No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

MAURICE D. BELL,
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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTION PRESENTED

Whether an appellate court errs under Fed. R. Crim. P. 51 by applying plain error review to a claim of procedural error brought to the sentencing judge's attention but not repeated after the sentence is imposed?

RELATED PROCEEDINGS

United States v. Bell, 20-3350, 2022 WL 1593942 (8th Cir. May 20, 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Maurice D. Bell respectfully requests this Court to issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on May 20, 2022.

OPINION BELOW

The Eighth Circuit opinion affirming the district court's denial of Bell's motion for reduction of sentence is reported at *United States v. Bell*, 2022 WL 1593942 (8th Cir. May 20, 2022) and is included in the Appendix (herein "App.").

JURISDICTION

The Eighth Circuit entered judgment on May 20, 2022, App. A. The Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Federal Rules of Criminal Procedure 51.

INTRODUCTION

Rule 51(b) of the Federal Rules of Criminal Procedure (herein "Rule 51"), states, "A party may preserve a claim of error by informing the court—when the court ruling or order is made *or sought*—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection" (emphasis added). Despite these two methods for preserving a claim of error being firmly placed on equal footing within the rule, four circuits, including the Eighth, disregard procedural objections made prior to sentencing, even if those objections are thoroughly and robustly made and ruled on prior to the imposition of sentence.

When courts require renewal of an objection post-sentencing to preserve the right to appeal a procedural error, even after a specific and well-argued presentation prior to pronouncement, they elevate form over substance in a misguided resurrection of the common law "exception" requirement. Petitioner asks the Court to eliminate the post-sentencing objection requirement as a violation of Rule 51 and inconsistent with this Court's holding in *Holguin-Hernandez v. United States,* 140 S.Ct. 762 (2020).

STATEMENT OF THE CASE

Legal Background

In the Court Reporter Act of 1944, 28 U.S.C. §753(b) (2006), Congress eliminated the need for a post-sentencing objection when it ordered that full trial transcripts be produced in federal court, making the "bill of exceptions" (formerly necessary to preserve portions of trial for review by the appellate court) a vestigial appendage to our trial practice.[1] Congress did away with "exceptions" in civil cases in 1937 with the approval of Federal Rule of Civil Procedure 46 (hereafter Civil Rule 46) which declares a party need only state the desired action *at the time an order is requested*:

> A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

[1] Benjamin K. Raybin, *"Objection: Your Honor Is Being Unreasonable!"-Law and Policy Opposing the Federal Sentencing Order Objection Requirement*, 63 Vand. L. Rev. 235, 251–55 (2010). (hereinafter "Raybin").

Fed. R. Civ. P. 46.

Rule 51 was enacted seven years later, the same year as the Court Reporter Act of 1944. *Raybin* at 252. The language of Criminal Rule 51 echoes Civil Rule 46 declaring that "exceptions" are not necessary. The Advisory Committee Notes state, "This rule is practically identical with rule 46 of the Federal Rules of Civil Procedure. It relates to a matter of trial practice *which should be the same in civil and criminal cases* in the interest of avoiding confusion." (emphasis added).

The "exception" that was historically required to preserve an issue for appellate review finds its modern parallel in the requirement of a post-sentencing objection, which courts have constructed in an attempt to rectify sentencing error and thereby decrease the number of appeals. *Raybin* at 255. The post-sentencing objection requirement, however, cannot reduce error if the issue was already argued before the same judge who overruled the objection or denied the attorney's request.

Once the judge imposes the sentence, the issues have already been argued and decided. No further objection is necessary to alert the judge to potential issues with the sentence. "It is the responsibility of the judge—not the parties—to ensure that the sentencing order is properly issued." *Id.* The requirement of a post-sentencing objection violates Rule 51, and improperly places the burden of lodging a redundant objection to the procedural impropriety of the proceedings on criminal defendants, rather than holding district court judges responsible for the integrity of the sentencing process.

Proceedings Below

Pursuant to a guilty plea and absent a plea agreement, Marcus Bell was convicted of one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). *United States v. Bell*, 20-3350, 2022 WL 1593942, at *1 (8th Cir. May 20, 2022); App. A. The district court sentenced Mr. Bell to 82 months' incarceration followed by three years supervised of release, a significant upward variance (a 30% increase) from the top of his guideline range of 51-63 months.

