No. _____

In the

Supreme Court of the United States

_____

Agustin Madrid,
also known as Augustin Madrid,

Petitioner,

v.

United States of America,

Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

1. Whether *Holguin-Hernandez v. United States*, __U.S.__, 140 S.Ct. 762 (2020), is relevant to the objections necessary to preserve claims of procedural unreasonableness?

PARTIES TO THE PROCEEDING

Petitioner is Augustin Madrid, 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 Augustin Madrid seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is reported at *United States v. Madrid*, 823 F. App'x 282 (5th Cir. Sept. 30, 2020)(unpublished). It is reprinted in Appendix A to this Petition. The district court's judgement and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on June 12, 2020. On March 19, 2020, the Court extended the 90-day deadline to file a petition for certiorari to 150 days. The Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT RULE PROVISION

Federal Rule of Criminal Procedure 51 reads as follows:

Preserving Claimed Error

(a) **Exceptions Unnecessary**. Exceptions to rulings or orders of the court are unnecessary.

(b) **Preserving a Claim of Error**. A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

LIST OF PROCEEDINGS BELOW

1. *United States v. Augustin Madrid*, 4:19-CR-273-P, United States District Court for the Northern District of Texas. Judgment and sentence entered on Judgment entered January 28, 2020. (Appendix B).

2. *United States v. Augustin Madrid,* 823 F. App'x 282 (5th Cir. Sept. 30, 2020), CA No. 20-10101, Court of Appeals for the Fifth Circuit. Judgment affirmed on September 30, 2020. (Appendix A).

STATEMENT OF THE CASE

On August 21, 2019, Agustin Madrid ("Madrid") was charged by indictment with possession of a controlled substance with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). (Record in the Court of Appeals, at 12–13). The indictment alleged that on or about August 20, 2019, Madrid knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of methamphetamine. (Record in the Court of Appeals, at 12). After signing a factual resume stipulating that he had possessed methamphetamine with the intent to distribute it to others when he was arrested on August 20, 2019, (Record in the Court of Appeals, at 26–27), Madrid pled guilty at a rearraignment. (Record in the Court of Appeals, at 54–84).

The Presentence Report

Madrid's Presentence Report ("PSR") determined that, based on the instant offense, Madrid's total offense level was 29, (Record in the Court of Appeals, at 107–08), and his criminal history score was 7. (Record in the Court of Appeals, at 112). However, the PSR determined that Madrid was a career offender under the provisions of USSG § 4B1.1(b). (Record in the Court of Appeals, at 107–08). While this determination did not affect Madrid's offense level because the enhanced offense level was the same as that resulting from calculations based on Madrid's offense conduct, (Record in the Court of Appeals, at 107–08), the career offender enhancement raised Madrid's Criminal History Category to VI. (Record in the Court of Appeals, at 112). As a result, the PSR concluded that Madrid's Guideline

imprisonment range was 151 to 188 months. (Record in the Court of Appeals, at 116). There were no objections to the PSR. (Record in the Court of Appeals, at 87).

Madrid's Motion for Downward Variance

In advance of sentencing, Madrid filed a sentencing memorandum and motion for downward variance. *Def.'s Sentencing Mem. and Mot. for Downward Variance*, *United States v. Madrid*, No. 4:19-CR-273-P (N.D. Tex. Jan. 16, 2020), ECF No. 25 ("Motion for Downward Variance"). There, Madrid moved for the district court to impose variant sentence the range calculated by the Guidelines. *Id.* at 1. Madrid argued that "a sentence below the advisory Guideline range would be appropriate and would reasonably capture the nature and circumstances of the offense." *Id.* at 2.

Madrid argued that the methamphetamine-related drug guidelines were arbitrary. *Id.* In support of this position, Madrid raised three points. First, he contended that the methamphetamine Guidelines "erroneously equate increased drug purity with increased culpability. *Id.* at 2–5. Second, he contended that "the Drug Trafficking Guidelines were not based on empirical evidence, but rather, statutory directives," particularly insofar as the Guidelines penalized methamphetamine (actual) at a much greater rate than methamphetamine (mixture). *Id.* at 2, 5–11. Third, he argued that "the Methamphetamine Guidelines treat all three different chemical forms of methamphetamine–*d*-meth, *l*-meth, and *dl*-meth–equally, disregarding the vastly different degrees of harm associated with each form." *Id.* at 2.

