No. _____

In The

Supreme Court of the United States

JUSTIN LANG WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

18 U.S.C. § 922(g)(1) makes it unlawful for anyone who has been convicted of a crime punishable by a prison term of more than one year to possess a firearm. There is no time limit on the firearm ban; it is for life. In 2011, Petitioner was convicted of a drug trafficking offense and received a nine year sentence, seven and one half years of which was suspended. Twelve years later, Petitioner was arrested after a routine traffic stop when he was found to be in possession of two firearms. He was subsequently indicted, pled guilty and was sentenced to prison for violating section 922(g)(1).

The constitutionality of section 922(g)(1) has been called into question since this Court's decisions in *Bruen* and *Rahimi*. The United States Sentencing Commission's Quick Facts Section on Firearms evinces the national significance of this issue. Since 2019, over 38,000 people have been convicted for 922(g) offenses. The average prison sentence is 68 months. Moreover, of the 8,040 individuals convicted under 922(g) in 2023, 88.5% were convicted under 922(g)(1). ussc.gov/research/quick-facts/section-922g-firearms.

As stated, Petitioner pled guilty to the indictment charging him with violating section 922(g)(1). Section 3E1.1(a) of the United States Sentencing Guidelines now states "[i]f the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels." A previous version of this Guideline required a defendant to demonstrate acceptance of responsibility for his "criminal conduct." Petitioner pled guilty to a one count indictment charging him for being a

convicted felon in possession of two firearms. Petitioner met with the U.S. Probation Office where he readily admitted to his offense; stated he understood the seriousness of it; vowed to never possess a firearm again; and timely pled guilty. Petitioner thus clearly evinced acceptance of responsibility for his offense.

Nevertheless, Petitioner was denied a reduction in his offense level for acceptance of responsibility due to a positive drug test unrelated to his offense of conviction. The record reveals that Petitioner's mother got him addicted to drugs and that he has struggled with substance abuse since he was 12. Petitioner's positive drug test, therefore, manifests his addiction and dependence rather than his lack of contrition, which was otherwise demonstrated. But for the district court's error in denying Petitioner acceptance of responsibility, he would have received a range of 41-51 months. Instead, he received a Guideline range of 57-71 months and a sentence of 57 months.

The questions presented are:

1. Whether section 922(g)(1)'s lifetime ban for possessing a firearm violates the Second Amendment as applied to Petitioner?

2. Can a district court deny a defendant a reduction for acceptance of responsibility when he pleads guilty, cooperates with the U.S. Probation Office but subsequent to his guilty plea tests positive for drugs, conduct which is unrelated to his offense of conviction?

3. When the plain reading of the Guideline demonstrates that unrelated post plea conduct cannot form the basis for the denial of an acceptance of

responsibility reduction, can the district court rely upon Guideline commentary to hold otherwise?

4. Whether denying a defendant a reduction in his sentence for acceptance of responsibility for being an addict runs afoul of this Court's decision in *Robinson?*

REASONS FOR GRANTING THE PETITION

Question 1. There is a split of authority among the Circuits regarding whether section 922(g)(1)'s lifetime ban for the possession of a firearm by a felon violates the Second Amendment to the United States Constitution.

Questions 2-4. The Fifth Circuit Court of Appeals' decision that a defendant can be denied a reduction in his offense level for acceptance of responsibility based on a post plea positive drug test unrelated to his offense of conviction conflicts with prior decisions of the Sixth Circuit Court of Appeals, is contrary to a plain reading of section 3E1.1(a) and punishes Petitioner for being a drug addict in violation of this Court's holding in *Robinson.*

PROCEEDINGS BELOW

1. *United States v. Justin Lang Williams,* Case no. 6:23-cr-00221-ADA-1, in the United States District Court for the Western District of Texas, Waco Division, the Honorable Alan D. Albright, Presiding.

2. *United States v. Justin Lang Williams,* Case No. 24-50376, in the United States Court of Appeals for the Fifth Circuit, Circuit Judges Barksdale, Haynes and Wilson.

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I. PETITION FOR WRIT OF CERTIORARI

Justin Lang Williams ("Petitioner" or "Williams") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

II. OPINION BELOW

The Fifth Circuit's unpublished opinion affirming Petitioner's 57 month sentence is attached hereto as Appendix A. The district court's judgment sentencing Petitioner to a term of incarceration of 57 months is attached hereto as Appendix B.

