NO:

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether this Court Should Clarify the Quantum Necessary for a Finding of a "Substantial Preliminary Showing" That Entitles Defendants to a Hearing in Which They Can Challenge the Veracity of a Search Warrant Pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978).

II. Whether the Eleventh Circuit Misapplied *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007), by Finding Petitioner's Sentence to Be Substantively Reasonable When it Constituted a Substantial Upward Variance Without Proper Justification.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RULE 14.1(B)(III) STATEMENT

Proceedings directly related to this case are as follows:

- *Richard Johnson v. United States*, S.Ct. No. 18A1355 (Extension granted June 25, 2019).
- *United States v. Richard Johnson*, App. No. 18-10176-CC (11th Cir.) (Opinion issued 768 Fed. Appx. 920 (11th Cir. Apr. 9, 2019)).
- *United States v. Richard Johnson*, D.Ct. No. 17-20299-CR-FAM (S.D. Fla.) (Judgment entered 1/2/2018).

There are no additional proceedings in any court that are directly related to this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTORY AND OTHER AUTHORITY:

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PETITION FOR WRIT OF CERTIORARI

Richard Johnson respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 18-10176 in that court on April 9, 2019, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 9, 2019. Petitioner applied for and was granted a 60-day continuance within which to file this Petition. Accordingly, this petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely on the following:

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

18 U.S.C. § 3553(a)

(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 . . . .
(5) any pertinent policy statement-- (A) issued by the Sentencing Commission . . . .
(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.

* * *

STATEMENT OF THE CASE

Richard Johnson ("Johnson"), petitioner in this case, was convicted of drug charges consisting of conspiracy, substantive possession with intent to distribute, and maintaining a residence to distribute crack and powder cocaine between December 2016 and January 19, 2017, within 1,000 feet of a school.

Detective Onassis Perdomo ("Perdomo"), from the arresting agency, Miami Gardens Police Department, stated that he had surveilled Mr. Johnson's house beginning in December 2016, and that he had observed what he characterized as hand-to-hand drug transactions at Johnson's house on at least two prior occasions, on January 11 and January 17, 2017. Although Perdomo characterized these earlier observations as hand-to-hand narcotics transactions, he conceded that he could not see what was exchanged, and he never stopped and questioned anyone to confirm that his suppositions about these contacts were accurate. Furthermore, he never recorded the transactions. Perdomo also stated that he conducted two controlled buys at the house on January 11 and January 17, 2017, through a confidential informant.

On January 19, 2017, Perdomo returned to the house with two other detectives. While watching the house, Perdomo observed Mr. Johnson outside in his front yard handing a brown paper bag to a young girl who was returning to the car that she had arrived in. Perdomo signaled for other nearby officers to arrest Mr. Johnson based on Perdomo's belief that he had witnessed a narcotics transaction between Mr. Johnson and the young girl. Police descended upon Mr. Johnson's

property, immediately throwing Mr. Johnson to the ground and handcuffing him. When they searched the brown paper bag, they discovered that Mr. Johnson had given the girl perfume, not narcotics. Even after discovering that they had been erroneous in their assumptions about observing a drug transaction, the police kept Mr. Johnson in handcuffs and proceeded over Mr. Johnson's objections to enter his residence without a warrant. Upon entering the home, police discovered another individual in the house who did not heed police warning to stop what he was doing and put his hands up in the air. Instead, that individual moved to a different room, and was eventually removed from the house and arrested. Police also searched Mr. Johnson's person and retrieved two Altoid tins from his pockets which contained contraband.

Police then applied for and received a search warrant for Mr. Johnson's home. In the warrant application, detective Perdomo completely failed to detail the incidents that occurred on January 19 involving the perfume transaction and the subsequent warrantless search of Mr. Johnson's person and residence over his objections. Instead, detective Perdomo referenced two controlled buys he allegedly conducted, and two hand-to-hand transactions he allegedly observed at the same residence on the previous January dates.

After police obtained the search warrant they returned to further search the home, and they seized 14.6 grams of crack, 15.9 grams of powder cocaine, and 9.8 grams of tramadol.

After Mr. Johnson was indicted, he filed a motion to suppress on August 30, 2017, which was denied on October 12, 2017, without the benefit of a hearing. (App. 8). Mr. Johnson argued in his motion to suppress that the alleged controlled buys were fabricated and served as a cover for the illegal search and seizure of his person and home on January 19, 2017. (App. 8).

