No. 25-

In the Supreme Court of the United States

JESUS GARCIA, JR., *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 the detailed Judiciary Sentencing Information (JSIN) statistics compiled by the United States Sentencing Commission are relevant to considering whether a defendant's sentence creates an unwarranted sentencing disparity compared to similarly situated defendants under 18 U.S.C. § 3553(a)(6).

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Jesus Garcia, Jr., No. 2:21-cr-410 (Mar. 18, 2024)

United States Court of Appeals for the Fifth Circuit:

United States v. Jesus Garcia, Jr., No. 24-50257 (Apr. 25, 2025)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Sentencing Guidelines

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Petitioner Jesus Garcia, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Congress's basic aim when enacting the Sentencing Reform Act of 1984 was "ensuring similar sentences for those who have committed similar crimes in similar ways." *United States v. Booker*, 543 U.S. 220, 252 (2005). So Congress instructed sentencing courts to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). And when courts of appeals review whether a

sentence is reasonable, a crucial purpose is "helping to avoid excessive sentencing disparities." *Booker*, 543 U.S. at 264.

To help courts with this admittedly difficult task, the United States Sentencing Commission has compiled comprehensive, nationwide sentencing data in an online resource known as *Judiciary Sentencing Information* (JSIN). JSIN provides courts with detailed information—like the average sentence—for similarly situated defendants: defendants who were sentenced under the same guideline with the same total offense level and the same criminal history category. It is hard to imagine more precise or pertinent information for considering whether a defendant's sentence diverges from similarly situated defendants nationwide.

The Fifth Circuit, however, refused to consider JSIN statistics showing that Jesus Garcia, Jr.'s sentence was more than double the sentence received by similarly situated defendants. The court deemed Garcia's reliance on JSIN "misguided" and the JSIN statistics themselves "basically meaningless." App. 5a (cleaned up). The court's flat rejection of these statistics frustrates Congress's goal of achieving increased uniformity in sentencing. And the court's decision is indefensible on the merits. The court relied entirely on circuit precedent rejecting reliance on much less precise pre-JSIN sentencing statistics. But the court ignored that JSIN's

granular information remedies the court's criticisms of those earlier statistics. And if the detailed JSIN statistics are not enough to show an unwarranted sentencing disparity, the Fifth Circuit has made it impossible for defendants to *ever* make such a showing.

The courts of appeals are split over this issue. Like the Fifth Circuit, the Tenth Circuit has held that JSIN statistics are immaterial to analyzing unwarranted sentencing disparities based solely on circuit precedent rejecting broader pre-JSIN sentencing statistics. By contrast, the Sixth and Ninth Circuits have reached the commonsense conclusion that JSIN is relevant—although not dispositive—when evaluating whether a sentence creates an unwarranted sentencing disparity. The government should also be concerned about the Fifth and Tenth Circuit's flat rejection of the JSIN data because the government acknowledges that JSIN is relevant to § 3553(a)(6) and routinely cites JSIN to show that a defendant's sentence does not create a sentencing disparity.

This Court should grant certiorari to resolve the circuit split on this critically important sentencing issue.

OPINION BELOW

The Fifth Circuit's opinion is not reported but is available at 2025 WL 1202209 and is reproduced at App. 1a–6a.

JURISDICTION

The Fifth Circuit entered its judgment on April 25, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(a)(6) of Title 18 of the United States Code provides: "The court, in determining the particular sentence to be imposed, shall consider … the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

STATEMENT

A. Legal background.

1. Congress enacted the Sentencing Reform Act of 1984 to address "[f]undamental and widespread dissatisfaction" with the then-prevailing regime of discretionary sentencing. *Mistretta v. United States*, 488 U.S. 361, 366 (1989). That earlier regime resulted in "great variation among sentences imposed by different judges upon similarly situated offenders." *Id.* So a basic goal of the Sentencing Reform Act was to ensure "*uniformity* in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct." *Rita v. United States*, 551 U.S. 338, 349 (2007) (cleaned up); *see Booker*, 543 U.S. at 253

("Congress' basic goal in passing the Sentencing Act was to move the sentencing system in the direction of increased uniformity.").

