No. _____

Seventh Circuit Appeal No. 24-2298

IN THE

SUPREME COURT OF THE UNITED STATES

MITCHELL MELEGA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

Adam Stevenson
Clinical Professor
Supreme Court Bar No. 295931

University of Wisconsin Law School
Frank J. Remington Center
975 Bascom Mall
Madison, WI 53706
Phone: (608) 262-9233
Email: adam.stevenson@wisc.edu

Attorney for Petitioner,
MITCHELL MELEGA

QUESTION PRESENTED

I) Whether a court of appeals may affirm a United States Sentencing Guidelines enhancement on alleged facts the government raised at sentencing but the district court did not adopt, when the district court made inadequate independent and accurate findings necessary for the enhancement and the defendant preserved both factual and legal objections.

PARTIES TO THE PROCEEDINGS

The only parties to these proceedings are the Petitioner, Mitchell Melega, and the Respondent, the United States of America.

STATEMENT OF RELATED CASES

Counsel is only aware of the related proceedings of Mr. Melega's co-defendant in the district court: *United States v. Erik Jones*, C.D. Ill. Case No. 20-cr-40056-1.

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OPINION BELOW

The decision of the Court of Appeals for the Seventh Circuit ("Seventh Circuit") is a published opinion. The opinion is attached as Appendix A and is reported at *United States v. Melega*, 173 F.4th 907 (7th Cir. 2026). The Seventh Circuit denied a timely-filed petition for rehearing and suggestion for rehearing *en banc*. That Order is attached as Appendix B.

JURISDICTION

On April 24, 2026, the Seventh Circuit entered its opinion in Mr. Melega's appeal. The opinion affirmed Mr. Melega's conviction and sentence.

On May 29, 2026, following an extension from the Seventh Circuit, Mr. Melega timely petitioned for rehearing and suggested rehearing *en banc*. On June 15, 2026, the Seventh Circuit denied Mr. Melega's rehearing petition.

On August 31, 2026, in Application No. 26A269, Associate Justice Amy Coney Barrett granted Mr. Melega's application for an extension of time to file this petition. The deadline was extended to October 28, 2026.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

INTRODUCTION

The Seventh Circuit's opinion *United States v. Melega*, 173 F.4th 907 (7th Cir. 2026), takes and expands the principle that an appellate court can affirm a sentencing enhancement based on any factual findings in the record. This is a matter on which this Court has not provided direct guidance. However, there are analogous cases and a split among the circuits on how to address this issue. Given the split, guidance from this Court would aid in sentencing review consistency.

This Court has addressed a similar question to this in *Williams v. United States*, 503 U.S. 193 (1992), but has not squarely addressed the issue in *Melega*. In *Williams*, the Court was faced with reviewing the scope of appellate review of a United States Sentencing Guidelines departure in the pre-*Booker* era. Considering the statutes governing appellate review of sentences, the Court determined that a narrow approach was appropriate, limiting review to what the district court said, not an independent analysis. *Williams*, 503 U.S. at 201.

In the absence of a follow-on to *Williams* pertaining to Guidelines enhancements, a split has developed among the circuits regarding what a court of appeals may do to evaluate a district court's ruling. On one side, some circuits look to civil procedure and broad appellate review to conduct an expansive review of the record, looking beyond what the sentencing court adopted. This approach is often stated as an ability to affirm on any grounds supported by the record. On the other side, some circuits have limited appellate review only to findings the district court

endorsed. This approach is consistent with the general limited nature of appellate review of district court factual findings and cases like *Williams*.

Melega appears to take one side of the split and push it further. It takes government allegations and statements, not deemed credible or found by the district court, as fact that can support a Guidelines enhancement. This appears to run counter to the principles in *Williams* and this Court's other Guidelines sentencing cases. It could turn reviewing courts into *de novo* second sentencing courts. The impact of these different approaches can create wide disparities in just how federal sentencing is conducted and reviewed. As a result, the case stands as an opportunity for the Court to squarely address this issue.

