No. _____

In the

Supreme Court of the United States

RICKY PARKERSON,
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 the Fifth Circuit's practice of shifting the burden of production and proof to the defendant at sentencing violates a defendant's Due Process rights as well his Sixth Amendment right to confrontation?

2. Whether substantive reasonableness review necessarily encompasses some degree of reweighing the sentencing factors?

PARTIES TO THE PROCEEDING

Ricky Parkerson is the petitioner, who was the defendant-appellant below. The United States of America is the respondent, and was the plaintiff-appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Ricky Parkerson seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is published and is reprinted in the appendix. *See United States v. Ricky Parkerson*, 984 F.3d 1124 (5th Cir. Jan. 12, 2021).

JURISDICTION

The Fifth Circuit issued its written judgment on January 12, 2021. (Appendix A). The 90-day deadline for filing a petition for writ of certiorari provided for in Supreme Court Rule 13 has been extended to 150 days from the date of the lower court judgment by order of this Court on March 19, 2020. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 18, 3553(a) of the United States Code provides:

> (a) **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 –
>
> > (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> >
> > (2) the need for the sentence imposed –
> >
> > > (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> > >
> > > (B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner . . .

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines –

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement –

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have

> yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
>
> (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.
>
> (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
>
> (7) the need to provide restitution to any victims of the offense.

The Fifth Amendment to the United States Constitution provides the following:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

LIST OF PROCEEDINGS BELOW

1. *United States v. Ricky Parkerson*, 3:18-CR-00517-B-1, United States District Court for the Northern District of Texas, Dallas Division. Judgement and sentence entered on July 10, 2019.

2. *United States v. Ricky Parkerson*, CA No.19-10780, Court of Appeals for the Fifth Circuit. Judgment affirmed on January 12, 2021.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

In District Court

On October 10, 2018, Ricky Parkerson (Parkerson) was named in a one-count indictment, charging him with the offense of Failure to Register as a Sex Offender, a violation of 18 U.S.C. § 2250. (ROA.6).

On March 12, 2019, Parkerson pleaded guilty to the one-count indictment, without a plea agreement. *See* (ROA.28-36). Parkerson signed a factual resume which appears to have established the elements of the offense. *See* (ROA.28-33).

The Pre-sentence report (PSR) set the base offense level and adjusted offense level at 16, pursuant to U.S.S.G. §2A3.5(a)(1). (ROA.101). The PSR reduced the offense level by three levels for acceptance of responsibility, resulting in a total offense level 13. (ROA.101). Parkerson had a criminal history score of 5 and thus was in criminal history category III. (ROA.105). At a total offense level 13 and a criminal history category III, his advisory imprisonment range was 18-24 months. (ROA.113). The PSR found grounds for an upward variance or departure, based upon the defendant's criminal history score under-representing the seriousness of his criminal history – which included two sexual assault convictions that were the basis of his requirement to register as a sex offender -- and also based upon conduct in which Parkerson was accused but not convicted of abducting his niece by using a box cutter. (ROA.114-115). The PSR also listed as a basis for an upward departure or variance

the opinion of a Texas Department of Criminal Justice (TDCJ) doctor that Parkerson presented a high risk of recidivism. (ROA.115).

Parkerson's attorney filed objections to the PSR's suggestion that there were grounds that warranted an upward departure or variance. (RAO.116-121). Parkerson's attorney objected to the sentencing court relying on the PSR to establish the fact of the uncharged conduct of abducting his niece. The PSR merely set forth that Parkerson's niece reported to police that she had picked up Parkerson to give him a ride. At some point during this incident, they wound up on foot in a field near Seagoville. When the niece refused to cross a fence with Parkerson, he allegedly pulled a box cutter out of his pocket. The niece ran back to her car and got away. *See* (ROA.99). Parkerson's attorney objected to the reliability of these facts, pointing out that these allegations resulted in no charges being filed, and that none of these facts were corroborated or verified. (ROA.117).

Parkerson's attorney also objected to the district court relying on the assertion in the PSR that a psychologist with the TDCJ opined that Parkerson was a high risk to commit another sex offense. *See* (ROA.116-121) and (ROA.111,115). As an attachment to the objections, and as evidence showing that Parkerson was only a low to moderate risk at most, Parkerson's attorney attached a Static 99 test that showed Parkerson was not a high risk of committing another sex offense, according to the test. (ROA.138). The defendant showed that the TDCJ psychologist's opinion that Parkerson was a high risk was contrary to Parkerson's actual test results and did not meet the standard of sufficient indicia of reliability. (ROA123-138).

