

No. \_\_\_\_\_

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In the

**Supreme Court of the United States**

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**APRIL TORRES,**

*Petitioner,*

v.

**United States of America,**

*Respondent.*

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

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PETITION FOR A WRIT OF CERTIORARI

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Brandon E. Beck  
*Assistant Federal Public Defender*

Federal Public Defender's Office  
Northern District of Texas  
1205 Texas Ave. #507  
Lubbock, Texas 79401  
(806) 472-7236  
brandon\_beck@fd.org

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## **QUESTIONS PRESENTED**

- I. Did the district court impose a plainly unreasonable revocation sentence upon Ms. Torres?

## **PARTIES TO THE PROCEEDING**

Petitioner is April Torres, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner April Torres seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

### OPINIONS BELOW

The opinion of the Court of Appeals is *United States v. Torres*, 776 F. App'x 855 (5th Cir. 2019). The district court did not issue a written opinion.

### JURISDICTION

The opinion and judgment of the Fifth Circuit were entered on September 6, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### STATUTORY AND RULES PROVISIONS

This petition involves one statute:

he court may, after considering the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) [18 USCS § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)] ... revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case.

18 U.S.C. § 3583(e)(3).

## STATEMENT OF THE CASE

On October 29, 2002, April Torres, Appellant, was sentenced in the Western District of Texas to 151 months imprisonment followed by 5 years of supervised release for conspiracy to possess with intent to distribute marijuana. Her supervised release commenced on August 7, 2012. On December 18, 2013, after finding that she committed a new crime, a district court for the Northern District of Texas revoked her supervised release, sentenced her to 12 months imprisonment followed by 48 months of supervised release. Her supervision commenced on November 25, 2014. On March 22, 2016, the district court revoked her supervision and sentenced her to 12 months and one day of imprisonment followed by 24 months of supervised release. Her most recent term of supervision commenced on October 13, 2016.

After being arrested for shoplifting and admitting to the probation officer that she had committed the offense, the government again moved to revoke Ms. Torres's supervised release. Mr. Torres either pleaded "true" or did not contest the allegations. Based on a Grade B violation with a criminal history category of II, the policy statement range was 6 to 12 months. The district, however, imposed a sentence of 30 months imprisonment:

While under supervision, April Torres committed new law violations making her a risk to the community. A sentence of 30 months is necessary to address the violation conduct committed by Ms. Torres and as deterrence from further criminal activity.

Despite having served most of her original 151 month custody sentence out of the Western District of Texas imposed in October of 2002, Ms. Torres has since twice had her terms of supervised release revoked for committing

additional crimes. Now, she faces two new prosecutions for theft committed in December of 2017 and May of 2018. The Court concludes that nothing short of incarceration deters Ms. Torres from committing additional crimes.

I've now stated the sentence and the reasons therefore. I call upon the parties to indicate any legal reason why sentence may not be imposed as stated.

Defense counsel objected to the district court's sentence as substantively unreasonable, which the district overruled. On appeal, the Fifth Circuit affirmed.



## REASONS FOR GRANTING THIS PETITION

### I. **The district court's above-Guidelines sentence was plainly unreasonable.**

The Court will not uphold a sentence imposed by the district court upon revocation of supervised release if the sentence was imposed in violation of law or was plainly unreasonable. *United States v. Headrick*, 963F.2d 777, 779 (5th Cir. 1992). Under the “plainly unreasonable” standard, the Court will follow a two-step process. *Id.* The Court will first determine whether the district court committed any significant procedural error. *United States v. Kippers*, 685 F.3d 491, 497 (5th Cir. 2012). If the Court finds no significant procedural error, the Court will then consider the “substantive unreasonableness” of the district court’s imposed sentence. *Miller*, 634 F.3d at 843. A non-Guidelines sentence can be substantively unreasonable if the district court: (1) did not account for a factor that should have received significant weight, (2) gave significant weight to an irrelevant or improper factor, or (3) represented a clear error of judgment in balancing the sentencing factors. *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013). Here, the district court’s sentence was plainly unreasonable because the court did not adequately consider the history and characteristics of Ms. Torres.

The policy statement range, in this case, was 6 to 12 months. When the district court sentenced Ms. Torres to 30 months imprisonment—more than twice the top of the range—the court focused on Mr. Torres’s history of violating supervised release to the exclusion of her history and characteristics, which the legislature included in

18 U.S.C. § 3553(a) to help ensure a sentence “not greater than necessary” to achieve the legislature’s sentencing purposes. 18 U.S.C. § 3553(a).

The legislature entrusts sentencing with district courts that consider the defendant in a holistic manner. Had the district court adequately considered Ms. Torres’s history and characteristics, it would have taken into account Ms. Torres’s household and financial situation, her ability to maintain a job and make car payments, and her son who is currently in college. It would have seen that this case was about more than deterrence but rather a person who was trying to get her life back on track. Accordingly, Ms. Torres should be resentenced with an appropriate balancing of those factors.

### **CONCLUSION**

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 4th day of December 2019.

Respectfully submitted,

**JASON D. HAWKINS**  
**Federal Public Defender**  
**Northern District of Texas**

/s/ Brandon Beck  
Brandon Beck  
Assistant Federal Public Defender  
Federal Public Defender's Office  
1205 Texas Ave. #507  
Lubbock, TX 79424  
Telephone: (806) 472-7236  
E-mail: brandon\_beck@fd.org

*Attorney for Petitioner*