No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SAMUEL JAMES WEAVER,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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PETITION FOR A WRIT OF CERTIORARI

Federal Defender Services of Eastern Tennessee, Inc.

Conrad Benjamin Kahn
Counsel of Record
Assistant Federal Defender
800 S. Gay Street, Suite 2400
Knoxville, Tennessee 37929
Telephone: (865) 637-7979
Email: Conrad_Kahn@fd.org

QUESTION PRESENTED

This case presents an important and long-standing question of appellate review that has divided the circuits and impacts countless defendants:

> What standard of review should apply when a district court applies a federal sentencing guideline to undisputed facts?

In *Buford v. United States*, 532 U.S. 59 (2001), this Court interpreted the "due deference" language in 18 U.S.C. § 3742(e) to require a deferential standard of review. But in *United States v. Booker*, 543 U.S. 220 (2005), this Court excised § 3742(e) when it made the Sentencing Guidelines advisory. Since then, the circuits have taken different views on whether § 3742(e) continues to require deferential review or whether de novo review applies.

The proper standard of review is a question of exceptional importance, and this case presents an ideal opportunity for the Court to provide much-needed clarity.

RELATED PROCEEDINGS

United States District Court (E.D. Tenn.)

United States v. Weaver, Case No. 1:19-cr-33.

United States Court of Appeals (6th Cir.)

United States v. Weaver, No. 23-5488.

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PETITION FOR A WRIT OF CERTIORARI

Samuel James Weaver respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The district court's judgment is in Appendix A. The Sixth Circuit's opinion, available at 2024 WL 4564653, appears in Appendix B. Its order denying rehearing en banc is included in Appendix C.

JURISDICTION

The Sixth Circuit entered its judgment on October 24, 2024, and denied rehearing en banc on December 5, 2024. Justice Kavanaugh granted Mr. Weaver's application to extend the time to file this certiorari petition until May 4, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3742(e) provides:

(e) Consideration. -- 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);

(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); or

(ii) is not authorized under section 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 and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 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.

STATEMENT OF THE CASE

1. In February 2019, law enforcement arrived at Mr. Weaver's home in the early morning to execute a search warrant. *See* Sentencing Transcript, R. 76 at 8.) They arrived in three cars with lights and sirens activated, and one of the cars used its PA system to announce their presence and purpose. (*Id.* at 9, 12–13.) After knocking on the door, they threw a flash grenade through a side window and attempted to forcibly enter the front door. (*Id.* at 17, 29–31.) During this attempt, before the door opened, Mr. Weaver, who had been awakened from sleep

in the back bedroom, fired a shot toward the front door. (PSR, R. 49 at 6.) Subsequently, while law enforcement continued their efforts to enter, Mr. Weaver put down the gun and fled through the back door. (*Id.*) However, he later returned to the house after seeing law enforcement had secured the premises, and he eventually surrendered. (*Id.*)

Upon searching the residence, law enforcement discovered various drugs, such as crack cocaine, powder cocaine, heroin, methamphetamine, and marijuana, along with scales and baggies. (*Id.* at 7.) After being informed of his *Miranda* rights, Mr. Weaver admitted to distributing crack cocaine and heroin, stating that he turned to drug sales after losing his job due to a back injury. (*Id.*) He also admitted to firing the gun, which he owned for protection, as people knew he was involved in drug sales. (*Id.* at 6–7.) He maintained, however, that he was unaware law enforcement was behind the door when he fired the shot. (Sentencing Transcript, R. 76, Page ID # 23–24.) The entire incident, from the officers' arrival in their cars to forcibly gaining entry through the front door, lasted no more than two minutes. (*Id.* at 14, 17.)

2. Mr. Weaver pled guilty to several drug and gun offenses. (Transcript from Change of Plea Hearing, R. 75 at 7–10.) Before sentencing, Probation recommended applying the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), which would raise his guidelines range to 295 to 353 months' imprisonment. (PSR, R. 49 at 9, 11, 18, 25.)

In ACCA cases, the court uses U.S.S.G. § 4B1.4, which starts with the offense level from Chapters Two and Three. Probation set Mr. Weaver's total offense level at 35. That included a base offense level of 32 for drug weight, a 6-level increase under U.S.S.G. § 3A1.2(c)(1) for assaulting someone who knew or had reason to believe was an officer, and a 3-level reduction for accepting responsibility. (*Id.* at 10–11.)