STATEMENT OF THE CASE[1]

Factual Background

Mitchell Melega pleaded guilty to 12 counts of fraud and money laundering. (PSR ¶6.) These charges were related to transactions conducted through a business, I-80, owned by his co-defendant, Erik Jones. (PSR ¶11.) Mr. Melega was a staff accountant and later the financial controller of I-80. (PSR ¶11.)

I-80 specialized in the reconditioning and reselling of vehicles. (PSR ¶11.) I-80 defrauded two banks, First Midwest Bank and Northwest Bank. The fraud against First Midwest proceeded by creating and sending false vehicle information to the bank. (PSR ¶17.) A fraudulent invoice either inflating the purchase price of vehicles or describing vehicles I-80 had no intention to buy would be created and sent to First Midwest. (*See, e.g.,* PSR ¶¶19, 32, 33.) Jones would prepare, or cause to be prepared, Borrowing Base certificates based on the fraudulent invoices. (*See* PSR ¶¶26-34.) Mr. Melega would then relay the fraudulent documents to the bank, requesting funds. (*See* PSR ¶¶26-34.) Once I-80 obtained the funds, Jones would use them to cover other business expenses and finance personal purchases. The scheme against Northwest Bank involved properties Jones owned. (PSR ¶¶36-37.)

Procedural Background

Jones and Mr. Melega each pleaded guilty to the same 12 counts. (PSR ¶¶1-4, 7, 9.) Mr. Melega's presentence investigation report ("PSR") included a calculated

[1] The following abbreviations are used herein: Criminal Record on Appeal, cited by document number and page: "R. __:__," Presentence Investigation Report by paragraph: "PSR ¶_," and Sentencing Transcripts, cited by page and line: "Sent'g Tr. __:__."

total offense level of 30. (PSR ¶62.) Included in this calculation was a two-point increase for sophisticated means under U.S.S.G. § 2B1.1(b)(10)(C) and a two-point increase for role in the offense under U.S.S.G. § 3B1.1(c). (PSR ¶¶54, 55.) Based on the calculated offense level of 30 and a criminal history category of I, Mr. Melega's recommended Guidelines range was 97 months to 120 months. (PSR ¶94.)

At sentencing, Mr. Melega objected to the application of the sophisticated means and role in the offense enhancements. The Government stated, related to the sophisticated means enhancement, that "[w]e don't know who altered [the documents]" and that "we're talking about the scheme. We're not talking about what the defendant himself personally did." (Sent'g Tr. 10:11-25.) Despite this, the defense's objections were all overruled and the district court adopted the PSR's sentencing calculation, without mentioning adopting it for the factual basis. (Sent'g Tr. 32:22-25.)

The district court sentenced Mr. Melega to 75 months of imprisonment, followed by five years of supervised release, joint and several restitution of $4,840,944.63 with Jones, and a $1,200 special assessment. (R.85:3-6.)

Seventh Circuit Decision

The Seventh Circuit affirmed Mr. Melega's sentence following arguments against the role in the offense and sophisticated means enhancements. The opinion was premised, in part, on the principle that the Seventh Circuit may "affirm an enhancement on any ground supported by the record." *Melega*, 173 F.4th at 911 (citing *United States v. Sheikh*, 367 F.3d 683, 688 (7th Cir. 2004)). The court used this

to affirm the application of the two-level sophisticated means enhancement. The court pointed to several scattered elements of the record, such as Government statements or court questions, that it believed supported the enhancement. References to the record included:

- The district court calling the overall scheme "relatively intricate," (*Melega*, 173 F.4th at 911; Sent'g Tr. 7:21);
- The individual words "procur[ing]" and "produc[ing]" taken from a clarifying question the district court posed to defense counsel, (*Melega*, 173 F.4th at 911; Sent'g Tr. 7:23-24);
- Arguments made by the Government that Mr. Melega "stood at the epicenter of the scheme." These arguments were made regarding sentencing, after the guidelines range had been calculated, and were not adopted by the district court, (*Melega,* 173 F.4th at 912; Sent'g Tr. 41:7-12).

REASONS FOR GRANTING THE PETITION

I. This Court Should Clarify the Scope of Appellate Review for Guidelines Determinations Considering Prior Precedent and an Existing Circuit Split.

