

No. 22-

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IN THE  
**Supreme Court of the United States**

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LORI ANN ROBLES,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED FOR REVIEW**

1. Whether the decision of the United States Court of Appeals for the Fifth Circuit affirming Petitioner's sentence of 360 months, based on an important federal question involving the issue of the correct application of the presumption of reasonableness of sentences within the Guideline range, conflicts with the decision of *Rita v. United States*, 551 U.S. 338 (2007), and, therefore, a compelling reason is presented in support of discretionary review by this Honorable Court.

2. Whether the decision of the District Court in sentencing Petitioner to 360 months, which was in the middle of the Guidelines sentencing range, was an application of the Guidelines as mandatory, which conflicts with the decision of *Nelson v. United States*, 555 U.S. 350, 352 (2009) and, therefore, a compelling reason is presented in support of discretionary review by the Honorable Court.

## **PARTIES TO THE PROCEEDING**

The parties to the proceeding are listed in the caption:

Lori Ann Robles:	Petitioner (Defendant-Appellant in the lower Courts)
United States of America:	Respondent (Plaintiff-Appellee in the lower Courts)

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, LORI ANN ROBLES, respectfully requests this Honorable Court grant this petition and issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit and the federal District Court which Ms. Robles respectfully submits incorrectly treated the Guidelines as mandatory and incorrectly applied the presumption of reasonableness used for sentences inside the Guidelines range, as defined by this Court.

### **CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE**

From the Federal Courts:

The Order of the United States Court of Appeals for the Fifth Circuit, *United States v. Lori Ann Robles*, No. 21-50666 (5th Cir. June 13, 2022), appears at Appendix A to this petition and is unreported.

The Judgment in a Criminal Case of the United States District Court for the Western District of Texas, Waco Division, appears at Appendix B to this petition and is unreported.

From the State Courts:

None.

### **GROUND FOR JURISDICTION**

On June 13, 2022, the United States Court of Appeals for the Fifth Circuit affirmed the 360-month sentence imposed by the District Court on Petitioner for charges related to violations of federal drug laws, to wit: possession with intent to distribute 500 kilograms or more of methamphetamine. A copy of the Order is attached and jurisdiction is invoked under 28 U.S.C. § 1254.

## CONSTITUTIONAL PROVISIONS

### U.S. CONST. Amend. V

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.

### U.S. CONST. Amend. VI

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 witnesses against him; to have compulsory process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

## STATEMENT OF THE CASE

### Overview:

Lori Ann Robles, who pleaded guilty to one count of conspiracy to possess with intent to distribute methamphetamine, was sentenced to serve 360 months in the custody of the Bureau of Prisons (“BOP”). ROA.82-87. The sentence was ordered despite the fact Ms. Robles had been molested as a child by two of her uncles and given away by her mother “when she was 12 years old to an 18 year old man.” ROA.151.

Prior to the guilty plea, the Government prepared, and Ms. Robles agreed to, a Factual Basis for the plea. ROA.64-67. The Factual Basis establishes that a confidential informant made several buys of methamphetamine from Ms. Robles. ROA.65. When a

search warrant was executed at the home of Ms. Robles and her husband, Eloy Robles, officers seized \$5,100 in cash and approximately 2,500 grams of methamphetamine. ROA.65. The remainder of the Factual Basis discusses the activities of the numerous co-defendants. ROA.66-67.

### The PSR

Following the guilty plea, a United States Probation Officer prepared a presentence investigation report (“PSR” or “report”), and the final PSR was entered on July 7, 2021. ROA.138-57. That report established the Texas Department of Public Safety (“DPS”) initiated an investigation into illegal methamphetamine distribution in Waco, Texas. ROA.141. According to the investigation, several initial purchases of methamphetamine from Ms. Robles and Eloy Robles (“Eloy”), her husband, were made. ROA.141-42. Subsequently, the home of Ms. Robles and Eloy was searched. ROA.142. The DPS found cash and methamphetamine. ROA.142. It was determined that law enforcement officers purchased 529 grams of methamphetamine. ROA.142. The Probation Officer concluded that Ms. Robles:

is responsible for 4,521 grams of methamphetamine. The methamphetamine in these cases is a mixture of “Ice” and “Actual.” Therefore, the total amount of methamphetamine will be calculated as actual with an average of 97%. Therefore, the total amount for calculation purposes will be **4,385 grams of Methamphetamine (Actual)**.

