NO. _____

In the Supreme Court of the United States

PABLO JACOBO FELIX-SAMANIEGO,

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

J. Matthew Wright
Counsel of Record
FEDERAL PUBLIC DEFENDER'S OFFICE
600 South Tyler Street
Suite 2300
Amarillo, Texas 79101
(806) 324-2370
Matthew_Wright@fd.org

Counsel for Petitioner

June 10, 2025

QUESTION PRESENTED

Should the court of appeals indulge a presumption of reasonableness for a within-guideline-range sentence where the Sentencing Commission has subsequently amended the relevant Sentencing Guidelines?

DIRECTLY RELATED PROCEEDINGS

United States v. Felix-Samaniego, No. 5:19-cr-114 (N.D. Tex. Mar. 21, 2024)

United States v. Felix-Samaniego, No. 5:23-cr-96 (N.D. Tex. Mar. 21, 2024)

United States v. Felix-Samaniego, No. 24-10283, consolidated with No. 24-10284 (5th Cir. Mar. 12, 2025)

TABLE OF CONTENTS

Question Presented ii

Directly Related Proceedings ii

Table of Authorities iii

Opinions Below 1

Jurisdiction 1

Statutory Provisions Involved 1

Statement 4

Reasons for Granting the Petition 5

A. At his original sentencing for the marijuana offense, the district court correctly anticipated Amendment 817 but failed to anticipate Amendments 821 and 825. 5

B. Applying Amendment 821 at the original sentencing would lowered both the original guideline range for the marijuana case and the policy statement range on revocation. 7

C. When the Commission revises its wholesale guidelines, the presumption of reasonableness loses its *raison d'etre*. 9

Conclusion 10

Petition Appendix

Opinion, *United States v. Felix-Samaniego*, No. 24-10283 (5th Cir. Mar. 12, 2025) 1a

TABLE OF AUTHORITIES

Cases

Dillon v. United States, 560 U.S. 817 (2010) 7

Gall v. United States, 552 U.S. 38 (2007) 9

Holguin-Hernandez v. United States, 589 U.S. 169 (2020) 9

Rita v. United States, 551 U.S. 338 (2007) 5, 9

Statutes

8 U.S.C. § 1326 4

18 U.S.C. § 3553(a) 1

18 U.S.C. § 3553(f) 6

18 U.S.C. § 3582(c)(2) 7

18 U.S.C. § 3583(e) 3

28 U.S.C. § 994(p) 2, 3, 9

28 U.S.C. § 1254(1) 1

Pub. L. 115-391 § 402, 132 Stat. 5221 (2018) 6

Sentencing Guidelines

U.S.S.G. § 1B1.10(d) & (e)(2) (2023 ed.) 4, 7

U.S.S.G. § 2D1.1(b)(18) 6

U.S.S.G. § 4A1.1(d) (2018) 6

U.S.S.G. § 4A1.1(e) (2023 ed.) 4, 7

U.S.S.G. § 5C1.2 6

U.S.S.G. § 7B1.4(a) 8

U.S.S.G. § 7B1.4, cmt., n.1 8

U.S.S.G., supp. app'x C Amendment 821 ..... 4, 6, 7, 8, 9

Rules

S. Ct. R. 13.1 1

In the Supreme Court of the United States

No. _____

PABLO JACOBO FELIX-SAMANIEGO,
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

Pablo Jacobo Felix-Samaniego respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion below was not selected for publication. It is reprinted on pages 1a–2a of the appendix.

JURISDICTION

The Fifth Circuit entered its judgment on March 12, 2025. This petition is timely under S. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18, Section 3553(a) provides, in pertinent 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—

* * * *

(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;

* * * *

(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.[1]

(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.

Title 18, Section 3583(e) provides, in pertinent part:

(e) Modification of Conditions or Revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

* * * *

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case.

STATEMENT

In two companion cases that would be consolidated on appeal, the government prosecuted Petitioner Pablo Felix-Samaniego for illegal reentry after removal, 8 U.S.C. § 1326, and sought revocation of his supervised release for a previous federal marijuana conviction. App., *infra*, 1a–2a. Petitioner pleaded guilty in the immigration case and admitted that he had violated the terms of his supervised release in the marijuana case. On March 21, 2024, the district court imposed consecutive sentences of 8 months (revocation) and 48 months (illegal reentry) in prison, for an aggregate term of 56 months. App., *infra*, 1a; *see* 5th Cir. ROA 24-10284.59–60; ROA 24-10283.85–86.

