

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ELIJAH D. BROWN,

*Petitioner,*

*versus*

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

Whether the Fifth Amendment's Due Process Clause permits a district court to base a sentencing determination on technical and factual assertions that were never introduced into evidence or subjected to adversarial testing, a question that has divided the circuits?

## TABLE OF CONTENTS

QUESTION PRESENTED .....	1
TABLE OF CONTENTS .....	2
APPENDIX INDEX .....	3
TABLE OF AUTHORITIES .....	4
OPINIONS BELOW .....	5
JURISDICTION.....	5
STATUTORY PROVISIONS INVOLVED.....	5
STATEMENT OF THE CASE.....	7
I.    Brown's terminal medical condition .....	7
II.   The criminal conduct and charges .....	8
III.  The sentencing proceedings .....	9
IV.  The district court's extra-record reliance and upward variance .....	10
V.   The Fifth Circuit decision.....	11
REASONS FOR GRANTING THE WRIT .....	13
I. <b>The decision below creates a square circuit split on a recurring question           of constitutional magnitude .....</b>	<b>13</b>
A.   Sister circuits prohibit reliance on extra-record information in sentencing determinations .....	13
B.   The Fifth Circuit's decision explicitly permits outcome- determinative reliance on extra-record speculation.....	14
C.   The split is acknowledged, entrenched, and demands this Court's resolution.....	15

<b>II.</b>	<b>The question presented is exceptionally important and recurs frequently</b>	<b>15</b>
	.....	
A.	The constitutional question is fundamental and recurring .....	15
B.	The question affects numerous cases and has broad practical significance.....	16
<b>III.</b>	<b>This case is an ideal vehicle for resolving the circuit split.....</b>	<b>17</b>
A.	The case presents a clean vehicle with no procedural obstacles.....	18
B.	The human consequences demonstrate the constitutional stakes..	19
<b>CONCLUSION .....</b>		<b>20</b>

## **APPENDIX INDEX**

Fifth Circuit order denying rehearing en banc, August 20, 2025.....	App. 001
Fifth Circuit opinion, May 30, 2025.....	App. 002
District court judgment, April 8, 2024.....	App. 025

## TABLE OF AUTHORITIES

<i>Holguin-Hernandez v. United States</i> , 589 U.S. 169 (2020) .....	11, 18
<i>Townsend v. Burke</i> , 334 U.S. 736 (1948) .....	15-16
<i>United States v. Brown</i> , No. 24-30214, 2025 WL 1540953 (5th Cir. May 30, 2025) (unpublished) .....	<i>passim</i>
<i>United States v. Meyer</i> , 790 F.3d 781 (8th Cir. 2015) .....	13-14
<i>United States v. Roy</i> , 88 F.4th 525 (4th Cir. 2023) .....	13-14
<i>United States v. Thompson</i> , 864 F.3d 837 (7th Cir. 2017) .....	13-14
<i>United States v. Tucker</i> , 404 U.S. 443 (1972) .....	16
<i>United States v. Warren</i> , 720 F.3d 321 (5th Cir. 2013) .....	11, 18
<i>United States v. Watts</i> , 519 U.S. 148 (1997) .....	16

## **STATUTES**

U.S. Const. amend. V .....	<i>passim</i>
18 U.S.C. § 922(o) .....	8
18 U.S.C. § 3553(a) .....	<i>passim</i>
26 U.S.C. § 5861(d) .....	8
28 U.S.C. § 1254(1) .....	5

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit affirming petitioner's conviction and sentence can be found at *United States v. Brown*, No. 24-30214, 2025 WL 1540953 (5th Cir. May 30, 2025) (unpublished), and is set forth at App. 002. The opinion of the United States Court of Appeals for the Fifth Circuit denying rehearing en banc on August 20, 2025, can be found at App. 001.

## JURISDICTION

The judgment of the court of appeals was entered on August 20, 2025. App. 001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 3553(a) (Factors to be considered in imposing a sentence):

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
- (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--
    - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
    - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
  - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—
- (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be

incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

## **STATEMENT OF THE CASE**

The Petitioner Elijah D. Brown was a 24-year-old first-time offender suffering from congestive heart failure when the court below sentenced him to an upward variance sentence for his possession of two firearms that contained Glock switch-type devices. That upward variance sentence, based entirely on extra-record judicial speculation, is the subject of this appeal.

