No. _____

In The
Supreme Court of the United States

LUIS JIMENEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Daniel J. Yadron, Jr.
Counsel of Record
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467
danny_yadron@fd.org

QUESTION PRESENTED

Under *Rita v. United States*, 551 U.S. 338 (2007), can a district court at sentencing ignore a party's nonfrivolous arguments for a greater or lesser sentence, as the Second, Fifth, and Ninth Circuits have held, or must the court respond, as the Third, Fourth, Sixth, Seventh, and Tenth Circuits have held?

Related Proceedings

United States v. Jimenez, No. 22-50054 (9th Cir. Oct. 10, 2023).
United States v. Jimenez, No. 3:20-cr-03874-BAS-1 (S.D. Cal. Mar. 7, 2022).

TABLE OF CONTENTS

APPENDIX INDEX

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

OTHER AUTHORITIES

No. _____

In The
Supreme Court of the United States

LUIS JIMENEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioner Luis Jimenez respectfully prays that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION

This case squarely presents an important question concerning federal sentencing that has deeply divided the courts of appeals for more than a decade. Specifically, under *Rita v. United States*, 551 U.S. 338 (2007), what procedural obligation does a district court have when a party raises a nonfrivolous argument for a non-Guidelines sentence? According to the Third, Fourth, Sixth, Seventh, and Tenth Circuits, a district court must respond to any nonfrivolous argument a party

makes for a non-Guidelines sentence. *See United States v. Friedman*, 658 F.3d 342, 362–63 (3d Cir. 2011) (remanding for resentencing because the district court failed to respond to a nonfrivolous argument for a non-Guidelines sentence*); United States v. Lynn*, 592 F.3d 572, 581–82, 584–85 (4th Cir. 2010) (same); *United States v. Peters*, 512 F.3d 787, 788–89 (6th Cir. 2008) (same); *United States v. Miranda*, 505 F.3d 785, 791–92, 796 (7th Cir. 2007) (same); *United States v. Lente*, 647 F.3d 1032–34 (10th Cir. 2011) (same).

But according to the Second, Fifth, and Ninth Circuits, a district court need not respond—permitting sentencing judges, effectively, to ignore nonfrivolous arguments. *See United States v. Thomas*, 628 F.3d 64, 72 (2d Cir. 2010) (affirming sentence, even though district court had not responded to the defendant's nonfrivolous request for a non-Guidelines sentence); *United States v. Bonilla*, 524 F.3d 647, 657–58 (5th Cir. 2008) (same); *United States v. Perez-Perez*, 512 F.3d 514, 516 (9th Cir. 2008) (same, as cited in the Ninth Circuit's decision below).

That circuit split makes the difference in assessing whether Luis Jimenez's ten-year prison sentence is lawful—along with those of countless others. In affirming Mr. Jimenez's sentence for carrying less than a kilogram of drugs across the border in a burrito, the panel agreed that the district court did not address Mr. Jimenez's mitigating arguments. It also did not dispute that those arguments were nonfrivolous. But unlike what would occur in five other courts of appeals, the Ninth Circuit affirmed. Thus, the Court should grant review in his case to resolve the longstanding debate over *Rita*'s scope.

OPINION BELOW

The Ninth Circuit affirmed Mr. Jimenez's 120-month sentence, observing, in relevant part, that the district court adequately explained the above-Guidelines sentence. *See* Appendix to the Petition ("Pet. App.") at 1a–2a.

JURISDICTION

The Court of Appeals affirmed Mr. Jimenez's sentence on July 5, 2023. Pet. App. 1a. It then denied Mr. Jimenez's petition for rehearing and rehearing en banc on October 10, 2023. Pet. App. 3a. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS AND RULES

Section 3553(a) of Title 18 of the U.S. Code provides factors for a court to consider in determining the particular sentence to be imposed. 18 U.S.C. § 3553(a). That subsection provides that a "court shall impose a sentence sufficient, but not greater than necessary," to comply with the purposes of punishment. *Id.* In determining a sentence, a court must consider:

1. "The nature and circumstances of the offense and the history and characteristics of the defendant,"
2. "The need for the sentence imposed,"
3. "The kinds of sentences available,"
4. "The kinds of sentence and the sentencing range,"
5. "Any pertinent policy statement,"

6. "The need for unwarranted sentence disparities," and,

7. "The need to provide restitution to any victims of the offense."