Congress advanced this goal in several ways. *First*, Congress directed the Sentencing Commission to develop the Sentencing Guidelines, paying particular attention to the goal of "reducing unwarranted sentencing disparities." 28 U.S.C. § 994(f); *see also id.* § 991(b)(1)(B). *Second*, Congress required sentencing courts to impose a sentence within the applicable Guidelines range absent circumstances justifying a departure. 18 U.S.C. § 3553(b)(1). *Third*, Congress instructed sentencing courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* § 3553(a)(6).

Of course, this Court struck down the statutory provision requiring sentencing courts to impose a sentence within the Guidelines range, as well as a provision requiring de novo review of departures. *Booker*, 543 U.S. at 259. But the Court emphasized that the remaining system—advisory Guidelines with sentencing decisions subject to appellate review for reasonableness—would "continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where

necessary." *Id.* at 264–65. After all, appellate courts are guided by the § 3553(a) factors—including the need to avoid unwarranted sentencing disparities—when determining whether a sentence is unreasonable. *Id.* at 261. So the Court explained that appellate review would "tend to iron out sentencing differences." *Id.* at 263.

2. The Sentencing Commission developed JSIN to provide judges "access to sentencing data for similarly situated individuals, including the types of sentences imposed and average and median sentences." U.S. Sent'g Comm'n, *2023 Annual Report* 2; *see* U.S. Sent'g Comm'n, *Judiciary Sentencing Information (JSIN)*, http://jsin.ussc.gov/. The Commission "collects detailed sentencing data on virtually every federal criminal case" and "maintain[s] a comprehensive database on all federal sentences." *James v. United States*, 550 U.S. 192, 206 (2007) (cleaned up) (first quote); *United States v. Zuniga-Peralta*, 442 F.3d 345, 348 (5th Cir. 2006) (second quote). In 2021, the Commission harnessed this extensive database and launched JSIN "with the needs of judges in mind." U.S. Sent'g Comm'n, *Sentencing Resources Guide* 12.

In particular, JSIN allows a user to filter by the primary offense guideline—the guideline producing the highest final offense level—that a defendant is sentenced under. *See* U.S. Sent'g Comm'n, *JSIN*, *supra*. After clicking on the cell in the sentencing table

corresponding to a particular total offense level and criminal history category, JSIN will show information for other defendants who have been sentenced under the same guideline over the past five years with the same total offense level and the same criminal history score. *See id.* JSIN will show what percentage of those defendants received a sentence of imprisonment; how many of those defendants received a sentence within, above, and below the Guidelines range; and the average and median length of imprisonment. *See id.* For controlled substance offenses, the data is even more granular. JSIN allows users to select the particular substance that produced the highest base offense level. *See id.*

B. Proceedings below.

1. This appeal arises from a routine drug-importation case. In early 2021, Garcia entered the United States from Mexico through a port of entry in Eagle Pass, Texas. C.A. ROA 57. After noticing several air fresheners hanging from the rearview mirror of Garcia's truck, an officer directed Garcia to the secondary inspection area. *Id.* While searching his truck, officers found 15 plastic-wrapped bricks in the truck's dashboard. *Id.* A laboratory analysis confirmed that the substance was cocaine with a net weight of 15.007 kilograms. *Id.* at 58.

2. An indictment charged Garcia with importing 5 kilograms or more of a mixture containing cocaine in violation of 21 U.S.C. §§ 952(a) and 960(a)(1), (b)(1). C.A. ROA 14. Garcia pleaded guilty. *Id.* at 127–28.