Mr. Melega's case squarely presents an issue of whether a court of appeals can affirm a Guidelines enhancement based on factual findings the district court did not make. The Supreme Court has addressed a similar question related to a departure under the pre-*Booker* Guidelines in *Williams*, 503 U.S. 193. However, the Court has not addressed the issue related to post-*Booker* enhancements. In the absence of direction from this Court, a split has developed between the circuits. Some authorize appellate courts to search the record for support. Others limit the evaluation to the record the sentencing court actually made. And some circuits are internally inconsistent. This Court's guidance would resolve this split and greatly clarify appellate review of federal sentences.

A. This Court Has Held that Appellate Courts May Not Affirm a Guidelines Departure on Grounds the District Court Did Not Rely On.

The Court took *Williams* to resolve a then-existing split about whether a departure could be affirmed if the "district court's departure … is based on both valid and invalid factors." 503 U.S. at 198. The Court looked to the mandatory nature of the Guidelines and appellate review. 18 U.S.C. §§ 3553(b), 3742. In evaluating what a reviewing court could do when the departure was invalid, the Court determined that the limited nature of appellate review under § 3742(f) was consistent with prior

cases from the Court limiting appellate review of sentences. "[I]t is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence." *Solem v. Helm*, 463 U.S. 277, 290, n.16 (1983). In considering that question in the case, the Court determined that the reviewing court cannot affirm based on an independent analysis of the sentence and case. *Williams*, 503 U.S. at 201.

Williams does not address the circumstances of appellate review when the issue involves a Guidelines enhancement. However, it built on existing precedent and led to following opinions emphasizing the district court findings of fact. *See, e.g., Gall v. United States*, 552 U.S. 38, 49-51 (2007); *Rita v. United States*, 551 U.S. 338, 361-62 (2007) (Stevens, J. concurring). Following *Gall* and *Rita*, as well as *Williams*, the circuits have split on just how to treat inadequate factual findings for Guidelines enhancements.

B. A Circuit Split Exists on Whether a Court of Appeals May Affirm a Guidelines Enhancement on any Ground Supported by the Record When the District Court Did Not Rely on That Ground.

Following *Booker* and the cases that followed, the circuits have had to determine how to evaluate district court Guidelines determinations despite their advisory nature. With regard to the findings necessary to support a base offense level Guidelines enhancement, the circuits have split. One set of courts, including the Second, Fourth, Fifth, Seventh, and Tenth Circuits, allow reviewing courts to affirm on any grounds in the record, even though the district court did not endorse them. The other courts, including the First, Third, and Sixth Circuits, limit appellate courts

to only those findings the district court adopted. This Court should resolve the split to provide what the Guidelines hope to achieve: national uniformity in federal sentencing practices.

1. Circuits where the court of appeals can affirm on grounds not endorsed by the district court

One side of the split generally allows reviewing courts to affirm a district court's Guidelines determination and sentence using any grounds in the record. This includes information that the district court did not endorse. At least the Second, Fourth, Fifth, Seventh, and Tenth Circuits take some form of this approach regarding the Guidelines.[2] The courts generally ground this principle in civil, rather than criminal, cases, but then once extended, extend it to sentencing cases moving forward.

The Fourth Circuit cited and rejected *Williams* in the enhancement context in *United States v. Ashers*, 968 F.2d 411, 414 (4th Cir. 1992). The Fourth Circuit said that "departures from the applicable guideline range, at issue in *Williams*, and enhancements to the offense level resulting in a guideline sentence, at issue here, are fundamentally different under guidelines jurisprudence." *Ashers*, 968 F.2d at 414. It added that any conduct that independently and properly should result in an increase in the offense level therefore justifies its application. *Id.* The Fourth Circuit more plainly stated this principle in *Dennings*, 922 F.3d at 237 n.3, stating, "[f]urther, to the extent that our reasoning differs in any respect from the district court's

[2] *See, e.g., Melega*, 173 F.4th 907; *United States v. McCree*, 160 F.4th 641 (5th Cir. 2025); *United States v. Sumka*, 81 F.4th 1153 (10th Cir. 2023); *United States v. Dennings*, 922 F.3d 232 (4th Cir. 2019); *United States v. Palmer*, 68 F.3d 52 (2d Cir. 1995).

articulated reasons, we are permitted to do so." *Dennings* cites to *United States v. Smith*, 395 F.3d 516, 519 (4th Cir. 2005). *Smith* cited to *MM v. School District*, 303 F.3d 523, 536 (4th Cir. 2002), a civil case involving the Individuals with Disabilities Education Act. This reference to civil cases and procedures from them is a common thread amongst this side of the split.

