

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2025

WILLIAM FLANAGAN,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

MOTION FOR LEAVE TO FILE *IN FORMA PAUPERIS*

The Petitioner, William Flanagan, requests leave, pursuant to Rule 39.1 of the Supreme Court Rules, to file the attached Petition for a Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously sought and been granted leave to proceed *in forma pauperis* in the following court: The United States District Court for the Western District of Texas.

Undersigned counsel was admitted to practice before the U.S. Supreme Court June 23rd, 2014. Additionally, undersigned counsel has

been appointed under the Criminal Justice Act of 1964, 18 USC § 3006A.

Respectfully submitted,

/s/ John A. Kuchera
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IN THE SUPREME COURT OF THE UNITED STATES

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WILLIAM FLANAGAN,
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v.

UNITED STATES OF AMERICA,
Respondent

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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Question Presented

1. Must an appellate court, in holding that an appellant has not satisfied plain error review, provide any sort of analysis as to how it arrived at its decision?

List of Parties

William Flanagan

Petitioner
(Defendant/Appellant below)

United States of America

Respondent

Table of Contents

	Page
Question Presented	ii
List of Parties	iii
Table of Contents	iv
Table of Authorities	v-vi
Citation to Opinion Below	1
Jurisdiction	1
Sentencing Guideline	2
Statement of the Case	3-4
First reason for granting the Writ: The Fifth Circuit's holding is inconsistent with Supreme Court precedent.	4-5
Second reason for granting the Writ: The Fifth Circuit's lack of analysis makes it impossible to determine exactly how the panel arrived at its decision.	6-8
Conclusion	8
Certificate of Service	9
Appendix A: Opinion of Fifth Circuit Court of Appeals	

Table of Authorities

	Page(s)
Cases	
<i>Clemons v. Mississippi</i> , 494 U.S. 738 (1990)	7
<i>Greenlaw v. United States</i> , 554 U.S. 237 (2008)	6
<i>Ornelas v. United States</i> , 517 U.S. 690 (1996)	6
<i>Molina-Martinez v. United States</i> , 578 U.S. 189 (2016)	4,5
<i>Puckett v. United States</i> , 556 U.S. 129 (2009)	6,7
<i>Rosales-Mireles v. United States</i> , 585 U.S. 129 (2018)	5
<i>United States v. Avery</i> , 295 F.3d 1158 (10th Cir. 2002)	6
<i>United States v. Marcus</i> , 560 U.S. 258 (2010)	7
<i>United States v. Ojeda Rios</i> , 495 U.S. 257 (1990)	7
<i>Youngblood v. West Virginia</i> , 547 U.S. 867 (2006)	7
<i>United States v. Siegelman</i> , 640 F.3d 1159 (11th Cir. 2011)	6

Sentencing Guideline

Sentencing Table (Ch. 5, Pt. A)..... 2

PETITION FOR WRIT OF CERTIORARI

Petitioner William Flanagan respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Citation to Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit affirming Flanagan's sentence is styled: *United States v. Flanagan*, No. 25-50264, 2026 U.S. App. LEXIS 7636 (5th Cir. March 16, 2026).

Jurisdiction

The opinion of the United States Court of Appeals for the Fifth Circuit affirming Flanagan's conviction was announced on March 16, 2026 and is attached hereto as Appendix A. Pursuant to Supreme Court Rule 13.3, this Petition has been filed within 90 days of the date of the entry of judgment. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

Sentencing Guideline:

Sentencing Table (Ch. 5, Pt. A)

Statement of the Case

Flanagan was charged in a one-count indictment (filed November 20, 2024) with possession with intent to distribute actual methamphetamine, in violation of Title 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). He entered a guilty plea (without a plea agreement) to that offense on December 17, 2024. He was sentenced on April 2, 2025, to 235 months in prison.

On appeal, Flanagan argued as follows.

He was assessed 2 points for a Louisiana (Lincoln Parish) Driving While Intoxicated (2nd Offense) conviction in Docket No. 2006-D-54551. Because the sentence imposed was non-incarcerative, he should only have been assessed 1 criminal history point.

Flanagan was also assessed 1 criminal history point for two Louisiana (Jackson Parish) convictions in Docket No. 2017-CR-47877, Resisting an Officer (Count 1), and Driving Under Suspension (Count 2). Section 4A1.2(c)(1) of the Sentencing Guidelines directs that convictions for these types of offenses are not to be counted in a defendant's criminal history unless he was sentenced to at least 30 days in prison. Flanagan

was sentenced to 26 days in jail. It was therefore error to assess him any criminal history points for these convictions.

When these 2 improperly assessed criminal history points are subtracted from Flanagan’s criminal history point total, his criminal history category is reduced. More specifically, his criminal history category, which was determined to be Category VI (advisory guideline range 188-235 months), would be reduced to Category V (advisory guideline range 168-210 months).

The Fifth Circuit held – without analysis – that Flanagan failed to establish plain error; *i.e.*, “a reasonable probability that, but for the district court’s misapplication of the Guidelines, he would have received a lesser sentence.”

First reason for granting the Writ: The Fifth Circuit’s holding is inconsistent with Supreme Court precedent.

In *Molina-Martinez v. United States*, 578 U.S. 189 (2016), the Supreme Court held:

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.

Id. at 198.

In *Rosales-Mireles v. United States*, 585 U.S. 129 (2018), the Supreme Court further held that when a defendant’s criminal history score is improperly calculated, error is generally plain, even if a properly calculated criminal history score would have placed him in the same advisory sentencing range:

The mere fact that Rosales-Mireles’ sentence falls within the corrected Guidelines range does not preserve the fairness, integrity, or public reputation of the proceedings

Id. at 143-44.

