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In the
Supreme Court of the United States

CHARLES RAYMOND WABLE, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

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

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
Appellate Counsel
Counsel of Record

OFFICE OF THE FEDERAL PUBLIC DEFENDER
Southern District of West Virginia
300 Virginia Street, East, Room 3400
Charleston, West Virginia 25301
304/347-3350
jonathan_byrne@fd.org

Counsel for Petitioner

Dated: October 8, 2026

I. QUESTION PRESENTED FOR REVIEW

Petitioner was convicted at trial of being a felon in possession of a firearm and witness tampering. In the lead up to sentencing, he made several *pro se* arguments about the calculation of his advisory Guideline range and ultimate sentence, none of which his counsel adopted. One of those objections was to the classification of a prior conviction as a “controlled substance offense.” The district court classified the offense as such and calculated the advisory Guidelines range accordingly. On appeal, Petitioner restated his argument that the conviction was not a controlled substance offense, but on a different theory and buttressed by documentation that had not been presented to the district court.

The question presented in this Petition is, in such circumstances, whether the Court of Appeals should review the question of whether a Petitioner’s prior conviction is a controlled substance offense *de novo* or only for plain error.

II. LIST OF ALL PARTIES AND RELATED CASES

PARTIES

- Petitioner – Charles Raymond Wable
- Respondent – United States of America

DIRECTLY RELATED CASES

- *United States v. Wable*, No. 1:22-cr-00037, U.S. District Court for the Northern District of West Virginia. Judgment entered September 25, 2023.
- *United States v. Wable*, Appeal No. 23-4605, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on July 10, 2026.

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V. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, *United States v. Wable*, 181 F.4th 441 (4th Cir. 2026), is published and attached to this Petition as Appendix A. The portion of the sentencing hearing transcript in which the district court made the rulings relevant to this Petition is attached to this Petition as Appendix B. The district court's judgment and commitment order is unpublished and attached as Appendix C.

VI. JURISDICTION

This Petition seeks review of a judgment of the United States Court of Appeals for the Fourth Circuit entered on July 13, 2026. No petition for rehearing was filed. This Petition is filed within 90 days of the date the court's entry of that judgment. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254 and Rules 13.1 and 13.3 of this Court.

VII. STATUTES AND REGULATIONS INVOLVED

The issue in this Petition requires interpretation and application of two Rules of Criminal Procedure; Rule 51, which provides, in pertinent part:

(b) A party may preserve a claim of error by informing the court – when the court ruling or order is made or sought – of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party.

As well as Rule 52, which provides, in pertinent part:

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

VIII. STATEMENT OF THE CASE

A. Federal Jurisdiction

On May 3, 2022, an indictment was filed in the Northern District of West Virginia charging Charles Raymond Wable with possession of a firearm as a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count One) and tampering with a witness by corrupt persuasion, in violation of 18 U.S.C. § 1512(b)(1) (Count Two). JA13-14.¹ Because those charges constitute offenses against the United States, the district court had original jurisdiction pursuant to 18 U.S.C. § 3231. This is an appeal from the final judgment and sentence imposed after Wable was convicted by a jury of both counts in the indictment. JA15-16. A judgment order was entered on September 25, 2023. JA66-72. Pursuant to the district court's directive, the clerk filed a notice of appeal on Wable's behalf on September 25, 2023. JA46; JA73. Wable also filed a timely, *pro se*, notice of appeal on September 29, 2023. JA74. The Fourth Circuit had appellate jurisdiction under 28 U.S.C. § 2253 and 28 U.S.C. § 1291.

B. Facts Pertinent to the Issue Presented

This case begins in 2020, when Wable was alleged to have violated his conditions of supervised release by possessing a firearm. During revocation

¹ "JA" refers to the Joint Appendix that was prepared in this case for the appeal to the Fourth Circuit.

proceedings, investigators discovered Wable had tried to find someone else to take responsibility for the firearm. Wable's efforts were ultimately unsuccessful and his supervised release was revoked based on his possession of the firearm. Two years after his revocation, he was convicted on substantive offenses based on the same conduct. The issue in this Petition relates to the 180-month sentence imposed following his substantive criminal convictions.

