NO. 24-7508

In the Supreme Court of the United States

CURTIS DWAYNE MEDRANO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

I. THIS COURT SHOULD GRANT CERTIORARI IN THIS CASE TO RESOLVE THE PROFOUND UNCERTAINTY, INCLUDING AN ACKNOWLEDGED CIRCUIT SPLIT, REGARDING THE CONSTITUTIONALITY OF 18 U.S.C. §922(G)(1) UNDER THE SECOND AMENDMENT.

There is a circuit split on a momentous question of constitutional law, namely whether and under what circumstances felons retain their Second Amendment rights. ***Compare*** *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. May 9, 2025)(en banc)(citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024);

United States v. Jackson, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S.Ct. 1041 (2025)), ***with*** *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024); *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024); *Range v. Att'y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024)(en banc); ***see also*** *Duarte*, 137 F.4th at 747, 761 (acknowledging split); Supplemental Brief for the Federal Parties in Nos. 23-374, *Garland v. Range* 23-683, at 2 (June 24, 2024), *available at https://www.supremecourt.gov/DocketPDF/23/23-374/315629/20240624205559866_23-374%20Supp%20Brief.pdf , last visited October 7, 2025* (same); Brief in Opposition ("BIO"), at 6)(acknowledging "some disagreement").

Deep or "shallow," (BIO, at 6), a circuit split on this question is intolerable: the law should make clear precisely when the exercise of an enumerated constitutional right becomes a felony. And as a federal constitutional guarantee, the Second Amendment does not depend on a citizen's state of residence. Uncertainty in this area tends to chill the exercise of fundamental rights, may lure citizens into committing felonies when they misjudge the scope of their constitutional protections and may discourage lawful prosecutions. The circuit split here, moreover, is reasonably balanced, and entrenched by *en banc* decisions on either side, *see Duarte*, 137 F.4th at 762; *Range v. Att'y Gen.*, 124 F.4th at 222–23, a fact that demonstrates both that it merits discretionary review and that it will not resolve without intervention of this Court. And as noted above, this split has been repeatedly

acknowledged both by the judiciary and the government.

The government characterizes the split as "shallow," referencing its Brief in Opposition in *Vincent v. Bondi*, No. 24-1155 (Aug. 11, 2025) ("*Vincent* BIO"). Based on a review of that document, it appears that the government means to say that only one Circuit has actually invalidated 18 U.S.C. §922(g)(1) as applied to a particular felon. *See Vincent* BIO, at 13 (citing *Range*). One Circuit would be intolerable, given the significance of the issue, but there are at least two more courts, *see Diaz*, 116 F.4th at 471; *Williams*, 113 F.4th at 661–62, that recognize a constitutional right to bear arms for some felons, though they have not yet clearly identified which ones. As argued above, this state of the law either chills the exercise of fundamental rights, lures people into the commission of felonies, deters lawful prosecutions, or possibly all three. Further, a District Court in the Seventh Circuit recently dismissed a 18 U.S.C. §922(g)(1) indictment on Second Amendment grounds because the government failed to muster valid historical analogues to the statute. *See United States v. Glass*, No. 24-CR-30124-SMY, 2025 WL 2771011, at *5 (S.D. Ill. Sept. 29, 2025). Its analysis did not depend on the nature of the defendant's prior convictions, making it, essentially, a facial invalidation of the statute. *See id.*

The government heavily presses the current administration's use of 18 U.S.C. §925(c), which permits felons to apply for relief from firearm disabilities. *See* (*Vincent* BIO, at 8-11). As the government acknowledges, *see* (*Vincent* BIO, at 8), Congress forbids the use of any money by the ATF process applications under this provision, *see United States v. Bean*, 537 U.S. 71,

74 (2002). The current administration has circumvented this ban by processing applications through other agencies. *See* 90 Fed.Reg. 13,080 (Mar. 20, 2025). This process demonstrates in stark terms the difference between a constitutional guarantee and an act of grace provided by an unstable political process. Should the current administration change its mind, lose power, or encounter resistance from Congress, this process to restore a fundamental right will evaporate.

The standards used by the Attorney General under 18 U.S.C. §925(c), moreover, are not necessarily the same as those announced by this Court in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). Under §925(c), a felon bears an affirmative burden to show, based on his "record and reputation[,] … that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. §925(c). This manner of interest balancing is foresworn by *Bruen*, 597 U.S. at 19, which burdens the government, not the citizen, with the duty to produce evidence of a historical analogue to the disability, *see id.* at 24.