### **I. Brown's terminal medical condition**

When Brown was only 19 years old, he was diagnosed with congestive heart failure, a severe condition in which the heart does not pump blood efficiently. To treat this life-threatening condition, Brown has been fitted with a left ventricular assist device (LVAD) implanted in his chest and an intra-aortic balloon pump (IABP) attached to his heart. A controller unit and battery pack are worn outside his body and connected to the LVAD through his skin. ROA.252.

Brown's prognosis was grim—approximately ten years to live from diagnosis. At sentencing, several years had already passed. Brown explained to the court that his condition had forced him to withdraw from college and that he realized “I don't



got long, so I need to get back in school, finish what I was doing, and just live the rest of my life the best I can.” ROA.167.

Despite these difficulties, Brown had no criminal history—juvenile or adult—until this case. ROA.249-50. He graduated from high school where he participated in ROTC, worked multiple jobs, and tried to pursue higher education before his medical condition intervened. ROA.250, 253.

## **II. The criminal conduct and charges**

On September 23, 2022, Shreveport Police responded to an “armed person” call. Officers found Brown’s stepfather, Tedric Ratcliff, and another individual in a stolen vehicle containing multiple firearms. Two of the firearms were registered to Brown: (1) a Palmetto Arms 7.62 AR rifle with a drop-in auto sear device and (2) a Glock 19 9mm pistol with a Glock switch conversion device. Brown was located sitting on apartment steps approximately 30 yards from the vehicle. ROA.189, 246-47.

Brown was not a prohibited person under federal firearms laws, but the conversion devices were not registered in the National Firearms Registration and Transfer Record as required. ROA.190. Brown was charged with two counts of illegal possession of a machinegun under 18 U.S.C. § 922(o) and two counts of possession of an unregistered firearm under 26 U.S.C. § 5861(d). ROA.20-21. After an unsuccessful suppression motion, Brown pleaded guilty to one count each. ROA.81.

During the pendency of the district court proceedings, due to the seriousness of his heart condition, Brown was transported from the Caddo Correctional Center in Shreveport, Louisiana, to Plaquemine Parish Detention Center in Davant, Louisiana,

to be housed closer to Ochsner LSU Medical Center in Jefferson, Louisiana, where he was receiving ongoing treatment. This means that Brown was housed nearly 400 miles (and a nearly 6 hour drive) away from his family and where his legal case was proceeding. While in pretrial custody, Brown suffered swollen ankles, shortness of breath, weight loss, chest pain, and bed sores due to multiple inpatient medical treatments over the past five years. ROA.252.

### **III. The sentencing proceedings**

The presentence report detailed Brown's terminal medical condition and noted he had no criminal history. ROA.249-50, 252. Under the Guidelines, Brown received a total offense level of 15, yielding a guideline range of 18-24 months imprisonment. ROA.255. The PSR noted that similarly situated defendants received an average sentence of 14 months and a median sentence of 13 months. ROA.257. Neither the probation office nor the government sought an upward departure or variance. ROA.257-58. Neither party objected to the PSR or filed a sentencing memorandum. ROA.259.

At the April 3, 2024 sentencing hearing, Brown personally addressed the court about his terminal condition, explaining that he had approximately six years left to live and needed a heart transplant. His counsel's sole argument was that the court should consider Brown's medical condition in determining the sentence. ROA.169-70. The government made no argument regarding the appropriate sentence.

#### IV. The district court's extra-record reliance and upward variance

The court imposed a 42-month sentence—75% above the high end of the guidelines range. In justifying this substantial upward variance, the court made detailed technical assertions about firearms that found no support in the record. The court explicitly stated these technical characteristics justified the upward variance:

It is designed to send a message to other people in Shreveport who convert ordinary firearms into automatic weapons that are, A, inaccurate when they are fired; B, the magazines can empty within a period of two seconds. And they are fired with the casings spread all over everywhere wherever they're fired. And there's no aim and there's no control over this.

ROA.172.

