No. _____

IN THE

Supreme Court of the United States

RAUL AMBRIZ-VILLA, JR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

DAVID L. BRENGLE
Assistant Federal Public Defender
650 Missouri Ave.
East St. Louis, IL 62201
(618) 482-9050
(618) 482-9057 fax
David_Brengle@fd.org
Counsel for Petitioner

QUESTIONS PRESENTED

1. During a traffic stop, does the Fourth Amendment place any limit on the extent and manner of questioning by police regarding matters not related to the mission of the traffic stop, if the additional questioning does not prolong the traffic stop?

2. On appellate review of a within-guidelines sentence for substantive reasonableness, is a Circuit court permitted to determine whether a reasoned weighing of 18 U.S.C. § 3553(a) factors rebuts the appellate presumption of reasonableness?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Raul Ambriz-Villa respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

DECISION BELOW

The Seventh Circuit's decision is published at 28 F.4th 786 (7th Cir. 2022), and appears at Appendix 1 to this Petition. The Seventh Circuit's denial of Petitioner's Petition for rehearing and rehearing en banc (unpublished) is available on Westlaw, citation 2022 WL 1094627, and appears at Appendix 6.

JURISDICTIONAL STATEMENT

The United States District Court for the Southern District of Illinois originally had jurisdiction pursuant to 18 U.S.C. § 3231, which provides exclusive jurisdiction of offenses against the United States. Petitioner timely appealed his conviction and sentence to the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The Seventh Circuit affirmed the judgment on March 14, 2022.

Petitioner's Petition for Rehearing and Rehearing *en banc* was denied on April 12, 2022. Petitioner seeks review of the Seventh Circuit's published opinion affirming Appellant's conviction and sentence pursuant to 28 U.S.C. § 1254(1). This Petition is filed within 90 days of the Seventh Circuit's denial of Petitioner's Petition for Rehearing and Rehearing en banc.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioner seeks this Court's review of the Seventh Circuit's opinion affirming the denial of his motion to suppress and the substantive reasonableness of his sentence.

A. Fourth Amendment. Petitioner's motion to suppress involved a traffic stop. Trooper Payton stopped Petitioner for crossing the white line as he drove on the highway. Payton immediately directed Petitioner to sit next to him in his police car while Payton prepared a warning citation, although he identified no particular safety concerns for doing so. Payton warned Petitioner not to open the back door of the police car, because his drug dog was in the back seat.

While preparing the warning citation for crossing the white line, Payton questioned Petitioner repeatedly and persistently about his personal life and travel plans, as well about whether he had drugs or other illegal objects in his truck. The repetitive questions and moving Petitioner to the police car did not extend the duration of the stop beyond the time necessary to prepare the warning ticket. In arguing for suppression, Defense Counsel argued the manner and level of intrusiveness of the stop were unreasonable under the Fourth Amendment, in light of the totality of the circumstances.

In denying suppression, the District Court found Trooper Payton's questions about matters outside the mission of the traffic stop were permissible, and any later consent to search was not tainted by an illegal stop. The District Court also found Appellant's "circumspect behavior and dubious story" gave Trooper Payton justification to extend the traffic stop after the he gave Petitioner a warning ticket, before he asked Petitioner to agree to a dog sniff of his vehicle. The District Court further found a reasonable person in Petitioner's shoes would have felt free to leave after Trooper Payton handed him the warning ticket.

The Seventh Circuit upheld the denial of the motion to suppress. However, unlike the District Court, it did not find Trooper Payton had reasonable suspicion that Petitioner was engaged in any illegal activity beyond the traffic violation. The Seventh Circuit rejected Petitioner's argument that "the scope and manner of the stop was unreasonable because Trooper Payton asked [Petitioner] repetitive and persistent questions not tailored to the reason for the initial stop while he was in the confines of the patrol car." However, the Seventh Circuit refused to consider whether the intrusive questioning while Petitioner was in custody in the police car rendered the scope and manner of the stop unreasonable. Rather, it held that, unless the additional questions extended the time to address the mission of the stop the traffic citation, the level of intrusiveness of the traffic stop could not violate the Fourth Amendment:

> But Trooper Payton was permitted to ask Ambriz-Villa questions unrelated to the reason for the stop without reasonable suspicion of other criminal activity, even if the questioning was repetitive and persistent, so long as the questioning did not prolong the duration of the stop, which Ambriz-Villa does not contest on appeal. * * * And it makes no difference that Ambriz-Villa was in the patrol car during the questioning. Trooper Payton was permitted to ask Ambriz-Villa to sit in the patrol car while he wrote the warning. * * * What matters is that Trooper Payton's questioning did not prolong the duration of the traffic stop. We agree with the district court that the scope and manner of the stop did not violate Ambriz-Villa's Fourth Amendment rights.