At the sentencing hearing, Parkerson's attorney re-urged and argued these same objections. See (ROA.75-84). The district court overruled both objections. (ROA.80,84). The district court adopted the facts and conclusions in the PSR. (ROA.84,153). The district court imposed a sentence of 120 months, an upward variance of essentially 100 months above the advisory range of 18-24 months. (ROA.88).

On Appeal

On appeal, Parkerson argued that the district court's basis for an upward variant sentence -- the unverified statements in the PSR that Parkerson had abducted his niece and the unreliable opinion that Parkerson was a high risk for recidivism – where not sufficiently reliable to support the variance. *See United States v. Parkerson*, 984 F. 3d 1124, 1126 (5th Cir. 2021). Parkerson also argued that relying on the uncorroborated, unverified conclusory statements in the PSR, without affording Parkerson the right to cross examine the alleged complainant, violated his Sixth Amendment right to confrontation. Parkerson argued further that the Fifth Circuit's practice of relying on unverified and uncorroborated facts in the PSR and shifting the burden to the defendant to disprove these facts violates his Fifth Amendment Due process rights. Finally, Parkerson argued that the statutory maximum sentence of 120 months, an extreme upward variance from the advisory imprisonment range of 18-24 months, was a substantively unreasonable sentence. Parkerson requested that the court of appeals conduct some degree of re-weighing of the sentencing factors to determine if the sentence was unreasonable.

The court of appeals found that "the factual account contained in the PSR bears sufficient indicia of reliability to justify its consideration at sentencing." *Id*. at 1129. The court concluded "that the niece's account, as reflected in the relevant passage of the PSR, bears sufficient indicia of reliability to meet this court's standard for consideration at sentencing." *Id*. at 1130. The court did not address the argument that its practice of accepting statements in the PSR as sufficiently reliable unless the defendant shows the information to be unreliable, shifts the burden of production, persuasion and proof to the defendant in violation of his due process rights. Nor did the court address the argument that relying on the unverified statements in the PSR violated Parkerson's Sixth Amendment rights to confrontation.

The Court of appeals affirmed the substantive reasonableness of the sentence without conducting any weighing of the sentencing factors, simply stating "Under these circumstances, it is not our role to second-guess the district court's exercise of its sound discretion, and accordingly we find no error," and "it would be inappropriate of us to second-guess the district court's application of the § 3553(a) factors." *Id*. at 1132.

REASONS FOR GRANTING THE PETITION

I. THE COURT BELOW AND OTHER FEDERAL COURTS OF APPEALS HAVE REACHED SUBSTANTIALLY DIFFERENT CONCLUSIONS REGARDING WHO HAS THE BURDEN OF PRODUCTION AND THE BURDEN OF PROOF AT SENTNCING.

A. The Fifth Circuit has created an almost impossible burden on the defendant to rebut assertions in the PSR.

The due process clause requires that a district court's sentencing determinations be supported by information bearing reasonable indicia of reliability. *See United States v. Johnson*, 648 F.3d 273, 277 (5th Cir. 2011) (cautioning that "without sufficient indicia of reliability, a court may not factor in prior arrests when imposing a sentence. This comports with the due process requirement that sentencing facts must be established by a preponderance of the evidence.") (citing *United States v. Watts*, 519 U.S. 148, 156 (1997)(*per curiam*)). Factual findings pertaining to the defendant's prior criminal conduct, like findings about the instant offense or relevant conduct, must also be based on reasonably reliable information. *See United States v. Harris,* 702 F.3d 226 at 231 (5th Cir. 2012) ("If the factual recitation [about an unadjudicated arrest] lacks sufficient indicia of reliability, then it is error for the district court to consider it at sentencing—regardless of whether the defendant objects or offers rebuttal evidence.").

However, the Fifth Circuit has repeatedly held that, "Generally, a PSR bears a sufficient indicia of reliability to be considered as evidence by the sentencing judge

in making factual determinations." *United States v. Zuniga*, 720 F.3d 587, 591 (5th Cir. 2013); *quoting Harris*, 702 F.3d at 230; and *United States v. Elwood*, 999 F.2d 814, 817-18 (5th Cir. 1993).

