No. _____

IN THE

Supreme Court of the United States

JARON MCCREE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Did the Fifth Circuit clearly violate the party presentation principle by affirming Petitioner's judgment based on a hypothetical finding of fact that the government (a) conceded in district court was unsupported by the record, and (b) never urged on appeal?

(2) Did the Fifth Circuit clearly violate this Court's precedent by affirming Petitioner's judgment based on its own independent fact finding, particularly considering (a) the government affirmatively waived the argument in district court, and (b) the district court considered and declined to adopt the Fifth Circuit's alternative ground?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. McCree*, No. 2:22-cr-88, U.S. District Court for the Eastern District of Louisiana. Judgment entered April 5, 2023.
- *United States v. McCree*, No. 23-30218, U.S. Court of Appeals for the Fifth Circuit. Judgment entered December 1, 2025. Petition for Rehearing En Banc denied on December 30, 2025.

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JUDGMENT AT ISSUE

On December 1, 2025, a panel of the U.S. Court of Appeals for the Fifth Circuit affirmed Petitioner's judgment in a published decision. A copy of the published opinion is attached as part of the Appendix (1a–25a), and it is published as *United States v. McCree*, 160 F.4th 641 (5th Cir. 2025).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Fifth Circuit entered its decision on December 1, 2025. App. 1a–25a. Petitioner filed a timely Petition for Rehearing En Banc, which was denied on December 30, 2025. App. 26a–27a. This petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13 because it is being filed within 90 days of the Fifth Circuit's denial of a timely filed petition for rehearing.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the U.S. Constitution provides, in relevant part:

> No person shall ... be deprived of life, liberty, or property, without due process of law ….

U.S. SENTENCING GUIDELINE PROVISIONS INVOLVED

U.S.S.G. § 2K2.1(b)(6)(B) of the 2021 Guidelines Manual provides, in relevant part:

> If the defendant . . . used or possessed any firearm or ammunition in connection with another felony offense . . . increase by 4 levels.

Application Note 14(B) in the Guideline commentary to § 2K2.1 (2021) provides, in relevant part:

> Subsections (b)(6)(B) . . . appl[ies] . . . in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia.

STATEMENT OF THE CASE

Petitioner pleaded guilty to unlawfully possessing a firearm in violation of 18 U.S.C. § 922(g)(1). The U.S. Sentencing Guideline applicable to firearm offenses is U.S.S.G. § 2K2.1, which contains an enhancement that applies if "the defendant used or possessed any firearm or ammunition in connection with another felony offense[.]" U.S.S.G. § 2K2.1(b)(6)(B) (2021).[1] Guideline commentary explains that if the other felony offense is a drug trafficking crime—*e.g.*, distributing or possessing with intent to distribute a controlled substance—then the enhancement automatically applies if the firearm was "found in close proximity to drugs." § 2K2.1, cmt. n.14(B). In contrast, if the other offense is mere drug *possession*, Fifth Circuit precedent makes clear that simultaneous possession is insufficient to support the enhancement. *United States v. Jeffries,* 587 F.3d 690, 692–94 (5th Cir. 2009). Rather, the government must prove by a preponderance of the evidence that the gun "emboldened" the defendant's drug possession or "served to protect" the drugs. *Id.* at 694.

At the time of Petitioner's offense, he simultaneously possessed a firearm and a small bag containing five pieces of crack cocaine, weighing about 1.1 grams in total. App. 2a. Law enforcement approached Petitioner to effectuate an unrelated arrest warrant, and Petitioner fled on foot, threw the firearm in a bush, and was apprehended shortly thereafter. App. 2a. The bag containing the crack was found on his person. App. 2a.

[1] The 2021 Guidelines Manual applied at the time of Petitioner's sentencing, so the citations in this petition refer to that version of the Guidelines. The enhancement at issue is now located at U.S.S.G. § 2K2.1(b)(7)(B) in the 2025 Guidelines Manual.