In any case, §925(c) does not likely override state firearms disabilities. An applicant who receives a favorable decision (of whom there are now just ten, *see Vincent* BIO, at 8-9), from the Attorney General may avoid federal prosecution, but continues to take his or her chances with statutes like Tex. Penal Code 46.04(a), which makes a felony of firearm possession for five years after the expiration of sentence.

Finally, the government points to purported vehicle problems in the current case, namely Petitioner's

prior convictions for vehicle theft and burglary. *See* BIO, at 6-7. These arguments are addressed in pages 13-15 of the Petition; the Brief in Opposition contains no response.

II. THE COURTS OF APPEALS HAVE DIVIDED ON THE LEVEL OF DEFERENCE TO GRANT DISTRICT COURTS THAT DISCLAIM THE IMPACT OF THE GUIDELINES ON THE SENTENCE CHOSEN. THE ROUTINE USE OF SUCH DISCLAIMERS GRAVELY UNDER MINES THE CONGRESSIONAL GOAL OF SENTENCING UNIFORMITY, WHICH IT SOUGHT TO ACHIEVE AT SIGNIFICANT PAINS, CREATING A SENTENCING COMMISSION, A REGULAR CYCLE OF GUIDELINE AMENDMENTS, AND AUTHORIZING APPELLATE REVIEW OF GUIDELINE APPLICATION DECISIONS. THE PRESENT CASE IS AN EXCELLENT VEHICLE TO ADDRESS THE ISSUE.

Otherwise stated, the question presented by this case is whether district courts may simply opt out of appellate review of their Guideline decisions. There is no dispute that the district judge who sentenced Petitioner includes boilerplate language disclaiming the Guidelines in virtually every case. *See* Initial Brief in *United States v. Medrano*, No. 23-10713, 2023 WL 8434068, at *32 (5th Cir. Filed November 30, 2023)(asserting this routine practice by the relevant Judge); Appellee's Brief in *United States v. Medrano*, No. 23-10713, 2025 WL 53196, at *12-14 (5th Cir. Filed

January 3, 2023)(failing to contest the existence of this practice).[1]

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[1] Identical language appeared *verbatim* in the Statement of Reasons form for at least 21 other defendants sentenced by this district court between September 2024 and July 2025. *See* Statement of Reasons, at 4, ECF No. 46, *United States v. Ball*, No. 4:24-cr-00250-O (N.D. Tex. Mar. 14, 2025); Statement of Reasons, at 4, ECF No. 39, *United States v. Brathole*, No. 4:24-cr-00308-O (N.D. Tex. May 30, 2025); Statement of Reasons, at 4, ECF No. 26, *United States v. Castillo-Rodriguez*, No. 4:24-cr-00152-O (N.D. Tex. Oct. 25, 2024) (including additional language regarding the need to impose supervised release); Statement of Reasons, at 4, ECF No. 73, *United States v. Clark*, No. 7:25-cr-00001-O (N.D. Tex. Jun. 27, 2025); Statement of Reasons, at 4, ECF No. 48, *United States v. Culp*, No. 7:25-cr-00003-O (N.D. Tex. Jun. 6., 2025); Statement of Reasons, at 4, ECF No. 33, *United States v. Ferrell*, No. 7:25-cr-00004-O (N.D. Tex. Jun. 13, 2025); Statement of Reasons, at 4, ECF No. 38, *United States v. Foster*, No. 4:24-cr-00315-O (N.D. Tex. Apr. 4, 2025); Statement of Reasons, at 4, ECF No. 34, *United States v. Garcia-Gutierrez*, No. 4:24-cr-00229-O (N.D. Tex. Jan. 31, 2025) (including additional language regarding the need to impose supervised release); Statement of Reasons, at 4, ECF No. 39, *United States v. Goines*, No. 7:24-cr-00022-O (N.D. Tex. Apr. 25, 2025) (including additional language justifying the sentence); Statement of Reasons, at 4, ECF No. 35, *United States v. Gomez*, No. 4:24-cr-00216-O (N.D. Tex. Mar. 14, 2025) (including additional language regarding the need to impose supervised release); Statement of Reasons, at 4, ECF No. 31, *United States v. Gomez-Carillo*, No. 7:24-cr-00016-O (N.D. Tex. Jan. 31, 2025); Statement of Reasons, at 4, ECF No. 47, *United States v. Guy*, No.