Prior to sentencing, Mr. Bell's attorney submitted a sentencing memorandum requesting a sentence of 36 months. App. B at 5-12. He supported the request for a downward variance with arguments about the applicability of the enhancements to Mr. Bell's base offense level because they require only "objective status and not scienter," making Mr. Bell's offense appear significantly more serious than it was:

> Both of those enhancements [possessing an extended magazine even though the weapon was manufactured and sold with this magazine and possessing a stolen weapon when there is no evidence establishing Mr. Bell knew or should have known it was stolen] apply because they only require objective status and not scienter. But for purposes of imposing the sentence, the Court should consider Mr. Bell's lack of intent in possessing the large capacity magazine and lack of knowledge of the firearm's stolen status. When those things are considered, the guidelines overstate the seriousness of the offense conduct. In the absence of these enhancements, the base offense level would be reduced by eight points, yielding a total guideline range of 21 to 27 months in custody. So, along with the other sentencing factors discussed below, these factors support the reasonableness of a 36-month sentence.
> App. B at 7.

The sentencing memo containing the argument quoted above was referenced at sentencing, and the request for a 36-month sentence was made at the sentencing hearing. App. C at 15.

Mr. Bell also contended at sentencing that he was not involved in drug trafficking. App. C at 20. Defense counsel pointed out only a small quantity of drugs were present, which was consistent with personal use, and no large quantity of money was recovered. App. C at 20. Defense counsel further argued the presence of a scale was not indicative of drug trafficking but was consistent with personal use. App. C at 20. The sentencing court, however, concluded this case "has all the indicia of drug dealing" and that the "gun is part of drug dealing." App. C at 27.

On appeal, the Eighth Circuit affirmed the district court's sentence, denying Mr. Bell's request for *de novo* review due to procedural error asserting the district court (1) failed to explain its application of the sentencing factors under 18 U.S.C. § 3553(a), and (2) based its sentence on clearly erroneous facts. Defense counsel objected to the district court's circular logic that the defendant was a drug dealer because "'[t]he gun is part of drug dealing' because drugs and guns 'go together,'" and that the upward variance was warranted for that reason. *Bell,* 2022 WL 1593942*,* at *4. Despite vigorous advocacy by defense counsel and the objection's clear presence in the record, the Eighth Circuit, relying on precedent, only reviewed Mr. Bell's claims of procedural error for plain error:

> Generally, we review de novo the district court's application of the Guidelines and review for clear error its factual findings. *United States v. Brooks-Davis*, 984 F.3d 695, 700 (8th Cir. 2021). But in this case plain error review is appropriate. The record shows that after the district court imposed Bell's sentence, Bell "lodged no procedural objections to the district court's sentence." *See United States v. Wohlman*, 651 F.3d 878, 883 (8th Cir. 2011).
> *Bell*, 2022 WL 1593942, at *3.

This ruling violates Rule 51. Rule 51(a) states, "Exceptions to rulings or orders of the court are unnecessary." The Eighth Circuit's requirement of a post-sentencing objection to adequately preserve an issue for appellate review is simply a rebranding of the antiquated practice of the "exception," which Rule 51 abolished. The Eighth Circuit's construction of this unwarranted procedural hurdle contradicts Rule 51(a).

Rule 51(b) says, "A party may preserve a claim of error by informing the court—*when the court ruling or order is made or sought*—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection" (emphasis added). Rule 51(b) clearly states that an objection given when the sentencing order is *sought* is sufficient to preserve any claim of error. Therefore, any argument or objection that clearly informs the court of a procedural error during sentencing is sufficient to preserve the claim for appellate review. Because defense counsel strenuously objected to the district court's erroneous depiction of Mr. Bell as a drug dealer at the sentencing hearing, as required by Rule 51, the Eighth Circuit erred by applying plain error review to this issue.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Deeply Divided Over the Question Presented.

Consistent with Rule 51, five courts of appeal have ruled that a post-sentencing objection is not required to preserve a claim of procedural error for appeal. Four courts of appeal have ruled that a claim of procedural error is forfeited

if a defendant fails to lodge a post-sentencing objection to any procedural issues regarding the sentence. Thus, an active circuit split exists because of these decisions. It is therefore necessary that this Court grant review to resolve such an entrenched circuit conflict with serious implications for parity and justice.