Regarding Mr. Weaver's criminal history score, he had five points, which would typically place him in a criminal history category III. (*Id.* at 18.) But because of the ACCA enhancement, it was increased to IV. (*Id.*) With a total offense level of 35 and a criminal history category of IV, the resulting guideline range for imprisonment was 235 to 293 months. (*Id.* at 25.) Count nine, however, carried a mandatory consecutive sentence of sixty months, leading to an increased guideline

range to 295 to 353 months' imprisonment. (*Id.*)

3. Before the sentencing hearing, Mr. Weaver objected to the ACCA designation and the six-level assault enhancement. He argued that he was unaware that the individuals storming his house at dawn were law enforcement. (PSR Objections, R. 52 at 29.) He stated that he was awakened by a loud explosion, believed he was being robbed, and fired the gun toward the yet unopened door in a startled and confused state. (*Id.*) He also noted that he consistently maintained in all his statements to agents that he did not know law enforcement was behind the door when he fired the gun. (*Id.*)

During the sentencing hearing, Commander Rusty Morrison from the Chattanooga Police Department SWAT team testified as a witness for the government. (Sentencing Transcript, R. 76 at 6.) He provided a detailed account of the operation, which involved approximately twenty officers and took place before full daylight. (*Id.* at 537.) In less than two minutes, the police managed to park in front of the house and forcibly enter it. (*Id.* at 8.)

As the officers approached the residence, the police vehicles, including an armored car, a marked patrol unit, and a van, activated

their lights and sirens. (*Id.* at 9–13.) Notably, the sirens were only on for about ten to twelve seconds. (*Id.* at 11.) The officers parked their cars on the street in front of the house, with the front door about twenty-five to thirty feet away and the back room where Mr. Weaver was sleeping about thirty-five to forty feet away. (*Id.* at 9, 21–22.)

Commander Morrison highlighted that the sirens on the armored car, as well as the PA system used to repeatedly announce the purpose of the search warrant and the address, were particularly loud. (*Id.* at 12.) This pre-entry announcement process, along with setting up to attempt entry at the front door, took around twenty to twenty-five seconds. (*Id.* at 14.)

During the incident, Mr. Weaver, who was sleeping in the back bedroom, fired a gun before law enforcement entered the home. Commander Morrison explained that Mr. Weaver attempted to flee through the back door without the gun in his possession but quickly returned inside when he discovered law enforcement waiting behind the house. (*Id.* at 15, 18–19.) Mr. Weaver was ultimately apprehended by the officers who had entered through the front door. Commander Morrison clarified that he was unaware of the gunshot during the forcible

entry and only learned about it later during a debrief with his team. (*Id.* at 14, 19.)

Following Commander Morrison's testimony, the parties stipulated that upon his arrest, Mr. Weaver admitted to his involvement in drug dealing and specified the extent of his involvement. (*Id.* at 22–24.) However, despite acknowledging other culpable acts, Mr. Weaver consistently denied having any knowledge that law enforcement was behind the door when he shot the gun. (*Id.*) He maintained that he was awoken by a loud noise and fired the firearm to scare off potential robbers. (*Id.*)

The parties then presented their respective arguments. The government argued that the lights, sirens, and PA announcements were enough to alert anyone inside the house that law enforcement was attempting to enter. (*Id.* at 24–25.) It also asserted that Mr. Weaver's decision to disarm himself before attempting to escape contradicted his claim of mistaking law enforcement for robbers. (*Id.* at 25–26.) The government stated that he knew it was law enforcement behind the door and discarded the gun because of his status as a convicted felon. (*Id.*)

In response, Mr. Weaver maintained that the events unfolded

rapidly, and he was genuinely unaware of law enforcement's presence when he fired the gun. (*Id.* at 26–28.) He explained that the incident occurred early in the morning before daybreak while he was sleeping in a back bedroom with closed doors. (*Id.*) Startled awake by a flash grenade thrown through a window into a nearby bedroom, Mr. Weaver asserted that he did not hear any PA announcements and was not aware that the individuals at the front door were law enforcement. (*Id.* at 28–34.) In his disoriented state, he believed he had fired the gun toward the ceiling, but the round got stuck in the doorjamb. (*Id.*)

The district court overruled Mr. Weaver's objection, stating that a reasonably healthy person in his situation should have known that officers were attempting to enter his home. (*Id.* at 34–35.) The court found no evidence suggesting Mr. Weaver had any impairments that would have made him less likely to understand the situation similarly to an average person. (*Id.*) Consequently, the court found that when Mr. Weaver, "when he realized there were police there and they were trying to make entry into his home, retrieved a loaded weapon that he had somewhere in close proximity to where he was sleeping, and he fired a round at the officers." (*Id.*)

The district court also overruled Mr. Weaver's remaining objections, including his objection to the application of the ACCA, and subsequently sentenced him to 295 months' imprisonment, followed by eight years of supervised release. (Judgment, R. 70 at 3–4.)

