

No:

In the
Supreme Court of the United States

JESUS MANUEL LAUREANO-PEREZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Jesus Manuel Laureano-Perez
Register Number 40502-069
MDC Brooklyn
P.O. Box 329002
Brooklyn, Ny 11232

QUESTIONS PRESENTED FOR REVIEW

Should a writ of certiorari be granted to determine whether the district court erred in enhancing Laureano's sentence based on uncharged conduct not contemplated by the government?

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case. The United States Court of Appeal for the First Circuit and the United States District Court for the District of Puerto Rico.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

TABLE OF CONTENTS

Cover Page	i
Questions Presented for Review	ii
Parties to the Proceedings in the Court Below	iii
Table of Contents	iv
Table of Authorities	
Opinion Below	2
Statement of Jurisdiction	2
Constitutional Provisions, Treaties, Statutes and Rules Involved	3
Statement of the Case	10
A. Overview of the Offense	10
B. Change of Plea Hearing	11
C. Sentencing Hearing	12
Reasons for granting the Writ.....	16
Should a writ of certiorari be granted to determine whether the district court erred in enhancing Laureano's sentence based on uncharged conduct not contemplated by the government?	17
Conclusion	21
Appendix <i>United States v. Laureano-Pérez</i> , 892 F.3d 50 (1st Cir. 2018)..	A-1

TABLE OF AUTHORITIES

Cases

<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	19
<i>United States v. Álvarez-Núñez</i> , 828 F.3d 52 (1st Cir. 2016)	18
<i>United States v. Laureano</i> , Docket No. 12-CR-434.....	10, 13, 14, 15
<i>United States v. Laureano-Pérez</i> , 892 F.3d 50 (1st Cir. 2018).....	2
<i>United States v. Narváez-Soto</i> , 773 F.3d 282 (1st Cir. 2014)	18
<i>United States v. Ortiz-Rodriguez</i> , 789 F.3d 15 (1st Cir. 2013).....	18
<i>United States v. Rivera-González</i> , 776 F.3d 45 (1st Cir. 2015).....	19
<i>United States v. Smith</i> , 445 F.3d 1 (1st Cir. 2006).....	19, 20

Federal Statutes

Title 18 U.S.C. § 3553.....	3, 9, 21
Title 21 U.S.C. § 841.....	8
Title 21 U.S.C. § 960.....	8
Title 28 U.S.C. § 1254(1)	2, 3

Rules

Federal Rule of Criminal Procedure 32.....	7
Supreme Court Rule 10	16
Supreme Court Rule 10.1(a).....	16

United States Sentencing Guidelines

U.S.S.G.'s § 3B1.2(c)	13
-----------------------------	----

No:

***In the*
*Supreme Court of the United States***

JESUS MANUEL LAUREANO-PEREZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

I, Jesus Manuel Laureano-Perez, the Petitioner herein, respectfully prays
that a Writ of Certiorari is issued to review the judgment of the United States Court
of Appeals for the First Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the First Circuit, whose judgment is herein sought to be reviewed, is an unpublished opinion in *United States v. Laureano-Pérez*, 892 F.3d 50 (1st Cir. 2018) and is reprinted as Appendix A to this petition.

STATEMENT OF JURISDICTION

The First Circuit's denial of Petitioner's direct appeal was entered on June 8, 2018.

The Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Id. Sixth Amendment U.S. Constitution

Title 18 U.S.C. § 3553 provides in pertinent part:

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—
 - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of Guidelines in Imposing a Sentence.—

(1) In general.—

Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.—

(A) [2] Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken

into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the

Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) Statement of Reasons for Imposing a Sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence Procedure for an Order of Notice.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

- (1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
- (2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
- (3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited Authority To Impose a Sentence Below a Statutory Minimum.—

Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) Limitation on Applicability of Statutory Minimums in Certain Cases.—
Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

- (1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
- (2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (3) the offense did not result in death or serious bodily injury to any person;
- (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
- (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

* * * * *

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

Id. Title 18 U.S.C. § 3553

STATEMENT OF THE FACTS

1. Overview of the Offense

On May 5, 2016, Puerto Rico Police Department (PRPD) Agents of the San Juan Drug Unit were operating pursuant to a work plan in order to curtail drug activity in the San Juan area of Puerto Rico. While PRPD agents patrolled the Barrio Obrero, they observed Laureano standing beside a vehicle. Upon seeing the marked police unit, Laureano fled the area while being approached by a second agent. Once the second agent identified himself as a Law Enforcement Officer, Laureano removed a firearm from a “fanny pack” and ran in the opposite direction.

