No. 19-5905

IN THE
SUPREME COURT OF THE UNITED STATES

RICKY DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Following imposition of judgment at his re-sentencing hearing, Ricky Davis challenged the 25-year sentence the district court imposed as procedurally and substantively unreasonable. The Ninth Circuit upheld the sentence on the basis that:

> The record confirms the district court evaluated the relevant 18 U.S.C. § 3553(a) factors, including the nature and circumstances of the offense and the need to avoid unwarranted disparities. After completing this analysis, the district court imposed a sentence that was below the Guidelines range of 360 months. We conclude that there was no procedural error and that the sentence of 300 months is substantively reasonable.

Appendix B2. Glaringly absent from this analysis was any recognition by the Ninth Circuit that in arriving at the sentence, the district court had miscalculated the Sentencing Guidelines under U.S.S.G. § 5G1.1(a), and had used as his Guideline anchor the Guideline range for violations of 18 U.S.C. §§ 1591(a) and 1594(a) – the very counts the Ninth Circuit had previously vacated – to arrive at the exact same sentence as when Davis had stood convicted of those more serious charges.

The issue before this Court is whether a sentencing judge gets a pass for miscalculating the applicable recommended Guideline sentence so long as the judge recognizes that his authority to sentence is capped by the statutory maximum. That issue is squarely presented here and there is no further action for any lower court to take regarding the 25-year sentence the district court imposed. Any and all issues pertaining to Davis' 25-year sentence are final and ripe to be decided by this Court, or alternatively, to be remanded to the Ninth Circuit so that it can apply

Rosales-Mireles v. United States, 138 S. Ct. 1897 (2018) to ensure the accuracy of Guideline calculations, to provide certainty and fairness in sentencing and to safeguard the public's perception of the integrity of the judicial proceeding that resulted in depriving an individual of 25 years of his liberty.

I. The Ninth Circuit's Decision Upholding Davis' 25-Year Sentence is Final and Ripe for Review.

The Solicitor General is confused about the relevance of this Court's jurisprudence regarding interlocutory appeals. The Solicitor General's argument that the issue presented is not ripe makes no sense, would create perverse litigation incentives at odds with its stated goal of judicial efficiency, and, not surprisingly, is not supported by this Court's jurisprudence.

To be sure, the Ninth Circuit remanded to the district court so that it could address a condition of supervised release that it had imposed without notice. But for the position the Solicitor General has taken here, it was likely that the parties would have been able to resolve the issue pertaining to the outstanding condition of supervised release through a joint stipulation. Now, however, if Davis were to stipulate to a revised condition, and this Court were to deny Davis' petition for certiorari as untimely as requested by the Solicitor General, Davis would then lose his right to petition for certiorari regarding the significant procedural error underlying his 25-year sentence.

Pursuant to 28 U.S.C. § 1254, "[c]ases *in the court of appeals* may be reviewed by the Supreme Court by. . . writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

§ 1254(1) (emphasis added).[1] If the parties resolve the remaining unrelated issue pertaining to the wording of a supervised release condition, this case will never be back "in the court of appeals." And there is no mechanism by which Davis could petition for writ of certiorari to this Court directly from the district court. Indeed, no section of Title 28, Chapter 81, the chapter that governs the jurisdiction of this Court, authorizes certiorari review from a district court in a criminal case to this Court. *See also* 28 U.S.C. § 2101 (discussing the timing for appeal or certiorari to this Court, the statute identifies only certain *civil* actions, suits or proceedings authorized by law that may be appealed directly to this Court); 28 U.S.C. § 1291 ("The court of appeals. . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States. . . except where direct review may be had in the Supreme Court."). Accordingly, if the Solicitor General is correct, Davis would be forced to not only litigate the supervised release condition in district court, but no matter the outcome, he would be forced to appeal to the Ninth Circuit for the sole purpose of getting back "in the court of appeals" in order to preserve his right to