4. Mr. Weaver appealed his sentence. While the case was pending, this Court decided *Wooden v. United States*, 142 S. Ct. 1063 (2022), which abrogated the Sixth Court's precedent on the ACCA's occasions clause. Following *Wooden,* both parties asked the Sixth Circuit to vacate Mr. Weaver's sentence and remand the case for resentencing. The court agreed and remanded for the district court to reconsider whether the ACCA still applied. (Sixth Circuit Order, R. 78 at 2–3.)

5. During the resentencing hearing, both parties agreed that Mr. Weaver was no longer subject to the ACCA. (Resentencing Transcript, R. 95 at 2–4.) He therefore explained that he would no longer face a mandatory minimum sentence on count three and would only have a ten-year mandatory minimum on certain drug counts. (*Id.*)

With the removal of the ACCA, Mr. Weaver's criminal history category reduced from IV to III. (*Id.*) However, his total offense level

remained unchanged at 35 because even when the ACCA applied, it was driven by Chapters Two and Three. (*Id.*) As a result, his new guideline range was 270 to 322 months' imprisonment. (*Id.*)

After considering some post-sentencing developments relating to medical problems arising from inadequate treatment during Mr. Weaver's incarceration, the district court imposed a sentence of 270 month's imprisonment, followed by eight years of supervised release. (*Id.* at 9–11; Amended Judgment, R. 89 at 3–4.)

6. Mr. Weaver appealed his resentencing judgment, challenging the district court's use of the assault adjustment. He argued that, since his original sentencing, the Sixth Circuit decided *United States v. Pruitt*, interpreting "assaulted" in § 3A1.2(c)(1) to follow the common law definition, which requires either (1) an attempted battery or (2) an act meant to, and reasonably does, cause a victim to fear immediate bodily harm. 999 F.3d 1017, 1023 (6th Cir. 2021). Mr. Weaver pointed out that, without the guidance of *Pruitt*, the district court never made the required findings on whether his conduct met this definition of assault. Initial Br. at 21–25. He further argued that if the district court had considered these requirements, it likely wouldn't apply the enhancement.

Id. The record didn't show that he intended to harm the officers, nor did it suggest that the officers behind the door were aware of the gunshot in a way that caused them an immediate fear of injury. *Id.* Mr. Weaver urged a remand so the district court could address this in the first instance. *Id.*

He also contended that the Sixth Circuit should apply de novo review, acknowledging that *United States v. Abdalla*, 972 F.3d 838, 850–51 (6th Cir. 2020), currently foreclosed his request. *Id.* at 18–21. Still, he argued that *Abdalla* mistakenly relied on this Court's decision in *Buford* to adopt a due deference standard. *Id.* In his view, a question about how a guideline applies to undisputed facts is purely legal and deserves de novo review. *Id.* While Mr. Weaver asserted that he prevails even under a due deference standard, he preserved the question of the proper review standard for potential en banc consideration. *Id.*

The Sixth Circuit upheld the district court's judgment, concluding that Mr. Weaver's conduct met the first definition of assault—attempted battery—based on his supposed intent to harm the officers. *United States v. Weaver*, 2024 WL 4564653, at *2–3 (6th Cir. Oct. 24, 2024). In a footnote, the panel noted that attempted battery requires an intent to

injure. *Id.* at *3 n.1. Although the district court hadn't explicitly found that Mr. Weaver had this intent, the panel reasoned that, under the due-deference standard, an explicit finding wasn't necessary. *Id.* The panel inferred that the act of shooting toward the officers implicitly showed an intent to injure, rather than merely to frighten. *Id.* Here's what the panel said:

> Weaver faults the district court for not expressly finding that Weaver "had the specific intent to actually shoot or harm an officer." Appellant Br. 23. True, attempted-battery assault does require "an intent to injure." 2 Wayne R. LaFave, *Substantive Criminal Law*, § 16.3(a) (3d ed. 2023). But it was not necessary for the court to explicitly state what was implicit in its finding that Weaver intended to shoot at the officers. Because our review of the application of the Guidelines to the facts is "deferential," *Pruitt*, 999 F.3d at 1020, the district court's failure to spell out its logic from point A (Weaver shot at the officers) to point B (he intended to harm the officers) is not reversible error.