In his motion, Mr. Johnson argued that the search of his house was unconstitutional based on *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978), because detective Perdomo purposely used the following material misstatements and omissions in his affidavit to procure the search warrant:

1. Perdomo claimed he conducted surveillance "during the month of January" 2017, and during that time observed two hand-to-hand transactions. The description of these transactions in the warrant were vague, with no specific date and describing the individuals involved merely as "unknown black male[s]" and a "thin, short, black male." None of these suspects were stopped or questioned to confirm that the alleged transactions involved narcotics. Other than statements in the warrant affidavit, these alleged transactions were never documented in any way or in any report by Perdomo. (App 8:3-4).

2. Detective Perdomo falsely claimed that he arranged to have a confidential informant ("CI") conduct two controlled buys, one on January 11 and one on January 17, 2017. Although Detective Perdomo represented in the warrant affidavit that official Miami Gardens funds were used in

connection with these alleged controlled buys, a state deposition showed that routine information concerning the funding of the controlled buys by law enforcement was not available and was unknown to relevant law enforcement agents. And no documents established the expenditures of funds for the alleged purchase of narcotics or the compensation paid to the CI. (App. 8:3-4).

3. In seeking approval for the warrant, Perdomo avoided all reference to the events of January 19, 2017: the hand-to-hand perfume transaction he had observed that triggered Mr. Johnson's arrest; or the subsequent searches of Mr. Johnson's person and residence that took place over his objections. (App. 8:5).

Mr. Johnson also filed a pretrial motion to compel the identity of the confidential informant ("CI") who conducted the alleged controlled buys referenced in the search warrant affidavit. The court conducted an *in camera* interview of the CI.

At that proceeding, the CI testified that he conducted the two controlled buys, but when it came to the details of those controlled buys, the informant was vague and nonresponsive to questions posed by the prosecutor and the court. He was unable to give specific details about the transactions or his compensation as a paid informant.

The CI was unable to remember the dates of the alleged transactions, and he could not explain what he had been paid for serving as a CI. When asked about

dates, the CI stated, "I can't remember the dates. I remember it was back in January. That's all I remember. I don't remember the dates. It was a week day."

With respect to his pay, the CI testified:

GOVT:	And you're being paid for being an informant?
CI:	Yes, I am.
GOVT:	How much do you get paid?
CI:	Enough.
GOVT:	More or less.
CI:	Basically, depending on the buy, depending on the buy.

He was also unclear as to who he allegedly purchased drugs from, stating as follows:

COURT:	Was this from Richard Johnson?
CI:	32, yes.
COURT:	I'm sorry? . . . . Then let's get down to what happened between him [the CI] and Richard Johnson, ...
GOVT:	The individual that you did the control buys of narcotics from, what was his name?
CI:	32 Malone, that's what I called him.
GOVT:	So if I understand you correctly, his street name was either 32 or Malone?
CI:	Yes.
GOVT:	Okay. That's what you knew him as?
CI:	Yes.
*	* *
COURT:	All right. Now, let me ask you this: Did you eventually find out this fellow named Malone whether his name was Richard Johnson or not?
CI:	I know him as 32. I knew him from the neighborhood, sir.

The CI's difficult testimony should have been considered by the court in light of the misrepresentations and omissions of the search warrant affidavit, or at the very least, it should have alerted the court to the necessity for a hearing pursuant to *Franks v. Delaware*. After this in camera proceeding, the district court denied Mr.

Johnson's motion to suppress and his motion to disclose the identity of the informant.

The jury trial for Mr. Johnson was held October 16-18, 2017. The government's entire case consisted of the testimony of several law enforcement agents. The government's star witness was Detective Perdomo. After two days of trial, Mr. Johnson was convicted of all the counts in the indictment, but the jury found through a special verdict that Mr. Johnson had not distributed tramadol.

After trial a Presentence Investigation Report ("PSR") was filed by the United States Probation Officer. The PSR determined that the applicable guideline was U.S.S.G. § 2D1.1, which yielded a base offense level of 20. The PSR also recommended a two-point enhancement for maintaining a premises in connection with the distribution of drugs. This resulted in a total offense level of 22. The PSR also found that Mr. Johnson had three criminal history points, for a criminal history category of II. The PSR did not recommend any departures. The maximum statutory penalty was 40 years. Based on level 22, criminal history category II, the PSR recommended a guideline range of 46-57 months.