A. Five Circuits Have Held That A Post-Sentencing Objection Is Not Required To Preserve An Error For Appeal.

The majority approach—employed by the Fourth, Fifth, Seventh, Tenth, and Eleventh Circuits—conforms to Rule 51 which provides that defendants may preserve a claim of error by informing the court of the action they wish the court to take when the court ruling or order is sought. An additional formulaic objection is not required.

In *United States v. Lynn*, the Fourth Circuit concluded that Rule 51 settled the matter:

> [T]he [Federal Rules of Criminal Procedure] abandon the requirement of formulaic 'exceptions'-after the fact-to court rulings. As Judge Easterbrook has explained, Rule 51 does 'not require a litigant to complain about a judicial choice after it has been made.' *United States v. Bartlett,* 567 F.3d 901, 910 (7th Cir.2009).
>
> The Federal Rules of Criminal Procedure, which the Supreme Court has expressly approved, represent the considered view after extensive study of skilled judges and lawyers. We see good reason to adopt the approach to preservation set forth in those Rules, and no reason to reject it.
> *United States v. Lynn*, 592 F.3d 572, 578 (4th Cir. 2010)

Likewise, in *United States v. Gozes-Wagner*, the Fifth Circuit adopted the same rule:

> In arguing for a downward variance in her pre-sentencing memorandum . . . . Gozes-Wagner's counsel reminded the court that there were 'legal mechanisms via departures or variances' that the court could use to sentence Gozes-Wagner well below her Guidelines range. *In our view,*

> *these actions were sufficient to preserve this error for appeal*. Accordingly, we review for abuse of discretion."
> *United States v. Gozes-Wagner*, 977 F.3d 323, 339 (5th Cir. 2020) (emphasis added).

In the Seventh Circuit, alongside a lengthy list of prior rulings, the court wrote, "A district court's explanation of its sentencing decision, regardless of whether it precedes or follows the announcement of the sentence itself, is a ruling to which an exception is not required." *United States v. Wood*, 31 F.4th 593, 597 (7th Cir. 2022), citing *United States v. Pennington*, 908 F.3d 234, 238 (7th Cir. 2018). The court went on to state, "The grounds for Wood's present appeal—that the district court procedurally erred by comparing him to Iriri—were created by the district court in the ruling itself. Wood was not obligated to take exception with the district court's ruling to preserve his argument on appeal, Fed. R. Crim. P. 51(a), so we review de novo." *Wood*, 31 F. 4th at 599.

The Tenth Circuit took a more pointed approach to addressing the issue at hand calling post-sentencing objections "superfluous and futile" and "a meaningless charade":

> The government contends that this court should review the district court's sentencing procedure only for plain error because counsel for Mr. Lopez did not renew his argument for a downward variance after the judge had pronounced sentence. We are not persuaded. It is quite apparent from the record that the issue was properly raised prior to the sentencing hearing, the judge was familiar with the argument, and the argument was addressed by the judge. This was certainly sufficient to preserve the issue for appellate review.
>
> The government, however, contends that a different rule applies to procedural challenges to criminal sentences, a rule which inflexibly requires a defendant to raise the issue anew after the court has pronounced sentence. The circumstances of this case show clearly that

> where, as here, the issue has been raised and ruled upon before pronouncement of sentence, this proposed rule would require defense counsel to perform a superfluous and futile gesture and would take the time of the district courts for this meaningless charade . . . . We therefore review this appeal under the standards we ordinarily apply to claims of procedural sentencing errors. Our overall standard of review is abuse of discretion.
> *United States v. Lopez-Avila*, 665 F.3d 1216, 1217–18 (10th Cir. 2011).