In his second argument, Madrid asked the district court "to reject the guidelines set forth in § 2D1.1 because they 'do not exemplify the Commission's exercise of its characteristic institutional role,' and they are not based on empirical evidence, but rather statutory directives correlating to mandatory minimum sentencing schemes." *Id.* at 5 (quoting *Kimbrough*, 552 U.S. at 109). Madrid explained that the initial drug trafficking guidelines were tied to statutory directives when first implemented in 1987, although methamphetamine was not listed in the guidelines' initial drug table. *Id.* However, after the Anti-Drug Abuse Act of 1988—which penalized methamphetamine (actual) at a rate "ten times greater than" methamphetamine (mixture)—the Sentencing Commission amended the methamphetamine Guidelines several times to include methamphetamine and would ultimately leave methamphetamine trafficking offenses with base offense levels in the Drug Quantity Table of § 2D1.1 that now "correspond to the [statutory] mandatory minimum provisions." *Id.* at 6.

In conclusion, Madrid argued for the court to grant a policy-based downward variance:

> The Guidelines here are to be treated merely as the Court's "starting point and the initial benchmark." [*Kimbrough v. United States*, 552 U.S. 85, 108 (2007) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007).] Similar to the Supreme Court's discussion in *Kimbrough* regarding the crack cocaine guidelines, the meth guidelines "do not exemplify the Commission's exercise of its characteristic institutional role," and they were promulgated without taking account of "empirical data and national experience'" [*Kimbrough*, 552 U.S. at 109 (2007) (citing *United States v. Pruitt*, 502 F.3d 1154, 1171 (10th Cir. 2007) (McConnell, J., concurring).] As a result, the Guideline range provided

> in the PSR yields a sentence "greater than necessary to achieve § 3553(a)'s purposes. A downward variance is warranted in this case.

Id. at 9 (footnotes converted to inline citations).

The Government's Response

The Government responded, opposing Madrid's motion for a downward variance. *Gov't's Resp. to Def.'s Sentencing Mem. and Mot. for Variance*, *United States v. Madrid*, No. 4:19-CR-00273-P-1 (N.D. Tex. Jan. 22, 2020), ECF No. 28 ("Response"). In one part, the Government argued that "The Fifth Circuit has already rejected the Defendant's drug quantity argument." *Id.* at 3–4 (part II). In support of this premise, the Government maintained that Molina's argument regarding the disparity between methamphetamine (actual) and methamphetamine (mixture) had "not been persuasive in this Circuit." *Id.* at 3. In support of its position, the government cited *United States v. Molina*, 469 F.3d 408, 413 (5th Cir. 2006), as evidence that this Court had ruled that the Guidelines' actual/mixture discrepancy "was rational." *Id.* at 3. The Government also cited to *United States v. Alcala*, 668 F. App'x 83, 84 (5th Cir. 2016) (unpublished) as more recent evidence of this Court's conclusion that the disparity "is not irrational or arbitrary." *Id.*

Notably, however, the Response made no attempt to argue that the district court lacked the discretion to deviate from the Guideline sentencing range should the district court hold a policy disagreement with the Guidelines' methodology for determining that range. *See generally id.* And the Government made no attempt to disprove Madrid's argument that the methamphetamine guidelines were not empirically based. *See generally id.*

The Sentencing Hearing

At sentencing, the district court announced its tentative conclusion that Madrid's motion for downward variance "should be denied for the reasons set forth in the Government's response . . . ." (Record in the Court of Appeals, at 88). The court explained, "It is my tentative finding, having read [the Government's response] as well as the Presentence Report and studying the facts of the case, also looking at such cases as *United States v. Molina* from the Fifth Circuit and the *United States v. Alcala*." (Record in the Court of Appeals, at 88).

As defense counsel began explaining the Guidelines' disparate treatment between ice, methamphetamine (actual), and methamphetamine (mixture), (Record in the Court of Appeals, at 88), the district court interrupted:

> Just to give you a preview, I'm familiar with these arguments. I've seen them before. I know that different judges here in this district . . . [take] a different view than I do. Perhaps when I've been on the bench for thirty years my view may change, but tentatively, *I just don't think it's an area that's in my discretion*. However, I understand the argument. It is a factor that I will take into consideration when it comes to sentencing. So I just want you to keep that in mind, but I do want to allow you to make your argument, so go ahead.