Id.

Section 3553(c) meanwhile provides that a court, "at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. § 3553(c).

Section 3742 of Title 18 of the U.S. Code provides, in relevant part, that "[u]pon review of the record, the court of appeals shall determine whether the sentence [] was imposed in violation of law; [] was imposed as a result of an incorrect application of the sentencing guidelines; [or] is outside the applicable guideline range[.]" 18 U.S.C. § 3742(e).

STATEMENT OF THE CASE

The district court sentenced Mr. Jimenez to ten years in prison after he pleaded guilty to stuffing 610 grams of methamphetamine and 99 grams of heroin into a burrito and walking across the border. This case is about whether the court addressed Mr. Jimenez's nonfrivolous mitigating circumstances before it did so.

As was undisputed at sentencing, Mr. Jimenez has been addicted to hard drugs since he was thirteen years old. In case there was any doubt that Mr. Jimenez had lost control: When he was forty-two years old, he was consuming enough methamphetamine and heroin each day to make a lethal overdose "likely." But his lawyer noted that he still maintained the support of friends and family and that he

had shown the ability to better himself before the pandemic interrupted his progress towards legitimate employment.

The closest that the district court came to acknowledging any of those mitigating arguments is when it said:

> I will recommend the [residential drug treatment program] while you're in custody. If you want to try and take advantage of that, I strongly recommend that. You can get time off your sentence if you complete it. It's not an easy program, but it will help you when you get out. If you say you want help, that will give you the help that you need.

In the next breath, the court imposed the ten-year sentence. Mr. Jimenez objected "to the procedural and substantive *reasonableness in light of the non-frivolous mitigating arguments that were presented*." In response, the district court did not address those arguments, but instead repeated concerns about Mr. Jimenez's prior drug convictions.

Mr. Jimenez appealed. He argued that the district court failed to address his nonfrivolous mitigating arguments for a lesser sentence, as required by *Rita*. That was because the court did not address why Mr. Jimenez's lifetime of severe drug addiction, continued support from family, and pandemic-stymied efforts to better himself did not warrant a lesser sentence.

The panel nevertheless affirmed in an international memorandum disposition. That memorandum relied on the Ninth Circuit's decision in *Perez-Perez* for the proposition that "[t]he district court was not required to repeat Jimenez's mitigating arguments just to show it had considered them." Pet. App. 2a (citing

Perez-Perez, 512 F.3d at 516). It did not mention *Rita*, which Mr. Jimenez cited below.

Mr. Jimenez sought rehearing by the panel or by the broader Ninth Circuit, sitting en banc. The Ninth Circuit denied his request. He now petitions the Court to review his case and resolve the longstanding division over *Rita*'s scope.

REASONS FOR GRANTING THE WRIT

This Court ought to grant this petition to resolve an important question that has deeply divided the circuits: Under *Rita*, can a district court silently consider and then not respond to a party's nonfrivolous argument for a non-Guidelines sentence? The courts of appeals have coalesced around two diametrically opposed views on that basic question.

Five courts of appeals hold that a district court must respond to a party's nonfrivolous request for a non-Guidelines sentence. Three courts of appeals—including the court below—hold that a district court need not respond to a party's nonfrivolous request for a non-Guidelines sentence.

The issue is of foundational importance to the perceived legitimacy of the criminal justice system. Courts need to follow the same rules of the road in sentencing thousands of people to federal prison each year. That is why the Court has not hesitated to intervene when intractable disagreements over the proper sentencing process—like this one—arise.

Mr. Jimenez's case provides the right vehicle to resolve that split because the issue is preserved and outcome determinative. Meanwhile, the result here shows

that the Ninth Circuit has adopted the wrong view of the law, making this Court's intervention all the more urgent. Thus, the Court should grant the petition.

I. After *Rita*, the courts of appeals have split irreconcilably over what procedural obligation a district court has when a party makes a nonfrivolous argument for a non-Guidelines sentence.

