No._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

CRAIG EDWARD HUNNICUTT, JR.,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether the Sixth Circuit decision affirming Mr. Hunnicutt's supervised release violation and new law convictions, improperly upheld the clearly erroneous factual findings of the district court that were critical and material to his claim of self-defense?

II.

Whether the district court district court abused its discretion at Mr. Hunnicutt's sentencing proceeding and imposed a procedurally unreasonable sentence upon him where it erroneously determined that he did not act in self-defense, improperly applied an enhancement, and considered other irrelevant, inaccurate, or uncorroborated information in imposing an upward variant sentence upon him?

III.

Whether the district court district court abused its discretion at Mr. Hunnicutt's sentencing proceeding and imposed a substantively unreasonable sentence upon him where it varied upward and made his sentence consecutive, and placed inordinate weight on Mr. Hunnicutt's history and characteristics, offense facts and the need to punish, in sentencing him to a custodial term of 130-months?

IV.

Whether the district court's 70-month sentence upon Mr. Hunnicutt resulted in a sentencing disparity with those similarly situated nationally?

V.

Whether the district court's reasons for imposition of sentence on Mr. Hunnicutt's supervised release violation included prohibited factors, including, the seriousness of the offense, promoting respect for the law, and just punishment, contrary to the holding of Esteras v. United States, 606 U.S. 185 (2025)?

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Petitioner CRAIG EDWARD HUNNICUTT, JR., respectfully petitions that a writ of certiorari issue to review the judgment of the Sixth Circuit Court of Appeals.

OPINIONS AND ORDERS BELOW

The Sixth Circuit's opinion affirming the judgment of the U. S. District Court, is and unpublished order styled as *United States v. Craig Edward Hunnicutt, Jr.,* Nos. 24/1831/1836 (6th Cir, September19, 2025) (App. A, 1a). Rehearing was denied by order entered on October 7, 2025 (App. B, 10a).

JURISDICTION OF THE SUPREME COURT

The U.S. Sixth Circuit Court of Appeals issued its order on September19, 2025. (App. A, 1a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Fifth Amendment, Due Process Clause:
No person shall be * * * deprived of life, liberty, or property, without due process of law.

18 U.S.C. § 3553(a) (In pertinent part):

(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--

(5) any pertinent policy statement--

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

* * *

18 U.S.C. § 3584(b):

(b) Factors to be considered in imposing concurrent or consecutive terms.--The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

Sentencing Guidelines Provisions (In pertinent part):

U.S.S.G. §2K2.1(b)(6)(B):

(6) If the defendant--
(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. . . . "

U.S.S.G. § 7B1.3(f):

> (f) Any term of imprisonment imposed upon the revocation of probation shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation.

STATEMENT OF THE CASE

Procedural History:

On November 14, 2023, Mr. Craig Hunnicutt, was charged in a single-count indictment with Felon in Possession of Ammunition, 18 U.S.C. § 922(g)(1); 18 U.S.C. § 924(a)(8), and 18 U.S.C. § 921(a). The offense conduct was alleged to have occurred on August 12, 2023, in the Southern Division of the Western District of Michigan.

Mr. Hunnicutt filed a Motion to Dismiss the Indictment Pursuant to the Second Amendment that was denied by U.S. District Judge Robert Jonker. On May 22, 2024, Mr. Hunnicutt appeared for a change of plea hearing. He pled guilty to possession of ammunition by a felon pursuant to a conditional Rule 11 Plea Agreement, that preserved his right to appeal the district court's ruling on his motion to dismiss.

On September 17, 2024, Mr. Hunnicutt was sentenced to 70-months in custody to be followed by three years of supervised release. At a consolidated sentencing hearing, a supervised release violation sentence of 60 months in case No.: 06-194, was ordered to be served consecutive to the 70-month sentence for a total sentence of 130-months. Mr. Hunnicutt filed timely Notices of Appeal in both the new law and supervised release cases. (Sixth Circuit Case Nos 24-1831 and 24-1836). After separate opening briefs were filed by Mr. Hunnicutt in each case the Court, entered

an order consolidating the cases for further briefing and submission. On September 19, 2025 the hearing panel entered an opinion and judgment affirming both Mr. Hunnicutt's supervised release violation and new law convictions. (App. A, 1a). A petition for rehearing was denied October 7, 2025. (App. B, 10a.).

