No. _____

In the Supreme Court of the United States

KETRIC DWANE TURNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

J. Matthew Wright
Counsel of Record
Office of the Federal Public Defender
Northern District of Texas
600 South Tyler Street
Suite 2300
Amarillo, Texas 79101
(806) 324-2370
Matthew_Wright@fd.org

Counsel for Petitioner

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QUESTION PRESENTED

Though they are now advisory rather than mandatory, the U.S. Sentencing Guidelines remain the "starting point" and "lodestar" of federal sentencing. *Molina-Martinez v. United States*, 578 U.S. 189, 200 (2016). This Court has held that a defendant mistakenly sentenced under "an incorrect, higher Guidelines range" can—and in "most cases" will—show that the error affected his substantial rights. *Id.* at 200–01.

Even so, many federal judges routinely assert that the sentence they selected after calculating and considering the Guidelines range would be the same even if the Guidelines range were different. Empirical data suggests that these assertions are often wrong.

Where a district court commits a plain error in calculating the Guidelines range, imposes a sentence within the erroneous range, and then makes a routine disclaimer, does that disclaimer serve as a *per se* bar to appellate relief under Federal Rule of Criminal Procedure 52(b)?

PARTIES TO THE PROCEEDING

Petitioner is Ketric Dwane Turner, 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. Ketric Dwane Turner, 2:24-cr-72 (Judgment entered June 11, 2025.)

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

United States v. Ketric Dwane Turner, No. 25-10740 (Judgment entered Aug. 3, 2026.)

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Ketric Dwane Turner 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.

OPINIONS BELOW

The Fifth Circuit's opinion was not selected for publication. It can be found at 2026 WL 2244201. The opinion is reprinted on pages 1a–12a of the appendix to this petition.

The district court entered no written opinion. The sentencing transcript was filed under seal. *See* 5th Cir. ROA 108–137.

JURISDICTION

The Court of Appeals entered its judgment on August 3, 2026. This Court would have jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS AND RULES INVOLVED

Title 18, Section 3742 of the U.S. Code provides, in pertinent part:

> (a) **Appeal by a defendant**.--A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—
>
> * * * *
>
> (2) was imposed as a result of an incorrect application of the sentencing guidelines;
>
> * * * *
>
> (f) **Decision and disposition**.--If the court of appeals determines that--
>
> (1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate.

Federal Rule of Criminal Procedure 52 provides:

> (a) **Harmless Error**. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

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

STATEMENT

Petitioner Ketric Dwane Turner pleaded guilty of failing to update his registration in violation of the Sex Offender Registration and Notification Act, 18 U.S.C. § 2250(a). When calculating the Sentencing Guidelines range, the district court made a mistake in analyzing a prior conviction. Because of that error, the court adopted a Guidelines range of 30–37 months' imprisonment. From that starting range, the court selected and imposed a prison term of 36 months in prison, explicitly describing it as "a sentence within the advisory guidelines range." 5th Cir. ROA 123.

On appeal, Mr. Turner showed that his Guidelines range should have been 21–27 months. The Government did not dispute that error, and the Fifth Circuit agreed that the district court erred when analyzing the prior conviction and calculating the Guidelines range. App., *infra*, 4a.

Because the error went unnoticed in district court, Mr. Turner had to convince the appellate court that the error affected his substantial rights, which in this context means he needed to "'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)). On this record, Mr. Turner had plenty of ammunition to make that showing.

The record suggests that the court and the parties expected the Guidelines range to be both the starting point and the probable ending point in deciding the sentence. For example, long before it knew what the Guideline calculations might be, the district court ordered the parties to file any request for a non-Guidelines-range sentence in writing, well before the sentencing hearing. Turner C.A. Br. 28–29; *see* 5th Cir. ROA 56. At that hearing, the court announced that it would accept the plea agreement because "[a]ll relevant conduct" would be "taken into consideration in the calculation of the offense level." Turner C.A. Br. 29 (quoting 5th Cir. ROA 112). Before finalizing its calculations, the court said it would use the Guidelines range as its "starting point." 5th Cir. ROA 116. And the court inquired about certain aspects of the proposed Guidelines calculations, even though neither party had objected to them. Turner C.A. Br. 29–30; 5th Cir. ROA 113–116.

