CASE NO._____

IN THE SUPREME COURT OF THE UNITED STATES

October 2019 Term

MICHAEL TRYANCE ANDERSON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of

Certiorari To the Eighth Circuit

Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether the Eighth Circuit's substantive reasonableness review satisfies the standards set forth in *United States v. Booker*, 543 U.S. 220 (2005), *Gall v. United States*, 552 U.S. 38 (2007), and 18 U.S.C. § 3742?

Parties to the Proceedings

Petitioner Michael Anderson was represented in the lower court proceedings by Lee T. Lawless, Federal Public Defender for the Eastern District of Missouri, and Scott F. Tilsen, Assistant Federal Public Defender for the Eastern District of Missouri, 325 South Broadway 2d Floor, Cape Girardeau, Missouri 63701. The United States is represented by United Sates Attorney Jeff Jensen and Assistant United States Attorney Keith D. Sorrell, 555 Independence, Room 3000, Cape Girardeau, Missouri 63703.

Directly Related Proceedings

United States v. Michael Anderson, No. 1:17-CR-00084 SNLJ (E.D. Mo. March 21, 2018)

United States v. Michael Anderson, No. 18-1640 (8th Cir. June 12, 2019)

United States v. Michael Anderson, No. 18-1640 (8th Cir. Aug. 23, 2019)

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OPINION BELOW

The decision of the United States Court of Appeals for the Eighth Circuit is published at 926 F.3d 954. It appears in the Appendix ("Appx.") 1.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The Eighth Circuit Court of Appeals entered its judgment on June 12, 2019, finding the sentence imposed procedurally and substantively reasonable. Appendix 1. Petitioner sought rehearing on the single issue decided in the June 12, 2019 judgment; the Eighth Circuit denied rehearing on August 23, 2019. Petitioner files this petition on November 21, 2019, pursuant to Supreme Court Rule 30.1

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3742(f)(2)

> (f) Decision and Disposition.—If the court of appeals determines that—
>
> (1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;
>
> (2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—
>
> (A) if it determines that the sentence is too high and the appeal has

been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

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 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.

STATEMENT OF THE CASE

Michael Anderson plead guilty to the regulatory offense of making a false statement in connection with the purchase of a firearm from a licensed firearms dealer on June 6, 2017, by falsely representing that he was not then under indictment for a crime punishable by a term exceeding one year, a violation of 18 U.S.C. § 922(a)(6). Anderson knew that previously, he had been charged by Information and arraigned on the felony offense of possession of a controlled substance in the circuit court of Cape Girardeau, Missouri. The count of conviction carried a maximum statutory punishment of 120 months of imprisonment. The factual basis for the plea agreement was the false statement made to the licensed firearms dealer.

The Presentence Investigation Report (PSR) found a total offense level of 12 and a criminal history category of III, resulting in an advisory Guidelines range of imprisonment of 15 to 21 months. It recounted Anderson's prior convictions for possession of drug paraphernalia, carrying a concealed weapon, possession of up to 35 grams of marijuana, driving on a suspended license and while revoked, possession of cocaine, driving while intoxicated, and unlawful possession of a firearm while intoxicated.

Prior to sentencing, the government filed a motion for a 99-month upward variance, based on uncharged conduct, from the Guidelines range to a sentence of 120 months. At the sentencing hearing on March 13, 2018, the District Court adopted the factual basis and Guidelines calculation of the PSR, with no objection

by either party. The PSR did not include any information about the uncharged conduct that underlay the government's request for an eight-year upward variance from a sentence of less than two years to the statutory maximum.

At the sentencing hearing, the government presented testimony from four people regarding a shooting incident in November 2016 that allegedly involved Mr. Anderson. Authorities have never charged anyone in connection with the incident, and law enforcement never arrested Anderson for it. The government also presented testimony from a police detective regarding two occasions on which Anderson shot at someone in self-defense or defense of others, incidents for which police never arrested or charged him. The government renewed its motion for an upward variance on the basis of the November 2016 incident.

The District Court stated that although the government only needed to establish the uncharged conduct by a preponderance of the evidence, the court "finds beyond a reasonable doubt" that Anderson was "at least aiding and abetting" in the November 2016 incident. The District Court concluded that the offense of conviction, which occurred in June 2017, "has a connection with" the November 2016 incident. The District Court stated: "There's a need to protect the public from Mr. Anderson's propensity to use firearms in criminal activity, especially in the instance that has been proved up today." The District Court then imposed the statutory maximum sentence of 120 months of imprisonment and three years of supervised release. Counsel objected to the procedural correctness and the substantive reasonableness of the sentence imposed, and to the District Court's explanation for the sentence.