[1] The Solicitor General's citation to *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504 (2001), is inapposite. Nobody is disputing that this Court has the "authority to consider questions determined in earlier stages of the litigation where certiorari is sought *from the most recent of the judgments of the Court of Appeals*." *Id.* at 508 n.1 (emphasis added). The entire legal proceedings in *Garvey* concerned the scope of review in federal court of an arbitrator's assessment of the facts, an issue that was not resolved with finality below until *Garvey II*. *Id.* at 507-08. Here, the issue of procedural error concerning the imposition of the 25-year sentence was resolved with finality in *Davis II*. Not only will the parties not be back to the Court of Appeals litigating that issue, it is unlikely the parties will be back in the Court of Appeals at all since the remaining unrelated issue will almost certainly be resolved at the district court level.

raise the issue raised here regarding his 25-year sentence, and for no other reason. That is hardly the picture of judicial efficiency.

Not surprisingly, the case law the Solicitor General relies upon does not support that absurd procedure. Instead, those cases stand for the sensible proposition that this Court will deny a petition for writ of certiorari as untimely where there continues to be litigation below regarding the issue giving rise to the question for review. Where ongoing litigation in the lower courts will likely continue to shape, inform, and possibly moot, the question presented, it makes sense for this Court to wait to ensure that the question presented is still a viable question following further litigation below. *See, e.g.*, *Am. Constr. Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 384 (1893) (explaining the reason why this Court generally does not review interlocutory matters is because "many orders made in the progress of a suit become quite unimportant by reason of the final result, or of intervening matters"); *see generally*, Justice Brennan, *Some Thoughts on the Supreme Court's Workload*, 66 Judicature 230, 231-32 (1983) (observing that "we have made mistakes in granting certiorari at an interlocutory stage of a case when allowing the case to proceed to its final disposition below might produce a result that makes it unnecessary to address an important and difficult constitutional question"); Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18 (11th ed. 2019) ("Substantial progress toward a final decision creates the possibility that the issues before the Supreme Court will become moot and lessens the

likelihood that a Supreme Court ruling will save the parties and the courts from wasted effort.").

The cases relied upon by the Solicitor General exemplify this Court's practice of waiting until a court of appeals has entered a final decision on the issue giving rise to the question presented to this Court. For example, in *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916), and unlike in this case, the very issue giving rise to the question presented in the first writ for certiorari was still being litigated in the courts below. The maker of American Girl shoes complained that the maker of American Lady shoes was infringing its trademark. *Id.* at 253. The district court dismissed the complaint. The appeals court reversed and remanded to the district court to do an accounting of the damages. *Id.* at 254. The makers of American Lady shoes sought certiorari, which this Court denied. *Id.* The district court then proceeded to award $1 in damages. *Id.* at 255. The makers of American Girl shoes again appealed, and the court of appeals again reversed, ruling that American Girl should get all the damages it was seeking. *Id.* at 255-56. The makers of American Lady shoes again petitioned for writ of certiorari, which this Court granted. *Id.* at 255. The litigation on the issue complained of, trademark infringement and damages, had been fully and finally litigated below, and was now ripe for review by this Court. Likewise, all issues pertaining to the imposition of Davis' 25-year sentence has been fully and finally litigated below, and thus the question raised in Davis' petition for certiorari is ripe for review.

Similarly, in *Mercer v. Theriot*, 377 U.S. 152 (1964), the district court denied the respondent's motion for a new trial following a jury award of $25,000 for the petitioner. *Id*. at 152-53. The Fifth Circuit reversed, and remanded for the district court to enter judgement for the defendant unless the plaintiff could present evidence sufficient for a new trial. The petitioner sought certiorari, which was denied. The district court then considered new evidence presented by the petitioner and concluded it was not sufficient for a new trial. The petitioner appealed to the Fifth Circuit, which affirmed the district court. The petitioner again petitioned for certiorari *from the decision of the Court of Appeals*, which this Court granted. *Id*. at 153. This Court concluded the district court had it right at the outset, and reversed the court of appeals. *Id*. at 156. Prior to the second decision by the Fifth Circuit, there was a chance the petitioner would have been granted a new trial, which would have mooted the Fifth Circuit's first adverse decision against the petitioner. Accordingly, this Court waited to see if the issue would still be alive following remand to the district court. Here, there is no remand to the district court that has any bearing on the question presented; *Davis II* represents the final decision by the Ninth Circuit concerning Davis' 25-year sentence.

