NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ZACHARY CHARLES FOWLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

LYNN C. HARTFIELD
CJA Counsel for Petitioner Zachary Fowler
Law Office of Lynn C. Hartfield, LLC
387 Corona Street, Suite 617
Denver, Colorado 80218
(720) 588-0571
lynn@lhartfieldlaw.com
Counsel of Record

QUESTIONS PRESENTED

Title 18 U.S.C. § 3553(a) mandates that in imposing sentence, a district court "shall" impose a sentence that is "sufficient but not greater than necessary" to comply with identified sentencing purposes, and that in determining the particular sentence, the court must consider certain enumerated factors including, as relevant here "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *See* 18 U.S.C. § 3553(a)(6). In assessing whether such unwarranted disparities exist, however, courts have largely rejected comparisons grounded in the only evidence readily available to defendants, that is, statistics compiled by the United States Sentencing Commission and written opinions detailing the offense conduct and sentence received by other defendants convicted of similar conduct. Further, several courts have held that if a sentence falls within the advisory guideline range, it by definition avoids unwarranted sentencing disparities. As a result, § 3553(a)(6)'s directive to sentencing courts to avoid unwarranted disparities offers defendants an illusory guarantee of fairness and appellate oversight.

The questions presented here are:

Is a sentence that falls within the advisory guideline range categorically one that does not create unwarranted disparities among defendants with similar records who have been convicted of similar conduct? As a corollary, what evidence must a court consider in reviewing whether a sentence creates unwarranted

disparities among similarly situated defendants, and may a court categorically reject circuit-wide or nationwide statistics?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

None known.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

UNITED STATES SENTENCING GUIDELINES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Zachary Charles Fowler, respectfully petitions for a writ of certiorari to review the order and judgment of the United States Court of Appeals for the Tenth Circuit.

OPINION BELOW

The decision of the United States Court of Appeals for the Tenth Circuit, *United States v. Fowler*, 2025 WL 1166455 (10th Cir. April 22, 2025) (unpublished), is found at Appendix A. The judgment on conviction is found at Appendix B. An excerpt of the sentencing hearing containing the district court's ruling is found at Appendix C.

JURISDICTION

The Tenth Circuit entered judgment on April 22, 2025. (App. A at A-1). Pursuant to 28 U.S.C. § 2101(c), the deadline to file a petition for writ of certiorari is July 21, 2025.

The United States District Court for the Western District of Oklahoma had jurisdiction pursuant to 18 U.S.C. § 3231. The Tenth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 3553(a) 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.

18 U.S.C. § 3553(a)(1)-(7) (2018).

STATEMENT OF THE CASE

Petitioner Zachary Charles Fowler was charged in a three-count indictment with kidnapping, carjacking, and use of a firearm in connection with a crime of violence. The charges arose from a single episode in which Mr. Fowler was alleged to have broken into the home of his ex-girlfriend, K.C., sexually assaulted her, and forced her to drive him from her home in Oklahoma to Texas. The evidence introduced at trial established that Petitioner and K.C. had been in a romantic relationship for approximately six months, much of the time cohabiting in a trailer located on K.C.'s parents' property. After K.C. ended the relationship, Petitioner became distraught, begging her to take him back, threatening suicide, and experiencing somatic symptoms that resulted in K.C. having to take him to the emergency room on at least one occasion.

As a result of his frequent absences following the breakup, Petitioner, who worked the night shift at a manufacturing plant, was fired from his job. He then went directly to K.C.'s trailer, forced his way in, grabbed a gun that she kept on her nightstand, and forced her to have sex with him. He told her he wanted to see the beach before he died, and ordered her to get into her car and drive him to Corpus Christi, Texas. During the drive, Petitioner had the gun part to the time, but at some point unloaded the bullets from the clip and handed it to K.C. She was eventually able to escape, and was picked up by two passersby.

After police interviewed K.C., Petitioner was arrested in a nearby town and transported to Corpus Christi. Once there, he was interrogated by officers from both

Corpus Christi and Noble County, Oklahoma in three separate sessions, all of which were recorded. Petitioner also submitted to a video-recorded polygraph examination. During these interrogations, he repeatedly asked to speak with counsel, but officers continued to interrogate him in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) and *Edwards v. Arizona*, 451 U.S. 477 (1981). At the culmination of his final interview, he made incriminating statements, including that when he had sex with K.C., it was "probably not consensual," and that he had entered her trailer without her consent. Although the statements were not introduced at trial, the district court relied heavily on them during the sentencing hearing.

