No. _____

In The
Supreme Court of the United States

GREGORY JAMAL WILLIAMS,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the lower court should have remanded for the recalculation of sentencing in light of changes in the United States Supreme Court and the Fifth Circuit that occurred post sentencing but while still on direct appeal regarding the gun enhancement under the United States Sentencing Guidelines.

Whether the United States District Court properly applied and the Fifth Circuit properly upheld the Importation Guideline under the United States Sentencing Guidelines.

Whether the United States District Court properly applied and the Fifth Circuit properly upheld the guideline regarding the Distinction Between ICE and Methamphetamine under the United States Sentencing Guidelines.

Whether the United States District Court properly applied and the Fifth Circuit properly upheld the guideline regarding the Leadership Role under the United States Sentencing Guidelines.

LIST OF PARTIES TO PROCEEDING

1. Gregory Jamal Williams, Petitioner
2. State of Mississippi, Respondent

RELATED CASES

United States of America vs. Gregory Jamal Williams, Criminal *No. 3:20-cr-00147-DPJ-LGI* United States District Court, Southern District of Mississippi, Northern Division. Judgment entered April 11, 2023.

United States of America vs. Gregory Jamal Williams, Cause No. *23-60211* United States Court of Appeals for the Fifth Circuit. Judgment entered October 23, 2023. Rehearing denied January 2, 2024.

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PETITION FOR WRIT OF CERTIORARI

Gregory Williams, an inmate currently at the Talladega Federal Correctional Facility, by and through his attorney, Cynthia A. Stewart, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit unpublished opinion affirming the District Court's judgment is reported as *United States v. Williams*, 83 F.4th 994 (5th Cir. 2023). See Appendix (App.) 1.

JURISDICTIONAL STATEMENT

The Fifth Circuit rendered judgment on October 23, 2023. See App. 1. This petition is timely filed pursuant to Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves 18 U.S.C.S. § 3553(b)(1) and 18 U.S.C.S. § 3742.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves United States Constitution, Amendments II, IV, VI and VIII.

United States Constitution, Amendment II

> A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

United States Constitution, Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Pursuant to his indictment, Defendant Williams was charged with two counts of Possession with Intent to Distribute Fifty Grams or More of **Methamphetamine**, in violation of Title 21 U.S.C. § 841(a)(1) and 841(b)(1)(A), one count of Conspiracy to Possess with Intent to Distribute Fifty Grams or More of Methamphetamine, in violation of Title 21 U.S.C. § 846, one count of Possession with Intent to Distribute Five Grams or More of Methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1) and § 841(b)(1)(B) and two counts of Possession with Intent to Distribute a mixture and substance containing heroin in violation of Title 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C).

On October 12, 2022, Mr. Williams entered an open plea of guilty to the 6-count indictment and was sentenced to 360 months as to Counts 1, 2, 3, and 4 and 240 months as to Counts 5 and 6, to run concurrently, in the BOP. The term of imprisonment shall be immediately followed by a 5-year term of supervised release as to Counts 1, 2, 3, and 4 and a 3-year term of supervised release as to Counts 5 and 6, to run

concurrently. Defendant is ordered to pay a partial fine in the amount of $1,500.00 and a special assessment fee in the amount of $600.00.

File notice of appeal on April 19, 2023. The decision of the lower Court was affirmed and an opinion issued on October 23, 2023. A Petition for rehearing was filed on or about November 6, 2023. See App. 12. Rehearing was denied on or about January 2, 2024. See App. 10.

On November 17, 2022, the undersigned received Mr. Williams's original PSIR from the United States Probation Office. The undersigned subsequently submitted Mr. Williams's objections to that PSIR. Those objections included Mr. Williams's objection to Numbered Paragraph 38 of the PSIR. That paragraph set Mr. Williams's Base Offense Level at 34 pursuant to U.S.S.G. § 2D1.1(a)(5) and (c)(4) because (1) the amount of methamphetamine attributable to Mr. Williams's conduct was 214.4 grams, and (2) the substance at issue reportedly had a purity level between 96% and 97%.[1] The defense did not object to the quantity of the substance or the purity level as determined by the laboratory that tested the substance for purity. The objection was based on the fact that the Base Offense Level of 34 for "'actual' methamphetamine" required that the offense involved "at least 150 grams but less than 500 grams" of "'actual' methamphetamine," but that if the offense instead involved "at least 150 grams but less than 500 grams" of methamphetamine, Mr.

[1] U.S.S.G. § 2D1.1(a)(5) and (c)(4).

Williams's Base Offense Level would have been a 30 pursuant to U.S.S.G. § 2D1.1(a)(5) and (c)(7).[2] The undersigned argued on Mr. Williams's behalf that the Sentencing Guidelines' policy statement regarding this ten-to-one distinction and its resulting huge distinction in base offense levels was unjustified and not based on empirical data.

With very little criminal history and relatively low-level drug sales, the District court imposed a draconian sentence that in effect essentially constitutes a life sentence. Galloway, who operated the barbershop that was the hub of the operation and initiated the entire string of sales had his charges dismissed Doc.#. 93, Doc. #117(Cause No. 3:20-cr-147-2); Sage Braddy received a sentence of 87 months in the BOP to be followed by a 3-year term of supervised release. Defendant is ordered to pay a partial fine in the amount of $1,500.00 and a special assessment fee in the amount of $100.00. Doc. # 104(Cause No. 3:20-cr-147-3); Jeffrey Rivers was sentenced to 120 months imprisonment (to run concurrently with Rankin County Circuit Court Docket No.: 30446) followed by a 5 year term supervised release. Ordered to pay $1,000.00 fine and $100.00 special assessment fee. Doc. #31 (Cause No. 3:21cr00016, United States District Court, Southern District, Northern Division).

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[2] U.S.S.G. § 2D1.1(a)(5), (c)(4), and (c)(7).

The Government failed to meet its burden of proof and the analysis of the Court resulted in a sentence that should be remanded for resentencing.

The Court making the Distinction between ICE and Methamphetamine violated Williams' constitutional rights to due process, a fair trial, effective assistance of counsel and the prohibition against cruel and unusual punishment. It also violates the principles of equity upon which the guidelines are based and creates great disparity between similarly situated defendants. It is also contrary to the trend in district court holdings across the country. Williams' objection to enhancement for a leadership role. The leader of the drug operation was Galloway whose charges were dismissed and the other co-defendants participated with Williams.

