No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GILBERT DEAN BICKNELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Adam Stevenson
Clinical Professor
Supreme Court Bar No. 295931

University of Wisconsin Law School
Frank J. Remington Center
975 Bascom Mall
Madison, WI 53706
Phone: (608) 262-9233
Email: adam.stevenson@wisc.edu

Attorney for Petitioner,
GILBERT DEAN BICKNELL

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QUESTIONS PRESENTED

1) Whether the materiality analysis from *Brady v. Maryland*, 373 U.S. 83 (1963), which has developed almost entirely around proceedings with binary outcomes like trials or capital sentencing, sufficiently satisfies due process when applied by lower courts analyzing federal sentencing decisions post-*United States v. Booker*, 543 U.S. 220 (2005)?
2) Whether a district court complies with its procedural obligations under 18 U.S.C. § 3553(a) and *Booker* when it adopts unqualified and contradictory findings in crafting a defendant's criminal sentence?

OPINION BELOW

The decision of the Court of Appeals for the Seventh Circuit ("Seventh Circuit") is a published opinion. The opinion is attached as Appendix A and is reported at *United States v. Bicknell*, 74 F.4th 474 (7th Cir. 2023). The Seventh Circuit denied a timely-filed petition for rehearing and suggestion for rehearing *en banc*. That Order is attached as Appendix B.

JURISDICTION

On July 19, 2023, the Seventh Circuit entered its opinion in Mr. Bicknell's appeal. The opinion affirmed Mr. Bicknell's sentence.

On August 15, 2023, following an extension from the Seventh Circuit, Mr. Bicknell timely petitioned for rehearing and suggested rehearing *en banc*. On August 30, 2023, the Seventh Circuit denied Mr. Bicknell's rehearing petition.

On November 3, 2023, in Application No. 23A405, Associate Justice Amy Coney Barrett granted Mr. Bicknell's application for an extension of time to file this petition. The deadline was extended to January 27, 2024. That date is a Saturday, so under Supreme Court R. 30(1), the deadline for filing is January 29, 2024.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides, in relevant part: "No person shall be … deprived of life, liberty, or property without due process of law[.]" U.S. Const., amend. V.

INTRODUCTION

Mr. Bicknell's case presents two important sentencing-related issues on which the Court can provide significant guidance to sentencing courts and the courts of appeals. First, while the protections afforded to defendants under *Brady* and *Giglio* apply explicitly to the "punishment phase" of criminal proceedings, when such a violation crosses a line to become "material" has been largely unaddressed by the federal courts. While the Seventh Circuit applied the typical *Brady* materiality framework, that methodology developed out of cases with heightened burdens of proof and binary outcomes. The Court and many circuits have routinely applied that materiality analysis in cases involving conviction or acquittal, exclusion or admission of evidence, or eligibility for the death penalty or a sentence of life in prison. But given the vast array of sentencing outcomes possible, the significant discretion afforded to courts in determining the years, months, and even days of a custodial sentence, and the lower standard of proof, further discussion and instruction on the *Brady* materiality standard at sentencing is necessary.

Second, following *Booker*, this Court has issued some guidance on the procedural and substantive components of federal sentencing. It has also instructed reviewing courts on how to evaluate each. Yet the relationship between the two remains an area of limited exploration. In Mr. Bicknell's case, the district court made one finding in the Guideline component of the sentence, a contradictory finding during the court's § 3553(a) analysis, and then post-sentencing reiterated its Guideline factual finding in a written Statement of Reasons. The Seventh Circuit said

the findings were not error, appearing to view each piece as separate. But this contradicts the Seventh Circuit's own precedent that conducted a more holistic analysis of the sentencing findings. This Court should weigh in to rectify the inconsistent opinions, taking the opportunity to clarify the nature of a sentencing court's factual findings in the procedure and substance of a sentencing.

STATEMENT OF THE CASE[1]

Gilbert Bicknell ("Gilbert") and his son, Michael, were arrested following a brief vehicle chase in which the duo drove separately. (R.1:4-5, ¶ 9.) As officers tried to stop Michael for a traffic violation, and after a brief drift between lanes, Gilbert pulled over to the opposite shoulder, stayed some time, and then left without stop or arrest. (Sent'g Tr. 28.)