Case Facts:

On August 12, 2023, at approximately 11:30 p.m., Grand Rapids Police (GRPD) officers were dispatched to a shooting with several victims in the parking lot of Riordan's Party Store, Grand Rapids. Witnesses identified Mr. Hunnicutt as the shooter. A detective reviewed surveillance videos of the shooting that revealed Mr. Hunnicutt was in and around the store prior to the shooting. The video showed Mr. Hunnicutt approach a group of people standing in the Riordan's Party Store parking lot. He first approached Grenika Marion, who was standing next to Shante Threats, and began speaking to her. Mr. Hunnicutt then walked away from Ms. Marion and Mr. Threats. He went into a store then walk over to a 2017 Jeep Cherokee that was registered to Kawana Taylor, Mr. Hunnicutt's then girlfriend, to retrieve an item. Mr. Hunnicutt returned to the group and began speaking with Mr. Threats. Threats turned to Mr. Hunnicutt and the two exchanged words. Hunnicutt and Threats faced each other for approximately four seconds. Hunnicutt began to retreat while he continued to look at Threats. Threats then placed his right hands near his pocket or waistband and drew a weapon. Hunnicutt responded by drawing his pistol and firing two rounds toward Threats. Hunnicutt turned and ran, while firing three additional rounds toward Threats as he fled the parking lot. He retreated to the Jeep Cherokee and his son drove the pair from the scene. Threats, Elisa Merritt, and Shelly Tejo

were struck by gunfire, and were transported to the hospital. As Threats attempted to flee, he fell to the ground due to the injury to his foot. As he stood and hopped away, Threats had a firearm in his hand.

On August 17, 2023, Mr. Hunnicut was charged by the State of Michigan, in the 17th Circuit Court, with Counts 1, 2, and 3, Assault with Intent to do Great Bodily Harm Less Than Murder; Count 4, Felony Firearm; Count 5, Carrying a Concealed Weapon; Counts 6 and 7, Felony Firearm. On October 18, 2023, counts 1, 2, 3, and 7 were dismissed, and on March 20, 2024, the remaining counts (4-6) were also dismissed. Mr. Hunnicutt's state defense counsel, Mr. Jeffrey Kortes, unequivocally stated that the counts were dismissed because Mr. Threats "was the aggressor, . . . reached for his gun first, and that Hunnicutt did not point his gun higher than the mid-thigh area, the prosecutor dismissed the Assault charges and one Felony Firearm charge as Hunnicutt was acting in self-defense."

The state court prosecutor, district court, government, Probation Department, and defense counsel reviewed and relied on the surveillance videos that clearly recorded the events and were made part of the district court record and made widely divergent conclusions regarding what actually occurred. After dismissal of counts 1, 2, 3, and 7 in state court Mr. Hunnicutt, was charged federally in a single-count indictment, with Felon in Possession of Ammunition, 18 U.S.C. § 922(g)(1); 18 U.S.C. § 924(a)(8), and 18 U.S.C. § 921(a).

The district court ultimately rejected Mr. Hummicutt's claim of self-defense and at a combined sentencing hearing for both cases imposed consecutive sentences

of 70-months for his new law and 60-months for his supervised release violations for a total sentence of 130-months.

REASONS FOR GRANTING THE PETITION

Review should be granted because this case implicates the Court's well established and longstanding precedent that the due process clause of the Fifth Amendment requires that a valid sentence must be based upon accurate information, and that a sentence that is imposed on false or inaccurate information is a violation of due process. *United States v. Tucker,* 404 U.S. 443, 447 (1972); *Townsend v. Burke,* 334 U.S. 736, 740-41 (1948). The district court's factual findings that Mr. Hunnicutt did not act in self-defense were "clearly erroneous" and that Sixth Circuit's conclusion that the district court did not abuse its discretion in its factual findings should be reversed.

Mr. Hunnicutt's sentences in this case also violates the mandate of the sentencing statutes and the Sentencing Guidelines that prohibit procedural errors that include a district court, "failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Gall v. United States,* 552 U.S. 38, 51 (2007). His consecutive sentences were also substantively unreasonable, where the district court placed undue weight on permissible factors, considered impermissible factors and failed to articulate valid reasons for imposing upward variant and disparate consecutive sentences. *Id.*

I. The Sixth Circuit decision affirming Mr. Hunnicutt's supervised release violation and new law convictions, improperly upheld the clearly erroneous factual findings of the district court that were critical and material to his claim of self-defense.

As was noted above, this case involved the review of several videos that captured the events that resulted in Mr. Hunnicutt's conviction and consolidated supervised release violation. In concluding that Mr. Hunnicutt's claim of self-defense was not well taken, the Sixth Circuit panel misapprehended several critical facts that will now be discussed.

The Court in its opinion, at Page 4, (App. A, 4a), stated:

> "The district court did not abuse its discretion by concluding that Hunnicutt did not act in self-defense. As depicted in the surveillance video, Hunnicutt approached a group of people in a parking lot, where he appeared to exchange words with Shante Threats. Hunnicutt then left and retrieved a gun that another individual had placed next to a nearby SUV shortly before. He tucked the gun into his waistband and returned to confront Threats. Hunnicutt and Threats spoke again, Threats lifted up his shirt to show Hunnicutt that he also possessed a firearm, and Hunnicutt immediately drew his weapon, aimed it at Threats's torso, and began firing. Hunnicutt then turned and ran, firing additional rounds into the crowd."
>
> Hunnicutt asserts that Threats reached for a gun first and that three men had surrounded him, giving him no choice but to draw his weapon and fire. But the video does not show anyone surrounding Hunnicutt. The video is admittedly too grainy to decide with certainty whether Threats merely lifted his shirt to show Hunnicutt his own firearm, or if he made a move to draw it. Notably, the footage shows that, after the first interaction, Hunnicutt went to retrieve a gun and returned to confront Threats, undermining Hunnicutt's claim that he was motivated by selfdefense.
>
> The district court's interpretation of the video is reasonable. We therefore conclude that the district court did not abuse its discretion by determining, by a preponderance of the evidence, that Hunnicutt did not act in self-defense."