Williams objected to the importation enhancement as violating his constitutional right to due process, fair trial and effective assistance of counsel. In addition, as asserted, the government failed to meet its burden of proof of any connection at all between Williams and any one out of the country.

I. The Enhancement Possession of a Gun Applied to this Defendant changed after Sentencing while still on Direct Appeal

Standard of Review before Fifth Circuit:

A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous

assessment of the evidence. *United States v. Romans*, 823 F.3d 299 (5th Cir. 2016); *United States v. Jones*, 733 F.3d 574, 587 (5th Cir. 2013). In the context of sentencing decisions, a court abuses that discretion where it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).[3]

Pursuant to *Williams v. Strain*, No. 13-2998, 2014 U.S. Dist. LEXIS 146950 (E.D. La. Sep. 16, 2014), given this is still on direct appeal and subsequent law has addressed the issue of enhancement regarding a firearm. During the course of this direct appeal the law changed and the Court should reconsider and remand for a new sentencing hearing. Pursuant to *Teague v. Lane*, 489 U.S. 288 (1989) and its progeny, subsequent case law is relevant to cases on direct appeal when the new case law is decided.

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[3] **Consideration [Caution: In United States v. Booker (2005) 543 U.S. 220, 160 L. Ed. 2d 621, 125 S. Ct. 738, the Supreme Court held (1) that 18 U.S.C.S. § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984, and (2) that 18 U.S.C.S. § 3742(e), which depends upon the Guidelines' mandatory nature, also must be severed and excised.].**

Subsequent case law strongly suggests that application of something no longer a crime, or enhancement thereof is not appropriate. See the following cases:

Under *United States v. Davis*, 77 F.4th 337 (5th Cir. 2023) the mere enhancement of a gun is not a crime or appropriate for sentencing enhancement. It is not applicable to the computation of the appropriate sentencing guideline range.

United States v. Davis, 77 F.4th 337 (5th Cir. 2023) strongly suggests that the enhancement for possession of a gun is inappropriately applied to this case. The opinion came down while this case was still on direct appeal and therefore the appropriate consideration is either inapplicability or a need for remand for the trial court to reconsider whether it is appropriate to enhance this defendant under the circumstances.

This would significantly affect the federal sentencing guideline calculation and therefore requires recalculation by the lower court or this Court.

Pursuant to *United States v. Davis*, 77 F.4th 337 (5th Cir. 2023), on cases pending direct appeal, like Mr. Williams', the announcement of a new case requires reconsideration by the lower court.

Davis, *ibid.*, also establishes that if something is no longer legal during the pendency of direct appeal it requires reconsideration.

II. The Court making the Distinction Between ICE and Methamphetamine violated Williams' constitutional rights to due process, a fair trial, effective assistance of counsel and the prohibition against cruel and unusual punishment.

a. Standard of Review before Fifth Circuit:

A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence. *United States v. Romans*, 823 F.3d 299 (5th Cir. 2016); *United States v. Jones*, 733 F.3d 574, 587 (5th Cir. 2013). In the context of sentencing decisions, a court abuses that discretion where it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).[4]

As set out in 18 U.S.C. § 3742, "defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

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[4] **Consideration [Caution: In United States v. Booker (2005) 543 U.S. 220, 160 L. Ed. 2d 621, 125 S. Ct. 738, the Supreme Court held (1) that 18 U.S.C.S. § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984, and (2) that 18 U.S.C.S. § 3742(e), which depends upon the Guidelines' mandatory nature, also must be severed and excised.].**

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [18 U.S.C.S. § 3563(b)(6) or (b)(11)] than the maximum established in the guideline range . . .

Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c) [18 U.S.C.S. § 3553(c)];

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2) [18 U.S.C.S. § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 U.S.C.S. § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 U.S.C.S. § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c) [18 U.S.C.S. § 3553(c)]; or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) Decision and disposition. If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the

sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

The Circuit Court reviews the district court's interpretation and application of the guidelines de novo and the district court's factual findings for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir.

2019), Cert. denied, 140 S. Ct. 1282, 206 L. Ed. 2d 264 (2020).

The defense previously objected to the base offense level reported in Mr. Williams' original Presentence Investigation Report ("PSIR") and the revised version of that report on the grounds that the United States Sentencing Guidelines arbitrarily and capriciously distinguish between methamphetamine and so-called "'actual' methamphetamine" in an empirically unjustified manner. The result of this distinction is a substantially varied base offense level resulting from an approximately ten-to-one sentence disparity between crimes involving so-called "'actual' methamphetamine" as compared to crimes involving methamphetamine, all other factors and circumstances surrounding such crimes being equal. We ask this Court to reject that supposed distinction and join a number of other federal courts[5] around the country that have begun sentencing defendants in line with the methamphetamine-related guidelines, even when the purity level of the methamphetamine is of a purity

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[5] *See United States v. Scott Michael Harry*, 2:17cr1017LTS [Ct. Doc. No. 108, June 6, 2018, in the United States District Court for the Northern District of Iowa; Northern Division]; *see also United States v. Tyson Scott Nawanna*, 321 F. Supp. 3d 943, 947 (N.D. Iowa 2018) [Ct. Doc. No. 54, May 1, 2018, in the United States District Court for the Northern District of Iowa, Western Division; *United States v. Jose Alberto Rodriguez, Jr.*, 3:17cr31TMB [April 5, 2019, in the United States District Court for the District of Alaska (Citing Other Courts); *United States v. Hartle*, No. 4:16-cv-00233-BLW, 2017 WL 2608221 at *1 (D. Idaho June 15, 2017); *United States v. Ibarra-Sandoval*, 265 F. Supp. 3d 1249, 1255 (D.NM 2017).

level, eighty percent or higher, that would arguably fall within that range for which the Guidelines would define the substance as "'actual' methamphetamine."

This includes cases in this District. In *United States v. Tementa Robinson*, Cause No. 3:21-cv-00014-CWR-FKB, Document 103(12/23/22). As that Order pointed pout "defendants caught with methamphetamine get longer sentences than defendants caught with methamphetamine mixture." The order quotes *United States v. Hayes*, 948 F. Supp. 2d 1009, 1025 (N.D. Iowa 2013) "No other drug is. Punished more severely based on purity."