Gilbert's federal case followed when Michael was arrested after throwing methamphetamine out of his car. Gilbert pled open and proceeded to sentencing. (R.59.) Along the way, his counsel asked for more information about Michael's involvement in the case and whether he would testify. (R.78:4, 83.) The Government fought these efforts. (R.83.) This ended in Gilbert's sentencing without notification about whether Michael would testify.

The sentencing hearing opened with a ruling on whether Gilbert obstructed Michael's arrest. (Sent'g Tr. 39:18-25, 105:19-20.) The district court held that he did not, but reserved the right to consider his actions under § 3553. It was then that the Government called Michael to testify. (Sent'g Tr. 78.)

At the start of the hearing, there was discussion of Michael's guilty plea. During that time, the district court repeatedly said that Michael pled without an agreement. (Sent'g Tr. 8-9.) Early in questioning, the Government asked whether Michael pled under an agreement; he said he did not. (Sent'g Tr. 79:17-20.) The

[1] The following abbreviations are used herein: Criminal Record on Appeal, cited by document number and page: "R. __:__," Appellate Court Record, cited by document number and page: "App. R. __:__," and Sentencing Transcripts, cited by page and line: "Sent. Tr. __:__.

district court also asked, and the Government again said Michael did not have a plea agreement. (Sent'g Tr. 80:7-9.)

The district court concluded testimony and took a break to address other business. Following that recess, the district court raised an interesting "procedural quirk." (Sent'g Tr. 108:7-10.) Court staff had located an executed cooperation plea agreement for Michael. (*Id*. at 108:16-20.) Government counsel stated she could not recall the agreement, having reviewed just the docket to refresh her recollection about the case. (Sent'g Tr. 108:23-109:8.) She had been the only government representative to sign the agreement. (R.89.)

After determining that it was, in fact, an executed agreement, the district court just moved on to complete the sentencing. Yet before the discovery, the district court found Michael "credible" during its safety valve ruling but made no statement about the effect of the agreement or Michael's multiple denials of its existence after its discovery. (Sent'g Tr. 101:21-102:17.) The district court denied Gilbert safety valve relief and sentenced him to 156 months. (Sent'g Tr. 136:16-20.) The district court reasoned that Gilbert's alleged obstructive actions were aggravating facts for sentencing. (Sent'g Tr. 133:17-134:3.) Yet when it later docketed the statement of reasons, the district court attached a document that explained its rulings on Guidelines objections. In it, the district court explicitly adopted Gilbert's position that he acted innocently relating to the obstruction enhancement. (R.95:6.) This form also said that those were the court's findings.

Gilbert appealed, arguing that the Government's failure to disclose the plea and cooperation agreements with Gilbert violated *Brady* and *Giglio*. (App. Br. 14.) He also argued that the district court's inconsistent factual findings at sentencing relating to alleged obstruction was a procedural error. (App. Br. 27.) This was precisely an issue from a prior case, *United States v. Davis*, 43 F.4th 683 (7th Cir. 2022), that Gilbert addressed in his briefing. (App. Br. 22-24.)

The Seventh Circuit "reluctantly" affirmed Gilbert's sentence. *Bicknell*, 74 F.4th at 475. While the court felt the Government had committed a clear *Giglio* violation, it felt that it was powerless to act. *Id*. at 478. The Seventh Circuit held that since Michael had testified in front of a judge, the judge would understand Michael was cooperating and seeking a benefit. *Id*. The agreement was therefore immaterial. *Id*.

As for the sentencing inconsistency, the opinion briefly addressed the issue and found no fault. *Id*. at 479. The Seventh Circuit held that since the district court explicitly reserved the right to consider the actions, that it could do so. *Id*. The opinion did not directly address the inconsistent written findings and the effect of *Davis* on the case.

REASONS FOR GRANTING THE PETITION

I. This Court Should Clarify How *Brady*'s Materiality Analysis Applies When Information Relating to Sentencing is Suppressed.

Sixty years ago, this Court announced in *Brady* that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." 373 U.S. at 87.[2] *Brady* mandates disclosure only if the information favors the accused and material to the determination of guilt or punishment. Yet far too often *Brady* has been seemingly forgotten at sentencing—the punishment phase. *See* JaneAnne Murray, *The Brady Battle*, The Champion, May 2013, at 72, 74. Despite *Brady* expressly extending the government's disclosure obligation to the sentencing phase along with the guilt phase of criminal proceedings, 373 U.S. at 87, "strikingly little attention has been paid to the punishment phase of criminal proceedings." Andrew Weissmann & Katya Jestin, '*Brady' and Sentencing*, Nat'l L.J., Oct. 27, 2008. For example, from 2015 through 2019, 761 of 808 *Brady* claims resulted from trials. Brandon L. Garrett, Adam M. Gershowitz & Jennifer Teitcher, *The Brady Database*, J.L. & Criminology (forthcoming) (manuscript at 26), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4470780#.