Mr. Johnson filed objections. The government filed a motion for an upward variance against Mr. Johnson. At sentencing, the government noted that the two-point enhancement was not applicable to Mr. Johnson's case, and that the resulting guideline level was 20. Based on this revised calculation, the guideline range was 37-46 months.

The court reviewed Mr. Johnson's criminal history and informed counsel he

was considering an upward variance because many of Johnson's priors that were approximately 30 years old had not been scored in the criminal history calculations. The court also expressed concern because Mr. Johnson's activities took place near a school. Defense argued that no upward variance was warranted. Defense also pointed out that if the criminal history was scored, it would have resulted in a guideline range of 51-63 months imprisonment. The government requested an upward variance to 78 months. Ultimately, the court sentenced Mr. Johnson to 180 months, or 15 years, imprisonment with six years of supervised release. The defense objected to the upward variance.

Mr. Johnson timely appealed. On appeal, the Eleventh Circuit determined that Mr. Johnson had not made a preliminary showing for a *Franks* hearing, and also that Mr. Johnson's upward variance was substantively reasonable. With respect to the denial of Mr. Johnson's *Franks* hearing, the court stated:

> Johnson has provided only unsupported and conclusory statements regarding the alleged "irregularities" in the controlled buys that Perdomo observed. This falls far short of the "offer of proof" Johnson must produce to show that Perdomo made statements in the warrant affidavit with "reckless disregard for the truth." And Perdomo's omission of the fact that the transaction that triggered the arrest involved only a perfume bottle was not an omission that was necessary to show probable cause, which was established via Perdomo's surveillance of Johnson. So we cannot say that the district court abused its discretion in failing to hold a Franks hearing.
>
> Johnson, 768 Fed. Appx. at 925.

In affirming his sentence, the Eleventh Circuit found that the court considered several §3553(a) factors, and that Johnson's objections amounted to a

disagreement with the weight that the court assigned to particular factors. It found that the court properly exercised its discretion and so the court "[could not] say that the district court abused its discretion in varying upward from the Guidelines range." Johnson, 768 Fed. Appx. at 926. The court, thus, affirmed Mr. Johnson's conviction and sentence. This petition follows.

REASON FOR GRANTING THE WRIT

I. This Court Should Clarify the Quantum Necessary for a Finding of a "Substantial Preliminary Showing" That Entitles Defendants to a Hearing in Which They Can Challenge the Veracity of a Search Warrant Pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978).

Pursuant to the Fourth Amendment, defendants have the right to test the veracity of search warrants to ensure that findings of probable cause supporting those warrants are based on truthful information. The Supreme Court decided in *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978) that:

> [W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.
> *Id.* at 155-56, 98 S.Ct. at 2676.

The *Franks* court found that some method for challenging warrants was necessary based on the wording of the Fourth Amendment, "[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation . . . . ." because "when the Fourth Amendment demands a factual showing sufficient to comprise 'probable cause,' the obvious assumption is that there will be a *truthful* showing

(emphasis in original)." *Id.* at 164-65, 98 S.Ct. at 2681, *citing United States v. Halsey*, 257 F.Supp. 1002, 1005 (S.D.N.Y. 1966), *aff'd* Docket No. 31369 (CA2 June 12, 1967). Otherwise Fourth Amendment requirements "would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and, having misled the magistrate, then was able to remain confident that the ploy was worthwhile." *Id.* at 168, 98 S.Ct. at 2682. The *Franks* Court also noted that the ability to challenge warrants was necessary due to the peculiar nature of warrant proceedings which are held *ex parte* and frequently "marked by haste." *Id.* at 169, 98 S.Ct. at 2683.

As noted above, the court requires a defendant to make a "substantial preliminary showing" of false statements in a warrant affidavit before he is entitled to litigate his allegations in an evidentiary hearing. *Id.*, at 155-56, 98 S.Ct. 2676. However, this showing is a preliminary one, it is not until the actual hearing that the defendant bears the burden of proving that the statements are actually false by a preponderance of the evidence. In that sense, the *Franks* preliminary showing can be compared to a preliminary showing necessary to avoid summary judgment in the civil context, *see, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (106 S.Ct. 2548, 2557 (1986) (demonstration of material issue in fact results in trial). A court presented with a *Franks* issue does not broach the subject of excluding evidence until a defendant succeeds in carrying his burden of proving his allegations by a preponderance of the evidence at the evidentiary hearing. Even at that point, the court may avoid the exclusion of evidence if it excises statements demonstrated to be

false and finds that probable cause for the warrant still exists without reference to the false information. *Id.*

