

**CASE NO. \_\_\_\_\_**  
**SUPREME COURT OF THE UNITED STATES**

**LEONARD ANDREW**

**PETITIONER**

**V.**

**UNITED STATES OF AMERICA**

**RESPONDENT**

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**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF  
THE UNITED STATES**

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## **QUESTIONS PRESENTED FOR REVIEW**

- I. Whether a sentencing court must meaningfully address a defendant's request for a downward departure pursuant to USSG §§ 5H1.3 and 5K2.13 when he has a confirmed, significant intellectual deficit and reduced mental capacity?

## **LIST OF ALL PARTIES TO THE PROCEEDINGS**

Petitioner/Appellant/Defendant – Leonard Andrew

Respondent/Appellee/Plaintiff – United States of America

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Judgment from the Eastern District of Kentucky in *United States v. Leonard James Andrew, Jr.*, 19-CR-42-GFVT, filed on August 5, 2021.

### **Appendix B**

Unpublished Opinion of the United States Court of Appeals for the Sixth Circuit in *United States v. Leonard James Andrew, Jr.*, No. 21-5787, filed on May 31, 2022.

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Leonard Andrew, by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the unpublished opinion of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Leonard James Andrew, Jr.*, No. 21-5787, filed on May 31, 2022 and attached to this Petition as Appendix B.

## **OPINIONS BELOW**

Mr. Andrew's appeal to the Sixth Circuit was taken from a Judgment entered following his guilty plea to distribution of child pornography in violation of 18 U.S.C. § 2252(a)(2). *See* Appendix A. On May 31, 2022, the Sixth Circuit issued an unpublished opinion affirming Mr. Andrew's sentence. *See* Appendix B. This petition for a writ of certiorari now follows.

## **JURISDICTION**

The Sixth Circuit issued an unpublished opinion affirming Mr. Andrew's sentence on May 31, 2022. *See* Appendix B. Mr. Andrew invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S. Const. amend. V:** “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall property be taken for public use, without just compensation.”

**18 U.S.C. § 3553(a)(4)(A)(i):** “The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—the kinds of sentence and sentencing range established for—the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress[.]”

## STATEMENT OF THE CASE

Mr. Andrew suffers from a lifelong intellectual disability. During this case, he underwent a Bureau of Prisons (BOP) psychological evaluation and was determined to have a “full scale IQ score 65” placing him in the “1<sup>st</sup> percentile, which means his IQ score is equal to or higher than that of [only] 1% of individuals his age.” [R. 38: Sealed Psychiatric Report, Page 7]. Dr. Allison Schenk, Forensic Unit Psychologist at MCC Chicago, concluded “Mr. Andrew’s intellectual functioning is below average in all domains[.]” *Id.*

After the district court determined he was competent to stand trial, Mr. Andrew pleaded guilty to one count of knowingly distributing visual depictions of a minor engaging in sexually explicit conduct in violation of 18 U.S.C. § 2252(a)(2). During his guilty plea hearing, Mr. Andrew informed the district court he had only progressed to the ninth grade and cannot read or write. [R. 84: Transcript, Rearraignment, Page ID # 311]. Mr. Andrew also advised the court about his intellectual disability, recalling that he was assigned to special education classes while in school and completed “first and second grade work all the way up to the ninth grade” when he dropped out. *Id.* at Page ID # 313. The court confirmed Mr. Andrew previously had been diagnosed with “mental capacity issues[.]” *Id.* at Lines 16-20. Defense counsel noted Mr. Andrew’s prior

diagnosis. *Id.* at Page ID # 314-15. The government also referenced the results of Mr. Andrew's competency evaluation. *Id.* at Page ID # 315.