The Second Circuit takes a similarly broad view. In *Palmer*, 68 F.3d 52, the Second Circuit affirmed a sentence based on the firearm "crime of violence" guideline enhancement on grounds the district court did not state. The Second Circuit disagreed with the district court's actual conclusion regarding whether a Connecticut statute was a crime of violence. *Id.* at 56. However, the court moved on to note that its caselaw allows the circuit to consider an "alternative approach" because it may affirm on any basis. *Id*. (citing *Citrus Mktg. Bd. of Israel v. J. Lauritzen A/S*, 943 F.2d 220, 223 (2d Cir. 1991)). *Citrus Mktg. Bd. of Israel* was a civil case reviewing a district court's dismissal of the case for failure to state a claim. 943 F.2d at 220. The circuit appears to have applied a general appellate principle from civil cases to the Guidelines.

Lastly, the Fifth Circuit likewise applies civil precedent to review of a Guidelines enhancement. In *McCree*, 160 F.4th at 647, the court also used a civil case for the proposition that the court "may affirm on any ground supported by the record [] even if it was not reached by the district court." *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 481 F.3d 309, 311 (5th Cir. 2007). *Moncrief Oil Int'l Inc*. involved review of a dismissal for lack of personal jurisdiction. 481 F.3d at 310.

Despite *Williams*, *Booker*, and the extensive statutes and case law regarding Guidelines sentencing and appellate review of the Guidelines and sentences, these circuits look to civil procedure to provide expansive review of a district court's determinations. This means that on appeal, the entire record, not just the district court's statements or even the entire sentencing hearing, are subject for argument and review. This may involve weighing contradictory and incomplete evidence, or the credibility of assertions or witnesses. On the other hand, other circuits take a more exacting approach to how they review a district court's findings and determinations.

2. Circuits where the court of appeals cannot affirm on grounds not endorsed by the district court

On the other side of the split stands the First, Third, and Sixth Circuits. These courts limit their review to only what the district court itself actually found. If the enhancement cannot stand on what the court said, the reviewing court sends the case back.

The First Circuit has stated its position in multiple cases. In *United States v. Zehrung*, 714 F.3d 628, 631 (1st Cir. 2013), the court reviewed a district court's determination that the defendant deserved an abuse of position of trust enhancement under U.S.S.G. § 3B1.3. While the First Circuit stated that while the district court need not go into "exquisite detail," the circuit still required the district court to have a sufficient basis on the record for an enhancement. *Zehrung*, 714 F.3d at 632. "[I]n the end we must be able to figure out what they 'found *and* the basis for the findings to the extent necessary to permit effective appellate review.'" *Id.* (quoting *United States v. Van*, 87 F.3d 1, 3 (1st Cir. 1996)) (emphasis in original). The court then cited

Rita, noting that it stressed that "[b]y articulating reasons, even if brief, the sentencing judge … assures reviewing courts (and the public) that the sentencing process is a reasoned process[.]" *Rita*, 551 U.S. at 358. Put more plainly, "[w]hile we have on occasion gone to significant lengths in inferring the reasoning behind, and thus in affirming, some less-than-explicit explanations by district courts, there are limits." *United States v. Gilman*, 478 F.3d 440, 446 (1st Cir. 2007) (internal citations omitted). "[I]f we are in fact unable to discern from the record the reasoning behind the district court's sentence, appellate review is frustrated and 'it is incumbent upon us to vacate, though not necessarily to reverse.'" *Id*. at 446-47 (quoting *United States v. Feliz*, 453 F.3d 33, 36 (1st Cir. 2006)).

