

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

ARTURO GARZA, JR.,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

There is a conflict among the United States Courts of Appeals regarding the scope of the mandate for resentencing on remand.

The question is: Whether the mandate rule precludes a district court from recalculating a defendant's Sentencing Guidelines range at resentencing based on convictions received between the first and second sentencings (as the First Circuit holds), or whether the mandate rule permits such recalculation of the Guidelines range (as the Fifth, Eighth, Ninth, and Eleventh Circuits hold).

## **RELATED PROCEEDINGS**

United States District Court for the Western District of Texas:

*United States v. Arturo Garza, Jr.*, No. 21-cr-298 (July 5, 2022)

*United States v. Arturo Garza, Jr.*, No. 21-cr-298 (Oct. 20, 2023)

United States Court of Appeals for the Fifth Circuit:

*United States v. Arturo Garza, Jr.*, No. 22-20338 (June 9, 2023)

*United States v. Arturo Garza, Jr.*, No. 23-20513 (Feb. 7, 2025)

*United States v. Arturo Garza, Jr.*, No. 23-20513 (Mar. 10, 2025)

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## **OPINIONS BELOW**

On June 9, 2023, the United States Court of Appeals for the Fifth Circuit reversed the judgment of the District Court for the Southern District of Texas and remanded for resentencing. *See Appendix A.*

On February 7, 2025, the Fifth Circuit affirmed the judgment of the District Court for the Southern District of Texas. *See Appendix B.*

On March 10, 2025, the Fifth Circuit denied Mr. Garza's petition for rehearing en banc. *See Appendix C.*

## **JURISDICTION**

The Fifth Circuit denied Mr. Garza's timely petition for rehearing en banc on March 10, 2025. *See Appendix C.* This petition is filed within 90 days of that date. *See Sup. Ct. R. 13.1 & 13.3.* This Court has jurisdiction under 28 U.S.C. § 1254(1).

## RELEVANT STATUTORY PROVISION

Article III, Section 1 of the United States Constitution provides:

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. . . .

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28 U.S.C. § 2106 provides:

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

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Rule 41 of the Federal Rules of Appellate Procedure provides:

**(a) Contents.** Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

## INTRODUCTION

Few legal principles are as firmly established as the mandate rule—the doctrine that an inferior court is bound to follow the dictates of a superior court. While federal courts universally acknowledge this principle, they have different views about how it applies in the criminal resentencing context.

This petition concerns whether the mandate rule restricts a district court from recalculating a defendant’s Sentencing Guidelines range on remand based on new convictions received after the initial sentencing hearing. In this case, the district court sentenced Mr. Garza to 87 months’ imprisonment, the high end of the Guidelines range it had identified. After Mr. Garza appealed the sentence, the Fifth Circuit remanded his case so the district court could correct errors related to the offense level calculation. The district court corrected and lowered Mr. Garza’s offense level on remand. However, it also recalculated the criminal history category based on convictions Mr. Garza received in unrelated cases that were pending at the time of the original sentencing. Despite having won his appeal, Mr. Garza faced a higher Guidelines range on remand.

As the Fifth Circuit acknowledged, however, Mr. Garza would have faced a lower Guidelines range if he had been resentenced in the First Circuit. That circuit interprets the mandate rule to prohibit a district court from recalculating a defendant’s Guidelines range based on convictions received between the first and second sentencing hearings. And the First Circuit has since affirmed this interpretation of the mandate rule, reversing a district court *sua sponte* when it imposed a higher Guidelines range on remand based on a defendant’s intervening convictions.

The Court should grant certiorari to resolve this conflict. The circuit split is clear. The issue is important. And the Fifth Circuit's position is wrong. It runs counter to other statutory limitations on the power to resentence. It complicates the resentencing process. And it unfairly penalizes defendants for judicial errors, transforming the appellate process into a trap for an unwary defendant.

## STATEMENT OF THE CASE

Mr. Garza pled guilty to one count of possessing a firearm after a prior felony conviction, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). C.A. ROA.13-14.<sup>1</sup> At the time of his original sentencing, the parties disagreed about the applicable Federal Sentencing Guidelines range, with Mr. Garza arguing for a lower offense level. C.A. ROA.234-40. The parties agreed Mr. Garza had a criminal history category of III. C.A. ROA.157.