The United States Probation Office calculated Petitioner's sentencing range to be 360 months to life imprisonment for the kidnapping and carjacking charges, but opined that a sentence outside the advisory guideline range might be appropriate due to his youth and his lack of any criminal history. The district court, however, sentenced him to 540 months—a full 15 years and 50 percent over the low end of the guideline range—plus the mandatory seven-year consecutive sentence required by 18 U.S.C. § 924(c), for a total of 52 years custody.

Petitioner appealed his conviction and sentence to the United States Court of Appeals for the Tenth Circuit, arguing that the sentence was substantively unreasonable. Specifically, he argued that the district court placed unreasonably heavy reliance on the recorded statements that were obtained in violation of *Miranda* and his Fifth Amendment right to counsel; failed to take into account his

youth; and, relevant to this petition, that the sentence was unreasonably long and created unwarranted disparities with other defendants convicted of similar conduct. In support of the disparity argument, Petitioner cited data from the United States Sentencing Commission reporting that the mean and median sentences for kidnapping charges in the past three years ranged from 124 to 201 months, or just one quarter to one third the length of his sentence, even excluding the 7-year mandatory consecutive sentence for the § 924(c) charge. He also cited numerous reported cases that described factual situations that were similar to or more serious than the conduct of which he was convicted, in which the defendants received sentences that were 10 to 20 years lower than the sentence he received.

The Court of Appeals Opinion

In an unpublished opinion, the Tenth Circuit Court of Appeals affirmed the sentence, finding it was not substantively unreasonable. (App. A at A-1). Regarding Petitioner's first two arguments, the court found that the post-interrogation statements, even if obtained in violation of *Miranda*, were not subject to exclusion at sentencing, and that, affording the district court deference, it had not placed excessive reliance on the statements. (App. A at A-3). It also found that the sentencing court had considered Petitioner's age but found that other circumstances present in the case outweighed that factor. (App. A at A-3-4)

Regarding Petitioner's argument that his 624-month sentence created unwarranted disparities with similarly situated defendants, the court, citing its opinion in *United States v. Franklin*, 785 F.3d 1365, 1371 (10th Cir. 2015), held

that because the sentence was within the guideline range, it "necessarily" complied with § 3553(a)(6). (App. A at A-4). Further, it held that Petitioner's citation to the Sentencing Commission's nationwide statistics on sentences imposed for defendants convicted of kidnapping offered the court "little to gauge the similarities with Petitioner's offense." (App. A at A-5). These statistics reported that the average mean and median sentences for kidnapping were 28 to 34 years lower than Petitioner's sentence (not including the additional seven-year consecutive sentence for the § 924(c) charge), or approximately 63 to 75 percent lower than Petitioner's sentence. The court held, however, that without knowing the "offense levels, criminal histories and specifics of the offenses," these statistics could not establish an unwarranted disparity. (App. A at A-5).

The court also rejected Petitioner's citations to numerous reported decisions in kidnapping cases, which described in detail the facts underlying those defendants' offenses of conviction, all of whom, regardless of criminal history category and regardless of aggravating factors, received sentences that were substantially lower than Petitioner's. (App. A at A-5). In one of the cases, for example, the defendant, who was a career offender, actually shot the victim and caused partial blindness, *United States v. Nelson*, 801 Fed. Appx. 652, 655 (10th Cir. 2020) (unpublished). That defendant received a sentence of 480 months. *Id.* In another, the defendant, who had at least some criminal history, raped the victim in front of her young child, yet received a sentence of 288 months. *United States v. Amaya-Vasquez*, 760 F3d. Appx. 78, 79 (3rd Cir. 2019) (unpublished), Despite these

aggravating circumstances in the reported opinions, the court found that they were unhelpful to establish an unwarranted disparity because none of the defendants in those cases "denied or deflected responsibility as [Petitioner] did." (App. A at A-5). The court concluded Petitioner's sentence was substantively reasonable.

REASONS FOR GRANTING THE PETITION

As part of the Sentencing Reform Act of 1984, Congress created the United States Sentencing Commission, with the explicit goal of reducing sentencing disparities and promoting transparency and proportionality in federal sentencing. 28 U.S.C. § 991 (1984). The Sentencing Commission, purportedly after extensive study, promulgated the Sentencing Guidelines, which assigned an "offense level" to each class of federal crime, which could be adjusted up or down based on characteristics of the offense and/or the offender, and assigned a "criminal history category" to each offender based on the number and type of prior convictions sustained by the defendant. USSG, Chapter 1, Part A at 1.1 (October 1987). The Guidelines also contained a sentencing grid, assigning a graduated sentencing range for each offense level and corresponding criminal history category. *Id.* at 1.11-1.13. At their inception, the Guidelines contemplated that courts would sentence offenders within the calculated range except in extraordinary circumstances where a defendant met certain narrow criteria. *Id.* at 1.6-1.8.