For sentencing, U.S. Probation recommended applying the above Guideline enhancement because Petitioner possessed a firearm "while in possession of cocaine." App. 2a–3a. The government likewise argued that the enhancement should apply based on the theory that the firearm "emboldened" Petitioner's drug possession. *See* App. 9a. Petitioner objected to the enhancement, arguing that there was no evidence to support the conclusion that the firearm "emboldened" Petitioner's possession of crack or served to "protect" the small amount of drugs. He argued that the record only established simultaneous possession of the two items, which clearly is insufficient to support the enhancement under well-established Fifth Circuit precedent.

At no point did the government argue that the district court should apply the enhancement based on a finding that Petitioner was engaged in drug *trafficking*. And, importantly, there was no evidence whatsoever that Petitioner intended to sell—rather than personally use—the crack found on his person. *See* App. 20a. To the contrary, the record showed that Petitioner had a long history of substance abuse, which included daily crack use for more than a year leading up to his arrest. App. 21a. And while a police officer wrote in a report that he suspected drug activity, the government candidly admitted at sentencing that there "wasn't anything in the record" to support that purported belief. App. 21a, 37a. The government also—in response to a direct question from the district court—affirmatively waived any reliance on a theory that Petitioner intended to distribute the drugs, instead urging only that the district court find that Petitioner possessed the firearm in connection

with mere *possession* of the user amount of drugs and apply the enhancement on that theory. App. 21a, 36a–38a.

The district court overruled Petitioner's objection and found that he possessed the firearm to facilitate his possession of the crack cocaine, warranting application of the enhancement. In doing so, the district court relied solely on a finding that Petitioner's other felony offense was drug possession—not trafficking. App. 52a–53a.

Petitioner challenged the enhancement on appeal. He argued that no evidence supported a finding that the firearm "emboldened" his drug possession or "served to protect" the small quantity of drugs, as required under clear Fifth Circuit precedent. As Petitioner explained, the only connection between the firearm and drugs was his simultaneous possession of both, which is insufficient to support the enhancement. He further argued that his case was materially indistinguishable from other cases in which the Fifth Circuit had found insufficient evidence to support the enhancement based on possession.[2]

The government maintained on appeal that the enhancement applied to Petitioner's conduct based on the theory that he possessed the firearm in connection with his possession of drugs. As in the district court, the government never argued that Petitioner was engaged in drug trafficking, much less presented or identified any evidence in the record that could support that finding. Relying solely on drug possession as the other felony offense, the government attempted to distinguish

[2] Indeed, while Petitioner's appeal was pending, the Fifth Circuit issued a published decision reversing the same enhancement where a defendant simultaneously possessed a firearm and stolen vehicle, fled from law enforcement, and discarded the firearm in a bush while fleeing—much like Petitioner's conduct in the instant case. *See United States v. Henry*, 119 F.4th 429 (5th Cir. 2024).

Petitioner's case from Fifth Circuit cases reversing the same enhancement in analogous circumstances. Notably, the government also conceded that if the district court's ruling was clearly erroneous, "the error is not harmless."

In a published, 2-1 panel decision, the Fifth Circuit affirmed the enhancement. A U.S. District Court judge, sitting by designation, wrote for the majority. App. 1a. The majority "recognize[d] that the record in this case bears resemblance to the records in past decisions in which this Court has found the § 2K2.1(b)(6) enhancement inapplicable." App. 9a (citing *Jeffries*, *Henry*, and several other Fifth Circuit cases). Nonetheless, the majority affirmed the enhancement based on its conclusion that "the district court *could have* plausibly found that [Petitioner] intended to sell the crack cocaine," which "*would have* automatically triggered" the enhancement. App. 10a (emphasis added). In doing so, the majority relied on precedent stating that an appellate court "may affirm on any ground supported by the record [] even if it was not reached by the district court." App. 9a (quoting *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007)).

