

No. _____

In the Supreme Court of the United States

NAUTICA BLU HAMILTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

At Petitioner’s sentencing hearing, the prosecutor successfully advocated for the statutory maximum sentence—30 years’ imprisonment—because Petitioner was a “young woman” when she committed the crime, and “to prevent” Petitioner “from being able to have her own children.”

1. Does a prosecutor commit structural error by advocating a harsher sentence because the defendant is a young woman who would otherwise be capable of bearing children?

2. If not, what quantum of proof is sufficient to show that the error affected the defendant’s substantial rights?

PARTIES TO THE PROCEEDING

Petitioner is Nautica Blu Hamilton, an individual, who was Defendant-Appellant below. Respondent is the United States of America, who was Plaintiff-Appellee below. Neither party is a corporation.

DIRECTLY RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

United States v. Nautica Blue Hamilton, No. 5:24-cr-50 (judgment entered Mar. 6, 2025)

United States Court of Appeals (5th Cir.):

United States v. Nautica Blu Hamilton, No. 25-10434 (judgment entered Mar. 17, 2026)

TABLE OF CONTENTS

Questions Presented.....	i
Parties to the Proceeding	ii
Directly Related Proceedings	iii
Opinion Below.....	1
Jurisdiction	1
constitutional and statutory Provisions Involved	2
Statement	3
A. Factual Background	3
B. Motion for Downward Variance	4
C. Sentencing Hearing.....	6
D. Appeal	7
Reasons for Granting the Petition	8
I. The Court should grant the petition and hold that prosecutorial decisions and advocacy based on the defendant's sex rise to the level of structural error.	8
II. Alternatively, the Court should grant the petition and hold that a sentencing recommendation made for unconstitutional reasons affects substantial rights where the district court imposes the recommended sentence.	11
Conclusion.....	12
APPENDIX A:	
Fifth Circuit Opinion	1a
APPENDIX B:	
Excerpts from Sentencing Transcript	6a

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Batson v. Kentucky</i> , 476 U.S. 79 (1986)	10
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	9
<i>Chinn v. Shoop</i> , 143 S. Ct. 28 (2022) (mem.).....	11
<i>Greer v. United States</i> , 593 U.S. 503 (2021)	8
<i>J.E.B. v. Alabama ex rel. T.B.</i> , 511 U.S. 127 (1994)	10
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)	11
<i>Molina-Martinez v. United States</i> , 578 U.S. 189 (2016)	11
<i>Sessions v. Morales-Santana</i> , 582 U.S. 47 (2017)	9
<i>Skinner v. State of Okl. ex rel.</i> <i>Williamson</i> , 316 U.S. 535 (1942)	9
<i>United States v. Armstrong</i> , 517 U.S. 456 (1996)	8, 10
<i>United States v. Dominguez Benitez</i> , 542 U.S. 74 (2004)	11
<i>Vasquez v. Hillery</i> , 474 U.S. 254 (1986)	10
<i>Wade v. United States</i> , 504 U.S. 181 (1992)	10
<i>Weaver v. Massachusetts</i> , 582 U.S. 286 (2017)	8, 10

<i>Williams v. Taylor</i> , 529 U.S. 362 (2000)	11
Constitutional Provisions	
Fifth Amendment	2, 9
Fourteenth Amendment	9
Statutes	
18 U.S.C. § 2251(a)	4
18 U.S.C. § 2251(e)	3
28 U.S.C. § 1254	1
Other Authorities	
Federal Rule of Criminal Procedure 52(b)	2, 11
Jeffrey J. Rachlinski & Andrew J. Wistrich, <i>Judging the Judiciary by the Numbers: Empirical Research on Judges</i> , 13 Annual Review of Law and Social Science 203 (2017)	12
Amendment 836, U.S.S.G., app’x C, vol. III, pp.397–403 (Nov. 1, 2025 ed.)	2
U.S.S.G. § 5H1.10 (policy statement) (2024)	2

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PETITION FOR A WRIT OF CERTIORARI

Nautica Blu Hamilton respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

The Fifth Circuit's opinion is published at 170 F.4th 391.

JURISDICTION

The Court of Appeals entered its judgment on March 17, 2026. This Court would have jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides, in pertinent part: “No person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const., amend. V.

Title 28, Section 994(d) provides, in pertinent part: “The [U.S. Sentencing] Commission shall assure that the guidelines and policy statement are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.”