Given the dearth of appellate cases addressing sentencing claims, the application of *Brady*'s materiality standard at sentencing is the least developed in

[2] The matter below involves a plea agreement that speaks to the credibility of a testifying witness, which this Court addressed in *Giglio v. United States*, 405 U.S. 150 (1972). However, the analysis of a *Giglio* issue mirrors that of a *Brady* claim.

case law. Murray, *supra*, at 74. Materiality is generally a high hurdle, requiring a reasonable probability that "the result of the proceeding would have been different" had the evidence been disclosed. *United States v. Bagley*, 473 U.S. 667, 682 (1985). A "reasonable probability" is one sufficient to undermine confidence in the outcome of the proceeding. *Id.*; *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995).

As typically applied in case law at the guilt phase of proceedings, *Brady*'s materiality analysis requires asking whether, had the suppressed evidence been disclosed in time for use, there is a reasonable probability that the defendant would have been found not guilty. And while courts have applied *Brady* at punishment phases, though rarely, these cases are almost exclusively capital punishment proceedings. When applied to capital punishment proceedings, *Brady*'s materiality standard asks whether the defendant would have instead been sentenced to life in prison. *See Cone v. Bell*, 556 U.S. 449, 475 (2009) (remanding for failure to consider a *Brady* violation because "[n]either the Court of Appeals nor the District Court fully considered whether the suppressed evidence might have persuaded one or more jurors that Cone's drug addiction . . . was sufficiently serious to justify a decision to imprison him for life rather than sentence him to death").

In either case—guilt or capital punishment—*Brady*'s materiality standard has developed almost exclusively around determining the threshold possibility of whether the suppressed evidence's disclosure would have resulted in a different *binary* outcome: Would the defendant have been acquitted rather than found guilty? Or, like in *Brady* itself, would the defendant have been sentenced to life in prison or to death?

Therefore, the binary-based materiality standard is ill-equipped to protect due process over non-binary, discretionary sentencing decisions featuring a vast array of outcomes. And the few courts that have addressed *Brady* at non-capital sentencing hearings have done so without establishing a clear standard and generally applying to a Guidelines provision. *See, e.g.*, *United States v. Weintraub*, 871 F.2d 1257, 1264-65 (5th Cir. 1989); *United States v. Quinn*, 537 F. Supp. 2d 99, 117-18 (D.D.C. 2008) (unpublished). Appellate courts are thus left no choice but to "reluctantly" affirm "deeply troubl[ing]" and "unsettling" nondisclosures at sentencing that could minimally, but meaningfully, impact the outcome. *Bicknell*, 74 F.4th at 475.

This Court should take this opportunity to address a criminal defendant's due process rights at sentencing by clarifying whether the proper materiality analysis under *Brady*—a reasonable probability of a different outcome—should reflect the underlying standard, or burden of proof, built into the original outcome. For example, information suppressed at a federal sentencing hearing might present a reasonable probability of a different outcome under a preponderance of the evidence standard, but the same information might not have a reasonable probability of changing the outcome at the guilt phase, which requires proof beyond a reasonable doubt.

This Court demonstrated as much in *Cone*. When vacating Cone's sentence because of suppressed evidence that failed to sustain an insanity defense, but "may well" have been material to the jury's deliberation at sentencing, the Court relied on *Brady* and explained that "the distinction between the materiality of the suppressed evidence with respect to guilt and punishment is significant." *Cone,* 556 U.S. at 473.

More importantly, the Court highlighted that while "[e]vidence that is material to guilt will often be material for sentencing purposes as well; the converse is not always true." *Id.* In other words, the underlying burden of proof directly affects the materiality threshold: A "higher" burden of proof (*i.e.*, beyond a reasonable doubt) entails a more demanding materiality analysis than a "lower" burden (*i.e.*, preponderance of the evidence). And suppressed evidence may be immaterial to the outcome at the guilt phase but material at the punishment phase, just as evidence may fail to convince a judge beyond a reasonable doubt despite previously satisfying a preponderance standard. Thus, *Cone* established that the materiality threshold differs between the guilt phase (or capital punishment phase) and the sentencing determination.