Accord Abbott v. Veasey, 137 S. Ct. 612, 613 (2017) (Roberts, C.J., respecting the denial of certiorari) (where the court of appeals remanded "for further consideration of the facts" and "for further proceedings on an appropriate remedy," the very issues giving rise to the petition for certiorari were still being litigated below and could continue to evolve, and were thus interlocutory and "better suited

for certiorari" after they had been definitively resolved below through a final judgment); *Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944, 945 (2012) (Alito, J., respecting the denial of the petitions for writs of certiorari) (explaining that because the very issue that was the basis for the petition for certiorari – the removal of the cross from Mt. Soledad – had been remanded to the district court for the court to fashion a remedy that may or may not result in removal of the cross at issue, it was unclear whether the question presented would still be a live controversy following completion of the litigation below); *Virginia Military Inst. v. United States*, 113 S. Ct. 2431, 2431-32 (1993) (Scalia, J., respecting the denial of the petition for writ of certiorari) (explaining that because the very issue that was the basis for the petition for certiorari – whether the Virginia Military Institute could be required to admit women – had been remanded to the district court for the court to fashion a remedy that may or may not "compel[] the Virginia Military Institute to abandon its current admissions policy," it was unclear whether the question presented would still be a live controversy following completion of the litigation below).

Here there is no further litigation on the issue presented for review – the decision of the Ninth Circuit upholding Davis' 25-year sentence as procedurally sound is final. There will be no further litigation below concerning the 25-year sentence, and if Davis is not permitted to petition this Court for writ of certiorari following the final decision by the Ninth Circuit, he will lose his right to petition this Court for review of his 25-year sentence unless he manufactures an appeal from the district court regarding a condition of supervised release that is unlikely to

necessitate any further litigation, and which has absolutely no bearing on the issue presented for review here. Not surprisingly, the Solicitor General has not cited any case law that would support such a procedure. Because there has been a final decision by the court of appeals on the issue giving rise to the question raised in Davis' petition for writ of certiorari, his petition is ripe for this Court's review.

II. The Recommended Guideline Sentence *Is the Anchor* for Federal Sentences, and the Failure to Correctly Calculate the Guideline Sentence is Procedural Error that Calls Into Question the Fairness and Integrity of the Sentencing Proceedings.

In addition to being confused about what constitutes an interlocutory decision that continues to be litigated and shaped below, the Solicitor General seems confused about the role the Sentencing Guidelines play in anchoring all sentencing decisions in federal court. The Solicitor General mistakenly seems to believe that whether a district court uses the Sentencing Guidelines as an anchor is optional. BIO at 9.

As this Court has repeatedly explained, "Congress sought . . . a Guidelines system that would bring about greater fairness in sentencing through increased uniformity." *Rita v. United States*, 551 U.S. 338, 354 (2007). The "post-*Booker* federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are *anchored* by the Guidelines and that they remain a meaningful benchmark through the process of appellate review." *Peugh v. United States*, 569 U.S. 530, 541, 133 S. Ct. 2072, 2083 (2013) (emphasis added); *see, e.g.*, *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1349 (2016) (reaffirming that the Guidelines "serve as the starting point for the district court's decision and *anchor*

the court's discretion in selecting an appropriate sentence") (emphasis added); *Beckles v. United States*, 137 S. Ct. 886, 898 (2017) (Ginsberg, J., dissenting) ("The Guidelines *anchor* every sentence imposed in federal district courts.") (emphasis added).

It is of no significance that the district court judge here did not explicitly state that he was using the recommended Guideline sentence that he calculated as an anchor. As this Court has observed, "sentencing judges often say little about the degree to which the Guidelines influenced their determination," but that does not alter the reality that "[d]istrict courts, as a matter of course, use the Guidelines range to instruct them regarding the appropriate balance of the relevant federal sentencing factors." *Molina-Martinez*, 136 S. Ct. at 1347. Moreover, the fact that "a district court may ultimately sentence a given defendant outside the Guidelines range does not deprive the Guidelines of force as the framework for sentencing." *Peugh*, 569 U.S. at 542.