The second agent observed Laureano throw a firearm over the fence and throw the contents of the fanny pack on the ground. Laureano was apprehended at the scene and the firearm and the contents of the man-purse were located. Homeland Security Investigations revealed that Laureano had previously been convicted in the matter of United States v. Laureano, Docket No. 12-CR-434, where he was serving a current term of supervisory release.

Laureano stated he found the fanny pack near the dumpster area. The fanny pack contained the firearm, magazines, and three (3) cellular phones. An iPhone seized was his personal cellular phone.

b. Change of Plea Hearing

On July 18, 2016, Laureano pled guilty to both Counts as charged. He acknowledged he had not reached a plea agreement and that his plea was voluntary. The Court determined Laureano was competent to enter a plea, that he had reviewed the charges of the indictment with his attorney, and that his decision to plead guilty was knowing.

Laureano understood that he was presumed innocent and could maintain his plea of not guilty, that the Government would have to present competent evidence beyond a reasonable doubt, that he had the right to confront witnesses that would testify against him, and that he was not required to testify should he decide not to proceed to trial. Laureano understood. Laureano further acknowledged that he was waiving his right to a trial, waiving his right not to incriminate himself and that he was acknowledging his guilt in the charged offense.

Laureano further understood that he would lose his right to hold public office, to serve on a jury, to vote, and would not be able to possess any firearms. The Court determined that Laureano was competent and accepted his plea of guilty as to Counts One and Two as charged.

The Government reiterated that the maximum penalty for Counts One and Two was ten (10) years incarceration, a \$250,000.00 fine and three (3) years of supervisory release. The Government further noted the imposition of a special

assessment of \$100.00 for each Count. Furthermore, it was explained that the Court might impose a different sentence than that determined by the final guideline calculations.

The Government reiterated the Statement of the Facts as per the Complaint establishing the elements of the charged offenses. Laureano acknowledged the facts as explained.

c. Sentencing Hearing

On November 2, 2016, Laureano appeared for sentencing. Since Laureano was serving a term of supervised release in United States v. Laureano, Docket No: 12 CR-434-25 (CCC), the Court heard how he was sentenced the day before to an additional two (2) years of incarceration for the supervisory release violation which counsel considered to be “higher than the suggested guideline range for a revocation of supervisory release.” Counsel requested a reasonable sentence that was “sufficient and not more than necessary” to comply with the goals of sentencing. The Presentence Investigation Report recommended a sentence of 37-46 months incarceration. The Government reiterated that Laureano was serving a term of supervised release after serving a thirty (30) month sentence for possession with intent to distribute 500 grams of cocaine, presented the same facts as per the change of plea hearing, and requested a sentence at the high end of the calculated guideline range of forty-six (46) months incarceration.

The Court reviewed the guideline calculations and agreed with the Probation Officer's recommendation that Count One and Two should be grouped for sentencing purposes pursuant to the U.S.S.G.'s § 3B1.2(c). Pursuant to § 2K2.1(a)(3), a base offense level of twenty-two (22) for the possession of the firearm was applicable. Since Laureano accepted responsibility for the offense, the total offense calculation was reduced by three levels pursuant to § 3E1.1(a) and § 3E1.1(b). There were no other applicable guideline adjustments. However, since Laureano had a previous felony conviction, his criminal history score ("CHS") was calculated at III. An additional two (2) criminal history levels were added since Laureano was convicted of the instant offense while on supervisory release in *United States v. Laureano*, Docket No: 12 CR-434-25 (CCC), resulting in his final criminal history points of five (5) and in a CHS III, 37-46 months incarceration.

The Court reiterated that the supervisory release violation from *United States v. Laureano*, Docket No: 12 CR-434-25 (CCC) resulted in a twenty-four (24) month consecutive term of incarceration. The Court also determined that the Probation Officer had correctly computed the guideline range and that the Presentence Investigation Report satisfactorily reflected the components of Laureano's offense by considering the nature and its circumstances.

