No. 24-7208

IN THE SUPREME COURT OF THE UNITED STATES

CORNELL SLATER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
Acting Assistant Attorney General

ROSALEEN O'GARA
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the court of appeals correctly determined that an asserted error in the calculation of petitioner's advisory Sentencing Guidelines range was harmless, where the district court expressly stated that it would impose the same sentence even under the Guidelines range advocated by petitioner.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Md.):

United States v. Slater, No. 19-cr-205 (May 24, 2023) (amended judgment)

United States Court of Appeals (4th Cir.):

United States v. Slater, No. 23-4381 (July 30, 2024) (judgment)

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-7208

CORNELL SLATER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2-5)[1] is available at 2024 WL 3579608. The judgment of the district court is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 30, 2024. Pet. App. 2. The petition for a writ of certiorari was filed on September 24, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

---

[1] Because petitioner's appendix is not paginated, the petitioner's appendix will be treated as if it were paginated, as Pet. App. 1-8.

STATEMENT

Following a guilty plea in the United States District Court for the District of Maryland, petitioner was convicted on one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1); one count of attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). See Judgment 1. In July 2020, the district court sentenced petitioner to 360 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals vacated petitioner's Section 924(c) conviction and remanded for resentencing. See Pet. App. 3. On remand, the district court resentenced petitioner to 288 months of imprisonment, to be followed by three years of supervised release. Am. Judgment 2-3. The court of appeals affirmed. Pet. App. 2-5.

1. In October 2018, petitioner was driving a car with a stolen temporary license plate. Second Amended Presentence Investigation Report ¶ 6 (2d Am. PSR). The original owner of the temporary license plate spotted petitioner's car and pulled up alongside "to see who had stolen her plate." Ibid. Petitioner exited his car, confronted the victim, "and fired two rounds, shooting [the victim] in her side." Ibid.

Two months later, petitioner and an accomplice attempted to commit an armed robbery of a store where they used to work. 2d

Am. PSR ¶ 10. During the robbery, petitioner shot an employee in the face. Id. ¶ 14.

On December 18, 2018, law enforcement arrested petitioner. 2d Am. PSR ¶ 17. During a warrant-authorized search of his residence, law enforcement located the firearm used in both shootings along with ten rounds of ammunition. Id. ¶ 18.

2. A grand jury in the District of Maryland returned an indictment charging petitioner with three counts of possessing a firearm or ammunition following a felony conviction, in violation of 18 U.S.C. 922(g)(1); one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); one count of attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); and one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). Indictment 1-7.

Petitioner pleaded guilty to one count of possessing a firearm following a felony conviction, the attempted Hobbs Act robbery count, and the Section 924(c) count. Judgment 1. The district court initially sentenced petitioner to 360 months of imprisonment. Judgment 2.

3. Petitioner appealed. D. Ct. Doc. 122 (Aug. 11, 2020). During the pendency of that appeal, this Court held in United States v. Taylor, 596 U.S. 845 (2022), that attempted Hobbs Act robbery does not qualify as a predicate crime of violence under Section 924(c)(3)(A). See id. at 860. On the government's motion,

the court of appeals vacated petitioner's conviction on the Section 924(c) count and remanded for resentencing on the other counts of conviction. Order, United States v. Slater, No. 20-4411 (Oct. 18, 2022).

On remand, the Probation Office calculated an offense level of 35 and a criminal history category of V, resulting in an advisory Sentencing Guidelines range of 262 to 327 months. 2d Am. PSR ¶¶ 46, 58, 85. The calculation included a four-level enhancement to the base offense level for the firearm-possession count because petitioner's first victim "was shot on the side of her body, thereby sustaining life-threatening bodily injury." Id. ¶ 27; see Sentencing Guidelines § 2A2.1(b)(1).

During sentencing, petitioner objected to that enhancement. Sent. Tr. 28-35. Petitioner did not provide evidence about his victim's injury; rather, petitioner claimed there was a lack of evidence of "the degree of bodily injury" the victim suffered. Id. at 29. The district court overruled the objection, observing that the presentence report provided "a sufficient description of bodily injury that [the victim] was shot on her side therefore sustaining a life threatening bodily injury" and that petitioner had stipulated to shooting his first victim. Id. at 32; see id. at 32-33, 35.

