No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ADRIAN ZITLALPOPOCA-HERNANDEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

To avoid "unwarranted sentence disparities," does 18 U.S.C. § 3553(a)(6) require federal judges to compare a defendant's sentence to the sentences of his co-defendants (as two circuits hold), the sentences of defendants nationwide (as three circuits hold), or a combination of the two (as six circuits hold)?

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Adrian Zitlalpopoca-Hernandez and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Zitlalpopoca-Hernandez*, 495 F. App'x 833 (9th Cir. 2012). U.S. Court of Appeals for the Ninth Circuit. Memorandum Disposition issued November 7, 2012.

- *United States v. Zitlalpopoca-Hernandez*, 632 F. App'x 335 (9th Cir. 2015). U.S. Court of Appeals for the Ninth Circuit. Memorandum Disposition issued December 28, 2015.

- *United States v. Zitlalpopoca-Hernandez*, 709 F. App'x 428, 430 (9th Cir. 2017), *as amended on denial of reh'g* (Oct. 25, 2017). U.S. Court of Appeals for the Ninth Circuit. Memorandum Disposition issued September 26, 2017.

- *United States v. Zitlalpopoca-Hernandez*, No. 08CR4304(1)-BEN, 2018 WL 1605967, (S.D. Cal. Mar. 29, 2018), U.S. District Court for the Southern District of California, Written Decision issued March 29, 2018.

- *United States v. Zitlalpopoca-Hernandez,* No. 18-50004, __ F. App'x __, 2020 WL 1172735 (9th Cir. Mar. 11, 2020), U.S. Court of Appeals for the Ninth Circuit. Memorandum Disposition issued March 11, 2020.

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Petitioner Adrian Zitlalpopoca-Hernandez respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit entered on March 11, 2020.

INTRODUCTION

Every federal judge who sentences a criminal defendant "shall consider" certain factors, one of which is "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). But the courts of appeals openly disagree on whether this provision refers to "unwarranted sentence disparities" between co-defendants *in a particular case* or among similarly situated defendants *nationwide*.

The Seventh, Tenth, and Eleventh Circuits hold that § 3553(a)(6) applies to the sentences of defendants nationwide. The Eighth and Ninth Circuits apply it to co-defendants in a particular case. And the First, Second, Third, Fourth, Fifth, and

Sixth Circuits hold that a judge *must* compare sentences nationwide but *may* compare the sentences of co-defendants. To bring consistency to an issue that affects every person sentenced in the federal criminal justice system, the Court should grant certiorari.

OPINIONS BELOW

The U.S. District Court for the Southern District of California sentenced Mr. Zitlalpopoca to 200 months of imprisonment for a variety of offenses relating to persuading an individual to travel to engage in prostitution under 18 U.S.C. § 2422(a), 18 U.S.C. § 2, 8 U.S.C. § 1328, 8 U.S.C. § 1324(a)(2)(B)(ii), and 8 U.S.C. § 1324(a)(1)(A)(iii) and (v)(II). *See United States v. Zitlalpopoca-Hernandez*, No. 08CR4304(1)-BEN, 2018 WL 1605967, (S.D. Cal. Mar. 29, 2018) (attached here as Appendix A). The Court of Appeals affirmed Mr. Zitlalpopoca's sentence. *See United States v. Zitlalpopoca-Hernandez,* No. 18-50004, __ F. App'x __, 2020 WL 1172735 (9th Cir. Mar. 11, 2020) (attached here as Appendix B).

JURISDICTION

On March 11, 2020, the Court of Appeals affirmed Mr. Zitlalpopoca's sentence. *See* Appendix B. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 3553(a) of Title 18 states:

> 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—

* * *

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]

18 U.S.C. § 3553(a)(6).

STATEMENT OF THE CASE

Mr. Zitlalpopoca's criminal charges stemmed from his relationships with two women in Mexico. These women were involved with him romantically and then began working for him as prostitutes. After several years, Mr. Zitlalpopoca persuaded one of the women to accompany him to the United States to work in prostitution. After they arrived, the woman who had stayed behind in Mexico told Mr. Zitlalpopoca she wanted to come to the United States as well. The three then operated a small-scale prostitution ring in the United States for about six months before Mr. Zitlalpopoca was arrested.

