No. 17-658

IN THE

Supreme Court of the United States

ROD BLAGOJEVICH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On A Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

BRIEF OF THE ILLINOIS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The Illinois Association of Criminal Defense Lawyers ("IACDL") is a non-profit organization dedicated to defending the rights of all persons as guaranteed by the U.S. Constitution. Its membership consists of private criminal defense lawyers, public defenders, investigators, and law professors throughout the State of Illinois. The IACDL's mission is to preserve the adversary system of justice; to maintain and foster independent and able criminal defense lawyers; and to ensure due process for persons accused of crime.

Members of the IACDL consistently advocate for the fair and efficient administration of criminal justice. IACDL has, from time to time, participated as *amicus curiae* on important issues concerning criminal justice. *See, e.g., Peugh v. United States,* 569 U.S. 530 (2013). The IACDL has a keen interest in ensuring that the federal Constitution places proper clarity in jury instructions on bribery cases and in sentencing procedures in the federal courts.[1]

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[1] Petitioner has filed with this Court a blanket letter of consent to the filing of amicus briefs. Respondent has granted its consent to the filing of this *amicus* brief. No party, party's counsel, or person—other than the *amici curiae* and their counsel—authored any part of this brief or contributed any money to fund preparation or submission of the brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus cruiae's* intention to file this brief.

SUMMARY OF ARGUMENT

A correct determination of what words and actions are legal and what are not legal is absolutely critical in the area of campaign finance. It can mean the difference between a legitimate request for campaign cash and a Hobbs Act prosecution under 18 U.S.C. §1951.

Petitioner's case is worthy of attention by this Court because the various Appellate Courts are in disarray regarding whether, in a campaign finance prosecution, the Government needs to prove that there was an explicit quid pro quo in trade for the donation as originally outlined in *McCormick v. United States*, 500 U.S. 257 (1991), or whether there need only be something implicitly understood such as a "wink and a nudge" which several Circuits, including the Seventh Circuit in this case, have developed from this Court's original decision in *Evans v. United States*, 504 U.S. 255 (1992).

Amici contends that *McCormick* should control in campaign financing prosecutions because the use of the "wink and a nudge" is standardless and opens politicians and donors up to selective prosecutions. This Court needs to eliminate the confusion and establish a single straightforward standard for use in these kinds of cases. *Amici* believes *McCormick* has that straightforward standard.

Amici also respectfully contends that Certiorari should be granted to address the conflict among the Circuits regarding the reviewability of sentencing disparity claims of "within Guidelines" sentences. Silence may normally be a virtue, but it shouldn't be one for a District Court judge in issuing a disparate sentence. The Seventh Circuit has promulgated a rule discussed *infra* that when a sentence issued is "within Guidelines," no discussion of sentencing disparities that the defense presents need even be discussed. Amici contends that this "silent acceptance" of a disparate sentence without even so much as a discussion by the District Court judge regarding why such a sentence is acceptable undermines this Court's holding in *United States v. Booker*, 543 U.S. 220 (2005), leads to a loss of transparency in sentencing hearings, and complicates the ability for any meaningful appellate review of such a sentence.

This Court should grant Certiorari and hold that, when a District Court is presented with clear evidence of a sentencing disparity as applied to the Defendant about to be sentenced, that the District Court must give an explanation regarding why the District Court believes the sentence is proper despite the presented disparity.

ARGUMENT

I. This Court Needs To Clarify When A Public Official's Receipt Or Solicitation of a Campaign Contribution Becomes A Criminal Act.

The Seventh Circuit's interpretation of this Court's decision in *McCormick v. United States*, 500 U.S. 257 (1991), as expressed in the Petitioner's decision below, is that nothing said between the candidate and the donor need be explicit; that a politician (or donor) may be convicted of a Hobbs Act violation by the absolutely non-explicit and amorphous standard of a "wink and a nudge." *See United States v. Blagojevich,* 794 F.3d 729, 738 (7th Cir. 2015).