In the ordinary case, as here, the failure to correct a plain Guidelines error that affects a defendant’s substantial rights will seriously affect the fairness, integrity, and public reputation of judicial proceedings.

Id. at 145.

Second reason for granting the Writ: The Fifth Circuit's lack of analysis makes it impossible to determine exactly how the panel arrived at its decision.

In our adversary system, it is up to the parties to frame the issues for decision. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). The appellate court then has an obligation to evaluate the merits of the legal issue presented on appeal. *United States v. Avery*, 295 F.3d 1158, 1169 (10th Cir. 2002). Put another way, the court has a duty, "as an expositor of the law," to provide clarification of legal principles. *Ornelas v. United States*, 517 U.S. 690, 697 (1996). An appellate court has a duty to answer properly presented questions from the parties. *United States v. Siegelman*, 640 F.3d 1159, 1165 (11th Cir. 2011).

Plain error review involves "four steps, or prongs." *Puckett v. United States*, 556 U.S. 129, 135 (2009):

First, there must be an error or defect--some sort of "[d]eviation from a legal rule"[] Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. . . . Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it "affected the outcome of the district court proceedings." . . . Fourth and finally, if the above three prongs are satisfied, the court of appeals has the *discretion* to remedy the error . . . if the error "seriously

affect[s] the fairness, integrity or public reputation of judicial proceedings.'" "

Id.

The Fifth Circuit's panel opinion herein makes no attempt to address how these four steps were applied in its decision, notwithstanding the fact that Petitioner specifically addressed them in his briefs. *See United States v. Marcus*, 560 U.S. 258, 262 (2010) (Lower appellate courts are to apply Rule 52(b), the plain error rule, as the Supreme Court has interpreted it).

Petitioner therefore requests remand for the Fifth Circuit to "show its work." *See Clemons v. Mississippi*, 494 U.S. 738, 751-52 (1990) (remanding a case to state court for "detailed explanation" and analysis of its conclusion of harmlessness); *United States v. Ojeda Rios*, 495 U.S. 257, 267 (1990) ("Because the Second Circuit did not address this threshold question, the case must be remanded for a determination whether the Government's explanation to the District Court substantially corresponds to the explanation it now advances."); *Youngblood v. West Virginia*, 547 U.S. 867, 870 (2006) (Holding that, since the Supreme Court of Appeals of West Virginia did not directly

address the inmate's constitutional claims in deciding that the denial of a new trial was not an abuse of discretion, it was appropriate for that court to consider the issue in the first instance.).

Conclusion

For the foregoing reasons, Petitioner Flanagan respectfully urges this Court to grant a writ of certiorari to review the opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

/s/ John A. Kuchera

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Certificate of Service

This is to certify that a true and correct copy of the above and foregoing Petition for Writ of Certiorari has this day been mailed by the U.S. Postal Service, First Class Mail, to the Solicitor General of the United States, Room 5614, Department of Justice, 10th Street and Constitution Avenue, N.W. Washington, D.C. 20530.

SIGNED this 13th day of April, 2026.

/s/ John A. Kuchera
John A. Kuchera,
Attorney for William Flanagan

Appendix A



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United States v. Flanagan

United States Court of Appeals for the Fifth Circuit

March 16, 2026, Filed

No. 25-50264 Summary Calendar

Reporter

2026 U.S. App. LEXIS 7636 *; 2026 LX 122436; 2026 WL 735180

UNITED STATES OF AMERICA, Plaintiff—Appellee, versus WILLIAM FLANAGAN, Defendant—Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Western District of Texas. USDC No. 7:24-CR-211-1.

Disposition: AFFIRMED.

Core Terms

district court, criminal history, sentence, petition for rehearing, plain error, drive

Counsel: For United States of America, Plaintiff - Appellee: Zachary Carl Richter, Assistant U.S. Attorney, U.S. Attorney's Office Western District of Texas, Austin, TX; Michael Cramer Williams, U.S. Attorney's Office Western District of Texas, Civil Division, El Paso, TX.

For William Flanagan, Defendant - Appellant: John Andrew Kuchera, Waco, TX.

Judges: Before STEWART, GRAVES, and OLDHAM, Circuit Judges.

Opinion

PER CURIAM:*

William Flanagan pleaded guilty to possession with intent to distribute a quantity of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). The district court sentenced Flanagan to 235 months of imprisonment followed by three years of supervised release.

On appeal, Flanagan argues that the district court committed plain error by miscalculating his criminal history score. Because Flanagan did not challenge the assessment of criminal history points in the district court, review is for plain error only. *See United States v. Carlile*, 884 F.3d 554, 556 (5th Cir. 2018). He contends that the district court should have given him only one criminal history point, rather than two, for a conviction for driving while intoxicated. With

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

2026 U.S. App. LEXIS 7636, *1

respect to this assertion, [*2] Flanagan has not shown an error that is clear or obvious. See *Puckett v. United States*, 556 U.S. 129, 135 (2009). He also asserts that the district court should not have given him a point for his sentence for resisting arrest and driving under a suspended license. With respect to this error, Flanagan has not shown "a reasonable probability that, but for the district court's misapplication of the Guidelines, he would have received a lesser sentence." *United States v. Martinez-Rodriguez*, 821 F.3d 659, 663-64 (5th Cir. 2016) (internal quotation marks and citation omitted).

AFFIRMED.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See *FED. R. APP. P. 41(B)*. The court may shorten or extend the time by order. See *5TH CIR. R. 41 I.O.P.*

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