

No. 22-7717

In the

Supreme Court of the United States

CHRISTOPHER A. BERNARD
Petitioner

v.

UNITED STATES OF AMERICA
Respondent.

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

PETITIONER'S REPLY TO THE BRIEF OF THE UNITED STATES

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Arguments in Reply

The Government identifies four numbered reasons why this Court should not review this case. None, however, provides a sufficient reason why this Court should not use this case to resolve the circuit split on this issue.

1. In its first argument, the Government contends that the appellate court correctly applied plain error because the Petitioner failed to object during sentencing.¹ This point not only begs the question presented in this petition, but it overlooks the need for this Court to resolve the circuit split on this issue.

2. The Government next accuses Petitioner of arguing that the Fifth Circuit’s application of plain error is at odds with this Court’s holding in *Hoguin-Hernandez*, and that such argument is “mistaken.”² Petitioner, however, did not make that argument. Rather, the Petitioner argued that *de novo* review *would not be inconsistent* with this Court’s holding in *Hoguin-Hernandez*, and he further noted that this Court, that decision, expressly left open the question raised in this petition.

3. The Government argues that the disagreement among the circuits on this issue “is narrower than the petitioner suggests.”³ Petitioner argued that the Fifth Circuit’s established rule—that plain error applies whenever the defense does not object to the district’s failure to adequately articulate reasons for sentence—is directly at odds with the rule consistently applied in the Fourth and Eleventh Circuits, a rule that was reaffirmed in both circuits this year. Hence, the split in the circuits is exactly as the Petitioner has described it. That this Court has yet to elect to review this issue does not alter the fact that there is a clear split among the circuits.

¹ Government’s Brief at 6-7.

² *Id.* at 7-9.

³ *Id.* at 9-11.

4. Finally, the Government concludes that this particular case would be a “poor vehicle” for resolving this issue because the inadequacy of the district court’s reasons “had no practical effect” on Petitioner’s sentence.⁴ In response to this contention, the Petitioner repeats the argument he made to the court of appeals in this case:

The district court opined that Bernard’s claim that he was not a career offender was “a very good legal issue” that this Court “should look at.” The court further agreed that if this Court should find that the district court was wrong in its legal determination that Bernard is a career offender, then the “sentenced would have been quite different.” In other words, the court expressed no independent basis for concluding that Bernard’s offense conduct merited a 262-month sentence; rather, the court agreed that but for the purely legal question regarding the applicability of the career-offender guideline in this particular case, a sentence of less than a mere quarter of the one actually imposed would have been sufficient to serve the goals of § 3553(a).

Had Bernard insisted that the district court pronounce a reasoned basis for rejecting a below-guidelines sentence, there is a reasonable likelihood that the court would have come to understand that it was misguided in its belief that Bernard’s career-offender argument was “a very good legal issue” that this Court might resolve in Bernard’s favor. That belief was misguided for the very reasons that the district court rejected it: Bernard is definitionally a career offender under a straightforward application of the unambiguous language of § 4A1.2(a)(2). In turn, the court may well have understood that the equitable considerations underlying Bernard’s legal argument, to which the court seemed sympathetic, could not be addressed by this Court but could have only been remedied by the district court through the granting of Bernard’s request for downward variance.

Given the very dramatic effect the application of the career-offender guideline had on the Petitioner’s sentence—from 60 to 66 months to 262 to 327 months—the district court’s failure to explain why it was rejecting Petitioner’s well-reasoned arguments for a downward variance may well have affected Petitioner’s ability to obtain a lower sentence, either by the district court at sentencing or on remand following the Fifth Circuit’s *de novo* review of the district court’s ruling

⁴ *Id.* at 11-12.

Conclusion

This Court should grant certiorari to address whether the holding in *Holguin-Hernandez*, extends to the adequacy of the reasons imposed for sentence and to resolve the split among the circuits on this issue.

Respectfully submitted,

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