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Disarming the Trial Penalty, One Sentencing Guideline at a Time

Introduction

In the half century since the Supreme Court explicitly affirmed the constitutionality of plea bargaining, criminal trials have all but disappeared.[1] This is due, in part, to the fact that the government has a nuclear arsenal at its disposal to convince criminal defendants to bargain away their Sixth Amendment right to trial. Prosecutors, after all, control nearly all aspects of plea negotiations, from timing to offer conditions. They choose the charges to bring, sometimes inflating the substance and number of those charges to pressure defendants with crippling carceral terms based on statutory mandatory minimums; and they take advantage of pretrial detention's psychological and physical pressures, the informational imbalances between prosecutor and defendant, and chronically overtaxed and underpaid public defenders to convince defendants to skip trial.[2] Their weapons even extend to the Sentencing Guidelines (the "Guidelines"), which offer rewards for pleading guilty and thereby convince defendants to cut a deal rather than risk a lengthy prison term.[3] Taken together, these tools and norms feed the coercive power of plea bargaining's "trial penalty," in which criminal defendants who choose to exercise their Sixth Amendment right to trial and reject a plea deal face exponentially higher sentences than those who plead out.[4] "Faced with this choice, individuals almost uniformly surrender the right to trial rather than insist on proof beyond a reasonable doubt," compromising what the founders called "'the heart and lungs' of liberty."[5]

Up until now, the courts routinely blessed these tactics. Consider the Guidelines' "acceptance of responsibility" provision, § 3E1.1. Section 3E1.1 permits a judge to reduce a convicted defendant's calculated offense level and the corresponding length of his suggested term of incarceration if, during plea negotiations, he truthfully and quickly admits or does not falsely deny the charged conduct.[6] It contemplates two distinct reductions. Section 3E1.1(a) permits a two-point reduction in a Guidelines-prescribed offense level based on a defendant's "acceptance of responsibility," which is generally satisfied when a defendant pleads guilty.[7] When that defendant's offense level is set at 16 or greater, § 3E1.1(b) permits a further one-point reduction if the government determines that the defendant pleaded guilty quickly enough, thus conserving prosecutorial and judicial resources in the lead-up to trial.[8] Most courts have upheld § 3E1.1's reductions as constitutional, reasoning that the recommendation codifies a tradition of leniency in sentencing, does not unduly coerce defendants during plea negotiations, and otherwise serves judicial economy and the efficient resolution of criminal proceedings.[9]

But Judge Jed Rakoff of the Southern District of New York disagreed in a March 2025 ruling. In his pre-sentencing advisory opinion, *United States v. Tavberidze*, Judge Rakoff sidestepped the constitutionality of § 3E1.1(a)'s two-point reduction but held that § 3E1.1(b)'s

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one-point reduction unconstitutionally burdened defendants' Sixth Amendment right to trial.[10] His decision is a rallying cry for critics of the trial penalty, and it offers hope for criminal law practitioners seeking to challenge the system of judicial norms and tools that doom criminal defendants to "a system of pleas, not a system of trials."[11] At the same time, however, Judge Rakoff's decision in *Tavberidze* — like the circuit courts that have considered § 3E1.1's constitutionality — largely declined to identify or otherwise supply a test for when a policy, practice, or recommendation imposes an unconstitutional burden on the exercise of the Sixth Amendment right to trial. In short, *Tavberidze* gives criminal defense lawyers a holding to oppose the tools that facilitate the trial penalty, but it does not provide the framework.

Accordingly, this articles fills the framework gap left by *Tavberidze* by (1) suggesting a factor-based test for unconstitutional burdens on the Sixth Amendment right to trial; (2) applying that test, thus illustrating how those factors underscore § 3E1.1(b)'s unconstitutionality; and (3) providing the framework for practitioners to urge the application of § 3E1.1(b)'s one-point reduction at sentencing, regardless of whether their client pleads guilty. In so doing, the article offers tools and strategies for criminal defense attorneys to work toward neutralizing some of those norms, features, and practices that fuel the trial penalty. Of course, a one-point reduction may have minimal or no real impact on a client other than one whose likely sentence straddles sentencing zones and those zones' sentencing options. But chipping away at the trial penalty is no small feat, and no single strategy can hope to accomplish that goal. Judicial opinions like Judge Rakoff's that even recognize a potential constitutional infirmity in the sentencing system are exceedingly rare, so advocates should capitalize on them to the greatest extent possible.