The Guidelines proved to be too rigid, however, and beginning in 2005, this Court issued a series of decisions granting courts more discretion in determining the appropriate sentence for a given defendant. In the watershed case of *United*

States v. Booker, 543 U.S. 220 (2005), the Court held that the Guidelines could not be treated as mandatory, and were to be treated as advisory going forward. *Id.* at 245. In a pair of cases decided two years later, the Court clarified that appellate courts were to review sentences for reasonableness, applying an abuse of discretion standard of review and, applying that deference, held that *Booker*'s grant of discretion permitted a district court to vary from the advisory guideline range, even if the reason for the variance was a policy disagreement with the Guidelines as drafted. *Gall v. United States*, 552 U.S. 38 (2007); *Kimbrough v. United* States, 552 U.S. 85 (2007).

While *Gall* and *Kimbrough* granted courts more flexibility in determining an appropriate sentence, courts were still required to make an individualized assessment of all of the factors listed in 18 U.S.C. § 3553(a) and, importantly, the *Gall* court cautioned that a sentencing court "may not presume that the Guidelines range is reasonable." *Gall*, 552 U.S. at 50. It also stressed that an appellate court reviewing a within-Guidelines sentence "may, but is not required to, apply a presumption of reasonableness." *Id.*

The *Gall* court also specifically addressed § 3553(a)(6)'s directive to courts to avoid unwarranted sentencing disparities among similarly situated defendants. In *Gall*, the government challenged a district court's probationary sentence for a defendant convicted of participating in a drug distribution conspiracy, whose guideline range was 30-37 months. *Gall*, 552 U.S. at 44. By varying downward to such an extensive degree, the government argued, the district court violated

§ 3553(a)(6)'s directive to avoid unwarranted disparities among similarly situated defendants. *Id.* at 53-54. This Court rejected the argument, noting that the Sentencing Commission had "clearly considered" the avoidance of unwarranted disparities when setting the Guidelines range" and that "[s]ince the District Judge correctly calculated and carefully reviewed the Guidelines range, he necessarily gave significant weight and consideration to the need to avoid unwarranted disparities." *Id.* at 54.

Lower courts, including the Tenth Circuit below, have seized on this language to conclude that any time a district court correctly calculates a sentencing range, it has "necessarily" considered whether a within-Guideline sentence creates unwarranted disparities among defendants convicted of similar conduct. *United States v. Fowler*, 2025 WL 1166455, *4 (10th Cir. April 22, 2025) (unpublished); *see also United States v. Sanchez*, 989 F.3d 523, 541 (7th Cir. 2021); *United States v. Moses*, 109 F.4th 107, 119 (2d Cir. 2024); *United States v. Treadwell*, 593 F.3d 990 (9th Cir. 2010) (*overruled on other grounds*, *United States v. Miller*, 953 F.3d 1095 (9th Cir. 2020)). This Court should re-examine and clarify this language, for several reasons.

First, the *Gall* court was reviewing a downward variance, not a within-Guidelines sentence. Thus, the question posed by *Gall* was whether a downward variance, by virtue of being outside the Guideline range, created an unwarranted disparity with other defendants. That is a different question than whether, nearly 40 years after the Guidelines were drafted, courts have collectively decided that

some guidelines result in sentencing ranges that are too harsh or too lenient in the mine-run of cases. Indeed, *Kimbrough*, decided the same day as *Gall*, approved of district courts granting variances from guidelines applying to crack cocaine defendants, even though the sole reason for the departure was the court's disagreement with the lengthy sentences recommended by the Sentencing Commission. *Kimbrough*, 552 U.S. at 91. Courts have similarly granted variances in methamphetamine cases, in recognition of the lack of empirical data underlying the suggested ranges and the arbitrariness of treating "pure" methamphetamine differently than methamphetamine mixtures (*see, e.g. United States v. Harry*, 313 F.Supp.3d 969, 971-74 (N.D. Iowa 2018); *United States v. Ibarra-Sandoval*, 265 F.Supp.3d 1249, 1255-56 (D.N.M. 2017)) and in child pornography cases, in recognition of the fact that many of that guideline's enhancements are present in virtually every case (*ee, e.g., United States v. Dorvee*, 616 F.3d 174, 184-86 (2d Cir. 2010)). But if a sizable number of district courts determine that the Sentencing Commission's advisory guideline ranges are too high, then a within-guidelines sentence, absent aggravating factors, *would* create an unwarranted disparity between defendants convicted of similar conduct with similar records.