The government charged Mr. Zitlalpopoca with a variety of offenses—the most serious of which were two counts of forcible sex trafficking under 18 U.S.C. § 1591, which carried a mandatory minimum of 15 years' imprisonment. The less serious counts involved persuasion to travel for prostitution under 18 U.S.C. § 2422, harboring aliens for purposes of prostitution under 8 U.S.C. § 1328, bringing aliens to the United States for financial gain under 8 U.S.C. § 1324(a)(2)(B)(ii), and harboring aliens under 8 U.S.C. § 1324(a)(1)(A)(iii), (v)(II). At trial, a jury found Mr. Zitlalpopoca guilty on all counts.

In his first appeal, Mr. Zitlalpopoca argued that the court should vacate his convictions for forcible sex trafficking under § 1591. He pointed out that the government had presented no evidence showing that he used force, fraud, or threats to convince the women to prostitute themselves in the United States, and that both women did so consensually. The Ninth Circuit agreed with Mr. Zitlalpopoca, vacated his § 1591 convictions, and remanded to the district court for resentencing on the remaining counts. *See United States v. Zitlalpopoca-Hernandez,* 495 F. App'x 833 (9th Cir. 2012).

Mr. Zitlalpopoca successfully appealed his sentence several more times. After the second sentencing, the Ninth Circuit held that the district court had erred by imposing various enhancements related to sexual abuse and vulnerable victims. *See United States v. Zitlalpopoca-Hernandez*, 632 F. App'x 335 (9th Cir. 2015). Without these enhancements, Mr. Zitlalpopoca's Sentencing Guidelines range was 27–33 months—far lower than the previous sentence the district court had imposed.

Prior to the third sentencing, Mr. Zitlalpopoca created a four-page chart analyzing 38 defendants in 13 different cases. He pointed out that defendants convicted of offenses similar to Mr. Zitlalpopoca's had received sentences of less than ten years. Nevertheless, the district court sentenced Mr. Zitlalpopoca to two consecutive terms of 100 months each, for a total of 200 months in prison. This sentence was nearly *14 years above* the upper end of his 27–33 month Guidelines range.

In his third appeal, Mr. Zitlalpopoca argued that the district court imposed a sentence far higher than those of the comparable cases in his chart. He contended that at a minimum, the district court procedurally erred by failing to address why this did not create unwarranted sentencing disparities with similarly situated defendants under 18 U.S.C. § 3553(a)(6). The Ninth Circuit agreed, remanding for the district court to "explain why it accepts or rejects the argument" that Mr. Zitlalpopoca's sentence created an unwarranted sentencing disparity under § 18 U.S.C. § 3553(a)(6). *United States v. Zitlalpopoca-Hernandez*, 709 F. App'x 428, 430 (9th Cir. 2017), *as amended on denial of reh'g* (Oct. 25, 2017).

On remand, everyone again agreed that the applicable Sentencing Guidelines range was 27 to 33 months. Mr. Zitlalpopoca, who by this time had served nearly ten years in prison, requested a time served sentence and again filed an extensive chart showing that other defendants convicted of the same crimes had received no more than ten years in prison (and most received sentences far lower). Nevertheless, the judge imposed the same 200-month sentence.

The week after sentencing, Mr. Zitlalpopoca filed a motion to correct his sentence under Federal Rule of Criminal Procedure 35, again arguing *inter alia* that the judge failed to compare Mr. Zitlalpopoca to the similarly situated defendants in his chart under § 3553(a)(6). In a subsequent written decision, the judge again rejected Mr. Zitlalpopoca's argument, holding for the first time that he had no obligation to look to the sentences of other defendants in unrelated cases. This was because the "law of the circuit" held that "the mere fact that a defendant

can point to some other defendant convicted at a different time of a different crime 'does not create an 'unwarranted' sentencing disparity.'" Appendix A at 29–30 (quoting *United States v. Treadwell*, 593 F.3d 990, 1012 (9th Cir. 2010)). The judge also cited other Ninth Circuit authority holding that he was "'not required to conform the sentence to those imposed in similar cases.'" Appendix A at 30 (quoting *United States v. Burgum*, 633 F.3d 810, 813-14 (9th Cir. 2011).

On appeal, Mr. Zitlalpopoca renewed his argument that the judge's 200-month sentence created unwarranted disparities with the similarly situated defendants in his chart. But this time the Ninth Circuit rejected his argument, holding that the district court had not erred in declining to consider Mr. Zitlalpopoca's comparator cases. *See* Appendix B at 5. Specifically, the Ninth Circuit held that the judge had no obligation to compare Mr. Zitlalpopoca's sentence to those of defendants convicted of the same crimes because his authority interpreting § 3553(a)(6) only applies to "sentences among co-defendants or co-conspirators." Appendix B at 5.

