No. 20-____

IN THE
Supreme Court of the United States

SELEDONIO MARTINEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

JENNIFER C. LEISTEN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Where the totality of the circumstances of this case do not support a top-of-the-Guidelines sentence, whether the 46-month sentence is reasonable.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Seledonio Martinez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 816 F. App'x 846 (4th Cir. 2020); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

(1) *United States v. Seledonio Martinez*, District Court No. 5:18-CR-111-D, Eastern District of North Carolina (final judgment entered Nov. 12, 2019).

(2) *United States v. Seledonio Martinez*, United States Court of Appeals for the Fourth Circuit, No. 19-4831 (decision issued August 18, 2020).

JURISDICTION

The Fourth Circuit issued its opinion on August 18, 2020. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(a) of Title 18 of the United States Code sets forth the factors the district court must consider when sentencing a defendant and states that the "court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing.

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner Seledonio Martinez was born and raised in El Salvador, one of fourteen children born to his parents. Four of his siblings died during infancy, one died after being struck by a car, and one sister was murdered by guerilla soldiers. He attended school through the ninth grade. After leaving school, Petitioner served four years with the National Police and five years with the El Salvadoran Army, where he sustained a gunshot wound to his leg. When guerilla soldiers murdered his father, sister, and uncle, Petitioner's mother and six of his siblings fled to the United States. Petitioner followed them, eventually settling in Raleigh, North Carolina. There, he started a taxi service and raised four children. (Fourth Circuit Joint Appendix 63-64; hereinafter "J.A.").

On April 7, 2005, Petitioner made a false statement to an Immigration and Customs Enforcement ("ICE") agent when he identified himself as Jose Alberto Alicea-Huertas, an American citizen born in Puerto Rico. He pled guilty in the United States District Court for the Middle District of Tennessee to making a false statement, a felony offense. The district court sentenced him to time served (153

days) and three years of supervised release. He was deported on September 21, 2006. On or before August 2, 2008, he returned to the United States without permission. (J.A. 60-62).

On November 28, 2018, Petitioner pled guilty in Wake County Superior Court to felony second-degree kidnapping and misdemeanor sexual battery. The victim of the offense, who was less than sixteen years old, alleged that Petitioner had forced her into a taxi and drove her to his house, where he sexually assaulted her. After kicking him in the leg, she fled to a nearby house for help. The state court sentenced Petitioner to 29 to 47 months of imprisonment for this offense and ordered him to register as a sex offender. (J.A. 62).

On April 3, 2018, while he was in state custody, a federal grand jury in the Eastern District of North Carolina returned a single-count indictment charging him with illegal re-entry under 8 U.S.C. § 1326(a) & (b)(1). (J.A. 9). His initial appearance on the indictment took place on March 12, 2019. Less than two months later, on May 2, 2019, Petitioner pled guilty to the indictment without a plea agreement. (J.A. 3-5).

In preparation for sentencing, the probation officer submitted a presentence report calculating Petitioner's guideline imprisonment range. The presentence report stated that the base offense level for illegal re-entry was 8. However, the probation officer applied two specific offense characteristics that substantially raised the offense level. First, the probation officer applied a four-level enhancement under U.S.S.G. § 2L1.2(b)(2)(D), which applies if "before the

defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in—a conviction for any other felony offense (other than an illegal reentry offense)." The probation officer determined that Petitioner's felony conviction for making a false statement, which occurred before he was deported, qualified him for this specific offense characteristic. (J.A. 65, ¶ 38).

Second, the probation officer determined that Petitioner's felony conviction for second-degree kidnapping after returning to the United States subjected him to an eight-level increase under U.S.S.G. § 2L1.2(b)(3)(B), which applies if "after the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in—a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more." (J.A. 65, ¶ 39).

Application of these specific offense characteristics raised the offense level from 8 to 20. After a three-level reduction for acceptance of responsibility, the total offense level was 17. The probation officer further determined that Petitioner's criminal history score was 9, based on his prior misdemeanor convictions for larceny, trespassing, forgery, as well as his felony convictions for making a false statement and second-degree kidnapping. The criminal history score of 9 placed him in criminal history category IV. With an offense level of 17 and a criminal history category of IV, the guideline imprisonment range was 37 to 46 months. Neither side objected to the presentence report. (J.A. 66-67).