The United States Probation Office (USPO) prepared Mr. Andrew's Pre-Sentence Investigation Report (PSR). USPO determined Mr. Andrew's "guideline range of imprisonment" was 210-240 months based on a total offense level of 33 and a criminal history category of V. [R. 80: Sealed PSR, Page 16, Paragraph 70]. Mr. Andrew filed notice regarding a potential downward departure pursuant to USSG §§ 5H1.3 and 5K2.13 based on his "life-long documented disability." *Id.* at Page 21. USPO incorporated Mr. Andrew's request into the PSR by way of addendum. *Id.*

Prior to sentencing, Mr. Andrew filed a sentencing memorandum reiterating his request for a downward departure pursuant to USSG §§ 5H1.3 and 5K2.13. [R. 72: Sealed Sentencing Memorandum, Page 8]. The memorandum also noted Mr. Andrew "has struggled to understand basic concepts and to communicate with others for his entire life." *Id.* Mr. Andrew attempted to work at various restaurants and other jobs, but his "intellectual deficit made it impossible to understand" instructions, "abbreviations, acronyms, and other terminology[.]" *Id.* at Page 5 (citing [R. 80: Sealed PSR, Page 16, Paragraph 67]).

At sentencing, defense counsel again emphasized that the "biggest driver of the offense conduct" is Mr. Andrew's "documented intellectual disability that puts

him in the first percentile, as low as possible, on the IQ scale.” [R. 85: Transcript, Sentencing, Page ID # 355-56]. Counsel noted Mr. Andrew’s “ability to understand verbal information, his perceptual reasoning, [and] his working memory” were also “all at the bottom of the scale[.]” *Id.* at Page ID # 356. Counsel reiterated that Mr. Andrew has “lived his entire life with a pretty serious intellectual deficit. It’s not just that he doesn’t think the way we do; it’s that he can’t.” *Id.* at Page ID # 357.

Defense counsel also noted that Mr. Andrew’s intellectual disability “makes him a target for other inmates” and noted pre-trial harassment he suffered at the hands of other inmates. *Id.* at Page ID # 359-60; [R. 72: Sealed Sentencing Memorandum, Page 6]. Counsel expressed concern that Mr. Andrew’s condition leaves him unequipped to handle interactions with others and more susceptible to abuse. *Id.* at Page ID # 360-61. Counsel reiterated the request for a downward departure based on Mr. Andrew’s status as a “developmentally-disabled person who...failed to fully comprehend the significance of his conduct at the time the offense was committed.” *Id.* at Page ID # 362, Lines 1-15.

The district court imposed a sentence of 180 months, “vary[ing] modestly” from the applicable Guidelines range. *Id.* at Page ID # 376-77; *id.* at Page ID # 373, Lines 20-22. The court did so because Mr. Andrew was abused as a child. *Id.* at Page ID # 373-74. At no point did the court address Mr. Andrew’s request for

downward departure pursuant to USSG §§ 5H1.3 and 5K2.13 or otherwise reference his intellectual disability.

On appeal, the Sixth Circuit affirmed the sentence, but noted the “main reason” the district court imposed the 180-month sentence was Mr. Andrew’s “childhood abuse[,]” not his intellectual disability. *See* Appendix B, Page 4. Despite the court making no reference to Mr. Andrew’s downward departure request at sentencing, the Sixth Circuit concluded “there [was] n o indication that the court did not review or appreciate his argument based on his intellectual disability.” *Id.*

## **REASONS FOR GRANTING THE WRIT**

### **I. The district court erred by failing to meaningfully address Mr. Andrew’s request for a downward departure based on his significantly reduced mental capacity in violation of 18 U.S.C. § 3553(a)(4)(A)(i).**

It is well-settled that sentencing courts must meaningfully consider a defendant’s “particular, non-frivolous argument in seeking a lower sentence[.]” *United States v. Gapinski*, 561 F.3d 467, 474 (6<sup>th</sup> Cir.2009) (citing *United States v. Lalonde*, 509 F.3d 750, 770 (6<sup>th</sup> Cir.2007)). If not, the sentence imposed is procedurally unreasonable. *See, e.g., United States v. Powell*, 679 Fed.Appx. 460, 462 (6<sup>th</sup> Cir.2017) (remand appropriate where district court “did not acknowledge” argument for lower sentence); *United States v. Kennedy*, 578 Fed.Appx. 582, 595

(6<sup>th</sup> Cir.2014) (remand appropriate where district court provided “no discussion” explaining rejection of argument for lower sentence).

