

No. _____

In the Supreme Court of the United States

JUAN GERARDO RODRIGUEZ-MANTOS, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner pled guilty to a charge of re-entry of a deported alien and various conspiracy and aiding and abetting offenses related to transporting, concealing, harboring, and shielding undocumented aliens in violation of 8 U.S.C. § 1326(a) and 8 U.S.C. § 1324. The district court sentenced Mr. Mantos to 252 months imprisonment, more than three and half times the upper end of the applicable already significantly enhanced Level 25 Guidelines range of 57 to 71 months the district court determined to be applicable and more than two and half month times the 100 month imprisonment sentence the Government recommended. Petitioner now seeks certiorari to review the following questions:

Whether the imposition of an outside Guidelines sentence is reasonable when the district court more than triples the already enhanced Guidelines sentencing level and justifies it with the same facts and reasons it found to enhance his Guidelines sentencing level?

Whether the Fifth Circuit Court of Appeals' decision affirming the district court's significant outside Guidelines sentence has so far departed from the accepted and usual course of proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Court's supervisory power?

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LIST OF PARTIES

The caption of this case names all parties to the proceeding in the court whose judgment is sought to be reviewed.

OPINION BELOW

The opinion of the court of appeals is an unreported case and can be found at 2018 WL 4292184. A copy of said opinion is also attached to this petition as Appendix A. A copy of the order denying Mr. Mantos' petition for rehearing *en banc* is also attached to this petition as Appendix B, and a copy of Mr. Mantos' Brief of Appellant that was filed in the United States Court of Appeals for the Fifth Circuit is also attached to this petition as Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 7, 2018. The United States Court of Appeals for the Fifth Circuit denied Mr. Mantos' Petition for Rehearing En Banc by order filed on October 5, 2018. Thus, this petition is filed within 90 days from the date of the denial of rehearing. *See* SUP. CT. R. 13.3. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On November 24, 2015, Mr. Mantos was charged with eight counts in a sealed superseding indictment with re-entry of a deported alien in violation of 8 U.S.C. § 1326(a); conspiracy to transport an undocumented alien; conspiracy to conceal harbor, and shield from detection an undocumented alien; aiding and abetting the transportation of an undocumented alien, and four counts of aiding and abetting to conceal, harbor, and shield from detection undocumented aliens in violation of 8 U.S.C. § 1324. On February 17, 2016, Mr. Mantos plead guilty to the indictment. The district court sentenced Mr. Mantos to 252 months imprisonment, more than three and half times the upper end of the applicable already significantly enhanced Level 25 Guidelines range of 57 to 71 months the district court determined to be applicable and more than two and half month times the 100 month imprisonment sentence the Government recommended. As justification for the significant outside Guidelines sentence, the district court simply made conclusory statements and reiterated the reasons it found for significantly enhancing his Guidelines sentencing level.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

This case was originally brought as a federal criminal prosecution under 8 U.S.C. § 1324. The district court therefore has jurisdiction pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE WRIT

A. THE FIRST QUESTION PRESENTED RAISES IMPORTANT QUESTIONS OF FEDERAL LAW NOT YET RESOLVED BY THE SUPREME COURT.

A sentencing court “must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall v. United States*, 552 U.S. 38, 50 (citing *Rita v. United States*, 551 U.S. 338, 356-57 (2007)). When a judge, “decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Gall*, 552 U.S. at 50. And, “a major departure [from the Guidelines] should be supported by a more significant justification than a minor one.” *Id.* “[F]ailing to adequately explain the chosen sentence - including an explanation for any deviation from the Guidelines range” is a “significant procedural error” that taints the sentence. *Id.* at 51. The Guidelines imprisonment range Mr. Mantos scored at is 57 to 71 months. The district court upwardly deviated from the upper end of that range by more than 355% by imposing a 252 month sentence.

The district court articulated its reasons for upwardly varying and departing from the applicable Guidelines range as follows:

I think that the type of victimization that you engaged in, the fear that you inculcated in all of them, and you know, the threats really do take this case outside of the heartland and you know, I guess I want to mention that the fact that you're in total denial here today doesn't help

the situation at all. You've shown absolutely no remorse for anything. In fact, you've completely tried to distance yourself from the entire situation going as far as saying I would show up at the house from time to time, but that's pretty much all I did. You know, I don't know what else I could say about that, but again I don't think that guideline sentence and concurrent sentences as to all counts is appropriate here because this case is in fact unusual. I don't think everything is fully accounted for in the advisory range and again it's all based on the conduct that you yourself chose to engage in, forcing them to take drugs, violating them sexually, it's just not fully accounted for in this advisory range which we have and so I am upwardly varying and departing ... to 84 months [which] is going to run consecutive on Counts Four, Five, and Six, but concurrent as to Counts One, Two, Three, and Seven, and as to Count Nine the maximum is 24 months, and I will run that concurrent as well.