Since the Court rendered the Federal Sentencing Guidelines advisory in *United States v. Booker*, 543 U.S. 220 (2005), limited guidance has been provided on a sentencing court's obligation to address nonfrivolous arguments at sentencing. The only time the Court squarely addressed the issue was in *Rita*. There, the Court primarily addressed whether appellate courts could presume a within-Guidelines sentence was substantively reasonable. *See* 551 U.S. at 341. After holding that appellate courts could apply such a presumption, the Court addressed whether the district court had sufficiently explained its sentencing decision. *Id.* at 347–51.

In addressing a district court's obligation to announce its sentencing rationale, the Court listed some of the virtues served by an explanation requirement. *Rita* noted that "[c]onfidence in a judge's use of reason underlies the public's trust in the judicial institution" and that "[a] public statement of those reasons helps provide the public with the assurance that creates that trust." *Id.* at 356. Moreover, "[b]y articulating reasons, even if brief, the sentencing judge not only assures reviewing courts (and the public) that the sentencing process is a reasoned process but also helps that process evolve" through feedback to the U.S. Sentencing Commission. *Id.* at 357. That said, no need exists for a "full opinion in every case." *Id.* at 356. Rather,

> [t]he appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances. Sometimes a judicial opinion responds to every argument; sometimes it does not; sometimes a judge simply writes the word "granted" or "denied" on the face of a motion while relying upon context and the parties' prior arguments to make the reasons clear. The law leaves much, in this respect, to the judge's own professional judgment.

Id.

Thus, the lower court's obligation to explain will often hinge on whether the parties agree about whether the case can be deemed a typical one under the Guidelines. Because if the "judge decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation." *Id.* And that is so because, in such cases, the circumstances may make clear that the judge simply adopted the Commission's reasoning that a Guidelines sentence is proper "in the typical case, and that . . . the case before him is typical." *Id.* at 357.

On the other hand, the Court noted that district courts have a different obligation when a party makes a nonfrivolous argument for a non-Guidelines sentence: "Where the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence, however, the judge will normally go further and explain why he has rejected those arguments. Sometimes the circumstances will call for a brief explanation; sometimes they will call for a lengthier explanation." *Id.*

Under that standard, the Court held that the district court sufficiently explained its sentencing rationale. The defendant had asked for a below-Guidelines sentence based on several factors, including his military service. *Id.* at 343–44. The district court expressly *acknowledged all* of the defendant's arguments but

concluded that they did not justify a below-Guidelines sentence. *Id.* at 344. Even then, the Court noted that the district court "might have said *more*," but thought the sentencing court's statements were sufficient. *Id.* at 359 (emphasis added).

As the following pages show, the Court's analysis has divided the courts of appeals for decades. And nothing this Court said has clarified the debate. In *Concepcion v. United States*, 142 S. Ct. 2389 (2022), the Court reaffirmed that "district courts are always obligated to consider nonfrivolous arguments presented by the parties." *Id.* at 2396. And in stating that holding repeatedly, *see id.* at 2404, the Court cited its recent decision in *Golan v. Saada*, which held that "a district court exercising its discretion is still responsible for *addressing and responding to* nonfrivolous arguments timely raised by the parties before it." 142 S. Ct. 1880, 1893 (2022) (emphasis added). Even those statements, however, have proved insufficient for several circuits to understand the proper reading of *Rita*.

A. Five courts of appeals hold that a district court must respond to a party's nonfrivolous arguments for a non-Guidelines sentence.

On the one hand, five courts of appeals—the Third, Fourth, Sixth, Seventh, and Tenth Circuits—hold that a sentencing court always must respond to a party's nonfrivolous arguments for a sentence that is above or below the Guidelines.

In *United States v. Friedman*, 658 F.3d 342, 363 (3d Cir. 2011), the district court never addressed the defendant's argument that a Guidelines sentence would result in unwarranted sentencing disparities, given his co-defendant's sentences. The Third Circuit, after noting that "district courts should engage in a true,

considered exercise of discretion . . . *including a recognition of, and response to*, the parties' non-frivolous arguments," reversed, holding that the court had procedurally erred. *Id.* at 359, 363 (omission in original) (emphasis added). On remand, the district court reduced the defendant's sentence from 34 months to 24 months. *See United States v. Friedman*, No. 3:09-CR-132 (D.N.J. March 1, 2012), ECF No. 104.