The district court concluded Mr. Garza was subject to a Sentencing Guidelines range of 70-87 months' imprisonment, based on an offense level of 25 and a criminal history category of III. C.A. ROA.157. The government sought a sentence "at the higher end" of the Guidelines range, based partly on Mr. Garza's pending charges. C.A. ROA.166. The district court agreed. It sentenced Mr. Garza to 87 months' imprisonment. C.A. ROA.168. It then reduced his sentence to 75 months to account for time he already spent in federal custody. ROA.168.

In an initial appeal, the Fifth Circuit Court of Appeals vacated the district court's judgment. *See* Appendix A. It held the district court erred in calculating Mr. Garza's offense level and remanded for further proceedings. *See id.* at 1-2, 12. It noted that Mr. Garza had a criminal history category of III but did not otherwise mention his criminal history. *See id.* at 2-3.

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<sup>1</sup> "C.A. ROA" refers to the record before the Fifth Circuit.

On remand, the district court recalculated Mr. Garza’s Guidelines range. It reduced his offense level from 25 to 21, consistent with the Fifth Circuit’s instructions on remand. C.A. ROA.203. Over Mr. Garza’s objection, it also updated his criminal history category. C.A. ROA.202-203. It noted Mr. Garza had received convictions in several cases that were pending at the time of his original sentencing, and it added seven criminal history points for these new convictions. These additional points raised Mr. Garza’s criminal history category from Category III to Category VI. C.A. ROA.202-203, 330. If the district court had not erred at the original sentencing, Mr. Garza would have faced a Guidelines range of 46-57 months’ imprisonment. Instead, after his successful appeal, he faced a Guidelines range of 77-96 months’ imprisonment.

The court again sentenced Mr. Garza to 87 months’ imprisonment. C.A. ROA.205. It once more reduced the sentence to 75 months to account for time Mr. Garza had spent in federal custody. C.A. ROA.205-207.

Mr. Garza appealed again. This time, the Fifth Circuit affirmed. *See Appendix B.* It rejected Mr. Garza’s claim that the mandate rule precluded the district court from reopening Mr. Garza’s criminal history calculation on remand. It acknowledged that the First Circuit had reached the opposite conclusion in a similar case. *See United States v. Ticchiarelli*, 171 F.3d 24 (1st Cir. 1999). However, it concluded the mandate rule allowed district courts to address issues on remand that could not have been brought in the original appeal. *Id.* “To the extent the First Circuit suggests otherwise,” it stated, “we disagree.” *Id.* at 6.

On March 10, 2025, the Fifth Circuit denied Mr. Garza’s petition for rehearing en banc without a written opinion. *See* Appendix C.

## REASONS FOR GRANTING THE WRIT

### **A. The courts of appeals are divided on the question presented.**

In the Fifth, Eighth, Ninth, and Eleventh Circuits, a resentencing court will recalculate a defendant's criminal history points based on criminal convictions received between the first and second sentencing hearings. But in the First Circuit, a resentencing court will not recalculate a defendant's criminal history points based on these intervening convictions. These rules generate opposite outcomes, with similarly situated defendants facing different Guidelines ranges depending on the jurisdiction where they are resentenced.

The Eighth, Ninth, and Eleventh Circuits interpret the mandate rule to permit de novo resentencing. *See United States v. Cornelius*, 968 F.2d 703, 705 (8th Cir. 1992); *United States v. Ponce*, 51 F.3d 820, 826 (9th Cir. 1995); *United States v. Stinson*, 97 F.3d 466, 469 (11th Cir. 1996).<sup>2</sup> In these jurisdictions, a district court may redo the entire sentencing process on remand, unless the appellate mandate explicitly limits the sentencing issues open for consideration. These jurisdictions have likewise held that, at resentencing, a district court may recalculate a defendant's criminal history points based on new convictions a defendant has received after the initial sentencing hearing. *See United States v. Tidwell*, 827 F.3d 761, 763-64 (8th Cir. 2016); *United States v. Klump*, 57 F.3d 801, 803 (9th Cir. 1995); *United States v. Burke*, 863 F.3d 1355, 1359-60 (11th Cir. 2017).

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<sup>2</sup> The Second, Sixth, and Tenth Circuits also interpret the mandate rule to allow de novo resentencing. *See United States v. Atehortva*, 69 F.3d 679 (2d Cir. 1995); *United States v. Jennings*, 83 F.3d 145, 151 (6th Cir. 1996); *United States v. Smith*, 116 F.3d 857, 859 (10th Cir. 1997). However, these jurisdictions have not addressed the question presented.