At sentencing, the district court adopted a Sentencing Guidelines range of 57 to 71 months. C.A. ROA 146. That range was calculated using the base offense level for offenses involving at least 15 kilograms but less than 50 kilograms of cocaine. *Id.* at 170; *see* U.S.S.G. § 2D1.1(a)(5), (c)(4). During a bench conference, the district court noted that, "given the quantity" of cocaine, it did not "like the guidelines range." C.A. ROA 163. The government then asked for an above-Guidelines sentence based on "the quantity of the cocaine." *Id.* at 146. Finding that "the advisory guidelines are not adequate," the court upwardly varied and sentenced Garcia to 108 months in prison. *Id.* at 65–66, 149.

3. Garcia appealed, arguing that the district court's upward variance in an otherwise unremarkable drug-importation case was unreasonable. *First*, Garcia argued that the district court improperly relied on drug quantity to justify its upward variance. As he explained, the Guidelines accounted for the drug quantity—an objective, empirical measurement—and he was on the very low end of the weight range (15 to 50 kilograms) used to calculate his

offense level. *Second*, Garcia argued that the district court created a vast and unjustified sentencing disparity. He cited JSIN statistics showing that defendants sentenced under the same guideline (§ 2D1.1) whose offense involved the same drug (cocaine) with the same offense level (25) and the same criminal history category (I) received an average sentence of just 47 months. *See* U.S. Sent'g Comm'n, *JSIN*, *supra*. Garcia, by contrast, received a sentence more than twice as long—108 months.

The Fifth Circuit affirmed. App. 1a–6a. The court held that "though Garcia avers that he received a higher sentence than other similarly situated defendants, his reliance on sentencing statistics is misguided." *Id.* at 5a. According to the court, "[s]uch averages 'only reflect a broad grouping of sentences imposed on a broad grouping of criminal defendants and are basically meaningless in considering whether a disparity with respect to a particular defendant is warranted or unwarranted.'" *Id.* (quoting *United States v. Willingham*, 497 F.3d 541, 544–45 (5th Cir. 2007)). The court also held that the district court acted within its discretion by varying based on drug quantity. *Id.* at 5a–6a.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are divided.

The courts of appeals are divided over whether the JSIN statistics are relevant to analyzing unwarranted sentencing disparities under § 3553(a)(6). The Fifth and Tenth Circuits each hold that the JSIN statistics offer no insight into whether a sentencing disparity is unwarranted. By contrast, the Sixth and Ninth Circuits have held that JSIN *is* relevant to this inquiry. This entrenched circuit split warrants the Court's review.

1. Below, the Fifth Circuit deemed Garcia's reliance on JSIN "misguided." App. 5a. The Court relied on an earlier decision holding that average sentences "only reflect a broad grouping of sentences imposed on a broad grouping of criminal defendants" and "are basically meaningless in considering whether a disparity with respect to a particular defendant is warranted or unwarranted." *Id.* (quoting *Willingham*, 497 F.3d at 544–45). In other cases—including a published, precedential decision—the Fifth Circuit has likewise dismissed JSIN data as "irrelevant" or "unavailing" based on its earlier precedent. *See United States v. Boukamp*, 105 F.4th 717, 738 (5th Cir. 2024) (first quote); *United States v. Thibodeaux*, 2025 WL 1177266, at *1 (5th Cir. Apr. 23, 2025) (second quote).

2. The Tenth Circuit has also held that JSIN is not relevant to analyzing sentencing disparities. *United States v. Cortez*, 139 F.4th

1146, 1156 (10th Cir. 2025). In the court's view, "bare national statistics do not shed light on the extent to which the sentences that the statistics pertain to involve defendants that are similarly situated to [the current defendant]." *Id.* (quoting *United States v. Garcia*, 946 F.3d 1191, 1215 (10th Cir. 2020)).

A concurring opinion, however, disagreed. The concurrence explained that the circuit precedent the majority relied on in rejecting national sentencing statistics involved "broad statistics" for all "firearms defendants." *Id.* at 1157–58 (McHugh, J., concurring). By contrast, "the JSIN statistics encompass defendants with the same criminal history score—meaning defendants with *similar*, but not identical, records—who were found guilty of the same conduct." *Id.* at 1158. In the concurrence's view, JSIN statistics "may provide an important data point when selecting a sentence." *Id.*; *see United States v. Lucero*, 130 F.4th 877, 890 (10th Cir. 2025) (McHugh, J., concurring) ("while the JSIN data do not dictate a particular decision, … they are relevant to [§ 3553(a)(6)]").