Just as important, courts have been inconsistent in how they treat various forms of evidence advanced by defendants to support a claim of unwarranted disparity. Some courts reject comparisons to codefendants, holding that § 3553(a)(6) refers only to consistently rejected challenges to *nationwide* disparities, and have rejected comparisons to sentences received by defendants in the same district or

circuit, applying the same reasoning. *See, e.g.*, *United States v. Wallace*, 597 F.3d 794, 803 (6th Cir. 2010); *United States v. Guillermo-Balleza*, 613 F.3d 432, 434-35 (5th Cir. 2010). Other courts allow, but do not require, such comparative assessments. *See, e.g., United States v. Wills*, 476 F.3d 103, 110 (2d Cir. 2007); *United States v. Nelson*, 918 F.2d 1268, 1272 (6th Cir. 1990).

Some courts, as the Tenth Circuit did below, reject out of hand comparisons to average sentences for defendants as reported in statistical manuals compiled by the United States Sentencing Commission, reasoning that they provide too little information about the specific conduct, offense levels and criminal histories underlying the offenses. *Fowler*, 2025 WL 1166455 at *5. *See also United States v. Zukerman*, 897 F.3d 423, 430 (2d Cir. 2018) (discrediting arguments based on "aggregated sentencing data" because they provide insufficient information about underlying conduct and criminal history); *United States v. Willingham*, 497 F.3d 541, 544 (5th Cir. 2007) (noting that averages of sentence provide no details underlying the sentences); *United States v. Hymes*, 19 F.4th 928, 938 (6th Cir. 2021) (characterizing the statistical reports as "unvetted by Congress" and cautioning that they should be viewed with "extreme care"). Other courts have found such statistics helpful, or even dispositive, in assessing unwarranted disparity, particularly in cases in which the difference between the defendant's sentence and the mean sentence is great, as it was in this case. *See, e.g., United States v. Jenkins*, 854 F.3d 181, 193-94 (2d Cir. 2017); *United States v. Freeman*,

992 F.3d 268, 279 (4th Cir. 2021), *aff'd on other grounds on rehearing en banc*, 24 F.4th 320 (4th Cir. 2022).

The Sentencing Commission recently unveiled a resource for judges that refines the statistical information available for specific guideline offense levels and criminal histories, the Judiciary Sentencing Information ("JSIN") platform (available at https://www.ussc.gov/guidelines/judiciary-sentencing-information). However, very few reported cases have used the JSIN to assess whether a sentence creates unwarranted disparities with other similarly situated offenders. One judge on the Tenth Circuit has endorsed its use (*see United States v. Cortez*, 139 F.4th 1146, 1147 (10th Cir. 2025) (McHugh, J. concurring)); *United States v. Lucero*, 130 F.4th 877, 889 (10th Cir. 2025) (McHugh, J. concurring)), but her colleagues, and other courts, have treated JSIN data the same way as previous statistical information has been treated, that is, as insufficient evidence of disparity (*see, e.g. Cortez*, 139 F.4th at 1156; *Lucero*, 130 F.4th at 887; *United States v. Brown*, 2025 WL 1696167, *7 (6th Cir. June 17, 2025) (unpublished)). And, due to its specificity, for some offenses (including Petitioner's) the tool returns a conclusion that there are an insufficient number of cases available to determine average sentences.

In short, in a case like Petitioner's, a defendant has no means of establishing that his sentence creates an unwarranted disparity with other similarly situated offenders convicted of the same or similar conduct. This is particularly troubling when the guideline range, as here, spans 40 or 50 years or more. The Tenth Circuit has essentially held that no sentence would be unreasonable due to disparity with

other offenders convicted of similar conduct, so long as the sentence falls within the advisory guideline range, even if that range includes life imprisonment or functional life imprisonment. Because the current state of the law provides defendants with virtually no ability to challenge within-guideline sentences as substantively unreasonable due to disparity among defendants convicted of similar conduct, this Court should grant review.

CONCLUSION

For the foregoing reasons, Petitioner Zachary Charles Fowler respectfully requests that his petition for a writ of certiorari be granted.

DATED this 21st day of July, 2025.

Respectfully submitted,

LAW OFFICE OF LYNN C. HARTFIELD, LLC

LYNN C. HARTFIELD
Counsel for Petitioner Zachary Charles Fowler
Law Office of Lynn C. Hartfield, LLC
387 Corona St., Suite 617
Denver, Colorado 80218
(720) 588-0571
lynn@lhartfieldlaw.com
Counsel of Record