The court also made broad assertions about community violence, claiming that Brown was “part of the problem with the gun violence in Shreveport” and that “people who have nothing to do with the encounters for which these weapons are maintained are shot and killed.” ROA.171-72. Additionally, the court claimed that “Glock switches are all over the place” and “drop-in auto sears 3d-printed are all over the place.” ROA.174.

The court acknowledged that there was “no indication [Brown was] involved in that kind of conduct” involving violence or harm to others. ROA.172. The record contains no expert testimony, ballistics analysis, crime statistics, or other evidence supporting any of these technical or sociological assertions. The presentence report did not contain such information. Without these unsupported technical claims, no basis existed in the record for any upward variance—neither the government nor probation sought departure from the guidelines range.

Brown’s counsel objected “to the severity of the Court’s sentence” and immediately noticed an intent to appeal. ROA.178. Brown’s objection to the “severity of the Court’s sentence” preserved his substantive reasonableness challenge under *Holguin-Hernandez v. United States*, 589 U.S. 169, 174 (2020), which encompasses whether the sentence gives significant weight to an irrelevant or improper factor. *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

#### **V. The Fifth Circuit decision**

On May 30, 2025, a divided panel of the Fifth Circuit affirmed Brown’s sentence. *United States v. Brown*, No. 24-30214, 2025 WL 1540953 (5th Cir. May 30, 2025) (unpublished). The majority found Brown’s 42-month sentence substantively reasonable despite being an upward variance from the 18-24 month guidelines range. The court held that the district court properly considered Brown’s serious medical condition (congestive heart failure requiring an LVAD device) but reasonably chose not to give it controlling weight. App. 005-006. The majority found no error in the district court’s reliance on general knowledge about the dangerousness of automatic weapons and the need for deterrence in addressing gun violence in Shreveport, noting that sentencing judges may draw upon their experience and community knowledge. App. 006-008. The court emphasized that Brown failed to demonstrate the district court’s statements about converted firearms were “materially untrue,” and that the 75 percent upward variance was within the range of departures previously upheld by the Fifth Circuit. App. 007-010.

The Honorable Judge Graves dissented and argued the sentence was substantively unreasonable on multiple grounds, characterizing it as essentially a “near-life sentence” for someone with limited life expectancy. App. 011. Judge Graves contended the district court failed to adequately account for Brown’s terminal heart condition, which should have received significant weight given his projected 6-year remaining lifespan. App. 013-015. The dissent criticized the court for relying on facts outside the record about gun violence and the characteristics of automatic weapons, arguing this violated due process requirements. App. 016-018. Additionally, the dissent emphasized troubling aspects of the case circumstances - that Brown was found 90 feet from the vehicle, had no criminal history, and that his stepfather (with extensive criminal history) was the actual possessor of the weapons, yet received a lower sentence. The dissent concluded this represented a clear error in balancing the sentencing factors and called for vacatur and remand. App. 021-024.

Brown petitioned the Fifth Circuit to rehear his case en banc and that petition was denied on August 20, 2025. App. 001.

## REASONS FOR GRANTING THE WRIT

### **I. The decision below creates a square circuit split on a recurring question of constitutional magnitude**

This case presents a clean circuit split on whether the Fifth Amendment permits district courts to base outcome-determinative sentencing decisions on extra-record information that has not been established through proper evidentiary procedures. The Fourth, Seventh, and Eighth Circuits prohibit such reliance, while the Fifth Circuit’s decision here explicitly endorses it. This conflict affects thousands of federal sentencings annually and undermines the constitutional guarantee that no person shall be deprived of liberty without due process of law.

#### **A. Sister circuits prohibit reliance on extra-record information in sentencing determinations**

The Fourth, Seventh, and Eighth Circuits have established a clear constitutional rule distinguishing between referencing and relying on extra-record information at sentencing. As the Fourth Circuit recently explained: “a district court may *reference* information from outside the record at sentencing so long as the court does not *rely* on such extrinsic information in its sentencing determination.” *United States v. Roy*, 88 F.4th 525, 531 (4th Cir. 2023) (emphasis in original). The Seventh and Eighth Circuits apply identical formulations. *See United States v. Thompson*, 864 F.3d 837, 842 (7th Cir. 2017); *United States v. Meyer*, 790 F.3d 781, 783 (8th Cir. 2015).