Mr. Hunnicutt asserts that these factual conclusions are not supported by the record. First, even the district court found that there was no initial confrontation or even any discussion or exchange between Mr. Hunnicutt and Mr. Threats. The video

showed Mr. Hunnicutt first approached a woman named Grenika Marion, who was standing next to Shante Threats, and began speaking to her. Mr. Hunnicutt then walked away from Ms. Marion and Mr. Threats and went into a convenience store, then exited and walked to a vehicle then came back to resume his conversation with Ms. Marrion.

The Sixth Circuit erroneously, found that, "Hunnicutt then left and retrieved a gun that another individual had placed next to a nearby SUV shortly before. He tucked the gun into his waistband and returned to confront Threats." The video does not show that either another individual placed a gun near a SUV, or that Hunnicutt retrieved a gun and placed it in his waistband. It is impossible to conclude with any certainty that "Hunnicutt retrieved a gun" because the video just does not show that he did. Moreover, Hunnicutt stated in his PSR interview that he always carried a weapon to protect himself because of attempts on his life. The district court acknowledged this fact at sentencing. Simply put, there was no reason for Mr. Hunnicutt to retrieve a weapon since he already carried a weapon on his person. The Sixt Circuit's reliance on this misinterpretation of the facts resulted in its erroneous conclusion that he was the aggressor, when in fact he simply took the action that he did to justifiably defend himself.

Ms. Marion stated that Mr. Hunnicutt spoke with her, not Mr. Threats, then walked away. She also stated that it was Mr. Threats who became upset because Mr. Hunnicutt was talking to her. In that first encounter, the video simply does not show Mr. Hunnicutt approach, speak or even look in Threats direction, nor does any body

language suggest that he engaged Mr. Threats in any fashion. The district court accurately found that the video of the initial encounter did not show any obvious confrontation between Hunnicutt and Threats. Consequently, the Sixth Circuit's conclusion that on the first encounter that Mr. Hunnicutt "appeared to exchange words with Shante Threats" is simply incorrect. This error lead more easily to the court's determination that the district court was justified in rejecting Mr. Hunnicutt's self-defense claim.

The Sixth Circuit also misapprehended the video evidence in concluding that "Threats lifted up his shirt to show Hunnicutt that he also possessed a firearm, and Hunnicutt immediately drew his weapon, aimed it at Threats's torso…" The opinion states that, "The video is admittedly too grainy to decide with certainty whether Threats merely lifted his shirt to show Hunnicutt his own firearm, or if he made a move to draw it." The video shows that Threats did in fact reach for and draw his gun. Evidence of this is that when Threats fell to the ground, he clearly had his weapon in his right hand. If he was merely lifting his shirt to show that he had a weapon, Threats would not have had his weapon in his hand as he fell to the ground. Moreover, the panel assumed that Threats knew that Hunnicutt had a weapon and that explained why Threats supposedly lifted his shirt, "to show Hunnicutt that he also possessed a firearm." There is nothing in the video that establishes that Mr. Hunnicutt's weapon was visible to Threats until he drew it to protect himself. Instead, it shows that Mr. Hunnicutt reacted to Threats drawing his firearm then acting in self-defense to save himself.

The Sixth Circuit's misapprehension of these facts resulted in the panel finding that: "The district court's interpretation of the video is reasonable. We therefore conclude that the district court did not abuse its discretion by determining, by a preponderance of the evidence, that Hunnicutt did not act in self-defense." (Doc.35, Sixth Circuit' Order, 9/19/25, p. 4; App. A 4a,). If the court had accurately interpreted the video evidence, it could not have found that Mr. Hunnicutt was the aggressor and would have concluded, as did the state court prosecutor, that Mr. Hunnicutt acted in justifiable self-defense.

It is basic to our system of jurisprudence that any plea, sentence or factual determination must be based on accurate information. Indeed, this Court has held that criminal defendants have a due process right to a sentence based on accurate information. *United States v. Tucker,* 404 U.S. 443, 447 (1972); *Townsend v. Burke,* 334 U.S. 736, 740-41 (1948). Both the Sixth Circuit and this Court have held that, a court abuses its discretion when it relies on clearly erroneous factual findings. *Freed v. Thomas,* 137 F.4th 552, 557 (6th Cir. 2025). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.,* 333 U.S. 364, 395 (1948). The relevant question is not whether the Sixth Circuit's interpretation of the facts was clearly erroneous, but whether the District Court's finding was clearly erroneous. See *Anderson v. City of Bessemer City, N.C.,* 470 U.S. 564, 577 (1985 (citing *McAllister v. United States,* 348 U.S. 19, 20–21, (1954).

