

No. _____

In the

Supreme Court of the United States

Jesus Lopez-Mejia,

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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QUESTION PRESENTED

- I. Whether Petitioner's sentence was substantively unreasonable?

PARTIES TO THE PROCEEDING

Petitioner is Jesus Lopez-Mejia, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below. No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Fifth Circuit:

- *United States v. Lopez-Mejia*, 847 F. App'x 249 (5th Cir. 2021)
- *United States v. Lopez-Mejia*, No. 3:19-CR-592-B-1 (Sept. 9, 2020)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jesus Lopez-Mejia seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at *United States v. Lopez-Mejia*, 847 F. App'x 249 (5th Cir. 2021). The district court did not issue a written opinion.

JURISDICTION

The Fifth Circuit entered judgment on May 13, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RULES AND GUIDELINES PROVISIONS

Congress articulated the statutory sentencing factors 18 U.S.C. § 3553(a), which requires judges to fashion a sentence “sufficient, but not greater than necessary” to comply with their purposes.

STATEMENT OF THE CASE

On September 17, 2019, police arrested Jesus Lopez-Mejia, Petitioner, on active warrants. (ROA.110). That same day, immigration officers encountered him and lodged an immigration detainer. (ROA.110). The government subsequently indicted him on one count of Illegal Reentry After Deportation, in violation of §§ 1326(a) and (b)(1). (ROA.24-26).

On January 21, 2020, Mr. Lopez-Mejia pleaded guilty to the one-count indictment. (ROA.77). The Presentence Investigation Report (PSR) was prepared, which reflected that he had a prior illegal reentry offense, a felony conviction before his first removal, and a felony conviction after his first removal. For each of these, he received a 4-level increase to his base offense level of 8. (ROA.111). After a 3-level reduction for acceptance of responsibility, Mr. Lopez-Mejia's total offense level was 17. (ROA.112). Combined with a Criminal History Category of VI, U.S. Probation calculated Mr. Lopez-Mejia's advisory guidelines range at 51 to 63 months. (ROA.122).

On September 8, 2020, the district court held Mr. Lopez-Mejia's sentencing hearing. (ROA.82). Defense counsel requested a sentence of 51 months, which was the low end of the advisory sentencing range. (ROA.90). The government, in response, requested a within-guidelines sentence "at the higher end of the guidelines." (ROA.97). The district court then imposed a 12-month upward variance, sentencing him to 75 months imprisonment, without supervised release. (ROA.101). Defense

counsel objected, arguing that the sentence was unreasonable and greater than necessary to achieve the statutory sentencing factors. (ROA.102).

The Fifth Circuit affirmed.

REASON FOR GRANTING THIS PETITION

The district court imposed an upward variance based on Mr. Lopez-Mejia's recidivism. In doing so, the court did not adequately consider and account for Mr. Lopez-Mejia's history and characteristics, leading to sentence that was greater than necessary to achieve the statutory sentencing goals. This Court should vacate and reverse for resentencing under a proper balancing of the appropriate factors.

Circuit courts exist, in part, to correct mistakes of substantive reasonableness when they occur. *Rita v. United States*, 551 U.S. 338, 354 (2007). Moreover, appellate review of a sentencing decision for "reasonableness" is proper regardless of whether the sentence is within or outside of the guidelines range. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). But when a sentence is above-guidelines, the district court does not benefit from a presumption of reasonableness. *See Rita*, 551 U.S. at 347.

In reviewing a challenge to the substantive reasonableness of a non-Guidelines sentence, the sentence unreasonably fails to reflect the statutory sentencing factors when: (1) the court does not account for a factor that should have received significant weight; (2) the court gives significant weight to an irrelevant or improper factor; or (3) the court makes a clear error of judgment in balancing the sentencing factors.

United States v. Chandler, 732 F.3d 434, 437 (5th Cir. 2013) (quoting *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006)). Additionally, when reviewing a non-Guidelines sentence, courts may consider the extent of the variance, but must give due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance. *Chandler*, 732 F.3d at 437 (quoting *United States v. Broussard*, 669 F.3d 537, 551 (5th Cir. 2012)).

Here, the district court’s above-Guidelines sentence was based on Mr. Lopez-Mejia’s criminal history. The district court described a series of Mr. Lopez-Mejia’s prior convictions and concluded that it was “a continuing pattern” and that “given all of the illicit activity and the fighting with the police and all of that, I just can’t see that 63 months is enough.” (ROA.100).

In doing so, the district court did not adequately consider Mr. Lopez-Mejia’s history and characteristics, another critical sentencing factor. Within this category, Mr. Lopez-Mejia and his counsel described how he was brought to the United States when he was five years old and that it has always has been, in a cultural and familial sense, his home. (ROA.94). His children are all American citizens and he simply wanted to share a life with them. (ROA.93-94). In fact, Mr. Lopez-Mejia did not even know he was undocumented until he was arrested for the first time after graduating high school. (ROA.88). In addition, the mother of his children has agreed to take the children to Mexico to visit him periodically. (ROA.89-90). Finally, and most importantly, once back in Mexico, Mr. Lopez-Mejia would be able to interact with his children by way of Zoom or other such technology, which is not available to him in

federal custody. (ROA.88-90). Had the district court given these considerations adequate weight, the sentence should have been lower.

Courts also evaluate whether the “degree of the departure or the sentence as a whole is unreasonable.” *United States v. Rajwani*, 476 F.3d 243, 250 (5th Cir. 2007), *modified on other grounds*, 479 F.3d 904 (5th Cir. 2007). Here, the PSR’s guideline range was 51 to 63 months. (ROA.122). Yet the district court sentenced Petitioner to 75 months, which was twelve months above the top of the advisory sentencing range. (ROA.101). Under the totality of the circumstances, this was unreasonable. Justice does not require Mr. Lopez-Mejia to suffer an enhanced sentence here.

CONCLUSION

This Court should grant the Petition, reverse, and remand for resentencing.

Respectfully submitted,

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