Having declared that a PSR bears a sufficient indicia of reliability for factual determinations at sentencing, the Fifth Circuit has also reasoned that if a PSR bears a sufficient indicia of reliability, then the "defendant bears the burden of demonstrating that the PSR is inaccurate; in the absence of rebuttal evidence, the sentencing court may properly rely on the PSR and adopt it." *Zuniga*, 720 F.3d at 591, *quoting United States v. Ollison*, 555 F.3d 152, 164 (5th Cir. 2009); and *United States v. Ayala*, 47 F.3d 688, 690 (5th Cir. 1995).

There simply is no question that the Fifth Circuit has developed a practice and a policy and procedure in which information in a PSR is considered reliable unless rebutted by the defendant, and "rebuttal evidence must consist of more than a defendant's objection; it requires a demonstration that the information is 'materially untrue, inaccurate or unreliable.'" *Zuniga*, 720 F.2d at 591; quoting *Harris*, 702 F.3d at 230. *See also United States v. Vital*, 68 F.3d 114, 120 (5th Cir. 1995). The court below in Mr. Parkerson's case engaged in the same practice. *See United States v. Parkerson*, 984 F.3d 1124, 1128-29 (5th Cir. 2021).

The result of this practice is that the PSR author can simply include any factual assertion in the PSR, and even if the defendant objects to the reliability of the source of the information, the government can – and often does – simply rely on the PSR without presenting any verifying or corroborating information. This

practice violates Parkerson's Fifth Amendment due process rights and his Sixth Amendment right to confrontation.

B. The circuits are in conflict.

In addition to the Fifth Circuit, several other circuit courts, have imposed on the defendant the burden of production when he objects to facts set forth in a PSR. *See United States v. Prochner*, 417 F.3d 54, 65-66 (1st Cir. 2005); *United States v. O'Garro*, 280 F. App'x 220, 225 (3d Cir. 2008); *United States v. Campbell*, 295 F.3d 398, 406 (3d Cir. 2002); *United States v. Valencia*, 44 F.3d 269, 274 (5th Cir. 1995); *United States v. Lang*, 333 F.3d 678, 681-682 (6th Cir. 2003); *United States v. Mustread*, 42 F.3d 1097, 1102 (7th Cir. 1994); *United States v. Rodriguez-Delma*, 456 F.3d 1246, 1253 (10th Cir. 2006). In these circuits, a district court may adopt the factual findings of a presentence report "without further inquiry" absent competent rebuttal evidence offered by the defendant. *United States v. Valdez*, 453 F.3d 252, 230 (5th Cir. 2006); *see also Prochner*, 417 F.3d at 66; *Lang*, 333 F.3d at 681-682; *Mustread*, 42 F.3d at 1102; *Rodriguez-Delma*, 456 F.3d at 1253.

However, the D.C., Second, Eighth, Ninth, and Eleventh Circuits have all rejected this reasoning. In each of these cases, an objection to facts stated in a PSR shifts the burden of production to the government to produce additional supporting evidence. *See United States v. Price*, 409 F.3d 436, 444 (D.C. Cir. 2005) ("the Government may not simply rely on assertions in a presentence report if those assertions are contested by the defendant."); *United States v. Helmsley,* 941 F.2d 71, 98 (2d Cir. 1991) ("If an inaccuracy is alleged [in the PSR], the court must make a

finding as to the controverted matter or refrain from taking that matter into account in sentencing. If no such objection is made, however, the sentencing court may rely on information contained in the report."); *United States v. Poor Bear*, 359 F.3d 1038, 1041 (8th Cir. 2004) ("If the defendant objects to any of the factual allegations . . . on which the government has the burden of proof, such as the base offense level. . . the government must present evidence at the sentencing hearing to prove the existence of the disputed facts."); *United States v. Ameline*, 409 F.3d 1073, 1085-86 (9th Cir. 2005) (*en banc*)("However, when a defendant raises objections to the PSR, the district court is obligated to resolve the factual dispute, and the government bears the burden of proof . . . . The court may not simply rely on the factual statements in the PSR. "); *United States v. Martinez*, 584 F.3d 1022, 1026 (11th Cir. 2009) ("It is now abundantly clear that once a defendant objects to a fact contained in the [PSR], the government bears the burden of proving the disputed fact by a preponderance of the evidence.").