In addition, the district court explicitly stated that "I don't think this case rises or falls on the calculation of the advisory guidelines, and in light of the stipulations, in light of

the facts." Sent. Tr. 36. The court observed that "you take the 924(c) charge and take it totally out in light of the Taylor opinion, it doesn't in any way eviscerate the conviction" on the remaining counts, which could be "concurrent or consecutive." Ibid. The court further observed that "[t]here's some cases that involve these algebraic equations, this is not one of them." Ibid. The court then walked through petitioner's criminal history, affirming that petitioner has a criminal history category of V. See id. at 38-43.

In determining the appropriate sentence, the district court also emphasized that, notwithstanding the vacatur of the Section 924(c) conviction, the "underlying facts here have really not changed." Sent. Tr. 54. While acknowledging petitioner's "concern for [his] family," ibid., and that he accepted responsibility, the district court also noted the severity of petitioner's crimes, see id. at 54-55. The court rejected the government's request for a sentence of at least 300 months because of petitioner's age, id. at 54, stating that "[t]he revised guidelines * * * provide perhaps a little better framework * * * to analyze this case," id. at 54-55. The court also discussed the need, under 18 U.S.C. 3553(a)(6), to avoid a potential "disparity of sentencing" between petitioner and his accomplice in the attempted Hobbs Act robbery. Id. at 55. The court noted that the accomplice "didn't do the shooting, but he went to trial and was found guilty and received 20 years imprisonment." Ibid. And the court made clear that

petitioner "deserve[d] a more severe sentence than [the accomplice] received." Ibid.

In light of "all those factors," the district court concluded that "a sentence at the lower end of the [G]uideline range but not the very bottom is an appropriate sentence here." Sent. Tr. 55. The court sentenced petitioner to a total of 288 months of imprisonment, consisting of consecutive terms of 120 months on the firearm-possession count and 168 months on the attempted Hobbs Act robbery count. Id. at 55-56. The government subsequently noted that based on a "rough calculation" the sentence was "probably * * * about four years higher" than the range that petitioner had advocated and asked the court whether it would "say that the sentence [it] imposed would be the same even if [it] had calculated the [G]uidelines differently." Id. at 63. The court responded

> Yeah. You get into all the algebraic equations and up, down, right, left and all this, and I still think this is a proportionate sentence. In light of the 20-year, 240 month sentence imposed on [the accomplice], * * * he was nowhere near as culpable as [petitioner]. But having said that, [petitioner] accepted responsibility and [the accomplice] went to trial and was found guilty, and I imposed a sentence of 240 months, or 20 years imprisonment as to [the accomplice]. And I think a 24 year sentence, or 288 months is proportionate in relation to that for [petitioner].

Id. at 63-64. Petitioner did not object. See id. at 64.

4. The court of appeals affirmed the district court's sentence in an unpublished per curiam decision. Pet. App. 2-5.

The court of appeals declined to address petitioner's objection to the four-level enhancement, finding that any error

was harmless. Pet. App. 3-5. The court explained that an alleged error in the calculation of the Sentencing Guidelines is harmless where "the district court would have reached the same result even if it had decided the Guidelines issue the other way" and where the sentence is "substantively reasonable even if the Guidelines issue had been decided in the defendant's favor." Id. at 4 (quoting United States v. McDonald, 850 F.3d 640, 643 (4th Cir.), cert. denied, 583 U.S. 880 (2017)) (quotations and alterations omitted).

Examining the particular circumstances of this case, the court of appeals found that "the district court's comments during the sentenc[ing] hearing make clear that it would have imposed the same 288-month sentence even if it had not applied the four-level enhancement under USSG § 2A2.1(b)(1)(A)." Pet. App. 4. The court also found that petitioner's sentence was substantively reasonable, observing that "the district court adequately explained why a 288-month sentence was necessary based on the [sentencing] factors" listed in 18 U.S.C. 3553(a). Id. at 5.

ARGUMENT

Petitioner contends that the court of appeals erred in affirming the district court based on its determination that the asserted error in calculating the Guidelines range did not affect the sentence imposed. That contention lacks merit; the court's unpublished per curiam decision does not conflict with any decision of this Court or of another court of appeals; and this case would

be a poor vehicle for addressing the question presented. This Court has repeatedly denied petitions for writs of certiorari raising similar issues.[2] It should follow the same course here.