Nor is there any dispute that the court below simply accepted the disclaimer at face value, with little to no effort to test it against other facts in the record. Although not the uniform practice of the Fifth Circuit, *see United States v. Martinez–Romero*, 817 F.3d 917, 925–26 (5th Cir. 2016), it is consistent with Fifth

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4:24-cr-00214-O (N.D. Tex. Jan. 27, 2025); Statement of Reasons, at 4, ECF No. 44, *United States v. Hackney*, No. 4:25-cr-00017-O (N.D. Tex. May 30, 2025); Statement of Reasons, at 4, ECF No. 27, *United States v. Huete-Torres*, No. 4:24-cr-00146-O (N.D. Tex. Oct. 25, 2024); Statement of Reasons, at 4, ECF No. 29, *United States v. Macias-Ordonez*, No. 4:25-cr-00001-O (N.D. Tex. Apr. 25, 2025); Statement of Reasons, at 4, ECF No. 30, *United States v. Meraz-Ramirez*, No. 4:24-cr-00128-O (N.D. Tex. Sep. 27, 2024) (including additional language regarding the need to impose supervised release); Statement of Reasons, at 4, ECF No. 47, *United States v. Nguyen*, No. 7:25-cr-00002-O (N.D. Tex. Jun. 13, 2025); Statement of Reasons, at 4, ECF No. 31, *United States v. Olvera-Gamez*, No. 4:24-cr-00130-O (N.D. Tex. Nov. 15, 2024); Statement of Reasons, at 4, ECF No. 44, *United States v. Pearson*, No. 4:24-cr-00290-O (N.D. Tex. Apr. 25, 2025); Statement of Reasons, at 4, ECF No. 34, *United States v. Ramirez-Benavidez*, No. 4:24-cr-00166-O (N.D. Tex. Nov. 15, 2024); Statement of Reasons, at 4, ECF No. 87, *United States v. Rivera*, No. 4:24-cr-00309-O (N.D. Tex. May 2, 2025); Statement of Reasons, at 4, ECF No. 41, *United States v. Williams*, No. 4:24-cr-00223-O (N.D. Tex. Feb. 24, 2025). The undersigned is aware of a single initial sentencing (as opposed to a revocation) during the time period in which the Judge omitted the language. *See* Statement of Reasons, at 4, ECF No. 39, *United States v. Lee*, No. 7:24-cr-14-O-1 (N.D. Tex. January 31, 2025).

Circuit precedent which "take(s) the district court at its clear and plain word," so long as it "did not 'beat around the bush' or equivocate." *United States v. Castro-Alfonso*, 841 F.3d 292, 298 (5th Cir. 2016); *see also United States v. Reyna-Aragon*, 992 F.3d 381, 387–89 (5th Cir. 2021); *United States v. Medel-Guadalupe*, 987 F.3d 424, 429 (5th Cir. 2021); *United States v. Redmond*, 965 F.3d 416, 420–21 (5th Cir. 2020); *United States v. Vega-Garcia*, 893 F.3d 326, 328 (5th Cir. 2018); *United States v. Guzman-Rendon*, 864 F.3d 409, 411–12 (5th Cir. 2017). Accordingly, the facts of this case show that district courts may opt out of appellate scrutiny if they simply say, in one case or every case, that the Guidelines did not affect the sentence. Indeed, the present case shows that the court of appeals will accept this claim even if it appears for the first time in a Statement of Reasons issued after the sentencing hearing, and even if the district court references the Guideline range in explaining the basis for a variance.

In defense of the district court's practice, the government points to *Molina-Martinez v. United States*, 578 U.S. 189 (2016). *See* (BIO, at 8-9). That case recognizes that sometimes a district court may, in the course of sentencing, explain the sentence in a way that makes clear it would have imposed the same sentence under different Guidelines. *See Molina-Martinez*, 578 U.S. at 200-201. But the process imagined by the *Molina-Martinez* court -- evidence of harmlessness emerging organically from the reasoning of the district court – lies at some distance from the phenomenon at issue here, in which district courts simply insert boilerplate Guideline disclaimers into the Statement of Reasons to evade review in essentially every

case. The former is a credible inference drawn from the district court's reaction to the case; the latter is a deliberate effort to defeat the defendant's procedural rights and undermine the sentencing regime created by Congress.