I. Unconstitutionally Burdening the Right to Trial: A Proposed Test

The Sixth Amendment guarantees criminal defendants "the right to a speedy and public trial, by an impartial jury."[12] Although plea bargaining "constitutes a waiver of the fundamental right to a jury trial,"[13] the Supreme Court has deemed it constitutional so long as there is "fairness in securing agreement between an accused and a prosecutor."[14] To constitute a "fair" plea, it must "be voluntary and knowing"[15] and free of threat or coercion.[16]

That standard is not well defined. And still less clear is when a Guidelines' recommendation might unconstitutionally compromise the plea bargaining process, thus unlawfully burdening a defendant's Sixth Amendment right to trial. Thankfully, the courts have offered a few hints from which a test might be pieced together.

First, the Court has long considered separation-of-powers concerns in sentencing, repeatedly emphasizing that a judge's ability to "reject a plea in exercise of sound judicial discretion" contributes to that sentence's fairness and the constitutionality of its imposition.[17] Indeed, when the Court invalidated the mandatory application of the Guidelines in *United States v. Booker*, it did so in large part because the Guidelines constrained judges' traditional supervisory role when imposing a sentence.[18] So too for the circuit courts who, in affirming § 3E1.1's broad constitutionality, have underscored that the Guidelines' "acceptance of responsibility" deduction is part-and-parcel with judges' traditional powers at sentencing.[19] Those courts, second, have also measured § 3E1.1's constitutionality by focusing on its practical dimensions, reasoning that § 3E1.1 promotes "judicial and law enforcement economy," as well as the "societal interest in the reduction of crime, restitution, early withdrawal from criminal activity, . . . and the increased potential for rehabilitation among those who feel and show true remorse for anti-social conduct."[20] Third and finally, courts have considered § 3E1.1's constitutionality by weighing whether it unnecessarily interferes with a defendant's ability to adequately negotiate a fair bargain — albeit dismissing as unpersuasive defendants' concerns that § 3E1.1 "impinges on the defense attorney's ability to perform his job."[21]

When Judge Rakoff considered the question of the Sixth Amendment in the context of § 3E1.1(b), he flagged many of the threads identified above. Departing from some of the circuit courts' reasoning, however, he determined that § 3E1.1(b)'s application *diminished* the role of the court, thus exacerbating its unconstitutional dimensions. As he noted, "a district judge cannot apply the one-level reduction except '[u]pon motion of the government,'" thus "empowering the [g]overnment, rather than the district court" with the right to make a sentencing decision.[22] Judge Rakoff also considered the practical consequences of the availability of such a reduction, noting that "even if a district judge were inclined to sentence a particular defendant to a substantially reduced term of imprisonment" regardless of how the case turned out, "the defendant would still face pressure to plead guilty at the outset of his case," "lest he render himself ineligible for § 3E1.1(b)'s one-level reduction."[23] Likewise, Judge Rakoff was not persuaded by § 3E1.1(b)'s support for "judicial economy," dismissing as inconsequential that the Guidelines' one-point reduction might save the government "some time and money."[24] As a remedy for § 3E1.1(b)'s unconstitutionality, he proposed applying the one-point reduction when sentencing *any* defendant, without considering whether he "timely" accepted a plea bargain.[25]

Synthesizing this precedent, there is a clear through line to argue for when a Guidelines' recommendation constitutes an unconstitutional burden on the Sixth Amendment right to trial. Namely, a sentencing recommendation is unconstitutional if: (1) it threatens the separation of powers, obviating or otherwise impeding the court's traditional role at sentencing by granting too much power to the government; (2) it limits the ability of the defendant to enter an informed and uncoerced plea; and (3) it only minimally serves "efficiency" purposes. Judge Rakoff got it right. Section 3E1.1(b) is unconstitutional, and practitioners should urge judges to apply its one-point reduction to every criminal sentence, regardless of whether a defendant chooses to plead out or to exercise his Sixth Amendment rights.