Amici contends that this "wink and a nudge" standard, when used in a case involving campaign financing (as opposed to a "regular bribery case") is truly without standards and opens politicians and their donors up to a potential of unprecedented investigations, indictments, and prosecutions. This is due to the fact that the "wink and a nudge" standard will inevitably be subject to the political tribal instincts of the investigator, prosecutor, and juror which can read into innocent words and conduct something criminal where it is not.

The Seventh Circuit has apparently decided that the "wink and a nudge" standard is appropriate to use in reviewing a campaign financing prosecution based on the standard that this Court uses in "regular bribery" cases as first promulgated in *Evans v. United States*, 504 U.S. 255 (1992); *see also*, *McDonnell v. United States*, 579 U.S. __, 136 S. Ct. 2355 (2016).

The fundamental problem with the Seventh Circuit's adoption of the *Evans* bribery standard in campaign financing cases is because, unlike political officeholders who are not supposed to be receiving money for work performed while in office other than the official salary of the officeholder, the political

candidate seeking office is *supposed to ask for money*. The political candidate is also expected to take the money. An officeholder's receipt of additional funds that are not part of his or her salary makes it much easier and more straightforward to examine the words and deeds of the officeholder to locate circumstantial evidence (or a "wink and a nudge") that proves, reading in between the lines, that the money received by the officeholder is illegally received to perform official acts.

Using this same standard for candidates does not have the same straightforward standard to follow in an investigation or prosecution of a candidate or the candidate's donor. Political donors, by definition, are supposed to give candidates money. They also have a fundamental First Amendment right to ask of a candidate what political positions the candidate will take. *See Citizens United v. FEC*, 558 U.S. 310, 319 (2010).

This Honorable Court should grant Certiorari to not only resolve the split amongst the various Circuit Courts of Appeal, but also uphold *McCormick's* explicit *quid pro quo* to allay concerns of looming selective investigations and prosecutions of opposition politicians (or their donors) based on a "wink and a nudge."

A. Campaign Financing Is A "Fact Of American Political Life" Which Requires A Bright Line Rule.

Campaign financing has reached unprecedented levels in our Country's history. The 2016 election cycle saw an unprecedented nearly 6.5 billion dollars raised for both Presidential and Congressional candidates combined. *See* Niv Sultan, *Election 2016: Trump's Free Media Helped Keep Cost Down, But Fewer Donors Provided More of the Cash* (4/13/2017), https://www.opensecrets.org/news/2017/04/election-2016-trump-fewer-donors-provided-more-of-the-cash/.

Campaign financing has long been a "fact of American political life." *United States v. Brewster*, 408 U.S. 501, 557 (1972) (White, J., Douglas, J., and Brennan, J., dissenting). Perhaps in recognizing this, Justice White wrote the following for the majority in *McCormick*:

> Whatever ethical considerations and appearances may indicate, to hold that legislators commit the federal crime of extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries, is an unrealistic assessment of what Congress could have meant by making it a crime to obtain property from another, with his consent, "under color of official right."
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> ***
>
> This is not to say that it is impossible for an elected official to commit extortion in the course of financing an election campaign. Political contributions are of course vulnerable if induced by the use of force, violence, or fear. The receipt of such contributions is also vulnerable under the Act as having been taken under color of official

> right, but only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act. In such situations the official asserts that his official conduct will be controlled by the terms of the promise or undertaking. This is the receipt of money by an elected official under color of official right within the meaning of the Hobbs Act.

Id., 500 U.S. at 273.

Amici contends that *McCormick* set forth a standard for determining when a campaign contribution transforms into bribery or extortion – when an ***explicit*** *quid pro quo* is present. *Id.* Five circuits – the Second, Third, Fourth, Ninth, and D.C. Circuit – have followed this reasoning. *See United States v. Ganim*, 510 F.3d 134, 143 (2d Cir. 2007), *United States v. Salahuddin*, 765 F.3d 329 (3d Cir. 2014), *United States v. Taylor*, 993 F.2d 382 (4th Cir. 1993), *United States v. Kincaid-Chauncey*, 556 F.3d 923 (9th Cir. 2009), *United States v. Ring*, 706 F.3d 460 (D.C. Cir. 2013).