In *United States v. Lynn*, 592 F.3d 572, 575 (4th Cir. 2010), a consolidated appeal, the Fourth Circuit addressed the sentencing claims of four defendants. With respect to one defendant, the court of appeals held that the lower court had "committed significant procedural error in sentencing" him because the court did not address his "nonfrivolous reasons for imposing" a non-Guidelines sentence. *Id.* at 581 (quoting *Rita*, 551 U.S. at 357). As in *Friedman*, the sentencing judge on remand reduced the defendant's sentence—from 101 months' imprisonment to 63 months—once ordered to address nonfrivolous mitigating arguments. *See United States v. Tucker*, No. 7:08-CR-666 (D.S.C. filed June 16, 2010), ECF No. 60.

In *United States v. Miranda*, 505 F.3d 785, 791–94 (7th Cir. 2007), the district court never responded to the defendant's argument that he should receive a below-Guidelines sentence because of his severe mental illness. The Seventh Circuit reversed, holding that when a party "presents nonfrivolous reasons for imposing" a non-Guidelines sentence, the court should "normally go further and explain why he has rejected those arguments." *Id.* at 796 (quoting *Rita*, 127 S. Ct. at 2468). Once again, on remand, the district court lowered the sentence from 50 months to time

served. *United States v. Miranda*, No. l:05-CR-787 (N.D. Ill. filed Jan. 24, 2008), ECF No. 83.

Finally, in *United States v. Lente*, 647 F.3d 1021, 1030–34 (10th Cir. 2011), the district court did not respond to the defendant's argument, based on Sentencing Commission data, that the Government's suggested sentence would create sentencing disparities. The Tenth Circuit reversed, noting that the defendant had presented "a material, non-frivolous argument based on sentencing data and comparative cases" and the district court "did not address" the defendant's argument about sentencing disparities at all. *Id.* at 1034. In reaching that conclusion, the court rejected the Government's contention that the lower court did not need to "expressly consider" such sentencing disparities "on the record." *Id.* On remand, the district court imposed the same 192-month sentence. *See United States v. Lente*, No. l:05-CR-2770 (D.N.M. Dec. 20, 2012), ECF No. 161.

Thus, those five courts of appeals remanded for a new sentencing hearing in each case solely because the judge had failed to respond to a party's nonfrivolous sentencing argument, something that each concluded violated the Court's holding in *Rita*. And in most cases, that led to the person receiving a shorter sentence.

B. Three courts of appeals—including the Ninth Circuit—hold that a district court need not respond to either party's nonfrivolous arguments for a non-Guidelines sentence.

On the other hand, three courts of appeals—the Second, Fifth, and Ninth Circuits—have held that a district court need not respond to a party's nonfrivolous arguments for a non-Guidelines sentence.

In *United States v. Thomas*, 628 F.3d 64, 72 (2d Cir. 2010), the district court did not address the defendant's argument that a particular sentencing enhancement was unreasonable as applied in his case and that he should thus receive a below-Guidelines sentence. In affirming, the Second Circuit "rejected the notion that a district court must respond specifically to even a non-frivolous argument concerning a policy disagreement with a Guidelines enhancement." *Id.* The circuit court reasoned that a district court must merely "satisfy" the court of appeals that it had "considered the party's arguments[.]" *Id.* (internal quotation marks omitted).

In *United States v. Bonilla*, 524 F.3d 647, 657 (5th Cir. 2008), the defendant raised various arguments for a below-Guidelines sentence, and the district court, in announcing its sentence, merely stated that it had "considered the arguments made earlier[.]" Even though the court had not responded to any of the defendant's arguments, the Fifth Circuit held the court's explanation was sufficient because of the general reference to those arguments. *Id.* at 658.

Finally, in *United States v. Perez-Perez*, 512 F.3d 514 (9th Cir. 2008), the Ninth Circuit held that although "specific articulation of the judge's consideration of the § 3553(a) factors, including those argued by the sentenced defendant, is helpful," *id.* at 517 n.1, *Rita* does not require a sentencing court to address nonfrivolous mitigating arguments, *id.* at 517. Critically, the Ninth Circuit, in turn, cited *Perez-Perez* in rejecting Petitioner's appeal.