Interestingly, the government appealed the District Court decision in *Robinson* and later voluntarily dismissed the appeal. (CA No. 23-60115)

Furthermore, the Order noted that "[e]mpirical data and national trends bear out . . . that everyone involved with methamphetamine today, whether a drug lord or and end user, has access to a substantially pure, uncut product."

As a result, the sentencing of defendants in this district and across the country has resulted in a lack of equity in sentencing, one of the primary goals in the establishment of Federal Sentencing Guidelines, and a violation of the Equal Protection Clause of the United States Constitution.

In the introduction, Authority and General Application Principle, the Guidelines themselves note one of the primary purposes of Congress in enacting

guidelines was to "establish reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders." (USFSG p.2)

A sentence does not have to be unreasonably too high or unreasonably too low before the reviewing court can vacate it under 18 U.S.C. § 3742(f)(2). **This court will vacate when sentence is too high or too low compared to sentences within range or reasonableness. *United States v. Jones*, 460 F.3d 191 (2d Cir. 2006).**

See the two articles, one from the Drug Enforcement Agency, showing that high purity methamphetamine labs exist in the United States. The Guideline analysis for the distinction between methamphetamine and "ICE" based in part on the assumption that a higher level of purity indicated a higher level in the drug chain. This is simply no longer true. The DEA data shows that most methamphetamine confiscated today is "pure" regardless of whether the defendant is a kingpin or a low level addict. *See United States v. Hendricks*, 307 F. Supp. 3d 1104, 1108 (D. Idaho 2018) (Today, most methamphetamine seized at all distribution levels is remarkably pure, which means that higher purity is not a good indicator of a defendant's place in the chain of distribution"; *United States v. Carrillo*, 440 F. Supp. 3d 1148, 1154 (E.D. Cal. 2020); (Since the Guidelines first took effect, unusually pure methamphetamine has become increasingly more common.")

For the reasons that follow, the defense moved the District Court to calculate Mr. Williams's base offense level under guidelines without regard to substance purity and hold his Base Offense Level as a 30 as if the substance was classified as methamphetamine, rather than a Base Offense Level of 34 based on the substance being so-called "'actual' methamphetamine."

On November 17, 2022, the undersigned received Mr. Williams's original PSIR from the United States Probation Office. The undersigned subsequently submitted Mr. Williams's objections to that PSIR. Those objections included Mr. Williams's objection to Numbered Paragraph 38 of the PSIR. This issue was also raised in a Motion for Downward Departure and/or Variance. That paragraph set Mr. Williams's Base Offense Level at 34 pursuant to U.S.S.G. § 2D1.1(a)(5) and (c)(4) because (1) the amount of methamphetamine attributable to Mr. Williams's conduct was 214.4 grams, and (2) the substance at issue reportedly had a purity level between 96% and 97%.[6] The defense did not object to the quantity of the substance or the purity level as determined by the laboratory that tested the substance for purity. The objection was based on the fact that the Base Offense Level of 34 for "'actual' methamphetamine" required that the offense involved "at least 150 grams but less than 500 grams" of "'actual' methamphetamine," but that if the offense instead involved "at least 150 grams but less than 500 grams" of methamphetamine, Mr. Williams's Base

[6] U.S.S.G. § 2D1.1(a)(5) and (c)(4).

Offense Level would have been a 30 pursuant to U.S.S.G. § 2D1.1(a)(5) and (c)(7).[7] The undersigned argued on Mr. Williams's behalf that the Sentencing Guidelines' policy statement regarding this ten-to-one distinction and its resulting huge distinction in base offense levels was unjustified and not based on empirical data.

It is noteworthy that the burden of proof lies with the Government, and they failed to meet their burden not knowing whether any labs existed in the United States, what phones were wire tapped, or where Williams fell in the drug hierarchy. § 6A1.3 § 14 of the Guidelines provides: "the burden of persuasion is on the party seeking to prove to dispute the fact . Thus the burden is on the government to establish such facts as the quantity of drugs . . . or whether defendant was responsible for all relevant conduct."[8] The Court, in fact, declined to apply the entire enhancement. 3(b)1.1(a)—(b) concluding that this defendant was not at the top of the drug hierarchy.

III. The Distinction between ICE and Methamphetamine as applied to Williams violates the Due Process Clause of the United States Constitution.

a. Standard of Review before Fifth Circuit:

A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous

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[7] U.S.S.G. § 2D1.1(a)(5), (c)(4), and (c)(7).

[8] U.S.S.G. §6A1.3 §14.

assessment of the evidence. *United States v. Romans*, 823 F.3d 299 (5th Cir. 2016); *United States v. Jones*, 733 F.3d 574, 587 (5th Cir. 2013). In the context of sentencing decisions, a court abuses that discretion where it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).[9]

As set out in 18 U.S.C. § 3742, "defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release

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[9] **Consideration [Caution: In United States v. Booker (2005) 543 U.S. 220, 160 L. Ed. 2d 621, 125 S. Ct. 738, the Supreme Court held (1) that 18 U.S.C.S. § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984, and (2) that 18 U.S.C.S. § 3742(e), which depends upon the Guidelines' mandatory nature, also must be severed and excised.].**

under section 3563(b)(6) or (b)(11) [18 U.S.C.S. § 3563(b)(6) or (b)(11)] than the maximum established in the guideline range . . .

Upon review of the record, the court of appeals shall determine whether the sentence—

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(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c) [18 U.S.C.S. § 3553(c)];

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2) [18 U.S.C.S. § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 U.S.C.S. § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 U.S.C.S. § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court

pursuant to the provisions of section 3553(c) [18 U.S.C.S. § 3553(c)]; or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

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there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

> This Court reviews the district court's interpretation and application of the guidelines de novo and the district court's factual findings for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019), Cert. denied, 140 S. Ct. 1282, 206 L. Ed. 2d 264 (2020).

For all the reasons set for the above The Distinction between ICE and Methamphetamine as applied to Williams violates the Due Process Clause of the United States Constitution.