The Third Circuit has been similarly plain about its position when the district court has not provided sufficient facts to support an enhancement. When reviewing a leadership enhancement, the court stated,

> [w]e are unwilling to speculate about the facts on which it was based, particularly in a situation like this, where the decision may have been based on a credibility determination or where there may be facts beyond the trial record that may have been considered had Tai not withdrawn his objection to the role enhancement.

United States v. Tai, 750 F.3d 309, 320 (3d Cir. 2014).

While not as explicit as its sister circuits, the Sixth Circuit takes a similar position. In *United States v. Alexander*, 59 F.3d 36, 39-40 (6th Cir. 1995), the court reviewed the application of a leadership enhancement under U.S.S.G. § 3B1.1. The court noted that the lower court did not need to specifically state the basis for the enhancement because it presided over the trial. However, the court added that it "is

preferable that trial courts indicate the factual basis," otherwise it requires courts to review *de novo* the trial and sentencing record. *Alexander*, 59 F.3d at 39. The court believed that was not what the United States Sentencing Commission intended and that a defendant having to appeal such an enhancement would have to challenge "*every* fact in the record that could possibly lead an appellate court to affirm the enhancement, even if different than the facts upon which the sentencing court relied." *Id*. (emphasis in original). Consistent with its sister circuits, the court does not require significant findings, just "minimal steps to provide defendants with a clear basis for their sentence enhancements, and appellate courts with a clear basis for review." *Id*. at 40.

While these circuits review more narrowly, there are also cases from the other circuits with broader, searching review that also appear to suggest caution or more exacting standards from the district court in some cases. For example, in *United States v. Goodwin*, 391 Fed. App'x 988 (2d Cir. 2010) (unpublished), the Second Circuit remanded a case involving a crime of violence enhancement under U.S.S.G. § 2K2.1 due to insufficient district court findings. In doing so, the court concluded that "[b]ecause we do not know whether the district court would apply the enhancement absent the erroneous factual finding it relied on, and, because the facts in dispute have not been found by the district court, we remand … ." *Goodwin*, 391 Fed. App'x at 991. The Fifth Circuit acted similarly in case involving the maintaining of a premises for drug manufacturing or distribution. *United States v. Le*, 126 F.4th 373 (5th Cir. 2025). While restating the Fifth Circuit's position on wide grounds for

affirmance, it required that the ground "must have been advanced" before the court. *Le*, 126 F.4th at 381 (internal citation omitted). Lastly, the Seventh Circuit has not been rigidly consistent with its practice. In *United States v. Hopper*, 934 F.3d 740, 769 (7th Cir. 2019), the court reviewed a relevant conduct drug quantity. Like the Fifth Circuit in *Le*, the Seventh Circuit remanded because the ground advanced for affirmance was not presented to the district court. *Hopper*, 934 F.3d at 770.

Collectively, these courts apply greater scrutiny and require more from district courts, or at least the records before them, to sustain guidelines enhancements. These circuits appear to follow the Court's sentencing cases and other bodies of sentencing law to take their positions. Mr. Melega's case then presents a clear opportunity to resolve these different approaches.

C. Mr. Melega's Case Squarely Presents This Issue for the Court to Consider.

The opinion in Mr. Melega's case sifts the record and selects comments made by the district court and the Government during the sentencing hearing, inappropriately treating them as findings of fact to support Mr. Melega's sophisticated means enhancement. Several times throughout its opinion, the Seventh Circuit relies on statements taken out of context, statements made in passing in the lead up to questions, or those that contradict the record itself. This shows the potential dangers of an expansive view of the "affirm on any grounds" principle and where tension arises with *Williams* and other cases from this Court.

One example of this comes when the opinion discusses Mr. Melega's role in the scheme, but in apparent rationale for the sophisticated means enhancement. The decision states that "Melega went much further. As I-80's controller, he stood at the epicenter of the scheme, not only handling the procurement and submission of fraudulent loan requests but also participating in financial decisions about when and how to request and divert funds." *Melega*, 173 F.4th at 912. When looking back to Mr. Melega's sentencing transcript, this was a statement the Government made, not the district court. (Sent'g Tr. 40:1-18.) Nor does the district court directly agree with this statement or make a finding of fact regarding Mr. Melega's role in the offense relating to sophistication. Rather, it just acknowledged the scheme itself was sophisticated and Mr. Melega was aware of the operations. (Sent'g Tr. 17:8-13.)