(Record in the Court of Appeals, at 88–89) (emphasis added).

Then, after hearing arguments by both sides, (Record in the Court of Appeals, at 89–92), the court announced its decision and the underlying rationale:

> I will make my final ruling on the motion for sentencing variance—downward sentencing variance *based on what I have already said*, based on the arguments presented by the Government in [its Response], as well as the facts in this case and *my understanding of the current state of the law*, and I'm going to deny the Motion for Downward Variance.

(Record in the Court of Appeals, at 92) (emphasis added). The district court, however, informed defense counsel that it would "keep [Madrid's] arguments in mind" as it determined a sentence. (Record in the Court of Appeals, at 92). Ultimately, the district court sentenced Madrid to an imprisonment term of 188 months and imposed a three-year term of supervised release. (Record in the Court of Appeals, at 96–97).

Madrid's counsel objected to the sentence as being "greater than necessary under the 3553(a) factors." (Record in the Court of Appeals, at 99). But the district court overruled Madrid's objection. (Record in the Court of Appeals, at 99).

The Appeal

Madrid raised two issues on appeal. Relevant here, Madrid argued that his sentence was procedurally unreasonable. Citing *Holguin-Hernandez v. United States*, __U.S.__, 140 S.Ct. 762 (2020), Madrid argued that appellate review was for reasonableness because he both "informed the court of the legal error at issue in an appellate challenge" by advocating for a below-Guideline-range sentence before the district court imposed a longer one and objected to the sentence being "greater than necessary under he 3553(a) factors."

The court of appeals, however, applied plain error review and affirmed the district court's decision in a brief opinion:

> Agustin Madrid appeals his 188-month, within-guidelines range sentence for possession with intent to distribute a mixture and substance containing a detectable amount of methamphetamine. He contends that the district court procedurally erred by determining, in denying his motion for a downward variance, that it lacked discretion to impose a downward variance based on a policy disagreement with the Guidelines. Because Madrid did not object in the district court on that

specific ground, we review this issue for plain error. See *United States v. Warren,* 720 F.3d 321, 332 (5th Cir. 2013).

In light of the entire record, it is neither clear nor obvious—but, rather, subject to reasonable dispute—that the district court's comments reflected a belief that it lacked discretion to impose a variant sentence based on a policy disagreement with the drug Guidelines. See *Puckett v. United States,* 556 U.S. 129, 135, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009). The court expressly stated that it would take Madrid's policy-based arguments into consideration in setting his sentence. And the court explicitly based its denial of a variance on the arguments in the Government's response to Madrid's motion, which addressed only the merits of Madrid's policy-based contentions and made no reference to the court's (lack of) discretion to grant a policy-based variance. Accordingly, Madrid fails to demonstrate plain procedural error. See *id.*

The judgment is AFFIRMED.

[App. A, at 1–2].

REASONS FOR GRANTING THE PETITION

I. The courts have divided as to whether *Holguin-Hernandez v. United States* may apply to claims of procedural reasonableness.

A. The courts of appeals have divided in their application of *Holguin-Hernandez.*

A federal criminal sentence should be sufficient but not greater than necessary to accomplish the goals of sentencing set forth in 18 U.S.C. §3553(a)(2)(A). This Court has set forth a two part standard for review of federal sentences. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Assuming a sound process, reviewing courts must decide whether the sentence represents an abuse of discretion as a substantive matter. *See Gall* v, 552 U.S. at 51. But before they reach this question, the reviewing courts:

> must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range.

Id.

Holguin-Hernandez v. United States, __U.S.__, 140 S.Ct. 762 (2020), held that the substantive portion of this review may be preserved without a specific objection. *See Holguin-Hernandez*, 140 S.Ct. at 764. This Court explained that a simple request for a lesser sentence adequately communicates that a greater sentence is unnecessary under §3553(a). *See id.* at 766. It therefore does what Federal Rule of Criminal Procedure 51 requires: tell the court what action the party wishes it to take, and provide the grounds for the request. *See id*. The Rule, emphasized this Court, does

not require appealing parties to state the standard of review in an objection, here, "reasonableness." *See id.* at 766-767.

