

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

CARLOS CARABALLO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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July 3, 2025

QUESTION PRESENTED

The question presented is: Whether the circuit court applied the appropriate standard of review regarding a challenge to the imposition of a Sentencing Guideline Special Offense Characteristic without considering the sentencing court's interpretation and application of cited case law in arriving at its findings of fact supporting the enhancement?

PARTIES TO THE PROCEEDINGS

Carlos Caraballo was the defendant and appellant in the proceedings below.

The United States of America was the plaintiff and appellee in the proceedings below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

United States v. Caraballo, Case No. 4:22-CR-00322-JDR Dkt. No. 94 (N.D. Okla. March 01, 2024), *aff'd in part*, No. 24-5029 (10th Cir. Apr. 4, 2025)

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APPENDIX (SUBMITTED UNDER SEPARATE COVER):

A: *United States v. Caraballo*, No. 24-5029 (10th Cir. April 4, 2025)

B: District Court Judgment (District Court Doc. 94)

C: Pertinent Sentencing Guidelines and Statutory Provisions

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PREVIOUS OPINIONS AND ORDERS

The United States Court of Appeals for the Tenth Circuit issued an Order and Judgment on April 4, 2025, denying, in part, a direct appeal in which the Petitioner was the Appellant/Defendant. *See United States v. Caraballo*, No. 24-5029 (10th Cir. 2025). (Appendix A).¹

The direct appeal sought reversal of a Judgment in a Criminal Case filed in the United States District Court for the Northern District of Oklahoma, in *United States v. Carlos Caraballo*, Case No. 22-CR-322-JDR-1. (Appendix B).

JURISDICTION

The Tenth Circuit reviewed the Petitioner's conviction under the authority of 28 U.S.C. §1291. On April 4, 2025, the Order and Judgment now presented for review was filed. No rehearing or additional form of review was conducted. The ruling is mandated and final.

Jurisdiction for a writ of certiorari lies in this Court pursuant to 28 U.S.C. §1254(1), applicable to cases in the courts of appeals, which permits a writ of certiorari to be “granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.” Petitioner was the Appellant in *United States v. Caraballo*, No. 24-5029 (10th Cir. 2025). (Appendix A).

¹Records required to be furnished with this Petition per Supreme Court rule are provided in a single-volume Appendix under separate cover.

RELEVANT LEGAL PROVISIONS

U.S.S.G. § 2G2.1(b)(6) states:

If, for the purpose of producing sexually explicit material or for the purpose of transmitting such material live, the offense involved (A) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct; or (B) the use of a computer or an interactive computer service to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct, increase by 2 levels.

18 U.S.C. § 2251(a) states:

Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

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STATEMENT OF THE CASE

1. FACTUAL BACKGROUND

The charges in this case arose after a schoolteacher discovered “inappropriate communications” between Mr. Caraballo and the victim on a school issued laptop in October 2021. The resulting investigation revealed that they had been communicating since Spring 2021. It was also found that between June 26, 2021, and June 29, 2021, Mr. Caraballo travelled from New York, where he lived, to the girl’s home in Oklahoma. While he was in Oklahoma, Mr. Caraballo had sex with the girl on two separate occasions. On one of these occasions, he took a photograph of her performing oral sex on him.

2. DISTRICT COURT PROCEEDINGS

Carlos Caraballo was initially charged by Indictment on September 19, 2022 with: Count One - Coercion and Enticement of a Minor in violation of 18 U.S.C. § 2422(b); Count Two - Travel with Intent to Engage in Illicit Sexual Conduct in violation of 18 U.S.C. § 2423(b); Count Three - Sexual Abuse of a Minor in Indian Country in violation of 18 U.S.C. §§ 1151, 1152, and 2243(a); and Count Four - Production of Child Pornography in violation of 18 U.S.C. §§ 2251(a) and 2251(e). The Superseding Indictment filed on June 5, 2023, realleged these four counts with the addition of Count Five - Tampering with a Witness by Corrupt Persuasion and Misleading Conduct in violation of 18 U.S.C. § 1512(b)(3).