1. Wable's supervised release is revoked after he is found to have possessed a firearm.

In 2007, Wable was sentenced to 188 months in prison, to be followed by a three-year term of supervised release. On September 25, 2020, Wable was serving that term of supervised release when he was visited at his home by a pair of probation officers. Among other things, one of the officers found a rifle under Wable's bed, which was "loaded with a high capacity magazine." JA107. Wable denied any knowledge of the firearm. JA107. Wable was arrested and a petition filed seeking the revocation of his term of supervised release. JA108.

A revocation hearing was held for Wable on November 10, 2020, at which Wable presented testimony from Johnny Marra, who claimed ownership of the gun and explained that he had hidden it under Wable's bed. The hearing was adjourned without the district court making any rulings related to revocation. JA108.

Following the hearing, ATF agents investigated Marra's story. That included obtaining contents of phone calls between Wable and Marra's mother, Donna. JA109. Confronted with the contents of those calls, Marra admitted that his testimony at the revocation hearing was false. He explained that his mother had asked him to testify

in Wable's favor, that he was afraid of what Wable might do to her if he refused, and that Wable had agreed to pay him for his testimony. Wable also provided the story that Marra was supposed to tell during his testimony. JA108.

When the revocation hearing resumed, the Government presented testimony from Marra that Wable paid him to testify and falsely claim ownership of the firearm. The Government also produced several of the relevant phone calls. The district court revoked Wable's term of supervised release and imposed a sentence of 24 months in prison, with no further term of supervised release to follow. Marra entered a guilty plea to making a false declaration before the court and was sentenced to 15 months in prison. JA109.

2. As his revocation sentence is ending, Wable is charged substantively with being a felon in possession of a firearm and witness tampering.

On May 3, 2022, as Wable's revocation sentence was nearing its end, the Government charged him in a two-count indictment with being a felon in possession of a firearm and tampering with a witness. JA13-14. Wable proceeded to trial and was convicted on both counts. JA15-16.

Following his conviction, a Presentence Investigation Report ("PSR") was prepared to assist the district court at sentencing. JA103-171. The probation officer recommended, pursuant to U.S.S.G. § 2I2.1(a)(1), that Wable's base offense level on Count One was 26, because the firearm at issue had a large-capacity magazine and Wable had two prior convictions, both from 2007, that were a "controlled substance offense" – a conviction in the Southern District of West Virginia for possession with

intent to distribute cocaine and a conviction in Clay County, West Virginia, for “cultivating marijuana.” JA111; JA117-118. The probation officer further recommended a two-level enhancement for obstruction of justice, for a final offense level of 28.² JA112. Combined with a Criminal History Category V, the recommended advisory Guideline range was 130 to 162 months in prison. JA122; JA129. The Government had no objections to those calculations. JA135.

Wable filed a pair of hand-written *pro se* pleadings objecting to several aspects of the PSR. JA77-87. As relevant to this Petition, Wable objected to using the Clay County conviction to enhance his base offense level because it was not a controlled substance offense, arguing that marijuana did not meet the definition of a “controlled substance.” JA78-79. Pursuant to an inquiry from the district court, Wable’s trial counsel explicitly did “not adopt the Defendant’s *pro se* objections to the Presentence Report.” JA17. Wable also filed a lengthy hand-written *pro se* sentencing memorandum in which he detailed mitigation arguments for sentencing, focusing on the abuse and lack of guidance he experienced as a child and a need for ongoing medical care (including increased risk from exposure to COVID-19). JA140-149. He also set forth abuse he had suffered at the hands of correctional officers at the regional jail while his case was pending. JA162-166.

² Under U.S.S.G. § 3D1.2(c) the two counts grouped because “one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the counts.”

3. The district court imposes a sentence of 180 months in prison, a *sua sponte* upward variance.

Sentencing for Wable took place on September 22, 2023. JA18-72. Wable told the district court that he had “never discussed my PSR” with trial counsel, but explained that “I’d reviewed it on my own.” JA20. The district court explained, as to Wable’s *pro se* objections, that “they’re on the record,” but because Wable was represented by counsel “legal objections and things of that nature are typically the province of counsel” and “I do not anticipate speaking about them at great length here today.” JA21. The district court also explained that those objections “would not be part of the, if you will, frontline appeal – front line of issues of appeal given that counsel has not adopted these.” JA23. The district court then confirmed that there were no active objections by counsel to the Guideline calculations in the PSR before adopting them. JA23-26. The district court also noted that it had received “a number of materials . . . directly from” Wable and had “read all those,” including “the sentencing memo and mitigating factors” filed by Wable. JA27.