At the time of Petitioner’s sentencing,¹ the policy statement at U.S.S.G. § 5H1.10 (2024) provided:

§ 5H1.10. Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status (Policy Statement)

These factors are not relevant in the determination of a sentence.

Federal Rule of Criminal Procedure 52(b) provides, “A plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.”

¹ Petitioner was sentenced in March of 2025. Effective November 1, 2025, the Sentencing Commission made substantial changes to Chapter 5 of the Sentencing Guidelines Manual, including the deletion of Chapter 5, part H, in its entirety. *See* Amendment 836, U.S.S.G., app’x C, vol. III, pp.397–403 (Nov. 1, 2025 ed.).

STATEMENT

Petitioner Nautica Blu Hamilton pleaded guilty of production of child pornography. App., *infra*, 1a. That charge carried a mandatory minimum term of fifteen years in prison, and a statutory maximum of thirty years in prison. See 18 U.S.C. § 2251(e). Ms. Hamilton asked the court to impose a sentence somewhere within the range of fifteen to twenty years in prison. The Government explicitly recommended the statutory maximum sentence *because* Ms. Hamilton is a “young female” who “should have a more nurturing, more protective feeling towards children,” and because of “female biology”: “a 30-year sentence may be the best way to prevent Ms. Hamilton from being able to have her own children.” App., *infra*, 2a–3a (quoting App., *infra*, 8a, 10a–11a). The district court followed the Government’s recommendation. App., *infra*, 3a.

The Fifth Circuit affirmed the sentence because, in its view, Ms. Hamilton failed to show that the Government’s invidious sex-based recommendation “affected her substantial rights.” App., *infra*, 4a–5a. This petition challenges that holding.

A. Factual Background

In July 2023, a social media company contacted the National Center for Missing and Exploited Children to report that one of its users had distributed an image of child pornography. 5th Cir. R. 34; PSR at 5, ¶ 15. Over the course of about a year, police were able to identify the suspect as Nautica Blu Hamilton, a twenty-one-year-old former daycare employee in Lubbock, Texas.

Ms. Hamilton ultimately confessed that she had taken the photograph of an eighteen-month-old victim while she was supposed to be changing the child's diaper, and that she had shared the photo with others in hopes of being paid. 5th Cir. R. 35–37. She admitted taking a similar photo of another child, though she could not say whether she had shared it with anyone else.

A federal grand jury indicted her for production and attempted production of child pornography in violation of 18 U.S.C. § 2251(a). 5th Cir. R. 8. She pleaded guilty.

B. Motion for Downward Variance

According to the Presentence Investigation Report, the U.S. Sentencing Guidelines recommended a sentence of 360 months, which was the statutory maximum. PSR at 16, ¶ 81.

Ms. Hamilton filed a written motion requesting a below-range sentence between fifteen and twenty years in prison. (5th Cir. Sealed R., TXND Doc. 38). Her attorneys discussed her childhood history of severe neglect, physical and sexual abuse at the hands of biological and foster parents, multiple foster care placements, and ostracism among her peers. (*Id.*).

The motion also described her documented history as a victim of domestic violence. Like many who suffered childhood abuse, Ms. Hamilton found herself in a physically and sexually abusive romantic relationship as a young adult. (*Id.* at 10–16). Her boyfriend exerted complete coercive control over her life, her property, and her finances. One time, she suffered in-

juries so severe that her employer sent her home, believing that “it was not safe for Hamilton to be at the facility,” and PSR at 15, ¶ 73.

Her abuser, who was unemployed, took all of her money, destroyed her car, and compelled her to sell most of her belongings to support his own drug habit. They moved to a low-rent hotel. (TXND Doc. 38 at 10–14). She did not have enough to eat. (*Id.* at 14). She attempted suicide. (*Id.* at 13). Some of the most severe beatings were accompanied by an accusation that she wasn’t earning enough money. (*Id.* at 14). She felt trapped, and alone, and desperate.

While caught in this helpless and hopeless situation, Ms. Nautica came across a social media post offering to pay for sexually explicit media, with “no limits.” (TXND Doc. 38 at 13). That offer led her to commit the current offense: “She did this atrocious, terrible thing for money she desperately needed.” (*Id.* at 16). At the time of the offense, she was nineteen or twenty years old.

Almost immediately, Ms. Hamilton felt intense remorse for victimizing the children. She resigned from that job. She finally broke free from the coercive relationship after her abuser chased her into the street, dragged her by her hair, hit her in the face, and broke her glasses. (TXND Doc. 38 at 14).