Parkerson contends that a rule that shifts the burden of production to the defendant to rebut facts that have simply found their way into the PSR violates Due Process. Parkerson also contends that the practice of shifting the burden to rebut factual assertions in the PSR violated his Sixth Amendment right to right to confrontation. Cross-examination represents "the greatest legal engine ever invented for the discovery of truth." *California v. Green*, 399 U.S. 149, 158 (1970). And the "[i]nvolvement of government officers in the production of testimony with an eye toward trial presents unique potential for prosecutorial abuse." *Crawford v.*

Washington, 541 U.S. 36, 56, n.7 (2004). The text of the Sixth Amendment broadly provides the right of confrontation "[i]n all criminal prosecutions," without limitation to the ascertainment of guilt or innocence. U.S. Const. Amendment VI. Finally, this Court, as well as the Fifth Circuit, have recognized in the revocation context a limited right to challenge unreliable hearsay evidence. *See Morrissey v. Brewer*, 408 U.S. 471, 489 (1970); *United States v. McCormick*, 54 F.3d 214, 221 (5th Cir. 1995). Revocation and sentencing present comparable liberty interests, and ought to afford comparable due process protections – in both cases, the defendant's primary liberty interest has been extinguished by criminal conviction, but prison time nonetheless depends on the outcome. In Mr. Parkerson's case, The Fifth and Sixth Amendments should have compelled live testimony, or at least verification and corroboration sufficient to establish that the facts objected to satisfied the reliability requirement.

C. Mr. Parkerson's case presents an excellent vehicle to decide this question.

In the present case, the author of the PSR merely took an incident report that was made to the police and paraphrased the information in the PSR. Neither a statement of the complainant or even the incident report were made a part of the record. The record does not reflect that the PSR writer even talked to the officer taking the report or the individual who filed the complaint. No charges were filed, and of course there were no convictions based upon the information. Parkerson's trial attorney objected to the district court relying on the information. (ROA.116-

121). There is no question that the district court relied on the information as a basis for the upward variance. (ROA.80,84,153).

The district court also relied upon an opinion from a psychologist with the Texas Department of Criminal Justice (TDCJ) that Parkerson presented a high risk of committing another sex offense. Parkerson's attorney objected to this information in the PSR and attached the result of a Static 99 test showing that Parkerson was not a high risk of committing another sex offense, but was actually found to be a low to moderate risk. (ROA.116-121,123-138). Accordingly, Parkerson presented evidence showing that the TDCJ Psychologist's opinion that was included in the PSR was unreliable. However, the district court relied on the unreliable opinion, although the court claimed to give it no more weight than the reliable Static 99 test results.

The result of all of this was Parkerson received a statutory maximum sentence of 120 months, essentially 100 months above the advisory imprisonment range of 18-24, based upon information that was not shown to be sufficiently reliable beyond the simple fact that it found its way into the PSR. With regard to one piece of information, the psychologist's opinion, Parkerson actually met his burden to show that the information was not reliable. Yet, the government presented nothing to verify or corroborate the facts that were objected to.

II. THE COURT BELOW AND OTHER FEDERAL COURTS OF APPEALS HAVE REACHED SUBSTANTIALLY DIFFERENT CONCLUSIONS REGARDING THE APPROPRIATE LEVEL OF DEFERENCE TO BE ACCORDED THE DISTRICT COURT IN SUBSTANTIVE REASONABLENESS REVIEW.

A. The circuits are in conflict.

The length of a federal sentence is determined by the district court's application of 18 U.S.C. §3553(a). *United States v. Booker*, 543 U.S. 220, 261 (2005). A district court must impose a sentence that is adequate, but no greater than necessary, to achieve the goals set forth in 18 U.S.C. §3553(a)(2). *See* 18 U.S.C. §3553(a)(2). The district court's compliance with this requirement is reviewed for reasonableness. *See Rita v. United States*, 551 U.S. 338, 359. (2007).

In *Gall v. United States*, 552 U.S. 38 (2007), this Court emphasized that all federal sentences, "whether inside, just outside, or significantly outside the Guidelines range" are reviewed on appeal "under a deferential abuse-of-discretion standard." *Gall*, 552 U.S. at 41. It expanded further on this theme in *Kimbrough v. United States*, 552 U.S. 85 (2007), holding that district courts enjoyed the power to disagree with policy decisions of the Guidelines where those decisions were not empirically founded. *See Kimbrough*, 552 U.S. at 109.