Mr. Anderson appealed the sentence on three grounds. He argued that the sentence was procedurally flawed because the District Court committed clear error when it found that Anderson had a "propensity" to use weapons in criminal activity, and because the court failed to adequately explain the upward variance to the statutory maximum. Finally, he asserted that the sentence was substantively unreasonable and an abuse of discretion.

The Court of Appeals affirmed the sentence. It noted that the PSR established that Anderson had a history of possessing stolen firearms. It recounted Anderson's prior conviction for unlawfully carrying a firearm while intoxicated, stating that the District Court "was not required to find that Anderson had discharged the weapons he possessed to find that he had a propensity to 'use' firearms." 926 F.3d at 957.

The panel also concluded that the District Court did not rely on the two shooting incidents involving self-defense or defense of others in finding that Anderson had a propensity to use weapons in criminal activity. 926 F.3d at 957 n. 2. Thus, the only bases for the finding were Anderson's alleged involvement in the November 2016 incident and his prior convictions for unlawful possession of firearms.

Observing that there is "no 'heightened standard of review' for outside-Guidelines sentences," the panel found the sentence substantively reasonable, according "due respect to the district court's firsthand opportunity to assess Anderson's character" and concluding that the sentence was a "permissible exercise of the district court's broad discretion." *Id*. at 958 (quoting *Gall v. United States*, 552

U.S. 38, 49 (2007)).

Anderson sought rehearing by the panel, and the Court of Appeals denied rehearing on August 23, 2019. This petition is timely filed on November 21, 2019, pursuant to Supreme Court Rule 30.1.

GROUNDS FOR GRANTING THE WRIT

I. The Eighth Circuit's ineffectual substantive reasonableness review accords near-complete deference to sentencing courts, thus misapplying this Court's decisions, depriving defendants of their statutory right to review the reasonableness of their sentences, deepening circuit conflicts on the nature of reasonableness review, and exacerbating unwarranted sentencing disparity.

The Eighth Circuit misapplied this Court's precedents and abandoned its responsibility to review the substantive reasonableness of the sentence when it accorded near-complete deference to the District Court's consideration and weighing of the 18 U.S.C. § 3553(a) sentencing factors. The panel opinion's extreme deference to the District Court effectively deprived Mr. Anderson of his statutory right to review of the reasonableness of the statutory maximum sentence, including the extent of the 99-month variance, imposed on a defendant convicted of a non-violent, regulatory offense who had no prior convictions for crimes of violence or drug distribution, who was in Criminal History Category III. *See* 18 U.S.C. § 3742(f)(2).

A. Development of Appellate Reasonableness Review

A central purpose of the Sentencing Reform Act of 1984 (SRA) was to "eliminate the unwarranted disparities perceived to be caused by sentencing judges' unbridled discretion." Note*, More Than a Formality: The Case for Meaningful Substantive Reasonableness Review*, 127 Harv. L. Rev. 951, 953 (2014). The mandatory nature of the Guidelines and the appellate review provided for in SRA § 3742 were intended to ensure greater consistency and fewer unwarranted disparities in sentencing. *Id*. at 954. *See also United States v. Booker*, 543 U.S. 220, 292 (2005) (Stevens, J., dissenting) ("The elimination of sentencing disparity, which

Congress determined was chiefly the result of a discretionary sentencing regime, was unquestionably Congress' principal aim."). *Booker* rendered the Guidelines advisory and stated that appellate courts should review sentences for unreasonableness in light of the § 3553(a) factors. 543 U.S. at 226-27, 261, This Court's subsequent decisions make clear that appellate courts must apply the abuse-of-discretion standard of review, taking into account the totality of the circumstances, including the extent of any variance from the Guidelines range, and ensure the sentence is "reasonable." Gall, 552 U.S. at 46. A "major departure" or variance from the Guidelines range must be "supported by a more significant justification than a minor one." *Id*. at 51. The reviewing court "may consider the extent of the deviation, but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." *Id*.