ROA.143 (emphasis in original).

Pursuant to U.S.S.G. § 2D1.1(a)(5), the Probation Officer set Ms. Robles’s Base Offense Level at 36. ROA.144. Two (2) levels were added because Ms. Robles brought two

of her children to a drug transaction and 2 levels were added because Ms. Robles had an organized leader role in the conspiracy. ROA.145 (citing U.S.S.G. § 3B1.1(a), § 3B1.4). Three (3) levels were deducted for acceptance of responsibility. ROA.145. Therefore, the PSR left Ms. Robles with a Total Offense Level of 37. ROA.145.

The Probation Officer next calculated Ms. Robles's Criminal History. ROA.146. The Officer added 3 Criminal History points for a 2006 possession of a small baggie of methamphetamine, 3 points for a 2007 evading arrest conviction, and 3 points for a 2010 methamphetamine drug case in federal court. ROA.146-49. Two (2) more points were added because Ms. Robles was on supervised release for the above-referenced federal case when she committed the instant offense. ROA.149. Thus, Ms. Robles's Criminal History score was 11, with a Criminal History Category of V. ROA.149. Thus, with a Total Offense Level of 37, and a Criminal History Category of V, Ms. Robles's Guidelines imprisonment range was set at 324 to 405 months in the custody of the BOP. ROA.154.

#### The Sentencing Hearing

Ms. Robles was sentenced on August 16, 2021. ROA.127. Without objection, the District Court concluded Ms. Robles's Total Offense Level was 37, with a Criminal History Category of V. ROA.128-29. Thus, Ms. Robles' Guidelines range was determined to be a term of 324 months to 405 months in prison. ROA.129.

At that time, Ms. Robles addressed the Court. ROA.129-31. Her allocution to the Court included a request that the Court release her from prison when she was still "a young woman" so she could become a success and reunite her family to show them that a life of

crime “isn’t for us.” ROA.130-31. Ms. Robles also made the following observations about her life:

- \* She acknowledged she had made mistakes in her life, but the person she asked the Court to consider was the “person I am”;
- \* She was born into a life of “drug dealers, drug users, rapists, murders, [and] child molesters”;
- \* She kept on “pushing and found a way to survive” and to learn to read and write;
- \* As she grew, she learned there was a “higher power out there that kept” advising her “over and over again”;
- \* When she grew older, she started her own legitimate, legal business, but she fell back into “the wrong crowd” and “let [her] guard down”; and
- \* Regardless of it all, Ms. Robles believed she could change her life.

ROA.129-30.

Ms. Robles concluded with an apology. ROA.131. She stated:

And I apologize to everybody whose life that I had an effect one, including my husband, my children, my grandchildren that I may never get to know until they’re older or my cousins. I’m sorry. I meant to get them to follow me in something different and the choice that I made to better people lives too, Your Honor, that are here right now, and I’m sorry for that. I know that I can get them to follow me in a different direction because they were. I gave them jobs when nobody else would give them jobs. I gave them opportunities, and I just didn’t know how to get back out, Your Honor.

ROA.131.

At this juncture, the Court observed that Ms. Robles previously was sentenced to 151 months on another narcotics case. ROA.132. The Court further observed that Ms. Robles committed the instant offense while she was on supervised release for the previous offense.

ROA.133. The Court further noted that Ms. Robles was distributing methamphetamine at a time she was “not in jail” but “in custody” for selling methamphetamine. ROA.132 (emphasis added).

Next, the Government addressed the Court. ROA.132. The Government asked for a Guidelines sentence. ROA.132. The prosecutor added that Ms. Robles was “very intelligent” because the AUSA addressing the Court had handled the previous case and was “shocked when she came back through.” ROA.132. The prosecutor concluded: “So Judge, I just have to ask for a Guidelines sentence. I can’t ask for anything lower on this Defendant.” ROA.133.

The Court then sentenced Ms. Robles to a prison term of 360 months. (ROA.133). No mention was made of any of the 18 U.S.C. § 3553(a) factors. ROA.133.

### The Appeal

The Court entered the Judgment in this case on July 15, 2021. ROA.82-87. Ms. Robles then timely-filed her handwritten, *pro se* notice of appeal on July 18, 2021. ROA.88.