Finally, the Eleventh Circuit denied the defense's request for *de novo* review while still affirming the standard set by Rule 51. The court maintained that under Rule 51 specific procedural issues must be raised during the course of the sentencing, but declared counsel is not required to reiterate the objection following imposition of sentence:

> Hawks's counsel "object[ed] to the reasonableness of the sentence." But the incantation of "reasonableness" does not preserve any and all potential procedural reasonableness objections for appellate review. To preserve his objection for appeal, Hawks was required to "raise that point in such clear and simple language" as would "inform the district court of the legal basis for the objection." *United States v. Massey*, 443 F.3d 814, 819 (11th Cir. 2006). Although, a party is not required to "repeat objections made during the course of sentencing proceedings following the imposition of sentence" or "to reargue a general objection made after sentencing if the argument in support of that objection has previously been presented ... and the reasons for the objection remain clear after the sentence is pronounced," neither caveat applies here. *United States v. Maurice*, 69 F.3d 1553, 1557 (11th Cir. 1995). Nowhere in the record did Hawks's counsel object to the district court's understanding of the facts. Therefore, plain error review is appropriate.
> *United States v. Hawks*, 731 Fed. Appx. 868, 870–71 (11th Cir. 2018).

B. Four Circuits Have Held That Failure To Lodge Post-Sentencing Objection Limits Appellate Review of That Issue To Plain Error.

Four circuits constitute the minority approach: the Third, Sixth, Eighth, and D.C. Circuits. The Third Circuit preferred temporal logic over common sense when they held, "Simply put, a defendant has no occasion to object to the district court's

inadequate explanation of the sentence until the district court has inadequately explained the sentence. Thus, the procedural objection can be raised for the first time only after the sentence is pronounced without adequate explanation." *United States v. Flores-Mejia*, 759 F.3d 253, 257 (3d Cir. 2014). While the opinion asserted this is the view of the majority of circuits, as demonstrated above, the majority of circuits do not follow this practice. *Id.*

The Sixth Circuit in *United States v. Simmons* offered a wandering explanation of why it applied plain error as the standard of review. The opinion is largely unremarkable except for the dissent. The *Simmons* dissent affirms the view of the majority of circuits and calls out the error and unfairness of the Sixth Circuit's rule:

> According to the majority, whether Simmons forfeited this claim hinges entirely on the adequacy of defense counsel's post-sentencing objection, which, the majority insists, must be considered in isolation. I strongly disagree. Not only is the majority's reasoning contrary to our prior published precedent, it also directly conflicts with Supreme Court authority and is in tension with the fundamental principles underlying our decisions in this area.
>
> For whatever reason, the majority has chosen to ignore the fact that this Court has expressly held that a defendant's arguments during sentencing raising a basis for a downward departure are sufficient-standing alone and *without a distinct, post-sentencing objection*-to preserve for appeal a failure-to-consider procedural claim. *See, e.g., United States v. Blackie,* 548 F.3d 395, 398 (6th Cir. 2008). . . .
>
> It makes no sense, and is fundamentally unfair, to place the burden for creating an adequate record for appeal on criminal defendants rather than district court judges.
>
> *United States v. Simmons*, 587 F.3d 348, 371 (6th Cir. 2009) (dissent).

The Eighth Circuit, too, requires a criminal defendant to lodge a post-sentencing objection regarding procedural error to avoid plain error review. "Because he failed to object at sentencing to any alleged procedural sentencing error, the error is forfeited and may only be reviewed for plain error." *United States v. Wohlman*, 651 F.3d 878, 883–84 (8th Cir. 2011) (internal quotations omitted). Wohlman's counsel had raised objections during the sentencing hearing, but upon questioning by the judge ("anything else that we need to tend to on this case today?"), failed to raise an additional objection after sentencing. *Id.* at 883. According to the court in Wohlman, the objections raised prior to the pronouncement of the sentence were insufficient to adequately preserve that issue for review. *Id.*

Wohlman is the precedent relied upon by *Bell*. "The record shows that after the district court imposed Bell's sentence, Bell 'lodged no procedural objections to the district court's sentence.' *See United States v. Wohlman*, 651 F.3d 878, 883 (8th Cir. 2011)." *Bell*, 2022 WL 1593942, at *3.

The D.C. Circuit has repeatedly affirmed the sufficiency of Rule 51, while at the same time reiterating the requirement that the defense offer a redundant objection following the sentencing pronouncement. *United States v. Pyles*, 862 F.3d 82, 88 (D.C. Cir. 2017). However, the dissent asserts that there is an "intra-circuit conflict" regarding the necessity for post-sentencing objections. *Id.* at 87.