Based on the clear video evidence in this case this Court, should have had a "definite and firm conviction" that the district court made a mistake and that its view of the evidence. The facts misapprehended by the Sixth Circuit panel were critical and material to Mr. Hunnicutt's claim of self-defense. Because they were misconstrued, the court erroneously concluded that he was the aggressor rather than Mr. Threats who actually initiated the gunfight.

The factual finding of the district court ignored the fact that it was necessary for Mr. Hunnicut to protect himself from the clear and obvious actions taken by Mr. Threats and his associates that presented an imminent danger of either death or great bodily harm to him. In Michigan, the applicable statute, M.C.L.A. 780.972, sets forth his "Right to use of force in defense of self or another individual":

> (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:
>
> (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

Once evidence of self-defense is introduced, the prosecution must disprove self-defense beyond a reasonable doubt. *People v Dupree,* 486 Mich 693, 709-710; (2010). The state prosecutor scrutinized the videos and facts of the case and concluded that under Michigan law it could not proceed against Mr. Hunnicutt, and dismissed the assault charges and companion firearm charge because he lawfully defended himself. It was clear to the state prosecutor that: a) Mr. Hunnicutt had no duty to retreat; b) he honestly and reasonably believed that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself. Moreover,

contrary the government's claim there is no evidence that Mr. Hunnicutt was the instigator. Mr. Threats was the only one upset because Hunnicutt spoke to his girlfriend Ms. Marion. It was he who brandished a firearm as he and his minions who approached Mr. Hunnicutt, with the intent to intimidate him. They were clearly the aggressors. Mr. Hunnicutt was lawfully at that location and had no duty to retreat. He had every right to defend himself, and he did just that.

If the Court of Appeals had based its decision on an accurate interpretation of the videos, the result of his direct appeal would have been different. This Court should grant Mr. Hunnicutt's petition.

II. The district court abused its discretion at Mr. Hunnicutt's sentencing and imposed a procedurally and substantively unreasonable sentence upon him where it:

a) Based his sentence on an erroneous view of the facts that resulted in the finding that he did not act in self-defense;

b) Considered other irrelevant, inaccurate, or uncorroborated information in imposing an upward variant sentence upon Mr. Hunnicutt;

c) Applied the use the firearm in connection with another felony offense guideline U.S.S.G. §2K2.1(b)(6)(B). enhancement where Mr. Hunnicutt acted in self-defense;

d) Abused its discretion where it imposed an upward variant and consecutive sentence upon Mr. Hunnicutt totaling 130 months;

e) Essentially denied Mr. Hunnicutt his bargained for acceptance of responsibility points by varying upward by some 19 months;

f) Placed inordinate weight on several permissible 18 U.S.C. § 3553(a) factors in sentencing Mr. Hunnicutt to a substantively unreasonable upward variant and consecutive sentence of 130-months.

Standard of Review:

An appellate court reviews a sentence imposed by the district court to determine if it is procedurally and substantively reasonable under a deferential abuse of standard. *Gall v. United States,* 552 U.S. 38, 51-52 (2007); *United States v. Gates,* 48 F.4th 463, 468–69 (6th Cir. 2022). On appeal a district court's legal interpretation of the Guidelines enhancements is reviewed *de novo*, and its factual findings for clear error. *United States v. Tripplet,* 112 F.4th 428, 432 (6th Cir. 2024).

a) The district court based Mr. Hunnicutt's sentence on an erroneous view of the facts that resulted in the finding that he did not act in self-defense.

Even though advisory, the Guidelines are required to be properly scored and considered. *Gall,* 552 U.S. at 51; *United States v. Fowler,* 819 F.3d 298, 305 (6th Cir. 2016). Whether the district court properly calculated the sentencing Guidelines range is a question of procedural reasonableness. *United States v. Parrish,* 915 F.3d 1043, 1047 (6th Cir. 2019). An appellate court reviews such claims for an abuse of discretion, asking whether the district court relied on clearly erroneous factual findings or applied incorrect legal standards. *Fowler*, 819 F.3d at 303.

Discussion:

The inaccurate facts adduced from the videos by the district court were the basis for its conclusion that Mr. Hunnicutt did not act in self-defense, and resulted in several Guidelines enhancements that improperly increased his sentencing range that will be discussed more fully below. Simply put, the Guidelines scoring in the instant matter was the product of the district court misinterpreting the clear facts

from the videos, then grossly over scoring the Guidelines rage to arrive at the most severe possible sentencing range.

While district courts are permitted to make "reasonable inferences from facts in the record when fashioning a sentence." *United States v. Hatcher,* 947 F.3d 383, 395 (6th Cir. 2020), citing *United States v. Parrish,* 915 F.3d 1043, 1048 (6th Cir. 2019). "These inferences must be supported by a preponderance of the evidence." (citation omitted).

