No. _____

In The

Supreme Court of the United States

DARYL SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the government honors a plea agreement requiring it to recommend a sentence within the advisory Sentencing Guidelines range when it formally recites that recommendation but, in the same sentencing presentation, repeatedly characterizes the defendant's criminal history as understated, emphasizes inflammatory allegations, and advances arguments that the sentencing court adopts in imposing a sentence far above that range; and whether a general provision allowing the government to respond to the defendant's statements permits advocacy inconsistent with the promised recommendation.

LIST OF PARTIES

DARYL SMITH, *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

RELATED PROCEEDINGS

1. *United States v. Daryl Smith*, No. 5:24-cr-00015, United States District Court for the Northern District of West Virginia. Judgment entered February 26, 2025.

2. *United States v. Daryl Smith*, No. 25-4122, United States Court of Appeals for the Fourth Circuit. Judgment entered August 5, 2026.

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PETITION FOR WRIT OF CERTIORARI

Daryl Smith, an inmate currently incarcerated at Hazelton FCI in Bruceton Mills, WV by and through Richard W. Weston, Criminal Justice Act panel attorney, respectfully petitions this Court for a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals.

OPINIONS BELOW

The opinion of the United States Fourth Circuit Court of Appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

The court of appeals entered judgment on August 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V provides:

> No person shall ... be deprived of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

Petitioner pleaded guilty to distribution of cocaine base under 21 U.S.C. § 841(a)(1), (b)(1)(C). In exchange, the government agreed to dismiss other counts and to recommend a sentence within the applicable Guidelines range. The sentencing court calculated an offense level of 12, criminal-history category III, and an advisory range of 15 to 21 months.

At sentencing, Smith disputed aspects of his presentence report, including descriptions of dismissed allegations and the assessment of criminal-history points. The government responded by emphasizing old and prejudicial allegations, repeatedly describing Smith's criminal history as "understated," and stating that he could not comply with the rules of society. Only after that presentation did it recommend a Guidelines sentence, prefaced by "despite all of that."

The district court adopted the prosecution's framing. It called the criminal history "lengthy, violent, and extremely understated," echoed the government's concern about Smith's inability to comply with society's rules, and imposed 120 months' imprisonment—more than five times the top of the advisory range. The statement of reasons also described the criminal history as extremely understated.

On appeal, Smith argued that the government's nominal recommendation did not satisfy its promise because its substantive presentation invited a substantial upward variance. The Fourth Circuit affirmed. Applying plain-error review because no contemporaneous objection was made, it reasoned that the government had expressly recommended a Guidelines sentence and that its criminal-history discussion was

permissible rebuttal to Smith's statements under the agreement. The court acknowledged that the government "did spend much of its time at sentencing emphasizing Smith's understated criminal history."

REASONS FOR GRANTING THE WRIT

I. The decision raises an important question about the substance of prosecutorial promises in plea bargaining.

In *Santobello v. New York*, 404 U.S. 257, 262 (1971), this Court held that when a guilty plea rests significantly on a prosecutorial promise, that promise must be fulfilled. A promised recommendation is not meaningful if the government can formally utter the agreed words while directing the substance of its advocacy toward the opposite result. Plea bargaining depends on the reliability of commitments made in exchange for surrendering trial rights.

The government here agreed to recommend a sentence within 15 to 21 months. Yet it characterized the criminal-history score as understated, a concept associated with upward departures under U.S.S.G. § 4A1.3, and described Smith as unable to obey society's rules. The sentencing judge adopted those very themes and imposed ten years. The question is not whether a prosecutor must conceal the defendant's history; it is whether the prosecutor may use that history affirmatively to undermine the very recommendation it promised to make.

II. A rebuttal clause should not be construed to swallow the sentencing promise.

The Fourth Circuit relied on the agreement's reservation of the government's right to respond to statements by Smith or his counsel. But responding to an asserted

factual inaccuracy is different from making an affirmative sentencing argument that the criminal-history category is understated and that the defendant cannot comply with society's rules. A general rebuttal clause and a specific sentencing commitment should be construed together so each retains meaning.

Smith challenged the inclusion and accuracy of allegations in the presentence report. The prosecution could have answered those challenges without repeatedly advancing a theory that the sentencing court ultimately used to justify a dramatically higher sentence. If a general right of reply permits the government to negate a specific promised recommendation, the promised benefit of the plea bargain becomes contingent on the defendant's silence at sentencing.

III. The plain-error posture presents an obstacle, but does not erase the underlying question.

Because defense counsel did not object, the court of appeals applied the plain-error framework of *Puckett v. United States*, 556 U.S. 129 (2009). That posture makes review more difficult. But Puckett did not eliminate the obligation to honor plea bargains; it supplied the framework for assessing unpreserved breaches. Here, the district court's repetition of the government's characterization and the magnitude of the variance illustrate why the distinction between a genuine recommendation and a formal recitation matters.

The court below found no clear breach in light of the response clause. Petitioner submits that the decision permits an overly formalistic reading of a prosecutor's obligation: the government can say the agreed sentence once while spending the substance of its presentation making the case for a far greater one. This Court should

clarify the relationship between the government's express promise, its reserved right to rebut, and the requirement that its recommendation be genuine.

CONCLUSION

This court should grant certiorari.

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