Judge James E. Graves, Jr., issued a lengthy dissent from the majority opinion. App. 16a–25a. After discussing how the facts of Petitioner's case were analogous to *Jeffries* and *Henry*, in which the Fifth Circuit reversed the same enhancement, Judge Graves explained that there is "no basis for the majority's conclusion that Petitioner possessed more than a personal-use amount of crack cocaine or was involved in drug trafficking"—either in the record or in the relevant legal authority. He also identified "significant evidence to contradict such a conclusion," including the government's

concessions regarding the lack of evidence of trafficking; the fact that the small pieces of crack were in a single bag in Petitioner's pocket; Petitioner's documented crack addiction and regular use of the drug; and both federal and state caselaw finding similar quantities of crack cocaine to be consistent with personal use and inconsistent with trafficking. App. 20a–25a.

Petitioner filed a timely petition for rehearing en banc. Petitioner argued that the panel majority violated the party presentation principle, misapplied precedent allowing for affirmances on alternative grounds, and improperly acted as a second, independent factfinder rather than a court of review and error correction. The petition was denied without any judge requesting a poll. App. 26a.

REASONS FOR GRANTING THE PETITION

As this Court recently reaffirmed:

> In our adversarial system of adjudication, we follow the principle of party presentation. The parties frame the issues for decision, while the court serves as neutral arbiter of matters the parties present. To put it plainly, courts call balls and strikes; they don't get a turn at bat.

Clark v. Sweeney, 607 U.S. 7, 9 (2025) (quotation marks and citations omitted). Courts must also adhere to their respective roles in the adversarial system. District courts make factual findings, and appellate courts review those findings for "clear error," overturning such findings *only* when the appellate court "is left with a definite and firm conviction that a mistake has been committed." *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985). Courts of Appeals "must constantly have in mind that their function is not to decide factual issues *de novo*." *Id.* at 573–74.

These are bedrock principles. They protect due process and ensure orderly adjudication of disputed issues. The Fifth Circuit discarded those fundamental principles in a published decision. The panel majority declined to resolve the specific issue presented by the parties, *i.e.*, whether the district court clearly erred in finding that Petitioner possessed a firearm "in connection with" possessing drugs. In fact, the majority implicitly acknowledged that the ruling *was* clearly erroneous, requiring reversal under established circuit precedent. App. 9a, 19a. Yet the majority affirmed Petitioner's judgment based on its conclusion that the court "could have" made a *different* factual finding that "would have" supported the enhancement. Worse, the district court had already expressly considered and rejected that precise alternative finding after the government conceded there was no evidence to support it.

This Court recently summarily reversed the Fourth Circuit for transgressing party-presentation principles in *Sweeney*, and the same relief is warranted here. *See Sweeney*, 607 U.S. at 9–10. In this case, the panel majority affirmed Petitioner's judgment based on a hypothetical factual finding that the government affirmatively disclaimed in the district court and never argued on appeal—and that the district court expressly considered but declined to make.[3] The majority also failed to provide any notice or opportunity for the parties to respond to the new, court-created argument, resulting in the kind of sandbagging and lack of due process that the waiver doctrine and party presentation principle are designed to prevent. By acting as a second, independent factfinder, the panel majority usurped the role of the district court while violating the party presentation principle and ignoring waiver and forfeiture doctrines. And it did so at the expense of Petitioner's liberty, affirming a lengthy prison term that was based on an improperly calculated Guidelines range.

For these reasons, discussed in more detail below, the Court should summarily reverse the Fifth Circuit's judgment. Alternatively, the Court should grant certiorari to review the questions presented.

I. The Fifth Circuit's published decision blatantly violates the party presentation principle, warranting summary reversal.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008); *see also United States v. Sineneng-Smith*, 590 U.S.

[3] Indeed, as Judge Graves explained in his dissent, "there is no evidence in the record to establish that [Petitioner] was distributing drugs or that the quantity he possessed was more than a personal-use amount," "[b]ut there is significant evidence to contradict such a conclusion." App. 20a.

371, 375 (2020) (same). "That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw*, 554 U.S. at 243. As this Court has recognized, "[c]ounsel almost always know a great deal more about their cases than we do, and this must be particularly true of counsel for the United States, the richest, most powerful, and best represented litigant to appear before us." *Greenlaw*, 554 U.S. at 244 (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (R. Arnold, J., concurring in denial of reh'g en banc)).