These circuits recognize a crucial constitutional distinction. District courts need not feign ignorance of matters beyond the record, but when determining an

appropriate sentence, due process requires reliance only on information subject to adversarial testing. This rule protects defendants' rights while preserving judicial discretion to acknowledge context. The distinction is outcome-determinative: in *Roy*, the court found constitutional error where a judge's personal anecdotes about fentanyl exposure drove the sentencing decision, 88 F.4th at 531; in *Thompson*, the circuit prohibited reliance on undisclosed discovery materials as sentencing facts, 864 F.3d at 842; in *Meyer*, the court barred case-specific information from a concurrent proceeding, 790 F.3d at 783.

**B. The Fifth Circuit's decision explicitly permits outcome-determinative reliance on extra-record speculation**

The decision below squarely rejects this constitutional framework. The panel majority acknowledged that the district court relied on extra-record information to impose a substantial upward variance but found such reliance constitutionally permissible. App. 006-008. The majority reasoned that sentencing judges may draw upon their "experience and community knowledge" and that Brown failed to prove the court's technical assertions were "materially untrue." App. 007-010. This holding directly contradicts the rule established by sister circuits.

The panel's approach eliminates any meaningful distinction between reference and reliance. Under the Fifth Circuit's framework, a district court may base outcome-determinative sentencing increases on unsubstantiated technical claims, sociological assertions, and personal beliefs, so long as the defendant cannot affirmatively disprove them. This shifts the constitutional burden, permitting deprivation of liberty based on judicial speculation rather than reliable evidence.

**C. The split is acknowledged, entrenched, and demands this Court's resolution**

Judge Graves's thoughtful dissent recognized the constitutional problem, noting that the district court impermissibly relied on "facts outside the record about gun violence and the characteristics of automatic weapons" in violation of due process requirements. App. 016-017. The dissent's analysis aligns with the Fourth, Seventh, and Eighth Circuits' approach but could not command a majority.

The en banc court's denial of rehearing has entrenched this split. Federal defendants facing sentencing now receive fundamentally different constitutional protections depending on which circuit hears their case. In the Fourth, Seventh, and Eighth Circuits, judges may not rely on extra-record speculation to impose upward variances. In the Fifth Circuit, such reliance is explicitly permitted and may be outcome-determinative. This conflict affects every federal sentencing and cannot be resolved without this Court's intervention.

**II. The question presented is exceptionally important and recurs frequently**

This case raises a pure question of constitutional law that affects thousands of federal sentencings each year and strikes at the heart of due process protections in criminal proceedings.

**A. The constitutional question is fundamental and recurring**

The Fifth Amendment's guarantee that no person shall be deprived of liberty without due process of law applies with full force to sentencing proceedings, where the liberty interests at stake are substantial and the potential for arbitrary government action is acute. This Court has long recognized that due process requires



reliability in the information upon which sentences are based. *See Townsend v. Burke*, 334 U.S. 736, 740-41 (1948) (due process violated where sentence based on “assumptions concerning his criminal record which were materially untrue”); *United States v. Tucker*, 404 U.S. 443, 447 (1972) (sentence based on unconstitutionally obtained prior convictions violated due process).

The adversarial system depends on parties having notice of information that will be used against them and opportunity to contest its accuracy. When courts base sentencing determinations on extra-record speculation about technical matters requiring expert knowledge or sociological claims amenable to empirical verification, these fundamental protections become meaningless. The constitutional requirement of reliability is rendered a nullity if judges may impose substantial sentence increases based on personal beliefs rather than evidence subject to adversarial testing.

The government bears the burden of establishing aggravating sentencing facts by a preponderance of the evidence. *United States v. Watts*, 519 U.S. 148, 156 (1997). This burden cannot be satisfied by judicial assumptions or personal beliefs about technical matters requiring expert testimony. To hold otherwise would eviscerate the adversarial process and permit arbitrary sentencing based on individual judges’ unsubstantiated views rather than reliable evidence.

**B. The question affects numerous cases and has broad practical significance**

Federal district courts conduct approximately 60,000 criminal sentencings annually. Every one of these proceedings implicates the question presented. The Fifth Circuit’s framework creates a license for outcome-determinative reliance on judicial

speculation in any case, affecting defendants' liberty interests and undermining public confidence in the fairness of federal sentencing.