This petition for a writ of certiorari follows.

SUMMARY OF THE ARGUMENT

For over fifteen years, the courts of appeals have sharply split over their interpretation of § 3553(a)(6)—a sentencing factor that applies to every defendant convicted of a federal crime. Because of this split, some courts compare a defendant's sentence exclusively to similarly situated defendants nationwide, while others compare a defendant's sentence only to those of his co-defendants.

Meanwhile, half the circuits employ a hybrid approach that holds judges *must* consider disparities between defendants nationwide and *may* consider disparities between co-defendants.

This divergent approach leads similarly situated defendants to receive dramatically different sentences based on the location of their crimes and the existence of any co-defendants. In the aggregate, this means that thousands of people are serving prison time that they might not have otherwise received, needlessly burdening the Bureau of Prisons and costing taxpayers millions of dollars. This is precisely what happened to Mr. Zitlalpopoca who received a sentence fourteen years above the upper end of the Guidelines range and seven years above that of any other similarly situated defendant nationwide. But because the lower courts applied Ninth Circuit precedent that eschewed comparisons with sentences other than a co-defendant's, his sentence created an egregious disparity, or at a minimum, involved procedural error.

This entrenched circuit split could be quickly and easily resolved. This Court's existing precedent, Congress' intent in passing the Sentencing Reform Act of 1984, and basic canons of statutory construction all support the hybrid approach currently employed by nearly half the circuits. This commonsense approach requires judges to consider national disparities while still permitting them to consider disparities between co-defendants. To adopt this approach and resolve a circuit split that affects every person convicted of a federal crime, the Court should grant certiorari.

REASONS FOR GRANTING THE PETITION

I.

The Courts of Appeals Are Openly Divided as to Whether § 3553(a)(6) Requires Comparisons Between Co-defendants or Defendants Nationwide.

In the fifteen years since this Court declared the U.S. Sentencing Guidelines advisory in *United States v. Booker*, 543 U.S. 220 (2005), courts of appeals have taken "diverse positions on whether the phrase 'unwarranted sentence disparities' in § 3553(a)(6) permits consideration of co-defendants' sentences." *United States v. Wills*, 476 F.3d 103, 109 (2d Cir. 2007). The crux of this disagreement rests on whether § 3553(a)(6) requires judges to compare the sentences of similarly situated *co-defendants* or the sentences of similarly situated defendants *nationwide*. *See United States v. Neufeld*, 223 F. App'x 887, 889 (11th Cir. 2007) ("Our sister circuits have split on whether section 3553(a)(6) permits consideration of sentence disparity among codefendants."; *United States v. McMutuary*, 217 F.3d 477, 489 (7th Cir. 2000) (citing circuits that have declined to compare co-defendants' sentences); *United States v. Fernandez,* 443 F.3d 19, 32 n.9 (2d Cir. 2006) (noting the inter-circuit "disagreement" over § 3553(a)(6)).

The circuits apply three different approaches to this question. The first approach, adopted by the Seventh, Tenth, and Eleventh Circuits, holds that the "kind of 'disparity' with which § 3553(a)(6) is concerned is an unjustified difference across judges (or districts) rather than among defendants to a single case." *United States v. Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006). Under this approach, the comparison of co-defendants is "not a proper application" of § 3553(a)

because it could "actually increase sentence disparity" by making sentences in cases involving co-defendants "out of sync with sentences in similar cases nationwide." *United States v. Pisman*, 443 F.3d 912, 916 (7th Cir. 2006). *See also United States v. Davis*, 437 F.3d 989, 997 (10th Cir. 2006) ("[T]he purpose of the guidelines is to eliminate unwarranted disparities in sentencing nationwide, not to eliminate disparity between co-defendants") (quotations omitted); *United States v. Regueiro*, 240 F.3d 1321, 1325–26 (11th Cir. 2001) ("Disparity between the sentences imposed on codefendants is generally not an appropriate basis for relief on appeal.").