Of course, the party presentation principle is "not ironclad." *Sineneng-Smith*, 590 U.S. at 376. "There are no doubt circumstances in which a modest initiating role for a court is appropriate." *Id.* "But as a general rule, '[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.'" *Greenlaw*, 554 U.S. at 244 (quoting *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in judgment)). And "[t]o the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant's rights." *Id.* at 243–44 (citing *Castro*, 540 U.S. at 381–83); *see also Sineneng-Smith*, 590 U.S. at 375.

In *Greenlaw*, this Court vacated an Eighth Circuit decision that sought to correct a legal error in the district court's sentencing determination that neither party had raised on appeal. The Eighth Circuit held that it "had discretion to raise and correct the district court's error on its own initiative" and therefore vacated the

district court's sentence, remanding with instructions to impose the correct sentence. *Id.* at 241–43. This Court held that the Eighth Circuit erred in ordering the increase in the defendant's sentence absent a government appeal or cross-appeal, despite the error being clear under then-existing precedent. *Greenlaw*, 554 U.S. at 240–41. The Court explained that there is no plain-error exception to the cross-appeal requirement. *Id.* at 247. The Court further explained: "Even if there might be circumstances in which it would be proper for an appellate court to initiate plain-error review, sentencing errors that the Government refrained from pursuing would not fit the bill." *Id.* at 248.

More recently, in *Sweeney*, this Court summarily reversed a Fourth Circuit opinion that "transgressed the party-presentation principle by granting relief on a claim that [the appellant] never asserted and that the [appellee] never had the chance to address." 607 U.S. at 9. In that case, the appellant asserted a single claim of error in his trial proceedings. *Id.* "Instead of ruling on that claim, the Fourth Circuit devised a new one" and granted relief on the new, judicially identified ground. *Id.* at 9–10. Because the Fourth Circuit "departed so drastically from the principle of party presentation as to constitute an abuse of discretion," this Court summarily reversed the judgment and remanded for further proceedings. *Id.* at 10.

The same relief is necessary here. The sole issue before the Fifth Circuit was whether the district court clearly erred in applying a sentencing enhancement based on a finding that Petitioner possessed a firearm in connection with possessing drugs. The panel majority recognized that the district court's ruling on that issue was clearly

erroneous under well-established circuit precedent. App. 9a. The government did not argue that the Fifth Circuit should affirm on any alternative basis, instead explicitly conceding that any error in the district court's ruling was *not* harmless. Nonetheless, without any notice to the parties, the panel majority affirmed Petitioner's judgment based on an alternative theory that the government never argued and that the district court expressly declined to adopt below.

Summary reversal is appropriate.

II. The Fifth Circuit's decision conflicts with this Court's precedent regarding waiver and alternative grounds for affirmance.

The Fifth Circuit's published decision not only violates the party presentation principle—it also conflicts with decades of precedent regarding waiver and the limited circumstances in which appellate courts may affirm judgments on "alternative grounds." This, too, warrants summary reversal.

The general rule is that alternative grounds for affirmance must have been "properly raised below" to be considered on appeal. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 38 (1989) (explaining that an appellee is "free to defend its judgment on any ground *properly raised below* whether or not that ground was relied upon, rejected, or even considered by the District Court" (emphasis added)); *see also, e.g.*, *Amadeo v. Zant*, 486 U.S. 214, 228 n.6 (1988); *Washington v. Yakima Indian Nation*, 439 U.S. 463, 476, n. 20 (1979). "For good reason, appellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance." *Wood v. Milyard*, 566 U.S. 463, 473 (2012). "That restraint is all the more appropriate when the appellate court itself spots an issue the parties did not air

below, and therefore would not have anticipated in developing their arguments on appeal." *Id.* Indeed, "[t]he core of due process is the right to notice and a meaningful opportunity to be heard." *LaChance v. Erickson*, 522 U.S. 262, 266 (1998); *see also Nolen v. Gober*, 222 F.3d 1356, 1360–61 (Fed. Cir. 2000) (explaining that a court *sua sponte* ruling on an issue that "neither party raised and about which neither party had prior warning, implicates fundamental principles of fairness"). As explained below, under this Court's precedent, an appellate court should only rely on an alternative ground that was *forfeited* in extraordinary circumstances.