The court announced a tentative determination "that a sentence within the advisory guidelines range is appropriate and necessary to give the [18 U.S.C. § 3553(a)] factors appropriate weight, but that's without prejudice to either side arguing for a particular point *within that advisory guideline range*." 5th Cir ROA 118 (emphasis added).

A. After expressly choosing a sentence "within the advisory guideline range," the district court asserted that the sentence would have been the same "regardless and irrespective of" that range.

After adopting the (erroneous) range of 30–37 months, the court reminded the parties that any request for a non-Guidelines-range sentence would be "untimely." 5th Cir. ROA 118. Both sides tailored their arguments to the Guidelines range adopted by the court. The prosecutor requested "a sentence at the top of the guidelines, 37 months," and defense counsel asked for a sentence "within the guideline range." 5th Cir. ROA 119. The court imposed a sentence of 36 months in prison: "This represents a sentence within the advisory guideline range." 5th Cir. ROA 123.

Later, after extensive attention to the Guidelines, the court made a curious assertion:

> Finally, even if the correct advisory guidelines range was not considered, the Court would have imposed the same sentence for the same reasons stated at the sentencing hearing regardless and irrespective of the applicable advisory guidelines range.

5th Cir ROA 130.

B. The district court makes that same assertion in every sentencing hearing.

The judge who sentenced Mr. Turner makes the same assertion in every case he sentences. The boiler-

plate disclaimer is truly routine. Mr. Turner's attorneys conducted a review of every initial-sentence appeal from the Amarillo Division of the Northern District of Texas between July 1, 2024, and June 30, 2025. *See* Turner C.A. Br. 31–34, reprinted at App., *infra*, 13a–16a. In 23 of those 30 cases (i.e., more than 75%), the court imposed a within-Guideline-range sentence. In *every* case, the district court asserted that the sentence would have been the same even if the Guideline calculation was wrong.

C. Applying a *per se* rule that Guidelines disclaimers foreclose appellate review of forfeited Guidelines errors, the Fifth Circuit affirmed.

On appeal, the Fifth Circuit recognized that the district court miscalculated the Sentencing Guidelines, but affirmed anyway. Under that court's precedent, a defendant is categorically incapable of showing that a Guideline-calculation error affected his substantial rights if the district court asserted that the sentenced would be the same even if it calculated the Guidelines incorrectly. In this case, the court applied its *per se* rule despite evidence that the sentencing court imposes a Guideline-range sentence in the vast majority of cases but also disclaims any connection between the Guidelines and the sentence selected in all of its cases.

The Sentencing Guideline for SORNA violations is found at U.S.S.G. § 2A3.5. To apply that guideline, the district court must first identify the defendant's tier. "SORNA classifies offenders into three tiers" based on the severity of the defendant's relevant convictions. *United States v. Montgomery*, 966 F.3d 335, 337 (5th

Cir. 2020). Getting the tier right is difficult but critically important. The defendant's tier determines the duration of his federal obligation to register as a sex offender. *See* 34 U.S.C. § 20915(a). The tier also affects the Sentencing Guideline calculation. The pertinent guideline calls for a higher base offense level (and thus recommends a longer sentence) for offenders in tier II or tier III. *See* U.S.S.G. § 2A3.5(a)(1), (a)(2), (a)(3).

Here, the district court made a mistake in analyzing the tier, but the parties overlooked that mistake prior to the appeal. Experience and precedent suggest that tier-selection errors are common in SORNA prosecutions; often, those errors are first discovered while the case is on appeal. *See*, e.g., *Montgomery*, 966 F.3d at 339; *United States v. Escalante*, 933 F.3d 395, 400–06 (5th Cir. 2019); *United States v. Navarro*, 54 F.4th 268, 277–82 (5th Cir. 2022).

Mr. Turner was under a federal obligation to register because of a 2015 conviction in Georgia state court. 5th Cir. ROA 49–51, 162. Believing that the offense made Mr. Turner a tier III offender, the district court adopted an erroneously inflated guideline range of 30–37 months. 5th Cir. ROA 116. In fact, Mr. Turner was a tier I offender under SORNA. His true guideline range was 21–27 months. The Fifth Circuit acknowledged that the district court erred when it adopted the higher Guidelines range. App., *infra*, 4a.