At the outset of the sentencing hearing, the district court confirmed that the guideline range was 37 to 46 months, and that neither side objected to that calculation. The remainder of the hearing, therefore, focused on sentencing considerations. Counsel for Petitioner argued that a sentence at the low end of the guideline range was sufficient, given the circumstances of the case. He pointed out that Petitioner "came in as soon as possible [and] entered a guilty plea" and had "tried to cooperate fully with the criminal justice system in Federal Court." (J.A. 40). He also told the court that Petitioner had asked him to request "that he be deported in lieu of any further incarceration." (J.A. 40). Counsel acknowledged, however, "that that would require a downward variance, among other things. And I'm putting it out there on the record, but it's just a very difficult thing to request these days." (J.A. 40).

Through an interpreter, Petitioner also personally addressed the court. He told the court that he returned to the United States "not just to do it," but because he was "fearful for [his] life." (J.A. 41). He said, "In my country, I was scared because of my enemies, and that's why I decided to come back here, because I felt safe in this country. That's the reason why . . . . because I was in fear for my life." (J.A. 41).

When Petitioner finished speaking, the district court asked the government for its sentencing position. Counsel for the United States first summarized the factual basis for the offense. The government further noted that Petitioner had prior misdemeanor convictions "for larceny, trespassing, forgery, the federal conviction for false statement, and he has second-degree kidnapping and sexual battery."

Because of his criminal history, "particularly the serious kidnapping and sex offense conviction compounded with his deportation and re-entry," the government asserted that a high-end guideline sentence was appropriate. (J.A. 42).

The court asked whether Petitioner was "still serving a State sentence or is he done with that?" (J.A. 42). Counsel for Petitioner responded that he was still serving an active state sentence. The court then announced its sentence. Addressing the nature and circumstances of the offense, the court said that Petitioner "illegally re-enter[ed] after having been deported for a felony conviction" and that "[i]t is a serious offense." (J.A. 44). The court told Petitioner: "I take what you say about being concerned about your life in El Salvador, but there is a process you need to follow to try and enter this country legally, and you did not follow that process." (J.A. 44). "Moreover," the court said, "when you were here, obviously the offense conduct in paragraph 17 essentially brought you to the attention of federal authorities is very concerning to me; second-degree kidnapping and sexual battery where you forced a victim into a taxi that you were driving, transported her to a residence and then sexually assaulted and restrained her. She was under the age of 16. That's very serious offense conduct." (J.A. 44). The court continued: "You obviously were not allowed to come back here the way that you did and then the criminal conduct you engaged in is an aggravating factor in my view." (J.A. 44).

As for Petitioner's history and characteristics, the court noted that Petitioner was fifty-four years old and had four adult children who lived in Raleigh. The court said nothing else about Petitioner's history and characteristics.

The court announced that there was "a need to incapacitate [Petitioner] and to punish [him] for [his] behavior." (J.A. 44). The court then imposed a sentence of 46 months, which was at the top of the guideline range. The court also ordered the term of imprisonment to run consecutively to the state sentence that Petitioner was already serving. In addition, the court imposed a three-year term of supervised release "as an added measure of deterrence." (J.A. 45). The court said that it had considered Petitioner's request to "simply sentence you to time served and let the deportation process take its course" but that "would be a . . . substantial downward variance for someone who committed a very serious crime federally, as well as who is serving a sentence for a very serious State crime." (J.A. 46). Because of the need for incapacitation and just punishment, the court found that a 46-month sentence was sufficient not greater than necessary for Petitioner.

The court entered its judgment on November 12, 2019. (J.A. 7; 49-55). Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit. (J.A. 56).

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued that his sentence was substantively unreasonable. The Fourth Circuit rejected this argument and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner argued to the Fourth Circuit that the sentence he received is substantively unreasonable. The Court of Appeals rejected Petitioner's argument

and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court's consideration.