The materiality threshold at sentencing likely should differ between trial or capital punishment proceedings and sentencing proceedings because evidence need only be proved by a preponderance, not beyond a reasonable doubt. For example, aggravating role adjustments, guideline enhancements, and mitigating factors typically need only be proved by a preponderance of the evidence. *See, e.g.*, *United States v. Garcia-Sierra*, 994 F.3d 17 (1st Cir. 2021) ("At sentencing, '[t]he government bears the burden of proving that an upward role-in-the-offense adjustment is appropriate in a given case.'" (internal quotation omitted)); *United States v. Ford*, 22 F.4th 687, 692 (7th Cir. 2022) ("Before a court can apply the enhancement, the government must establish by a preponderance of the evidence . . . ."); *United States v. Wynn*, 37 F.4th 63, 67 (2d Cir. 2022) ("The defendant bears the burden of

establishing by a preponderance of the evidence that he is entitled to a mitigating role adjustment . . . ." (internal quotation omitted)). As explained below, the need to clarify *Brady*'s materiality analysis at sentencing has only grown in the years since this Court expanded the significant discretion granted to courts at sentencing in *Booker*, 543 U.S. 220.

This Court tacitly heightened the need to clarify *Brady*'s materiality analysis at sentencing when it expanded the discretion of federal judges at sentencing and broadened what a sentencing court can consider in *Booker*. Now, rather than few possible outcomes, a vast array of possibilities exists limited largely by only the sentencing court's reasoned exercise of discretion. *See id.* at 245 (holding that the Guidelines are advisory and that a "sentencing court [must] consider Guidelines ranges" but that the court can "tailor the sentence in light of other statutory concerns as well" (internal citations omitted)); *id.* at 264 ("[T]he Act without its 'mandatory' provision and related language remains consistent with Congress' initial and basic sentencing intent … to 'provide certainty and fairness in meeting the purposes of sentencing, … [while] maintaining sufficient flexibility to permit individualized sentences when warranted.'" (internal citations omitted)).

And at least two of this Court's post-*Booker* decisions further expanded a court's discretion at sentencing. *See Gall v. United States*, 552 U.S. 38 (2007) (holding that appellate courts may not presume the unreasonableness of sentences that fall outside the Guidelines range); *Kimbrough v. United States*, 552 U.S. 85 (2007), (holding that, consistent with the Guidelines being advisory, a sentencing court may

deviate from the guidelines based on its own policy judgments). Given a sentencing court's significant discretion, a wide variety of information can affect the proceeding's outcome. This includes, for example, information that casts doubt on the government's calculations of drug quantity or financial loss, or that is relevant to the defendant's role or his acceptance of responsibility, or to unwarranted sentencing disparities. *See* Murray, *supra*, at 74 (citing *Weintraub*, 871 F.2d 1257 (drug quantity); Weissmann & Jestin, *supra* (financial loss); *United States v. Severson*, 3 F.3d 1005, 1013 (7th Cir. 1993) (acceptance of responsibility); *Quinn*, 537 F. Supp. 2d at 118 (sentencing disparities)). And given the broad discretion under § 3553(a), any information relevant to a sentencing factor could carry material weight in the court's sentencing decision and it need not be proven beyond a reasonable doubt.

Additionally, information that could likely lower a defendant's custodial sentence by even one day is *Brady* material to which the defense is entitled. This accords with this Court's precedent on prejudice caused by additional incarceration. This Court noted in *Glover v. United States* that its "jurisprudence suggests that any amount of actual jail time has Sixth Amendment significance." 531 U.S. 198, 203 (2001). Although *Glover* addressed a claim of ineffective assistance of counsel, the determinative question mirrored *Brady*'s materiality analysis: "[w]hether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* (quoting *Williams v. Taylor*, 529 U.S. 362, 414 (2000) (opinion of O'Connor, J.)).