Because Mr. Turner first raised this error on appeal, he had the burden of showing that it affected his substantial rights. *Molina-Martinez*, 578 U.S. at 194. He urged the Fifth Circuit to look beyond the boilerplate disclaimer. He pointed to previous cases where

the court vacated a sentence despite a disclaimer, and to the appellate court's own recognition that "district courts often impose lighter sentences when confronted with a sentencing error no matter how emphatically they indicate otherwise." *United States v. Redmond*, 965 F.3d 416, 422 (5th Cir. 2020). But the Fifth Circuit only remands where the *Government* bears the burden of proving harmlessness. Where, as here, the defendant must show prejudice, the Fifth Circuit treats a disclaimer as dispositive. App., *infra*, 7a & n.2.

REASONS FOR GRANTING THE PETITION

I. The lower courts are divided about the propriety of routine Guidelines disclaimers.

The circuits are divided on the permissibility of routine Guidelines disclaimers, and consequently divided over the weight such statements should be given in the analysis of prejudice.

1. The Second, Third, Seventh, Ninth, and Tenth Circuits have all rejected routine Guidelines disclaimers like the one here.

A sentencing court in the Second Circuit should "not try to answer the hypothetical question of whether or not it definitely would impose the same sentence on remand if [the court of appeals] found particular enhancements erroneous." *United States v. Feldman*, 647 F.3d 450, 460 (2d Cir. 2011). "Nor do we believe that criminal sentences may or should be exempted from procedural review with the use of a simple incantation: 'I would impose the same sentence regardless of any errors calculating the applicable Guidelines range.'" *Id.* As that court explained in *United States v. Seabrook*, 968 F.3d 224, 233–34 (2d

Cir. 2020): "[T]he district court cannot insulate its sentence from our review by commenting that the Guidelines range made no difference to its determination when the record indicates that it did."

In the Third Circuit, a disclaimer alone is not enough. The sentencing court would have to conduct a full, three-step sentencing process before selecting a valid alternative sentence: (1) calculate the correct Guidelines range as a starting point; (2) decide whether to depart under the Guidelines; and then (3) weigh the 18 U.S.C. § 3553(a) factors to determine whether a variance is appropriate. *United States v. Wright*, 642 F.3d 148, 154–55 & n.6 (3d Cir. 2011). That did not happen here.

In the Seventh Circuit, the Sentencing Reform Act does not "permit the judge to nullify the guidelines by way of a simple assertion that any latent errors in the guidelines calculation would make no difference to the choice of sentence." *United States v. Asbury*, 27 F.4th 576, 581 (7th Cir. 2022). "A generic disclaimer of all possible errors will not do." *Id.* Critically, the court would need to explain *why* a specific error would not "affect the ultimate outcome." *Id.* at 581–82 (quoting *United States v. Bravo*, 26 F.4th 387, 397 (7th Cir. 2022)).

The Ninth Circuit agrees: a Guideline disclaimer is only effective if the district court "performs its sentencing analysis twice." *United States v. Williams*, 5 F.4th 973, 978 (9th Cir. 2021) (quoting *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011)) (cleaned up). A "mere statement" that the court would impose the same sentence "'no matter what the correct calculation cannot, without more, insulate the sentence from remand' if 'the court's analysis did not

flow from an initial determination of the correct Guidelines range.'" *Id.* (quoting *Munoz-Camarena*, 631 F.3d at 1031).

The Tenth Circuit gives "little weight to the district court's statement that its conclusion would be the same 'even if all of the defendant's objections to the presentence report had been successful.'" *United States v. Gieswein*, 887 F.3d 1054, 1062–63 (10th Cir. 2018). That court "has rejected the notion that district courts can insulate sentencing decisions from review by making such statements." *Id.* (citing *United States v. Pena-Hermosillo*, 522 F.3d 1108, 1109 (10th Cir. 2008)).