However, prior to sentencing, the Court provided the following statement:

As I indicated most, if not all, of these weapons cases, violent crimes and murders are occurring at all hours of the day, and any place on the island, even in congested public highways, in shopping centers, public basketball courts, and cultural events. Firearms like the one Laureano possessed in this case, are present everywhere, obtained by persons like Mr. Laureano who have had no training in the proper use of the weapons and appear not to have the means to purchase them.

From 2011 to 2015, there was a significant decrease in the amount of yearly murders, basically, due to the large extent, to the firearms initiative which Puerto Rico Department of Justice and the U.S. Attorney's Office have implemented.

This year, however, the number of murders has increased significantly. There have been 67 more murders this year as of October 31, than there were as of October 31 last year. An increase of 14%.

I recently spoke about this year's increase in the number of murders and the inordinate amount of promotions for "merit" occurring in the Police Department. It was front page news in the local daily. The article provoked a written reaction by the Superintendent.

He indicated that his focus is to continue developing strategies, to continue reducing the crime rate, and to bring peace and security to Puerto Rico.

Not a weekend passes, however, in which a significant number of murders occur. During the October 22 to 23 weekend, there were 14 murders. The number of murders for October was 65. And as I indicated, the number of murders as of October 31st is 14 percent higher this year than it was on October 31st last year, which begs the question of what kind of strategies have been developed during the Superintendent's incumbency.

Do they really exist?

To paraphrase, "Perhaps they are something in the nature of a strategy and not a strategy at all."

Id. (JA 017 - 019; DE 35).

The Court, while considering factors not presented nor relevant to Laureano's offense, sentenced Laureano to a term of sixty (60) months imprisonment as to Counts One and Two, both terms concurrent with each other but consecutive to the sentence imposed by Judge Cerezo in United States v. Laureano, Docket No: 12 CR-434-25 (CCC). The Court also placed Laureano on three (3) years of supervisory release on each Count, to be served concurrently with each other. As part of the judgment and commitment order, the Court also imposed that Laureano should submit to "random drug testing, not less than three samples during the supervision period, but not more than 104 samples each year, in accordance with the Drug After Care Program policy of the United States Probation Officer." (JA 021; DE 35). The Court ordered that if a controlled substance is detected in any sample of Laureano's random drug test, that he should participate in an in-patient or out-patient substance abuse treatment program.

The Court granted the Probation Officer the authority to access Laureano's financial information and subject Laureano and his property to house residence vehicle searches without a warrant, if necessary, and the authority to seize any communication or electronic device or medium, which is subject to further forensic investigation or analysis. Trial counsel objected to the sentence, including the supervised release as both procedurally and substantially improper.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS INTERPRETED A FEDERAL STATUTES IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides in relevant part as follows:

Rule 10 CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore, the following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.... *Id.*

Id. Supreme Court Rule 10.1(a), (c)

QUESTIONS PRESENTED

I. SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE WHETHER THE DISTRICT COURT ERRED IN ENHANCING LAUREANO'S SENTENCE BASED ON UNCHARGED CONDUCT NOT CONTEMPLATED BY THE GOVERNMENT

Laureano's argument is rather simple. The District Court relied on uncharged, unrelated offense conduct not contemplated by either the Government or the defense during the sentencing hearing. Laureano was charged with an all too familiar offense in Puerto Rico. He was found in possession of a firearm after being released from a prior federal offense. There were no allegations that Laureano used the firearm, discharged the firearm, nor that he intended to use the firearm at any point. There were no allegations that Laureano committed any murders with the firearm. In fact, Laureano alleged all along that he found the firearm and the fanny pack next to a dumpster when he went to "throw [out] the trash" several days prior to his arrest.

The District Court reached a *sua sponte* conclusion that there had been an increase in the murder rate in Puerto Rico, mostly questioning the Police Superintendent's lack of "strategies" to curtail the murder rate in Puerto Rico. It is Laureano's position that the specific reliance on the Police Superintendent's failure to reduce the murder rate in Puerto Rico in order to justify a sentence variance was an error that requires this Court's intervention.