Significantly, however, *Holguin-Hernandez* reserved the question of what objections are necessary to preserve claims of procedural error. It said:

> The Government and amicus raise other issues. They ask us to decide what is sufficient to preserve a claim that a trial court used improper procedures in arriving at its chosen sentence. And they ask us to decide when a party has properly preserved the right to make particular arguments supporting its claim that a sentence is unreasonably long. We shall not consider these matters, however, for the Court of Appeals has not considered them. *See, e.g., Tapia v. United States*, 564 U.S. 319, 335, 131 S.Ct. 2382, 180 L.Ed.2d 357 (2011); *Cutter v. Wilkinson*, 544 U.S. 709, 718, n. 7, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005). We hold only that the defendant here properly preserved the claim that his 12-month sentence was unreasonably long by advocating for a shorter sentence and thereby arguing, in effect, that this shorter sentence would have proved "sufficient," while a sentence of 12 months or longer would be "greater than necessary" to "comply with" the statutory purposes of punishment. 18 U.S.C. § 3553(a).

Id. at 767.

The answer to this reserved issue has divided the courts of appeals. Certainly, the reasoning of the opinion provides significant support for the notion that formulaic "procedural reasonableness" objections are not required by Rule 51, provided the defendant has made some effort to inform the court of the action it wishes to take, and the reasons therefor. "Procedural reasonableness," like "substantive reasonableness," is not an error but a standard of review. And *Holguin-Herrera* states in terms that an appealing party "need not also refer to the standard of review" to preserve error. *Id.* at 766-767.

Yet the court below has repeatedly and categorically rejected any lessons from *Holguin-Hernandez* beyond the narrow question of how to preserve substantive reasonableness review. *See United States v. Cuddington*, 812 F. App'x 241, 242 (5th Cir. 2020)("But the Supreme Court in Holguin-Hernandez explicitly declined to address whether its reasoning applied to procedural reasonableness. … Accordingly, our case law requiring a specific objection to preserve procedural error remains undisturbed, as we have previously held in at least one unpublished decision.")(internal citations and quotations omitted); *United States v. Gonzalez-Cortez*, 801 Fed. Appx. 311, 312, n.1 (5th Cir. 2020)(unpublished)(applying plain error review to a claim of procedural error). Indeed, it did so in the opinion below. *See* [Appx. A, at 1–2]. The court below accordingly adheres to its pre-*Holguin-Hernandez* precedent, which required procedural reasonableness objections in all cases. *See Cuddington*, 812 F. App'x at 242 (citing *United States v. Dominguez-Alvarado*, 695 F.3d 324, 327 (5th Cir. 2012) for the proposition that "[i]f a defendant fails to properly object to an alleged error at sentencing, however, the procedural reasonableness of his sentence is reviewed for plain error.").

The court below is joined in this view by the Eleventh Circuit, which has likewise declined to apply *Holguin-Hernandez* in the procedural arena. *See United States v. Sanders*, 820 F. App'x 932, 937, n.4 (11th Cir. 2020)(unpublished)("The Supreme Court's recent decision in *Holguin-Hernandez v. United States*, —— U.S. ——, 140 S. Ct. 762, 206 L.Ed.2d 95 (2020), does not change our conclusion. In that case the Court held that by requesting a certain sentence, a defendant generally preserves

his argument that a higher sentence is substantively unreasonable. But the Court expressly did not decide 'what is sufficient to preserve a claim that a trial court used improper procedures in arriving at its chosen sentence.' Nor does the reasoning of *Holguin-Hernandez* help Sanders.")(internal citations omitted). Likewise, the Tenth Circuit has concluded that "*Holguin-Hernandez's* holding has no direct bearing on the preservation standards" for procedural claims. *United States v. Finnesy*, 953 F.3d 675, 691, n.8 (10th Cir. 2020)(cert. pending).

By contrast, the D.C. Circuit has given *Holguin-Hernandez* a broader reading, concluding that it excused the need for at least some objections to a district court's the procedural error. In *United States v. Abney*, 957 F.3d 241 (D.C. April 24, 2020), the D.C. Circuit considered the impact of *Holguin-Hernandez* on the preservation of a defendant's allocution claim. *See Abney*, 957 F.3d at 246-249. In that case, the defendant asked to speak in the middle of sentencing. *See id.* at 245. But instead of offering a chance to allocute (which had not earlier been provided), the court stopped him and continued imposing the punishment. *See id.* at 245.