When a party affirmatively *waived* the alternative ground in district court, however, an appellate court lacks discretion to resurrect the argument at all. "Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.'" *United States v. Olano*, 507 U.S. 725, 733 (1993) (citation omitted). "At the outset, an appellate court should not raise an alternative ground for affirmance sua sponte if the appellee actually *waived* that argument in the lower court or on appeal." Jeffrey M. Anderson, *Right for Any Reason*, 44 Cardozo L. Rev. 1015, 1056 (2023) (emphasis in original); *see also Amadeo*, 486 U.S. at 228 n.6.

In *Amadeo*, for example, this Court refused to consider an alternative ground for affirmance when the respondent "conceded [the] point in both [the district and appellate] courts below." 486 U.S. at 228 n.6. And in the habeas context, this Court has explicitly held that courts may not override the government's deliberate waiver of a known defense. *See, e.g.*, *Day v. McDonough*, 547 U.S. 198, 209–10 (2006); *Wood*,

566 U.S. at 466–70 ("A court is not at liberty, we have cautioned, to bypass, override, or excuse a State's deliberate waiver of a limitations defense.").

When an alternative ground for affirmance has not been waived, but instead merely forfeited, then the "appellate court has discretion to consider" it, but that discretion is not unlimited. *Anderson*, 44 Cardozo L. Rev. at 1069. Indeed, this Court "has said that 'where the ground presented [in the appellate court] has not been raised below,' the appellate court should consider that ground '*only in exceptional cases*.'" *Id.* (quoting *Granfinanciera*, 492 U.S. at 39) (emphasis added). Moreover, that limited category of cases does not include cases in which the unpreserved argument presents "a question that is significantly fact-intensive," which "could not be decided without transforming the appeal into a 'first view' enterprise[.]" *Id.* at 1070.

Indeed, this Court has long rejected the idea that appellate courts can affirm on alternative grounds that are based on new factual findings made by the appellate court in the first instance. "[W]here the correctness of the lower court's decision depends upon a determination of fact which only a [fact finder] could make but which has not been made, the appellate court cannot take the place of the [fact finder]." *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 88 (1943); *see also, e.g.*, *Jenkins v. Anderson*, 447 U.S. 231, 234 n.1 (1980) (declining to consider an alternative ground because it "may turn on factual findings that should be made by a district court"); *CRST Van Expedited, Inc. v. E.E.O.C.,* 578 U.S. 419, 434–35 (2016) (rejecting respondent's invocation of the "Court's authority to affirm 'on any ground properly raised below'" because case involved, *inter alia*, a "fact-sensitive issue"); *id.* at 435 ("It

is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance.").

Following *Chenery*, Courts of Appeals—including the Fifth Circuit itself—have recognized that judgments cannot be affirmed on alternate grounds when doing so would require the appellate court to make its own factual findings. *See United States v. Garrett*, 720 F.2d 705, 710 (D.C. Cir. 1983) (citing *Chenery*); *Elizarraras v. Bank of El Paso*, 631 F.2d 366, 372 (5th Cir. 1980) (citing *Chenery* and "limiting the rule to cases where appellate court need not make findings of fact"); *Pacheco de Perez v. AT&T Co.*, 139 F.3d 1368, 1372 n. 5 (11th Cir. 1998) ("We are mindful of the general rule that a court of appeals will not consider issues not reached by the district court, especially where the issues involve questions of fact."); *Guevara v. Republic of Peru*, 468 F.3d 1289, 1306 (11th Cir. 2006) ("The *Chenery* case notes that this rule does not apply 'where the correctness of the lower court's decision depends upon a determination of fact.'"); *Packers Plus Energy Servs. Inc. v. Baker Hughes Oilfield Operations*, LLC, 773 F. App'x 1083 (Fed. Cir. 2019).