II. Section 3E1.1(b) Does Not Pass Constitutional Muster

A. Stealing the Judge's Job

To start, § 3E1.1(b) imperils the separation of powers because it wrests sentencing control from the judge and hands it to the government. As noted above, the court's ability to exercise discretion in sentencing has long served to allay Sixth Amendment concerns. Likewise, decisions affirming the constitutionality of § 3E1.1 highlight its place in the history of judge-issued sentences.[26] And many courts have noted that § 3E1.1 generally passes constitutional muster because "[t]he guideline, in fact, does not guarantee that a defendant who pleads guilty will receive a lower sentence"; the defendant, instead, must establish

"sincere contrition" to the court's satisfaction, and he may fail to do so, even in cases where he does plead guilty.[27]

As Judge Rakoff correctly noted in *Tavberidze*, however, § 3E1.1(b) supplants the role of the judge in favor of the government. By its plain terms, § 3E1.1(b)'s one-point reduction can be applied only "upon motion of the government stating the defendant has assisted authorities in the investigation or prosecution of his own misconduct."[28]

By reducing the number of tools available for prosecutors to extract guilty pleas from criminal defendants, advocates may be able to make some progress toward decreasing the pervasiveness of the trial penalty.

Not only do the Guidelines make no allowance for when the government does *not* make that motion, but also the commentary by the Sentencing Commission (the "Commission") expressly notes that "an adjustment under subsection (b) may *only* be granted upon a formal motion by the [g]overnment at the time of sentencing."[29] In effect, § 3E1.1(b)'s government-motion requirement precludes a judge from applying the reduction *sua sponte*, leaving a judge discretion only "in deciding whether to grant the motion."[30] This one-way discretion — in which a court can reject the one-point reduction, but never, on its own, apply it — is inconsistent with the court's traditional supervisory role. Further, the government-motion requirement also makes the prosecutor responsible for assessing whether a defendant's guilty plea has both conserved government resources and permitted "the court to allocate [its] resources efficiently" — yet again eliding the court from participating in the analysis. The Sixth Circuit, in fact, acknowledged that this problem may well occur, explaining that "even after *Booker*, a district court consulting the [G]uidelines remains constrained in awarding" a reduction under § 3E1.1(b).[31] Given that shift of control from judge to prosecutor, § 3E1.1(b) loses its footing in the history of sentencing, unnecessarily intruding upon the separation of powers.

Additionally, § 3E1.1(b)'s reduction in the court's role at sentencing likely has a psychological impact on defendants, exerting coercive pressure on them to plead guilty. As Judge Rakoff put it, "empowering the [g]overnment, rather than the district court" to determine whether the defendant has adequately assisted the court "amplifies the pressure exerted on a defendant to plead guilty, rather than proceed to trial."[32] Indeed, federal courts routinely warn about the dangers of consolidating more unilateral authority in the hands of prosecutors in sentencing, noting that such shifts "alter[] the relative bargaining strength of the parties" because "[a] defendant may feel pressured into accepting a less favorable plea, or foregoing discovery or motions, for fear of antagonizing the prosecutor."[33] In the context of § 3E1.1, defendants are less likely to feel empowered to explore their options during plea negotiations, for fear of being penalized at sentencing by a prosecutor for being uncooperative — or too slow to pull the "guilty" trigger. Thus, in addition to running afoul of the justification embedded in sentencing's history, § 3E1.1(b)'s concentration of power in the hands of prosecutors also coerces defendants into giving up their Sixth Amendment rights. That, too, is a mark against it.

B. Speak Now or Forever Hold Your Peace

Section 3E1.1(b) further injects an impermissible temporal component into plea bargaining, requiring that a defendant "timely notify[] authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently."[34] The obligation to act in a "timely" fashion is at odds with plea bargaining's "voluntary and knowing" requirement.

First, the obligation to make a sufficiently quick decision to plead guilty fundamentally undercuts a defendant's ability to negotiate rationally. Negotiations take time. Each party needs an opportunity to assess their relative positions, consider those positions' strengths and weaknesses, and weigh options. Indeed, even proponents of plea bargaining acknowledge that fair plea bargaining requires "both sides to have perfect and equal information about the evidence, the law, and the judge," such that each side can evaluate the strength of the case, the likelihood of a guilty verdict, and the likelihood of a lengthy imposed sentence.[35] Where, as here, the Guidelines impose a requirement on a defendant to act quickly in order to receive a sentencing benefit, negotiations can never be truly fair.