Id.

REASONS FOR GRANTING THE WRIT

For nearly two decades, the courts of appeals have been divided over a basic question of federal sentencing law: What standard governs appellate review when a district court applies the Sentencing Guidelines to undisputed facts? The answer matters in virtually every criminal appeal, and yet it depends entirely on where the case is heard. That

entrenched circuit split traces back to two decisions of this Court—*Buford* and *Booker*—and how they interact. To understand the problem, it's necessary to start with *Buford*.

I. In *Buford*, this Court held that § 3742(e) requires deference when applying the Guidelines to undisputed facts.

In 2000, the Sentencing Guidelines defined a "career offender" as someone with two prior felony convictions for violent or drug crimes—but "related" convictions, like those consolidated for sentencing, counted as one. U.S.S.G. § 4B1.1 (2000). The Seventh Circuit had held that no formal consolidation order was needed; convictions could be "functionally consolidated" if they were factually or logically connected and sentenced together. *See Buford*, 532 U.S. at 60–61.

That's what Buford argued. She pled guilty to armed bank robbery, and the court had to decide whether her five 1992 state convictions were related. *Id.* at 61. The government agreed that four—gas station robberies—were but claimed the separate drug conviction wasn't. *Id.* at 61–62. The district court agreed, and the Seventh Circuit upheld that decision, applying a deferential standard of review. *Id.* at 62–63. This Court granted certiorari to decide if that was the right standard. *Id.*

Everyone agreed that § 3742(e) required appellate courts to "give due deference to the district court's application of the guidelines to the facts." *Id.* at 63. But Buford argued that deference wasn't warranted here: the facts weren't in dispute, and the court of appeals was just as well-positioned to decide whether the convictions were functionally consolidated. *Id.* at 64. She also contended that de novo review would promote clarity and consistency. *Id.*

The Court disagreed. It held that the proper level of deference turns on the nature of the question—and this one relied on the district court's on-the-ground expertise. *Id.* at 64–65. District judges handle consolidation issues far more frequently than appellate judges and are better equipped to interpret the practical realities of sentencing and local court practices. That experience, the Court said, helps them draw finer inferences from the procedural record—like whether cases were grouped for convenience or because they were truly related.

Buford's push for uniformity didn't carry the day either. *Id.* at 65–66. This wasn't a broad Guidelines question—it was a narrow, fact-intensive determination. That limits the value of appellate precedent. And if greater consistency is needed, the Sentencing Commission—not

the courts—is the one to provide it.

In the end, the fact-bound nature of the issue, the district court's comparative advantage, and the limited value of setting precedent all supported that deference was properly due under § 3742(e). *Id.* at 66.

II. Subsequently, in *Booker*, this Court excised § 3742(e), eliminating the "due deference" standard for applying the Guidelines to undisputed facts.

Just four years after deciding *Buford*, this Court fundamentally reshaped federal sentencing in *United States v. Booker*, 543 U.S. 220 (2005). There, the Court held that mandatory sentencing guidelines violated the Sixth Amendment when used to enhance a sentence based on judicial factfinding. 543 U.S. at 226–27. To cure the constitutional problem, the Court didn't just sever the provision making the Guidelines mandatory—18 U.S.C. § 3553(b)(1). It also struck § 3742(e), which had governed appellate review and required courts to give "due deference" to a district court's application of the Guidelines—a standard central to *Buford*. *Id.* at 245, 259–60. That excision matters. It removed the statutory foundation for *Buford*'s deferential review standard and marked a clean break from the old regime.

III. Post-*Booker*, the circuits are split on whether § 3742(e)'s "due deference" standard continues to apply to challenges to how the Guidelines apply to undisputed facts.

Since *Booker*, the circuits have split on whether § 3742(e)'s "due deference" standard still governs appellate review of how the Guidelines apply to undisputed facts. Some have held that *Booker* invalidated the provision entirely—including its deferential standard of review. *United States v. Lopez-Urbina*, 434 F.3d 750, 763 n.1 (5th Cir. 2005). Others have read *Booker* more narrowly, concluding that the "due deference" standard survives. *United States v. Richards*, 674 F.3d 215, 219 n.2 (3d Cir. 2012); *United States v. Tann*, 532 F.3d 868, 874 (D.C. Cir. 2008). Still others have acknowledged the tension and the circuit split but declined to resolve it. *United States v. Thomas*, 933 F.3d 605, 609 (6th Cir. 2019); *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1173 (9th Cir. 2017). As a result, courts now diverge: some apply de novo review, while others continue to defer to the district court's application of the Guidelines to the facts.