1. The court of appeals correctly applied established principles of harmless-error review in determining that the asserted error in the district court's calculation of petitioner's advisory Guidelines range was harmless.

a. In Gall v. United States, 552 U.S. 38, 51 (2007), this Court stated that under the advisory Sentencing Guidelines, an appellate court reviewing a sentence, within or outside the Guidelines range, must ensure that the sentencing court made no significant procedural error, such as by failing to calculate or incorrectly calculating the Guidelines range, treating the Guidelines as mandatory, failing to consider the sentencing

---

[2] See, e.g., Kinzy v. United States, 144 S. Ct. 2682 (2024) (No. 23-578); Brooks v. United States, 143 S. Ct. 585 (2023) (No. 22-5788); Irons v. United States, 143 S. Ct. 566 (2023) (No. 22-242); Rangel v. United States, 141 S. Ct. 1743 (2021) (No. 20-6409); Brown v. United States, 141 S. Ct. 2571 (2021) (No. 20-6374); Snell v. United States, 141 S. Ct. 1694 (2021) (No. 20-6336); Thomas v. United States, 141 S. Ct. 1080 (2021) (No. 20-5090); Torres v. United States, 140 S. Ct. 1133 (2020) (No. 19-6086); Elijah v. United States, 586 U.S. 1068 (2019) (No. 18-16); Monroy v. United States, 584 U.S. 980 (2018) (No. 17-7024); Shrader v. United States, 568 U.S. 1049 (2012) (No. 12-5614); Savillon-Matute v. United States, 565 U.S. 964 (2011) (No. 11-5393); Effron v. United States, 565 U.S. 835 (2011) (No. 10-10397); Rea-Herrera v. United States, 557 U.S. 938 (2009) (No. 08-9181); Mendez-Garcia v. United States, 556 U.S. 1131 (2009) (No. 08-7726); Bonilla v. United States, 555 U.S. 1105 (2009) (No. 08-6668). Another petition raising a similar issue is currently pending. See Medrano v. United States, petition for cert. pending, No. 24-7508 (filed June 24, 2025).

factors set forth in 18 U.S.C. 3553(a), making clearly erroneous factual findings, or failing to explain the sentence. The courts of appeals have consistently recognized that errors of the sort described in Gall do not automatically require a remand for resentencing and that ordinary appellate principles of harmless-error review apply. As the Seventh Circuit has explained:

> A finding of harmless error is only appropriate when the government has proved that the district court's sentencing error did not affect the defendant's substantial rights (here--liberty). To prove harmless error, the government must be able to show that the Guidelines error did not affect the district court's selection of the sentence imposed.

United States v. Abbas, 560 F.3d 660, 667 (2009) (citation and quotation marks omitted); see Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.").

A sentencing court may confront a dispute over the application of the Sentencing Guidelines. When the court resolves that issue and imposes a sentence inside or outside the resulting advisory Guidelines range, it may also explain that, had it resolved the disputed issue differently and arrived at a different advisory Guidelines range, it would nonetheless have imposed the same sentence in light of the factors enumerated in Section 3553(a). Under proper circumstances, that permits the reviewing court to affirm the sentence under harmless-error principles even if it disagrees with the sentencing court's resolution of the disputed Guidelines issue.

This Court in Molina-Martinez v. United States, 578 U.S. 189 (2016), analogously recognized that when the "record" in a case shows that "the district court thought the sentence it chose was appropriate irrespective of the Guidelines range," the reviewing court may determine that "a reasonable probability of prejudice does not exist" for purposes of plain-error review, "despite application of an erroneous Guidelines range." Id. at 200; see id. at 204 (indicating that a "full remand" for resentencing may be unnecessary when a reviewing court is able to determine that the sentencing court would have imposed the same sentence "absent the error"). Although Molina-Martinez concerned the requirements of plain-error review under Federal Rule of Criminal Procedure 52(b), the principle it recognized applies with equal force in the context of harmless-error review under Rule 52(a).

Petitioner errs in suggesting (Pet. 11) that applying normal harmlessness principles to potential Guidelines errors would license "complete disregard of the [G]uidelines." Harmless-error review does not alter the principle that "the Guidelines should be the starting point" for a district court's determination of the appropriate sentence. Gall, 552 U.S. at 49. It simply identifies cases, like this one, where the court found that factor to be outweighed by others. Harmless-error review in cases like this one therefore "merely removes the pointless step of returning to the district court when [the court of appeals is] convinced that the sentence the judge imposes will be identical" regardless of

the correct range. Abbas, 560 F.3d at 667. And far from undermining appellate review, "[a]n explicit statement that the district court would have imposed the same sentence under two different ranges can help to improve the clarity of the record, promote efficient sentencing, and obviate questionable appeals." United States v. Zabielski, 711 F.3d 381, 389 (3d Cir. 2013).

b. Applying those ordinary principles of harmless-error review to the circumstances of this case, the court of appeals correctly determined that any error in the district court's calculation of petitioner's advisory Guidelines range was harmless because it did not affect the district court's determination of the appropriate sentence. See Pet. App. 4.