United States v. Ambriz-Villa, 28 F.4th 786, 790 (7th Cir. 2022). The Seventh Circuit went on to find that because the stop was not illegal, Petitioner's consent to search was not tainted. *Id*.

B. Substantive reasonableness. Appellate courts reviewing a sentence for substantive reasonableness must "determine whether the sentence 'is unreasonable' with regard to § 3553(a)." *United States v. Booker*, 543 U.S. 220, 261 (2005). In addition, 18 U.S.C. § 3553(a) factors "guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable." *Id.* Courts of Appeals may apply a nonbinding, rebuttable, appellate presumption of reasonableness. *Rita v. United States*, 551 U.S. 338, 347 (2007).

On appeal, Petitioner argued the District Court's within-Guidelines sentence "was outside the bounds of a reasonable balancing of the § 3553(a) factors." *United States v. Ambriz-Villa*, 28 F.4th 786, 791 (7th Cir. 2022). Specifically, Defense Counsel argued in his brief, "Even considering the District Court's sentencing analysis, no weighing of sentencing factors within the bounds of reason supports the conclusion that more than the ten-year minimum is necessary to serve the goals of [sentencing]," and a "168 month sentence is unreasonable when measured against § 3553(a) factors, rebutting the presumption of reasonableness."

Defense Counsel cited Petitioner's considerable, favorable sentencing factors. Appellant was 49 years old, in criminal history category I, with no substance abuse problems. He was devoted to his wife and children, and sacrificed his own education when he was young so his siblings could go to school. He and his wife operated a food truck at a farmers' market in their local community for the previous three years. He regularly performed extra work without pay to ensure the success of the market. Because of these things, he had an excellent reputation in the community. Petitioner's motive for his offense was to support his family and his children's education. After Petitioner's arrest, his son had to drop out of college to work to support the family.

Defense Counsel further argued the District Court's justification for a within-guidelines sentence was weak. The District Court characterized Petitioner's motivation to support his family as merely a financial motive, which was common for many crimes. The District Court reasoned prior punishment did not deter Petitioner; Defense Counsel argued the failure of a single thirty-day term of imprisonment to deter Petitioner provided little support for the conclusion that fourteen years, as opposed to ten years, was the shortest term necessary to serve the goals of sentencing, in light of other mitigating factors. Also, although the District Court emphasized Petitioner was involved in transporting three times the drug quantity necessary for

his base offense level, there was no evidence Petitioner played a part in determining the drug amount or purity of the drugs he transported.

In affirming on appeal, the Seventh Circuit refused to review whether a reasoned weighing of sentencing factors rebutted the presumption of reasonableness. Rather, it found it had no power to determine whether the District Court's weighing of sentencing factors was beyond the bounds of reason:

> Ambriz-Villa may rebut [the reasonableness] presumption only by showing that his sentence does not comport with the § 3553(a) factors. * * * To this end, Ambriz-Villa stresses to us that he has strong factors in favor of mitigation. But we do not re-weigh the factors on appeal. Rather, our review is limited to ensuring the sentence is "logical and consistent" with the factors. * * * Here, the district court considered the § 3553(a) factors, concluding the facts did not "warrant a variance below the Guidelines range." The judge noted that Ambriz-Villa was moving a considerable quantity of drugs—nearly three times the amount required to establish a baseline offense—and that prior community supervision had not successfully deterred his criminal conduct. The district court logically applied the factors, and to hold otherwise would require us to first weigh the facts differently. That we will not do.

United States v. Ambriz-Villa, 28 F.4th 786, 792 (7th Cir. 2022).

On March 28, 2022, Defense Counsel filed a petition for rehearing or rehearing en banc, which was denied on April 12, 2022.

REASONS FOR GRANTING THE PETITION

1. During a traffic stop, does the Fourth Amendment place any limit on the extent and manner of questioning by police regarding matters not related to the mission of the traffic stop, if the additional questioning does not prolong the traffic stop?

A. Seventh Circuit holding conflicts with Supreme Court precedent. The panel's holding that police may ask unlimited non-traffic-stop-mission questions to a motorist, so long as the traffic stop is not prolonged, conflicts with *Berkemer v. McCart*y, 468 U.S. 420, 439 (1984), which limits even traffic-stop-mission-related questions to a "moderate number," *United States v. Hensley*, 469 U.S. 221, 235 (1985), which holds courts must ask whether the circumstances "justified the length and intrusiveness of the stop and detention that actually occurred," and *Terry v. Ohio*, 392 U.S. 1, 28 (1968), which holds the manner of a seizure is a factor in the reasonableness inquiry.

