

No. _____

In the
Supreme Court of the United States

Miguel Yepson-Cortez,

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 Miguel Yepson-Cortez, 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 Miguel Yepson-Cortez 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The unpublished opinion of the Court of Appeals is available at *United States v. Yepson-Cortez*, No. 24-10541, 2025 WL 637431 (5th Cir. February 27, 2025)(unpublished).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 February 27, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTE

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

Miguel Yepson-Cortez is a hardworking truck driver from a profoundly tight-knit family. *See* (ROA.146-186). He lacks a legal right to be in the United States and has been twice removed from this country. *See* (ROA.204). After his second removal, he was victimized by a border syndicate that kidnapped him and collected a large ransom from his family. *See* (ROA.146, 157, 165, 205). Because this event made him feel understandably “desperate to get away” from the crime in Mexico, (ROA.205); *see also* (ROA.154, 156), and because he wished to care for his father, who had recently (before his last removal) suffered a brain aneurysm, *see* (ROA.146, 150, 155, 211), he returned to the United States without authorization. Immigration authorities caught him in the United States after his arrest for trespassing at a market. *See* (ROA.203-204, 210). The federal government indicted him for illegal re-entry. (ROA.23-24). Petitioner pleaded guilty with a plea agreement but did not waive appeal. *See* (ROA.188-197).

A Presentence Report (PSR) calculated a Guideline range of 30-37 months imprisonment. *See* (ROA.215). The defense submitted ten letters to the judge from Petitioner’s family, describing him as hard-working and devoted. *See* (ROA.146-186). The letters recounted his kidnapping after the prior removal and his desire to help care for ailing family members. *See* (ROA.146, 150, 154-157, 165).

At sentencing, defense counsel sought a sentence at the bottom end of the Guideline range. *See* (ROA.126). The court imposed a sentence of 34 months instead,

the mid-point of the Guideline range. *See* (ROA.128). Explaining the sentence, the court noted the defendant's prior criminal history and removals. *See* (ROA.133-134).

But it also said the following:

But the Court did give significant mitigating weight to defendant's motivation in this case as reflected in the PSR, defendant's allocution and the arguments of defense counsel. Here, defendant's desire to enter the United States on this occasion was motivated by a desire to support his family and out of an understandable fear of individuals who may do him harm in Mexico. This is reflected in the character statements, the arguments of defense counsel and defendant's own allocution, and the Court did give significant mitigating weight to those factors.

(ROA.134). The court thus found as a factual matter that the defendant entered the country to help his family and escape criminal victimization.

B. Proceedings in the Court of Appeals

Petitioner appealed. He contended that the sentence imposed was substantively unreasonable because it failed to give significant weight to objectively compelling mitigating evidence. Specifically, he pointed out that the district court accepted the defendant's well-attested account of his re-entry, which followed a terrifying kidnapping-for-ransom, and came from a desire to help a seriously ill member of the defendant's close family. But he argued that the sentence did not reflect the powerful mitigating value of these claims.

The court of appeals affirmed with the following commentary:

The sentence imposed was presumptively reasonable, and Yepson has not rebutted that presumption. *E.g., United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009) (noting our "court applies a rebuttable presumption of reasonableness to a properly calculated, within-[G]uidelines sentence"). The court properly considered the 18 U.S.C. § 3553(a) sentencing factors, the presentence investigation report (to which Yepson did not object), "the advisory guidelines range, the

conduct admitted in the factual resume, ... and all mitigating and aggravating factors". *See United States v. Diehl*, 775 F.3d 714, 724 (5th Cir. 2015). Moreover, the court stated it gave Yepson's motivation for reentry significant mitigating weight. Although he may disagree with how the relevant considerations were balanced by the district court, our court will not independently reweigh the above-referenced 18 U.S.C. § 3553(a) sentencing factors or substitute its judgment for that of the district court. *E.g., United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017).