B. The Eighth Circuit's Reasonableness Review Conflicts with This Court's Precedents

The panel in Anderson's case abdicated its responsibility under *Booker* and *Gall* to consider the extent of the 99-month deviation from the Guidelines range, from 21 months to 120 months, and the substantive reasonableness of the resulting statutory maximum sentence. It acknowledged that "we have not defined with any specificity the extent to which the district court must explain the reasons for the extent of its upward variance: 'all that is generally required to satisfy the appellate court is evidence that the district court was aware of the relevant factors.'" *Anderson*, 926 F.3d at 958 (quoting *United States v. Perkins*, 526 F.3d 1107, 1110 (8th Cir. 2008)). The bulk of the panel's analysis concerned potential procedural

errors, and it devoted a scant single paragraph to the substantive reasonableness of the sentence. Nor did the panel discuss the fact that the extreme variance in this case was to the statutory maximum sentence. The panel emphasized that it was according "due respect" to the district court's weighing of the § 3553(a) factors and found that the "sentence was a permissible exercise of the district court's broad discretion." *Id.* at 958.

The panel stated that the District Court "was not required to find that Anderson had discharged the weapons he possessed to find that he had a propensity to 'use' firearms." 926 F.3d at 957. The panel then cited a Missouri statute criminalizing exhibiting a firearm in an angry or threatening manner, although Anderson has never been convicted under that statute and his prior weapons offenses both involved simple possession of a firearm. In addition to this inexplicable citation, the panel's conclusion also conflicts with the holding in *Bailey v. United States*, 516 U.S. 137, 144 (1995) (superseded by statute as stated in *Welch v. United States*, 136 S. Ct. 1257, 1267 (2016)), that "use" of a firearm requires active employment and cannot be satisfied by mere possession. Despite Anderson's lack of prior convictions for unlawful "use" of a weapon, the panel cited Anderson's "repeated possession and use of weapons" as a basis for the upward variance. 926 F.3d at 958 (emphasis added).

It is no review at all if the only requirement is that the record generally satisfies the appellate court that the district court was aware of all relevant factors. Extreme deference to the sentencing court deprives substantive reasonableness

review of any effective force. As the Eighth Circuit itself has acknowledged, "[i]f anything remains of substantive reasonableness review in the courts of appeals, our court cannot ignore its duty to correct" errors in weighing the § 3553(a) factors. *United States v. Kane*, 639 F.3d 1121, 1136 (8th Cir. 2011). As another Circuit put it, "Because of the substantial deference district courts are due in sentencing, we give their decisions about what is reasonable wide berth and almost always let them pass. There is a difference, though, between recognizing that another usually has the right of way and abandoning one's post." *Id.* (quoting *United States v. Irey*, 612 F.3d 1160, 1225 (11th Cir. 2010) (en banc)). The Court of Appeals abandoned this responsibility in Anderson's case, declining to question the extent of the variance, the proportionality of the statutory maximum sentence, or whether the sentence avoided unwarranted disparity among defendants with similar records who have been found guilty of similar conduct.

The Eighth Circuit's overly deferential review represents a return to the unbridled discretion that district judges enjoyed before the SRA, and it fails to promote uniformity of sentencing, particularly in outlier cases such as Anderson's that involve a massive upward variance from under two years to the maximum sentence that can be imposed by law. The panel opinion admits as much, acknowledging that "[w]e do not require district courts to compare the defendant with other similarly situated prior offenders." 926 F.3d at 958. Yet avoiding unwarranted disparity is a central goal of the federal sentencing scheme, even after *Booker*, and a listed factor in the sentencing statute. 18 U.S.C. § 3553(a)(6). A

sentence at the statutory maximum that represents a dramatic upward variance from the Guidelines range is likely to create the very disparity that the statute instructs sentencing courts to avoid. And under this Court's decisions, it is the Court of Appeals' responsibility to ensure that the sentence is not unreasonable in light of the § 3553(a) factors. The panel in Anderson's case abdicated that responsibility and disregarded this Court's contrary instructions set forth in *Booker* and *Gall*.

C. A Statutory Maximum Sentence Merits More Searching Review

As the Second Circuit has noted, "District courts should generally reserve sentences at or near the statutory maximum for the worst offenders." *United States v. Jenkins*, 854 F.3d 181, 192 (2d Cir. 2017). What places a defendant among "the worst" is unclear, but some guideposts exist. For example, 28 U.S.C. § 994(h) directs the Sentencing Commission to assure that the Guidelines specify a sentence at or near the statutory maximum for adult defendants whose instant offense is a crime of violence or a controlled substance offense and who have been convicted of two or more prior felonies which are also crimes of violence or controlled substance offenses. Neither circumstance applied in Anderson's case.

In *Ewing v. California*, this Court observed that the Commission did not include shoplifting or similar theft-related offenses to be "among the crimes that might trigger especially long sentences for recidivists" and that Congress did not include such offenses when it sought sentences "'at or near the statutory maximum' for certain recidivists." 538 U.S. 11, 42 (2003) (citations omitted).