The majority sub-divided procedural reasonableness arguments into those that assert the court has either (1) failed to consider 3553(a) sentencing factors or

(2) wrongly considered or applied these factors. *Id.* The majority opinion in *Pyles* asserted that an objection to the failure to consider 3553(a) factors must follow the sentencing to preserve an issue for appellate review. *Id* at 88. The *Pyles* majority opinion argues this additional objection promotes judicial economy by providing the sentencing judge with an opportunity to correct perceived errors and thereby obviate the need for an appeal.

However, when a district court judge has heard arguments on procedural issues (including the reasonableness of the sentence and arguments that the court has based its sentence on clearly erroneous facts) and overruled them, further objections from the same attorney after sentencing are futile and unnecessary under Rule 51. Such redundant objections do nothing to change the opinion of the judge or to promote judicial economy.

II. The Eighth Circuit's Decision is Incorrect.

The Eighth Circuit's requirement that a defendant repeat procedural objections after sentencing is incorrect and unfounded. This Court's recent decision in *Holguin-Hernandez v. United States,* 140 S.Ct. 762 (2020) affirmed the validity of Rule 51 regarding pre-sentencing objections and substantive reasonableness but declined to extend the same rule to procedural unreasonableness as it was not addressed below.

In *Holguin-Hernandez*, the defendant argued to the district court that he should not be sentenced to any time in custody according to the 18 U.S.C. §3553(a) sentencing factors, but if he were sentenced to prison, the length of the term "should be less than 12 months long." *Holguin-Hernandez*, 140 S.Ct. at 766. Nevertheless,

the court sentenced him to 12 months. There was no post-sentencing objection. *Id.* at 765.

In *Holguin-Hernandez*, the Court was asked to consider whether or not defense counsel's argument for a lesser sentence prior to the pronouncement of sentence was sufficient to "preserve his claim on appeal that the 12-month sentence was unreasonably long." *Id.* As in *Bell*, the judge attempted to solicit a post-sentencing objection from defense counsel by asking if there was "anything further," but counsel replied there was not. *Id.* at 765.

This Court held that counsel's argument at sentencing was sufficient to preserve Holguin-Hernandez's claim of substantive unreasonableness. *Id.* at 764. No further objection was necessary because Rule 51(b) plainly states that informing the court of the action a defendant wishes the court to take is sufficient to preserve the claim. *Id.* at 766.

While the Court's holding in *Holguin-Hernandez* was limited to substantive reasonableness, this limit was self-imposed. The Court did not address the issue of procedural unreasonableness as it has not been considered by the Court of Appeals. *Id.* at 767. The Eighth Circuit's holding in *Bell* squarely places the requirement of post-sentencing objections to procedural unreasonableness directly into this Court's purview.

If the reasoning of *Holguin-Hernandez* were applied to *Bell*, the result would be parity between substantive and procedural issues. Constructively, it would also

result in parity between the Civil and Criminal Rules of Procedure, as well as consistency in how the rule would be applied in all of the Circuits:

> By "informing the court" of the "action" he "wishes the court to take," Fed. Rule Crim. Proc. 51(b), a party ordinarily brings to the court's attention his objection to a contrary decision. *See* Rule 52(b). And that is certainly true in cases such as this one, where a criminal defendant advocates for a sentence shorter than the one ultimately imposed. Judges, having in mind their "overarching duty" under § 3553(a), would ordinarily understand that a defendant in that circumstance was making the argument (to put it in statutory terms) that the shorter sentence would be " 'sufficient' " and a longer sentence " 'greater than necessary' " to achieve the purposes of sentencing. *Pepper*, 562 U.S. at 493, 131 S.Ct. 1229 (quoting § 3553(a)). Nothing more is needed to preserve the claim that a longer sentence is unreasonable.
>
> We do not agree with the Court of Appeals' suggestion that defendants are required to refer to the "reasonableness" of a sentence to preserve such claims for appeal. See 746 Fed.Appx. 403; *United States v. Peltier*, 505 F.3d 389, 391 (C.A.5 2007). The rulemakers, in promulgating Rule 51, intended to dispense with the need for formal "exceptions" to a trial court's rulings. Rule 51(a); *see also* Advisory Committee's 1944 Notes on Fed. Rule Crim. Proc. 51, 18 U.S.C. App., p. 591. They chose not to require an objecting party to use any particular language *or even to wait until the court issues its ruling*. Rule 51(b) (a party may "infor[m] the court" of its position either "when the court ruling or order is made or" when it is "sought"). The question is simply whether the claimed error was "brought to the court's attention." Rule 51(b)."
> *Holguin-Hernandez*, 140 S.Ct. at 766 (emphasis added).

