

No. _____

In the

Supreme Court of the United States

Emilio Garcia-Pinedo,

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

Was the district court's above-guidelines sentence substantively unreasonable?

PARTIES TO THE PROCEEDING

Petitioner is Emilio Garcia-Pinedo, who was the Defendant-Petitioner in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Emilio Garcia-Pinedo seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is *United States v. Garcia-Pinedo*, 704 Fed. App'x 382 (5th Cir. 2017) (unpub.). It is reprinted in Appendix A to this Petition. The district court did not issue a written opinion.

JURISDICTION

The en banc opinion and judgment of the Fifth Circuit were entered on November 24, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This petition involves 18 U.S.C. § 3553(a), which provides, in relevant part:

- (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—
...
 - (3) the kinds of sentences available;
 - (4) the kinds of sentence and the sentencing range established for—
...
 - (5) any pertinent policy statement—
 - (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).

STATEMENT OF THE CASE

On March 28, 2016, officers arrested Mr. Garcia-Pinedo for suspicion of driving while intoxicated. He was transferred to ICE custody on April 28, 2016, based on suspicion that he was in the country illegally. On May 18, 2016, the Government filed a one-count indictment against Mr. Garcia-Pinedo for Illegal Re-Entry After Deportation, in violation of 8 U.S.C. § 1326(a). On September 13, 2016, he pleaded guilty to the charge. The presentence investigation report was prepared, which reflected that Mr. Garcia-Pinedo was in Criminal History Category IV with a total offense level of 10. Accordingly, Mr. Garcia-Pinedo's advisory guideline range was 15 to 21 months.

The sentencing hearing was held on January 23, 2017, in which the district court sentenced Mr. Garcia-Pinedo to 48 months imprisonment, which was significantly above the top of the guidelines range. In doing so, the district court focused entirely on Mr. Garcia-Pinedo's criminal history and the court's perception of Mr. Garcia-Pinedo's respect for the law. After the sentence was pronounced, defense counsel objected to the length of the sentence. Mr. Garcia-Pinedo appealed to the Fifth Circuit, which affirmed.

REASONS FOR GRANTING THIS PETITION

I. The district court imposed an unreasonable sentence upon Mr. Garcia-Pinedo.

Circuit courts exist, in part, to correct mistakes of substantive reasonableness when they occur. *Rita v. United States*, 551 U.S. 338, 354 (2007). Moreover, appellate review of a sentencing decision for “reasonableness” is proper regardless of whether the sentence is within or outside of the guidelines range. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). But when a sentence is above-guidelines, the district court does not benefit from a presumption of reasonableness. *See Rita*, 551 U.S. at 347.

Here, the district court abused its discretion when it gave Petitioner a substantively unreasonable sentence by relying solely on Petitioner’s criminal history and perceived respect for the law, to the exclusion of other aspects of his history and characteristics. In doing so, the court demonstrated a clear error of judgment in balancing the sentencing factors. *See United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013) (explaining that a sentence which reflects a clear error of judgment in balancing the sentencing factors is substantively unreasonable).

At the sentencing hearing, defense counsel explained several important, mitigating aspects of Petitioner’s history and characteristics, including: (1) Petitioner came to this country solely to work and provide for his family; (2) Petitioner’s criminal history suggests that he does learn his lesson after facing conviction for a crime; and (3) any time he spends in prison is time he cannot take care of his family. With this

in mind, defense counsel asked for a sentence at the middle or bottom of the guidelines. The Government asked the court to sentence Petitioner at the top of the guidelines. Nevertheless, the district court focused on Petitioner's drug convictions from the distant past and 9 prior deportations and proceeded to impose a 48-month sentence, which was far in excess of the guideline range of 15-21 months. This was an abuse of the court's discretion.

This Court also evaluates whether the "degree of the departure or the sentence as a whole is unreasonable." *United States v. Rajwani*, 476 F.3d 243, 250 (5th Cir. 2007), *modified on other grounds*, 479 F.3d 904 (5th Cir. 2007). Here, the PSR's guideline range was 15 to 21 months. Yet the district court sentenced Petitioner to 48 months, which is more than twice the top-end of the range. Under the totality of the circumstances, this was unreasonable. Justice does not require Petitioner to suffer an enhanced sentence here.

CONCLUSION

The district court's upward variance sentence did not advance the objectives set forth in § 3553(a) and the sentence is greater than necessary to serve the statutory sentencing goals. The district court's imposition of a 48-month sentence was unreasonable and the judgment should be vacated.

Respectfully submitted,

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