Examining the lessons of *Holguin-Hernandez*, the D.C. Circuit concluded that the defendant's request to speak placed the court on notice of its duty to invite allocution, the absence of formal objection notwithstanding. *See id.* at 246-249. The court believed that *Holguin-Hernandez*, taking the text of Rule 51 as a guide, required nothing more than a request for court action, in that case to permit allocution. *See id.* at 247. Further, the court thought it "fair to assume district court judges during sentencing 'hav[e] in mind'" the duty of presentence allocution, just as the *Holguin-*

Hernandez court thought it fair to assume courts "have in mind" the duty to comply with §3553(a)(2)(A). *See id.* at 248 (quoting *Holguin-Hernandez*, 140 S.Ct. at 746).

Although the *Abney* court acknowledged that application of *Holguin-Hernandez* beyond substantive reasonableness had been by reserved this Court, it nonetheless thought the case's rationale governed:

> In applying *Holguin-Hernandez*, we acknowledge distinctions between that case and this one. The Court there held that a simple request for a shorter sentence preserved for appeal the claim that the sentence was excessive in violation of 18 U.S.C. § 3553(a), but noted that it was not thereby deciding "what is sufficient to preserve a claim that a trial court used improper procedures in arriving at its chosen sentence." Holguin-Hernandez, 140 S. Ct. at 767; accord id. (Alito, J., concurring). The Court's caveat was evidently sparked by the concern that a general request for a lower sentence might not suffice, for example, to bring to a sentencing court's attention procedural errors in Sentencing Guidelines calculations.
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> ***
>
> This case involves a claim of procedural error, but because the procedural right involved is a requisite of any sentencing and its omission is easy to detect, we treat it as akin to the straightforward claim of excessive sentence in *Holguin-Hernandez* and unlike the buried flaws in Sentencing-Guidelines calculations described in *Molina-Martinez* and *Rosales-Mireles* that may call for more specific and detailed objections to be effectively preserved under the first clause of Rule 51(b). District courts have a clear, well-established, affirmative obligation to invite defendants to exercise their right to speak on their own behalf before sentencing. *See* Fed. R. Crim. P. 32(i)(4)(A)(ii), 32.1(b)(2)(E). Against that backdrop, it is difficult to envision a request by a defendant to be heard at sentencing that would not suffice under Rule 51(b) to "inform[ ]the court" of the nature of the claim. There was no more need here for Abney to specify that he sought to "allocute" than there was for Gonzalo Holguin-Hernandez to specify that he sought a sentence that was no "greater than necessary" under 18 U.S.C. § 3553(a), or to specify that he took exception to the sentence the court imposed as "unreasonable." *Holguin-Hernandez*, 140 S. Ct. at 766.

Id. at 248-24a9.

Abney cannot be reconciled with the decision below, nor with the position of the court below and the Tenth and Eleventh Circuits generally. These courts confine *Holguin-Hernandez* to the substantive reasonableness context, and find that it has no significance in determining the adequacy of objections to procedural error. By contrast, *Abney* found the case entirely dispositive on this issue.

The Fourth Circuit has also recently reaffirmed, after *Holguin-Hernandez*, its prior view that some claims of procedural error do not require formal and specific objection. *See United States v. Rivera*, 819 Fed. Appx. 139, 141 (July 20, 2020)(unpublished). Specifically, and using reasoning that prefigured *Holguin-Hernandez*, the Fourth Circuit had previously held that "[b]y drawing arguments from § 3553 for a sentence different than the one ultimately imposed, an aggrieved party sufficiently alerts the district court of its responsibility to render an individualized explanation addressing those arguments, and thus preserves its claim." *United States v. Lynn*, 592 F.3d 572, 578 (4th Cir. 2010).

Citing *Holguin-Hernandez*, the Fourth Circuit has recently reaffirmed the validity of *Lynn*. *See Rivera*, 819 Fed. Appx. at 141. Indeed, it recognized that *Holguin-Hernandez* supports the rule in *Lynn*. *See id*. (quoting *Lynn*, and then introducing a quote and citation from *Holguin-Hernandez* with "*cf*."). The position of the Fourth Circuit, like *Abney*, cannot be reconciled with the position of the court below, which requires procedural reasonableness objections in all cases, and which sees no obvious relationship between *Holguin-Hernandez* and the preservation of procedural error.