Because the Sentencing Guidelines are the anchor for *every* federal sentence and provide the basis by which all variances and departures are measured, "[a]t the outset of the sentencing proceedings, the district court must determine the applicable Guidelines range." *Molina-Martinez*, 136 S. Ct. at 1342. Not only must district courts "'begin their analysis with the Guidelines,'" they must also "'remain cognizant of them throughout the sentencing process.'" *Rosales-Mireles v. United States,* 138 S. Ct. 1897, 1903 (2018) (quoting *Peugh*, 569 U.S. at 541). And, because the Guidelines are the lodestar of sentencing, "[b]efore a court of appeals can

consider the substantive reasonableness of a sentence, "'[i]t must first ensure that the district court committed no significant procedural error, such as. . . improperly calculating [] the Guidelines range,'" which the Ninth Circuit failed to do here. *Rosales-Mireles*, 138 S. Ct. at 1919 (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). The "rule that an incorrect Guidelines calculation is procedural error ensures that they remain the starting point for every sentencing calculation in the federal system." *Peugh*, 569 U.S. at 542.

Precisely because the recommended Guideline sentence is the anchor for all federal sentencings, there is "considerable empirical evidence," that "when a Guideline range moves up or down, offenders' sentences tend to move with it." *Molina-Martinez*, 136 S. Ct. at 1346 (internal quotations and alterations omitted). And, as discussed in his petition for certiorari (Pet. 14-18), that is hardly surprising given our well-documented cognitive basis for framing our deliberations based upon "an initial numerical reference, even one [we] know is random" and anchoring our subsequent judgments, including "what sentence a defendant deserves. . . to the initial number given." *United States v. Ingram*, 721 F.3d 35, 40 (2d Cir. 2013) (Calabresi, J., concurring); *see, e.g.*, Judge Mark W. Bennett, *Confronting Cognitive "Anchoring Effect" and "Blind Spot" Biases in Federal Sentencing*, 104 J. Crim. L. & Criminology 489, 533 (2014) (explaining that "the anchoring effect skews judgments even when the anchor is incomplete, inaccurate, irrelevant, implausible, and even random," and "[a]nchoring studies involving judges establish that judges are as susceptible as anyone to the anchoring effect").

In light of our cognitive biases and the powerful impact that any initial numeric value has on our ultimate decision, where, as here, a district court judge incorrectly calculates a higher Guideline range at the outset of sentencing there is "a reasonable probability of a different outcome" had the court correctly identified the recommended Guideline sentence, and thus "the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights." *Molina-Martinez*, 136 S. Ct. at 1346-47. And in "the ordinary case. . . the failure to correct a plain Guidelines error that affects a defendant's substantial rights will seriously affect the fairness, integrity, and public reputation of judicial proceedings." *Rosales-Mireles*, 138 S. Ct. at 1911.

The issue presented here is whether this Court intended to create an exception for situations where at the outset of sentencing a district court announces an inflated Guideline range based on its failure to apply U.S.S.G. § 5G1.1(a), but then subsequently evinces awareness that it lacks the authority to sentence an individual in excess of the statutory maximum.

It appears to be the Solicitor General's position that a district court's failure to correctly calculate the recommended Guideline sentence is merely a trivial, non-consequential detail so long as the district court understood that it was precluded from imposing a sentence in excess of the statutory maximum. BIO at 9-10. In other words, according to the Solicitor General it is of no matter if a district court judge believed the Sentencing Guidelines supported a sentence up to life in custody,

as long as the judge understood that he could not sentence in excess of the statutory maximum of 30 years.

The Solicitor General's reasoning completely disregards the central role that the Sentencing Guidelines play in anchoring a district court's discretion. It is the recommended Sentencing Guideline range that is the anchor and lodestar of federal sentencing, not statutory minimums and maximums. *See, e.g.*, *Molina-Martinez*, 136 S. Ct at 1346; *Peugh*, 569 U.S. at 541.

