No. 24-7508

IN THE SUPREME COURT OF THE UNITED STATES

CURTIS DWAYNE MEDRANO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record

MATTHEW R. GALEOTTI
Acting Assistant Attorney General

ANN O'CONNELL ADAMS
Attorney

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

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 922(g)(1) violates the Second Amendment as applied to petitioner.

2. Whether the court of appeals erred in denying plain-error relief on petitioner's claim of Sentencing Guidelines error, where it found -- in light of the district court's express statement that it would have imposed the same sentence even if its Guidelines calculation were incorrect -- that petitioner had not demonstrated a reasonable probability of an outcome-determinative error.

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-7508

CURTIS DWAYNE MEDRANO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unpublished but available at 2025 WL 915406.

JURISDICTION

The judgment of the court of appeals was entered on March 26, 2025. The petition for a writ of certiorari was filed on June 24, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of

possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The district court sentenced petitioner to 120 months of imprisonment, to be followed by three years of supervised release. Judgment 2. The court of appeals affirmed. Pet. App. 1a-3a.

1. After another driver cut off petitioner's car and made an obscene gesture, petitioner pointed a firearm out his driver's side window, fired multiple shots into the other vehicle, and sped away. Presentence Investigation Report (PSR) ¶¶ 8-11. The other driver was struck in the back by a bullet, resulting in life-threatening injuries to his heart, lungs, and kidneys. PSR ¶ 8. Police officers in Fort Worth, Texas identified petitioner as the shooter and determined that he had prior felony convictions. PSR ¶¶ 7, 9-10, 13.

A federal grand jury in the Northern District of Texas returned an indictment charging petitioner with possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner moved to dismiss the indictment on the ground that Section 922(g)(1) violates the Second Amendment. D. Ct. Doc. 17, at 6-10 (Feb. 28, 2023). After the district court denied the motion, 23-cr-42 Docket entry No. 19 (Mar. 4, 2023), petitioner pleaded guilty, Judgment 1.

The Probation Office calculated a total offense level of 21 and a criminal history category of V, which yielded a Guidelines

range of 70 to 87 months. PSR ¶ 70. Petitioner's prior convictions included theft, attempted burglary, multiple incidents of vehicle theft, assault of a family member resulting in bodily injury, and evading arrest. PSR ¶¶ 35-41. The Probation Office also observed that an upward departure or variance might be warranted because petitioner's criminal history category substantially underrepresented his criminal history and the likelihood that he would commit other crimes. PSR ¶¶ 82, 84. It emphasized, in particular, that petitioner's criminal activity began at age 17 with petty theft and continued to escalate, culminating in the shooting of another person. PSR ¶ 82. The court adopted the Probation Office's factual findings and legal determinations, including the criminal history calculation and the advisory Guidelines range. Pet. App. 7a-8a.

The district court, however, imposed an above-Guidelines sentence of 120 months. Pet. App. 10a. The court observed that the Guidelines did not adequately account for either the injuries sustained by the victim or the risk that petitioner's conduct posed to innocent bystanders. Id. at 11a. And when considering the sentencing factors listed in 18 U.S.C. 3553(a), the court emphasized that to afford just punishment for this particular offense and to protect the public from further crimes of petitioner, given his criminal history, a sentence of 120 months was appropriate and "sufficient but not greater than necessary to

comply with the statutory purposes of sentencing." Pet. App. 11a-12a.

Petitioner did not object to the sentence. Pet. App. 12a. And in its written statement of reasons, the district court explained that "[e]ven if the guideline calculations are not correct, this is the sentence the [c]ourt would otherwise impose under 18 U.S.C. § 3553." D. Ct. Doc. 37, at 4 (July 7, 2023).

2. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. 1a-3a.

The court of appeals rejected petitioner's argument that Section 922(g)(1) is unconstitutional facially and as applied to him. Pet. App. 1a-2a. The court observed that in United States v. Diaz, 116 F.4th 458 (5th Cir. 2024), cert. denied, 145 S. Ct. 2822 (2025), it had already rejected a facial attack on Section 922(g)(1) and held that the statute is constitutional "as applied to defendants with underlying felony convictions involving theft." Pet. App. 2a; see Diaz, 116 F.4th at 467-472.

The court of appeals also denied plain-error relief to petitioner's claim, raised for the first time on appeal, that the district court had erred in calculating his criminal history score by including one criminal history point for petitioner's prior conviction for evading arrest. Pet. App. 2a-3a. The court of appeals agreed with petitioner that the district court made a "clear or obvious" error by not excluding that prior conviction

under Sentencing Guidelines § 4A1.2(c)(1). Pet. App. 3a. But the court of appeals observed that "[t]he district court found that the guidelines range did not adequately reflect the seriousness of [petitioner's] conduct and stated that it would have imposed the same above-guidelines sentence even if it erred in its guidelines calculations." Ibid. And it accordingly determined that plain-error relief was not warranted because petitioner had "not shown that the error affected his substantial rights by demonstrating a reasonable probability that but for the error he would have received a lower sentence." Ibid.