III. JURISDICTION

The Fifth Circuit entered judgment on December 23, 2024. Appendix A. This petition is timely filed pursuant to Supreme Court Rule 13.1. The Court has jurisdiction under 28 U.S.C. § 1254(1).

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of various legal authorities, including the Second Amendment, 18 U.S.C. § 922(g)(1), and United States Sentencing Guidelines ("USSG") Section 3E1.1(a):

U.S. Const. amend. 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.

18 U.S.C. § 922(g)(1):

> It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; to ship or transport in interstate or foreign commerce, or possess in or affecting

commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Section 3E1.1(a):

If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

V. STATEMENT OF THE CASE

On September 19, 2023, a Lyft vehicle transporting Petitioner was pulled over for a traffic stop. No explanation for the traffic stop is in the record. ROA.9, ROA.106.[1] The Lyft driver consented to the vehicle's search. Petitioner exited the back seat of the vehicle and immediately disclosed to the officers he possessed two firearms in his bag and was a convicted felon. ROA.107. Petitioner has a prior conviction for a drug trafficking offense in 2011. Since that time he has a clean record, except for pleading no contest to driving with a revoked license. ROA.110-12. A Criminal Complaint was issued on September 20, 2023, and Petitioner was arrested the same day. ROA.10, ROA.106. Petitioner was released on a $25,000 unsecured bond on September 25, 2023. ROA.106.

Petitioner was charged in a one Count Indictment for being a convicted felon in possession of two firearms. ROA.23. No other charges were filed. Petitioner pled guilty to the one Count Indictment on December 19, 2023, and his plea was accepted

[1] References to "ROA" are to the record on appeal in the United States Court of Appeals for the Fifth Circuit, Case No. 24-50376.

by the district court on January 2, 2024. ROA.44, ROA.48. The maximum statutory sentence for this offense is 15 years. 18 U.S.C. § 924(a)(8).

Subsequently, on January 9, 2024, Petitioner and his counsel met with the U.S. Probation Office. Petitioner readily admitted to his conduct as described in the Indictment; stated he understood the seriousness of the offense; and vowed to never possess a firearm again. Petitioner also provided a urine sample on this same date that tested positive for cocaine. ROA.108. Williams has been addicted to cocaine since he was 16, twenty years prior to the instant offense. Moreover, the record reveals that his mother is a drug addict who got him hooked on drugs. ROA.113-14.

The Presentence Report ("PSR") was issued on March 15, 2024. ROA.104. It calculated the Defendant's base offense level at 20 based on his previous controlled substance offense. It then added four levels since Petitioner possessed methamphetamine and drug paraphernalia at the time of his arrest. ROA.108 (citing U.S.S.G. § 2K2.1(b)(6)(B)). This resulted in an adjusted offense level of 24. ROA.109. Although Petitioner pled guilty, took responsibility for his offense, and cooperated with law enforcement, Petitioner was denied a three level reduction for acceptance of responsibility because of the positive drug test mentioned above. ROA.108-09. Accordingly, Petitioner Total Offense Level remained at 24. ROA.109. William's criminal history score was three based on the prior trafficking offense from 2011. Hence, his Criminal History Category was II. ROA.99. This resulted in a Guideline imprisonment range of 57 to 71 months. ROA.117. U.S.S.G. Chap. 5, Part A.

No written objections were made to the PSR. ROA.120. At sentencing, however, Petitioner' counsel asked the district court to grant him the reduction for acceptance of responsibility and sentence him to a range between 41 to 51 months. Appendix C at * 7. The district court denied this request and sentenced Petitioner to a sentence of 57 months. ROA.56, ROA.100-02. The court also adopted the PSR without change. ROA.96, ROA.125.

Judgment was entered on April 11, 2024. Appendix B. Petitioner appealed his sentence to the Fifth Circuit Court of Appeals, arguing the district court erred when it denied him a reduction for acceptance of responsibility for conduct unrelated to his offense of conviction. The Fifth Circuit on December 23, 2024, denied Williams' appeal holding, based on Circuit precedent, that the section 3E1.1 adjustment can be denied even when a defendant's "new crimes" are unrelated to the charged conduct. Appendix A at *2. Neither a petition for rehearing nor a petition for rehearing en banc was submitted.