Wable’s lengthy allocution³ covered many of the topics that had been part of his *pro se* sentencing memorandum. JA30-35. After a time, he transitioned into a discussion of the facts of his case and disagreements with trial counsel over how it was handled. JA35-38. The district court cut Wable off, refocusing on sentencing and stating “if there’s anything else you’d like to share with me you think I need to know

³ The Government later stated that Wable spoke for “approximately a half an hour.” JA41.

for sentencing purposes, go right ahead.” JA38. Wable stated that “I was chemically assaulted, trying to get medical help at the regional jail where they – I was trying to get my breathing medication,” noting that “I sent that to the courts.” JA38. The district court again assured Wable “everything that you’ve submitted to the court in advance, in writing, is in the record of this court, and I have read all of that.” JA39. Wable concluded that he “was hoping that the Court would consider a downward variance.” JA40.

Ultimately, the district court imposed a sentence of 120 months in prison on Count One and 180 months in prison on Count Two, to be served concurrently. JA56. Those were to be followed by concurrent three-year terms of supervised release. JA57.

4. The Fourth Circuit affirms.

Wable appealed his case to the Fourth Circuit. *United States v. Wable*, Appeal No. 23-4605. Counsel initially filed an *Anders* brief.⁴ *Id.* at Dkt. No. 23. In addition to filing a *pro se* brief, Wable also filed motions for new counsel. *Id.* at Dkt. Nos. 34, 35, 36. The Fourth Circuit granted Wable’s motion and appointed undersigned counsel, who informed the court that he would strike the *Anders* brief and file a new brief on Wable’s behalf. *Id.* at Dkt. Nos. 45, 46. As relevant to this Petition, in the substantive brief, Wable argued that his Clay County marijuana conviction was incorrectly classified as a controlled substance offense. *Id.* at Dkt. No. 58 at 14-22. The brief included, as an attachment, criminal records from that conviction of which Wable asked the court to take judicial notice. *Id.* at Dkt. Nos. 56, 57, 58 at 19-20.

⁴ See *Anders v. California*, 386 U.S. 738 (1967).

The Fourth Circuit affirmed Wable’s sentence in a published opinion. *United States v. Wable*, 181 F.4th 441 (4th Cir. 2026). As to the Clay County marijuana conviction, the court reviewed for plain error because, while Wable made a *pro se* objection to its classification as a controlled substance offense, the argument on appeal was on a different theory. *Id.* at 448 n.1. That argument was that the records provided to the court showed that he was convicted under West Virginia’s general attempt statute, not of a controlled substance offense. *Id.* at 449. Recognizing that “the state court records of this conviction are murky at best,”⁵ the court held that the “timing of Wable’s argument proves dispositive.” *Id.* at 449-450. It explained that had “Wable objected to the classification of his conviction at sentencing, then the state records’ lack of clarity would weigh in his favor” because “the Government bears the burden before the sentencing court to establish that a prior offense qualifies for purposes of the Guidelines calculation.” *Id.* at 450. However, “on appeal, Wable bears the burden under the plain error standard” and because the records “do not clearly demonstrate that Wable was convicted of a General Attempt offense” he could not meet his burden under plain error review. *Ibid.*

⁵ The court did take judicial notice of them. *Wable*, 181 F.4th at 449, n.3.

IX. REASON FOR GRANTING THE WRIT

The writ should be granted to determine whether, where a defendant lodges a *pro se* objection to a Sentencing Guideline calculation and on appeal makes the same objection, using a different legal theory, the Court of Appeals should review that issue *de novo* or only for plain error.

Wable's advisory Guideline range was driven, in part, by the classification of a prior offense as a "controlled substance offense." In a *pro se* objection, Wable argued that prior offense was not a controlled substance offense, putting the issue before the district court. The district court did not address the status of that prior offense at all because Wable's counsel did not adopt his *pro se* objection. On appeal, Wable argued, again, that the prior offense should not have been classified as a controlled substance offense, but on a different theory than presented in his *pro se* objection. The Fourth Circuit, applying binding circuit precedent, applied plain error review, rather than *de novo* review. In doing so, it recognized that under a *de novo* standard Wable would likely prevail. Whether the review of a *pro se* objection, pressed using a different theory on appeal, should be reviewed *de novo* or only for plain error is an important question of federal law that this Court should resolve. *See* Rules of the Supreme Court 10(c).