Here, the district court entirely failed to address Mr. Andrew’s request for a downward departure pursuant to USSG §§ 5H1.3 and 5K2.13 based on his lifelong intellectual disability. The court made no reference to his departure request at sentencing. While it ultimately applied a modest downward variance, the court explained it was doing so because Mr. Andrew was abused as a child. *See* [R. 85: Transcript, Sentencing, Page ID # 373-74]. Particularly given the significance of his intellectual disability, the court’s total silence on Mr. Andrew’s downward departure request renders Mr. Andrew’s sentence procedurally unreasonable and violates 18 U.S.C. § 3553(a)(4)(A)(i)’s requirement that sentencing courts consider “the kinds of sentence and sentencing range” produced by full application of the Sentencing Guidelines.

To be sure, Mr. Andrew’s departure was specific and non-frivolous. Mr. Andrew underwent a Bureau of Prisons (BOP) psychological evaluation after he was charged in this case. Mr. Andrew remained at MCC Chicago for approximately eight months. As part of the evaluation, Mr. Andrew completed testing pursuant to the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV). [R. 38: Sealed Psychiatric Report, Page 7]. This assessment “measures an individual’s cognitive abilities, resulting in an overall intelligence quotient (IQ), as

well as scores for abilities in verbal comprehension, perceptual reasoning, working memory, and processing speed.” *Id.*

Mr. Andrew’s results on the WAIS-IV “reflect a full scale IQ score of 65[.]” *Id.* Dr. Allison Schenk, Forensic Unit Psychologist at MCC Chicago, noted “[t]his score is in the extremely low range of intelligence and the 1<sup>st</sup> percentile, which means his IQ score is equal to or higher than that of [only] 1% of individuals his age.” *Id.* Likewise, the score for verbal comprehension “measures one’s ability to examine and understand verbal information.” *Id.* Mr. Andrew’s verbal comprehension score was 63, also “in the 1<sup>st</sup> percentile and the extremely low range.” *Id.* Mr. Andrew’s results for perceptual reasoning, working memory, and processing speed were similar. *Id.* As a result, Dr. Schenk concluded that “Mr. Andrew’s intellectual functioning is below average in all domains[.]” *Id.*

As detailed in his sentencing memorandum and at sentencing, Mr. Andrew has struggled with this condition all his life, which explains his difficulties in school and with employment. Mr. Andrew has been unable to function even in the most basic work environments because his “intellectual deficit made it impossible to understand” instructions, “abbreviations, acronyms, and other terminology[.]” These difficulties also contributed to Mr. Andrew’s long history of substance abuse. *See* [R. 80: Sealed PSR, Paragraph 67]. Despite these circumstances, Mr. Andrew has never undergone psychiatric counseling or drug treatment, both

undoubtedly contributing to his offense conduct and difficulties in life more generally.

These are the kinds of circumstances our sentencing statutes and constitutional due process protections require sentencing courts to address. Mr. Andrew is not the average offender. “It’s not just that he doesn’t think the way we do; it’s that he can’t.” [R. 85: Transcript, Sentencing, Page ID # 355-56]. This is why it was imperative for the district court to meaningfully address his argument for a downward departure from the otherwise applicable Guidelines range of 210-240 months. Instead, as the Sixth Circuit acknowledged, the court made no reference to Mr. Andrew’s intellectual disability. *See* Appendix B, Page 4.

Given this Court’s concern for the types of sentences imposed on individuals with significant mental impairment, Mr. Andrew respectfully asks this Court to grant certiorari to ensure he and others like him receive meaningful consideration from our court system. *See, e.g., Atkins v. Virginia*, 536 U.S. 304 (2002); *Hall v. Florida*, 572 U.S. 701 (2014); *Moore v. Texas*, 137 S.Ct. 1039 (2017); *Moore v. Texas II*, 139 S.Ct. 666 (2019).

## **CONCLUSION**

For the foregoing reasons, Mr. Andrew respectfully asks this Court to grant his petition for the issuance of a writ of certiorari for the purpose of vacating his sentence.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Jarrod J. Beck, counsel for Petitioner Leonard Andrew, do hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, Washington, DC 20543. I also certify that a true copy of the Petition was served by mail with first-class postage prepaid upon Assistant United States Attorney John Patrick Grant, Assistant United States Attorney, 260 West Vine Street, Suite 300, Lexington, Kentucky 40507-1612.

This 26<sup>th</sup> day of August, 2022.

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JARROD J. BECK

COUNSEL FOR LEONARD ANDREW