Thus, those three courts of appeals affirmed the defendant's sentence, even though the sentencing judge had failed to respond to a party's nonfrivolous argument. Accordingly, following this Court's decision in *Rita*, the courts of appeals are deeply divided over what procedural obligation a district court has when a party makes a nonfrivolous request for a non-Guidelines sentence. Only this Court can provide clarity on the scope of a district court's obligation.

II. Resolving the question presented now is critically important to the proper administration of the federal criminal justice system.

It is critical that the Court grant review now to clarify a sentencing judge's obligation to explain the rationale behind its sentencing decision. There are more than 60,000 sentencing hearings a year. *See* U.S. Sentencing Comm'n, SOURCEBOOK 42 (2022). The extent of a district court's obligation to articulate its sentencing rationale therefore affects an enormous number of people every year.

It is unacceptable in a national system of criminal justice that the same basic standards do not govern those more than 60,000 hearings. Indeed, the Court has continually recognized the need for intervention when a circuit split develops over the sentencing process post-*Booker*. *See Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1903 (2018) (resolving the circuit split over when a court of appeals should exercise its discretion to correct a plainly erroneous Guidelines calculation); *Molina-Martinez v. United States*, 578 U.S. 189, 192 (2016) (resolving the circuit split over whether an unpreserved Guidelines error, standing alone, affects a defendant's substantial rights under Federal Rule of Criminal Procedure 52(b)); *Peugh v. United States*, 569 U.S. 530, 540 (2013) (resolving the circuit split over whether the Ex Post

Facto Clause applies to the advisory Guidelines); *Rita*, 551 U.S. at 341 (resolving the circuit split over whether a court of appeals can presume a within-Guidelines sentence is reasonable); *Kimbrough v. United States*, 552 U.S. 85, 93 n.4 (2007) (resolving the circuit split over whether a district court may use its discretion to remedy the crack-powder disparity); *Gall v. United States*, 552 U.S. 38, 40 (2007) (resolving the circuit split over the scope of an appellate court's review when a defendant receives a non-Guidelines sentence). That repeated intervention is warranted because of the real risk that an "unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings." *Rosales-Mireles*, 138 S. Ct. at 1908. The Court should intervene in this case as well to set forth a single, national standard for the requirements for a district court to explain its sentencing rationale.

Because if it does not, the current regime effectively creates a two-track sentencing system that increases "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). And that is so because of the documented phenomenon of defendants getting lower sentences on remand after a court of appeals holds that the district judge failed to address a nonfrivolous mitigating argument. *Supra* 9–11; Jennifer Niles Coffin, *Where Procedure Meets Substance: Making the Most of the Need for Adequate Explanation in Federal Sentencing*, 36-MAR CHAMPION 36 (2012) (listing a bevy of cases that follow this pattern).[1] But in circuits that permit judges

[1] Coffin updated her article in 2016 with still more cases. Jennifer Niles Coffin, Where Procedure Meets Substance: Making the Most of the Need for Adequate Explanation (2016),

to ignore identical mitigating arguments, those defendants are left to spend more time in federal prison. That disparity is not just unwarranted, but untenable.

III. Mr. Jimenez presents the right vehicle to resolve the circuit split.

Mr. Jimenez's case provides an excellent vehicle to resolve the circuit split for two reasons: The issue was preserved, and it is outcome determinative.

First, the issue is squarely presented. Mr. Jimenez objected to the sentencing court's failure to address nonfrivolous mitigating arguments below and raised the issue on appeal. The Ninth Circuit affirmed the sentence, citing its *Perez-Perez* case, which holds that sentencing courts need not address such arguments.

Second, the issue decides the case. The Ninth Circuit affirmed because—and only because—it concluded that the district court "was not required to repeat Jimenez's mitigating arguments just to show it had considered them." Pet App. 2a (citing *Perez-Perez*, 512 F.3d at 516). That makes Mr. Jimenez's case a clean vehicle to resolve the ongoing circuit split.