Where a district court relies on clearly erroneous facts or erroneous information and "the information in question appears to have been 'an important factor in determining [the] sentence," the resulting sentence is procedurally unreasonable. *United States v. Wilson,* 614 F.3d 219, 225 (6th Cir. 2010) (citations omitted). Here, the district court's reliance on clearly erroneous facts that were central to the sentence imposed upon Mr. Hunnicutt resulted in a procedurally unreasonable sentence. This Court should grant certiorari to Mr. Hunnicutt.

b) The district court considered other irrelevant, inaccurate, or uncorroborated information in imposing an upward variant sentence upon Mr. Hunnicutt.

Mr. Hunnicutt also objected to the PSR paragraphs **that** included extensive descriptions of three incidents that allegedly involved Mr. Hunnicutt, but that did not result in any criminal charges of convictions.

In the first, occurring on October 9, 2022, Mr. Hunnicutt was named by an anonymous informant as the person who allegedly fired shots outside of a nightclub. Not only did the person who fired the shots not fit Mr. Hunnicutt's description, but there was no evidence to charge him and no further action was taken by the police.

Despite this tenuous and uncorroborated information, and the denial by Mr. Hunnicutt that he was the person involved, the district court utilized this information in imposing sentence, concluding that this along with the other two incidents established a "a pattern since he is released on federal supervision, but it's really a pattern that goes all the way back without firearms to age 14. You know, you can trace that pattern of life for Mr. Hunnicutt when he is encountering, engaging, confronting another individual and feels a sense of disrespect or of some kind of brushoff if you will. Not always involving women, but multiple times involving women. He resorts to holding a weapon. . ." The other incidents involved a dispute with his son PSR ¶¶10-14 and the third a vehicle chase at which shots were fired PSR ¶¶15-17.

The district court overruled Mr. Hunnicutt's objections to the inclusion of these incidents in the PSR and considered them as fact. As was observed by the Court in *Hatcher,* "Put simply, "the district court was imputing some nefarious conduct to [Hatcher] that the record simply does not support. To rely on such an inference based on a complete absence of record evidence was plain error." *Hatcher,* 947 F.3d at 395 (Citation omitted). See also, *Hatcher,* 947 F.3d at 395-96 compiling "other cases that a district court may not rely on similarly threadbare evidence to connect a defendant to other criminal conduct for sentencing purposes."

Here, Mr. Hunnicutt's objections to the inclusion and consideration of the three uncorroborated, uncharged incidents that in the PSR were overruled by the court. He also objected to the consideration of a July 13, 2006 incident regarding alleged threats

and possession of a firearm reported by his ex-girlfriend. The court neither heard testimony about these incidents nor made any effort to determine their reliability.

With his objections being overruled, the district court utilized these tenuous inferences from the video's and the 404(b) information to conclude that Mr. Hunnicutt's lifetime pattern of behavior from a juvenile to adulthood, was to, engage in a confrontational pattern of behavior involving the use of weapons. The court's reliance on this speculative and uncorroborated information rendered his sentence procedurally unreasonable. *Wilson,* 614 F.3d at 225.

c) The district court abused its discretion where it applied the use the firearm in connection with another felony offense guideline U.S.S.G. §2K2.1(b)(6)(B). enhancement where Mr. Hunnicutt acted in self-defense.

The PSR (¶40, p.13) scored an additional 4-points "Because the defendant used the firearm in connection with another felony offense, specifically Assault with Intent to Murder; Attempted Murder, four levels are added. U.S.S.G. §2K2.1(b)(6)(B)." Mr. Hunnicutt's objection to this enhancement was overruled by the court. As was discussed above, Mr. Hunnicutt maintains that he acted in self-defense and that the district court made an erroneous finding of fact, and abused its discretion finding to the contrary. A person may resort to self-defense if he has honest and reasonable belief that his life was in imminent danger or that there was a threat of serious bodily harm. *People v. George*, 213 Mich App 632, 634- 635 (1995). Self-defense is a complete defense to attempted murder and aggravated assault. *People v Dupree*, 486 Mich 693, 707; 788 (2010) (quoting 2 LaFave, Substantive Criminal Law (2d ed.), § 10.4(a), pp. 143-144).

Because Mr. Hunnicutt lawfully defended himself, the enhancement is inapplicable. He did not use a firearm in any assaultive crime. Indeed, the district court specifically found that even under a preponderance of the evidence standard, Mr. Hunnicutt did not have the intent to kill in rejecting the government's efforts to apply the cross reference from U.S.S.G. §2K2.1(c)(1)(A) to §2X1.1.

A sentencing court must correctly calculate the defendant's Sentencing Guidelines range. *Rita v. United States,* 551 U.S. 338, 347-48 (2007); *United States v. Rayyan,* 885 F.3d 436, 440 (6th Cir. 2018). "When a defendant is sentenced under an incorrect Guidelines range- whether or not the defendant's ultimate sentence falls within the correct range-the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error." *Molina-Martinez v. United States,* 578 U.S. 189, 198 (2016).