ARGUMENT

Petitioner renews his contentions that Section 922(g)(1) violates the Second Amendment as applied to him, Pet. 7-13; and that he is entitled to relief on plain-error review for the inclusion of one criminal history point for a prior conviction for evading arrest, Pet. 13-24. The court of appeals correctly rejected those arguments, and its decision does not implicate any conflict in the circuits that would warrant this Court's review.

1. Petitioner contends (Pet. 7-13) that 18 U.S.C. 922(g)(1), 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," ibid., violates the Second Amendment as applied to him. For the reasons set out in the government's brief in opposition in Vincent v.

Bondi, No. 24-1155 (Aug. 11, 2025), that contention does not warrant this Court's review. Although there is some disagreement among the courts of appeals regarding whether Section 922(g)(1) is susceptible to individualized as-applied challenges, that disagreement is shallow. See Br. in Opp. at 11-13, Vincent, supra (No. 24-1155). This Court has previously denied plenary review when faced with similarly narrow disagreements among the circuits about the availability of as-applied challenges to Section 922(g)(1). See id. at 13-14. And any disagreement among the circuits may evaporate given the Department of Justice's recent re-establishment of the administrative process under 18 U.S.C. 925(c) for granting relief from federal firearms disabilities. See Br. in Opp. at 8-11, Vincent, supra (No. 24-1155).

Moreover, Section 922(g)(1) does not raise any constitutional concerns as applied to petitioner. Petitioner has previous felony convictions for an attempted burglary, in which he attempted to break into a woman's house while she was sleeping, and a vehicle theft, in which he stole another woman's car from a dealership after she dropped it off for service. PSR ¶¶ 36, 38. Accordingly, assuming petitioner could bring an as-applied challenge, the court of appeals correctly determined that he would not succeed. See Pet. App. 2a; United States v. Diaz, 116 F.4th 458, 467-471 (5th Cir. 2024) (rejecting as-applied challenge raised by defendant convicted of theft), cert. denied, 145 S. Ct. 2822 (2025); see,

e.g., Pitsilides v. Barr, 128 F.4th 203, 213 (3d Cir. 2025) (district courts may consider "the context and circumstances" of a previous offense in deciding an as-applied challenge to Section 922(g)(1)).

2. Petitioner further contends (Pet. 13-24) that the court of appeals erred in affirming his sentence on plain-error review based on its determination that petitioner had not shown a reasonable probability that he would have received a lower sentence but for a guideline error he identified for the first time on appeal. This Court has repeatedly denied petitions for writs of certiorari that have raised similar issues.[1] The same result is warranted here.

---

[1] 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); Brown v. United States, 141 S. Ct. 2571 (2021) (No. 20-6374); Rangel v. United States, 141 S. Ct. 1743 (2021) (No. 20-6409); 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). Other petitions raising similar issues are currently pending. See Sullivan v. United States, No. 25-5357 (filed Aug. 12, 2025); Phillips v. United States, No. 24-1295 (filed June 18, 2025); Slater v. United States, No. 24-7208 (filed. Sept. 24, 2024).

a. When a defendant fails to object to an alleged error in the district court, he may not obtain relief from that error on appeal unless he establishes reversible "plain error" under Federal Rule of Criminal Procedure 52(b). See Puckett v. United States, 556 U.S. 129, 134-135 (2009). Reversal for plain error "is to be 'used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result.'" United States v. Young, 470 U.S. 1, 15 (1985) (citation omitted). To establish reversible plain error, a defendant must show "(1) 'error,' (2) that is 'plain,' and (3) that 'affect[s] substantial rights.'" Johnson v. United States, 520 U.S. 461, 466-467 (1997) (quoting United States v. Olano, 507 U.S. 725, 732 (1993)) (brackets in original). If those prerequisites are satisfied, the court of appeals has discretion to correct the error based on its assessment of whether "(4) the error seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." Id. at 467 (citation and internal quotation marks omitted; brackets in original). "Meeting all four prongs is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (quoting United States v. Dominguez Benitez, 542 U.S. 74, 83 n.9 (2004)).

In Molina-Martinez v. United States, 578 U.S. 189 (2016), this Court analyzed an error in the calculation of the Sentencing Guidelines under plain-error review. See id. at 194. It 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").