> Unlike the Guidelines, which district courts are required to use as the starting point for sentencing, to remain cognizant of throughout the sentencing process, and to explain the decision to deviate from, statutory ranges merely set the floor and the ceiling within which a district court must sentence, thereby functioning not to 'anchor' the district court's discretion, but rather to limit the extent to which a district court may permissibly stray from the Guidelines range. . . . As a result, it is no surprise that a Guidelines range and a statutory range do not have commensurate effects on the final sentence imposed. . . . [S]tatutory ranges are generally too expansive to exert significant influence over the ultimate sentence imposed.

United States v. Payano, 930 F.3d 186, 193-94, 199 (3d Cir. 2019) (internal quotations and alterations omitted) (recognizing that while an incorrectly calculated Guideline range has a much great likelihood to distort the ultimate sentence, under the facts of the case, the district court's failure to correctly identify the statutory maximum could also have influenced the actual sentence imposed thereby seriously affecting the fairness, integrity or public reputation of the judicial proceeding).

The fact that the judge here recognized that he could not actually impose a life sentence is, therefore, not the issue. The issue is the cognitive bias inherent in calculating the recommended Guideline sentence and the implicit role that

calculation has on the court's subsequent sentencing decision. And it is particularly troubling under the facts of this case where the recommended Guideline sentence the court announced at the outset of Davis' re-sentencing hearing *was* the applicable Guideline range at Davis' *first* sentencing hearing when Davis stood convicted of the more serious charges of attempting to sex traffic a minor child in violation of 18 U.S.C. §§ 1591(a) and 1594(a), which *did* carry a statutory maximum of life in custody, and the district court then proceeded to impose exactly the same sentence it had imposed when Davis stood convicted of the more serious charges with the higher statutory maximum, and the higher Guideline range.

The Solicitor General's attempt to harmonize the Second Circuit's decisions in *United States v. Dorvee*, 616 F. 3d 174 (2d Cir. 2010) and *United States v. Bennett*, 839 F.3d 153 (2d Cir. 2016) with the approach taken by the Ninth Circuit here and the Sixth Circuit in *United States v. Murphy*, 591 F. App'x 377 (6th Cir. 2014) is unavailing.

To be sure, the judges in *Dorvee* and *Bennett* re-stated the incorrectly calculated Guideline range several times, and the judge here only stated the incorrect calculation once at the outset of sentencing, but that is a distinction without a difference. As this Court has repeatedly explained, judges are simply required to correctly calculate the Guideline at the *outset* of sentencing; the district court is under no obligation to repeat its Guideline calculation at any other time. *Molina-Martinez*, 136 S. Ct. at 1342 (citing *Peugh*, 133 S. Ct. at 2080); *Gall*, 552 U.S. at 49. The anchoring effect, and the inherent cognitive bias, occurs when the

numeric number is announced at the outset of sentencing. Whether or not a sentencing judge re-states its Guideline calculation at some later point in the hearing is immaterial as this Court has repeatedly instructed that not only must district courts "begin their analysis with the Guidelines," they must "remain cognizant of them throughout the sentencing process." *Rosales-Mireles v. United States*, 138 S. Ct. at 1904 (internal quotations omitted). In other words, whether or not the sentencing judge is repeating the recommended Guideline sentence it calculated, we must assume the judge remained cognizant of that Guideline sentence throughout the sentencing process.

Just like the judge in *Dorvee* and *Bennett*, the judge here incorrectly calculated the Guideline range at the outset of the sentencing, and like the judges in *Dorvee* and *Bennett,* followed the incorrect Guideline calculation with a correct statement of the applicable statutory maximum, and like the judges in *Dorvee* and *Bennett*, never corrected the inflated Guideline range announced at the outset of sentencing. In other words there is no doubt that all the judges incorrectly calculated the recommended Guideline sentence while at the same time being acutely aware that they could not sentence the defendant in excess of the statutory maximum.

