No. 24-6269

IN THE

Supreme Court of the United States

LAIRON GRAHAM,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR THE PETITIONER

INTRODUCTION

The government's memorandum, which was filed in other recent cases involving contractual appeal waivers, does not address the first two questions presented in the petition for a writ of certiorari.[1]

ARGUMENT

I. The government should be invited to respond to petitioner's arguments relating to the first question presented.

The first question presented is critically important, and this case is an ideal vehicle for the Court to resolve it. *See* Pet. 14-16, 21-23. But after receiving a requested extension to file a response, the government now declines to even minimally address that question. Resp. Mem. at 2 n.*.

The government's waiver is notable because the Court previously requested a response in *Goudelock v. United States*, where the first question presented was

[1] The government's memorandum is substantively identical to those recently filed in *McMillan v. United States*, No. 25-5609 (Oct. 21, 2025), *Richardson v. United States*, No. 25-5986 (Dec. 1, 2025), and *Martin v. United States*, No. 25-6142 (Jan. 16, 2026). Unfortunately, the non-boilerplate introductory sentence of the government's memorandum is factually inaccurate. There was not "a provision in [petitioner's] plea agreement waiving the right to appeal his sentence *except* in circumstances that the court of appeals found not to be present here." Resp. Mem. at 1 (emphasis added). Rather, the appeal waiver provision in petitioner's plea agreement does not describe any circumstance in which the waiver would not apply. *See* Pet. 5 (quoting C.A. App. 60-61). *But see Garza v. Idaho*, 586 U.S. 232, 238 (2019) ("[N]o appeal waiver serves as an absolute bar to all appellate claims.").

"[w]hether the right to due process on appeal is violated where an appellate court invokes and relies on a legal argument that was not presented by an opposing party or otherwise mentioned prior to the issuance of the court's decision." Petition for Writ of Certiorari at 1, No. 25-5553 (Sept. 2, 2025), cert. denied (Jan. 12, 2026). The government ultimately filed a response in which it argued, *inter alia*, that the Second Circuit did not violate the party presentation principle in that case. Brief for Respondent at 10-12, *Goudelock v. United States*, No. 25-5553 (Dec. 1, 2025). However, the government's response in *Goudelock* conspicuously did not include, even as an alternative argument, a response to the actual question presented.

In this case, counsel repeatedly invoked the party presentation principle *before* the Second Circuit issued its decision. *See* Pet. 10-12, 22-23. Moreover, the *sua sponte* argument invoked by the Second Circuit to reject petitioner's appeal in this case had been *affirmatively disclaimed* by the government. *See* Pet. 2, 12, 21. These two factors, which were not present in *Goudelock*, make this case an especially suitable vehicle for the Court to decide whether party-presentation violations may ever amount to violations of due process. Therefore, the government should be invited to file a brief that includes a substantive response to the first question presented (in addition to, rather than in lieu of, case-specific issues the government may wish to address).

II. The government should also be invited to state its position as to whether a GVR is appropriate in light of *Clark v. Sweeney*.

The government also declines to respond to the second question presented: "Whether . . . the Court should grant certiorari, vacate the Second Circuit judgment, and remand the case in light of the recent party-presentation-related order in *Clark v. Sweeney*," 607 U.S. 7 (2025). Pet. i.

The two factors cited above, *supra* p.2, distinguish this case from *Sweeney* in ways that accentuate the "particularly flagrant" nature, Pet. 21, of the Second Circuit's party-presentation violation. Otherwise, the most abundant factor separating this case from *Sweeney* relates to the identities of the victorious and aggrieved parties: In *Sweeney*, the prosecution would have lost an appeal, and a criminal defendant would have won, because of an appellate court's reliance on "a claim that [the defendant] never asserted and that the State never had the chance to address." 607 U.S. at 9. The opposite is true here. But that is not a legitimate reason for a different outcome in this Court. *See Hefferman v. City of Paterson, N.J.*, 578 U.S. 266, 272 (2016) ("[I]n the law, what is sauce for the goose is normally sauce for the gander."). *See also United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) ("In criminal cases, departures from the party presentation principle have usually occurred 'to protect a *pro se* litigant's rights.'") (quoting *Greenlaw v. United States*, 554 U.S. 237, 244 (2008)). Therefore, the government should be invited to respond and state its position as to whether facts that meaningfully separate this case from *Sweeney* tend to support or undermine petitioner's request for a GVR.

CONCLUSION

The petition should be granted. At a minimum, the government should be invited to respond to the first two questions presented.

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Respectfully submitted,

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