While the District Court may rely on "[g]eographic considerations relevant at sentencing, as 'the incidence of particular crimes in the relevant community that appropriately informs and contextualizes the relevant need for deterrence,'" that reliance "does not relieve [the Court] of the obligation to ground sentencing determinations on case-specific factors. *United States v. Ortiz-Rodriguez*, 789 F.3d 15, 19 (1st Cir. 2013)(quoting *United States v. Flores-Machicote*, 706 F.3d 16, 23 (1st Cir. 2013)). It is possible for a sentencing judge to focus too much on the community and too little on the individual. *Flores-Machicote*, 706 F.3d at 24 (citation omitted). In this case, the District Court was clear that it was basing the above guideline-sentencing enhancement on the murder rate in Puerto Rico and the Police Superintendent's lack of police reaction to those murders. (JA 019; DE 35)

Laureano understands that as a general matter, "the sentencing court has always been free to consider a wide range of relevant material[,]'" including the "cumulative experience garnered through the sheer number of district court sentencing proceedings that take place day by day." *United States v. Alvarez-Núñez*, 828 F.3d 52, 55 (1st Cir. 2016)(quoting *Payne v. Tennessee*, 501 U.S. 808, 820-21, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)); see *United States v. Narváez-Soto*, 773 F.3d 282, 286 (1st Cir. 2014)(quoting *United States v. Martin*, 520 F.3d 87, 92 (1st Cir. 2008)). This includes "community-based considerations." *Id.* However, those community considerations cannot override the case specific facts

of the defendant before the court. "Section 3553(a) factors must be assessed in case-specific terms," and a sentencing court's "appraisal of community-based considerations does not relieve its obligation to ground its sentencing determination in individual factors related to the offender and the offense." *Flores-Machicote*, 706 F.3d at 23; see, *United States v. Rivera-González*, 776 F.3d 45 (1st Cir. 2015).

Although Laureano's sentence was outside of the guideline range, this Court may not apply a presumption of unreasonableness. Nonetheless, it must consider the extent of the deviation while giving due deference to the District Court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance. *See Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007).

In this case, the District Court was obliged to explain how Laureano's possession of a firearm by a convicted felon was different from the ordinary situation covered by, and accounted for, in the guideline calculations, and thus why a variance was justified. *See United States v. Smith*, 445 F.3d 1, 4 (1st Cir. 2006) ("The sentence is not a modest variance from the guideline range," and "[t]he farther the judge's sentence departs from the guidelines sentence . . . the more compelling the justification based on factors in section 3553(a) that the judge must offer in order to enable the court of appeals to assess the reasonableness of the

sentence imposed." (omission in original) (internal quotation marks omitted)).

None of the justifications presented at sentencing are applicable to Laureano.

Here, the District Court failed to provide any explanation; it merely relied on an apparent disagreement with the Superintendent of the Police Department of Puerto Rico and his [the Superintendent's] inability to curtail the murder rate in Puerto Rico, not on any case specific offenses for Laureano. The District Court's reference to the § 3553 factors and contextualizing comments about the murder rate in Puerto Rico, did not explain why an upward variance was warranted. Given the nature of this firearm possession offense, and the fact that the District Court did not explain how the enhancing conduct involving unrelated and uncharged murders falls outside the heartland of the guideline enhancement that had been calculated by the Sentencing Commission, a remand is required. The District Court's explanation of someone else's conduct, not Laureano's, was insufficiently compelling to explain the upward variance. *See United States v. Smith*, 445 F.3d 1 (1st Cir. 2006) ("We are hard-put to see any basis for finding this sentence reasonable. This is equally true if one turns from the facts relied upon by the district judge to the general considerations provided by the statute.").

In sum, the guideline calculations in Laureano's offense adequately calculated by the final guideline range, the appropriate criminal history enhancements based on his prior cases, and his supervised release violation, were

sufficient, within themselves, for a proper sentencing determination. Relying on uncharged, unrelated offenses in Puerto Rico and *the Superintendent's* inability to curtail the same, do not justify the sentence variance imposed.

As such, this Court's intervention is required due to the First Circuit's error in not intervening in light of Title 18 U.S.C. 3553 precedent.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the First Circuit.

Done this 31, day of August 2018

Respectfully submitted,



Jesus Manuel Laureano-Perez
Register Number 40502-069
MDC Brooklyn
P.O. Box 329002
Brooklyn, Ny 11232