, indeed, a period which is less than the periods elapsed in the timeliness cases cited in the decision of the Court below. *Id.* at 5-6. As such, it is therefore respectfully submitted that a grant of *certiorari* and a remand to the Circuit Court would be appropriate in order to allow the Circuit Court to address this particular issue in the first instance.

Furthermore, Mr. Williams submits that the remaining factors actually weigh in his favor, and that the Sixth Circuit erred in holding otherwise. For instance, the Sixth Circuit rejected Mr. Williams' claims regarding his assertion of innocence. *See*, Opinion Below at 6. First, the Court found that Mr. Williams had admitted during his rearraignment hearing that he had "conspired with at least one other person to distribute and possess with intent to distribute at least 50 grams of methamphetamine" which the Court found "surely undermine[d] his innocence

claim." *Id*. Further, the Court below acknowledged Circuit precedent stating that "'statements of guilt under oath at a plea hearing support the district judge's decision not to permit withdrawal.'" *Id*. *quoting United States v. Martin*, 668 F.3d 787, 796 (6th Cir. 2012). The Court also found that Mr. Williams' claimed defense was not actually an assertion of innocence, but was instead "merely a flawed legal argument." *Id*., *citing*, *United States v. Sachs*, 801 F.2d 839, 845 (6th Cir. 1986).

However, in his principal Brief below, Mr. Williams had argued that it was "questionable" to review a Defendant's "assertion of innocence" because "the very fact that an individual is seeking to withdraw a 'guilty plea' presupposes the fact that, at some point, the individual has not, in fact, maintained their innocence." App.Br. at 33; CM/ECF Page 38. Further, Mr. Williams noted that he had maintained his belief that he could not be convicted of a conspiracy as charged. *Id*. As such, Mr. Williams submits that the Sixth Circuit erred on its analysis of this prong and that *certiorari* should be granted to reverse and remand these proceedings to the Court below.

The Sixth Circuit also found that the circumstances surrounding Mr. Williams' plea of guilty weighed in favor of the government. *See*, Opinion Below at 7. Although Mr. Williams contended that he had not received or understood all the discovery in his case at the time of his plea, the Court found that Mr. Williams had not "explain[ed] why he was inclined to alter his plea after acquiring additional evidence through discovery." *Id*.

Indeed, Mr. Williams had acknowledged, in his principal Brief, the "meticulous nature of the District Court's inquiry during the plea hearing. . .". App.Brief at 34;

CM/ECF Page 39. However, Mr. Williams argued to the Court below that, at the time he entered his plea, he did not have, or had not yet understood, all the discovery in his case. *Id*. *see also*, Second Motion to Withdraw Guilty Plea to Count 1 of the Indictment filed May 7, 2020; RE: 41; Page ID 154. Although the Court below found that Mr. Williams had not "explain[ed] why he was inclined to alter his plea after acquiring additional evidence through discovery," *(Opinion Below at 7)*, Mr. Williams had indicated in his Second Motion to Withdraw Guilty Plea to Count 1 of the Indictment that he "believes there are discrepancies relative to Count 1 which should have been explored but were not." *See*, Second Motion to Withdraw Guilty Plea to Count 1 of the Indictment; RE: 41 at 2; Page ID 155. As such, Mr. Williams submits that the Sixth Circuit erred on its analysis of this prong and that *certiorari* should be granted to reverse and remand these proceedings to the Court below.

Finally, the Court below rejected Mr. Williams' arguments regarding the lack of prejudice to the government, finding that it was not required to address the "prejudice" prong because the other factors weighed against Mr. Williams. *Opinion Below*, at 8; *quoting*, *United States v. Spencer*, 836 F.2d 236, 240 (6th Cir. 1987)(stating "'the government is not required to establish prejudice that would result form a plea withdrawal, unless and until the defendant advances and establishes a fair and just reason for allowing the withdrawal[.]'"). However, should this honorable Court find that the Court below erred in its analysis of the other factors, remand may be appropriate to analyze this factor and weigh it against the additional factors upon remand.

Given the foregoing, Mr. Williams submits that the Sixth Circuit erred in its analysis of whether Mr. Williams should have been allowed to withdraw his plea. As such, Mr. Williams respectfully requests that *certiorari* be granted, that the judgment of the Sixth Circuit be reversed, and that this matter be remanded for the Court below for further proceedings, including a new analysis and weighing of the factors.

II. *Certiorari* is requested to review the Sixth Circuit's determination that "harmless error" governed the disposition of Mr. Williams' arguments regarding his §2D1.1 enhancement.