A. The Fifth Circuit has recognized that *Buford* and § 3742(e) no longer govern post-*Booker*.

The Fifth Circuit was the first to confront whether *Buford* and § 3742(e)'s "due deference" standard survived *Booker*. In *Lopez-Urbina*,

the defendant argued that the district court misapplied the grouping rules when calculating his Guidelines range. 434 F.3d at 762–63. The Fifth Circuit reviewed the issue de novo, explaining that it would affirm only if the court correctly applied the guideline to factual findings that weren't clearly erroneous. *Id.* In a footnote, the court marked a key shift: before *Booker*, it gave "due deference" under § 3742(e) to grouping decisions that turned on fact-intensive, case-specific determinations. But with *Booker* having excised that provision, the court made clear that deference no longer applied—and proceeded under de novo review. *Id.* at 763 n.1.

B. The D.C. and Third Circuits have held that *Booker* left § 3742(e)'s "due deference" standard intact.

A few years after *Lopez-Urbina*, the D.C. Circuit took a different path in *Tann*. It held that *Booker* invalidated only the parts of § 3742(e) that made the Guidelines mandatory—not the provisions governing how appellate courts review a district court's application of the Guidelines to the facts. 532 F.3d at 874. As *Tann* explained, *Booker* didn't change how Guidelines ranges are calculated. Courts must still get the math right, and if they don't, a remand is required. On that reasoning, the D.C. Circuit held that *Booker* left § 3742(e)'s "due deference" standard

fully intact. *Id.*

Four years after *Tann*, the Third Circuit joined the debate in *Richards*—and aligned itself with *Tann*. 674 F.3d at 219 n.2. The court held that § 3742(e)'s "due deference" standard remains fully operative. *Id.* It reasoned that *Buford* relied only "in part" on § 3742(e), and that *Booker* excised just the portion of the statute requiring de novo review of departures, since that provision reinforced the Guidelines' mandatory nature. *Id.* The court also highlighted Justice Stevens's concurrence in *Rita v. United States*, where he noted in passing that the "due deference" standard still applied. 551 U.S. 338, 361–62 (2007) (Stevens, J., concurring). In the end, the Third Circuit concluded that both *Buford*'s reasoning and § 3742(e)'s "due deference" directive remained intact after *Booker*.

C. The Sixth and Ninth Circuits have acknowledged the circuit split but declined to resolve it.

Both the Sixth and Ninth Circuits have recognized the post-*Booker* uncertainty surrounding § 3742(e)'s "due deference" standard but have declined to squarely resolve the issue. Just two years after *Booker*, the Sixth Circuit noted in an unpublished decision that *Booker*'s severance of § 3742(e) casts doubt on the continued applicability of *Buford*. *United*

States v. Brain, 226 F. App'x 511, 514 (6th Cir. 2007). Yet for over a decade, the court has continued to apply *Buford* reflexively, without directly addressing whether *Booker* left the standard intact. *See Thomas*, 933 F.3d at 609. The Ninth Circuit has taken a similar stance. While it has acknowledged the existence of a circuit split on the issue, it has expressly declined to take a position. *Gasca-Ruiz*, 852 F.3d at 1173.

IV. The Sixth Circuit got it wrong.

The Sixth Circuit erred when it relied on § 3742(e)'s "due deference" standard to uphold Mr. Weaver's sentence. Before *Buford*, the Sixth Circuit regularly reviewed the application of the Guidelines to undisputed facts de novo. *See United States v. Merritt*, 102 F.4th 375, 379 (6th Cir. 2024). That was the correct approach then—and it's the correct approach now, post-*Booker*.

Booker didn't just trim § 3742(e); it cut the provision out entirely. The Court was unambiguous. It said § 3742(e) "must be severed and excised." *Booker*, 543 U.S. at 245. It didn't say "in part" or "just the departures clause." It said *the provision*—full stop. And it said it repeatedly. *Id.* at 259 (ordering excision of "two specific statutory provisions," including the one that sets forth "standards" of review on

appeal—plural); *id.* at 260 (same); *id.* at 265 (reiterating that "§ 3742(e) is severed and excised"). To remove any doubt, the Court attached an appendix identifying exactly what it struck, *id.* at 259, and that appendix expressly includes the "due deference" language. *Id.* at 268–71.