REASONS FOR GRANTING THE PETITION

The parsimony clause of 18 U.S.C. § 3553(a) instructs that a sentence should be no greater than necessary to achieve the purposes of sentencing. Thus, to withstand appellate review, a sentence must be substantively reasonable—that is, no greater than necessary. *Gall v. United States*, 552 U.S. 38, 50 (2007). To be substantively reasonable, the chosen sentence must account for the "totality of the circumstances." *Gall*, 552 U.S. at 51; *accord Rita v. United States*, 551 U.S. 338, 341 (2007) (noting that appellate courts must set aside sentences they find unreasonable). Where the totality of the circumstances do not justify the sentence imposed, the sentence is substantively unreasonable. *Id.*

Here, the totality of the circumstances show that the 46-month sentence is greater than necessary to meet the § 3553(a) factors. The evidence before the district court showed that Petitioner committed the offense of re-entry because he was fear for his life in his home country of El Salvador. And given that his father, sister and uncle were murdered by guerilla soldiers there, that fear was not unreasonable. The district court, however, appeared to give this extraordinary circumstance little consideration and instead focused on Petitioner's state kidnapping conviction. But Petitioner was already serving a substantial sentence for his state crime, and his guideline range was also significantly elevated because of this conviction. Because Petitioner was already incapacitated and justly

punished, there is nothing to support the district court's decision to impose a sentence at the top of the guideline range. Because the court's rationale does not support its sentence, the 46-month sentence is unreasonable. This Court must therefore vacate the sentence and remand this case to the district court for resentencing.

In imposing a sentence, "[t]he substantive standard that Congress has prescribed for trial courts is the 'parsimony principle' enshrined in [18 U.S.C.] § 3553(a)." *Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766 (2020). Under the parsimony principle, a sentencing court must select a sentence that is "sufficient *but not greater than necessary*" to comply with the purposes set forth in § 3553(a). 18 U.S.C. § 3553(a) (emphasis added). These purposes include the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. *Id.* at § 3553(a)(2). The court should also consider "the nature and circumstances of the offense and the history and characteristics of the defendant," the kinds of sentences available, as well as "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* at § 3553(a)(1), (a)(6).

Applying these factors here, the totality of the circumstances do not support the sentence imposed by the district court. The evidence before the court showed that Petitioner originally fled El Salvador to escape horrific violence after guerilla soldiers murdered his father, sister, and uncle. Petitioner then built a life in North Carolina, raising four children and starting a taxi service. After being deported for making a false statement to an ICE agent, Petitioner again feared for his life in El Salvador and returned to his family in North Carolina. Following his indictment on the instant offense, Petitioner fully cooperated and pled guilty within two months of his initial appearance, thus minimizing the expenditure of government resources. The district court appeared to give little, if any, consideration to these extraordinary mitigating circumstances. *See* U.S.S.G. § 5K2.1(authorizing downward departure "[i]f the defendant committed the offense because of serious coercion, blackmail, or duress, under circumstances not amounting to a complete defense").

The court found that a top-end Guideline sentence was necessary for two reasons: to "incapacitate" Petitioner and provide just punishment for his crime. (J.A. 44). But these objectives could have been achieved just as easily by a low-end Guideline sentence, particularly where Petitioner was already serving a substantial sentence of 29 to 47 months for his state offense. Indeed, at the time of the sentencing hearing, counsel for Petitioner confirmed that he remained in state custody. Because the district court ordered the federal sentence to run consecutively to the state sentence, Petitioner will not even begin to serve his 46-month federal

sentence until his projected release date from state custody on August 20, 2020. And when he completes his federal sentence, he will be immediately deported. Thus, Petitioner was sufficiently incapacitated—a top-end sentence was not needed.

Regarding the court's stated need "to punish [Petitioner] for [his] behavior," a low-end Guideline sentence would have been likewise more than sufficient. The court stated that Petitioner's kidnapping and sexual assault offense was "an aggravating factor" for the sentencing. (J.A. 44). But although Petitioner's behavior in connection with the kidnapping and sexual assault was certainly abhorrent, the state imposed a substantial punishment for this crime—it was the federal court's job to punish Petitioner for his illegal re-entry, not the state offense. Moreover, the Guidelines already accounted for Petitioner's criminal record by imposing a twelve-level increase to the base offense level. This significant increase to Petitioner's guideline range should have more than satisfied the court's concern about his criminal history and the need for incapacitation and just punishment. Thus, the court's justifications do not support the sentence imposed here.

Under the totality of the circumstances, the court erred in imposing the 46-month sentence, because the facts of this case simply do not warrant a sentence at the top of the Guidelines. The court appeared to give little weight, if any, to relevant mitigating factors such as the trauma Petitioner suffered in El Salvador, the loss of his family members, his work history, or his role as a father. Because the court's sentence is not justified under the totality of the circumstances, the sentence is substantively unreasonable and should be vacated. *Rita*, 551 U.S. at 341. For these

reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

/s/ *Jennifer C. Leisten*
JENNIFER C. LEISTEN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

Counsel for Petitioner

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