[Appx. A]; *United States v. Yepson-Cortez*, No. 24-10541, 2025 WL 637431, at *1 (5th Cir. Feb. 27, 2025).

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. This review "take(s) into account the totality of the circumstances, including the extent of any variance from the Guidelines range." *Id.* And "a major departure should be supported by a more significant justification than a minor one." *Id.* at 50.

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. Vasquez-Tovar*, 2012 U.S. App. LEXIS 21249, at *4 (5th Cir. 2012)(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. Ofrey-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 explicitly applied this restrictive approach to substantive reasonableness review in this case. In affirming the sentence, the court said expressly that “our court will not independently reweigh the above-referenced 18 U.S.C. § 3553(a) sentencing factors or substitute its judgment for that of the district court.” [Appx. A]; *Yepson-Cortez*, 2025 WL 637431, at *1. Further, it cited published, binding, authority for this proposition. (citing *United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017). The case accordingly squarely presents the issue that has divided the courts of appeals. Here, the court expressly said that it simply would not reweigh the factors; in other circuits – and according to this Court’s precedent, *see Booker*, 543 U.S. at 261 – that is precisely the task of substantive reasonableness, albeit with deference.

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 a strong vehicle to address the nature of substantive reasonableness review. Petitioner will not be released from prison until April of next year, providing plenty of time to consider the issue and offer meaningful relief.

Further, there is good reason to think a court willing to “reweigh the statutory factors,” that is, to apply substantive reasonableness review, could find the sentence infirm. Critically, the court here explicitly accepted the defendant’s account of his re-entry, namely that he suffered a terrifying kidnapping at the hands of a criminal syndicate at the border and that he returned in part to assist in the care of a father who had recently suffered a brain aneurysm. *See* (ROA.134). Taking the facts as the district court found them, the court gave unreasonably little weight to factors that should have been predominant, and made a clear error of judgment in balancing the factors under §3553(a).

The defendant’s desire to escape the risk of further violence represents a kind of duress – it is an intense and terrifying pressure motivating his choice to engage in illegal conduct. The Sentencing Commission has long recognized that a below-Guideline sentence may be appropriate “if the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense...” USSG §5K2.12. Indeed, as far back as Blackstone, the courts have recognized that because criminal punishment targets “abuse[s] of th[e] free will,” “it is highly just and equitable that a man should be excused for those acts, which are done through unavoidable force and compulsion.” 4 W. Blackstone,

COMMENTARIES 27 (quoted in *Dixon v. United States*, 548 U.S. 1, 24 (2006)(Breyer, J., dissenting).

As such, the fact that the defendant committed the offense out of a reasonable fear of violence bears very directly on “the need for the sentence imposed … to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” §3553(a)(2)(A). Assuming that reasonable measures – like removal from a different port -- are taken to avoid the risk in the future, a defendant who committed the offense under a measure of duress is less likely to repeat it than one who committed it on his own initiative. Accordingly, such a defendant needs less deterrence and incapacitation. The district court is required to consider those factors under §3553(a)(2)(B) and (2)(C).

At the very least, the mid-range sentence was unreasonable when the court combines the defendant’s reasonable fear of violence with his desire to take care of his ailing father, who had recently suffered a brain aneurysm. Again, the defendant’s motivation to care for his father was well-attested in the sentencing materials, and was not questioned by any party or the court. *See* (ROA.134, 146, 150, 155, 211). The desire to assist in the care of a seriously ill close relative is a basic human impulse, which in the ordinary circumstance is lauded rather than punished. It is thus directly relevant to 18 U.S.C. §3553(a)(1) and to §3553(a)(2)(A), which limits the district court to the minimum sentence necessary to achieve a just punishment, among other goals.

As such, the instant case is one in which the Petitioner could levy a persuasive critique of the sentence as substantively unreasonable. The restrictive approach of

the Fifth Circuit foreclosed consideration of this argument. This Court should resolve the circuit split so that his contentions may have a fair evaluation.

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 27th day of May, 2025.

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