As noted above, the District Court enhanced Mr. Williams' sentence pursuant to U.S.S.G. §2D1.1(b)(1), which provides for a two-level increase to the offense level "if a dangerous weapon (including a firearm) was possessed." *Id*. On appeal, Mr. Williams claimed that the enhancement had been erroneously applied. First, Mr. Williams claimed that there had been insufficient information presented to demonstrate that a "firearm" had been possessed by Mr. Williams during a "buy" on July 17, 2019, that the other definitional requirements for a "firearm" or a "destructive device" had not been met, and that the "dangerous device" theory had not been pressed or satisfied in the District Court. *See*, App.Br. at 39–43; CM/ECF Page 44–48. Second, Mr. Williams argued that that insufficient evidence had been presented to connect the gun recovered from his car to relevant conduct alleged in the Indictment. *Id*. at 43–48; CM/ECF Page 48–53.

The Sixth Circuit did not rule on the substance of these arguments. Instead, the Court agreed with the Government and found that any error on this enhancement would have been harmless. Specifically, the Court stated:

> Our Court has held that any "[e]rrors that do not affect the ultimate Guidelines range or sentence imposed are harmless and do not require resentencing." *United States v. Faulkner*, 926 F.3d 266, 275 (6th Cir. 2019). Here, when issuing Williams' sentence, the district court emphasized that if our Court were to rule that the imposition of the enhancement constituted error, it would nevertheless sentence Williams to 150 months' imprisonment.[2] (FOOTNOTE IN ORIGINAL: The district court also clarified that in such scenario, a sentence at the high end of the 120-150 month Guidelines range would be appropriate given Williams' history of using and possessing handguns, substantial recidivism, and history of violating the conditions of his release.) Thus, because any error by the district court would have had no effect on Williams' ultimate sentence, we need not determine whether the district court accurately increased Williams' offense level pursuant to § 2D1.1(b)(1). *See United States v. Morrison*, 852 F.3d 488, 491 (6th Cir. 2017) ("If the record shows that the district court would have imposed its sentence regardless of the Guidelines range, then an error in calculating the Guidelines range is harmless.").

See, Opinion Below, at 8-9. Mr. Williams seeks *certiorari* to review the Sixth Circuit's application of "harmless error" to his claims under U.S.S.G. §2D1.1(b)(1).

First, Mr. Williams seeks *certiorari* for consideration of whether, as a policy matter, "harmless error" should apply to a circumstance where, as here, a District Court proactively insulates its sentence from meaningful appellate review by pre-indicating its intent to fashion a particular sentence regardless of the Guidelines range. On this item, and as indicated in the Circuit proceedings below, Mr. Williams recognizes the long history of Sixth Circuit precedent applying harmless error where "the record shows that the district court would have imposed its sentence regardless of the Guidelines range." *See*, Appellant's Reply Brief at 8; CM/ECF Page 12; *citing*, *United States v. Morrison*, 852 F.3d 488 (6th Cir. 2017); *United States v. Faulkner*, 926 F.3d 266, 275 (6th Cir. 2019); *United States v. Collins*, 800 Fed.Appx. 361, 362 (6th Cir. 2020); *and*, *United States v. Ward*, 506 F.3d 468, 476 (6th Cir. 2007). And

Mr. Williams further recognizes that, although this honorable Court has recently reconfirmed the importance of the Guidelines to the sentencing process, this honorable Court has also specifically stated that "the record in a case may show, for example, that the district court thought the sentence it chose was appropriate irrespective of the Guidelines range." *See generally*, *Molina-Martinez v. United States*, 578 U.S. _____ (2016) at 9-10, 11 (discussing plain error). However, and despite this precedent, Mr. Williams respectfully suggests that *certiorari* should be granted in order to consider whether sound jurisprudential policy supports extending that rationale to a circumstance where, as here, the District Court proactively insulates its sentence from meaningful appellate review by pre-indicating its intent to fashion a particular sentence regardless of the Guidelines range.

Furthermore, even if "harmless error" could generally apply, it is submitted that the doctrine was not correctly applied to Mr. Williams' specific proceedings. As noted in Mr. Williams' Reply Brief during the proceedings in the Circuit Court below, the Sixth Circuit recently addressed "harmless error" in *United States v. Collins*, 800 Fed. Appx. 361 (6th Cir. 2020). In *Collins*, the District Court had incorrectly applied a sentencing enhancement, and the panel turned to whether the error was harmless. *Id*. at 361-362.