IV. Leadership Role

a. Standard of Review before Fifth Circuit:

A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence. *United States v. Romans*, 823 F.3d 299 (5th Cir. 2016); *United States v. Jones*, 733 F.3d 574, 587 (5th Cir. 2013). In the context of sentencing decisions, a court abuses that discretion where it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).[10]

As set out in 18 U.S.C. § 3742, "defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

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(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [18 U.S.C.S. § 3563(b)(6) or (b)(11)] than the maximum established in the guideline range . . .

Upon review of the record, the court of appeals shall determine whether the sentence—

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(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2) [18 U.S.C.S. § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 U.S.C.S. § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 U.S.C.S. § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c) [18 U.S.C.S. § 3553(c)]; or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) Decision and disposition. If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

This Court reviews the district court's interpretation and application of the guidelines de novo and the district court's factual findings for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019), Cert. denied, 140 S. Ct. 1282, 206 L. Ed. 2d 264 (2020). This issue involves both.

The specific facts related to Mr. Williams in this case do not at all indicate he was a leader, organizer, or

high up on any sort of hierarchy in the drug trade. The facts in the PSIR show just the opposite. He stored drugs and did not participate in setting prices or locations for transactions related to those drugs.

Co-defendant Galloway initiated the entire operation and continued to participate in the individual transactions. In addition, the operation was run out of his barbershop business. Co-defendant Sage Braddy participated in all transactions and there is no evidence to indicate he was being directed to do so by this defendant. The fact that a defendant played an essential role in the offense (which is the case with all three co-defendants here) is not sufficient to support the enhancement. In determining whether a defendant played a supervisor/manager role in an offense, a court should consider such factors as the exercise of decision-making authority, the degree of participation in planning or organizing the offense (In this instance, that would fall on Galloway), and the degree of control and authority exercised over others. U.S.S.G. 3B1.1. See *United States v. Sherrod*, 964 F.2d 1501, 1504 (5th Cir. 1992).

V. Objection to Importation Enhancement

a. Standard of Review before Fifth Circuit:

A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence. *United States v. Romans*, 823 F.3d 299 (5th Cir. 2016); *United States v. Jones*, 733 F.3d 574, 587 (5th Cir. 2013). In the context of

sentencing decisions, a court abuses that discretion where it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).[11]

As set out in 18 U.S.C. § 3742, "defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [18 U.S.C.S.

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[11] **Consideration [Caution: In United States v. Booker (2005) 543 U.S. 220, 160 L. Ed. 2d 621, 125 S. Ct. 738, the Supreme Court held (1) that 18 U.S.C.S. § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984, and (2) that 18 U.S.C.S. § 3742(e), which depends upon the Guidelines' mandatory nature, also must be severed and excised.].**

§ 3563(b)(6) or (b)(11)] than the maximum established in the guideline range . . .

Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c) [18 U.S.C.S. § 3553(c)];

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2) [18 U.S.C.S. § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 U.S.C.S. § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 U.S.C.S. § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c) [18 U.S.C.S. § 3553(c)]; or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) Decision and disposition. If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

"We review the district court's factual determination that an offense involved the importation of methamphetamine for clear error." *United States v. Nimerfroh*, 716 F. App'x 311, 315 (5th Cir. 2018) (per curiam); *see also United States v. Serfass*, 684 F.3d 548, 550 (5th Cir. 2012). See also *United States v. Brune*, 991 F.3d 652 (5th Cir. 2021)

This Court reviews the district court's interpretation and application of the guidelines de novo and the district court's factual findings for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019), Cert. denied, 140 S. Ct. 1282, 206 L. Ed. 2d 264 (2020).

Moreover, the discovery materials in this case in no way suggest he participated as any sort of importer of drugs across the border where most of these sorts of illegal substances originate or that he had any knowledge of the original source of the drugs. There

is no proof of any importation. The Government misleads the Court by suggesting the absence of discovery of high purity methamphetamine labs in the United States supports importation. This is simply not accurate. There are two articles, one from the Drug Enforcement Agency, showing that high purity methamphetamine labs exist in the United States.

It is the Government's burden to prove importation. No proof is offered. Furthermore, the Government's argument is inaccurate since in the general region, high purity labs exist. The Government could not deny the existence of high purity labs in the United States. Nor could it establish any actual connection between Williams and anyone out of the United States, despite many wire taps of Williams' phone. The most the agent could say was there might have been other phones.

The Government must prove the facts underlying a sentencing enhancement by a preponderance of the evidence. *Serfas*s, 684 F.3d at 553 (citing *United States v. Rodriquez*, 630 F.3d 377, 380 (5th Cir. 2011).

Section 2D1.1(b)(5) provides for a two-level enhancement if "the offense involved the importation of amphetamine or methamphetamine" and the defendant does not receive a mitigating role adjustment. U.S.S.G. § 2D1.1(b)(5).

> We have previously found the importation enhancement warranted where the PSR clearly stated that the drugs at issue were imported from Mexico. *See*, *e.g.*, *United States v. Foulks*,

> 747 F.3d 914, 915 (5th Cir. 2014); *United States v. Moreno*, 598 F. App'x 261, 263 (5th Cir. 2015); *United States v. Vasquez*, 596 F. App'x 260, 263 (5th Cir. 2014). Here, however, the PSR lacks any discussion of importation aside from Nimerfroh's mention that he was dealing with the "cartel." Even if his use of the word "cartel" could be read to mean a Mexican cartel, such reading says nothing about where the cartel's activities took place nor does it speak to where the methamphetamine came from and whether it was imported. A Mexican cartel could have manufactured the methamphetamine within the United States and then sold it to Nimerfroh—no importation required. Therefore, considering the record as a whole, there is insufficient evidence to infer that the methamphetamine Nimerfroh possessed had been imported from Mexico. Accordingly, the district court clearly erred by applying the § 2D1.1(b)(5) enhancement.

United States v. Nimerfroh, 716 F. App'x 311 (5th Cir. 2018)

VI. Guideline Purpose Applied to Gregory Williams

a. Standard of Review before Fifth Circuit:

A district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence. *United States v. Romans*, 823 F.3d 299 (5th Cir. 2016); *United States v. Jones*, 733 F.3d 574, 587 (5th Cir. 2013). In the context of

sentencing decisions, a court abuses that discretion where it "(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).[12]

As set out in 18 U.S.C. § 3742, "defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [18 U.S.C.S.