As the court of appeals observed, "the district court's comments during the sentenc[ing] hearing make clear that it would have imposed the same" sentence even if it upheld petitioner's objection. Pet. App. 4. When addressing Guidelines issues, the district court emphasized that it did not think "this case rises or falls on the calculation of the advisory guidelines." Sent. Tr. 36; see id. at 37 ("I don't intend to waste a lot of time on algebraic equations when a man has pled guilty and acknowledges taking a gun and shooting somebody twice in the side."). And after announcing its sentence, the court expressly confirmed, in response to a question from the government, that it would impose the same sentence even if petitioner was correct that the Sentencing Guidelines range should be lower. Id. at 63-64.

The district court's careful analysis of the relevant Section 3553(a) factors underscores that it would have imposed the same sentence even under petitioner's preferred Guidelines range. Among other things, in accordance with Section 3553(a)(6), the court was concerned about avoiding a "disparity of sentencing" between petitioner and his accomplice. Sent. Tr. 55. The court reasoned that, as the shooter, petitioner "deserve[d] a more severe sentence" than his co-conspirator. Ibid. And it emphasized that "proportiona[lity]" when confirming that it would impose the same sentence even had it had sustained petitioner's objection to the Guidelines calculation. See id. at 63-64.

The court of appeals therefore correctly found that the "record" shows that "the district court thought that the sentence it chose was appropriate irrespective of the Guidelines range," Molina-Martinez, 578 U.S. at 200, and that any error in calculating petitioner's Guidelines range was harmless, see id. at 200-201. Petitioner errs in suggesting that the court of appeals allowed the district judge "to nullify the [G]uidelines by way of a single assertion that any latent errors in the [G]uidelines calculation would make no difference to the choice of sentence." Pet. 10; see id. at 10-11. The district court did not make "a simple inoculating statement," Pet. 11; instead, it explained why a 24-year sentence was appropriate based on the factors in Section 3553(a), affirmed that it would impose that sentence even if it erred in the Guidelines calculation, and made clear that its

decision did not "rise[] or fall[] on the calculation of the advisory guidelines," Sent. Tr. 36. The court of appeals' fact-bound determinations that "the district court adequately explained why a 288-month sentence was necessary based on the § 3553(a) factors" and "that any error in calculating the Guidelines range was harmless," Pet. App. at 5, do not warrant this Court's review, see Sup. Ct. R. 10.

2. Contrary to petitioner's contention (Pet. 11-13), the court of appeals' decision does not implicate a disagreement in the courts of appeals that warrants this Court's review. To the extent that some formal differences exist in the articulated requirements for harmless-error review, those differences do not reflect any meaningful substantive disagreement about when a Guidelines-calculation error is harmless. Petitioner fails to identify any court that would have reached a different result in the circumstances of this case.

Petitioner does not dispute (Pet. 13) that the decision below is consistent with decisions from the First, Eighth, and Eleventh Circuits. See United States v. Gonzalez, 71 F.4th 881, 887 (11th Cir. 2023), cert. denied 144 S. Ct. 552 (2024); United States v. Espinoza-Roque, 26 F.4th 32, 38-39 (1st Cir. 2022); United States v. Shuler, 598 F.3d 444, 447 (8th Cir.), cert. denied 560 U.S. 975 (2010). Petitioner asserts (Pet. 12) a conflict with the Seventh Circuit, citing United States v. Abbas, supra, and United States v. Bravo, 26 F.4th 387, 397 (2022), cert. denied, 143 S.

Ct. 2690 (2023). But in the Seventh Circuit, an error in calculating a Guidelines range can be considered harmless where the sentencing "judge goes beyond a flat statement that the [G]uidelines were irrelevant and offers a specific reason why a dispute under the [G]uidelines did not affect the sentence." Bravo, 26 F.4th at 397. As just discussed, that happened here.