A. Wable's *pro se* objection should have triggered the district court's duty to ensure his advisory Guideline range was correct.

Under the Guidelines, the base offense level for a defendant convicted of a firearm offense is 26 if two factors are present. The first is the nature of the firearm itself, including whether it is a "semiautomatic firearm that is capable of accepting a

large capacity magazine.”⁶ U.S.S.G. § 2K2.1(a)(1)(A)(i)(2021). The other is whether a defendant committed the offense after having sustained “at least two felony convictions of . . . a controlled substance offense.” U.S.S.G. § 2K2.1(a)(1)(B)(2021). Wable’s PSR set forth two offenses, recent enough to factor in the Guideline calculation, that could conceivably have been controlled substance offenses, both from 2007: a federal conviction for possession with intent to distribute cocaine and a Clay County, West Virginia, conviction for “cultivating marijuana.” JA117-118. There is no dispute that the federal cocaine conviction is a controlled substance offense. *United States v. Groves*, 65 F.4th 166 (4th Cir. 2023).

In a *pro se* pleading prior to sentencing, Wable argued that the Clay County conviction was not a controlled substance offense. The basis for that position was that marijuana “is not a ‘controlled substance’ as defined in [21 U.S.C.] § 802 and can not [sic] be used as a predicate offense.” JA79. On appeal, Wable also argued that the Clay County conviction was not a controlled substance offense, but on a different basis: that records obtained by appellate counsel showed that Wable had been convicted under West Virginia Code § 61-11-8, the general attempt statute, not West Virginia Code § 60A-4-101, the controlled substance statute. *Wable*, Appeal No. 23-4605, Dkt. No. 58 at 18-20. At the time of Wable’s offense, the Sentencing Guidelines did not include inchoate offenses within the definition of “controlled substance offense,” and therefore the Clay County offense could not be classified as such. *Id.* at 17-18; see *United States v. Campbell*, 22 F.4th 438 (4th Cir. 2022).

⁶ There is no dispute that the firearm Wable possessed met that definition. JA107.

Applying binding precedent, *see United States v. Lawson*, 128 F.4th 243, 254 (4th Cir. 2025), the Fourth Circuit reviewed the issue of whether the Clay County conviction was a controlled substance offense for plain error. *Wable*, 181 F.4th at 448. That decision is contrary to two strands of law, one of long standing and the other of more recent vintage, that establish the responsibility of the district court in situations involving *pro se* pleadings and Guideline calculations.

First, Courts have long been instructed to ensure that *pro se* pleadings are “liberally construed.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Thus, in the context of objections to a magistrate judge’s proposed findings and recommendations, “district courts must review *de novo* any articulated grounds to which the litigant appears to take issue.” *Elijah v. Dunbar*, 66 F.4th 454, 460-461 (4th Cir. 2023). “In practice,” this “allows courts to recognize claims despite various formal deficiencies, such as incorrect labels or lack of cited legal authority.” *Wall v. Rasnick*, 42 F.4th 214, 215 (4th Cir. 2022). That requirement extends to Courts of Appeals resolving appeals where a party proceeded *pro se* in the district court. *Lerman v. Board of Elections in City of New York*, 232 F.3d 135, 139-140 (2d Cir. 2000)(reviewing dismissal of complaint *de novo*, recognizing that “we must construe *pro se* complaints liberally, applying a more flexible standard to evaluate their sufficiency than we would when reviewing a complaint submitted by counsel”).

The same should apply when a litigant makes a *pro se* objection to an advisory Guideline calculation. *Wable* was represented by counsel, but clearly had a poor relationship with him. He “never discussed my PSR” with counsel and “reviewed it

on my own.” JA20. During his allocution, Wable had a lengthy digression about disagreements with counsel over the course of his case. JA35-38. That left him in a *Catch-22*:⁷ he could not force his attorney to make any particular objection but the district court rejected his *pro se* objection without actually considering it. A plain error is one that “was not brought to the court’s attention.” Fed. R. Crim. P. 52(b). Wable did all he could to bring the issue to the district court’s attention and should not be hobbled on appeal as a result of the district court’s failure to address the matter.