A minority of circuits, however – the Sixth, Seventh, and Eleventh – do not require an explicit *quid pro quo* to sustain a conviction in campaign contribution cases. *See United States v. Blandford*, 33 F.3d 685 (6th Cir. 1994); *United States v. Giles*, 246 F.3d 966 (7th Cir. 2001); *United States v. Siegelman*, 640 F.3d 1159 (11th Cir. 2011) (per curiam). Those circuits apply the standard that the Court set forth in *Evans v. United States*, 504 U.S. 255 (1992).

The defendant in *Evans* simultaneously received $7,000 in cash and a $1,000 check in the form of a campaign contribution from an undercover agent, thus

making the case a mixture of both cash bribes and campaign contributions. *Id. at 258.* A plurality of the Court endorsed the holding of the Court of Appeals:

> [P]assive acceptance of a benefit by a public official *is* sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power. The official need not take any specific action to induce the offering of the benefit.

Id. at 258 (internal quotations and citations omitted) (emphasis in original). Thus, under *Evans,* an ***implicit*** *quid pro quo* is sufficient to sustain a Hobbs Act conviction.

This Court should grant Certiorari to resolve the conflict among the circuits regarding the proper standard for determining when a campaign contribution violates the Hobbs Act and other federal anticorruption laws. Furthermore, this Court should hold that the *McCormick* – the ***explicit*** *quid pro quo* – standard is the correct standard in campaign finance cases.

B. An Explicit Standard Is Necessary To Guard Against Selective Campaign Finance Prosecutions.

In 1972, Justice White, writing in dissent in *Brewster*, cautioned:

> "[T]he opportunities for an Executive, in whose sole discretion the decision to prosecute rests under the statute before us, to claim that legislative conduct has been sold are obvious

> and undeniable. These opportunities, inherent in the political process as it now exists, create an enormous potential for executive control of legislative behavior by threats or suggestions of criminal prosecution—precisely the evil that the Speech or Debate Clause was designed to prevent.
>
> ***
>
> To arm the Executive with the power to prosecute for taking political contributions in return for an agreement to introduce or support particular legislation or policies is to vest enormous leverage in the Executive and the courts."

Id., 408 U.S. at 558–59 (White, J., dissenting).

In light of recent events, Justice White's warning – that a lax standard in campaign finance cases could lead an Executive to threaten prosecution of his political opponent – may prove to be prophetic. On November 2, 2017, the President tweeted the following:

> "Donna Brazile just stated the DNC RIGGED the system to illegally steal the Primary from Bernie Sanders. Bought and paid for by Crooked H...." Donald J. Trump (@realDonaldTrump), Twitter (Nov. 2, 2017, 7:39 PM), https://twitter.com/
>
> /realDonaldTrump/status/926247543801044993.
>
> "....This is real collusion and dishonesty. **Major violation of Campaign Finance Laws and**

> **Money Laundering – where is our Justice Department?"** [Donald J. Trump (@realDonaldTrump), Twitter (Nov. 2, 2017, 7:48 PM), https://twitter.com/realDonaldTrump/status/926249604936556545. (Emphasis added)

On November 3, 2017, the President tweeted the following:

> "Everybody is asking **why the Justice Department (and FBI) isn't looking into** all of the dishonesty going on with Crooked Hillary & the Dems.." Donald J. Trump (@realDonaldTrump), Twitter (Nov. 3, 2017, 5:57 AM), https://twitter.com/*realDonaldTrump/status/926403023861141504*. (Emphasis added).

> "...New Donna B book says she paid for and stole the Dem Primary. What about the deleted E-mails, Uranium, Podesta, the Server, plus, plus..." Donald J. Trump (@realDonaldTrump), Twitter (Nov. 3, 2017, 6:03 AM), htpps://twitter.com/realDonaldTrump/status/926404584456773632.