Although *Franks* has been a longstanding rule for several decades, the application of this rule in terms of the quantum of the "substantial preliminary showing" that must be present to obtain an evidentiary hearing remains unclear. As is evidenced in petitioner's case, the Eleventh Circuit is very strict in its application of the *Franks* preliminary showing, and it appears to conflate the preliminary showing with the ultimate burden the defendant must carry at the evidentiary hearing. *See United States v. Johnson*, 768 Fed. Appx. 920 (11th Cir. 2019). Other courts have a less strict approach, allowing defendants through various means to establish that there is a legitimate issue concerning false statements which is best tested through an evidentiary hearing. *See United States v. Stanert*, 762 F.2d 775, 781 (9th Cir.), as amended by 769 F.2d 1410 (1985) (finding that clear proof of deliberate or reckless omission was not required for substantial preliminary showing to obtain *Franks* hearing, but that clear proof would be necessary at evidentiary hearing). Implicit in this less strict approach is the recognition that defendants labor under a disadvantage since they are not privy to the *ex parte* warrant process, and they are sometimes in the position of having to prove a negative, i.e., the non-existence of a witness or a fact. These differing approaches result in defendants having different levels of access to the evidentiary *Franks* hearing in which they can test the merits of their allegations. And thus, these approaches accord defendants different levels of Fourth Amendment

protections.

In the instant case, petitioner was denied an evidentiary *Franks* hearing based on the Eleventh Circuit's finding that he had "provided only unsupported and conclusory statements regarding the alleged 'irregularities' in the controlled buys that [the affiant] observed," and thus fell short of what was necessary to obtain a *Franks* hearing. *Johnson*, 768 Fed. Appx. 920. However, the Eleventh Circuit's review of petitioner's challenges to the warrant confused petitioner's legitimate raising of issues of falsity with the necessity to prove those allegations by a preponderance of the evidence at a hearing, and thus, conflicted with the standard set by *Stanert*, 762 F.2d at 781.

Petitioner was specific in his allegations that the two controlled buys that were the heart of the probable cause finding for the search warrant were fabricated. To support his allegations, he referenced a state deposition that showed that routine information concerning the funding of the controlled buys by law enforcement was not available and was unknown to relevant law enforcement agents. The court's in camera hearing with the CI also supported the petitioner's allegations. The information gleaned during that hearing should have made the court less comfortable proceeding without a full *Franks* evidentiary hearing, because even in the context of an *ex parte* hearing without cross examination, the unreliability of the informant shone through.

On the very point raised by the petitioner before the in camera proceeding – regarding financial arrangements that would have been routine and standard, i.e.,

the payment of an informant for his participation in a controlled buy – the informant was evasive and nonresponsive, lending support for petitioner's allegations that the controlled buys were a fabrication. At the in camera hearing, the informant evaded a straightforward answer as follows:

GOVT:	And you're being paid for being an informant?
CI:	Yes, I am.
GOVT:	How much do you get paid?
CI:	Enough.
GOVT:	More or less.
CI:	Basically, depending on the buy, depending on the buy.

The confidential informant was also hazy on other details of the alleged controlled buys, being unable to identify what days he participated and who he purchased the alleged contraband from. Instead of identifying petitioner, he merely stated the person's name was "32" or "Malone," and the government never attempted to connect these names to petitioner.

The information obtained from the informant at the in camera proceeding raised more questions than it answered. His evasive and nonresponsive answers to the court contradicted statements in the warrant affidavit that he was "reliable," and further supported petitioner's allegations that the alleged controlled buys and the informant's role in any such transactions was false. Thus, the statements made by the defendant in his suppression motion, plus the informant's statements at the in camera hearing met the "substantial preliminary showing" set out in *Franks*, as fleshed out by *Stanert*, 762 F.2d at 781. Accordingly, petitioner should have at least been entitled to an evidentiary *Franks* hearing.

This Court should grant the petition to clarify that the less strict standard utilized by *Stanert*, 762 F.2d at 781, governs, and should remand petitioner's case accordingly.

II. The Eleventh Circuit Misapplied *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007), by Finding Petitioner's Sentence to Be Substantively Reasonable When it Constituted a Substantial Upward Variance Without Proper Justification.