On appeal, Ms. Robles argued the District court committed reversible error by imposing an unreasonable sentence. The Court of Appeals for the Fifth Circuit in a two-page opinion disagreed and affirmed. (Appendix B, page 2).

**ARGUMENT AMPLIFYING REASONS RELIED  
ON FOR ALLOWANCE OF THE WRIT**

I.

Background: The Requirement of Reasonableness

This Honorable Court has explained that it is constitutionally impermissible for the District Court to treat the Guidelines as mandatory or presume a Guideline sentence is reasonable. This principle was first announced in *United States v. Booker*, 543 U.S. 220, 228 (2005), where it was determined that courts are no longer bound to follow the Sentencing Guidelines. As later set forth in *Nelson v. United States*, 555 U.S. 350, 352 (2009), “the guidelines are . . . not mandatory on sentencing courts.” (emphasis in original). Additionally, as discussed below, although a Guideline sentence may be presumed to be reasonable by an appellate court, a district court may no longer automatically rely on the Guideline factors alone when determining the appropriate sentence. *Kimbrough v. United States*, 552 U.S. 85 (2007); *Rita v. United States*, 558 U.S. 338 (2007). However, the Guidelines range of sentence remains one of several factors for the Court to consider. *Rita*, 558 U.S. at 348-49. To this end, Courts review, if the issue is preserved, “whether a sentence is reasonable under an abuse of discretion standard.” *United States v. Herrera-Garduno*, 519 F.3d 526, 529 (5th Cir. 2008) (citing *Gall v. United States*, 552 U.S. 38, 52 (2007)).

The Court must also consider when imposing any sentence the relevant portions of Title 18 U.S.C. § 3553(a), often referred to as “the § 3553(a) factors.” This section provides in pertinent part:

- (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 . . .;

(5) any pertinent policy statement . . .;

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct . . .

18 U.S.C. § 3553(a).

With respect to the reasonableness issue, which is before this Court, sentencing Judges consider the “totality of the circumstances.” *Gall v. United States*, 552 U.S. 38, 55 (2007); *see also United States v. Williams*, 517 F.3d 801, 811 (5th Cir. 2008) (quoting *Gall*,

552 U.S. at 67). Indeed, a mathematical approach to sentencing “suffers from infirmities of application” because “deviations from the Guidelines range will always appear more extreme—in percentage terms—when the range itself is low. . . .” *Gall*, 552 U.S. at 67 (emphasis added). Moreover, “the mathematical approach assumes the existence of some ascertainable method of assigning percentages to various justifications.” *Id.* at 66 (emphasis added).

## II.

The United States Court of Appeals for the Fifth Circuit  
has Decided how the Presumption of Reasonableness of Petitioner’s Federal Sentence,  
and Mandatory Sentence, on an In-Guidelines Sentence, Which are  
Important Federal Questions, in ways which Conflicts with  
Relevant Decision of this Honorable Court

### A.

The Reasons, and Lack of Reasons, Given for the Sentence Imposed  
in the District Court

In pronouncing sentence, the District Court explained the reasons for its decision.

The Judge stated:

She got 151 months [on the previous narcotics case]. To me the time for Ms. Robles to have made this decision might have been prior to when that hap—she started selling then – while she was in custody then, but she gets out and she’s on supervised release. She knows she’s on supervised release, and as you know, supervised release is kind of our—we don’t have parole anymore. It’s our, you’re not in jail but you’re in custody, and so essentially while she is in custody for—being punished for selling and distributing methamphetamine, she distributes methamphetamine. I mean, that’s obviously why—I just want to make clear on the record of what’s going through my head. That’s why she’s a total offense level of 37. That’s why she’s a criminal history category of five, and there’s really—and the way our system works, it’s hard to get a higher guideline range than by committing an offense

that's the same offense while you're on supervised release for that offense. But you know all that. I just needed to put it on the record.

ROA.132.

However, that was not the Government's reason for requesting a within-Guideline sentence. Instead, the Government took the position that it could not do anything about the Guideline range. The prosecutor explained:

Just one thing, Judge. We would ask for a guideline sentence on Ms. Robles, and I would point out to the court she is very intelligent. I handled her case when she was here before, and she's very smart. I was actually shocked when she came back through when she showed up on the wiretap while she was still on supervised release. So Judge, I just have to ask for a guideline sentence. I can't ask for anything lower on this defendant. And that's all I've got.

ROA.132-33 (emphasis added).