Thus, appellate courts may exercise their discretion to *sua sponte* resurrect a forfeited issue in limited and extraordinary circumstances, *e.g.*, when "the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice." *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022). But they may not when doing so requires independent fact-finding. That makes sense because "just as trial courts are particularly well-suited to making findings of fact, appellate courts are particularly well-suited to answering questions of law." *Id.* at 879; *see also*

United States v. Eaden, 37 F.4th 1307, 1304–05 (7th Cir. 2022) ("As an appellate court, legal errors are in our wheelhouse …. Factual errors, by contrast, tend to be more obscure on appeal.")

The Fifth Circuit's ruling in Petitioner's case violated these precedents—and egregiously so. The government did not simply fail to argue the panel majority's alternative ground for affirmance in the proceeding below and thereby forfeit it. The government affirmatively *waived* the argument. In the district court and on appeal, the government exclusively argued that Petitioner possessed a firearm in connection with drug possession. The district court directly asked the prosecutor if "the underlying basis for enhancement [is] the belief that the possession of the gun was to facilitate possession of the drugs?" and the prosecutor answered "Yes, sir." App. 36a–37a. The district court then directly asked if the government was relying on suspicion of drug trafficking and if that factored into the government's position. In response, the government conceded that "[t]here wasn't anything in the record" to support that conclusion and maintained that Petitioner's other felony offense was drug possession. App. 37a. In other words, the government made a "deliberate decision" to forgo arguing that Petitioner was engaged in drug trafficking based on a lack of evidentiary support. *See Wood*, 566 U.S. at 473. Thus, the Fifth Circuit's affirmance based on a hypothetical, alternative finding of drug trafficking violated this Court's precedent prohibiting courts from considering and resolving cases based on waived issues.

Moreover, even if the government had *not* waived the argument, the Fifth Circuit's ruling still violated this Court's precedent that prohibits affirming on

alternative grounds when doing so requires additional factual findings. The Fifth Circuit simply was not permitted to rely on an alternative finding of fact that the district court never made (or, more accurately, implicitly rejected after asking the government directly about the evidence) and that, by the government's own admission, lacked evidentiary support. Worse, the Fifth Circuit did not hold oral argument or order supplemental briefing, so the parties never had an opportunity to address the appellate court's *sua sponte* theory. This seriously undermined Petitioner's right to due process, because he never had notice and an opportunity to be heard on the dispositive issue that the Fifth Circuit relied on.

III. The Fifth Circuit disregarded the limited role of appellate courts, necessitating the exercise of this Court's supervisory power.

Finally, this Court's intervention is necessary because the Fifth Circuit's published decision disregards the distinct functions of district and appellate courts. "It is not the job of appellate courts to find facts." *United States v. Searcy*, 284 F.3d 938, 943 (8th Cir. 2002); *see also United States v. Marin-Cardona*, 739 F. App'x 256, 258 (5th Cir. 2018) ("It is not [the] role [of] an appellate court to weigh competing inferences and arrive at a decision[.]"). Instead, appellate courts must only review factual findings for clear error and "must constantly have in mind that their function is not to decide factual issues *de novo*." *Anderson*, 470 U.S. at 573–74.

In this case, the Fifth Circuit did the opposite. The majority acted as a second, independent factfinder, rather than a court of review and error correction, and affirmed Petitioner's judgment based on the asserted plausibility of a factual finding that the district court never made (and, instead, considered and rejected). That

turned the well-established clear error framework on its head. It is black-letter law that an appellate court should *defer* to a district court's factual finding so long as it is "plausible," not *deviate* from it on the ground that a different finding may have also been "plausible." The Fifth Circuit's ruling violated *Chenery*, disregarded clear error review, and usurped the district court's proper role as factfinder. This Court should summarily reverse.

CONCLUSION

For the foregoing reasons, Petitioner Jaron McCree respectfully asks this Court summarily reverse the Fifth Circuit's judgment or, alternatively, grant certiorari on the question presented.

Respectfully submitted,

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