Materiality at sentencing should ask whether there is a reasonable probability that, had the suppressed evidence been disclosed, any change in the sentencing outcome would have resulted. The Seventh Circuit instead began its materiality analysis by stating that a cooperation-plea agreement with a testifying witness is immaterial because district court judges will realize that a testifying witness is cooperating with the government, even without disclosing the agreement. *Bicknell*, 74 F.4th at 478. (noting the agreement was not material because "the fact that Michael testified as a government witness was itself enough to make plain to anyone at the hearing—including … the district court—that he was cooperating with the government"). The Seventh Circuit ended its analysis by noting that "at sentencing, where the district court—rather than a jury—[sits] as the finder of fact," a government witness's incentives to cooperate will be impliedly apparent to the court because of the "district court's extensive experience with sentencing hearings." *Id.* at 479. In effect, the court bookended its materiality analysis with an apparent bright-line rule that the government need not disclose cooperation agreements with witnesses that testify at sentencing before a judge, because the act of testifying itself implies incentives to cooperate and judges are aware of those motivations. This flawed reasoning guts the defendant's constitutional right to due process and cross-examination that *Brady*/*Giglio* seek to protect at all stages, including sentencing.

Finally, because all federal sentencing occurs in front of a district judge, the court of appeals has effectively overruled *Brady*'s disclosure requirement of "textbook … *Giglio* information" at sentencing. *Bicknell*, 74 F.4th. at 475. Given that 89.5% of

federal defendants pleaded guilty rather than go to trial in 2022, the opinion has effectively eliminated the need to disclose cooperation agreements in nine out of ten federal criminal cases (if the system-involved witness testifies). John Gramlich, *Fewer than 1% of Federal Criminal Defendants Were Acquitted in 2022*, Pew Research Center (June 14, 2023), https://www.pewresearch.org/short-reads/2023/06/14/fewer-than-1-of-defendants-in-federal-criminal-cases-were-acquitted-in-2022/. And this directly contradicts *Brady/Giglio*, which establish that cooperation agreements can be material at the sentencing phase. *Brady*, 373 U.S. at 87*; Giglio*, 405 U.S. at 154-55. The court of appeal's decision thus improperly weakens *Brady*'s disclosure requirements and undermines due process for most federal criminal defendants, and this Court should clarify the proper materiality analysis.

This Court should take this opportunity to clarify whether a material *Brady* violation occurs when the government withholds information in the punishment phase that could change the defendant's sentence by even one day. "[F]ar too much is at stake in criminal law" not to clarify *Brady*'s materiality standard at sentencing, thereby ensuring that the government "attend[s] to its disclosure obligations with more care and attention." *Bicknell*, 74 F.4th at 480.

II. This Court Should Evaluate Whether a District Court's Unqualified, Signed Adoption of Documents containing the Defendant's Factual Narrative Constitutes a "Finding" for § 3553(a) Sentencing Purposes and Whether a Factual Contradiction Between it and the Guidelines Determination is Error.

It is fundamental to due process that a defendant has the right to a sentence based on true and reliable information. *United States v. Tucker*, 404 U.S. 443, 447 (1972); *United States v. Gamble*, 969 F.3d 718, 722 (2020). This Court has repeatedly affirmed post-*Booker* that sentencing courts may conduct factfinding to "guide their discretion" in issuing a particular sentence. *Rita v. United States*, 551 U.S. 338, 373 (2007). Neither this Court nor the circuits appear to have ever extended this discretion to include reliance on logically inconsistent factual findings. At the same time, the distinction between Guidelines and statutory findings under the *Booker* line of cases has continued to confuse lower appellate courts, including here. Perhaps because it views the Guidelines calculation and the § 3553(a) analysis as separate phases of sentencing, the Seventh Circuit's treatment of this issue in Gilbert's case was perfunctory and failed to address the fundamental issue of adopting contradictory findings. This Court should take this case to instruct on the relationship of the various findings a sentencing court must make.

At sentencing, a district court must avoid "significant procedural error," such as "selecting a sentence based on clearly erroneous facts." *Gall*, 552 U.S. at 51. While the highly deferential "clear error" standard might save a given factual finding in isolation, it cannot simultaneously save two contradictory findings.

This Court's unclear distinction between substantive and procedural reasonableness in federal criminal sentencing following the landmark *Booker* decision has led to lower courts often conflating the two standards. Although definitions vary, procedural reasonableness relates to the following of "proper procedures" and giving "adequate consideration" to statutory or Guidelines factors. *Holguin-Hernandez v. United States*, 589 U.S. ___, 140 S. Ct. 762, 766 (2020) (citing *Gall*, 552 U.S. at 56, *Booker*, 543, 543 U.S. at 261-62). Substantive reasonableness, by contrast, relates to the question of whether a sentence is "greater than necessary" to comply with the purposes of 18 U.S.C. § 3553. *See Holguin-Hernandez,* 140 S. Ct. at 766, 18 U.S.C. § 3553(a). This confusion isn't helped by the fact that many errors can be fairly described as either procedural or substantive. For instance, this Court in *Tapia v. United States* described the issue of using a defendant's perceived need for rehabilitation as a factor in sentencing in procedural terms by reference to 18 U.S.C. § 3582's plain language. 564 U.S. 319, 332 (2011). But this error can just as easily be framed in substantive terms: if rehabilitation is not a permissible sentencing factor, then it stands to reason that any sentence considering it in an aggravating sense would be "greater than necessary." § 3553(a).