---

[12] **Consideration [Caution: In United States v. Booker (2005) 543 U.S. 220, 160 L. Ed. 2d 621, 125 S. Ct. 738, the Supreme Court held (1) that 18 U.S.C.S. § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984, and (2) that 18 U.S.C.S. § 3742(e), which depends upon the Guidelines' mandatory nature, also must be severed and excised.].**

§ 3563(b)(6) or (b)(11)] than the maximum established in the guideline range . . .

Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c) [18 U.S.C.S. § 3553(c)];

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2) [18 U.S.C.S. § 3553(a)(2)]; or

(ii) is not authorized under section 3553(b) [18 U.S.C.S. § 3553(b)]; or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title [18 U.S.C.S. § 3553(a)] and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c) [18 U.S.C.S. § 3553(c)]; or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) Decision and disposition. If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

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(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

This Court reviews the district court's interpretation and application of the guidelines de novo and the district court's factual findings for clear error. *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019), Cert. denied, 140 S. Ct. 1282, 206 L. Ed. 2d 264 (2020).

Gregory Williams is forty-two years old, with neither a high school diploma nor a GED.

He has a 1997 conviction for possession of cocaine, not considered in the guideline calculation because of the age of the conviction. He also has a 2008 felony conviction for sale of cocaine.

He has no history of violence.

REASON FOR GRANTING THE WRIT

New caselaw regarding the gun enhancement applied to Williams requires remand and sentence reduction. The lower court improperly applied the ICE/methamphetamine distinction and the importation enhancement under the federal sentencing guidelines.

CONCLUSION

In summary, Williams' draconian sentence violates the explicitly stated purpose of the guidelines, the purpose for the original distinction between ICE and methamphetamine, equity and the stated constitutional violations. Furthermore, the government failed to meet its burden of proof, presenting smoke and mirrors and a stated lack of information instead. **Most importantly the case should have been remanded for recalculation of the sentence as a result of a change under the law regarding the gun enhancement occurring after Williams sentencing but while his case was still on direct appeal.** For this reason, the Court should remand for resentencing.

Respectfully submitted,

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APPENDIX

APPENDIX TABLE OF CONTENTS

App. 1

United States Court of Appeals
for the Fifth Circuit

No. 23-60211
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff — Appellee,

versus

GREGORY JAMAL WILLIAMS,

Defendant — Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CR-147-1

(Filed Oct. 23, 2023)

Before HAYNES, GRAVES, and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Following his guilty plea conviction on multiple drug-trafficking charges, Gregory Jamal Williams was sentenced within the guidelines range to 360 months of imprisonment. On appeal, he contends that the

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* This opinion is not designated for publication. *See* 5th CIR. R. 47.5.

sentencing enhancements he received for importation of methamphetamine, pursuant to U.S.S.G. § 2D1.1(b)(5), and for being a manager or supervisor, pursuant to U.S.S.G. § 3B1.1(b), were error. He also contends that the district court erred in refusing to depart downwardly based on § 2D1.1's harsher treatment of "ice" as compared to actual methamphetamine, which treatment he asserts lacks an empirical basis and results in unwanted sentencing disparities.

Williams briefs no argument challenging the district court's assessment of a two-level enhancement for possessing a dangerous weapon under U.S.S.G. § 2D1.1(b)(1), and he likewise briefs no argument challenging the district court's drug-quantity calculations under the methamphetamine Guideline. Accordingly, he has abandoned any such challenge. *See United States v. Still*, 102 F.3d 118, 122 n.7 (5th Cir. 1996); *Beasley v. McCotter*, 798 F.2d 116, 118 (5th Cir. 1986). Although he additionally asserts that the district court violated his due process rights, his right to the effective assistance of counsel, and his Eighth Amendment rights by basing his sentence on "ice" rather than actual methamphetamine, the arguments are wholly conclusional and inadequately briefed and thus will not be considered. *See* Fed. R. App. P. 28(a)(8)(A); *United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010); *see also Beasley*, 798 F.2d at 118.

Inasmuch as Williams contends that the importation enhancement is error because the Government did not present direct evidence that the drugs he sold in fact came from a Mexican source or that he knew that

they were imported, the argument is patently incorrect. *See United States v. Arayatanon*, 980 F.3d 444, 452 (5th Cir. 2020) (upholding importation enhancement based on circumstantial evidence). Special Agent Rayner's testimony at sentencing provided sufficient proof of strong indicators that the drugs involved in the offense came from Mexico, including testimony that the high purity, high volume, low cost, and unvarying color and quality of the drugs were consistent with the large-scale production of methamphetamine in Mexico, which testimony was corroborated by the DEA reports the Government had submitted prior to sentencing. Special Agent Rayner also presented proof that Williams and his girlfriend had traveled from Jackson, Mississippi, to the border town of El Paso, indicating a nexus to Mexican supply, and he further explained that Williams had ventured into the sale of fentanyl-laced heroin, a practice promoted by Mexican drug cartels.

Williams briefs no argument challenging the district court's reliance on this evidence to support a plausible inference of importation, and he specifically fails to demonstrate that the Government's evidence was inaccurate or untrue. *See United States v. Gomez-Alvarez*, 781 F.3d 787, 796 (5th Cir. 2015); *see also Still*, 102 F.3d at 122 n.7; *Beasley*, 798 F.2d at 118. Given Special Agent Rayner's testimony, the district court's finding of importation is plausible in light of the record as a whole, and this court will therefore uphold the § 2D1.1(b)(5) enhancement. *See United States v. Brune*, 991 F.3d 652, 667 (5th Cir. 2021), *cert. denied*, 142 S. Ct.

755 (2022); *Arayatanon*, 980 F.3d at 452; *United States v. Rico*, 864 F.3d 381, 383 (5th Cir. 2017).

Next, Williams challenges the district court's assessment of a three-level enhancement for his role in the offense. He urges that he was a mere participant in the drug-trafficking conspiracy and that did not set prices or direct transactions and thus was not a manager or supervisor for purposes of § 3B1.1(b).

