

No. _____

In the
Supreme Court of the United States

Manuel Espinoza-Camacho,

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

Whether substantive reasonableness review necessarily requires the court of appeals to reweigh the sentencing factors?

PARTIES TO THE PROCEEDING

Petitioner is Manuel Espinoza-Camacho, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Manuel Espinoza-Camacho seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is available at *United States v. Espinoza-Camacho*, 2024 WL 3874382 (5th Cir. August 20, 2024)(unpublished). It is reprinted in Appendix A to this Petition. The district court's judgement and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on August 20, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

Section 3553(a) of Title 18 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.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

Sometime between February 23, 2018, and June 21, 2020, Petitioner Manuel Espinoza-Camacho re-entered the United States after a prior removal. *See* (Record in Court of Appeals 192-193, 196-197). On June 21, 2020, police responded to a shooting at an apartment complex in Fort Worth. *See* (Record in Court of Appeals 196-197). Nobody saw the shooting, but one tenant saw Petitioner at the scene, and police arrested him June 22, 2020. *See* (Record in Court of Appeals 196-197). On the day he arrived in jail, and well before any conviction for the shooting, ICE agents encountered Petitioner and identified him as a person without lawful status in the country. *See* (Record in Court of Appeals 192-193, 196-197). A little more than nine months later (March 29, 2021), Petitioner pleaded guilty to the state charge of murder, receiving a 15-year term of imprisonment. *See* (Record in Court of Appeals 196-197).

The federal government indicted Petitioner for illegally re-entering the country after a prior removal. *See* (Record in Court of Appeals 9-10). He pleaded guilty, and the Presentence Report found that he had thereby accepted responsibility. *See* (Record in Court of Appeals 39-40, 193). The Guidelines recommended a 24-month sentence of imprisonment, the product of a final offense level of 15, a criminal history category of III, capped at 24 months by the statutory maximum. *See* (Record in Court of Appeals 201); (PSR, ¶57). The state murder conviction figured very significantly in

the Guideline determinations, accounting for 10 of Petitioner’s 15 offense levels and half of his criminal history points. *See* (Record in Court of Appeals 194-197).

At sentencing, trial counsel urged the district court to consider a concurrent sentence with the state charge. *See* (Record in Court of Appeals 178). In support, she noted that the state punishment was already very substantial, especially in relation to the federal maximum of two years, and that Petitioner still had most of it yet to serve. *See* (Record in Court of Appeals 178).

The trial court imposed the statutory maximum term of two years, run fully consecutively to the undischarged state term. *See* (Record in Court of Appeals 180). Explaining its consecutive sentencing decision, it said only that the state and federal charges were “unrelated.” (Record in Court of Appeals 180).

B. Proceedings in the Court of Appeals

Petitioner appealed, contending that the district court had not correctly applied the open-ended factors set forth in USSG §5G1.3(d) and in associated Commentary. These factors assist the district court in determining whether to impose a concurrent, consecutive, or partially concurrent sentence in cases where the defendant did not commit the instant offense under criminal justice sentence, *see* USSG §5G1.3(a), but where an undischarged sentence is not closely related to the instant offense either, *see* USSG §5G1.3(b). *See* USSG §5G1.3(d), & comment. (n. (4)). The court of appeals treated the brief as a challenge both to the substantive and procedural reasonableness of the sentence. *See* [Appendix A]; *United States v. Espinoza-Camacho*, No. 23-11178, 2024 WL 3874382, at * (5th Cir. Aug. 20, 2024)

It affirmed and offered the following explanation as to the substantive claim:

As for Espinoza-Camacho's challenge to the substantive reasonableness of the consecutive sentence, we measure such reasonableness against the factors listed in Section 3553(a). *See United States v. Ochoa*, 977 F.3d 354, 357 (5th Cir. 2020). Because Espinoza-Camacho's sentence conformed to Section 5G1.3(d) and was within the guidelines range, the consecutive nature of his sentence is “presumptively reasonable and is accorded great deference.” *United States v. Candia*, 454 F.3d 468, 473 (5th Cir. 2006).

Espinoza-Camacho asserts that the goals of punishment, deterrence, and incapacitation under Section 3553(a) can be met by the remaining component of the undischarged sentence. After considering the applicable guideline and “all the factors” in Section 3553(a), however, the district court concluded that a consecutive sentence was warranted. In reaching that decision, the district court noted that the instant case was unrelated to the state case, therefore implying that the state sentence for murder would not provide just punishment for Espinoza-Camacho's illegal reentry offense in this case or adequately deter further illegal reentry offenses. *See* § 3553(a). Under these circumstances, Espinoza-Camacho has not rebutted the presumption of reasonableness that is afforded his consecutive sentence. *See Candia*, 454 F.3d at 478.

Espinoza-Camacho, 2024 WL 3874382, at *1–2.

REASONS FOR GRANTING THE PETITION

The courts of appeals are in conflict as to the nature of substantive reasonableness review.

A. The courts are divided.

The length of a federal sentence is determined by the district court's application of 18 U.S.C. §3553(a). *See 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 dictate 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 51.

Fifth Circuit precedent imposes several important barriers to relief from substantively unreasonable sentences. By forbidding the “substantive second guessing” of the district court, it very nearly forecloses substantive reasonableness review entirely. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 767 (5th Cir. 2008). To similar effect is its oft-repeated unwillingness to “reweigh the sentencing factors.” *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). Although *Gall* plainly affords the district court

extensive latitude, it is difficult to understand what substantive reasonableness review is supposed to be, if not an effort to reweigh the sentencing factors, vacating those sentences that fall outside a zone of reasonable disagreement.

Notably, other circuits have declined to abdicate their roles in conducting substantive reasonableness review. 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).

The Fifth Circuit’s restrictive approach to substantive reasonableness review is evident in its opinion, which emphasized the “great deference” afforded the district court in reasonableness determinations. *Espinoza-Camacho*, 2024 WL 3874382, at *1 (quoting *Candia*, 454 F.3d at 473). The case accordingly squarely presents the issue that has divided the courts of appeals. That issue is recurring and important. It is

potentially implicated in nearly every federal criminal case that proceeds to sentencing, and it serves as an important check on the substantive injustice of sentences that are simply too long or too short.

B. The present case is the right vehicle.

This case, moreover, presents an unusually strong vehicle to address the nature of substantive reasonableness review. Here, the district court imposed the maximum conceivable sentence of imprisonment: the statutory maximum, run fully consecutively to a lengthy undischarged sentence. In so doing, it gave no weight to the defendant's plea of guilty, and provided no incentive for similarly situated defendants to plead guilty and accept responsibility in the future. Further, it ignored the impact of a lengthy undischarged sentence on the need for incapacitation and deterrence. A court willing to engage in pure, true, substantive reasonableness review might well find the sentence too severe.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 15th day of November, 2024.

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