By contrast, the Eighth Circuit holds that § 3553(a)(6) "requires" courts to consider the sentences of one's co-defendants but not those of defendants nationwide. *United States v. Brunken*, 581 F.3d 635, 638 (8th Cir. 2009). *See also United States v. Reynolds*, 643 F.3d 1130, 1136 (8th Cir. 2011) (holding that § 3553(a)(6) required the defendant to "show an unwarranted disparity between Reynolds's sentence and the sentences of the other participants" in his case). The Ninth Circuit has similarly eschewed comparisons to defendants nationwide, holding that "[t]he mere fact that [Defendant] can point to a defendant convicted at a different time of a different fraud and sentenced to a term of imprisonment shorter than [his] does not create an 'unwarranted' sentencing disparity." *United States v. Treadwell*, 593 F.3d 990, 1011–12 (9th Cir. 2010). *See also United States v. Burgum,* 633 F.3d 810, 813–14 (9th Cir. 2011) (holding that the district court was "not required to conform the sentence to those imposed in similar cases" because

"[a]lthough comparability is a legitimate sentencing factor, divergence from sentences imposed in similar cases is permissible.").

The third approach, adopted by the First, Second, Third, Fourth, Fifth, and Sixth Circuits, is a hybrid of the first two approaches. Under this approach, "[d]istrict judges are permitted, but not required … to consider sentence disparities with respect to codefendants." *United States v. Walls*, 546 F.3d 728, 737 (6th Cir. 2008). This is because the Sentencing Reform Act of 1984, which created § 3553(a)(6), was "intended to eliminate *national* disparity." *Wills*, 476 F.3d at 109 (quotations omitted) (emphasis in original). *See also United States v. Parker*, 462 F.3d 273, 277 (3d Cir. 2006) ("Congress's primary goal in enacting § 3553(a)(6) was to promote national uniformity in sentencing rather than uniformity among co-defendants in the same case."). But even though § 3553(a)(6) is "primarily aimed at national disparities," a sentence may also be "substantively unreasonable because of the disparity with the sentence given to a codefendant." *United States v. Reyes-Santiago*, 804 F.3d 453, 467 (1st Cir. 2015). So while § 3553(a) "'does not *require* district courts to consider sentencing disparity among co-defendants, it also does not *prohibit* them from doing so.'" *Wills*, 476 F.3d at 110 (quoting *Parker*, 462 F.3d at 277) (emphasis added).[1]

[1] *See also United States v. Pyles*, 482 F.3d 282, 290 (4th Cir. 2007) (holding that while § 3553(a)(6) is "concerned with … unjustified difference across judges (or districts)," this was "not to say" that judges may not "look to what variances were given co-defendants"); *United States v. Balleza*, 613 F.3d 432, 435 (5th Cir. 2010) (stating that § 3553(a)(6) "requires the district court to avoid only unwarranted disparities between similarly situated defendants nationwide," not "co-defendants who might not be similarly situated").

As these cases demonstrate, the courts of appeals have been locked in a three-way split over the correct interpretation of § 3553(a)(6) since *Booker.* Not only does this split span nearly all the courts of appeals,[2] its duration of a decade and a half confirms that it will not resolve without this Court's intervention.

II.

This Issue Affects Every Person Convicted of a Federal Crime.

Federal judges sentence nearly 70,000 defendants in the criminal justice system every year. In each case, Congress mandates that the judge "shall consider" the need to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6) (emphasis added). But Congress did not say whether it intended this phrase to refer to two brothers charged in the same indictment or every federal defendant between Maine and Hawaii. And even if it referred to both, Congress did not say whether it intended to prioritize the comparison of one category of defendants above the other. Not surprisingly, then, the courts of appeals have interpreted the statute in divergent ways.

But by maintaining these conflicting statutory interpretations of § 3553(a)(6), the courts of appeals are exacerbating the very disparities Congress sought to

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[2] In *United States v. Joseph*, 399 F. App'x 599, 600 (D.C. Cir. 2010), the D.C. Circuit held that it "need not address" the issue of whether § 3553(a)(6) requires judges to "consider the need to avoid an unwarranted disparity in *co-defendant* sentences or only an unwarranted disparity in *nationwide* sentences" because the sentence was reasonable under either analysis) (emphasis in original). Since then, the D.C. Circuit does not appear to have addressed the issue.

minimize through the Sentencing Reform Act. As courts have acknowledged, at least one of these interpretations has the potential to "actually increase sentence disparity" by making sentences imposed on co-defendants "out of sync with sentences in similar cases nationwide." *Pisman*, 443 F.3d at 916. *See also United States v. Regueiro*, 240 F.3d 1321, 1325–26 (11th Cir. 2001) (explaining that consideration of co-defendants' sentences will "simply create another, wholly unwarranted disparity" between the defendant and "all similar offenders in other cases"). So the question of not only *which* categories of people judges should compare a defendant to, but *whether* that comparison is mandatory or discretionary directly impacts the sentence imposed.