IV. This Court should grant review because the court of appeals below is on the wrong side of the circuit split.

Review is warranted in this case in particular because the Ninth Circuit got it wrong, again. Contrary to what the Ninth Circuit held below, before a district court exercises its broad discretion to send a defendant to prison, the court must acknowledge any nonfrivolous argument a party makes for a non-Guidelines

---

https://www.fd.org/sites/default/files/criminal_defense_topics/essential_topics/sentencing_resources/where-procedure-meets-substance-making-the-most-of-the-need-for-adequate-explanation.pdf.

sentence and explain why the court agrees or disagrees with that argument. Silent—and thus assumed—consideration is not enough.

A court's acknowledgment of a party's nonfrivolous argument provides the only real assurance that the court heard and considered that argument. Indeed, "[a] judge who fails to mention a ground of recognized legal merit (provided it has a factual basis) is likely to have committed an error or oversight." *United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005) (Posner, J.). Because, as another experienced jurist put it, every judge has initially thought he or she would rule in favor of one party, only to find that the opinion "just won't write." *See* Kenneth F. Ripple, *Legal Writing in the New Millennium: Lessons from a Special Teacher and a Special 'Classroom'*, 74 NOTRE DAME L. REV. 925, 926 (1999).

As with anything, forcing oneself to engage with an argument—either in writing or verbally—often makes one think more critically about that argument. Thus, it should perhaps not be surprising that, in four of the five courts of appeals decisions holding that a court must address a party's nonfrivolous sentencing argument, the district court gave the defendant a lower sentence of remand. *See supra* 9–11. As discussed above, that is a frequent occurrence when an appellate court remands a case after holding that the district court failed to sufficiently explain its sentencing rationale. *See* Coffin, *supra*, at 36.

Moreover, requiring courts to respond to nonfrivolous arguments is consistent with two of the purposes of an explanation requirement that the Court discussed in *Rita*. One function of an explanation requirement is to facilitate accurate appellate

review. *Rita*, 551 U.S. at 357–58. In the courts of appeals that simply assume a court considered and rejected any argument not discussed, the appellate court will necessarily have a less accurate understanding of what actually led the court to impose the sentence that it did. Courts meanwhile will have to guess why some unacknowledged—and possibly overlooked—arguments did not carry the day.

This makes meaningful appellate review for procedural and substantive reasonableness much harder, if not impossible. The court of appeals will have to fill in the blanks for the lower court and then review that manufactured rationale to determine whether the court properly exercised its discretion. That is not review, but a post hoc rationalization. Meanwhile, any error in the district court's thought process will be shielded from scrutiny, since the error will have been silently made. That creates an untenable system in which, if an error occurs at sentencing and no one is around to hear it, the error effectively does not occur.

Another function of an explanation requirement is to benefit the public. As the Court noted in *Rita*, "[c]onfidence in a judge's use of reason underlies the public's trust in the judicial institution," and that "[a] public statement of those reasons helps provide the public with the assurance that creates that trust." 551 U.S. at 356. Allowing a court, however, to silently dismiss potentially meritorious arguments does not build trust in the judiciary. To the contrary, it leaves the public (including crime victims) wondering whether the judge even considered those arguments.

Finally, defendants themselves greatly benefit from hearing the sentencing court explain and discuss their sentencing rationale, including their thoughts on the defendant's arguments for a non-Guidelines sentence. A court's response to a defendant's arguments "communicates a message of respect for defendants, strengthening what social psychologists call 'procedural justice effects,' thereby advancing fundamental purposes of the Sentencing Reform Act." Michael M. O'Hear, *Explaining Sentences*, 36 FLA. ST. U. L. REV. 459, 472 (2009) (footnote omitted); *see also Rosales-Mireles*, 138 S. Ct. at 1908 (citing, and agreeing with, procedural justice literature). Thus, requiring courts to respond to a defendant's nonfrivolous arguments can foster compliance with the law by providing more legitimacy to the process from the defendant's perspective.

In short, the minimal requirement that district courts respond to nonfrivolous arguments for a below-Guidelines sentence serves numerous virtues and makes it more likely that a district court will impose a lawful, fair sentence. The Ninth Circuit erred, yet again, when it held otherwise in Petitioner's case.

CONCLUSION

Accordingly, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Date: January 8, 2024

Daniel J. Yadron, Jr.
Counsel of Record
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467
danny_yadron@fd.org