Without the four-point the firearm enhancement, Mr. Hunnicutt's advisory Guidelines range would be (18/II) or 30-37 months, instead of the (21/II) 41–51-month range that the district court calculated when sentencing him. The Sixth Circuit erred in affirming the application of the four-point enhancement under U.S.S.G. §2K2.1(b)(6)(B).

d) The district court abused its discretion where it imposed an upward variant and consecutive sentence upon Mr. Hunnicutt totaling 130 months.

Standard of Review:

An appellate court reviews a district court's decision to impose consecutive sentences for abuse of discretion. *United States v. Berry,* 565 F.3d 332, 342 (6th Cir. 2009). Where the defendant fails to the court's imposition of a consecutive sentence, this Court reviews is for plain-error standard. *United States v. Potts,* 947 F.3d 357,

364 (6th Cir. 2020). To be plain, an error must be obvious or clear and must affect the defendant's substantial rights and the fairness of the judicial proceedings. *United States v. Russell,* 26 F.4th 371, 376 (6th Cir. 2022).

District courts have discretion to impose consecutive terms of imprisonment, *Oregon v. Ice,* 555 U.S. 160,168-69 (2009). When doing so, they must consider "the factors set forth in section 3553(a)." 18 U.S.C. § 3584(b); *United States v. Morris,* 71 F.4th 475, 483 (6th Cir. 2023). The applicable Guidelines provision U.S.S.G. § 7B1.3(f), appears to require a consecutive sentence stating any term of imprisonment "imposed upon the revocation of probation or supervised release shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving," However, the Sixth Circuit has interpreted that provision as a non-binding policy statement. *United States v. Johnson,* 640 F.3d 195, 208 (6th Cir. 2011).

A district court need not separately analyze the § 3553(a) factors for "the concurrent or consecutive nature of the sentence" and for the total sentence length. *Berry,* 565 F.3d at 343. Instead, the court may "intertwine" those determinations in a single discussion of the factors. *United States v. King,* 914 F.3d 1021, 1026 (6th Cir. 2019). However, the court must make "generally clear the rationale under which it has imposed the consecutive sentence." *Johnson,* 640 F.3d at 209.

Discussion:

1) The district court failed to adequately explain its rationale for imposing consecutive sentences and appeared to believe that consecutive sentences were mandatory.

The government requested that the court impose consecutive sentences. Defense counsel made no objection to the possibility of consecutive sentences in its

pleadings or at their sentencing hearing, and missed an opportunity to educate the court of its discretion under the applicable statute, 18 U.S.C. § 3584(b). Here the district court appeared to believe that consecutive sentences were mandatory. With the supervised release violation guidelines of 51-63-months and the sentence of 60 months imposed the court made the 70-month sentence of the ammunition charge consecutive for a custodial term of 130-months. This was an abuse of discretion.

Nowhere at the sentencing hearing did the district court indicate that it understood that it had discretion to impose concurrent sentences. This was so despite the Sixth Circuit's holding that U.S.S.G. § 7B1.3(f) – suggesting mandatory consecutive sentences -- is a non-binding policy statement. Construing it as binding "would be reversible error." *Johnson,* 640 F.3d at 208 (citation omitted). "…a district court commits plain error when it mistakenly believes that the policy statements contained in Chapter 7 of the Sentencing Guidelines limit its discretion." *United States v. Gibbs,* 506 F.3d 479, 487 (6th Cir. 2007) (compiling cases).

Additionally, the court imposed the consecutive sentence, "for all the same reasons" as the upward variant sentence. This was a woefully inadequate explanation for nearly doubling Mr. Hunnicutt's sentence to 130-months. Absent objection in the district court, a challenge to the court's explanation of its decision to impose consecutive sentences is reviewed for plain error. *United States v. King,* 914 F.3d 1021, 1024 (6th Cir. 2019). Mr. Hunnicutt maintains that the district court committed plain error here, because the error was obvious or clear, and affected his

substantial rights and the fairness of the judicial proceedings. *Russell,* 26 F.4th at 376.

e) The district court essentially denied Mr. Hunnicutt his bargained for acceptance of responsibility points by varying upward by some 19 months.

Mr. Hunnicutt bargained for his acceptance of responsibility points by in his Rule 11 Plea Agreement. The government concurred that he was entitled to the full 3-point reduction from his offense level from 24 to 21. This reduced his advisory Guidelines range from 51-71 months to 41-51 months. By varying upward to 70-months, the court essentially deprived Mr. Hunnicutt of the benefit of his plea bargain.

After granting Mr. Hunnicutt the acceptance of responsibility points the court stated, "Mr. Hunnicutt still hasn't fully assimilated his responsibility in all of this," required an upward departure from his advisory Guidelines range. This clearly contradicted the court's determination that he was entitled to acceptance of responsibility points and seriously questions the sincerity of the court in first granting them, then imposing a sentence that effectively denied him the 20-month Guidelines reduction.

While the court also cited reasons that included the "serious injury" sustained by Mr. Threats and the "reckless behavior" that put people in harm's way were not "full captured" by the Guidelines, it ignored that Mr. Hunnicutt already had been an additional 4 offense level points for "use of a firearm in connection with another felony offense." The court also ignored the circumstances of the events that were reflected in the videos, showing the necessity to protect himself in a "shoot or be shot" situation.