Accordingly, second, § 3E1.1(b)'s temporal component runs up against constitutional limits. Whether a defendant is adequately informed prior to entering a plea has long animated debate over the constitutionality of plea bargaining. In *Walker v. Johnson*, for example, the Court held that a defendant had been deprived of his Sixth Amendment rights when he pled guilty before being informed of his right to counsel.[36] Likewise, pressuring a defendant to "plead guilty before the prosecution has fully disclosed the facts of the alleged crime" — or, indeed, "before the defense has had time to gather potentially exculpatory information" — certainly smacks of a Due Process violation.[37] And the timing pressure stemming from § 3E1.1(b) may very well exacerbate other Due Process concerns — for example, by insulating prosecutors from needing to produce exculpatory evidence under *Brady v. Maryland*,[38] which technically only requires the production of such evidence before trial (rather than prior to the entry of a guilty plea).[39] Thus, § 3E1.1(b) likely "discourages transparency and tends to insulate the government from the consequences of failing to identify and disclose exculpatory evidence," generating an imbalance of negotiating power and compromising the bargaining process.[40]

Section 3E1.1(b)'s price is too high. The Guidelines' commentary on this point notes that "the conduct qualifying for a decrease in offense level under subsection (b) will occur particularly early in the case."[41] What that really means is far from clear — but it seems to be up to the prosecutor, who, apparently, "is in the best position to know whether [he] has conserved resources."[42] The threat of this unilateral assessment undoubtedly coerces a defendant into pleading guilty quickly and likely giving up a necessary opportunity to weigh his options, to give his counsel a chance to investigate his defenses, or to put the government to the test on its claims. So § 3E1.1(b) fails to pass constitutional muster on this point, too.

C. Promoting Efficiency Is Just Not Enough

We do not deny that Section 3E1.1(b) conserves party and judicial resources — a justification that has long excused plea bargaining's coercive effect on defendants' pretrial conduct.[43] Indeed, § 3E1.1 made its way into the Guidelines by being billed as "a necessary lubricant for an overburdened criminal justice system,"[44] and courts have repeatedly noted that "[a]voiding trial preparation and the efficient allocation of the court's resources are descriptions of the desirable consequences and objectives of the guideline."[45]

But how far does § 3E1.1(b) really get us, particularly when rates of criminal trials have sunk to historic lows? After all, myriad tools already are available to convince a defendant to cut a deal — from being convicted for a lesser count with an attendant lesser maximum sentence, to avoiding pretrial detention, to the often prohibitive expense of mounting a defense, to a defendant simply recognizing that he has no viable defense, and he would be better off pleading guilty. Regardless, as the Commission already recognizes, the "timeliness of the defendant's acceptance of responsibility is a consideration under both subsections" — meaning that the earlier a defendant pleads out, the more likely it is that the court will deem him or her sufficiently contrite to warrant an "acceptance of responsibility" reduction.[46] Thus, many of the benefits captured by § 3E1.1(b) are already captured by § 3E1.1(a). And finally, the constitutional risks of § 3E1.1(b) are simply damning. As discussed, the recommendation gives too much power to the government, exerts coercive bargaining tactics upon defendants, generates an imbalance in negotiating power, and otherwise eliminates the backstop a judge provides in crafting a sentence. Section 3E1.1(b) must be deemed an "unconstitutional penalty" because it penalizes someone who chooses to exercise his rights "rather than save the [g]overnment some time and money."[47]

III. The Remedy? Urge § 3E1.1(b)'s One-Point Reduction in Every Case

A one-, two-, or three-point reduction in offense-level calculations — such as those represented by § 3E1.1(b) — may be small, but such reductions can in particular cases make a big difference.[48] Indeed, a one-point reduction can mean the difference between a carceral term or a mix of incarceration or probation, or even life in prison.[49] Likewise, despite being advisory, the Guidelines still hold significant sway over sentencing. Even in a post-*Booker* world, district courts are still required to "consult [the] Guidelines and take them into account" when crafting sentences.[50] And scholars have found that the Guidelines' directions continue to dramatically influence sentencing outcomes.[51] Thus, any reduction in offense level can yield appreciable returns for a criminal defendant. It could also affect a defendant's calculus when deciding whether to plead guilty or risk the consequences of a trial.