Here, as the court of appeals recognized (Pet. App. 3a), the record contains multiple indications that the district court would have imposed a 120-month sentence even if it had omitted the criminal history point for petitioner's prior conviction for evading arrest. The district court did not impose a within-Guidelines sentence; it imposed a sentence that would have been well above the Guidelines range whether or not the additional criminal history point were included. See Pet. 4 (potential Guidelines ranges). It did so where the presentence report had noted that an upward variance might be warranted on the ground that petitioner's criminal history score -- even with the additional criminal history point -- could be viewed as "substantially underrepresent[ing]" his criminal history. PSR ¶¶ 82, 84. And it selected the specific sentence -- which included 120 months of imprisonment -- specifically because it found that

the Guidelines did not adequately account for either the injuries sustained by the victim or the risk that petitioner's conduct posed to others. Pet. App. 10a-12a; see id. at 3a.

The district court then confirmed in its written statement of reasons that the Guidelines range did not drive the sentence. See D. Ct. Doc. 37, at 4; Pet. App. 3a. The court of appeals' factbound assessment of the record in this case, and the sufficiency of petitioner's showing of a reasonable probability of a different outcome without the additional criminal-history point, does not warrant this Court's review. See Sup. Ct. R. 10; see also, e.g., United States v. Johnston, 268 U.S. 220, 227 (1925) (explaining that the Court ordinarily does not "grant * * * certiorari to review evidence and discuss specific facts").

b. Contrary to petitioner's contention (Pet. 15-18), the court of appeals' unpublished and nonprecedential decision does not implicate a disagreement among the courts of appeals that warrants this Court's review. Petitioner characterizes the court of appeals' decision as holding that "a District Court's Guideline disclaimer is enough to make [an] error harmless," Pet. 17, and faults it for relying on a "routine Guideline disclaimer[]," see, e.g., Pet. 21. But the district court's explanation in its written statement of reasons that it would have imposed the same sentence under the Section 3553(a) factors notwithstanding any Guidelines errors is not the only evidence in the record that petitioner

suffered no prejudice from the asserted error. Instead, as just discussed, the record undermines petitioner's claim of a reasonable probability of a different outcome in other ways as well.[2]

Petitioner errs in asserting (Pet. 15-18) that the decision below reflects a conflict in the circuits warranting this Court's review. Petitioner himself describes (Pet. 17-18) the court below as lacking a fixed approach to prejudice analysis in cases of Guidelines error, and "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties," United States v. Wisniewski, 353 U.S. 901, 902 (1957) (per curiam). In addition, the decision below is nonprecedential, Pet. App. 1a n.*, and can therefore create neither circuit law nor a conflict of binding authority within or between circuits.

In any event, the out-of-circuit decisions that petitioner cites as conflicting, see Pet. 15-17, do not indicate that those

---

[2] Contrary to petitioner's suggestion (Pet. 23-24), the plain-error posture of this case does not make it a better vehicle for further review. In his view (Pet. 24), a court that is not informed of a Guidelines error is ill-suited to state preemptively that any error would not affect its choice of sentence. But a defendant should not be in a better position to have another chance at resentencing than defendants who brought a Guidelines error to the district court's attention. And, as explained in the text, the record in petitioner's case contains the very indications this Court stated in Molina-Martinez would defeat a defendant's showing of prejudice on plain-error review -- statements from the district court that it believed the sentence it imposed was appropriate regardless of the Guidelines range. See Molina-Martinez, 578 U.S. at 200-201.

circuits would have reached a different result in the particular circumstances of this case. The Second Circuit's decision in United States v. Feldman, 647 F.3d 450 (2011), for example, involved harmless-error (not plain-error) review, a within-Guidelines (not above-Guidelines) sentence, and a record that the court viewed as insufficient to meet the government's burden to show harmlessness. See id. at 457-460; see also Olano, 507 U.S. at 734 (explaining parties' respective burdens on harmless- and plain-error review).

The Second Circuit's decision in United States v. Seabrook, 968 F.3d 224 (2020), was likewise on harmless-error review, involved a low-end Guidelines-range sentence, and highlighted the district court's repeated focus on the Guidelines in deciding on a sentence. See id. at 231-234. The Third Circuit's decision in United States v. Wright, 642 F.3d 148 (2011) -- which involved a below-Guidelines sentence and an objection that was raised in the district court, id. at 151-152 -- is likewise inapposite. There, moreover, the court highlighted the defendant's lack of an opportunity to oppose what would have been an upward variance, see id. at 154; petitioner, in contrast, was on notice from the presentence report that an upward variance from even the higher Guidelines range was possible. And in United States v. Gieswein, 887 F.3d 1054 (2018) -- another case involving harmless-error

review, the Tenth Circuit affirmed the sentence at issue, rejecting the defendant's claim of prejudice. Id. at 1061-1064.

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

ANN O'CONNELL ADAMS
Attorney

SEPTEMBER 2025