Absent that enhancement Mr. Hunnicutt's advisory Guidelines range would have been 30-37 months. For the court to ignore that Mr. Hunnicutt's primary incentive to enter into a Rule 11 agreement, was to obtain the benefit of acceptance of responsibility points to reduce his sentencing exposure, was an abuse of discretion. An appellate court gives "great deference" to a "district court's decision to deny an acceptance-of-responsibility reduction." *United States v. Histed,* 93 F.4th 948, 961 (6th Cir. 2024) (citations omitted). While the district court first granted Mr. Hunnicutt's acceptance of responsibility points, it effectively denied them by imposing an upward variant sentence that eliminated the primary benefit of his plea bargain.

f) The district court placed inordinate weight on several permissible 18 U.S.C. § 3553(a) factors in sentencing Mr. Hunnicutt to a substantively unreasonable upward variant and consecutive sentence of 130-months.

A sentence is substantively unreasonable when the district court selects the sentence arbitrarily, relies on impermissible factors, fails to consider pertinent 18 U.S.C. § 3553(a) factors, or gives unreasonable weight to any pertinent factor. "A claim that a sentence is substantively unreasonable is a claim that a sentence is too long (if a defendant appeals) or too short (if the government appeals)." *Rayyan,* 885 F.3d at 442. The issue is whether "the court placed too much weight on some . . . factors and too little on others in sentencing the individual." *Id.* Substantive reasonableness claims on appeal are reviewed under an abuse-of-discretion standard. *United States v. Nunley,* 29 F.4th 824, 830 (6th Cir. 2022). To be substantively reasonable, the sentence "must be proportionate to the seriousness of the circumstances of the offense and offender, and sufficient but not greater than

necessary, to comply with the purposes of § 3553(a)." *United States v. Johnson,* 24 F.4th 590, 607 (6th Cir. 2022) (quoting *United States v. Vowell,* 516 F.3d 503, 512 (6th Cir. 2008)).

While a within-Guidelines sentence is accorded a rebuttable presumption that it is reasonable. *Rita,* 551 U.S. at 352, 354; *United States v. Smith,* 881 F.3d 954, 960 (6th Cir. 2018) A sentence outside of the Guidelines range is not presumed to be either reasonable or unreasonable. *Gall,* 552 U.S. at 51; *United States v. Elmore,* 743 F.3d 1068, 1072 (6th Cir. 2014).

Discussion:

Mr. Hunnicutt's advisory Guidelines range was calculated by the court at 41-51 months. He requested a downward variance while the government requested that the court vary upward: "In the government's view, the defendant's advisory range does not adequately reflect the seriousness of the offense, promote respect for the law, punish the defendant, adequately deter criminal conduct, and protect the public."

1) The district court placed inordinate weight on the nature and circumstances of the offense.

Mr. Hunnicutt's antagonist, Shante Threats sustained a gunshot wound to the ankle. While the video depicted what occurred at the scene there was no follow-up or indication of the extent of the injury or indication that Mr. Threats did not recover from his wound. The district court appeared to be preoccupied with what the injury looked like at the scene. This reflected a willingness by the court to base Mr. Hunnicutt's sentence only on partial information, devoid of potential mitigating information that could have been ascertained, but was not inquired about or provided

the court by the probation department. The failure of the court to obtain and consider the complete facts about the injuries sustained by the shooting victims, while basing its sentence at least in part on the severity of the injuries, was an abuse of discretion.

2) The district court placed inordinate weight on Mr. Hunnicutt's personal history and characteristics, the protection of the public, the need to punish, and for specific deterrence.

The court stated that protection of the public, specific deterrence and the reckless offense conduct, that were not, "fully captured by the guidelines." The court also expressed a belief that, "Mr. Hunnicutt still hasn't fully assimilated his responsibility in all of this," required an upward departure from his advisory Guidelines rang.

The court also stated that while the 404b information contained in the PSR, was considered in the overall mix, that it was not necessary, "to reach the conclusions and support the conclusions I reached." Later, the court indicated that it would not increase Mr. Hunnicutt's criminal history category because of his BOP track record, and because of the fact that most of his prior offenses occurred in the distant past.

Despite all of these statements and assurances by the district court, it repeatedly referenced that Mr. Hunnicutt's "pattern of conduct" or "pattern of behavior" or "a pervasive dangerous attitude" that commenced from age-14, and continued to the present, that the court mentioned ten-times just prior to imposing sentence. In so doing, the court placed undue weight on Mr. Hunnicutt's personal history and characteristics. Rather than deemphasizing these factors the court actually increased Mr. Hunnicutt's sentence because of them. Simply put, the court provided a rationale for leniency, then imposed upward variant and consecutive

sentence that was inconsistent with its claimed intentions, and resulted in a substantively unreasonable sentence. Indeed, the court indicated in its Statement of Reasons of its Judgment that it varied upward, because of the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1).

