

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

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In the

# Supreme Court of the United States

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Christopher Sanchez,

*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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## **QUESTIONS PRESENTED**

- I. Is a single-sentence explanation of “I believe this addresses the issues of adequate deterrence and protection of the public” procedurally reasonable on plain error review when the district court imposes a sentence of imprisonment above the policy-statement range?

## **PARTIES TO THE PROCEEDING**

Petitioner is Christopher Sanchez, 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 Christopher Sanchez 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 reprinted in Appendix A to this Petition. The district court's judgment is reprinted in Appendix B to this Petition. The district court did not issue a written opinion.

### **JURISDICTION**

The opinion and judgment of the Fifth Circuit were entered on December 4, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### **STATUTORY AND RULES PROVISIONS**

This petition involves 18 U.S.C. § 3553(c), which states, “The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence ...”.

## **STATEMENT OF THE CASE**

Petitioner pleaded guilty to possession of methamphetamine with intent to distribute, and received both a term of imprisonment and of supervised release. After serving his sentence, his supervised release was revoked because he used methamphetamine. At sentencing, defense counsel sought leniency in light of the defendant's cooperation, work history, and educational aspirations.

The district court then summarily imposed a sentence above the policy-statement range, giving no indication that it had considered the defendant's history and characteristics. The sole explanation for the sentence was a statement of the advisory range, and the following: "I believe this addresses the issues of adequate deterrence and protection of the public."

## REASONS FOR GRANTING THIS PETITION

- I. A single-sentence explanation of “I believe this addresses the issues of adequate deterrence and protection of the public” is procedurally unreasonable on plain error review when the district court imposes a sentence of imprisonment above the policy-statement range.

### A. There was plain error.

When a district court imposes sentence within a Guideline range, “doing so will not necessarily require lengthy explanation.” *Rita v. United States*, 551 U.S. 338, 356-357 (2007). Yet a more complete justification for the sentence is necessary in two circumstances: (1) Where the defendant or prosecutor presents non-frivolous reasons for imposing a different sentence; and (2) Where the judge imposes a sentence outside the Guidelines. *United States v. Whitelaw*, 580 F.3d 256, 261 (5th Cir. 2009) (quoting *Rita*, 551 U.S. at 356-357); *see also United States v. Mondragon-Santiago*, 564 F.3d 357, 363-364 (5th Cir. 2009) (failure to address plausible grounds for downward departure represented plain or obvious error).

In the present case, the defendant offered an argument for leniency that was clearly “non-frivolous.” Counsel urged the court to consider the defendant’s cooperation, work history, and educational aspirations. The notion that a defendant with this proven track record might appropriately receive a lesser sentence is hardly frivolous and is directly relevant to 18 U.S.C. §3553(a).

Yet the district court did not address this ground for a lesser sentence of imprisonment. Under the plain language of *Rita*, *Whitelaw*, and *Mondragon-Santiago*, this is error. Moreover, the Fifth Circuit has twice found that a district

court’s failure to offer adequate explanation where “more is required” “easily” constitutes plain error. *See Whitelaw*, 580 F.3d at 261-262; *Mondragon-Santiago*, 564 F.3d at 363-364.

**B. The error affected the Petitioner’s substantial rights.**

The Fifth Circuit found no effect on the defendant’s substantial rights from a district court’s failure to explain the sentence in *United States v. Whitelaw*, 580 F.3d 256 (5th Cir. 2009). In *Whitelaw*, close review of the record “reveal[ed] the reasons for Whitelaw’s sentence” because that sentence “followed an extensive hearing during which the court heard evidence” as well as specific responses by the government to the defendant’s claims for leniency. *Whitelaw*, 580 F.3d at 263. The Fifth Circuit thus found no actual prejudice. *See id.* at 264.

This case is distinguishable. Here, the district court did not adopt the government’s arguments for a higher sentence—the government was utterly silent throughout the sentencing hearing, and indeed throughout the litigation. The arguments in favor of a lesser sentence, moreover, were factually supported, legally valid, and logically compelling. It is reasonably probable that fuller consideration of these arguments would lead a reasonable district court to impose a sentence somewhere below the top of the policy statement range.

The failure of a district court to show some consideration of compelling arguments in favor of leniency “undermines confidence” in the proceeding, and thus satisfies the substantial rights prong of the plain error standard. *See United States v. Dominguez-Benitez*, 542 U.S. 74, 82-83 (2004) (quoting *Strickland v. Washington*,

466 U.S. 668, 694 (1984)). Critically, this standard does not require the defendant to demonstrate the likelihood of a different result by a preponderance of the evidence. *See Dominguez-Benitez*, 542 U.S. at 83 & n.9.

Alternatively, Petitioner submits that *Whitelaw* is wrongly decided. He respectfully submits that this Court should adopt the reasoning of the Second, Sixth, and D.C. Circuits, which have held that failures to explain impact substantial rights within the meaning of the plain error doctrine. *See In re Sealed Case*, 527 F.3d 188, 190-193 (D.C. Cir. 2008); *United States v. Lewis*, 424 F.3d 239, 246-249 (2d Cir. 2005); *United States v. Blackie*, 548 F.3d 395, 402-404 (6th Cir. 2008). These courts have reasoned that failures to explain a sentence affect substantial rights by depriving the defendant of meaningful appellate review (*see Sealed Case*, 527 F.3d at 193; *Blackie*, 548 F.3d at 403; *Lewis*, 424 F.3d at 247), that such failures impact the public's right to remain informed of the course of judicial proceedings, and negatively affects public perception of federal sentencing (*see Sealed Case*, 527 F.3d at 193; *Blackie*, 548 F.3d at 403; *Lewis*, 424 F.3d at 248), that such failures may be fairly analogized to "structural errors," where prejudice may be presumed (*see Lewis*, 424 F.3d at 248-249), and that the requirements of plain error are appropriately relaxed in the review of sentencing errors (*see Sealed Case*, 527 F.3d at 193; *Lewis*, 424 F.3d at 248).

**C. The error affected the fairness, integrity, and public reputation of judicial proceedings.**

This Court, in *Rita*, recognized that an adequate explanation of the sentence is critical to promote public confidence in the exercise of judicial authority: The statute does call for the judge to "state" his "reasons." And that requirement reflects

sound judicial practice. Judicial decisions are reasoned decisions. Confidence in a judge's use of reason underlies the public's trust in the judicial institution. A public statement of those reasons helps provide the public with the assurance that creates that trust. *Rita*, 551 U.S. at 356.

That concern is implicated in this case. Defense counsel in this case raised compelling claims for a lesser sentence that were not meaningfully engaged. This record does not show that the defendant's sentence was generated by the "focused, adversarial development of the factual and legal issues" that should inform the imposition of a term of incarceration in the federal system. *Burns v. United States*, 111 S. Ct. 2182, 2185 (1991). Thus, it should be vacated.

## CONCLUSION

Petitioner requests that this Court grant his Petition for Writ of Certiorari and allow him to proceed with briefing on the merits and oral argument.

Respectfully submitted,

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