No mention was made by the Judge or by the Government that Ms. Robles had been molested by family members when she was a child. ROA.151. No mention was made that, when Ms. Robles was 12 years old, her mother "gave her away . . . to an 18 year old man." ROA.151. Finally, no mention was made by the Government of any law that requires the prosecution to ask for a Guidelines sentence and ignore the sentencing facts. *See* ROA.151.

B.

The Limitation on the Presumption of Reasonableness

Because the sentence in this case was within the Guidelines, the Fifth circuit was free to apply a presumption of reasonableness. Nonetheless, that presumption is different from the Courts using the Guidelines range as mandatory. As Justice Scalia observed, "the door remains open for a defendant to demonstrate that his sentence, whether inside or outside the advisory Guidelines range, would not have been upheld but for the existence of a fact

found by the sentencing judge and not the jury.” *Gall v. United States*, 552 U.S. 38, 602-03 (2007) (Scalia, J., concurring).

As an initial matter, Ms. Robles submits there is a principal conflict between this Court’s declaration that there is a presumption of reasonableness and the Fifth Circuit’s application of this presumption. Specifically, Mr. Ms. Robles respectfully submits the Fifth Circuit used the presumption to render a categorical affirmation in this case. However, this Court explained that there is no such categorical affirmation based on the presumption. Specifically, as this Court has explained, the presumption of reasonableness: (1) is not a binding one; (2) is not a “trial related evidentiary presumption” requiring a particular party to shoulder a “burden of persuasion or proof test lest they lose their case”; and (3) does not “reflect a strong judicial deference of the kind that leads appeals courts to grant greater factfinding leeway to an expert agency than to a district judge.” *Rita*, 551 U.S. at 347.

Ms. Robles contends that the Fifth Circuit enforced the presumption as a binding resolution in this case. Further, contrary to *Gall*, Ms. Robles respectfully submits the Fifth Circuit is treating the Guidelines as mandatory and requiring the defendant to shoulder the burden of persuading and proving that the sentence of the District Court is unreasonable. In fact, when the Government declared that it had to ask for a Guideline sentence, it was endorsing a legal theory that the presumption was mandatory. *See* ROA.151.

Indeed, the history of the Fifth Circuit’s description of this presumption establishes the Circuit has strayed away substantially from this Court’s definition of presumption of reasonableness. The Fifth Circuit has stated that “[t]he presumption is rebutted only upon

a showing that the sentence does not account for a factor that should receive significant weight, it gives significant weight to an irrelevant or improper factor, or it represents a clear error of judgment in balancing sentencing factors.” *United States v. Diaz*, 637 F.3d 592, 603 (5th Cir. 2011) (quoting *United States v. Cooke*, 589 F.3d 178, 186 (5th Cir. 2009)). Historically, this Appellate Court has declared the presumption is: (1) “rarely rebutted,” *United States v. Nikowova*, 480 F.3d 321, 325 (5th Cir. 2007) (*abrogated on other grounds*); (2) due “great deference” on appeal, *United States v. Alonzo*, 435 F.3d 551, 553 (5th Cir. 2006); and (3) merely “inferred” from the sentence “in light of” the Title 18 U.S.C. § 3553(a) factors, *United States v. Mares*, 402 F.3d 511, 519-20 (5th Cir. 2005).

Ms. Robles argues the above limitations placed on the use of the presumption by this Court have been replaced at the Fifth Circuit level by a more expansive and all encompassing broad application of the presumption. Specifically, contrary to *Rita*, the Fifth Circuit presumption was binding based on the Government’s argument. ROA.151; *see also Rita*, 551 U.S. at 348 (holding that presumption is not binding, not related to evidentiary presumption and does not reflect strong judicial deference as set forth above). In other words, Ms. Robles respectfully submits that it is far more difficult, if not impossible, to rebut the presumption under the Fifth Circuit’s definition of presumption than the definition mandated by this Court. Therefore, the holding of the Fifth Circuit in this case conflicts with this Court’s rule of law.

C.  
The Misapplied Presumption

As set forth above, even in cases where a within-Guidelines sentence is presumed to be reasonable, the District Court must still recognize that each sentence must be determined by all of the circumstances of the offense and of the defendant, and not an automatic affirmance. As this Court has explained, the District Court must subject the sentence to be imposed “to the thorough adversarial testing contemplated by federal sentencing procedure.” *Rita*, 551 U.S. at 351. As a corresponding duty, “appellate courts must review sentences individually and deferentially whether they are inside the Guidelines range (and thus potentially subject to a forma ‘presumption’ of reasonableness) or outside that range.” *Id.* at 367 (Stevens, J., concurring).