If the court actually did what it said it would do, Mr. Hunnicutt's request for a downward variance would have properly been granted. Instead, the court acted contrary to its own articulation and sentenced Mr. Hunnicutt to a sentence that was significantly more than necessary to satisfy the objectives of the sentencing statutes. *Johnson,* 24 F.4th at 607. Here, even according the sentencing judge due deference, his justification was not, "sufficiently compelling to warrant the extent of the variance." *United States v. Tristan-Madrigal,* 601 F.3d 629, 6333 (6th Cir. 2010). The district court, also made Mr. Hunnicutt's sentence in the supervised release revocation case, consecutive to his sentence in the instant matter. By doing so the court inordinately punished him and imposed a disparately long combined sentence of 130-months that was too long for the offense conduct and was substantively unreasonable. *Rayyan,* 885 F.3d at 442. This was an abuse of discretion.

III. The district court's 70-month sentence upon Mr. Hunnicutt resulted in a sentencing disparity with those similarly situated nationally.

18 U.S.C. § 3553(a)(6), directs district courts "to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." This Court has instructed that § 3553(a)(6) refers to "national disparities between defendants with similar criminal histories convicted of similar

conduct' *United States v. Bass,* 17 F.4th 629, 636 (6th Cir. 2021) quoting, *United States v. Conatser*, 514 F.3d 508, 521 (6th Cir. 2008).

Mr. Hunnicutt's sentence represents a disparity, when compared to other defendants sentenced nationally in fiscal year 2023, for offenders convicted of violating section 922(g) but who were not sentenced under the ACCA. See, U.S. Sentencing Commission's Interactive Data Analyzer tool found at https://www.ussc.gov/research/interactive-data-analyzer (last viewed 2/7/2025). This data reveals that a majority of other defendants, of the some 7,800 cases reported, who have similar criminal histories (category II) as Mr. Hunnicutt, convicted of a 922(g) offense, received average sentences of 52 months or some 18-months less than the sentence Mr. Hunnicutt received.

Of some 9,000 defendants convicted of firearms offenses nationally in Fiscal Year 2022, 73 or 0.8% received an upward variance. In the Sixth Circuit, of the 1,287 sentenced for firearms offenses only six defendants or a total of 0.5% received an upward variance. See, U.S. Sentencing Commission, Statistical Information Packet for Fiscal Year 2022, for the Sixth Circuit, Table 10, found at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2022/6c22.pdf (last viewed 2/7/2025) Based on these statistics, it is clear that Mr. Hunnicutt's upward variant sentence of 70-months in prison offends the letter and spirit of 18 U.S.C. § 3553(a)(6), the need to avoid unwarranted sentencing disparities, both with similar criminal histories nationally.

IV. The district court's reasons for imposition of sentence on Mr. Hunnicutt's supervised release violation included prohibited factors, including, the seriousness of the offense, promoting respect for the law, and just punishment, contrary to the holding of *Esteras v. United States,* 606 U.S. 185 (2025).

Mr. Hunnicutt argued in the Sixth Circuit that his consecutive sentences for both his supervised release violation (24-1831) and new law case (24-1836) were both procedurally and substantively unreasonable. At sentencing, the district court stated that the upward variant sentence was necessary on the new law case to, achieve the overall purposes of sentencing, which certainly include the need to reflect the nature and circumstances of what happened, reflect the seriousness of what happened, take into account Mr. Hunnicutt as an individual, protect the public, and promote respect for the law. (R.64, Tr., Sentencing, Pg.ID 389). The court then stated that it imposed the supervised release violation 60-month consecutive sentence "for all the same reasons" it imposed the 70-month new law sentence. The court also referenced the seriousness of the offense and injuries sustained buy the victim in concluding that the violation sentence imposed was "suitable." *Id.,* Pg.ID 395-96. This clearly included the factors set forth in 18 U.S.C. § 3553(a).

Consideration of those factors is contrary to this Court's opinion in *Esteras v. United States,* 606 U.S. 185 (2025). In that case this Court held that a district court may not consider the sentencing factors in 18 U.S.C. § 3553(a)(2)(A) and (a)(3), "the seriousness of the offense," "promot[ing] respect for the law," and "just punishment," because though these factors are not explicitly referenced in the supervised release statute. "Congress's decision to exclude § 3553(a)(2)(A) from § 3583(e)'s list of sentencing factors means that district courts cannot consider § 3553(a)(2)(A) when

deciding whether to revoke supervised release." *Esteras,* 606 U.S. at 197. See also, *United States v. Hoyle,* 148 F.4th 396, 405 (6th Cir. 2025), citing and following *Esteras*.

This Court and the Sixth Circuit in *Hoyle,* confirmed that while § 3553(a)(2)(A) factors may be considered for the substantive offense, they must not be, as they were in Mr. Hunnicutt's case, for his supervised-release violation. Since the district court did include these prohibited factors in imposing Mr. Hunnicutt's supervised release violation sentence this Court should grant certiorari.

CONCLUSION

Petitioner Craig Edward Hunnicutt, Jr., requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

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