3. Unlike the Fifth and Tenth Circuits, the Ninth Circuit has held that the JSIN statistics are "highly relevant" to the task of avoiding unwarranted sentencing disparities. *United States v. Brewster*, 116 F.4th 1051, 1060 (9th Cir. 2024). As the court explained, the JSIN statistics come from "a reliable source" and are

"designed specifically for judges to use during sentencing to fulfill their obligations under § 3553(a)(6)." *Id.* at 1062.

4. The Sixth Circuit has also held that JSIN statistics are relevant to analyzing unwarranted sentencing disparities. *United States v. Martin*, 2025 WL 1835928, at *3 (6th Cir. July 3, 2025). In *Martin*, the "the district court recognized that JSIN offered 'the best tool ... we have to discern' unwarranted sentencing disparities" and sentenced the defendant "in line with the average sentence under the JSIN statistics." *Id.* The Sixth Circuit held that the district court was well within its discretion to consider JSIN. *Id.* As the court explained, JSIN statistics "provide a snapshot of how judges nationally have sentenced individuals with comparably serious offenses and criminal histories." *Id.*

II. This is a critically important question.

The Court should grant the petition because the question is critically important. Congress has instructed sentencing courts to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). And when a court of appeals reviews whether a sentence is unreasonable, a crucial purpose is "helping to avoid excessive sentencing disparities." *Booker*, 543 U.S. at 264. But the Fifth and Tenth Circuits have cut off the "'the best tool ... we have

to discern' unwarranted sentencing disparities." *Martin*, 2025 WL 1835928, at *3 (quoting district court). Indeed, if the Sentencing Commission's comprehensive JSIN statistics are "meaningless," App. 5a, "it is unclear … what further information a defendant could provide that would be relevant to this factor," *Cortez*, 139 F.4th at 1158 (McHugh, J., concurring); *see infra* 16–17.

Even the government agrees that "JSIN data … ties into a Section 3553(a) factor, specifically, the need to avoid unwarranted sentencing disparities." Gov't Br. 30, *United States v. McDaniel*, No. 22-1448 (8th Cir. Sept. 2, 2022). And the government routinely cites JSIN as evidence that a defendant's sentence does *not* create a sentencing disparity. *See*, *e.g.*, Gov't Br. 10 n.4, *United States v. Hines*, No. 24-60172 (5th Cir. July 24, 2024) (citing JSIN to argue that the median sentence was not "disproportionately lower" than the defendant's sentence); Gov't Br. 26, *United States v. Butler*, No. 21-5589 (6th Cir. Dec. 8, 2021) (citing JSIN to argue that "Butler's sentence is typical rather than disparate").

In short, this question is critically important because the Fifth and Tenth Circuits prevent both defendants and the government from citing the most relevant information for evaluating whether a defendant's sentence diverges from similarly situated defendants

and, by doing so, gut a central aim of the Sentencing Reform Act—nationwide uniformity in sentencing.

III. The decision below is wrong.

The Fifth Circuit's refusal to consider the JSIN statistics is wrong on the merits. The court relied entirely on its earlier *Willingham* decision. App. 5a (quoting 497 F.3d at 544–45). But *Willingham* rejected reliance on more rudimentary pre-JSIN sentencing statistics, and the court's criticisms of those statistics do not apply to the detailed, more granular JSIN data.