These conclusional assertions are directly refuted by the record, specifically Special Agent Rayner's testimony that, in four controlled purchases with a confidential informant (CI), Williams directly negotiated the terms of the sale, including the quantity, type, and price of the drugs, dictated the places where the transactions would occur, and commanded others, including his son, to deliver the drugs to the CI. Given this unrebutted evidence, *see United States v. Parker*, 133 F.3d 322, 329 (5th Cir. 1998), the district court did not clearly err in finding that Williams exercised supervisory or managerial responsibility, and this court must similarly uphold the § 3B1.1(b) enhancement. *United States v. Ochoa-Gomez*, 777 F.3d 278, 281-83 (5th Cir. 2015).

Although Williams's argument that § 2D1.1 is not empirically grounded and results in unwarranted sentencing disparities implicates the substantive reasonableness of his sentence, his arguments are insufficient to rebut the presumption of reasonableness afforded his within-guidelines sentence. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009). Whatever

appropriate deviations it may permit or encourage at the discretion of the district judge, "*Kimbrough* does not force district or appellate courts into a piece-by-piece analysis of the empirical grounding behind each part of the sentencing guidelines." *United States v. Duarte*, 569 F.3d 528, 530 (5th Cir. 2009) (citing *Kimbrough v. United States*, 552 U.S. 85, 109 (2007)). Additionally, *Kimbrough* does not disturb the presumption of reasonableness given to his within-guidelines sentence "even if the relevant Guideline is not empirically based." *United States v. Lara*, 23 F.4th 459, 485 (5th Cir.) (citing *United States v. Mondragon-Santiago*, 564 F.3d 357, 366–67 (5th Cir. 2009)), *cert. denied*, 142 S. Ct. 2790 (2022). The district court considered Williams's argument that there is no empirical basis for the methamphetamine guideline's purity-distinctions but declined to deviate from the Guidelines on that basis. Accordingly, Williams fails to demonstrate that his sentence is substantively unreasonable. *See Lara*, 23 F.4th at 485-86; *United States v. Rebulloza*, 16 F.4th 480, 485 (5th Cir. 2021).

To the extent that Williams argues that the application of the Guideline results in unwarranted sentencing disparities, that argument, too, is insufficient to rebut the presumption of reasonableness afforded his within-guidelines sentence. "[T]he need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," is a factor that district courts must consider in fashioning a sentence, *see* 18 U.S.C. § 3553(a)(6), and the district court in this case

expressly considered that factor, concluding that a downward variance would in fact result in a sentencing disparity with Williams's codefendant son, whose sentence had already been calculated under the same Guideline. The record shows that the district court considered Williams's arguments for leniency, along with all of the § 3553(a) factors, in imposing sentence. Williams does not argue, and the record does not reflect, that his sentence fails to account for a factor that should receive significant weight, gives significant weight to an irrelevant or improper factor, or represents a clear error of judgment in balancing sentencing factors. *See Cooks*, 589 F.3d at 186.

Accordingly, the district court's judgment is AFFIRMED.

App. 7

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS CRIMINAL NO. 3:20-CR-00147-DPJ-LGI-1

GREGORY JAMAL WILLIAMS DEFENDANT

SENTENCING PROCEEDINGS
BEFORE THE
HONORABLE DANIEL P. JORDAN, III,
CHIEF UNITED STATES
DISTRICT COURT JUDGE,
APRIL 5, 2023,
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: CARLA J. CLARK, ESQ.

FOR THE DEFENDANT: CYNTHIA A. STEWART, ESQ.

FOR U.S. PROBATION: ALLIE WHITTEN

* * *

[6] [THE COURT:] In terms of the guidelines we also have an objection to the four-level adjustment for role in the offense under 3B1.1(c) and the enhancement for alleged possession of a [7] weapon.

* * *

[107] [THE COURT:] All right. Ms. Stewart, the objection to the possession of a weapon, I think you're going to have to establish that none of the 16

firearms that were recovered were possessed as part of this offense, so it's your floor.

* * *

[108] THE COURT: I understand. Under 2D1.1(b)(1), if a dangerous weapon, including a firearm, is possessed, the Court is to increase by two levels. Application note 11(A) states that it applies "if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense"; for example, an unloaded hunting rifle in a closet.

According to the Fifth Circuit, this enhancement, therefore, applies if the Government demonstrates that a temporal and spatial relation existed between the weapon, the drug trafficking activity, and the defendant. That's in a lot of cases, but I'm just citing *United States versus Guidry*.

"Once the Government has met that burden, the defendant [109] can only avoid the enhancement by showing that 'it was clearly improbable that the weapon was connected with the offense.'" *United States versus King* from 2014.

* * *

[134] [THE COURT:] Regarding the guns, there were four assault weapons, [135] nine semiautomatic handguns, most with extended clips.

United States Court of Appeals
for the Fifth Circuit

No. 23-60211

UNITED STATES OF AMERICA,

Plaintiff —Appellee,

versus

GREGORY JAMAL WILLIAMS,

Defendant — Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CR-147-1

(Filed Jan. 11, 2024)

ORDER:

The Appellant's motion for recall and stay of the mandate pending petition for writ of certiorari is GRANTED for 90 days.

/s/ Catharina Haynes
CATHARINA HAYNES
United States Circuit Judge

United States Court of Appeals
for the Fifth Circuit

No. 23-60211

UNITED STATES OF AMERICA,

Plaintiff — Appellee,

versus

GREGORY JAMAL WILLIAMS,

Defendant — Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CR-147-1

(Filed Jan. 2, 2024)

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before HAYNES, GRAVES, and HIGGINSON, *Circuit Judges*.

PER CURIAM:

The petition for panel rehearing is DENIED.[1] Because no member of the panel or judge in regular active service requested that the court be polled on rehearing

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[1] Judge Graves would grant the panel rehearing.

en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED.

CASE NO. 23-60211

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA
PLAINTIFF/APPELLEE

VS.