Case law shows that many district courts reserve sentences at or near the statutory maximum for offenses under 18 U.S.C. § 922(a)(6) for egregious offense conduct. *See*, *e.g.*, *United States v. Steward*, No. 13-1325, 2016 WL 3676818 (W.D. Tenn. July 6, 2016) (unpub.) (denying motion to vacate 120-month sentence for making false statement while purchasing firearm with which movant's husband shot and killed a police captain during an attempted robbery); *United States v. Hernandez*, 633 F.3d 370 (5th Cir. 2011) (affirming 97-month sentence, on a Guidelines range of 51 to 63 months, for a straw purchaser who sold to Mexican drug cartels more than 25 firearms which were used in the commission of eight murders); *United States v. Nelson*, 296 F.App'x 475 (6th Cir. 2008) (unpub.) (affirming 120-month sentence for a first offender and former police officer who enlisted others to straw purchase firearms for him, where offense involved more than 200 firearms); *United States v. Rayyan*, 885 F.3d 436 (6th Cir. 2018) (affirming 60-month sentence, on a Guidelines range of 15 to 21 months, imposed in a 33-page opinion after a three-day hearing, for defendant who consumed Islamic State propaganda, expressed an interest in committing jihad, and planned out an attack on a large church).

Neither the non-violent, regulatory offense of conviction, nor Anderson's relatively modest criminal record placed him among the worst offenders who merit a statutory maximum sentence. Nonetheless, the Court of Appeals did not address, even briefly, the fact that the sentence imposed was the maximum sentence permitted by law.

D. The Eighth Circuit's Bloodless Review Deepens a Circuit Split

The Eighth Circuit's ineffectual review conflicts with the more robust reasonableness review practiced by other circuits, further promoting disparity and undermining uniformity, exposing defendants in this Circuit to the idiosyncrasies of individual sentencing judges in a way that they are not so exposed in sister circuits. As detailed in one survey, "[s]ome circuits vest an inordinate amount of discretion at the district court level, which is unreviewable in practice," while "some circuits vest much more discretion at the appellate level." Carrie Leonetti, *De Facto Mandatory: A Quantitative Assessment of Reasonableness Review After Booker*, 66 DePaul L. Rev. 51, 60 (2017). The combination of "advisory guidelines with weak appellate review increases unwarranted sentencing disparities." *Id*. at 59-60. Another study describes "confusion in the circuit courts over the scope of their mandate to review the substance of sentences" and divisions "over the level of deference owed to sentences both within and outside the Guidelines." *More Than a Formality, supra*, at 962.

Appellate judges and other stakeholders have lamented the lack of standards for conducting reasonableness review. *See, e.g., United States v. Neba*, 901 F.3d 260, 268 (5th Cir. 2018) (Jones, J., concurring) (noting "courts' inability to assess 'substantive reasonableness'" and concluding, "I think it fair to ask whether the Court should next begin to consider articulating some rules for 'substantive reasonableness.'"); *Prepared Testimony of Judge Patti B. Saris Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security* (Oct. 12,

2011), at 15, *available at* https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/testimony/20111012_Saris_Testimony.pdf (Chair of the Sentencing Commission describing a perceived "lack of clarity regarding the standard to be applied when reviewing a sentence for substantive reasonableness and the resulting deference to the district court's discretion."); *Statement of Matthew Axelrod at U.S. Sentencing Commission, Hearing on the Current State of Federal Sentencing* (Feb. 16, 2012), at 8, *available at* https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20120215-16/Testimony_16_Axelrod.pdf (Associate Deputy Attorney General addressing "differences in the way circuit courts view . . . their role in overseeing sentencing practice and policy" and stating that "[m]any appellate courts have taken a 'hands off' approach to their review of district court sentencing decisions and the guidelines; others are scrutinizing the guidelines more closely.").

The varying approaches among the circuits and the pleading of appellate judges for clearer standards of reasonableness review show that the issue requires this Court's attention, as it is the only body that can reconcile the differences and provide the necessary guidance to the courts of appeals.

E. This Single-Issue Case Is an Appropriate Vehicle for Certiorari because Only This Court Can Resolve the Circuit Conflicts and Clarify the Standard for Reasonableness Review

Only this Court can clarify the contours of substantive reasonableness review, as it did post-*Booker*, in *Gall*, *Rita v. United States*, 551 U.S. 338 (2007), and

Kimbrough v. United States, 552 U.S. 85 (2007). Twelve years and thousands of cases later, the divergence of interpretation of that trio of cases in the circuits is well entrenched and desperately warrants this Court's intervention. The majority in *Booker* believed that reasonableness review "would tend to iron out sentencing differences." *Booker*, 543 U.S. at 236.