Additionally, by reducing the number of tools available for prosecutors to extract guilty pleas from criminal defendants, advocates may be able to make some progress toward decreasing the pervasiveness of the trial penalty. Of course, the "trial penalty cannot be attributed to any single cause;" rather, "many shortcomings across the criminal justice system combine to perpetuate this injustice."[52] But by guaranteeing a § 3E1.1(b) reduction regardless of a defendant's willingness to plead out (thus making a quick guilty plea less tantaliz-

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ing to a criminal defendant), some of the documented coercive harms embedded in plea bargaining could be reduced. This includes, among other things, (1) increasing transparency into prosecutorial conduct before and during trial; (2) permitting novel legal theories to be challenged in court; (3) hampering prosecutorial overreach; and (4) spurring counsel on both sides of the aisle to develop the evidence to prove their case, rather than attend to their plea-negotiation skills.[53]

Waving *Tavberidze* like a flag and leveraging the analysis and factors discussed above to cast doubt on § 3E1.1(b)'s constitutionality, criminal defense counsel can argue for the application of its one-point reduction to any proposed carceral term for their clients, regardless of whether the government brings a § 3E1.1(b) motion. Counsel can, for example, assert that a prosecutor's withholding of a § 3E1.1(b) reduction for a defendant's failure to plead out facially violates a defendant's constitutional right to a speedy trial. Counsel can also file an objection to the presentence investigation report, assuming that it fails to include a recommended reduction under § 3E1.1(b), and urge its application.[54] Indeed, when Judge Rakoff issued his decision in *Tavberidze* before the sentencing hearing, he did so in part to give the litigants a chance to address its constitutionality before he applied the reduction.[55] And counsel can certainly seek post-conviction relief, through appeal or otherwise, challenging as unconstitutional a sentence that fails to include the reduction. When briefing the issue to the court or otherwise raising it, defense counsel can focus heavily on § 3E1.1(b)'s impact on a judge's role in sentencing and its effect on the plea-negotiating process. Doing so increases the likelihood that other courts might agree with Judge Rakoff and choose to grant a one-point reduction in offense levels across the board when crafting sentences, thereby beginning to chip away at the trial penalty injustice.

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Notes

1. Thea Johnson, *Plea Bargaining Task Force Report* 14, 24 (A.B.A. 2023).

2. *See generally id.*; *see also* Andrew Manuel Crespo, *The Hidden Law of Plea Bargaining*, 118 Colum. L. Rev. 1303, 1313–14 (2018); Nat'l Ass'n Crim. Def. Lawyers, The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It 5 (2018) (hereinafter *The Trial Penalty*); Russell Covey, *Reconsidering the Relationship Between Cognitive Psychology and Plea Bargaining*, 91 Marquette L. Rev. 213, 213–15 (2007) (considering plea bargaining generally).

3. Russell D. Covey, *Fixed Justice: Reforming Plea Bargaining with Plea-Based Ceilings*, 82 Tulane L. Rev. 1258–59, 1265 ns. 92, 93 (2008) (citing 18 U.S.S.G. §§ 3E1.1, 5K1.1).

4. Breanne Potter, *Greater of Two Evils: Trial Penalty or Plea Penalty?* 31 Cardozo J. Equal Rights & Soc'y J. 137, 139 (2024); *see also* Berthoff v. United States, 140 F. Supp. 2d 50, 67 (D. Mass. 2001) ("Evidence of sentencing disparities visited on those who exercise their Sixth Amendment right to trial by jury is today stark, brutal, and incontrovertible.").

5. *The Trial Penalty*, *supra* note 2 at 5.

6. 18 U.S.S.G § 3E1.1.

7. United States v. Tavberidze, -- F. Supp. 3d --, 2025 WL 748354, at *1 (Mar. 10, 2025).

8. *Id.*

9. *See, e.g.*, United States v. Paz Uribe, 891 F.2d 296, 400 (1st Cir. 1989); United States v. Cordell, 924 F.2d 614, 619 (6th Cir. 1991); United States v. Crawford, 906 F.2d 1531, 1534 (11th Cir. 1990); United States v. Gonzalez, 897 F.2d 1018, 1020 (9th Cir. 1990); United States v. White, 869 F.2d 822, 826 (5th Cir. 1989) (per curiam), *cert. denied*, 490 U.S. 112 (1989); United States v. Henry,

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883 F.2d 1010, 1012 (11th Cir. 1989); United States v. McConaghy, 23 F.3d 351, 352–53 (11th Cir. 1994); United States v. Jones, 997 F.2d 1475, 1477 (D.C. Cir. 1993).

10. *Tavberidze*, 2025 WL 748354, at *2.

11. Lafler v. Cooper, 566 U.S. 156, 170 (2012).

12. U.S. Const. amend. VI.

13. Santobello v. New York, 404 U.S. 257, 264 (Douglas, J., concurring) (citing Duncan v. Louisiana, 391 U.S. 145 (1968)).