In *Klump*, for example, the Ninth Circuit affirmed a revised sentence imposed by a district court on remand. *See Klump*, 57 F.3d at 802. The circuit court remanded to correct an error in calculating the defendant’s offense level. *See United States v. Klump*, 21 F.3d 1117, 1117 (9th Cir. 1994) (unpublished). But on remand, the district court recalculated the defendant’s criminal history score to add points for an unrelated, intervening conviction. *See Klump*, 57 F.3d at 802. The Ninth Circuit concluded there was no error. It noted that the appellate court’s “remand was general, not limited,” and that “[t]he general [Ninth Circuit] rule that resentencing is *de novo*” therefore applied. *Id.* Thus, “[t]he [intervening] state sentence was a ‘prior sentence’” under the Guidelines. *Id.*

The Fifth and First Circuits have adopted a narrower interpretation of the mandate rule. *See United States v. Bell*, 988 F.2d 247, 251 (1st Cir. 1993); *United States v. Lee*, 358 F.3d 315, 323 n.4 (5th Cir. 2004).<sup>3</sup> Under this interpretation, a district court may not conduct a *de novo* resentencing. Rather, the resentencing court is limited to addressing only those discrete, particular issues identified by the appeals court for remand.

Consistent with that narrow interpretation, the First Circuit, in *Ticchiarelli*, held that the mandate rule precludes a district court from recalculating a defendant’s criminal history category on remand based on intervening convictions. *See Ticchiarelli*, 171 F.3d at 35-37. It emphasized that “[t]he mandate rule, as we have described it, does not permit *de novo*

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<sup>3</sup> The D.C. and Seventh Circuits share this restrictive view of the mandate rule but have not squarely addressed the question presented. *See United States v. Whren*, 111 F.3d 956, 959-61 (D.C. Cir. 1997); *United States v. Parker*, 101 F.3d 527, 528 (7th Cir. 1996). The Seventh Circuit has addressed the issue on plain error review. *See United States v. Carnell*, 35 F.4th 1092, 1096 (7th Cir. 2022); *United States v. Hopper*, 11 F.4th 561, 572-74 (7th Cir. 2021). It found there was no plain error when a resentencing court recalculated criminal history points based on intervening convictions, given the “lack of controlling precedent in our circuit, and the disagreement among the other courts of appeals.” *Hopper*, 11 F.4th at 572-74.

resentencing as to all aspects of a sentence,” and that the defendant’s intervening conviction “is neither related to the reason for the remand nor does it fit within an exception to the mandate and law of the case doctrines.” *Id.* at 35. To hold otherwise, it concluded, would “impl[y] a greater scope of remand, as though all matters were reopened [at resentencing].” *Id.* at 36. The First Circuit has affirmed this interpretation of the mandate rule. *See United States v. Cheveres-Morales*, 83 F.4th 34, 42-44 (1st Cir. 2023) (considering the same issue *sua sponte*, on plain error review, and finding that the district court violated the mandate rule).

The Fifth Circuit recently split with the First Circuit on this point. In Mr. Garza’s case, the panel concluded that the mandate rule permits a district court to recalculate a defendant’s criminal history category on remand based on convictions received after the initial sentencing hearing. *See Appendix B* at 4-6. It noted that the Fifth Circuit shares the First Circuit’s narrow interpretation of the mandate rule at resentencing. *Id.* at 5. However, it held that district courts may address issues on remand that were not, or could not have been, brought in the original appeal. *Id.* at 5. It elaborated that issues related to Mr. Garza’s intervening state convictions could not have been brought in the original appeal, since Mr. Garza only received those state convictions after his first sentencing hearing. *See id.* at 5-6. Thus, it concluded, the mandate did not prohibit the district court from recalculating his criminal history category based on those convictions. *See id.*

Ultimately, the courts of appeals remain divided on this question, with the Fifth, Eighth, Ninth, and Eleventh Circuits interpreting the mandate rule to allow recalculation of the Sentencing Guidelines based on intervening convictions, and the First Circuit

reaching the opposite conclusion. Only this Court can resolve the circuit split and clarify the proper interpretation of the mandate rule in this context.

**B. This is an important issue worthy of the Court’s review.**

This question warrants the Court’s review because it involves a significant and recurring issue.