In their discussion, the Court noted that it had "found errors in calculating the guidelines range to be harmless when a district court made clear that 'it would have given [the defendant] *the same* sentence' even if it had started from the correct guidelines range without the calculation error." *Id*. at 362 (emphasis added); *quoting*,

United States v. Bishop, 797 Fed.Appx. 208, 211-212 (6th Cir. 2019). The Sixth Circuit echoed its "same sentence" logic both in its detail of *Bishop*, *supra*, as well as in its general description of other cases where guidelines errors were deemed to be harmless. *Id*., *citing*, *Morrison*, *supra*, 852 F.3d at 492 & n.2; *United States v. Maxwell*, 678 F. App'x 395, 396 (6th Cir. 2017); *and United States v. Mizori*, 601 F. App'x 425, 431-32 (6th Cir. 2015). And the Court continued its "same sentence" analysis in its discussion of *United States v. Buchanan*, 933 F.3d 501, 516 (6th Cir. 2019), where the court had declined to apply harmless error. *Id*. (emphasis added).

Applying these principles, the *Collins* court indicated that "the district court in this case did not alternatively state that it would have imposed an *identical* sentence even if it had rejected the career-offender enhancement." *Id*. at 363 (emphasis in original). As such, the language from *Collins* suggests that, in order to substantiate the application of "harmless error," it must be clear that the sentence would have been at least the same, if not perhaps identical, without the alleged sentencing error.

It is submitted that the record below does not satisfy this standard. As noted in Mr. Williams' Reply Brief, the District Court stated ". . . I am going to sentence within the overlapped *range*." Tp. Sent. at 47; Page ID 310 (emphasis added). Further, the Court stated that "the sentence I'm imposing is 150," which the Court found was the high end of the lower "*range*" and "the middle of the 140 to 175 *range*." *Id*. (emphasis added). The District Court also noted that even if the Court of Appeals found error with the enhancement, then the sentence imposed would "be in the *range*

that would be the *range* without the enhancement." *Id*. (emphasis added). Further, the Court stated:

> I think a sentence at the high end of that *range*, in the middle of the actual *range* I'm using, is appropriate because of your history of using and possessing handguns, that you have a substantial recidivism behavior, a history of violating conditions of release, and the fact that you had that handgun at the time in your vehicle.
>
> All of those support a sentence toward the higher end of the 140 to 175. But because of your individual circumstances as described by your attorney, I'm choosing to sentence within the 140 to 175; actually, toward the bottom, if you want to do the math.
>
> So the sentence will be 150 months.

Id. at 47-48; Page ID 310-311 (emphasis added).

Given the language used by the District Court, it is submitted that its sentence did not satisfy the standards set forth in *Collins*, and that harmless error should not apply to Mr. Williams' arguments regarding U.S.S.G.§2D1.1(b)(1). Although the District Court repeatedly noted that it was sentencing Mr. Williams to a term of months within the overlap of two ranges, the sentencing transcript does not appear to disclose that the District Court would have imposed an "identical" sentence without the firearm enhancement. As such, *certiorari* is requested in order to review and reverse the Sixth Circuit's application of harmless error, and to remand these proceedings for a determination of Mr. Williams' claims on their merits.

In making this determination, Mr. Williams discloses *United States v. Steel*, 609 Fed.Appx. 851 (6th Cir. 2015), which itself was noted (and distinguished) in *Collins*. In *Steel*, the Sixth Circuit had applied harmless error to a sentencing argument where the record contained statements similar to those made in the

District Court proceedings herein. *Id.* at 853-854. Specifically, in *Steel*, the District Court had stated "that Steel's criminal history 'would keep me at the 188 months whether I get at it from the low end of the guidelines where I am today or high end of the guidelines on the defense view. Either way, I think 188 months is a balance of all the guideline and Section 3553 factors in this case.'" *Id.* at 853-854. Further, the Sixth Circuit found the application of harmless error to be particularly appropriate because the "alternative sentence was within the guideline range" and because Steel had not otherwise argued that the sentence was unreasonable. *Id.* at 855.