VI. REASONS FOR GRANTING THE PETITION – QUESTION 1

Petitioner contends that the federal statute that prohibits a person from possessing a firearm if he has been convicted of a crime punishable by imprisonment for a term exceeding one year violates the Second Amendment.[2] *Bruen* provided

[2] Petitioner did not raise this issue below. The facts here, however, are not in dispute. Petitioner received a lifetime ban from exercising his Second Amendment rights based on a drug trafficking crime from 2011. If such a ban violates the Second Amendment, then plain error is obvious. It also affects the fairness or integrity of the judicial proceeding since the Petitioner would have been convicted under an unconstitutional statute. Petitioner's substantial rights were likewise affected since he is imprisoned for violating section 922(g)(1).

Courts with a new two-step analysis for firearm regulations. The first step is straightforward: "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2116 (2022). If the Second Amendment's text covers the conduct, then courts should move on to step two, where the "government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2129-30. The government must provide a "representative historical analogue, not a historical twin." *Id.* at 2132; *see also United States v. Daniels*, 124 F.4th 967, 972 (5th Cir. 2025) (noting the same two-step process in connection with a conviction under 922(g)(3)). The Court further set forth what it called the two "*central*" considerations when engaging in an analogical inquiry: "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id.* 2133.

The Third Circuit, in *Range v. Att'y Gen.*, 69 F.4th 96 (3d Cir. 2023), found section 922(g)(1) to be unconstitutional as applied to Range. It concluded that the Government had failed to carry the burden required by *Bruen* "that the Nation's historical tradition of firearms regulation supports depriving Range of his Second Amendment right to possess a firearm." *Id.*, at 106.

Subsequently, in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), this Court clarified the methodology for determining whether a firearms regulation complies with the Second Amendment. After issuing that decision, the Court granted certiorari

in multiple cases presenting the question whether section 922(g)(1) violates the Second Amendment, vacated these decisions, and remanded for further consideration in light of *Rahimi*. This included the Third Circuit's decision in *Range*.

In an en banc decision at the end of 2024, the Third Circuit reaffirmed its holding in *Range*. *Range v. Att'y Gen.*, 124 F.4th 218, 228-32 (3d Cir. 2024) (en banc). The court specifically found that the defendant was one of "the people" protected by the Second Amendment and rejected the Government's argument that felons are not included in this protection. *Id.* at 228. The court then noted *Rahimi's* holding that permits the "disarming (at least temporarily) [of] physically dangerous people." *Id.* at 230. This analysis is consistent with Justice Barret's dissent in *Kanter v. Barr*, where the Justice reasoned that without evidence that a defendant "belongs to a dangerous category or bears individual markers of risk, permanently disqualifying [a defendant] from possessing a gun violates the Second Amendment." 919 F.3d 437, 451 (7th Cir. 2019) (J. Barrett, dissenting).

Petitioner here is clearly within the class of people the Second Amendment protects. *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024) (citing *Rahimi*). The issue, therefore, is whether he is a dangerous person and, if so, can at least be temporarily banned from exercising his Second Amendment rights. *Range,* 124 F.4th at 230-31; *United States v. Williams*, 113 F.4th 637, 657-59 (6th Cir. 2024). Moreover, the Third Circuit in *Range* specifically rejected the Government's argument that all felons are dangerous. 124 F.4th at 230. In the case at bar, Petitioner was convicted in 2011 for a drug trafficking offense. His only offense from 2011 – 2023 (when he was

arrested for this offense) is driving on a revoked license, hardly a dangerous crime. ROA.110-11. Furthermore, he was released on a $25,000 unsecured bond pending trial shortly after his arrest. ROA.106. Clearly, the court did not view Petitioner as a danger to others.

In *United States v. Diaz*, The Fifth Circuit phrased the issue as this: whether section 922(g)(1)'s ban is consistent with this Country's history of firearm regulation. 116 F.4th at 467, 471. Nevertheless, the Fifth Circuit affirmed the defendant's lifetime ban based on his prior offense of theft. For Petitioner, however, the specific question is this: whether the Country's history of firearm regulation permits a lifetime ban of a drug offender's Second Amendment rights? This precise question has not been answered by this Court. This Court did observe in *Bruen* that "'there is little evidence of an early American practice of,' forever barring all people convicted of a felony from ever again possessing a firearm." 142 S.Ct. at 2142. Moreover, the Fifth Circuit just this year held that section 922(g)(3) is unconstitutional as applied to that defendant. This statute bars an unlawful user of a controlled substance from possessing a firearm. *United States v. Daniels,* 124 F.4th at 975-79. These decisions, along with *Range, Williams* and Justice Barrett's dissent *Kanter*, certainly suggest that a lifetime ban from possessing a firearm for a decades long ago drug trafficking conviction runs afoul of the Second Amendment.