On August 10, 2023, Mr. Caraballo entered an unconditional guilty plea to Counts Three and Four without a plea agreement.

Upon receipt of the first draft of the Presentencing Report (“PSR”), Mr. Caraballo objected to the application of the Special Offense Characteristic found at U.S.S.G. § 2G2.1(b)(B) because the requisite intent was not supported by the facts in this case and the Special Sex Offender Conditions regarding sexually explicit materials infringed on his First Amendment Rights. Mr. Caraballo filed his Objection reiterating and expanding upon his arguments.

At the sentencing hearing, counsel for Mr. Caraballo argued that he did not object to the facts in the PSR but that these facts were not a sufficient basis to apply the enhancement because they did not show the requisite “purpose.” In response to the court’s questioning, counsel pointed to how Mr. Caraballo’s case is distinguishable from those cited by both Probation and the Government. Counsel for Mr. Caraballo pointed out that there was some conflicting discovery as to when, if, and how Mr. Caraballo learned of the victim’s correct age. Counsel pointed to an interview in which the victim indicated that she did not tell Mr. Caraballo her actual age until after his trip to Oklahoma. Counsel further pointed to the victim’s ongoing explicit conversations with others as a possible source of her motive in taking photographs of herself that she sent to Mr. Caraballo. Both these issues distinguished this case from those relied upon by Probation and the Government and rebutted the assertion that Mr. Caraballo used a computer or cellular phone to communicate with the victim with the intent to produce child pornography.

The Government declined to make an additional factual record in response. Instead, the Government accused Mr. Caraballo of attempting to deny “the exact

language” of Count Four that he had pled guilty to, stated that Mr. Caraballo continued to engage with the victim online after the offense occurred, and argued that whether Mr. Caraballo knew the victim’s age is irrelevant to the analysis on this issue.

The sentencing court overruled Mr. Caraballo’s objection to the enhancement concluding that:

“The defendant sending sexually explicit conduct to [the girl]. to lure, entice, and normalize exploitation is sufficient to warrant the enhancement at U.S. Sentencing Guideline Section 2G2.1(b)(6)(B). Thus, the specific offense characteristic applied at paragraph 19 of the presentence investigation report was properly applied.”

Mr. Caraballo also reasserted his objection to the special condition upon release that prohibits him from viewing sexually explicit materials. Over his objection, the sentencing court imposed the special condition.

3. TENTH CIRCUIT APPEAL PROCEEDINGS

After perfecting Mr. Caraballo’s direct appeal to the Tenth Circuit, appointed counsel filed a brief arguing that application of the Special Offense Characteristic U.S.S.G. § 2G2.1(b)(6)(B) and the “Special Sex Offender Conditions” regarding materials depicting or describing sexually explicit conduct which involves only adults should be reversed due to the trial court failing to use the correct legal standards to apply the enhancement or the special condition. The Tenth Circuit affirmed the application of the enhancement which is the subject of this petition and remanded the issue of the special condition to the trial court for further proceedings. *United*

States v. Caraballo, 2025 WL 1013449 (10th Cir. 2025). (Attachment A). The direct appeal became final on April 4, 2025.

The Circuit's Order and Judgment concluded that the district court's interpretation of the cases it cited to support its application of the challenged enhancement did not affect the inquiry as to whether the district court properly interpreted and applied the enhancement. The Circuit further held that the district court had not made adequate findings prior to imposing a special condition which imposes on Mr. Caraballo's rights under the First Amendment and remanded the matter for further proceedings. (Appendix A).

REASONS FOR GRANTING A WRIT

Certiorari is appropriate when “a United States court of appeals has ...so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power[.]” S. Ct. R. 10(a). The decision submitted for review failed to evaluate the trial court’s interpretation of relevant sentencing guideline and the Circuit’s own jurisprudence regarding the applicability of the challenged Special Offense Characteristic.