The circuits are confused regarding the standards for evaluating substantive reasonableness challenges on appeal. This Court set forth the general directive in *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586 (2007): "[T]he appellate court should [] consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. When conducting this review, the court will, of course, take into account the totality of the circumstances, including the extent of any variance from the Guidelines range. . . ." *Gall*, 552 U.S. at 51, 128 S. Ct. at 597. This Court further directed that if the sentencing court decided that a variance was warranted, the court had to "consider the extent of the deviation and ensure that the justification was sufficiently compelling to support the degree of the variance. . ." The court noted, "[I]t is uncontroversial that a major departure should be supported by a more significant justification than a minor one." *Gall*, 552 U.S. at 50, 128 S. Ct. at 597.

The practical application of *Gall*'s directive, however, has been a source of confusion among the circuits. *See United States v. Feemster*, 572 F.3d 455, 462 n.4

(8th Cir. 2009) (expressing confusion of how to implement substantive reasonableness review under *Gall*); *United States v. Tomko*, 562 F.3d 558, 591 (3d Cir. 2009) (same); *United States v. Irey*, 612 F.3d 1160, 1231 n. 14 (Tjoflat, J., concurring and dissenting) (11th Cir. 2010) (same). In light of the confusion that has developed under *Gall*, petitioner requests this Court to grant the writ to clarify the standard with respect to substantial variances from the guidelines, and to make explicit that such substantial variances must be based on something more than the common elements of the offense or the guidelines factors that are common to the offense and have already taken into account. Without such direction by this Court, the use of unjustifiable variances result in unwarranted disparities which are prohibited under 18 U.S.C. § 3553(a)(6).

Petitioner's sentence in this case was an unreasonable variance from the United States Federal Sentencing Guidelines because it was not based on an adequate justification to support the degree of the variance. The underlying drug offenses involved only 14.6 grams of crack and 15.9 grams of powder cocaine, and the properly scored guideline range was 37-46 months imprisonment. The district court gave an upward variance from the range of 37-46 months imprisonment up to 180 months. The court stated that this was justified because Mr. Johnson's 30-year-old criminal convictions that were not counted under the guidelines due to their age, caused Mr. Johnson's criminal history to be underrepresented. And further that the instant conviction involved distributing drugs near a school. While these explanations may have been sufficient for explaining why the court wanted to

vary from the guidelines, it was not an adequate explanation for the size of the variance. The sentence was substantively unreasonable because Johnson's criminal history and activities near a school could not, as a substantive matter, account for such a large variance of 143 additional months, or an 80% increase above the low end of the properly calculated guidelines. First, the guidelines provided rules for excluding Mr. Johnson's 30-year-old convictions from the criminal history calculus because they were stale and did not accurately represent Mr. Johnson's current risk of recidivism. Although the guidelines also recognize that on some occasions stale convictions may warrant a variance in the sentencing calculus, the extent of the court's variance based on this factor was excessive. Had the court wanted to vary based on the uncounted prior 30-year-old convictions, a smaller variance may have been sustainable. For example, the court could have calculated the guidelines by counting the criminal history. As defense explained at sentencing, this could have resulted in a variance of up to 63 months imprisonment. Alternatively, the court could have adopted the government's recommendation of 78 months as its variance.

Likewise, the court's variance overemphasized the fact that Mr. Johnson's convictions involved maintaining a drug premises near a school. The problem with the court's rationale regarding proximity to a school is that it provides little more than what is implicit in the instant offense. The offenses petitioner was convicted of required as an element that the illegal activity occur within 1000 feet of a school. And the district court did not articulate at sentencing why this element required

more thought than any other person convicted of the same offenses. Under the guidelines, this factor warranted an increase of approximately two guideline points (see U.S.S.G. § 2D1.1(b)(12)), not an 80% increase in the overall sentence. "An above-guidelines sentence is more likely to be reasonable if it is based on factors that are sufficiently particularized to the individual circumstances of the case rather than factors common to offenders with like crimes." *United States v. Bradley*, 675 F.3d 1021 (7th Cir. 2012).

By failing to have an adequate justification for the steep 143-month increase in Mr. Johnson's sentence, the court imposed a substantively unreasonable sentence and misapplied *Gall,* 552 U.S. 38, 50, 128 S.Ct. 586, 597. This type of sentence reflected a *lack of consideration* given to the specifics of the petitioner's case. Without proper guidance from this Court, unwarranted variances will go unchecked and cause unwarranted disparities from judge to judge and jurisdiction to jurisdiction. Given the confusion within the circuits regarding how to evaluate substantive reasonableness, this Court should grant the writ so it can clarify that substantial variances require more justification than what is required in the elements of the offense or the commonly addressed sentencing factors for that offense.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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