As shown above, this issue is of great importance based on the number of individuals convicted for 922((g)(1) offenses, along with other offenses under section 922(g). Accordingly, the Court should grant the petition for a writ of certiorari in this

case, vacate the court of appeals' judgment, and remand for further consideration in light of *Rahimi* and subsequent decisions from this Court.

VII. REASONS FOR GRANTING THE PETITION – QUESTIONS 2-4

A. A conflict exists among the Circuits on this issue.

This Court's intervention is necessary to resolve a conflict among the Circuits on whether post plea unrelated conduct can be used to deny a defendant a reduction for acceptance of responsibility when the defendant otherwise would be eligible for the reduction. The Fifth Circuit has held that post plea conduct unrelated to the charged offense can form the basis of denying a defendant his acceptance of responsibility reduction. *See United States v. Hinojosa-Almance*, 977 F.3d 407, 410-411 (5th Cir. 2020) (citing *United States v. Watkins*, 911 F.2d 983, 984-85 (5th Cir. 1990)); *United States v. Portwood*, 22 F.3d 1094, *1 (5th Cir. 1994).

The Sixth Circuit disagrees. This Circuit has concluded:

> We hold that acceptance of responsibility, as contemplated by the United States Sentencing Commission, is "acceptance of responsibility for his offense," Guidelines 3E1.1(a) ..., not for "illegal conduct" generally. Considering unrelated criminal conduct unfairly penalizes a defendant for a criminal disposition, when true remorse for specific criminal behavior is the issue.

United States v. Banks, 252 F.3d 801, 806-07 (6th Cir. 2001) (quoting *United States v. Morrison*, 983 F.2d 730, 735 (6th Cir. 1993)). Hence, a present need exists to resolve a conflict on this issue between the Fifth and Sixth Circuits

B. The Fifth Circuit cases are wrongly decided.

The Fifth Circuit's interpretation of section 3E1.1(a) derives from the court's decision in *Watkins*. As shown herein, however, *Watkins* was based on a prior version

of section 3E1.1(a) that no longer applies. The more recent version of the Guideline makes evident, as the Sixth Circuit has concluded, that unrelated conduct cannot be used to deny a defendant a reduction under 3E1.1(a).

1. The Watkins Decision

In *Watkins*, the Fifth Circuit held that a defendant can be denied a reduction for acceptance of responsibility for "criminal conduct" that occurred while the defendant was waiting to be sentenced, even if the conduct was unrelated to his offense of conviction. 911 F.2d at 985. The *Hinojosa-Almance* case cited by the Fifth Circuit in its decision in this case relies upon *Watkins*. Appendix A at *2. *Watkins* was decided in 1990. At that time, section 3E1.1 read that a defendant may be entitled to a two point reduction in his sentence if he "'clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his *criminal conduct*.'" *Id.* at 984 (emphasis added). It is the *Watkins* decision that courts in the Fifth Circuit consistently cite when denying a defendant a reduction for acceptance of responsibility for conduct unrelated to his offense.

2. The Amendment to Section 3E1.1 and the Portwood Decision

In 1992, section 3E1.1 was amended. The words "criminal conduct" were deleted and added in their place was the word "offense." U.S.S.G. § 3E1.1, Amend. 459, Nov. 1, 1992; *United States v. Portwood,* 22 F.3d 1094, *1 (5th Cir. 1994). In *Portwood,* the Fifth Circuit rejected the argument that Williams makes now -- that the change from "criminal conduct" to "offense" means that for a defendant to be denied a reduction for acceptance of responsibility for some subsequent criminal act,

then that subsequent criminal act must be related to his offense of conviction. *Id.; United States. Purcell*, 61 Fed. Appx. 921, *1 (5th Cir. 2003).