GREGORY JAMAL WILLIAMS
DEFENDANT/APPELLANT

APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI

PETITION FOR REHEARING *EN BANC*

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ATTORNEY FOR APPELLANT
GREGORY JAMAL WILLIAMS

[2] CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Gregory Jamal Williams, Defendant-Appellant

2. Carla Clark, Attorney for the Plaintiff-Appellee United States of America

3. Cynthia A. Stewart, Attorney for Defendant-Appellant

4. Honorable LaKeysha Greer Isaac, Magistrate Judge, United States District Court of Southern Mississippi

5. Honorable Daniel P. Jordan, III, Chief District Judge, United States District Court of Southern Mississippi

---

[3] RULE 35 STATEMENT OF REASONS FOR GRANTING REHEARING *EN BANC*

Appellant, Gregory Jamal Williams, requests rehearing *en banc* of the panel's decision panel opinion of October 23, 2023, in *United States v. Williams*, affirming the district court's Judgment on April 5, 2023. Opinion is attached as Appendix A.

Williams requests rehearing because the panel's decision case does not take into account the recently decided case *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023) holding consistent with the second amendment to the United States Constitution that the mere enhancement for a gun is not a crime. It follows that it is not appropriate for a sentencing enhancement. The gun enhancement pursuant to U.S.S.G. §2D1.2(b)(1) should not have been considered in the computation of the appropriate sentencing guideline range.

Rehearing *en banc* is necessary to ensure the Court's opinions do not conflict with each other. See *United States v. Daniels*. Consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

[4] **TABLE OF CONTENTS**

[5] **TABLE OF CASES AND AUTHORITIES**

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[6] PETITION FOR REHEARING EN BANC

STATEMENT OF ISSUE PRESENTED FOR REHEARING

I. THE COURT SHOULD GRANT REHEARING *EN BANC* BECAUSE THE PANEL'S OPINION-CONFLICTS WITH *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023)

II. THE COURT SHOULD GRANT REHEARING EN BANC BECAUSE THE PANEL DECISION REGARDING APPLICATION OF THE IMPORTATION ON ENHANCEMENT IS FACTUALLLY INACCURATE

STATEMENT OF THE CASE

(i) Course of the Proceedings and Disposition of the Case:

Pursuant to his indictment, Defendant Williams was charged with two counts of Possession with Intent to Distribute Fifty Grams or More of Methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1) and 841(b)(1)(A), one count of Conspiracy to Possess with Intent to Distribute Fifty Grams or More of Methamphetamine, in violation of Title 21 U.S.C. § 846, one count of Possession with Intent to Distribute Five Grams or More of Methamphetamine, in violation of Title 21 U.S.C. § 841(a)(1) and § 841(b)(1)(B) and two counts of Possession with Intent to Distribute a mixture and substance containing heroin in violation of Title 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C). RE 4 ROA. 18 On October 12, 2022, Mr. Williams plead guilty to

the 6-count indictment and was sentenced to 360 months as to Counts 1, 2, 3, and 4 and 240 months as to Counts 5 and 6, to run concurrently, in the BOP. The term of imprisonment shall be immediately followed by a 5-year [7] term of supervised release as to Counts 1, 2, 3, and 4 and a 3-year term of supervised release as to Counts 5 and 6, to run concurrently. Defendant is ordered to pay a partial fine in the amount of $1,500.00 and a special assessment fee in the amount of $600.00. See RE 2 ROA. 145

On appeal, Williams made several arguments, one of which was an objection to his importation enhancement.

(ii) Statement of Facts:

The gun enhancement followed law in place at the time. The law has changed since *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023).

The discovery materials in this case in no way suggest he participated as any sort of importer of drugs across the border where most of these sorts of illegal substances originate or that he had any knowledge of the original source of the drugs. There is no proof of any importation. The Government misleads the Court by suggesting the absence of discovery of high purity methamphetamine labs in the United States supports importation. This is simply not accurate.

It is the Government's burden to prove importation. No proof is offered. Furthermore, the Government's argument is inaccurate since in the general

region, high purity labs exist. The Government could not deny the existence of high purity labs in the United States. Nor could it establish any actual connection between [8] Williams and anyone out of the United States, despite many wire taps of Williams' phone. The most the agent could say was there might have been other phones.

ARGUMENT

I. THE ENHANCEMENT POSSESSION OF A GUN APPLIED TO THIS DEFENDANT CHANGED AFTER SENTENCING AND APPEAL

Pursuant to *Williams v. Strain*, No. 13-2998, 2014 U.S. Dist. LEXIS 146950 (E.D. La. Sep. 16, 2014), given this is still on direct appeal and subsequent law has addressed the issue of enhancement regarding a firearm. During the course of this direct appeal the law changed and the Court should reconsider and remand for a new sentencing hearing. Pursuant to *Teague v. Lane*, 489 U.S. 288(1989) and its progeny, subsequent case law is relevant to cases on direct appeal when the new case law is decided.

Subsequent case law strongly suggests that application of something no longer a crime, or enhancement thereof is not appropriate.

Under *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023) the mere enhancement of a gun is not a crime or appropriate for sentencing enhancement. It is not applicable to the computation of the appropriate sentencing guideline range.

United States v. Daniels, 77 F.4th 337 (5th Cir. 2023) strongly suggests that the enhancement for possession of a gun is inappropriately applied to this case. The opinion came down while this case was still on direct appeal and therefore the [9] appropriate consideration is either inapplicability or a need for remand for the trial court to reconsider whether it is appropriate to enhance this defendant under the circumstances.

This would significantly affect the federal sentencing guideline calculation and therefore requires re-calculation by the lower court or this Court.

Pursuant to *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), on cases pending direct appeal, like Mr. Williams', the announcement of a new case requires reconsideration by the lower court.

Daniels, *ibid*, also establishes that if something is no longer legal during the pendency of direct appeal it requires reconsideration

II. OBJECTION TO IMPORTATION ENHANCEMENT

The opinion and the lower court relied on representations, true or otherwise, that there was no evidence of Meth labs in the United States. Martinez, C. (2023, October 27). Embrace your inner Walter White by buying this San Jose home with 'inactive' meth lab. Los Angeles Times. https://latimes.com We can make the same analysis.

CONCLUSION

Because of the errors of law and fact in the opinion, this Court should grant rehearing and reverse the conviction or remand for consideration of new law and facts.