Imagine for instance that Defendant X is convicted of one of the most common federal crimes—felon in possession of a firearm. In 2018, 6,719 individuals were convicted of this crime, and the average sentence was 64 months.[3] But imagine also that Defendant X's co-defendant, Defendant Y (who has the same background and culpability as Defendant X), is convicted of the same offense under similar circumstances and receives a sentence of only 40 months. In the Seventh, Tenth, and Eleventh Circuits, the judge must consider whether to impose a sentence close to the national average of 64 months and cannot consider Defendant Y's lower sentence. In the Eighth and Ninth Circuits, the judge has no responsibility to consider the national average and need only consider Defendant

[3] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY18.pdf.

Y's 40-month sentence. And in the First, Second, Third, Fourth, Fifth, and Sixth Circuits, the judge *must* consider the 64-month national average but *may* consider Defendant Y's 40-month sentence. So not only does the choice of comparator sentences mean that Defendant X could face a swing of two years in prison, application of these conflicting comparators for 70,000 people a year could translate into a difference of thousands of years of prison and millions of dollars in incarceration costs in the aggregate.

It is difficult to imagine an issue that affects a larger percentage of federal defendants, not to mention the thousands of prosecutors who charge them, the judges who sentence them, the prisons that house them, and the taxpayers who pay for it all. Given the resources poured into federal sentencing, the least the Court can do is assure that a sentencing factor applied in every federal criminal case is interpreted consistently across the circuits. Because this issue affects not only every circuits' jurisprudence but the sentence of every person convicted of a federal crime, the Court should move quickly to standardize the courts of appeals' interpretations of § 3553(a)(6).

III.

Mr. Zitlalpopoca's Case Squarely Presents This Issue.

Mr. Zitlalpopoca's case arose in the Ninth Circuit, where the leading case does not require nationwide comparisons and instead holds that "[t]he mere fact that [a defendant] can point to a defendant convicted at a different time of a different fraud and sentenced to a term of imprisonment shorter than [his] does not

create an 'unwarranted' sentencing disparity." *Treadwell*, 593 F.3d at 1012. In *Treadwell*, the defendant argued that the district court failed to consider unwarranted sentencing disparities between his fraud sentence and the sentences of "several high-profile white-collar criminals who were responsible for substantially greater financial losses." *Id.* at 1009. But the Ninth Circuit refused to consider *any* of these defendants, stating that the "district court need not, and, as a practical matter, cannot compare a proposed sentence to the sentence of every criminal defendant who has ever been sentenced before." *Id.* at 1012. *Treadwell* has since had a chilling effect on other defendants seeking nationwide comparisons—in one case, the Ninth Circuit held that *Treadwell* "foils" the defendant's argument that "[defendants] in other jurisdictions received shorter sentences despite causing greater losses." *United States v. Zidar*, 432 F. App'x 651, 655 (9th Cir. 2011).

This is precisely what happened to Mr. Zitlalpopoca. After he urged the district court to consider the sentences of others convicted of the same offenses, the district court criticized this approach as having been "roundly rejected in *U.S. v. Treadwell,"* which "teaches that the mere fact that a defendant can point to some other defendant convicted at a different time of a different crime 'does not create an 'unwarranted' sentencing disparity.'" Appendix A at 29 (quoting *Treadwell*, 593 F.3d at 1012). Then on appeal, when Mr. Zitlalpopoca tried to point to authority holding that judges should compare defendants to others found guilty of the same conduct, the Ninth Circuit claimed that this authority was restricted to cases involving "sentences among co-defendants or co-conspirators." Appendix B at 5. So the Ninth

Circuit's approach to § 3553(a)(6) determined which cases could be considered in deciding whether Mr. Zitlalpopoca's sentence created "unwarranted sentencing disparities."