B. The conflict merits review.

The question reserved by the *Holguin-Hernandez* court is recurring and widely applicable, potentially relevant to all manner of procedural error. Of course, the standard of review is frequently dispositive to the resolution of legal disputes. And even when it is not dispositive, the erroneous application of plain error effectively deprives the parties of any meaningful review, and may undermine faith in the judicial process. It therefore matters in its own right. Further, there is no reason to believe that the courts considering the issue will bring the lessons of *Holguin-Hernandez* to bear on it.

There is a broader reason to accept certiorari regarding the application of *Holguin-Hernandez* to the preservation of procedural error. Certiorari would be an excellent opportunity to correct a line of precedent applied in at least two circuits that seriously undermines the authority of this Court to state uniform national standards of law.

The court below has repeatedly held that its precedent must be followed in the face of intervening contrary Supreme Court authority unless that intervening authority "unequivocally overrules" a Fifth Circuit precedent. *See Matter of Henry*, 944 F.3d 587, 591 (5th Cir. 2019)("a panel of this court can only overrule a prior panel decision if such overruling is unequivocally directed by controlling Supreme Court precedent.")(internal quotations omitted); *Moore v. Tangipahoa Parish School Board,* 921 F.3d 545 (5th Cir. 2019)(requiring that intervening Supreme Court precedent "unequivocally overrule" Fifth Circuit panel opinions); *Tech. Automation Servs. Corp.*

v. Liberty Surplus Ins. Corp., 673 F.3d 399, 405 (5th Cir. 2012)(same); *Martin v. Medtronic, Inc.*, 254 F.3d 573, 577 (5th Cir.2001)(using "unequivocal" the standard); *United States v. Zuniga–Salinas*, 945 F.2d 1302, 1306 (5th Cir.1991) ("unequivocally directed"). And it is joined in this defiant view of Supreme Court authority by the Eleventh Circuit. *See Atl. Sounding Co. v. Townsend*, 496 F.3d 1282, 1284 (11th Cir. 2007), *aff'd and remanded*, 557 U.S. 404 (2009)(" Under our prior panel precedent rule, a later panel may depart from an earlier panel's decision only when the intervening Supreme Court decision is "clearly on point.")(citing *Garrett v. Univ. of Ala. at Birmingham Bd. of Trustees*, 344 F.3d 1288, 1290-92 (11th Cir.2003)); accord *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008); *In re Holsey*, 589 Fed. Appx. 462, 467 (11th Cir. 2014)(unpublished).

This Court should clarify that this approach to Supreme Court authority is inappropriate. The chief goal of this Court's certiorari docket is to ensure the uniformity of federal law. *See Braxton v. United States*, 500 U.S. 344, 347 (2001). That task that would become nigh impossible if its holdings were limited to the precise issue before the Court in each case, leaving inconsistent rules intact based on narrow distinctions. Deciding about 80 cases a year, this Court cannot be expected to pick through every circuit (or state high court) decision that conflicts with the rules announced in its decisions, overruling each one by one.

"[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be." *Hutto v. Davis*, 454 U.S 370,

375 (1982). If a lower court is to honor this guidance, it must reconsider its precedent each time clearly relevant authority issues from this Court (or, for that matter, Congress). And it must do so even if the new precedent is not "unequivocal" or "clearly on point." This is not to say that prior precedent is of no weight or must invariably be overturned, only that this Court is the ultimate expositor of federal law, and cannot be ignored every time its guidance is not exact.

An opinion from the Court regarding the scope of its *Holguin-Hernandez* holding would be an excellent opportunity to disabuse circuit courts of their exclusive reliance on circuit precedent in the face of relevant intervening Supreme Court precedent.

C. The present case is an appropriate vehicle to address the conflict.

This case well presents the issue. The defense in this case urged the district court to exercise its discretion to impose a sentence below the applicable Guideline range, but the district court refused even to recognize its discretion to do so. *See* (Record in the Court of Appeals, at 125). As in *Holguin-Hernandez*, the defendant's request likely called to mind an "overarching duty" of the district court, here, a duty of the court to recognize the discretion it possessed in sentencing matters. Had the court of appeals applied the lessons of *Holguin-Hernandez* outside its narrow context, it may well have decided the standard of review differently.

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 1st day of March, 2021.

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