The issue is significant for several reasons. The mandate rule is foundational to this country’s judicial system. From “its earliest days,” the Supreme Court has “consistently held that an inferior court has no power or authority to deviate from the mandate issued by an appellate court.” *Briggs v. Pa. R.R. Co.*, 334 U.S. 304, 306 (1948) (citing *Himely v. Rose*, 9 U.S. (5 Cranch) 313, 314 (1809), *The Santa Maria*, 23 U.S. (10 Wheat.) 431, 434 (1825), and *Boyce’s Ex’rs v. Grundy*, 34 U.S. (9 Pet.) 275, 287 (1835)). The Ninth Circuit has observed that the mandate rule is “necessary to the operation of a hierarchical judicial system.” *Mirchandani v. United States*, 836 F.2d 1223, 1225 (9th Cir. 1988). Because this rule plays such a critical, structural role in our judicial system, its interpretation is similarly important. It goes to the balance of power between the district and appellate courts.

The human stakes surrounding this question are also significant. This Court’s interpretation of the mandate rule determines a district court’s ability to recalculate a defendant’s Guidelines range on remand. And changes in a defendant’s Guidelines range can dramatically impact the eventual sentence. “The Guidelines are the framework for sentencing and anchor the district court’s discretion.” *Molina-Martinez v. United States*, 578 U.S. 189, 198-99 (2016) (internal quotation marks omitted). According to the Bureau

of Prisons, between fiscal years 1991 through 2024, approximately 45.1% of criminal defendants received a sentence within the Guidelines range.<sup>4</sup> And for the remaining defendants, the Guidelines continue to exert a strong influence on the eventual sentence. “[J]ust as a runner’s starting position influences the time in which he finishes the race, a defendant’s sentence depends in part on what the Guidelines range is, even if that range is nonbinding.” *United States v. Vargas*, 74 F.4th 673, 710 (5th Cir. 2023) (Elrod, J., joined by J. Stewart, Haynes, Graves, Wilson, and Douglas, dissenting in part and from the judgment) (quotation omitted). Unless this Court intervenes, defendants resentenced within the Fifth, Eighth, Ninth, and Eleventh Circuits will therefore be at risk of receiving dramatically higher sentences from those resentenced within the First Circuit.

The question presented also involves a recurring issue. According to a joint study by the Administrative Office of the U.S. Courts and the United States Department of Justice, approximately 18% of federal defendants have a pending misdemeanor or federal charge at the time of their arrest. *See* Marie VanNostrand, et. al, *Pretrial Risk Assessment in the Federal Court*, 72 FED. PROB. 1, 11 (2009). Many of these defendants still have pending charges at the time they receive their federal sentence and begin their appellate proceedings. And given the length of time that it takes to complete an appeal—the typical appeal in a federal criminal case takes nearly one year—many defendants will have new convictions on their criminal records by the time they return to court for resentencing. *See U.S. Courts of Appeals: Median Times for Civil and Criminal Cases Terminated on the*

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<sup>4</sup> *Quick Facts: Federal Offenders in Prison*, U.S. SENT’G COMM’N (2025), <https://www.ussc.gov/research/quick-facts/individuals-federal-bureau-prisons>.

*Merits*, JUD. BUS. U.S. COURTS (Sept. 2024). Every such case will trigger this question anew.

In light of the significant and recurring nature of this question, the Court should grant the petition and resolve this question as soon as possible.

**C. This case is an ideal vehicle for addressing this question.**

This case presents an excellent vehicle for addressing the scope of the mandate rule. First, the case cleanly presents a purely legal issue. There are no jurisdictional problems, factual disputes, or preservation issues. Mr. Garza thoroughly briefed his mandate rule arguments in both the district court, C.A. ROA.353-365, and before the Fifth Circuit. The district court directly addressed Mr. Garza's challenge after requesting written briefing on the issue. C.A. ROA.174, 202-203. And the Fifth Circuit also directly addressed the mandate rule issue, deciding the case in a precedential opinion. *See* Appendix B.

Second, the issue was outcome determinative in this case. If the Fifth Circuit had interpreted the mandate rule to preclude consideration of any convictions received after the original sentencing, Mr. Garza would have faced a lower Guidelines range of 46-57 months. *See* USSG Ch. 5, Pt. A (Sentencing Table). Under the Fifth Circuit's rule, he instead faced a Guidelines range of 77-96 months. *See id.* The district court did not say that it would have imposed the same sentence on Mr. Garza regardless of its Guidelines decision. C.A. ROA.205-206.