Instead, the state of affairs that Justice Scalia predicted in his dissent in *Booker* has come to pass. He presciently hypothesized:

> [A] court of appeals might handle the new workload by approving virtually any sentence within the statutory range that the sentencing court imposes, so long as the district judge goes through the appropriate formalities, such as expressing his consideration of and disagreement with the Guidelines sentence. What I anticipate will happen is that "unreasonableness" review will produce a discordant symphony of different standards, varying from court to court and judge to judge, giving the lie to the remedial majority's sanguine claim that "no feature" of its avant-garde Guidelines system will "ten[d] to hinder" the avoidance of "excessive sentencing disparities."

Booker, 543 U.S. at 312 (Scalia, J., dissenting).

Anderson's case is but one of many in which a court of appeals has affirmed the reasonableness of a sentence after merely satisfying itself that the district court "considered" the § 3553(a) factors. The perfunctory nature of this review is apparent in an entirely typical passage from *United States v. Huffstatler*, 571 F.3d 620, 624 (7th Cir. 2009) (per curiam): "Finally, Huffstatler's [450-month] sentence, though above the guidelines range, was reasonable. The sentencing judge correctly calculated the guidelines range and then reviewed the § 3553(a) factors . . . in some detail before announcing that a longer sentence was justified. We require nothing more." The federal reporters are replete with similarly truncated analyses of

whether a sentence is unreasonable – at least in those appellate courts that forego the more searching review undertaken in other circuits.

The legal issue in this case is typical and recurring: a district court relies on uncharged conduct to vary from the Guidelines range in a firearms case, and a court of appeals reviews whether the sentence imposed is reasonable. In the federal courts, the number of charged firearms offenses has increased by 32.1% since 2014, and firearms cases composed 10.8% of all federal criminal cases in 2018. Admin. Office of the U.S. Courts, *Federal Judicial Caseload Statistics 2018*, *available at* https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2018; U.S. Sent. Comm'n, *2018 Sourcebook of Federal Sentencing Statistics*, Federal Offenders by Type of Crime (Figure 2).

Last year, 7,032 federal defendants were sentenced under Sentencing Guidelines § 2K2.1, the primary guideline for firearms offenses. U.S. Sent. Comm'n, *2018 Sourcebook of Federal Sentencing Statistics*, Federal Offenders Sentenced under Each Chapter Two Guideline (Table 20). The sentencing court varied from the Guidelines range in 33.4% of those cases, potentially resulting in appeals taken by either party triggering reasonableness review. *Id.*, Sentence Imposed Relative to the Guideline Range for Firearms Offenders (Table F-6). The frequency of appealable variances from the Guidelines range in firearms cases shows that the issue presented in this case is a recurring one with implications for thousands of defendants in each circuit.

This single-issue case comes to the Court on direct appeal and is an excellent

vehicle for certiorari because it well exemplifies the Eighth Circuit's unduly deferential approach to reasonableness review and the unwarranted disparity that results from the court's refusal to seriously engage with the substantive reasonableness of even a statutory maximum sentence that is the result of a variance from 21 months to 120 months. The moribund posture of the Eighth Circuit is evident in the failure of Anderson's petition for rehearing to muster even one request by a judge to treat the petition for rehearing as a petition for rehearing en banc, as provided in Rule 40A of the Local Rules of the Eighth Circuit. The lack of any judicial appetite to reconsider or refine the Circuit's current approach to reasonableness review will continue to subject defendants to the status quo, and thus to the proclivities of individual sentencing judges.

CONCLUSION

The extreme deference to sentencing judges accorded on review by the Eighth Circuit saps the reasonableness review prescribed by this Court's decisions of any animating force and conflicts with the more robust engagement with the sentencing factors practiced in other circuits. Weak and ineffectual appellate review of whether a sentence is reasonable renders that review an empty formality in too many circuits and leads directly to unwarranted sentence disparities that are fundamentally unfair and jurisprudentially undesirable. It is incumbent on this Court, after allowing these issues to percolate in the circuits for more than a decade, to clarify the nature and scope of reasonableness review, to bring the circuits' approaches into alignment, and to ensure that criminal defendants in every part of

the nation receive the careful review that any sentence to imprisonment for a term of years deserves. This Court should grant the writ of certiorari.

Respectfully submitted,

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