ROA. 500-01. The 18 U.S.C. § 3553(a) factors the district court marked in the Statement of Reasons form mirror the reasons the district court articulated at the sentencing hearing for its significant outside Guidelines sentence which include: victim impact; lack of remorse; to reflect the seriousness of the offense, promote respect for the law, just punishment for the offense; adequate deterrence; and protect the public from further crimes. ROA. 579.

In light of Supreme Court authority holding that the more a sentence deviates from the guidelines, the more a district court is required to justify the sentence, Mr. Mantos argued to the Fifth Circuit Court of Appeals that the district court's justification was erroneously insufficient. The Fifth Circuit affirmed the 355% upward outside Guidelines sentence and held that the district court sufficiently justified the sentence even though all it did to justify

it was to simply reiterate the facts and reasons it found for significantly enhancing Mr. Mantos' sentencing level.

This Court should grant this petition because this case presents this Court an opportunity to provide clarification and guidance with respect to the level of justification sentencing courts should provide when imposing sentences that deviate so much from the Guidelines. It further bears mentioning that since the vast majority of federal criminal defendants plead guilty, sentencing issues come up frequently on appeal. *See Missouri v. Frye*, 566 U.S. 134, 143 (2012) ("Ninety-seven percent of federal convictions ... are the result of guilty pleas."). Moreover, the law of sentencing is relatively new in light of the seminal case *Booker v. Washington*, 543 U.S. 220 (2005) which declared that the sentencing guidelines are no longer mandatory. Since sentencing issues come up frequently on appeal, and the law of sentencing is still developing in light of *Booker*, this case is significantly important regarding the development of sentencing law and the opportunity presented in this case to give district courts direction and guidance when imposing sentences that depart so much from the Guidelines. For these reasons, this petition should be granted.

B. THE FIFTH CIRCUIT’S DECISION AFFIRMING THE DISTRICT COURT’S SIGNIFICANT OUTSIDE GUIDELINES SENTENCE HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF PROCEEDINGS, OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THE COURT’S SUPERVISORY POWER.

The district court’s stated reasons for imposing a 252 month sentence do not provide much beyond conclusory statements that the applicable guideline range does not adequately take Mr. Mantos’ conduct into account. The law is clear that when a sentencing judge “decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Gall*, 552 U.S. at 50. And, “a major departure [such as a 355% departure the case at bar presents,] should be supported by a more significant justification than a minor one.” *Id.*

Moreover, “[f]ailing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range” is a “significant procedural error” that taints the sentence. *Id.* at 51. Since the district court clearly did not adequately explain why a Guidelines sentence would not meet the sentencing goals of 18 U.S.C. § 3553(a), the district court committed a significant procedural error. In the absence of the district court furnishing a detailed explanation why granting all the sentencing level enhancements the probation office recommended and selecting an imprisonment range in the middle or upper end of the applicable range would not accomplish the 18 U.S.C.

§ 3553(a) goals, the district court's election to impose a 355% outside Guidelines sentence constitutes procedural error. Accordingly, this petition should be granted because the Fifth Circuit's decision affirming the district court's significant outside Guidelines sentence has so far departed from the accepted and usual course of proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Court's supervisory power.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

s/Derly J. Uribe

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DATED: December 30, 2018

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UNITED STATES OF AMERICA, RESPONDENT

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CERTIFICATE OF SERVICE

Derly J. Uribe, appointed under the Criminal Justice Act, certifies that, pursuant to Rule 29.5, he served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by depositing an envelope containing the above documents in the United States mail with first-class postage provided prepaid to:

The Honorable Noel Franciso
Solicitor General of the United States
950 Pennsylvania Ave, NW
Washington, D.C. 20530-0001

today, December 30, 2018 and by electronic mail today to the Office of the Solicitor General at supremectbriefs@usdoj.gov. The undersigned further certifies that all parties required to be served have been served.

s/Derly J. Uribe
DERLY J. URIBE