The impact is particularly acute in cases involving technical questions beyond common knowledge. Firearms cases, drug cases involving chemical compositions or potency, fraud cases involving complex financial instruments, and technology crimes all require specialized knowledge. Under the Fifth Circuit's approach, judges may impose substantial sentence increases based on their personal understanding of these technical matters without any expert testimony or evidentiary foundation. Defendants have no opportunity to present contrary evidence or cross-examine the basis for these beliefs.

The arbitrary nature of this system violates core due process principles. Sentences should not depend on individual judges' backgrounds, personal experiences, or assumptions about technical or sociological facts. The Constitution requires a neutral arbiter applying law to facts established through reliable procedures, not a system where judges may base liberty-depriving decisions on unsubstantiated speculation.

### **III. This case is an ideal vehicle for resolving the circuit split**

This case presents the constitutional question in its cleanest possible form, free from procedural complications or alternative grounds for decision. The record demonstrates a stark due process violation, and the human consequences illustrate why the constitutional protection matters.

**A. The case presents a clean vehicle with no procedural obstacles**

The constitutional issue is squarely presented and properly preserved. Brown timely objected to the severity of the sentence. ROA.178. This objection preserved his substantive reasonableness challenge under *Holguin-Hernandez v. United States*, 589 U.S. 169, 174 (2020), which encompasses whether the sentence gives significant weight to an irrelevant or improper factor. *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

The district court's reliance on extra-record information was explicit and outcome-determinative. The court detailed technical assertions about weapon ballistics, claiming the firearms "empty within a period of two seconds," are "inaccurate when they are fired," and have "no aim and there's no control." ROA.172. The court also made broad sociological claims about community violence and the prevalence of conversion devices. ROA.171-72, 174. The court acknowledged these factors justified the 75 percent upward variance from the advisory guidelines range. ROA.172-74.

No evidentiary support exists in the record for these claims. The presentence report contains no expert testimony, ballistics analysis, or crime statistics. Neither the probation office nor the government sought an upward variance. Without the court's extra-record speculation, no basis existed for any variance from the guidelines range. The panel majority acknowledged the district court's reliance on extra-record information but found it constitutionally permissible, thereby squarely presenting the question whether such reliance violates due process. App. 006-008.

**B. The human consequences demonstrate the constitutional stakes**

The facts of this case illustrate why the constitutional protection matters. Elijah Brown was twenty-four years old at sentencing and had never before been arrested. ROA.249-50. He suffers from congestive heart failure diagnosed when he was nineteen. ROA.252. This terminal condition requires him to carry external devices to keep his heart functioning, and his life expectancy is severely limited. Despite his devastating illness, Brown had maintained his dignity and pursued education and employment until his medical condition intervened. ROA.250, 253.

At sentencing, Brown spoke about confronting his mortality and his desire to make the most of his remaining time. ROA.167. He explained he had approximately six years left to live and needed to finish school and live the remainder of his life productively. The district court acknowledged Brown's medical condition but imposed a 42-month sentence—75 percent above the guidelines range—representing a substantial portion of Brown's remaining life. As Judge Graves observed, this constitutes “essentially a near-life sentence for someone with limited life expectancy.” App. 011.

The sentence rests entirely on the district court’s unsubstantiated technical and sociological assertions. Brown had no opportunity to present contrary expert testimony about weapon ballistics or crime statistics. The court only disclosed its extra-record claims after Brown had allocuted and counsel had addressed the court. This violation of fundamental fairness resulted in Brown spending years of his

limited remaining life in custody based on judicial speculation rather than reliable evidence.

Moreover, the circumstances of the offense highlight the arbitrary nature of extra-record reliance. Brown was found 90 feet from the vehicle containing the firearms. App. 021. His stepfather, who had extensive criminal history and was the actual possessor of the weapons, received a lower sentence despite being a prohibited person. App. 022. These facts suggest Brown may have been constructively possessing his own legally registered firearms that happened to have illegal conversion devices. Yet the district court imposed a near-life sentence based on unsubstantiated claims about the technical characteristics and societal impact of such devices.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this November 18, 2025,

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