Nor is there a conflict between the decision here and the Fifth Circuit's decision in United States v. Guzman-Rendon, 864 F.3d 409, cert. denied, 583 U.S. 1022 (2017). See Pet. 12-13. That decision recognized that a Guidelines error can be harmless where either "the district court considered both ranges (the one now found incorrect and the one now deemed correct) and explained that it would give the same sentence either way," or "the proponent of the sentence convincingly demonstrate[s] both (1) that the district court would have imposed the same sentence had it not made the error, and (2) that it would have done so for the same reasons it gave at the prior sentencing." Id. at 411 (alterations and quotations omitted). Petitioner cannot show that he would prevail under that approach.

The district court here was aware that its sentence was "about four years higher than the [G]uidelines" range that would have resulted from upholding petitioner's objection, Sent. Tr. 63; confirmed that it would have imposed the same 288-month sentence in that circumstance, ibid.; and emphasized that "this case [does not] rise[] or fall[] on the calculation of the advisory

guidelines," id. at 36. The court also explained why it thought that sentence to be "sufficient, but not greater than necessary," 18 U.S.C. 3553(a). See, e.g., Sent. Tr. at 54-55; id. at 63-64. Under similar facts in Guzman-Rendon, the Fifth Circuit found harmless error. See 864 F.3d at 410-411.

For similar reasons, petitioner provides no sound support for his assertion (Pet. 13) that the Third, Sixth, Ninth, or Tenth Circuits would have reversed the district court here. The decisions that petitioner cites recognize that an error can be harmless where a district court points "to the alternative Guidelines range and explain[s] its decision to arrive at the specific sentence," see United States v. Carter, 730 F.3d 187, 193 (3d Cir. 2013), or recognize that a "[p]rocedural error is harmless if the record viewed as a whole clearly indicates the district court would have imposed the same sentence had it not relied on the procedural miscue(s)," United States v. Eddington, 65 F.4th 1231, 1243 (10th Cir. 2023) (citation omitted); see United States v. Alvarado, 95 F.4th 1047, 1056 (6th Cir. 2024) (observing that an error can be harmless "when the district court explains that under the 18 U.S.C. § 3553(a) factors, it would have imposed the same sentence"); United States v. Halamek, 5 F.4th 1081, 1091 (9th Cir. 2021) ("If the party defending the sentence persuades the court of appeals that the district court would have imposed the same sentence absent the erroneous factor, then a remand is not required.") (citation omitted).

Finally, in United States v. Seabrook, 968 F.3d 224 (2020) (cited at Pet. 13), the Second Circuit was unconvinced--based on the record before it--that the district court's choice of sentence was independent of the asserted errors in calculating the Guidelines range. See id. at 234 (observing that, "[t]ellingly," the district court "returned multiple times to the Guidelines in framing its choice of the appropriate sentence," and had also declined the government's suggestion to take a Guidelines factor into account under Section 3553(a)) (citation and quotations omitted). But it is far from clear that the Second Circuit would be similarly unconvinced here. Although the district court found the calculated Guidelines range useful, see Sent. Tr. 54-55, it made clear that its sentence did not "rise[] or fall[] on the calculation of the advisory guidelines," id. at 36. Instead, the court rooted its sentence in the Section 3553(a) factors. See, e.g., id. at 54-55, 63-64.

3. At all events, this case would be an unsuitable vehicle for resolving the question presented because the district court did not err in calculating petitioner's advisory Guidelines range. On appeal, petitioner argued only that the district court erred in applying the four-level enhancement under Sentencing Guidelines § 2A2.1(b)(1)(A), based on the court's finding that the petitioner inflicted a life-threatening bodily injury on his first victim. See Pet. App. 3. That factual finding would be reviewed only for clear error, and would be sustained "so long as it was plausible

in light of the record viewed in its entirety." United States v. Gross, 90 F.4th 715, 722 (4th Cir. 2024) (citation omitted).

Petitioner cannot show clear error here. The district court's finding was consistent with the presentence report, which related that "[t]he victim * * * sustain[ed] life-threatening bodily injury." PSR ¶ 27; see Sent. Tr. 33. It was also consistent with petitioner's plea and factual stipulations, wherein he "pled guilty and acknowledge[d] taking a gun and shooting somebody twice in the side," that "[h]e shot the person twice," and that "he tried to murder" her. Sent. Tr. 37-38; see id. at 33. Accordingly, even if petitioner were to prevail on the question presented, there is no reason why his sentence would change.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

MATTHEW R. GALEOTTI
Acting Assistant
Attorney General

ROSALEEN O'GARA
Attorney

SEPTEMBER 2025