2. The First, Fourth, Eighth, and Eleventh Circuits take a different view. Those courts treat disclaimers as magic words that inoculate a sentence from further appellate review.

The decision in *United States v. Ouellette*, 985 F.3d 107 (1st Cir. 2021), is typical: "Because the district court made clear that it would have imposed the same sentence regardless of the Guidelines, any alleged error in calculating Ouellette's [base offense level] is harmless." *Id.* at 110.

The Fourth Circuit agrees with the First: a district court can insulate its sentence from appellate review of Guidelines errors if it "expressly state[s] in a separate and particular explanation that it would have reached the same result" if the Guideline calculation came out differently. *United States v. Gomez-Jimenez*, 750 F.3d 370, 383 (4th Cir. 2014), as corrected (Apr. 29, 2014).

The same regime applies in the Eighth Circuit, according to *United States v. Still*, 6 F.4th 812 (8th Cir.

2021). A court in that circuit simply has to announce that "it would have alternatively imposed the same sentence even if a lower guideline range applied." *Id.* at 818.

So, too, in the Eleventh Circuit. In *United States v. Keene*, 470 F.3d 1347 (11th Cir. 2006), the district court asserted "that even if the guideline calculations are wrong, my application of the sentencing factors under Section 3553(a) would still compel the conclusion that a 10-year sentence [120 months] is reasonable and appropriate under all the factors that I considered." *Id.* at 1349. The court held that any error was harmless.

3. The Fifth Circuit cannot easily be sorted into one camp or the other. Some panels agree with the Second, Third, Ninth, and Tenth Circuits. *See*, e.g., *United States v. Ritchey*, 117 F.4th 762, 767 (5th Cir. 2024) ("This statement is relevant to the harmless error inquiry, but it is not decisive."); *United States v. Tanksley*, 848 F.3d 347, 353 (5th Cir. 2017) ("Nonetheless, it is not enough for the district court to say the same sentence would have been imposed but for the error."); *United States v. Martinez-Romero*, 817 F.3d 917, 925–26 (5th Cir. 2016) ("The court stated three times that even if the 16-level enhancement for the attempted kidnapping was incorrect, it would nonetheless impose the same 46-month sentence … [T]he sentencing error [was] not harmless.").

Other published decisions hold (or at least assume) that a district court's Guidelines disclaimer prevents any finding of prejudice. See, e.g., *United States v. Reyna-Aragon*, 992 F.3d 381, 387–89 (5th Cir. 2021); *United States v. Medel-Guadalupe*, 987 F.3d 424, 429 (5th Cir. 2021); *United States v. Vega-Garcia*, 893 F.3d

326, 328 (5th Cir. 2018); *United States v. Guzman-Rendon*, 864 F.3d 409, 411–12 (5th Cir. 2017).

There are cases where the Fifth Circuit has held that it will defer to some, but not all, Guidelines disclaimers. In *United States v. Richardson*, 676 F.3d 491, 512 (5th Cir. 2012), the court suggested that the district court must first have "considered all of the possible guidelines ranges that could have resulted if it had erred" in calculating the Guidelines range. Under that rubric, Mr. Turner would have prevailed. The district court never considered the correct Guidelines range when calculating the sentence.

But the panel below took a different view. The court acknowledged that a "blanket disclaimer" falls short of proving harmlessness where the error was preserved. App., *infra*, 7a n.2. But the court contrasted review for harmless error (where the Government has the burden of negating prejudice) and review for plain error (where the burden lies with the defendant).

II. When a judge usually sentences within the Guidelines range, but then routinely disclaims reliance, those disclaimers should be viewed with skepticism.

Because Guideline errors are *usually* prejudicial, appellate courts should be skeptical of *routine* Guidelines disclaimers. *Molina-Martinez* recognized that there may be some "unusual" cases where a plain Guidelines-calculation error would not affect the defendant's substantial rights. 578 U.S. at 201. For example, there may be some cases where the court's explanation for the sentence "could make it clear that the judge based the sentence he or she selected on factors independent of the Guidelines." *Id.* at 200.

But where a court typically sentences defendants *within* the calculated Guidelines range, and only rarely sentences *above* that range, there is strong reason to doubt a routine disclaimer asserting that the sentence would be the same, even if the Guideline range were lower.