> "....People are angry. **At some point the Justice Department, and the FBI, must do what is right and proper**. The American public deserves it!" Donald J. Trump (@realDonaldTrump), Twitter (Nov. 3, 2017, 6:11 AM),

https://twitter.com
/realDonaldTrump/status/926406490763784194.
(Emphasis added).

These tweets are considered to be official statements of the Executive Branch of the United States. *See*, Ali Vitale, Trump's Tweets "Official Statements," Spicer Says, NBC News (6/6/2017), https://www.nbcnews.com/politics/white-house/trump-s-tweets-official-statements-spicer-says-n768931. *See also, Doe v. Trump*, 2017 U.S. Dist. LEXIS 178892 at 51-52 ("…to the extent there is ambiguity about the meaning of the Presidential Memorandum, the best guidance is the President's own statements regarding his intentions with respect to service by transgender individuals.").

In light of the foregoing, a bright line rule requiring an explicit quid pro quo in a Hobbs Act prosecution is required to guard against selective or targeted prosecutions on the part of the Executive Branch of the United States against its political opposition. *Cf*. *Brewster*, 408 U.S. at 558–59.

C. The Circuit Conflict Warrants Certiorari.

In the area of campaign finance law, this Court has repeatedly recognized the importance of congruity between lower court decisions and the decisions of this Court. *See e.g., Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 385 (2000) ("Given the large number of States that limit political contributions, [citation

omitted] we granted certiorari to review the congruence of the Eighth Circuit's decision with *Buckley*. 525 U.S. 1121 (1999); S*ee also e.g., Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516 (2012) ("The question presented in this case is whether the holding of *Citizens United* applies to the Montana state law.").

Similarly, this Court has granted Certiorari where, as here, lower courts have expressed uncertainty as to the correct application of a decision from this Court. *See e.g.***,** *Michigan v. Clifford*, 464 U.S. 287, 289 (1984) ("We granted certiorari to clarify doubt that appears to exist as to the application of our decision in *Tyler*.").

Various courts of appeals have expressed uncertainty as to the correct application of *Evans* and *McCormick*. *See e.g., Blandford*, 33 F.3d at 69 ("[e]xactly what effect *Evans* had on *McCormick* is not altogether clear."); *see also Giles*, 246 F.3d at 971-72 ("not all courts of appeals that have considered the issue have found the *Evans* holding entirely clear."); *McGregor*, 879 F. Supp. 2d at 1316-17 (noting "considerable debate" over *McCormick* and *Evans*, and the "Circuit Courts of Appeals have struggled with these questions.").

Criminal law practitioners, such as *amici*, also have a strong interest in ensuring that there is a bright line rule which apprises individuals exactly of what conduct is prohibited. One of the fundamental roles of a criminal defense lawyer is to give legal advice to a client which includes informing the client what speech or conduct is legal as well as what is not so the client may follow the law. A penal statute is required to define an offense with "sufficient definiteness that

ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (citing to a collection of cases). While the *statutes* in question are not being challenged for vagueness, the lower courts' uneven *application* of them – and *McCormick* and *Evans* – has created uncertainty in this area of the law.

II. This Court Also Needs To Clarify Standards Of Fairness In The Conduct Of Sentencing Hearings For Proper Appellate Review Of Disparate Sentencing Claims.

The Sentencing Guidelines are supposed to be a means towards the ends of (among other things) achieving fairness and ending disparity in sentencing. That is the lesson of *Rita v. United States*, 551 U.S. 338 (2007). The Guidelines are not supposed to be an end in itself.

Nevertheless, the Seventh Circuit has decided in Petitioner's case (and others) that the Sentencing Guidelines are an "anti-disparity formula" that, so long a sentence is within the Guidelines, means that there need be no discussion of defense evidence of an actual disparity. *See United States v. Blagojevich*, 854 F.3d 918, 921 (7th Cir. 2017); *citing, United States v. Bartlett*, 567 F.3d 901, 907-09 (7th Cir. 2009), *United States v. Boscarino*, 437 F.3d 634, 638-39 (7th Cir. 2006).