In *Berkemer,* this Court found police may question a defendant during a roadside traffic stop without reading him his constitutional rights. *Berkemer,* 468 U.S. at 429. This Court contrasted a roadside interrogation from a "stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek." *Id.* at 436 (citation omitted). This Court further explained a traffic stop is "not such that the motorist feels completely at the mercy of the police," and "the atmosphere surrounding an ordinary traffic stop is substantially less 'police dominated' than that surrounding the kinds of interrogation" requiring *Miranda* warnings. *Id.* at 436-39. Rather, a traffic stop is more analogous to a "*Terry* stop." *See Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). Consequently,

> "[T]he stop and inquiry must be 'reasonably related in scope to the justification for their initiation.' " *Ibid*. (*quoting Terry v. Ohio, supr*a, 392 U.S., at 29, 88 S.Ct., at 1884.) Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain

> information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond.

Berkemer v. McCarty, 468 U.S. 420, 438–40 (1984).

Hence, even for questioning related to the mission of the traffic stop, *Berkemer* and *Terry* do not allow unlimited questioning, but restrict the questions to a *moderate* number, in circumstances is more consistent with a typical roadside traffic stop than a stationhouse interrogation. The Seventh Circuit's holding that an officer may hold a defendant in his police car and pepper him with an unlimited number of questions unrelated to the mission of a traffic stop, many of which were accusatory, without reasonable suspicion of other criminal activity, so long this questioning does not prolong the stop beyond the time it takes to issue a citation, cannot be reconciled with *Terry* and *Berkemer*. The repetitive and probing questioning in close quarters is more akin to a stationhouse interrogation then the typical limited roadside interrogation contemplated by *Berkemer*.

This Court's opinion in *Hensley* makes clear it is not just the length of the stop, but the level of intrusiveness, which must be considered in determining the reasonableness of the stop and questioning of an individual under the Fourth Amendment. *Hensley* held police may objectively rely on a flyer from a different department, requesting that a suspect be stopped and questioned, "if the police who issued the flyer or bulletin possessed a reasonable suspicion justifying a stop . . . and if the stop that in fact occurred was not significantly more intrusive than would have been permitted the issuing department." *Id.* at 233. The opinion later explicitly stated that reasonableness depends both on the length and the intrusiveness of the stop: "We hold only that this flyer, objectively read and supported by a reasonable suspicion on the part of the issuing department, justified the length and intrusiveness of the stop and detention that actually occurred." *Id.* at 235.

Hence, the Seventh Circuit's holding that police making a traffic stop may question a defendant without limit on any subject while he is confined in a police car, so long as the stop is not extended beyond the time necessary to issue a traffic citation, is inconsistent with the above precedent.

This Court's holding in *Rodriguez v. United States*, 575 U.S. 348, 350 (2015) (citation omitted) that "a traffic stop 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a warning ticket," does not support a different conclusion. *Rodriguez* and the precedent on which it relied did not include a challenge to the manner or level of intrusiveness of a stop. *Rodriguez* addressed only, "whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop." *Id. Rodriguez* gave no indication that this Court's holdings requiring that a traffic stop be reasonable not only in length, but also in manner and level of intrusiveness, were overruled.

Nor is the Seventh Circuit's holding supported by *Arizona v. Johnson*, 555 U.S. 323 (2009), which stated, "An officer's inquiries into matters unrelated to the justification for the traffic stop, [the Supreme] Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Id.* at 333. *Johnson* involved a challenge to the frisk of a motorist during a *Terry* stop, and did not involve a claim that an officer's repetitive questioning about extraneous matters was overly intrusive. In addition, *Johnson* relied on *Muehler v. Mena*, 544 U.S. 93 (2005), which challenged a traffic stop only because officer's inquired into the motorist's immigration status; no claim was made that the questioning was of such character and in such circumstances that rendered the stop overly intrusive. *Id.* at 101. Neither *Rodriguez*, *Johnson,* nor *Mena* support an

overruling of this Court's precedent holding that the level of intrusiveness is a separate inquiry from the length of the stop, in a Fourth Amendment reasonableness inquiry.

B Clarifying the limits on police questioning during a traffic stop is important. Courts in at least two other Circuits, in addition to the Seventh, have wrongly construed this Court's precedent as permitting an officer's interrogation about extraneous matters "to his heart's content" during a traffic stop, so long as the questioning does not prolong the stop. *See United States v. Everett,* 601 F.3d 484, 492 (6th Cir. 2010) ("[A]n officer may ask unrelated questions to his heart's content, provided he does so during the supposedly dead time while he or another officer is completing a task related to the traffic violation."); *Olaniyi v. D.C.*, 876 F. Supp. 2d 39, 57 (D.D.C. 2012) (Same, *quoting Everett*).