14. *Santobello*, 404 U.S. at 261 (majority opinion).

15. *Id.*

16. Waley v. Johnston, 316 U.S. 101, 104 (1942); *see also* Town of Newton v. Rumery, 480 U.S. 386, 393 (1987) ("We see no reason to believe that release-dismissal agreements pose a more coercive choice than other situations we have accepted.").

17. *Santobello*, 404 U.S. at 262.

18. United States v. Booker, 543 U.S. at 233 ("We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range.").

19. *Henry*, 883 F.2d at 1012.

20. *Gonzalez*, 897 F.2d at 1020.

21. *McConaghy*, 23 F.3d at 352–53.

22. *Tavberidze*, 2025 WL 748354, at *5.

23. *Id.* at *5.

24. *Id.* at *6.

25. *Id.*

26. *Jones*, 997 F.2d at1477.

27. *White*, 869 F.2d at 826.

28. 18 U.S.S.G. § 3E1.1(b).

29. *Id.* § 3E1.1, Commentary, Application Note 6 (emphasis added).

30. *Id.*

31. United States v. Smith, 429 F.3d 620, 628 (6th Cir. 2005).

32. *Tavberidze*, 2025 WL 748354, at *5.

33. United States v. Detwiler, 338 F. Supp. 2d 1166, 1181–82 (D. Or. 2004).

34. 18 U.S.S.G. § 3E1.1(b) (emphasis added).

35. Thomas P. Hogan, *The Foolishness of Abolishing Guilty Pleas*, 45 Pa. Law. 28, 30 (Feb. 2023).

36. 312 U.S. 275, 286 (1941).

37. Candace McCoy, *The Coercive Trial Penalty: Timing Is Everything*, 35 Fed. Sent. Rep. 100, 100 (2022).

38. 373 U.S. 83 (1963).

39. Covey *supra*, note 3 at 213–15 (2007).

40. *The Trial Penalty*, *supra* note 2 at 40.

41. 18 U.S.S.G. § 3E1.1, Commentary, Application Note 6.

42. *Smith*, 429 F.3d at 628.

43. *Santobello*, 404 U.S. at 260 (characterizing plea bargaining as "an essential component of the administration of justice," and, when "[p]roperly administered," it should "be encouraged" to avoid "every criminal charge [being] subjected to a full-scale trial").

44. Michael M. O'Hear, *Remorse Cooperation, and 'Acceptance of Responsibility': The Structure, Implementation, and Reform of Section 3E1.1 of the Federal Sentencing Guidelines*, 91 Nw. U. L. Rev. 1507, 1513 (1997).

45. *McConaghy*, 22 F.3d at 353.

46. 18 U.S.S.G. § 3E1.1, Commentary, Application Note 6.

47. *Tavberidze*, 2025 WL 748354, at *6.

48. *See, e.g.*, Longoria v. United States, 141 S. Ct. 978, 979 (2021) (Mem.) (noting the "substantial" difference a one-point offense-level reduction can make to a recommended sentence) (statement of Sotomayor, J., joined by Gorsuch, J., regarding denial for writ of certiorari).

49. U.S. Sent. Comm'n, Guidelines Manual (2024), Ch. 5, Part A — Sentencing Table.

50. Hughes v. United States, 584 U.S. 675, 681 (2018) (reasoning that the Guidelines "provide the framework for the tens of thousands of federal sentencing proceedings that occur each year"). Indeed, a sentence that is within the Guidelines' range is entitled to a "presumption of reasonableness," meaning that it "will almost never be reversed on appeal as substantively unreasonable." United States v. Gardellini, 545 F.3d 1089, 1092 (D.C. Cir. 2008).

51. Michael Light, *The Declining Significance of Race in Criminal Sentencing: Evidence from US Federal Courts*, 100 Soc. Forces 1110, 1118 (2022); *see also* Max Alderman, Arash Barfar & Dana Edberg, *Explaining Compassionate Release: A Machine Learning Study of Sentencing Modifications and Judicial Decision Making*, 59 Loy. L.A. L. Rev. -- (forthcoming 2026) (manuscript available upon request); *but see* Crystal Yang, *Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing*, 44 J. Legal Stud. 75, 81 (2015).

52. *The Trial Penalty*, *supra* note 2 at 5.

53. *Id.* at 9.

54. Fed. R. Crim. P. 32(f).

55. 2025 WL 748354, at *2. ■

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