A fair reading of the revised section 3E1.1 certainly evinces that the phrase "his offense" is narrower than "his criminal conduct." Moreover, the plain reading of this Guideline clearly suggests that in order to receive a reduction for acceptance of responsibility a defendant must accept responsibility for just his offense. Otherwise, there would be no reason to change this section from "criminal conduct" to "offense". *Portwood* did not buy this argument. Instead, it concluded that the commentary, specifically note 1(B), controls. This note provides that the court can consider whether a defendant has voluntarily terminated or withdrawn from "criminal conduct or associations." U.S.S.G. § 3E1.1, cmt. n.1(B). Accordingly, *Portwood* held that "any continued criminal conduct is a sufficient basis for denying a reduction for acceptance of responsibility." *Portwood,* 22 F.3d 1094, *1.

3. Why Portwood was wrongly decided.

Several reasons show that *Portwood* and the subsequent Fifth Circuit holdings such as in *Hinojosa-Almance* are wrongly decided. **First,** it conflicts with the revised Guideline language in section 3E1.1(a). As demonstrated "criminal conduct" was changed to "offense" in section 3E1.1(a) in 1992. Note 1(B), however, has not been changed since its original effective date on November 1, 1987. U.S.S.G. § 3E1.1, Amend. 459, Nov. 1, 1992; Amend. 746, November 1, 2010; Amend. 810, November 1, 2018. In other words, note 1(B) has not been edited to make it align with the actual language of the Guideline. Why that change was not made is unclear.

Second, it conflicts with the Supreme Court's decision in *United States v. Stinson*, where the Court determined that the Guideline trumps the commentary when the two diverge. Specifically, the Court in *Stinson* held that "commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." 508 U.S. 36, 38 (1993); *United States v. Choulat*, 75 F.4th 489, 494 (5th Cir. 2023) (citing *Stinson*). A plain reading of section 3E1.1(a) evinces that a defendant such as the Petitioner must accept responsibility for his offense. Petitioner's offense was being a felon in possession of a firearm and was not a narcotics offense. Appendix B. There can be little argument that accepting responsibility for all of one's criminal conduct is substantially different (and thus inconsistent) than merely accepting responsibility for one's offense of conviction. *Portwood's* flaw is that it relied on a provision in the commentary that is clearly inconsistent with the plain reading of the Guideline, as amended, when it used the commentary's term "criminal conduct" in deciding that unrelated conduct that occurs after a guilty plea can deny a defendant a reduction for acceptance of responsibility under section 3E1.1(a).

Third, *Portwood's* interpretation is at odds with note 1(A). This note was added in 1992 at the same time section 3E1.1(a) was modified. It states that the court should consider, when deciding whether a defendant should receive a reduction for acceptance of responsibility, whether the defendant has "truthfully admitt[ed] the conduct comprising the *offense(s) of conviction*, and truthfully admit[ed] or not falsely

den[ied] any additional relevant conduct . . . ." U.S.S.G. § 3E1.1, cmt. 1(A), Amend. 459, Nov. 1, 1992 (emphasis added). This change to the commentary evinces the clear intent of the Guidelines to permit a defendant a reduction for acceptance of responsibility when he has admitted to the offense of conviction and any relevant conduct. Petitioner clearly did so at the district court and should have thus received a reduction under section 3E1.1. The failure to grant him this reduction was error.

The Eleventh Circuit has agreed with the Fifth Circuit and reasoned that the changes to section 3E1.1 were made to ensure that a defendant was not denied a decrease solely because the defendant failed to admit to all criminal conduct, rather than taking away from the district court the discretion to consider the defendant's subsequent, even if unrelated, criminal conduct. *United States v. Pace*, 17 F.3d 341, 344 (11th Cir. 1994). The Eleventh Circuit's reasoning misses the mark. In an amendment in 1990 to note 3 to the commentary, the Commission made clear that a defendant just had to truthfully admit to his involvement in the offense and related conduct in order to receive the reduction. It is thus evident that before the change to 3E1.1(a) occurred the commission had unequivocally stated that a defendant did not have to admit to all criminal conduct before he received the reduction.

Fourth, as noted above, the Sixth Circuit has held that a defendant's post plea unrelated criminal conduct cannot be used to deny him a reduction for acceptance of responsibility. *United States v. Banks,* 252 F.3d 801, 806-07 (6th Cir. 2001) (citing *United States v. Morrison,* 983 F.2d 730, 735 (6th Cir. 1993)). This holding is consistent with the change to section 3E1.1(a) that requires a defendant to accept

responsibility for his offense, rather than his criminal conduct. In vacating the judgment of the district court, *Banks* observed that the defendant fully cooperated with law enforcement, consented to a search, discussed his crimes with investigators and timely pled guilty. 252 F.3d at 807. The same is true for the Petitioner. From the first moment of the traffic stop through his guilty plea and subsequent sentencing, Petitioner fully cooperated with law enforcement. ROA.107-08. In other words, although he clearly demonstrated acceptance of responsibility for his offense, he was nevertheless denied a sentencing reduction due to conduct unrelated to his offense of conviction. This harsh result is at odds with the plain and unambiguous reading of section 3E1.1(a).