On appeal, Petitioner argued that the sentences were unreasonable because the district court failed to address or consider Amendments 821 and 825 to the U.S. Sentencing Guidelines. In 2023, the Sentencing Commission amended the "status points" guideline in two ways: by reducing its effect (adding one criminal history point, instead of two), and by restricting its scope (applying that one point only if the defendant had seven or more points). *See* Amendment 821, U.S.S.G., supp. app'x C, at 234–236; *see also* U.S.S.G. § 4A1.1(e) (2023 ed.). Amendment 825 then made Amendment 821 retroactive, but delayed implementation until February 1, 2024. *See* U.S.S.G., supp. app'x C, at 260–63; *see also* U.S.S.G. § 1B1.10(d) & (e)(2) (2023 ed.).

The Fifth Circuit affirmed. The court held that Petitioner could not overcome the presumption of reasonableness on appeal. App., *infra*, 2a. This timely petition follows.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition to decide whether an appellate presumption of reasonableness should apply where, after the original sentence, the Commission amended applicable guideline range and made that change retroactive.

In *Rita v. United States*, 551 U.S. 338 (2007), this Court allowed appellate courts to presume that a sentence within a properly calculated guideline range is reasonable. The Court explained that the presumption is appropriate based on the correspondence between the sentencing judge's fact-specific determination at the "retail" level and the Sentencing Commission's view at the "wholesale" level. *Rita*, 551 U.S. at 348–351. That correspondence disappears when the Commission has amended the relevant guideline. This Court should decide whether the presumption applies when the Commission's wholesale judgment has diverged from the district court's retail judgment.

A. At his original sentencing for the marijuana offense, the district court correctly anticipated Amendment 817 but failed to anticipate Amendments 821 and 825.

In April 2020, the district court sentenced Petitioner to serve 30 months' imprisonment on the marijuana case. 5th Cir. ROA 24-10283.60, 222. Under the then-current version of the Sentencing Guidelines Manual (November 2018), Petitioner's offense level was 17; his criminal history score was 4, yielding a criminal history category of III; and his guideline range was 30–37 months' imprisonment. 5th Cir. ROA. 24-10283.138–40, 143, 149.

At the time, the court and the parties correctly anticipated that the Commission would lower the offense-level guideline calculations. In 2018, Congress

had amended 18 U.S.C. § 3553(f), expanding eligibility for the statutory "safety valve" provision. *See* Pub. L. 115-391 § 402, 132 Stat. 5221 (2018). Petitioner was not subject to any mandatory minimum, so the statutory change had no effect on his sentence. But everyone expected the Sentencing Commission to adopt corresponding changes to the safety-valve guideline, U.S.S.G. § 5C1.2, when it achieved a quorum.[1] While this would not affect Petitioner's statutory sentencing range, it would make him eligible for a two-offense-level reduction under U.S.S.G. § 2D1.1(b)(18). Eventually, the Commission did amend the offense-level guidelines to make Petitioner eligible for the safety-valve reduction. *See* Amend. 817, U.S.S.G., supp. app'x C, at 219–224 (2023 ed.). The district court sentenced Petitioner as though the anticipated amendment had already taken effect, utilizing offense level 15 and a guideline range of 24–30 months. 5th Cir. ROA 24-10283.217–18.

But the court and the parties did not anticipate changes to the criminal history score. In the original calculations, the district court assigned two criminal history points to a 2016 conviction and added two points under U.S.S.G. § 4A1.1(d) (2018), because Petitioner was under a criminal justice sentence. 5th Cir. ROA.24-10283.139–40. Four criminal history points put him in category III.

In 2023, the Sentencing Commission amended the "status points" guideline in two ways: by reducing its effect (adding one criminal history point instead of two), and by restricting its scope (applying that one point only if the defendant had seven

[1] The Commission amended the safety-valve guideline in 2023. *See* Amend. 817, U.S.S.G., supp. app'x C, at 219–224 (2023 ed.).

or more points). *See* Amendment 821, U.S.S.G., supp. app'x C, at 234–236; *see also* U.S.S.G. § 4A1.1(e) (2023 ed.). Amendment 825 then made Amendment 821 retroactive, while delaying implementation until February 1, 2024. *See* U.S.S.G., supp. app'x C, at 260–63; *see also* U.S.S.G. § 1B1.10(d) & (e)(2) (2023 ed.). By making the amendment retroactive, the Commission allowed defendants with otherwise-final sentences to move for a reduction under 18 U.S.C. § 3582(c)(2). *See Dillon v. United States*, 560 U.S. 817, 821 (2010).

