

IN THE  
**Supreme Court of the United States**

---

VICTORIA DAVIDSON,

*Petitioner,*

*v.*

UNITED STATES,

*Respondent.*

---

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

---

**REPLY BRIEF FOR PETITIONER**

---

JAMESA J. DRAKE  
*Counsel of Record*  
DRAKE LAW LLC  
P.O. Box 56  
Auburn, ME 04212  
(207) 330-5105  
jdrake@drakelawllc.com

## Table of Contents

|                                                                                    |    |
|------------------------------------------------------------------------------------|----|
| Table of Authorities.....                                                          | ii |
| Reply Brief for Petitioner.....                                                    | 1  |
| I.    The decision in <i>Beaird</i> will control the outcome<br>for Davidson ..... | 1  |
| II.   The issue presented is not moot or harmless .....                            | 2  |
| Conclusion.....                                                                    | 5  |

## Table of Authorities

### Cases

|                                                                     |         |
|---------------------------------------------------------------------|---------|
| <i>Beaird v. United States</i> , No. 25-5343,.....                  | 1, 2, 5 |
| <i>Molina-Martinez v. United States</i> , 578 U.S. 189 (2016) ..... | 4       |
| <i>Stinson v. United States</i> , 508 U.S. 36 (1993).....           | 1, 2    |

### Statutes

|                              |   |
|------------------------------|---|
| 18 U.S.C. § 3553(a) .....    | 3 |
| 18 U.S.C. § 3583(b)(1) ..... | 5 |
| 18 U.S.C. § 3583(b)(2) ..... | 5 |
| 18 U.S.C. § 3583(c) .....    | 3 |

### U.S. Sentencing Guidelines

|                                  |   |
|----------------------------------|---|
| U.S.S.G. § 2B1.1(b)(10)(C) ..... | 1 |
| U.S.S.G. §§ 4C1.1 .....          | 4 |
| U.S.S.G. § 5C1.1 .....           | 4 |

## REPLY BRIEF FOR PETITIONER

The government does not argue that the sophisticated-means sentencing enhancement is interpreted and applied uniformly among the federal courts – because it is not. *See* Pet. 9-13. Nor does the government argue that the sophisticated-means sentencing enhancement was properly applied to Petitioner Davidson – because it was not. *See* Pet. 13-18. Instead of addressing the merits of the question Davidson’s petition presents, the government suggests two jurisprudential reasons for denying review. Neither reason has merit.

### **I. The decision in *Beird* will control the outcome for Davidson.**

The Second Circuit upheld the district court’s application of Sentencing Guideline § 2B1.1(b)(10)(C), which increases the offense level for fraud offenses that involve “sophisticated means.” In doing so, as the government recognizes, the Second Circuit treated commentary to the Sentencing Guidelines, regarding the sophisticated-means enhancement, as authoritative under *Stinson v. United States*, 508 U.S. 36 (1993). Gov’t Memorandum in Opposition at 2. This Court granted certiorari in *Beird v. United States*, No. 25-5343, to consider whether *Stinson* still correctly states the rule for the deference that the courts must give the

commentary to the Sentencing Guidelines. Thus, this Court’s decision in *Beaird* will almost certainly answer whether the Second Circuit was correct to rely on the commentary as authoritative in Davidson’s case. If the Second Circuit erred in its understanding of *Stinson*, and in its view that Guidelines commentary was authoritative as to Davidson, then it necessarily follows that reconsideration of the Second Circuit’s reasoning in affirming Davidson’s sentence will be necessary. Because the outcome of *Beaird* will directly impact the outcome of Davidson’s case, holding Davidson’s petition pending a resolution of *Beaird* is the proper course.

## **II. The issue presented is not moot or harmless.**

Even assuming *arguendo* that a challenge to a term of imprisonment can be mooted by the expiration of that term, Gov’t Memorandum in Opposition at 2, such a rule has no application here. The government made similar arguments to the Second Circuit, Gov’t Br. 54-55, and the Second Circuit was correct to reject them by ruling directly on the merits. *See* Pet. 8.

The sentencing judge, Judge Hellerstein, agreed that Davidson’s “sophisticated means” was relevant to the § 3553(a) criteria, and district courts utilize the § 3553(a) criteria to calculate the length of the

supervised release term. 18 U.S.C. § 3553(a); 18 U.S.C. § 3583(c). Davidson remains on supervised release. On remand, the district court can decide whether the § 3553(a) factors continue to support the same duration of supervised release; The district court may shorten the supervised release term, on remand, if it chooses to do so.

Nor is the issue harmless, as the government seems to intimate. Gov't Memorandum in Opposition at 3-4. Again, the government made similar arguments to the Second Circuit, Gov't Br. 55-56, which it rejected by deciding the case on the merits. *See* Pet. at 8.

The record does not clearly indicate that the district court would have imposed a three-year term of supervised release even if Davidson did not employ “sophisticated means.” Moreover, “[w]hen 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).<sup>1</sup>

---

<sup>1</sup> Davidson preserved her challenge to the district court’s application of the sophisticated-means sentencing enhancement.

At Davidson’s reopened sentencing proceeding on January 9, 2024, Judge Hellerstein made clear that he would have imposed the same *carceral* term even if the then-newly amended guideline for so-called zero-point offenders applied to Davidson. (Dkt. 237 at 2-3, 7-8, 10; citing U.S.S.G. §§ 4C1.1, 5C1.1). Referring to Davidson’s *prison sentence*, Judge Hellerstein explained, “I gave her 18 months but only nine months of custody, and the other part would be in home confinement.... That was a pretty good sentence I gave her.” (Dkt. 237 at 7-8). Again, referring to giving Davidson “nine months and nine months home confinement,” Judge Hellerstein said, “I departed and varied the original sentence. I’m not going to depart further or vary further. I believe I gave Ms. Davidson a generous, a generous sentence.” *Id.* at 9-10.

It does not follow, however, that because Judge Hellertein would have imposed the same carceral term, he also would have imposed the same term of supervised release had he understood that Davidson did not employ “sophisticated means.” Regardless of whether Davidson’s prison sentence was “generous,” her three-year term of supervised release was the maximum allowable on Count 3, and it was only two years shy of the

maximum allowable term of supervised release on Count 1. 18 U.S.C. § 3583(b)(1), (b)(2).<sup>2</sup>

## CONCLUSION

For the reasons advanced herein and in Davidson's petition for certiorari, Davidson respectfully requests that this Court hold her petition in abeyance pending a decision in *Beaird*.

Respectfully submitted,

/s/ Jamesa J. Drake

*Counsel of Record*

Drake Law LLC

P.O. Box 56

Auburn, ME 04212

(207) 330-5105

jdrake@drakelawllc.com

---

<sup>2</sup> Obviously, the fact that the district court dismissed accusations of a probation violation is of no legal consequence to the arguments advanced here. Gov't Memorandum in Opposition at 4.