For these reasons, the Fourth, Fifth, Seventh, Tenth, and Eleventh Circuits' approach is more consistent with the text and purpose of Rule 51, and the Court's opinion in *Holguin-Hernandez*. The Eighth Circuit's decision in *Bell*, which follows the policy of the Third, Sixth, and D.C. Circuits requiring a post sentencing objection to avoid plain error review, is incorrect and creates inequality in sentencing based on geography.

III. The Question Presented is Undeniably Important.

The different treatment of procedural unreasonableness between circuits, and thus, between defendants in those circuits, carries deep implications. First, Civil Rule 46 and Rule 51 have nearly identical language but different applications. This breeds inefficiency and confusion for defendants and results in the unintentional forfeiture of their substantial rights, namely, the right to seek appellate review of their sentences based on procedural errors committed by the court. Parity between the Civil and Criminal systems and between one circuit and the next is crucial to the interest of justice and overall equity within our system.

Additionally, disparity between the treatment of substantive and procedural unreasonableness contributes to substantial inefficiency and injustice. The Court's decision in *Holguin-Hernandez* establishes why the post-sentencing objection is no longer necessary to preserve claims of substantive unreasonableness for appellate review. *Holguin-Hernandez*, 140 S.Ct. at 766-67. *Bell* demonstrates the reason why that question needs to be answered.

Finally, it is unjust for the circuit courts to apply different standards of review to different defendants as a result of an arbitrary application of a procedural rule. The law should apply uniformly to all parties within the criminal justice system equally. The honor and reputation of our justice system depend on it.

IV. This Case Presents an Ideal Vehicle for Resolving the Question Presented.

When this Court decided that a request for a particular sentence that was proffered as the reasonable sentence was sufficient to preserve a substantive

unreasonableness challenge, it declined to address the manner of preserving challenges to procedural unreasonableness:

> They ask us to decide what is sufficient to preserve a claim that a trial court used improper *procedures* in arriving at its chosen sentence. And they ask us to decide when a party has properly preserved the right to make particular arguments supporting its claim that a sentence is unreasonably long. We shall not consider these matters, however, for the Court of Appeals has not considered them. *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 767 (2020).

Bell is an ideal vehicle for the Court to decide the proper method of preserving objections to procedural unreasonableness because the only issues defense counsel brought to the attention of the district court prior to sentencing were procedural in nature. Bell maintains that the district court procedurally erred in two respects. In Bell's appellate brief, he first argued that the district court "[f]ail[ed] to explain the application of important § 3553(a) factors." Appellant's Br. at 8. Second, Bell argued that the district court erred in giving Mr. Bell an upward variance to 82-months of imprisonment based on clearly erroneous facts, concluding Bell was involved in drug dealing activity in connection with the firearm possession. *Id.*

The court in *Bell* noted the Eighth Circuit's standard of review for the application of the Guidelines is *de novo*, but for factual findings, the standard is clear error. In *Bell*, the appellate court declined to apply the *de novo* standard of review because the defense did not offer a redundant post-sentencing objection. Instead, they reviewed only for plain error, despite a

record that established defense counsel brought these issues to the sentencing judge's attention as required by Rule 51(b).

Timely resolution of this circuit split is essential. The Eighth Circuit's opinion in *Bell*, and every case seeking appellate review in the Third, Sixth, Eighth, and D.C. circuits with alleged procedural error, will continue to deepen the conflict amongst the circuits, cause confusion between procedural rules and civil and criminal practices in federal courts, and breed inequality in appellate review for unfortunate defendants in the geographic footprint of the circuits that incorrectly require a post-sentencing objection to avoid plain error review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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