Despite these compelling mitigating circumstances, the Government urged the court to impose the statutory maximum sentence of 30 years in prison. In its written response to the variance motion, the Government argued that Ms. Hamilton’s history of physical and sexual abuse should be treated as an “aggravating factor” because “she responded to her own

abuse by callously perpetrating the same sexual violence upon others for something as trivial as financial gain.” (5th Cir. Sealed. R., TXND Doc. 39 at 3).

C. Sentencing Hearing

At sentencing, the prosecutor provided a more detailed explanation for recommending the thirty-year prison sentence. That explanation was explicitly tied to Ms. Hamilton’s sex:

But what makes this more shocking—and we discussed this in length at our response to the defendant’s motion for a downward variance. *But as a young female, one can already assume that women probably should have a more nurturing, more protective feeling towards children than maybe men do.* I think that’s a societal assumption. Whether it’s true or not, that is probably why, when people go to daycares or hire daycare workers, they think women may be a safer fit.

Despite being a young female, she had no thought but to attempt to make money somehow by sexually abusing these young female children.

...

While I am not going to try to weigh in on female biology and at what point Ms. Hamilton may or may not be able to have children anymore, but by my calculation, at twenty-one years of age today, a 30-year sentence may be the best way to prevent Ms. Hamilton from being able to have her own children, because if

she was willing to do this with two children she was protecting, or supposed to be protecting, in her position as a daycare worker, there's no telling what she would do behind closed doors with her own children.-

App., *infra*, 2a–3a (quoting App., *infra*, 8a–11a) (emphases added).

The district court agreed with the prosecutor that Ms. Hamilton should be sentenced to thirty years in prison. App., *infra*, 16a.

D. Appeal

On appeal, Ms. Hamilton argued that the Government “improperly considered her sex when formulating a sentencing recommendation, violating the Fifth Amendment’s equal protection guarantee.” App., *infra*, 4a. Because she did not raise that specific argument in the district court, the Fifth Circuit applied the plain-error standard of review. App., *infra*, 4a. The court rejected Ms. Hamilton’s argument that she suffered structural error. App., *infra*, 5a. And the court also held that she could not show that the error affected her substantial rights: “Because the record does not indicate that the district court would have imposed a lesser sentence without the government’s comments at sentencing, Hamilton cannot show that the sentence affected her substantial rights and therefore cannot succeed on plain error review.” App., *infra*, 5a.

REASONS FOR GRANTING THE PETITION

I. The Court should grant the petition and hold that prosecutorial decisions and advocacy based on the defendant's sex rise to the level of structural error.

If a defendant on direct appeal identifies a structural error in the proceedings below, the Court of Appeals will “reverse ‘even when the challenge was not preserved.’” App., *infra*, 4a (quoting *United States v. Kirchner*, 161 F.4th 266, 272 (5th Cir. 2025)); *see also Greer v. United States*, 593 U.S. 503, 513 (2021) (quoting *Neder v. United States*, 527 U.S. 1, 8 (1999) (“Only in a ‘very limited class of cases’ has the Court concluded that an error is structural, and ‘thus subject to automatic reversal’ on appeal.”)).

The label “structural error” describes a class of errors that defy any attempt to analyze their harm. “The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial.” *Weaver v. Massachusetts*, 582 U.S. 286, 294–95, (2017). Generally, structural errors fall under one (or more) of three umbrellas: (1) “the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest”; (2) “the effects of the error are simply too hard to measure” on appeal; or (3) “if the error always results in fundamental unfairness.” *Weaver*, 582 U.S. at 296. “In a particular case, more than one of these rationales may be part of the explanation for why an error is deemed to be structural.” *Id.*

“[A] prosecutor’s discretion is ‘subject to constitutional constraints.’” *United States v. Armstrong*, 517

U.S. 456, 464 (1996) (quoting *United States v. Batchelder*, 442 U.S. 114, 125 (1979)). The “equal protection component of the Due Process Clause of the Fifth Amendment” provides one such constraint. *Id.* (citing *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954)); *see also Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”).

A governmental actor violates the constitutional guarantee of equal protection when it discriminates between men and women based on “overbroad generalizations about the different talents, capacities, or preferences of males and females.” *Sessions v. Morales-Santana*, 582 U.S. 47, 62 (2017) (quoting *United States v. Virginia*, 518 U.S. 515, 533, (1996)).