As the Second Circuit has explained, given the central role the Guideline calculation announced at the outset of sentencing plays in anchoring a district court's discretion, it is not enough to ensure the public's perception of fairness and integrity of judicial proceedings, nor Congress' goal of achieving uniformity and

proportionality in sentencing, that a sentencing judge recognizes that he/she cannot impose a sentence greater than the statutory maximum. *Dorvee*, 616 F.3d at 182 ("If the district court miscalculates the typical sentence at the outset, it cannot properly account for atypical factors and we, in turn, cannot be sure that the court has adequately considered the § 3553(a) factors. That is what happened here, and constitutes procedural error."); *Bennett*, 839 F.3d at 163 (explaining that given the "contemporary research on judicial decision making, which indicates that anchoring and other 'contextual factors' can affect the exact sentence imposed," even though the district court judge insisted he "was 'not moved by' the Guidelines," the Second Circuit recognized that implicitly "the miscalculated Guidelines range may well have anchored the District Court's thinking as to what an appropriate sentence would be"). *Compare United States v. Murphy*, 591 F. App'x 377, 382 (6th Cir. 2014) ("a district court does not err by . . . misstating that the Guidelines sentence is higher than the statutory maximum sentence, if it uses the statutory maximum sentence as the benchmark for a downward departure").

The Second Circuit is correct. The reality is that when a district court judge incorrectly calculates the recommended Guideline sentence at the outset of sentencing, even if that judge disavows the Guidelines and/or explicitly recognizes his/her authority to sentence is constrained by the statutory maximum, we must assume given the implicit bias intentionally built into a sentencing regime that anchors sentences to the Guidelines by requiring judges to calculate the Guideline at the outset of sentencing, that the incorrectly calculated Guideline sentence

impacted the ultimate sentence imposed. And, where, as occurred here, we are talking about depriving someone of 25 years of his life, and where, as occurred here, the district court relied on the same Guideline calculation at the first sentencing as the second sentencing to arrive at the exact same sentence even though the Guidelines no longer supported a life sentence the second time around, there is a heightened need to vigilantly protect and safeguard the public perception of the fairness and integrity of the underlying judicial proceeding. Given that heightened concern, it is particularly troubling here that the Ninth Circuit Court of Appeals ignored the issue altogether and premised its decision upholding Davis' sentence simply on the fact that the district court evaluated the relevant 18 U.S.C. § 3553(a) factors without evincing any awareness that the anchor against which those factors are measured will be dispositive of any sentence imposed. *Molina-Martinez*, 136 S. Ct. at 1342; *Gall*, 552 U.S. at 50.

Accordingly, "[a]lthough the Government maintains that remanding for resentencing would be a 'pointless formality' on the facts of this case, . . . advancing [the interests of fairness and the integrity of judicial proceedings] and ensuring [an individual's] sentence is procedurally sound are neither pointless endeavors, nor mere formality." *United States v. Hester*, 910 F.3d 78, 91 (3d Cir. 2018). Indeed, "regardless of [a sentence's] ultimate reasonableness, a sentence that lacks reliability because of unjust procedures may well undermine public perception of the proceedings." *Rosales-Mireles*, 138 S. Ct. at 1910. Moreover, "[e]nsuring the accuracy of Guidelines determinations also serves the purpose of providing

certainty and fairness in sentencing on a greater scale." *Id*. at 1908 (internal quotations omitted).

Where "a decision remanding a case to the district court for resentencing on the basis of a Guidelines miscalculation is far less burdensome than a retrial, or other jury proceedings, and thus does not demand such a high degree of caution," and where a district court judge believed the Sentencing Guidelines supported a sentence of life in custody and imposed a 25-year sentence, the same sentence the Court imposed when the Guidelines did in fact support a life sentence, and where the Ninth Circuit evinced no recognition, let alone concern, that the district court anchored the sentencing proceeding with the wrong Guidelines, at minimum this Court should remand to the Ninth Circuit with instructions to apply *Rosales-Mireles v. United States* in order to safeguard the "public's perception of the fairness and integrity of the judicial process." *United States v. Sabillon-Umana*, 772 F.3d 1328, 1335 (10th Cir. 2014).

CONCLUSION

The petition for a writ of certiorari should be granted, or alternatively, Davis respectfully requests that this Court grant his petition for writ of certiorari, vacate the Ninth Circuit's decision and remand in light of the Ninth Circuit's failure to consider *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1903 (2018).

Dated: January 27, 2020

Respectfully submitted,

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