Yet, the Courts below never addressed the facts surrounding Ms. Robles’s horrific childhood. Specifically, before the Courts below in this case were the following facts about Ms. Robles. When Ms. Robles was a child, she was molested by two uncles. ROA.151. The abuse did not stop there. Her mother “gave her away when she was 12 years old to an 18-year-old man.” ROA.151. Although Ms. Robles was able to run away from him, she was on her own as she was only 13 when she escaped. ROA.151. She started selling drugs because she needed the money. ROA.151.

Ms. Robles ultimately had three children, but her parental rights were terminated when she went to prison. ROA.151. From the ages of 17 to 24, she began cutting herself and her arms have the scars which substantiate her cutting. ROA.152. Ms. Robles’ whole life

reflects a life of drug and alcohol abuse which is undoubtedly connected to the sexual abuse she suffered as a child. ROA.152.

The above discussion of the sentencing hearing reveals the District court made no mention of these facts when the Judge sentenced Ms. Robles. While the fifth circuit observed Mr. Robles argued the District Court did not consider these matters, it affirmed the District Court without any mention of these facts. Rather, the Circuit Court concluded:

The district court implicitly and explicitly considered the record, the 18 U.S.C. § 3553(a) factors, and Robles's mitigation arguments before determining that a sentence within the guideline range was appropriate. The explanation of the sentence was sufficient under the circumstances. *See United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008). Robles fails to rebut the presumption of reasonableness by showing that the district court failed to consider a pertinent factor, considered an irrelevant or improper factor, or erred in balancing the sentencing factors. *See United States v. Jenkins*, 712 F.3d 209, 214 (5th Cir. 2013).

(Appendix B, page 2) (full citation to § 3553(a) and *Jenkins* added).

The Courts below failed to give any consideration for a life that, in many ways, was not of Ms. Robles' doing. It is beyond dispute that Ms. Robles has struggled in life considering that she was molested as a child and at 12 she was given away by her mother to an 18-year-old man. The sentence in this case is void of any due consideration for the impact of any of the events which had nothing to do with Ms. Robles' choices in life, but rather explains why she has failed to avoid a life of drug abuse. To repeat, the District Court never discussed this matter and the Fifth Circuit followed suit. Therefore, Ms. Robles submits that this issue is of significant importance to deserve further review.

III.  
The Sentence Was Unreasonable

The District Court and the Fifth Circuit must consider the “totality of the circumstances” when determining and evaluating the reasonableness of a sentence. *Gall*, 552 U.S. at 55. The District Court failed to consider all of the circumstances in this case. As noted, the District Court did not even mention the childhood life of Ms. Robles. Title 18 U.S.C. § 3553(a) provides that the Court shall consider the history and characteristics of the defendant.

The Fifth Circuit did not apply this factor to an evaluation of the District Court’s sentence. Respectfully, the Fifth Circuit’s opinion establishes it should have—but failed to—do so. The Fifth Circuit explained the presumption of reasonableness is rebutted when it is shown the District Court “failed to consider a pertinent factor.” (Appendix B, page 2) (citing *Jenkins*, 712 F.3d at 214). It is clear that the District Court made no mention of the profoundly abusive history of Ms. Robles’s life. The prosecutor made no mention of her childhood, despite his admission that he was involved with a previous prosecution of Ms. Robles. It is clear from the opinion of the Fifth Circuit that it did not require that such an important fact should be considered in this case. Thus, the opinion of the Fifth Circuit is contrary to this Court’s jurisprudence in *Rita* and the subsequent rulings by this Court applying *Rita*.

## CONCLUSION

For the reasons set forth above, Ms. Robles submits, on the important issue of federal sentencing concerns, compelling reasons are presented in support of discretionary review by this Honorable Court.

WHEREFORE, Petitioner LORI ANN ROBLES respectfully requests that this Honorable Court grant this petition and issue a Writ of Certiorari and review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed the sentence imposed by the District Court. Ms. Robles also respectfully requests any further relief to which he may be entitled under the law and in equity.

Respectfully Submitted,

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