C. The Fifth Circuit punishes Petitioner for being a drug addict.

The Fifth Circuit's decision punishes Petitioner for being an addict and is thus in conflict with *Robinson v. State of California*, 370 U.S. 660, 666-67 (1962). *Robinson* makes clear that punishing someone for being a narcotic addict runs afoul of the Eighth and Fourteenth Amendments. Narcotic addiction, as this Court recognized, is an illness not a crime. *Id.* at 667. Justice Douglas, in fact, in his concurring opinion, explicitly noted that it is "'cruel and unusual' punishment in the sense of the Eighth Amendment to treat as a criminal a person who is a drug addict." *Id.* at 668 (Douglas, J. concurring). This is the very thing, however, that the Fifth Circuit is doing when it denied Petitioner a downward adjustment for acceptance of responsibility due to an unrelated positive drug test.

Indeed, the Fifth Circuit reasoned that the section "3E1.1 adjustment may be denied in these circumstances even when a defendant's *new crimes* 'were not directly related to the underlying criminal conduct with which he was charged.'" Appendix A at *2 (emphasis added). This begs the question of what new crimes did Petitioner commit? He could not have been charged with possession of a narcotic since possession requires immediate power or control over the drugs or at least the power and intention to exercise dominion and control over the drugs. *United States v. Murphy*, 107 F.3d 1199, 1207-08 (6th Cir. 1997). Of course, this illustrates the very problem with illegal drugs – once they are ingested the person is not in control. In addition, as shown, addiction is not a crime, and all the positive drug test revealed is that Petitioner is an addict, a fact that has been acknowledged.

Simply put, what the record reveals is that Petitioner was denied a reduced sentence for acceptance of responsibility even though he cooperated with law enforcement from the time of his arrest through sentencing, acknowledged his responsibility for his offense and timely pled guilty to the charge. Why? Because he is a drug addict – a condition, not a crime, unrelated to the charged offense. In a similar context, the Second Circuit questioned whether a defendant's drug use alone provides a sufficient basis for denying the defendant a sentence reduction. Rather, "[c]ontinued drug abuse may well signify addiction and dependence rather than lack of contrition." *United States v. Woods*, 927 F.2d 735, 736 (2d Cir. 1991).

Based on the record before the Court, it is evident that Petitioner was denied a reduction for acceptance of responsibility for one reason and one reason alone – he is a drug addict. As shown, this is not permitted under *Robinson.*

VII. CONCLUSION AND PRAYER FOR RELIEF

Petitioner clearly falls within the class of people the Second Amendment protects. Whether someone like Petitioner can nevertheless receive a lifetime ban from possessing a firearm, and have that ban not violate his Second Amendment rights, is an open question. Recent jurisprudence from various courts across the country appear to indicate that such a lifetime ban violates a person's constitutional rights. Other courts disagree. Accordingly, guidance for this Court is needed to help bring clarity to this important issue. Hence, the granting of this writ is warranted.

Likewise, there is a clear conflict between the Fifth Circuit and the Sixth Circuit on whether post plea conduct unrelated to the offense can be used as a basis to deny a defendant a reduction in his sentence for acceptance of responsibility. The Fifth Circuit says you can and on this basis affirmed Petitioner's sentence. The Fifth Circuit's decision is at odds with the Sixth Circuit's decisions in *Banks* and *Morrison,* conflicts with the plain reading of section 3E1.1(a), improperly relies upon Guideline commentary that is inconsistent with the Guideline's plain reading and neglects the more updated Guideline commentary stated in note (1)(A). Moreover, the real effect of the Fifth Circuit's decision is to punish Petitioner for being an addict, something this Court's holding in *Robinson* proscribes.

Accordingly, Petitioner respectfully requests that the Court grant certiorari to review the judgment of the Fifth Circuit and to resolve the conflict among the Circuits concerning both Petitioner's Second Amendment rights and Guideline section 3E1.1(a), and to grant to Petitioner such other relief as justice requires.

Respectfully Submitted,

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