The Tenth Circuit reviews the procedure used in reaching a sentencing decision for abuse of discretion. *United States v. Lucero*, 747 F.3d 1242, 1246 (10th Cir. 2014). The district court’s legal conclusions regarding the guidelines and factual findings are reviewed de novo. *Id.* However, in its decision, the Tenth Circuit misrepresented the argument made by Mr. Caraballo and disregarded the district court’s interpretation of case law it relied upon in making its findings of fact. In doing so, the Tenth Circuit failed to exercise the correct standard of review or adequately address the issue raised on appeal

A. The Tenth Circuit failed to apply the correct standard of review when it did not adequately address Mr. Caraballo’s issue on appeal.

First, the Circuit misconstrued Mr. Caraballo’s argument that specific intent or purpose to produce child pornography must be found prior to imposing the challenged enhancement. This is evident in the two findings by the district court that

the Circuit found sufficient basis for application of the enhancement. These were that Mr. Caraballo:

- “had sent the girl “sexually explicit material,” which could be seen and thought to be an attempt to lure, entice, and normalize the exploitation of [the girl] in a way to persuade her to produce sexually explicit material in return” and
- “had solicit[ed] sexually explicit images and video by cellular telephone” in order “to desensitize [the girl] and normalize the behavior.”

Appendix A at 3.

However, neither of these findings explicitly address whether Mr. Caraballo sought out these images with the knowledge that the girl was a minor. At sentencing the defense argued that it was unclear when and whether Mr. Caraballo learned the victim’s age in relation to these communications. Neither the trial court nor the Circuit made any findings that Mr. Caraballo knew that the victim was a minor at the time of these exchanges. As Mr. Caraballo could not be said to have had the intent to create child pornography if he believed he was communicating with an adult, the failure to make a finding as to this disputed fact shows a failure to engage in the challenge raised by Mr. Caraballo both at the trial court and circuit court level.

Second, both the Circuit and the district court concluded that the language of the statute of conviction which Mr. Caraballo pled to “closely tracked the language in 2G2.1.” (Appendix A at 4). However, the statute of conviction and the plea do not not adequately track the language of the challenged sentencing characteristic to presume its applicability.

By not addressing whether Mr. Caraballo acted with intent to produce child pornography when he communicated with the victim via computer or other electronic means, the sentencing court and the Tenth Circuit treated the “for the purpose of” language in the enhancement as surplusage. In *Ratzlaf v. United States*, this Court admonished courts not to treat statutory terms such as “for the purpose of” as surplusage in *any* setting. 501 U.S. 125, 140-141 (1994). This Court further held that where the language of the statute is clear, it would not look to legislative history to cloud it. *Id.* at 147-148.

The language here is equally clear. By not giving effect to this language, neither the Tenth Circuit nor the sentencing court correctly construed the challenge raised by Mr. Caraballo or the sentencing guideline at issue.

B. The Tenth Circuit failed to apply the correct standard of review when it did not consider whether the district court erred in its application of case law to the issue raised and the facts of this case.

The sentencing court looked to two cases in support of its application of this Special Offense Conduct enhancement: *United States v. Reaves*, 253 F.3d 1201 (10th Cir. 2001); and *United States v. Gallegos*, 2023 WL 8802687 (10th Cir. 2023) (unpublished). Neither of these cases address the legal issue Mr. Caraballo presented. These cases are also factually distinct from the case at hand. Nonetheless, the Tenth Circuit determined that the district court’s reliance on these cases in its interpretation of the guidelines “doesn’t affect” the review of the lower court’s decision. This is a clear deviation from the standard of review.

The district court did not address Mr. Caraballo's argument and in doing so, ignored the plain language of the guideline and relied upon case law which is distinguishable and inapplicable to the issue raised. In ratifying the district court's decision without evaluating the legal analysis underpinning of that court's findings, the Tenth Circuit failed to engage in the appropriate standard of review.

Certiorari review should be granted to resolve the departure from the appropriate standard of review.

CONCLUSION

Certiorari review should be granted to resolve the departure from the appropriate standard of review.

Respectfully submitted,

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