The Seventh Circuit correctly addressed this issue with regard the various factual findings at sentencing in *Davis*, 43 F.4th 683, where it held that a district court which "adopted the PSR in full" during a sentencing hearing cannot later in the proceeding make oral findings which directly contradict the PSR's written findings. *Id.* at 686. It was procedural error for the court to hand down a sentence reflecting

either narrative while the record contained "an inscrutable inconsistency in the factual findings." *Id.* at 688.

In providing a basis for Gilbert's 156-month sentence, the district court relied on a finding that Gilbert hadn't pulled over his vehicle during the incident preceding his arrest. (R.40.) The sentencing court's oral statement is a procedural requirement of every federal sentence under 18 U.S.C. § 3553(c), but factual findings such as this are also used by sentencing courts when applying enhancements or reductions under the Guidelines. The district court later contradicted this finding in its written, docketed 28 U.S.C. § 994(w) "Statement of Reasons," leaving an unclear record of what the court believed had occurred during the incident and the substance motivating its sentencing decision. (R.95.)

The district court memorialized Gilbert's sentencing in its standardized "Statement of Reasons," to which it had appended pages from Gilbert's PSR relating to an obstruction enhancement on the same facts that the court had overruled. (*Id.*) Quoting the Statement of Reasons in part,

> [Gilbert] objects to the conclusion that he 'impeded the path of police vehicle.' [Gilbert] maintained since his arrest that he did not attempt to block police cars from stopping Michael Bicknell's car, nor did he attempt to interrupt their apprehension of Michael. [Gilbert] attempted to pull over to get out of the way of the police cars, not obstruct their path.

(*Id.*) The court added a check mark to the box under "Court's Findings" labeled "Court adopts defendant's position.":

> Court's Findings
>
> A. [ ] Court adopts probation officer's position.

B. [ ] Court adopts government's position.

C. [x] Court adopts defendant's position.

D. [ ] Other: _____

(*Id.*)

The "Statement of Reasons" concluded with the phrase, "[t]he Court adopts the above-listed findings on 7/7/2022" and the district court's signature. (*Id.*) The district court could have noted any qualifications or disagreements it had with Gilbert's narrative under the "Other" option but did not. (*Id.*)

The Seventh Circuit sought to address this contradiction by stating that "[t]he fact that the district court agreed with Gilbert on the bottom line with respect to the obstruction enhancement does not mean the district court needed to accept Gilbert's preferred narrative down to every last detail." *Bicknell*, 74 F.4th at 479. But this statement, while not wrong, misses the district court's error. The district court did not need to accept Gilbert's preferred narrative "down to every last detail," but it did. *Id.*

No matter how the error at Mr. Bicknell's sentencing is characterized, it is plainly error to make logically inconsistent factual findings regardless of their purpose at sentencing. This Court's doctrine post-*Booker* should not be interpreted to allow sentencing courts to make Guidelines findings and calculations in a vacuum, but that is how the Seventh Circuit treated Gilbert's case. The district court made findings by adopting the PSR unequivocally, and it is error to reach a different conclusion later on during sentencing without a justifying explanation.

The Court should take this case to resolve the ambiguity left by *Rita* and *Gall* regarding a court's factfinding role at sentencing. Due process entitles a defendant to a sentence based on a single set of logically consistent facts. Neither *Rita*, *Gall*, nor *Booker* suggest that the Guidelines and the statutory sentencing factors in § 3553(a) are separate to the point that these sentencing components can rely on inconsistent facts.

CONCLUSION

For these reasons, Mr. Bicknell asks the Court to issue a Writ of Certiorari and review this case on the merits.

Date: January 26, 2023

Respectfully Submitted,

/s/ Adam Stevenson

Adam Stevenson
Clinical Professor
Supreme Court Bar No. 295931

Frank J. Remington Center
University of Wisconsin Law School

Attorney for Petitioner,
GILBERT DEAN BICKNELL.