[10] **RESPECTFULLY SUBMITTED,** on this, the 6th day of December, 2023

Respectfully submitted,

GREGORY JAMAL WILLIAMS

By: /s/ Cynthia A. Stewart
CYNTHIA A. STEWART

SUBMITTED BY:

CYNTHIA A. STEWART (MB#7894)
ATTORNEY, PLLC
118 Homestead Drive, Suite C
Madison, Mississippi 39110
Telephone: (601) 856-0515
Facsimile: (601) 856-0514

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[11] CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this date, I electronically filed with the court's electronic EM/ECF filing system and that all parties entitled to service were notified by same.

I further certify that I have this date mailed, by first class mail, postage prepaid, a true and correct copy of the foregoing to:

Gregory Jamal Williams, 22005-509
FCI TALLADEGA
FEDERAL CORRECTIONAL INSTITUTION
P.M.B 1000
TALLADEGA, AL 35160

DATED this, the 6th day of December, 2023

/s/ Cynthia A. Stewart
Cynthia A. Stewart

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[12] **CERTIFICATE OF COMPLIANCE**

1. This document complies with the type-volume limit of FED. R. APP. P. 32(a)(7)(B) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f) and 5th CIR. R. 32.1: this document contains 1621 words.

2. This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5), and 5th CIR. R. 32.1 and the type-style requirements of FED. R. APP. P. 32(a)(6) because:

This document has been prepared in a proportionally spaced typeface using Microsoft Word for Mac Version 16.4 3 n Times New Roman and font size 14 for body text and 12 for footnote text converted to PDF format.

S/Cynthia Ann Stewart

CASE NO. 23-60211

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA
PLAINTIFF/APPELLEE

VS.

GREGORY JAMAL WILLIAMS
DEFENDANT/APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

UNOPPOSED MOTION TO RECALL AND STAY OF MANDATE PENDING PETITION FOR CERTIORARI

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ATTORNEY FOR APPELLANT
GREGORY JAMAL WILLIAMS

[2] **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Gregory Jamal Williams, Defendant-Appellant

2. Carla Clark, Attorney for the Plaintiff-Appellee United States of America

3. Cynthia A. Stewart, Attorney for Defendant-Appellant

4. Honorable LaKeysha Greer Isaac, Magistrate Judge, United States District Court of Southern Mississippi

5. Honorable Daniel P. Jordan, III, Chief District Judge, United States District Court of Southern Mississippi

[3] Pursuant to FED.R.APP.P. 41 and 28 U.S.C.A. § 2101(f) Gregory Williams respectfully requests that this Court recall and stay issuance of the mandate to allow him time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case. In support of this motion, Mr. Williams states:

On January 2, 2024, the Court, by a vote of 2 to 0, affirmed the decision of the United States District Court for the Southern District of Mississippi.

On January 9, 2024, counsel believed she had filed a Motion to Stay the mandate with this court. See attached.

On January 10, 2024 the court issued the mandate and opinion.

Under 28 U.S.C. § 2101(c) and SUP. CT. R. 13.1, Williams has 90 days in which to file a petition for writ of certiorari in the United States Supreme Court seeking review of this Court's judgment.

FED.R.APP.P. 41(d)(2)(B) (amended December 1, 1998) permits a stay of the mandate for 90 days. The presumptive 90-day stay of RULE 41 precisely mirrors the time available for seeking review on certiorari. See 28 U.S.C. §2101(c); SUP. CT. R. 13.1. RULE 41 is designed to ensure that all parties receive a full 90 days to prepare and file a petition.

In this case, there is further good cause to recall and stay the mandate because under the Federal Rules of Appellate Procedure and the Rules of the Fifth [4] Circuit Mr. Williams' certiorari petition "would present a substantial question" for review.

Issues which have been raised in the present case include the following:

I. THE COURT SHOULD GRANT RELIEF BECAUSE THE PANEL'S OPINION CONFLICTS WITH *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023)

II. THE COURT SHOULD GRANT RELIEF BECAUSE THE PANEL DECISION REGARDING APPLICATION OF THE IMPORTATION ON ENHANCEMENT IS FACTUALLLY INACCURATE

III. THE DISTINCTION BETWEEN ICE AND METHAMPHETAMINE AS APPLIED TO WILLIAMS VIOLATES THE DUE PROCESS CALUSE OF THE. UNITED STATES CONSTITUTION

To obtain a stay of the mandate "pending the filing of a petition for a writ of certiorari in the Supreme Court," a movant "must show that the [certiorari] petition would present a substantial question and that there is good cause for a stay." Fed. R. App. P. 41(d)(1). This requires a party to demonstrate a reasonable probability of succeeding on the merits and injury absent a stay. See, e.g., *United States v. Warner*, 507 F.3d 508, 510-11 (7th Cir. 2007) (Wood, J., in chambers); *Nara v. Frank*, 494 F.3d 1132, 1133 (3d Cir. 2007); see also, e.g., *California v. American Stores Co*., 492 U.S. 1301, 1307 (1989) (stay of the mandate pending a petition for certiorari is warranted where "there is both a reasonable probability that at least four Justices would vote to grant the petition for a writ of certiorari and a fair prospect that [5] applicant may prevail on the merits," and where "the equities favor the applicant") (O'Connor, J., in chambers). That standard is easily satisfied here.

Counsel has contacted counsel for the Government and they do not oppose this Motion.

In this case, because a petition for writ of certiorari would present significant and substantial issues, Mr. Williams respectfully requests this Court to grant the motion to recall and stay of the mandate pending the filing of a petition for writ of certiorari and disposition of the case by the United States Supreme Court.

RESPECTFULLY SUBMITTED, on this, the 10th day of January, 2024.

Respectfully submitted,

GREGORY JAMAL WILLIAMS

By: /s/ Cynthia A. Stewart
CYNTHIA A. STEWART

SUBMITTED BY:

CYNTHIA A. STEWART (MB#7894)
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I further certify that I have this date mailed, by first class mail, postage prepaid, a true and correct copy of the foregoing to:

Gregory Jamal Williams, 22005-509
FCI TALLADEGA
FEDERAL CORRECTIONAL INSTITUTION
P.M.B 1000
TALLADEGA, AL 35160

United States Supreme Court
1 First St NE
Washington, DC 20543

DATED this, the 10th day of January, 2024

/s/ Cynthia A. Stewart
Cynthia A. Stewart

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[7] **CERTIFICATE OF COMPLIANCE**

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S/Cynthia Ann Stewart