The government points to elements of the record that tend to show, in its view, that the district court would have imposed the same sentence under different Guidelines. *See* (BIO, at 9-10). On the other side of the scale, however, must be considered the district court's failure to disclaim the Guidelines in the live hearing, its routine use of the same language in essentially every case, and its reference to the Guidelines when explaining the choice to vary, from which one might reasonably infer some influence of the Guideline range in determining the extent of the variance. *See* Pet.App. 10a-12a. This "factbound" question of whether the district court actually would have imposed fewer than ten years in the absence of its error, (BIO, at 10), however, is not the one presented to this Court. Rather, this Court need only decide whether any of these record facts matter when the district court chooses to disclaim the Guidelines. That question has divided the courts of appeals, with the Eighth, Eleventh, and most panels of the Fifth Circuit holding that the disclaimer simply eliminates the need for further inquiry, *see United States v. Peterson*, 887 F.3d 343, 349 (8th Cir. 2018)(quoting *United States v. Davis*, 583 F.3d 1081, 1094–95 (8th Cir. 2009)); *United States v. Henry*, 1 F.4th 1315, 1327 (11th Cir. 2021)(quoting *United States v. Keene*, 470 F.3d 1347, 1349 (11th Cir. 2006)); *United States v. Grady*, 18 F.4th 1275, 1291 (11th Cir. 2021); *Castro-Alfonso*, 841 F.3d at 298; *Reyna-Aragon*, 992 F.3d at 387–89;

Medel-Guadalupe, 987 F.3d at 429; *Redmond*, 965 F.3d at 420–21; *Vega-Garcia*, 893 F.3d at 328; *Guzman-Rendon*, 864 F.3d at 411–12, and the Second, Third, Ninth, and Tenth Circuit conducting a more searching analysis, *see United States v. Feldman*, 647 F.3d 450, 460 (2d Cir. 2011); *United States v. Seabrook*, 968 F.3d 224, 233–34 (2d Cir. 2020); *United States v. Wright*, 642 F.3d 148, 155–54 & n.6 (3d Cir. 2011); *United States v. Williams*, 5 F.4th 973, 978 (9th Cir. 2021)(quoting *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011)); *United States v. Gieswein*, 887 F.3d 1054, 1062–63 (10th Cir. 2018).

The government speculates that Petitioner's claim for relief would fail in the Second, Third, and Tenth Circuits. *See* (BIO, at 12-13). The government does not contest, however, that these Circuits apply different standards than the Eighth, Eleventh and Fifth Circuits. Petitioner did not get the benefit of any meaningful analysis of the record. Here, the court of appeals simply noted the disclaimer, noted that "[t]he district court found that the guidelines range did not adequately reflect the seriousness of Medrano's conduct," and affirmed. *United States v. Medrano*, No. 23-10713, 2025 WL 915406, at *2 (5th Cir. Mar. 26, 2025)(unpublished). It did not consider the credibility of the disclaimer in light of its absence from the live hearing, its repeated use by the same Judge in essentially every case, or any other factor. *Medrano*, 2025 WL 915406, at *2. At the very least, these facts could reasonably produce a remand.

The government correctly observes that this Court does not grant certiorari to resolve internal disagreements within a particular Circuit. *See* (BIO, at 11). That the Fifth Circuit has issued conflicting rulings,

however, does not mean that the Circuits are not divided. Nor does it mean that the present case – which simply takes the disclaimer at face value -- does not conflict with the law of other Circuits that conduct a more searching prejudice analysis even if the district court disclaims the Guidelines.

Finally, in a footnote, the government contends that "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." (BIO, at 11, n.2). Petitioner is not in a better position than he would be if he had objected. Had he objected, the district court likely would have recognized the clear or obvious error acknowledged by the court of appeals, and may well have imposed a lesser sentence. And if the court had indeed heard the objection, rejected it in spite of clear binding precedent, and then disclaimed the Guidelines, the disclaimer might have been better evidence of what the district court actually would have done at sentencing. A defendant who raises a clear Guideline error for the first time on appeal is not in a better position to show an effect on substantial rights because he or she failed to object, but because there is a better chance that the error affected the outcome. Federal Rule of Criminal Procedure 52, which creates the distinction between harmless and plain error review, presumes a district court acting in good faith – it does not presume that district courts will deny meritorious claims and routinely deny the effect of the Guidelines on the outcome in essentially every case.

Respectfully submitted,

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