Second, the district court has an obligation to correctly determine the advisory Guideline range. This Court has made it clear that a sentence imposed pursuant to an improperly calculated Guideline range is unreasonable and “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *Gall v. United States*, 552 U.S. 38, 49 (2007). That is “an independent obligation” and in doing so district courts “aren’t limited to the parties’ arguments or the recommendations in the presentence report.” *United States v. Henderson*, 159 F.4th 213, 219 (4th Cir. 2025)(holding that the Government’s “failure to timely object to the presentence report didn’t relieve the district court of its independent duty to calculate Henderson’s proper guideline range”). If that obligation applies regardless of whether either party objects, when a defendant objects *pro se* and raises the issue

⁷ See *Rhodes v. Robinson*, 408 F.3d 559, 566-567 (9th Cir. 2005), quoting Joseph Heller, *Catch-22*, at 47 (6th ed. 1976).

with the district court, however inelegantly, then the review of the district court's ruling (or lack thereof) should not be for plain error.

Rule 51(b) of the Rules of Criminal Procedure requires that a litigant "inform" the district court of "the court ruling or order is made or sought" or of their "objection to the court's actions and the grounds for that objection." This "gives the district court the opportunity to consider and resolve" the issue, given that it "is ordinarily in the best position to determine the relevant facts and adjudicate the dispute." *Puckett v. United States*, 556 U.S. 129, 135 (2009). In this case, Wable informed the district court of his *pro se* objection, albeit on a different theory than relied upon on appeal. That should be enough, given the district court's free-standing obligation to correctly calculate the advisory Guideline range, to preserve *de novo* review of the matter.

B. This is a good case to resolve this issue because the Fourth Circuit showed that the applicable standard of review determined the outcome of Wable's appeal.

The Fourth Circuit not only held that Wable could not satisfy plain error review in affirming his sentence. It also stated that, were the standard of review *de novo*, he would likely have prevailed. That makes this case a good vehicle to resolve the issue of what the proper standard of review in such cases should be.

The Fourth Circuit agreed that "if Wable can demonstrate that he was convicted of a general attempt offense, then his sentencing range was improperly calculated." *Wable*, 181 F.4th at 449. Looking to the records provided on appeal, the court described them as "murky at best." *Ibid.* That is because while the PSR identified the Clay County conviction as being for "cultivating" marijuana, no such-

named offense exists in the West Virginia Code. Instead, the state's general drug statute makes it a crime to "manufacture" a controlled substance, which is defined to include "production" which is then defined to include "cultivation." W. Va. Code §§ 60A-4-101(n), 60A-4-101(w), 60A-4-401(a) (all 2006). The records show that, while Wable was charged under § 60A-4-401(a), he was convicted at trial under W. Va. Code § 61-11-8, West Virginia's generic attempt statute, with the original drug charge dismissed. *Wable*, Appeal No. 23-4605, Dkt. No. 58 at Attachment. The Fourth Circuit was right to call the records "murky."

In light of that murk, the "timing of Wable's argument proves dispositive," the Fourth Circuit concluded. *Wable*, 181 F.4th at 450. "Had Wable objected to the classification of his conviction at sentencing" – which he did, albeit on different grounds – "then the state records' lack of clarity would weigh in his favor." *Ibid.* That is because "the Government bears the burden before the sentencing court to establish that a prior offense qualifies for purposes of the Guideline calculation." *Ibid.* On plain error review, however, "Wable bears the burden" and because "the state court records do not clearly demonstrate that Wable was convicted of a General Attempt offense, we conclude that Wable has not met his burden to establish that the district court plainly erred." *Ibid.*

In other words, had Wable's argument been reviewed *de novo* he would have prevailed. His sentence would have been procedurally unreasonable and he would have been entitled to resentencing. As a result, this case is a proper one for resolving this issue.

X. CONCLUSION

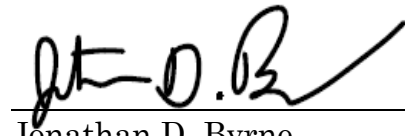
For the reasons stated, this Court should grant certiorari in this case.

Respectfully submitted,

CHARLES RAYMOND WABLE

By Counsel

WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER

A handwritten signature in black ink, appearing to read "J.D. Byrne", is written over a horizontal line.

Jonathan D. Byrne
Appellate Counsel
Counsel of Record