Here, the prosecutor admitted that the Government was recommending the maximum sentence because of Ms. Hamilton’s sex: as a “young woman,” she “should have a more nurturing, more protective feeling towards children than maybe men do”; she committed her offense “[d]espite being a young female.” App., *infra*, 3a.

The prosecutor also *explicitly* “calculat[ed]” what sentence would be necessary to deny Ms. Hamilton an opportunity to procreate based on “female biology.” App., *infra*, 3a. Obviously, that “calculation” is focused exclusively on the defendant’s sex. This Court has long recognized that a government exceeds its constitutional boundaries when it sets out to dictate who may, and who may not, bear children. *See Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535, 541 (1942) That power, “if exercised, may have subtle, far-reaching and devastating effects,” including grave problems of discrimination. *Id.*

The Court has already recognized that equal protection violations in criminal prosecutions represent structural error. The Court grants “automatic relief to defendants who prevailed on claims of race or gender discrimination” when choosing a grand jury or trial jury. *Weaver*, 582 U.S. at 288, 301 (discussing *Batson v. Kentucky*, 476 U.S. 79, 100 (1986), and *Vasquez v. Hillery*, 474 U.S. 254, 263 (1986)); *see also J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 128–29 (1994) (“We hold that gender, like race, is an unconstitutional proxy for juror competence and impartiality.”)

For similar reasons, a defendant may prevail on a “selective-prosecution claim” regardless of her factual guilt: the claim “is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution.” *United States v. Armstrong*, 517 U.S. 456, 463 (1996).

In *Wade v. United States*, 504 U.S. 181, 186 (1992), the Court held that “a defendant would be entitled to relief if a prosecutor refused to file a substantial-assistance motion, say, because of the defendant’s race or religion.” Here, Ms. Hamilton showed that the prosecutor recommended the maximum sentence because of her sex. This was not based on speculation or innuendo; the prosecutor said so herself. Properly understood, this was a structural error in the sentencing proceedings and should have led to automatic reversal.

II. Alternatively, the Court should grant the petition and hold that a sentencing recommendation made for unconstitutional reasons affects substantial rights where the district court imposes the recommended sentence.

If the prosecutor’s error was not structural, then Ms. Hamilton would need to demonstrate that the error “affect[ed]” her “substantial rights.” Fed. R. Crim. P. 52(b). That means she “must ‘show a reasonable probability that, but for the error,’ the outcome of the proceeding would have been different.” *Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 76, 82 (2004)).

“Reasonable probability” is a familiar standard in criminal appeals and post-conviction matters. It does not require certainty of a better outcome: “The reasonable-probability standard is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for error things would have been different.” *Dominguez Benitez*, 542 U.S. at 83, n.9; accord *Williams v. Taylor*, 529 U.S. 362, 405–406 (2000); *Kyles v. Whitley*, 514 U.S. 419, 434 (1995); see also *Chinn v. Shoop*, 143 S. Ct. 28 (2022) (mem.) (Sotomayor, J., dissenting from denial of certiorari).

Here, the Fifth Circuit applied the wrong standard when considering prejudice. Ms. Hamilton lost because she could not *prove* “that the district court would have imposed a lesser sentence without the government’s comments at sentencing.” App., *infra*, 4a. Though the sentencing court did not “explicitly rely on

Hamilton’s sex in sentencing her to the statutory maximum,” the Government *did* explicitly rely on sex in making that recommendation, and the district court imposed the Government-recommended sentence. That is a strong enough connection between the constitutional violation and the sentence to undermine confidence in the outcome.

Ms. Hamilton cited empirical evidence confirming that prosecutor recommendations have a powerful effect on the court’s selection of sentence. *See* Hamilton C.A. Reply Br. 4 (discussing Jeffrey J. Rachlinski & Andrew J. Wistrich, *Judging the Judiciary by the Numbers: Empirical Research on Judges*, 13 Annual Review of Law and Social Science 203, 213 (2017)). According to that research, the available evidence shows a “strong” “correlation between the prosecutors’ recommendations and judges’ sentences.”

Because the prosecutor explicitly advocated a statutory maximum sentence for an unconstitutional reason, and because the court followed that recommendation, Ms. Hamilton showed a reasonable probability that the outcome of her case would have been different in the absence of the constitutional violation.

CONCLUSION

This Court should grant the petition and set the case for a decision on the merits.

Respectfully submitted,

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