The opinion acted similarly when it relied on the following statements as the factual basis to affirm the sophisticated means enhancement beyond what the district court found:

- "Melega hid his deception by directing I-80 employees to make excuses about why vehicles were missing when banks showed up to conduct inspections. Melega may not have lied to bank inspectors himself, but he caused others to do so." *Compare Melega*, 173 F.4th at 912 *with* Sent'g Tr. 15:21-16:4.
- "In the final analysis, Melega's actions evinced a 'greater level of planning or concealment' than the typical bank fraud." *Compare Melega*, 173 F.4th at 912 *with* Sent'g Tr. 13:6-8.

- "Melega actively planned, coordinated, and concealed the fraud. He was more than a conduit or middleman." *Compare Melega,* 173 F.4th at 913 *with* Sent'g Tr. 45:21-24.
- "Unlike Jones, Melega downplayed his role and misconduct in a letter to the district court. He cast himself as 'ignorant and passive to the things going on around [him],' in stark contrast to the record evidence." *Compare Melega*, 173 F.4th at 915 *with* Sent'g Tr. 45:2-46:18.

These alleged findings were Government arguments, not what the district court specifically adopted. In the opinion, these statements are presented, uncited, as found fact. However, the district court itself never makes statements like these nor any similar findings of fact.

The only finding the district court appeared to make for the sophisticated means enhancement is brief. The court stated that Mr. Melega's knowledge and involvement in redirecting or hiding assets, without elaboration, would qualify. (Sent'g Tr. 17:8-13.) Essentially, Mr. Melega's broad knowledge was enough.

The opinion also takes statements that the district court made out of context. For example, the opinion states that "[t]he court also underscored the sophistication of Melega's actions, identifying his role in 'procur[ing]' false documents and 'produc[ing]' them to the banks … ." *Melega*, 173 F.4th at 911. However, this is taken from a question that the district court asked, and not a definitive statement. (Sent'g Tr. 7:15-24.) In context, the district court was asking for clarification on the

arguments made by each party, not making a finding of fact regarding Mr. Melega's individual sophisticated conduct.

Should the opinion stand, it draws the "affirm on any grounds" principle directly into contradiction with the need for sentencing court factfinding and the approach this Court takes to requiring both an adequate explanation for a given sentence and a sufficient record for appellate review. The implications of the broadening of the "affirm on any grounds" line of cases in *Melega* risks undercutting those sentencing processes, the meaningfulness of appellate review, and reshapes the incentives in and perceptions of federal sentencing.

While this Court has not squarely addressed this question, it did set out the fact that district courts must explain their Guidelines decisions adequately for appellate review. *Gall*, 552 U.S. at 49-50. However, rather than require that, *Melega* shifts the work from the government and district courts to this courts of appeals. The basis for the sentence is no longer what was articulated or found below; it is whatever a reviewing court can construct above.

Procedural fairness and transparency are principles on which federal sentencing and the Guidelines rest. U.S.S.G. § 1A1.1, Background (2025) (noting that the Sentencing Reform Act of 1984 provides for the development of Guidelines that will "provide certainty and fairness in meeting the purposes of sentencing…"). However, for a defendant sentenced for one reason, only to have their sentence affirmed for another, that perception of fairness is weakened. This most directly impacts the defendant in question, but it more broadly draws into question the

community's ability to trust the sentencing process. For that reason, the Court should accept Mr. Melega's case to squarely address this issue.

CONCLUSION

For these reasons, Mr. Melega asks the Court to issue a Writ of Certiorari and review this case on the merits.

Date: _____

Respectfully Submitted,

_____

Adam Stevenson
Clinical Professor
Supreme Court Bar No. 295931

Frank J. Remington Center
University of Wisconsin Law School

Attorney for Petitioner,
MITCHELL MELEGA