B. Applying Amendment 821 at the original sentencing would lowered both the original guideline range for the marijuana case and the policy statement range on revocation.

1. The table below illustrates the combined effects of Amendment 817 (offense level) and Amendment 821 (criminal history score) on the original sentencing calculations:

		Original Calculations	**After Anticipating Amendment 817**
Total Offense Level		17	15
Before Amendment 821/825	Criminal History Score	4	4
	Criminal History Category	III	III
	Advisory Guideline Range	30–37 months[2]	24–30 months[3]
After Amendment 821/825	Criminal History Score	2	2
	Criminal History Category	II	II
	Advisory Guideline Range	27–33 months	21–27 months

[2] ROA.24-10283.143

[3] ROA.24-10283.217-218

2. Amendment 821 would also lower the policy-statement range for revocation of supervised release. If Petitioner had been scored in criminal history category II for the marijuana case, the policy statement range for revocation of supervised release would be 6–12 months, rather than 8–14 months. *See* U.S.S.G. § 7B1.4(a) (p.s.).

3. Petitioner does not contend that his supervised release policy statement range was calculated incorrectly. Application Note 1 to Guideline 7B1.4 instructs the revocation court to utilize the criminal history category "determined at the time the defendant originally was sentenced to the term of supervision." U.S.S.G. § 7B1.4, cmt., n.1. As Petitioner explained below, there is a reasonable probability of a shorter sentence if the district court had anticipated and applied Amendment 821 in the same way that it anticipated and applied Amendment 817.

First, the court might have reduced the sentence on either case to account for the fact that Petitioner's original marijuana sentence was three months longer than it likely would have been under Amendment 821. At the original sentencing hearing, the court told Petitioner that it would not sentence him over the guideline range calculated after anticipating and applying what would be Amendment 817. If the court applied both 817 and 821, the applicable maximum would have been 27 months in prison. The district court might have lowered one or both sentences imposed in 2024 to account for that difference in sentencing calculations for the 2020 sentence.

Second, the district court might have selected a revocation sentence within the range for criminal history category II if the court had known the Commission would amend the criminal history guideline and then make that amendment retroactive.

C. When the Commission revises its wholesale guidelines, the presumption of reasonableness loses its *raison d'etre.*

Federal appellate courts review sentences for "reasonableness." *Holguin-Hernandez v. United States*, 589 U.S. 169, 174 (2020); *see also Gall v. United States*, 552 U.S. 38, 56 (2007). In *Rita*, this Court allowed appellate judges to indulge in a presumption of reasonableness based on the correlation between the sentencing judge's fact-specific determination at the "retail" level and the Sentencing Commission's view at the "wholesale" level. *Rita*, 551 U.S. at 348–351.

This Court has not addressed whether that presumption should apply where the Commission has revised its guidelines after sentencing. "The Commission's work is ongoing." *Id.* at 350; *see* 28 U.S.C. § 994(p) (authorizing guideline amendments). The Commission decided to modify the "status points" provision based on a deep empirical study. U.S.S.G., supp. app'x C, amend. 821, at 240–41 ("The Commission's action to limit the impact of 'status points' builds upon its tradition of data-driven evolution of the guidelines.").

The district court did not have the benefit of Amendments 821 or 825. The court sentenced Petitioner on March 21, 2024. The Commission announced Amendment 821 on May 3, 2024, 85 Fed. App'x 28270–273, and announced that the change should be retroactive on September 1, 2023, 88 Fed. App'x 60534, 60535–36. Despite these significant and intervening developments amending the original

guidelines, the Fifth Circuit presumed that the district court's sentence was reasonable. App., *infra*, 2a.

CONCLUSION

This Court should grant the petition and set this case for a decision on the merits.

Respectfully submitted,

J. Matthew Wright
Counsel of Record
FEDERAL PUBLIC
DEFENDER'S OFFICE
600 South Tyler Street
Suite 2300
Amarillo, Texas 79101
(806) 324-2370
Matthew_Wright@fd.org

June 10, 2025