That does not mean that the sentencing judges are "lying" when they make routine disclaimers, as one member of this Court recently suggested. *See* Oral Argument Tr. 25, *Beaird v. United States*, 25-5343 (U.S. Oct. 13, 2026). It is much more likely that these courts systematically underestimate the Guidelines' powerful anchoring effect. After all, judges remain human, and it is very difficult for humans to avoid the distorting effects of confirmation bias. An unnoticed Guideline error can be especially pernicious because it will also affect the behavior and advocacy of the parties and the U.S. Probation Office.

Above-Guideline-range sentences are relatively rare. The best available empirical data shows that the Guidelines have a strong anchoring effect, nationwide and in the Northern District of Texas specifically. *See* Table 8 in U.S. Sentencing Commission, *Sourcebook of Annual Sentencing Statistics: Statistical Information Packet*, Fiscal Year 2024, Northern District of Texas, online at https://perma.cc/QN96-YKHU. For SORNA cases specifically, federal courts sentenced 1,497 individuals using U.S.S.G. § 2A3.5 as the primary offense Guideline during fiscal years 2019–2013. Only 55 people—fewer than 4%—were sentenced above the applicable Guidelines range. *See* U.S. Sentencing Commission, Commission Datafiles, online at https://perma.cc/6SUJ-ZWZB.

Recall that, even under plain-error review, a defendant need only show a "reasonable probability" that the error affected his sentence. *Molina-Martinez*, 578 U.S. at 194. "Reasonable probability" does not mean 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, 405–06 (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).

There are surely "unusual" cases where a Guideline error does not affect the sentence selected. But a universal disclaimer is too blunt an instrument to identify those rare situations. This Court should hold that routine Guideline disclaimers may be overcome upon a sufficient showing that the Guidelines played an important role in the sentencing process.

III. Allowing a sentencing court to unilaterally opt out of appellate review is inconsistent with the text and purpose of the Sentencing Reform Act.

"Before the Guidelines system, a federal criminal sentence within statutory limits was, for all practical purposes, not reviewable on appeal." *Koon v. United States*, 518 U.S. 81, 96 (1996). As part of the Sentencing Reform Act, Congress decreed that defendants *could* appeal a sentence "that was imposed as a result of an incorrect application of the sentencing guidelines." 18 U.S.C. § 3742(a)(2). Even though the Guidelines are now advisory, appellate courts remain under

congressional command to "remand" a case for resentencing if "the sentence was … imposed as a result of an incorrect application of the sentencing guidelines." § 3742(f)(1).

Early on, this Court recognized that the vast majority of Guideline errors would lead to resentencing:

> [O]nce the court of appeals has decided that the district court misapplied the Guidelines, a remand is appropriate unless the reviewing court concludes, on the record as a whole, that the error was harmless, *i.e.*, that the error did not affect the district court's selection of the sentence imposed.

Williams v. United States, 503 U.S. 193, 203 (1992). Appellate review remains a critical part of the federal sentencing regime. *See Rita v. United States*, 551 U.S. 338, 350 (2007) ("The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process.").

No statute authorizes an escape hatch for district judges seeking to short-circuit the appellate process. On the contrary, Congress unambiguously required careful appellate review to discover and correct any mistakes in the Guidelines' application. By allowing a district court to avoid congressionally mandated appellate review by a routine incantation, the decision below goes against statutory text and purpose. The same could be said of many similar decisions in the First, Fourth, Fifth, Eighth, and Eleventh Circuits.

This is exactly the sort of error that endangers the public reputation of the judiciary: "what reasonable

citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands?" *Rosales-Mireles v. United States*, 585 U.S. 129, 141 (2018) (quoting *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333–34 (10th Cir. 2014)). This Court should grant this petition and correct these erroneous decisions.

CONCLUSION

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

Respectfully submitted,

J. Matthew Wright
Counsel of Record
Office of the Federal Public Defender
Northern District of Texas
600 South Tyler Street
Suite 2300
Amarillo, Texas 79101
(806) 324-2370
Matthew_Wright@fd.org