Amici's view is that this holding by the Seventh Circuit in their line of decisions does not comport with

the holdings of this Court in *Rita* or in *Gall v. United States*, 552 U.S. 38 (2007). In essence, this line of cases subsumes an opposing view that the Guidelines reign supreme in sentencing, even when faced with evidence that a "within Guidelines" sentence results in a sentencing disparity where the one sentenced faces a much harsher sentence than others previously punished who committed similar offense that also have similar backgrounds. The idea that the Guidelines reign supreme in the arena of a sentencing hearing is something this Court abandoned in *United States v. Booker*, 543 U.S. 220 (2005).

A. The Seventh Circuit's Holding Undermines This Court's Ruling in *Booker vs. United States.*

The Seventh Circuit's holding that the Guidelines are a self-executing anti-disparity formula, that if followed, requires no more from judges regarding the requirements of 18 U.S.C. 3553 (a)(6) *when confronted by clear evidence of a sentencing disparity* in the issuance of a "within Guidelines" sentence hollows out Congress' promise of fairness and equal treatment. In the end, this reasoning is circular and does not enforce a sentencing judge's responsibility to be complete and thorough in its evaluation of an individual defendant in pronouncing sentence. *Amici* is gravely concerned that disparate sentencing will continue pervasively without a mention from the sentencing court regarding why a sentence such as Petitioner's is either not disparate or not unwarranted.

Justice Stevens expressed this very concern when writing in partial dissent in *Booker:*

> "The present problem with disparity in sentencing……..stems precisely from the failure of [f]ederal judges—individually and collectively—to sentence similarly situated defendants in a consistent, reasonable manner. There is little reason to believe that judges will now begin to do what they have failed to do in the past." *United States v. Booker*, 543 U.S. 220, 297 (*citing*, 130 Cong. Rec. 976 (1984)(remarks of Sen. Laxalt); (J. Stevens, joined by Souter, J. dissenting in part).

The fundamental flaw in the Seventh Circuit's analysis is its failure to recognize that this Court has held that the Guidelines are advisory only and simply the starting point of a judge's analysis in the crafting of a fair sentence. The Guidelines are not the endpoint.

> "As we explained in *Rita*, a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party. In so doing, he may not presume that the Guidelines range is reasonable." *Gall.*, 552 U.S. at 49-50 (citations omitted).

Amici contends that the Seventh Circuit has fundamentally misread this Court's holding and meaning in *Gall*. This misreading appears to be predicated on the following language in *Gall* which is quoted by the *Blagojevich* decision as follows:

> "Section 3553(a)(6) requires judges to consider 'the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.' The Court of Appeals stated that 'the record does not show that the district court considered whether a sentence of probation would result in unwarranted disparities.' As with the seriousness of the offense conduct, avoidance of sentencing disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges. Since the District Judge correctly calculated and reviewed the Guidelines range, he *necessarily* gave significant weight and consideration to the need to avoid unwarranted disparities." *Blagojevich*, 854 F.3d at 921 (internal citation omitted)(emphasis in original); *citing Gall*, 552 U.S. at 54.

The Seventh Circuit's focus on the word *"necessarily"* in *Gall* misreads what *amici* maintains this Court meant and takes the language out of context to read into the Guidelines an anti-disparity formula that is never subject to error.

In *Gall*, this Court upheld a sentence of probation rather than incarceration stating that the judge took into account the fact that there would be a sentencing disparity because he started procedurally with the Guidelines before finally concluding, after going

through all of the sentencing factors, that the District Court considered the need to avoid unwarranted disparities as well as unwarranted similarities with others similarly charged yet were not similarly situated. *Gall*, 552 U.S. at 55-56.

In *Gall,* this Court upheld a sentence that was not "within Guidelines." That does not mean that any "within Guidelines" sentence is automatically not disparate especially when faced with a non-frivolous argument to the contrary. *Amici* contends that the District Court erred in not addressing the disparity issue and the Seventh Circuit erred in holding that a District Court never needs to address evidence of a sentencing disparity so long as the sentence is "within Guidelines." This Court needs to say so.