However, Mr. Williams submits that *Steel* is distinguishable from his case. First, Mr. Williams, both below and herein, has otherwise argued that his sentence is unreasonable. Second, it is submitted that the "identical sentence" language from *Collins* appears to clarify *Steel*, and it appears that the Court in Mr. Williams' case was relying more upon the overlapped ranges rather than the specific, identical sentence. As such, it is submitted that *Steel* is distinguishable, and that *certiorari* should be granted in order to review and reverse the Sixth Circuit's application of harmless error, and to remand these proceedings for a determination of Mr. Williams' claims on their merits. Further, and for all of the reasons set forth in Mr. Williams' Circuit briefings on the 2D1.1(b)(1) enhancement, it is submitted that the District Court erred in enhancing Mr. Williams' sentence, and that this matter should be further remanded to the District Court after the Sixth Circuit's consideration of this issue on the merits. *See generally*, App. Br. at 36–48 ; CM/ECF Pages 41–53; *see also*, App. Reply Br. 5–6; CM/ECF Pages 9–10.

III. *Certiorari* is requested to review the substantive reasonableness of Mr. Williams' sentence.

In his proceedings below, Mr. Williams argued that his sentence was substantively unreasonable. *See*, App.Br. at 48–50; CM/ECF Pages 53– 55. The Sixth Circuit has held that "'[a] sentence is substantively unreasonable if the district court selects the sentence arbitrarily, bases the sentence on impermissible factors, fails to consider pertinent 18 U.S.C. § 3553(a) factors, or gives an unreasonable amount of weight to any pertinent factor.'" *See*, *United States v. Frei*, 995 F.3d 561, 567 (6th Cir. 2021); *quoting*, *United States v. Tristan-Madrigal*, 601 F.3d 629, 633 (6th Cir. 2010). The Sixth Circuit has also held that a sentencing review is conducted under the totality of the circumstances, and that there is a presumption of reasonableness for a sentence that falls within the Guidelines range. *Tristan-Madrigal*, *supra*, 601 F.3d at 633; *quoting*, *Gall v. United States*, 552 U.S. 38, 51 (2007); *and*, *United States v. Herrera-Zuniga*, 571 F.3d 568, 590 (6th Cir. 2009).

Ultimately, however, the panel below found Mr. Williams' true argument was "that the district court had "improperly balanced the sentencing factors, which is a claim that is 'beyond the scope of our appellate review.'" *See*, Opinion Below at 10; *quoting*, *United States v. Ely,* 468 F.3d 399, 404 (6th Cir. 2006) *and*, *Gall*, *supra*, 552 U.S. at 51. Mr. Williams submits that the Sixth Circuit erred in rejecting his claims on this basis and Mr. Williams therefore requests that certiorari be granted because his claims should have been reviewed based on the district court's failure to give a reasonable amount of weight to factor 18 U.S.C. §3553(a)(1).

As noted in the proceedings below, 18 U.S.C. §3553(a)(1) instructs a sentencing court to review, among other items, "the history and characteristics of the defendant." *Id*. It is submitted that Mr. Williams' history and characteristics mitigated in favor of a lesser sentence in the proceedings below, and that the District Court failed to give this factor a reasonable amount of weight.

As noted in the proceedings below, Mr. Williams faced significant difficulties in his childhood, including placement in foster care, and a fractured family relationship after he exited foster care. *See*, PSIR at 19; Dist. Ct. Page ID: 199. Mr. Williams' upbring was also marked by the fact that Mr. Williams' mother had "dated various men over the years, who brought drugs and criminal activity into the household." *Id.* Further, Mr. Williams – as early as middle school – had begun to "hang out with older people on the streets and was exposed to the drug and criminal culture." *Id*.

Mr. Williams also has a significant lack of formalized education. For instance, he never graduated from high school, and, at the time of sentencing, had never received his GED and had only a 10th grade education. *Id.* at 20; Dist. Ct. Page ID: 200. He also had participated in the "Developmentally Handicapped Program" while in grade school, and "school notations indicate that [he] was developmentally delayed and received additional services while enrolled in school." *Id*. He also has "little verifiable employment history," despite his age and his four children of his own. *Id.* at 19-20; Dist. Ct. Page ID: 199-200.

Given the foregoing, and as set forth in the proceedings below, Mr. Williams submits that his sentence was substantively unreasonable. Further, the Sixth Circuit should not have found that Mr. Williams' arguments were beyond the scope of appellate review because by failing to give appropriate weight to sentencing factor 3553(a)(1), the district court thereby necessarily also placed unreasonable weight on other sentencing factors. As such, Mr. Williams requests that *certiorari* in this matter be granted, and this case remanded for further proceedings.

CONCLUSION

Wherefore, and for all of the foregoing reasons, Petitioner Williams respectfully requests that this honorable Court grant certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

Respectfully Submitted,

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