This misinterpretation allows police to transform a traffic stop from a *Terry*-type stop, of limited duration and scope, to an interrogation approaching that of a stationhouse interview; defendants confined next to a police officer in his squad car and under the officer's constant scrutiny may be repeatedly asked accusatory questions every spare minute, so long as the questioning ends when the citation is issued. Such practice, which is so unlike the typical public, roadside detention contemplated in *Berkemer,* cannot be deemed categorically reasonable under the Fourth Amendment. Without this Court's correction of this matter, defendants in the Seventh, Fourth, and D.C. Circuits, who are subjected to such atypical interrogation during a traffic stops, will be precluded from obtaining review of their particular circumstances for reasonableness under the Fourth Amendment.

2. On appellate review of a within-guidelines sentence for substantive reasonableness, is a Circuit court permitted to determine whether a reasoned weighing of 18 U.S.C. § 3553(a) factors rebuts the appellate presumption of reasonableness?

A. Seventh Circuit holding conflicts with Supreme Court precedent. In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court excised the statutory provision that made the United States Sentencing Guidelines mandatory, along with "the provision that sets forth standards of review on appeal" for sentences. *Id.* at 259. The *Booker* Court then set a new standard of review for sentences on appeal, finding the language and structure of the sentencing statute, and past appellate practice, "imply a practical standard of review already familiar to appellate courts: review for 'unreasonable[ness].'" *Id.* at 261. The *Booker* Court directed appellate courts reviewing a sentence for substantive reasonableness to "determine whether the sentence 'is unreasonable' with regard to § 3553(a)," emphasizing that 18 U.S.C. § 3553(a) factors "guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable." *Id.*

Gall v. United States, 552 U.S. 38, 51 (2007) clarified review of a sentence was a two-step process; an appellate court must "first ensure that the district court committed no significant procedural error," including "failing to consider the § 3553(a) factors," and "failing to adequately explain the chosen sentence." *Id.* at 51. If the decision is "procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *Id.* In *Rita v. United States*, 551 U.S. 338, 347 (2007), this Court held appellate court could apply a nonbinding, rebuttable, appellate presumption of reasonableness on substantive reasonableness review.

The Seventh Circuit's decision narrows the substantive reasonableness review contemplated by *Booker, Gall,* and *Rita.* Despite the directives that the presumption of reasonableness be rebuttable and that substantive reasonableness be gauged by § 3553(a) factors,

the panel refused to consider Appellant's argument that the reasonableness presumption was rebutted by 18 U.S.C. § 3553(a) factors. The Panel stated, "our review is limited to ensuring the sentence is 'logical and consistent' with the [3553(a)] factors," and it could not consider whether the district court's weighing of such factors was beyond the bounds of reason. The Panel found consideration of such argument would require it to "re-weigh" the 3553(a) factors on appeal, which it would not do. *Ambriz-Villa*, 28 F.4th 786, 791-92 (7th Cir. 2022).

Booker includes no restriction on an appellate court's authority to consider whether a district court's weighing of sentencing factors is outside the bounds of reason, resulting in a sentencing determination that is an abuse of discretion. No other authority provides support for the Seventh Circuit's grafting such a restriction onto *Booker's* directive to measure substantive reasonableness against 3553(a) factors, and *Rita's* directive to consider whether the presumption of reasonableness is rebutted. Hence, the Seventh Circuit's misinterpretation of this Court's precedent requires this Court's attention.

B. Maintaining substantive reasonableness review is important. "In sentencing, as in other areas, district judges at times make mistakes that are substantive. At times, they will impose sentences that are unreasonable. Circuit courts exist to correct such mistakes when they occur." *Rita*, 551 U.S. at 354 (2007). "[S]ubstantive reasonableness occupies a range, not a point." *United States v. Morgan*, 987 F.3d 627, 632 (7th Cir. 2021). Leaving the Seventh Circuit's decision in tact will preclude correction of sentences which are substantively unreasonable, in that they are premised on a weighing of sentencing factors beyond the bounds of reason, but the district court explained his sentencing decision in a way that is consistent and logical with 3553(a) factors.

In Petitioner's case, the district court's explanation of his sentencing decision was logical and consistent with 3553(a) factors, but his weighing of sentencing factors was beyond the bounds

of reason and rebutted the presumption of reasonableness. The sentencing factors in Petitioner's case favoring leniency were extraordinarily strong, and the District Court's justification for rejecting the significance of those factors, and for his conclusion that a within guideline sentence was warranted, was extraordinarily weak. Without this Court's attention, defendants subjected to sentences based on a weighing of sentencing factors that is beyond the bounds of reason will have no avenue for substantive review of the error, so long as the district court lists some facts consistent with 3553(a) factors to support his decision.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Dated: May 16, 2022

Respectfully submitted,

/s/ David L. Brengle
David L. Brengle
Counsel of Record
Assistant Federal Public Defender
Southern District of Illinois
650 Missouri Ave
E St. Louis, IL 62201
(618) 482-9050
(618) 482-9057 (fax)
David_Brengle@fd.org
Counsel for Petitioner