This case is therefore an ideal vehicle for the Court to fully address the question presented and to resolve the disagreement among the courts of appeals.

#### **D. The Fifth Circuit’s decision was wrong.**

The Fifth Circuit was wrong when it held that district courts may recalculate a defendant’s Guidelines range on remand based on a defendant’s intervening convictions. This Court’s precedent does not clearly establish the scope of the mandate rule in the resentencing context. However, the Fifth Circuit’s interpretation of the mandate rule is inconsistent with other statutory restrictions on the district court’s power to resentence, and it undermines the goals of judicial efficiency and fairness.

This Court has yet to address the scope of the mandate rule at resentencing. It has long held that, when an issue is decided by an appellate court, that issue “is considered as finally settled.” *See In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895) (citations omitted).<sup>5</sup> But that doctrine “comes into play only with respect to issues previously determined.” *See id.*; *see also Quern v. Jordan*, 440 U.S. 332, 333 n.18 (1979). “While a mandate is controlling as to matters within its compass, on the remand a lower court is free as to other issues.” *Sprague v. Ticonic National Bank*, 307 U.S. 161, 168 (1939). The Court has never addressed the general scope of the mandate at a resentencing. *See Pepper v. United States*, 562 U.S. 476, 506 (2011) (declining to directly address this issue because “Pepper does not challenge the scope or validity of the Court of Appeals’ mandate ordering de novo resentencing”).

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<sup>5</sup> While this Court has not identified the specific source for this rule, scholars have observed that the rule may be rooted in in constitutional and statutory authority setting forth this country’s hierarchical judicial system. *See, e.g.*, Adam Crews, *The Mandate Rule*, 73 S. CAROLINA L. REV. 263, 272-83 (2021); U.S. CONST. art. III, § 1 (establishing a judicial system made up of this Court and “such inferior courts” as Congress may “ordain and establish”); 28 U.S.C. § 2106 (granting appellate courts the authority to vacate and reverse any lower court order, and to “remand the cause and direct the entry of such appropriate judgment . . . as may be just under the circumstances”).

The Fifth Circuit’s decision is inconsistent with other statutory restrictions on the district court’s power to resentence, however. Under 18 U.S.C. § 3582(c), for example, a district court generally “may not modify a term of imprisonment once it has been imposed,” except that “the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.” Thus, if an appellate court vacates a sentence on appeal, statutory restrictions prevent the district court from entering an entirely new judgment—the district court only has only the limited power to “modify” an imposed term of imprisonment. Under 18 U.S.C. § 3742, a district court to which a case is remanded must also apply the Guidelines “that were in effect on the date of the previous sentencing of the defendant,” further limiting the district court’s discretion upon remand. These statutory restrictions suggest that the district court has limited power at resentence. Interpreting the mandate rule in a way that limits a resentence court from recalculating a defendant’s Sentencing Guidelines based on intervening convictions is most consistent with this statutory scheme.

Finally, the Fifth Circuit’s decision undercuts judicial economy and fairness. For one, it makes resentence less efficient. It requires the parties, on remand, to conduct additional investigation into a defendant’s criminal history, recalculate the criminal history points associated with any new convictions, and to litigate any disputes arising from that recalculation. It also requires the district court to resolve any such disputes and to conduct its own recalculation of the Sentencing Guidelines—even in cases where the appellate court’s decision did not involve a Guidelines issue. These additional steps significantly expand the scope of any resentence hearing and undermine judicial economy.

The Fifth Circuit’s decision is also unfair. Under the Fifth Circuit’s rule, a defendant who receives an erroneous sentence and who tries to correct that error through appeal may face an inflated Guidelines range on remand. That inflated Guidelines range may, and often will, occur through no fault of the defendant. In this case for example, Mr. Garza did not commit any additional criminal conduct between the time of his first and second sentencing hearing. Rather, he received convictions in state court cases that were pending at the time of his original sentence. The ultimate effect of the Fifth Circuit’s decision, therefore, is to “convert[] what was meant to be a path toward a reduced sentence into a costly trap for an unwary defendant.” *Cheveres-Morales*, 83 F.4th at 42.

This Court should grant certiorari to correct the Fifth Circuit’s decision and to set forth the proper interpretation of the mandate rule in this context.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Date: June 9, 2025

Respectfully submitted,

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