

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-7739

GONZALO HOLGUIN-HERNANDEZ, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE RESPONDENT FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for divided argument in this case. The United States requests that petitioner and the United States each be allotted 15 minutes of argument time and that the appointed amicus curiae be allotted 30 minutes of argument time. Counsel for petitioner consents to this motion.

1. This case presents the question whether, to properly preserve a claim that the district court ordered a substantively unreasonable term of imprisonment, a criminal defendant who has

requested a shorter term must also object to the reasonableness of the term of imprisonment after it is ordered. At a hearing to consider the revocation of petitioner's supervised release, petitioner argued for no term of imprisonment, or at least a term beneath the 12-to-18-month range that the Sentencing Commission has recommended. See J.A. 9-10. The district court ordered a 12-month revocation term, J.A. 11, and petitioner appealed. On appeal, the court of appeals applied plain-error review to petitioner's contention that his 12-month revocation term was substantively unreasonable, and it affirmed the district court's judgment. J.A. 2.

2. The United States agrees with petitioner that the court of appeals erroneously applied plain-error review (although the United States believes that petitioner's substantive challenge to his 12-month revocation term should fail on remand under the appropriate standard of review). The United States has accordingly filed a brief as respondent supporting vacatur and has a substantial interest in this Court's resolution of the question presented. The United States is a party to federal sentencing disputes and thus has a strong interest in any clarification or application of the contemporaneous-objection requirement of Federal Rule of Criminal Procedure 51 and the plain-error standard of review under Federal Rule of Criminal Procedure 52. Division

of argument will therefore materially assist the Court in its consideration of this case.

For the foregoing reasons, the government requests that the Court grant the motion for divided argument.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

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