The D.C. and Third Circuits read *Booker* differently, but their reasoning doesn't hold up. They claim *Booker* excised only part of § 3742(e) and point to a passing remark in Justice Stevens's concurrence in *Rita* that the "due deference" standard still applied. *See supra* Part III.B. But that remark—made years later by a Justice who dissented from *Booker*'s remedial holding—sheds no meaningful light on what the Court actually held.

These courts also suggest that *Buford* relied only "in part" on § 3742(e). *Id.* But that's a misreading. In *Buford*, there was no dispute that the "due deference" standard governed; the only question was how much deference it required. 532 U.S. at 63–64. The notion that *Buford* can stand independent of § 3742(e) is revisionist.

In short, *Booker* excised § 3742(e) in full—including its "due deference" standard. With that standard gone, the question becomes what review now applies. Courts could return to pre-*Buford* precedent

and apply de novo review. *See Merritt*, 102 F.4th at 379. Or they could follow this Court's more recent guidance on mixed questions of law and fact: if resolving the issue turns primarily on legal analysis, apply de novo; if it's fact-intensive, use clear error. *See U.S. Bank N.A. v. Village at Lakeridge, LLC*, 582 U.S. 387, 396 (2018); *Bufkin v. Collins*, 145 S. Ct. 728, 739 (2025); *Wilkinson v. Garland*, 601 U.S. 209, 221–23 (2024); *Google LLC v. Oracle America, Inc.*, 593 U.S. 1, 24 (2021).

Either way, the Sixth Circuit applied the wrong standard here. The district court made no explicit finding that Mr. Weaver intended to injure another person. Under any appropriate standard of review, that omission would have required a remand. The Sixth Circuit reached the wrong result—because it relied on a standard *Booker* struck down twenty years ago.

V. The question presented is extremely important.

This issue—what standard governs appellate review of how the Guidelines apply to undisputed facts—is not a marginal or technical one. It goes to the heart of what federal appellate courts do every day: review the application of the Sentencing Guidelines. Few questions arise more frequently on appeal. And yet for nearly two decades, the circuits have

been deeply divided on the proper standard.

That split is both acknowledged and entrenched. *See Gasca-Ruiz*, 852 F.3d at 1173; *Thomas*, 933 F.3d at 609. The D.C. and Third Circuits have squarely held that § 3742(e)'s "due deference" standard survived *Booker*. The Fifth Circuit has just as clearly held the opposite. And the Sixth and Ninth Circuits have openly recognized the split, flagged the tension, and yet declined to resolve it—leaving district courts and litigants in procedural limbo. *See supra* Part III. That is the very definition of a mature circuit conflict.

The consequences are far-reaching. Sentencing affects nearly every federal criminal case, and appellate review of the Guidelines plays a central role in ensuring consistency and legality. Yet under the current state of the law, the standard of review—and therefore the outcome—can change depending on what circuit the case arises in. That lack of uniformity undermines both fairness and confidence in the federal sentencing process.

This Court's intervention is badly needed. The conflict is real, it has persisted for nearly twenty years, and it implicates one of the most fundamental tasks of appellate review. The question is cleanly

presented, outcome-determinative here, and arises frequently. This is the right case to resolve it.

VI. This case is an excellent vehicle to resolve the conflict.

This case is an ideal vehicle to resolve the entrenched circuit conflict over § 3742(e)'s "due deference" standard. The question was squarely presented in the Sixth Circuit and was outcome-determinative. The panel applied the "due deference" standard to affirm the district court's Guidelines calculation—the exact legal question that has divided the courts of appeals.

The issue was preserved and fully developed in the Sixth Circuit. Mr. Weaver challenged the standard of review on direct appeal and then sought rehearing en banc, specifically urging the court to reconsider its continued use of § 3742(e) after *Booker*. The Sixth Circuit denied rehearing, making clear that it will not revisit its post-*Booker* approach—only further cementing the need for this Court's intervention.

This case presents the question cleanly and without complication. The record is straightforward, the legal issue is purely one of law, and its resolution will have immediate impact. Given the number of cases affected and the deep, longstanding nature of the conflict, review by this

Court is urgently needed to restore clarity and uniformity in federal sentencing.

CONCLUSION

For the above reasons, Mr. Weaver respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

Federal Defender Services
of Eastern Tennessee, Inc.

/s/ Conrad Benjamin Kahn
Conrad Benjamin Kahn
Assistant Federal Defender
800 S. Gay Street, Suite 2400
Knoxville, Tennessee 37929
Telephone: (865) 637-7979
Email: Conrad_Kahn@fd.org
Counsel of Record for Petitioner