Not only does Mr. Zitlalpopoca's case squarely present this issue, it was the direct cause of the unprecedented upward variance in his case. Although everyone agreed that Mr. Zitlalpopoca had a Sentencing Guidelines range of 27 to 33 months, the district court imposed a total sentence of 200 months—more than *six times* above the upper end of the advisory Guidelines range. But as Mr. Zitlalpopoca pointed out, other defendants convicted of the same crimes generally receive much lower sentences; indeed, the highest one of the 38 cases he cited was 120 months. Had the Ninth Circuit not restricted Mr. Zitlalpopoca to cases involving "sentences among co-defendants or co-conspirators," the district court would have been required to consider defendants with radically lower sentences and justify the disparity its sentence created. At a minimum, this would have afforded Mr. Zitlalpopoca the same sentencing procedure that tens of thousands of defendants in other circuits already receive. Thus, Mr. Zitlalpopoca's case squarely presents this issue and could serve as an ideal vehicle to resolve it.

IV.

The Court Should Adopt the Hybrid Approach of the Majority of Circuits.

Resolution of this critical issue would not be difficult or time consuming. This Court's existing precedent, as well Congress' intent and basic principles of statutory

interpretation, demonstrate that the Court should adopt the third "hybrid" approach that already exists in six circuits.

First, multiple decisions from this Court have already implicitly answered the question presented here. For instance, in *Kimbrough v. United States*, the Court found that a district court's disagreement with the 100-to-one sentencing ratio for crack cocaine versus powder cocaine did not violate the need to avoid "unwarranted sentence disparities" in § 3553(a)(6). 552 U.S. 85, 106–08 (2007). Not only did this holding permit district courts to compare defendants to a broad spectrum of other defendants nationwide, the Court expressly affirmed that under § 3553(a)(6), "district courts must take account of sentencing practices *in other courts*." *Id.* at 108 (emphasis added). And in *Gall v. United States*, the Court found no procedural error where the district court first determined that the sentence created no unwarranted sentence disparities nationwide and *then* considered whether the sentence was inconsistent with the sentences "already imposed by a different judge on two of Gall's co-defendants." 552 U.S. 38, 54 (2007). Because the Court has already allowed for consideration of disparities with both co-defendants and defendants nationwide, at a minimum, the first two approaches of the Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits that permit consideration of only one or the other should be corrected.

Second, the United States Sentencing Guidelines manual explains that Congress sought to achieve three objectives in enacting the Sentencing Reform Act of 1984. *See* U.S.S.G. Ch. 1, Pt. AU.S.S.G. Ch. 1, Pt. A, intro. cmt. One of these

objectives was to reduce the wide disparity in sentences "imposed by different federal courts for similar criminal conduct by similar offenders." *Id.* (emphasis added). *See also Wills*, 476 F.3d at 109 (explaining that the Sentencing Reform Act of 1984 was "intended to eliminate *national* disparity") (emphasis in original); *Parker*, 462 F.3d at 277 ("Congress's primary goal in enacting § 3553(a)(6) was to promote national uniformity in sentencing rather than uniformity among co-defendants in the same case."). As these sources show, Congress did not intend § 3553(a)(6) to apply primarily—let alone exclusively—to co-defendants, as the Eighth and Ninth Circuits' jurisprudence suggests.

And at a minimum, the Eighth and Ninth Circuits' interpretation of § 3553(a)(6) defies common sense and basic canons of statutory interpretation. If courts were to interpret § 3553(a)(6) as referring to disparities between co-defendants, it would not apply to a person who committed a crime without the assistance of others—i.e., a person who has no co-defendants. This would read the entire subsection of § 3553(a)(6) out of the statute for a significant percentage of federal defendants, thereby violating one of the "most basic interpretive canons" that courts should read statutes "so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quotations omitted). Because the Eighth and Ninth Circuits' approach would only require sentencing courts to apply § 3553(a)(6) in cases involving co-defendants, it cannot be what Congress had in mind when it intended to minimize "unwarranted sentence disparities" on a national level.

In light of this Court's precedent, Congress' intent to avoid nationwide sentencing disparities, and the statutory absurdity that would result from considering only co-defendants' sentences, the Court should resolve this acknowledged inter-circuit conflict by adopting the "hybrid" interpretation of the First, Second, Third, Fourth, Fifth, and Sixth Circuits. This common-sense approach would interpret § 3553(a)(6) to require that judges *must* consider "unwarranted sentence disparities" between defendants nationwide and *may* consider disparities between co-defendants.

CONCLUSION

To resolve this longstanding circuit split and bring consistency and predictability to the sentencing of every defendant convicted in the federal criminal justice system, Mr. Zitlalpopoca respectfully requests that the Court grant his petition for a writ of certiorari.

Respectfully submitted,

Date: June 5, 2020

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