Nonetheless, the courts of appeals have taken divergent positions regarding the extent of deference owed district courts when federal sentences are reviewed for reasonableness. The Fifth Circuit flat-out prohibits "substantive second-guessing of the sentencing court." *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 767 (5th Cir.

2008). In Mr. Parkerson's case, the Fifth Circuit affirmed the sentence, specifically stating "Under these circumstances, it is not our role to second-guess the district court's exercise of its sound discretion, and accordingly we find no error," and "it would be inappropriate of us to second-guess the district court's application of the § 3553(a) factors." *Parkerson*, 984 F.3d at 1132.

This approach contrasts sharply with the position of several other courts of appeals. The Second Circuit has emphasized that it is not the case that "district courts have a blank check to impose whatever sentences suit their fancy." *See United States v. Jones*, 531 F.3d 163, 174 (2d Cir. 2008). The Eleventh and Third Circuits have likewise read *Gall* to "leave no doubt that an appellate court may still overturn a substantively unreasonable sentence, albeit only after examining it through the prism of abuse of discretion, and that appellate review has not been extinguished." *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008); *accord United States v. Levinson*, 543 F.3d 190, 195-196 (3d Cir. 2008). These cases conform to the consensus among the federal circuits that it remains appropriate to reverse at least some federal sentences after *Gall* as substantively unreasonable. *See United States v. Ofray-Campos*, 534 F.3d 1, 44 (1st Cir. 2008)*; United States v. Abu Ali*, 528 F.3d 210, 269 (4th Cir. 2008); *United States v. Funk*, 534 F.3d 522, 530 (6th Cir. 2008); *United States v. Shy*, 538 F.3d 933 (8th Cir. 2008).

These approaches cannot be squared. The Fifth Circuit understands *Gall* to prohibit substantive second guessing; the majority of other circuits have issued opinions that understand their roles as to do precisely that, albeit deferentially.

B. The present case is the appropriate vehicle.

The present case is an appropriate vehicle to consider this conflict. Mr. Parkerson's advisory imprisonment range was 18-24 months. The sentencing court imposed a statutory maximum sentence of 120 months. The sentencing court could not have imposed a more severe upward variance. However, the Fifth Circuit almost ignored the argument that the sentence was unreasonable, simply stating it would be inappropriate to second-guess the sentence.

Title 18 U.S.C. § 3553(a) requires that, "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." Section 3553(a) also requires a district court to consider, "[T]he need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct . . ." 18 U.S.C. § 3553(a)(2)(6). This Court has instructed courts of appeals to review a district court's compliance with Section 3553 by the "reasonableness" standard. *See Rita*, 551 U.S. at 359; and *Gall*, 552 U.S. at 41.

The Fifth Circuit has made it clear that it prohibits "substantive second-guessing of the sentencing court." *United States v. Cisneros-Gutierrez*, 517 F.3d at 767. The Fifth Circuit has simply refused to conduct any reasonableness review by re-visiting the weighing of sentencing factors. *See United States v. Malone*, 828 F.3d 331, 342 (5th Cir. 2016); *United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017); *United States v. Cotten*, 650 Fed. Appx. 175, 178 (5th Cir. 2016) (unpublished); *United States v. Mosqueda*, 437 Fed. Appx. 312, 312 (5th Cir. 2011) (unpublished);

United States v. Turcios-Rivera, 583 Fed. Appx. 375, 376-377 (5th Cir. 2014); *United States v. Douglas*, 667 Fed. Appx. 508, 509 (5th Cir. 2016) (unpublished).

The problem in this case, and the reason this Court should grant review, is that the Petitioner received no reasonableness review from the court of appeals. Mr. Parkerson fully preserved the sentencing issue at the trial court and presented this issue for abuse of discretion – or reasonableness – review on appeal. The Fifth Circuit affirmed the sentence without conducting any kind of reasonableness analysis or weighing of the sentencing factors. Accordingly, the outcome of the case likely turns on an appellate court's refusal to engage in meaningful review of the reasonableness of a criminal sentence. Review is warranted to address the practice of the Fifth Circuit to refuse to apply the reasonableness review required by this Court, and to resolve the division in the circuit courts in applying reasonableness review.

CONCLUSION

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

Respectfully submitted this 11th day of June, 2021.

Respectfully submitted,

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