B. The Seventh Circuit's Holding Makes Transparency In Sentencing Difficult, If Not Impossible.

"Justice should not only be done, but should manifestly and undoubtedly be seen to be done." *R v. Sussex Justices, Ex Parte McCarthy,* (1924) 1 KB 256, 259, [1923] All ER Rep 233. Transparency in a free society is one of this country's most storied traditions.

The Seventh Circuit's interpretation of *Rita* and *Gall* belies that tradition. Silence in pronouncing a sentence regarding a marked sentencing disparity provides an appearance of injustice where everyone reviewing a case like Petitioner's is left to speculate why he received a much longer sentence than others similarly situated. A sentencing court's silence,

coupled with an appellate court's approval of such silence in the face of evidence of a sentencing disparity makes a mockery of the phrase "equal justice under law" and ratifies Justice Scalia's concerns regarding an advisory set of Guidelines:

> "The worst feature of the scheme is that no one knows—and perhaps no one is meant to know—how advisory Guidelines and "unreasonableness" review will function in practice." *Booker*, 543 U.S. at 297 (J. Scalia, dissenting in part).

The Seventh Circuit's approval of silence in the face of evidence of a large sentencing disparity is the *opposite of transparency*. Without transparency, there is no public confidence in the system that *amici* cherish. The loss of transparency in sentencing leads not only to a loss of public confidence, but trust in our judges as well.

"The statute does call for the judge to "state" his "reasons." And that requirement reflects sound judicial practice. Judicial decisions are reasoned decisions. Confidence in a judge's use of reason underlies the public trust in the judicial institution. A public statement of those reasons helps provide the public with the assurance that creates that trust." *Rita*, 551 U.S. at 356.

Amici respectfully maintains that this Court expected any sentencing judge, including Petitioner's, to state reasons for its sentence when it issued its decision in *Rita.*

"Where the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence, however, the judge will normally go further and explain why he has rejected those arguments. Sometimes the circumstances will call for a brief explanation; sometimes they will call for a lengthier explanation." *Rita*, 551 U.S. at 356.

This Court did not contemplate the Seventh Circuit's formulation of "no explanation required." This Court should grant Certiorari and send the case back for re-sentencing with a view towards requiring the District Court (should the Court still wish to issue a "within Guidelines" sentence) to either explain why the District Court believes there is no disparity or at least why such a disparity is warranted as §3553(a)(6) plainly requires.

C. The Seventh Circuit's Line of Cases Makes Meaningful Appellate Review of Future Sentences Problematic.

The appellate standard for appellate review of a sentence is "reasonableness." By "reasonableness," this Court has stated that this means that the appellate court must determine *e.g.* "whether the District Judge abused his discretion in determining that the §3553(a) factors supported a sentence of [15 years] and justified a substantial deviation from the Guidelines range." *See Kimbrough v. United States,* 552 U.S. 85, 111 (2010); *see also Gall* at 58-60; *Rita* at 358-60.

The approval of a silent record makes it difficult, if not impossible, to determine whether the District Court abuses its discretion in allowing a substantial sentencing disparity to exist. Approval of silence in the face of disparity is another offering, this time by the Seventh Circuit, "a smuggled-in dish that's indigestible." *See Spears v. United States,* 555 U.S. 261, 267 (2009).

This Court stated in *Kimbrough* that "(t)o reach an appropriate sentence, these disparities must be weighed against the other §3553(a) factors and any unwarranted disparity created by the crack/powder ratio itself." *Kimbrough,* 552 U.S. at 108. What if the District Judge in cases like *Kimbrough*, *Spears*, *Rita,* reached the same exact result, but instead provided no explanation why probation or a lesser prison sentence was issued? Without any basis in the record to inform an appellate court whether the District Court accepted defense evidence or rejected it, they would be left to guess and would be inclined to reverse. Without any basis to understand whether or not the District Court considered Petitioner's disparity evidence, the Seventh Circuit should also have reversed. The Seventh Circuit has blurred the lines between "reasonableness" and "reviewability" to make this Court require that silence in the face of disparity is not an option.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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