In *Willingham*, the district court relied on statistics showing the average sentence imposed under the same guideline with no further details. 497 F.3d at 543. The Fifth Circuit held that the district court clearly erred. *Id.* at 544. The court explained that "[n]ational averages of sentences that provide no details underlying the sentences are unreliable to determine unwarranted disparity because they do not reflect the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases." *Id.* For example, the court was concerned that the average sentence did not reflect "serious aggravating factors" that added 13 levels to the defendant's base offense level. *Id.* The statistics also said "nothing about the similarity (or lack thereof) of [the defendant's] record" compared to

other defendants. *Id.* at 545. In other words, the average sentence "only reflect[s] a broad grouping of sentences" and is "basically meaningless in considering whether a disparity with respect to a particular defendant is warranted or unwarranted." *Id.* at 544–45.

The JSIN statistics, by contrast, are far more detailed. *First*, unlike the average sentence at issue in *Willingham*, JSIN "reflect[s] the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases." *See* 497 F.3d at 544. After all, JSIN shows the average sentence for offenders sentenced under the same guideline *with the same total offense level*, reflecting aggravating or mitigating factors based on specific offense characteristics in Chapter 2 of the Guidelines and any adjustments in Chapter 3. *Second*, JSIN differs from the statistics at issue in *Willingham* because it accounts for "the similarity (or lack thereof) of [a defendant's] record." *See* 497 F.3d at 545. Indeed, JSIN provides the average sentence for defendants *with the same criminal history category*. Unlike the bare-bones statistics in *Willingham*, the granular JSIN statistics provide a valid basis to evaluate the factors that § 3553(a)(6) is concerned with: whether the defendant and other offenders committed "similar conduct" and

have "similar records." So the Fifth Circuit's rejection of JSIN data based on inapposite precedent was wrong.[1]

Even more concerning, the Fifth Circuit's flat refusal to consider JSIN makes it effectively impossible for a defendant to *ever* establish an unwarranted sentencing disparity. A defendant would presumably start by searching for other defendants nationwide convicted of the same crime. Even putting aside the time-consuming nature of that task, a defendant would soon run into roadblocks. A defendant could not determine the "enhancements or adjustments for the aggravating or mitigating factors" that applied in each case or the criminal records of these other defendants. *See Willingham*, 497 F.3d at 544–45. To be sure, a presentence report usually has a detailed account of the offense conduct and a Guidelines calculation. But those reports are "ordinarily kept confidential to protect the sentencing process, the defendant's privacy interest, and those people who have cooperated with criminal investigations." *United States v. Huckaby*, 43 F.3d 135, 136 (5th Cir. 1995). Although the Sentencing Commission has access to that information—and has compiled it in JSIN—individual defendants do not. Thus, the Fifth

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[1] The Tenth Circuit's rejection of JSIN data also incorrectly relied on circuit precedent analyzing less detailed pre-JSIN statistics. *See Cortez*, 139 F.4th at 1157–58 (McHugh, J., concurring) (distinguishing earlier "broad statistics" from JSIN and concluding that "not all sentencing statistics are alike").

Circuit's rejection of JSIN statistics directly tracking the factors in § 3553(a)(6) effectively reads that provision out of the statute—not only on appellate review but also in district courts at sentencing.

IV. This case is an ideal vehicle.

This case presents an ideal vehicle for addressing whether JSIN statistics are relevant to analyzing unwarranted sentencing disparities. There are no jurisdictional problems, factual disputes, or preservation issues. Garcia cited JSIN statistics to argue that his sentence was unreasonable, and the Fifth Circuit directly addressed—and rejected—his argument. App. 5a. And this was a run-of-the-mill drug-importation prosecution. Some cases may implicate other statutory sentencing factors justifying a sentencing disparity. *See Lucero*, 130 F.4th at 891 (McHugh, J., concurring) (explaining that defendant's "egregious conduct underlying the offense of conviction and his long history of similar conduct" warranted a sentence more than double the average sentence). Not so here. Garcia is as close to the mine-run defendant as possible. So if national uniformity is the goal, he deserved a sentence close to the nationwide average. The sentence the district court imposed—more than double the average sentence received by similarly situated defendants—creates a clearly unwarranted sentencing disparity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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