No. 25-

In the Supreme Court of the United States

THOMAS SCOTT PERKINS, *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. Thomas Scott Perkins,
No. 4:20-cr-388 (July 23, 2024)

United States Court of Appeals for the Fifth Circuit:

United States v. Thomas Scott Perkins,
No. 24-50600 (June 30, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Thomas Scott Perkins 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 when reviewing Thomas Scott Perkins's sentence. Even though Perkins's sentence was more than double the sentence received by similarly situated defendants, the court held that he had not "demonstrated an unwarranted sentencing disparity." App. 2a. Indeed, this is just the latest example of the Fifth Circuit rejecting attempts to show sentencing disparities based on JSIN data. 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.

Not surprisingly, the Fifth Circuit is an outlier in refusing to consider JSIN statistics. The Sixth, Ninth, and Tenth Circuits have all reached the commonsense conclusion that JSIN is relevant—although not dispositive—when evaluating whether a sentence creates an unwarranted disparity. The government should also be concerned about the Fifth 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 1794108 and is reproduced at App. 1a–2a.

JURISDICTION

The Fifth Circuit entered its judgment on June 30, 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.*

B. Proceedings below.

1. At an early age, Perkins was diagnosed with autism spectrum disorder. C.A. ROA 2316, 2498. Autism spectrum disorder is a neurodevelopmental disorder defined by deficits in social communication and social interaction, as well as restricted and repetitive patterns of behavior, interests, or activities. *Id.* at 1198–99, 2320–21. Perkins has difficulties with social interaction and is a self-described "loner." *See*, *e.g.*, *id.* at 1199–1200, 2317–18, 2315, 2321. And he engages in repetitive interests and can become fixated on narrow interests (such as computers and video games) and behaviors (like downloading files from the internet). *See*, *e.g.*, *id.* at 677–78, 1200, 2220, 2223, 2314.

Because Perkins had no friends and rarely left the house, he became addicted to computers. C.A. ROA 1005–06, 2219–20. He

ran extremely broad searches and "liked downloading stuff and watching it upload and download for the sake of watching it." *Id.* at 1006, 2217–18. At some point, Perkins encountered child pornography on the internet and became obsessed with the distinction between child pornography and child nudity based on his understanding that child nudity was legal under this Court's precedent. *Id.* at 968, 2223, 2352. So he began an "experiment[ ]," conducting his own "research" by "download[ing] a bunch of stuff" and "try[ing] to figure out what was legal and what was not." *Id.* at 2223, 2352. This ill-conceived experiment led Perkins to search for and download tens of thousands of images and videos containing illegal child pornography. *Id.* at 2225.

2. A second superseding indictment charged Perkins with nine counts. C.A. ROA 359–66. Count one charged him with distributing child pornography in violation of 18 U.S.C. § 2252A(a)(2). *Id.* at 359. Counts two through nine charged him with possessing different computers or hard drives containing child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). *Id.* at 359–63. Perkins refused to consider a plea agreement even though he recognized that it would lead to a lower sentence. *Id.* at 2337. So he went to trial, and a jury found him guilty on all nine counts. *Id.* at 401–03.

At sentencing, the district court adopted a Sentencing Guidelines range of 210 to 262 months. C.A. ROA 1403. Perkins argued at length for a downward variance. *First*, he focused on how autism spectrum disorder impacted his offense. *Id.* at 2556–58. He noted that autistic individuals commonly engage in compulsive behaviors such as collecting, which helps explain why he amassed such a large collection of child pornography. *Id.* at 2556–57. He also explained that he could not understand the harm being done to the victims depicted in the videos he downloaded. *Id.* at 2557. *Second*, Perkins explained that even a within-Guidelines sentence would result in a drastic sentencing disparity under the guideline for non-production child pornography offenses, citing the Sentencing Commission's JSIN data that showed that the average sentence for similar defendants was 151 months and the median was 144 months. *Id.* at 2554–56. *Third*, he explained that the circumstances of his offense were quite typical. *Id.* at 2558. *Finally*, Perkins argued that he poses little danger. *Id.* at 1407, 2559.

In imposing its sentence, the district court briefly mentioned Perkins's mental health issues, acknowledging that "they are vast, and they are many." C.A. ROA 1418. But the court determined that it could not "wall that off and consider only that." *Id.* The court explained that the sentence should account for the "substantial

number of images" he downloaded and for the disturbing content depicted by many of those videos. *Id.* at 1419–26. The court also believed that Perkins posed a "danger to the public." *Id.* at 1428. The court noted his admission that he would have sex with a child if given the opportunity, although the court agreed that this scenario was "not likely to happen." *Id.* at 1426–27. Based on these "aggravating circumstances," the court concluded that a "significant upward variance is appropriate." *Id.* at 1418, 1429. But the court never mentioned the JSIN data or the significant sentencing disparity that would result from an upward variance. The district court imposed a total sentence of 360 months' imprisonment—240 months on counts one through eight (to run concurrently) and 120 months on count nine (to run consecutively). *Id.* at 1430.

3. Perkins appealed, arguing that his sentence was substantively unreasonable. *First*, Perkins argued that the district court disregarded his autism spectrum disorder, which medical experts and courts recognize makes individuals uniquely vulnerable to accessing child pornography. *Second*, Perkins argued that the district court placed unjustifiable weight on supposedly aggravating factors that are inextricably linked to autism spectrum disorder. *Third*, Perkins argued that the district court's sentence created a drastic and unwarranted sentencing disparity,

again citing JSIN statistics to show that his sentence is more than double the average sentence received by similarly situated defendants. *Fourth*, Perkins argued that none of the sentencing factors justified the significant upward variance.

The Fifth Circuit affirmed. App. 1a–2a. The court concluded that "Perkins's arguments on appeal amount to no more than a disagreement with the district court's balancing of the applicable § 3553(a) factors," explaining that it would not "independently reweigh the § 3553(a) factors or substitute [its] judgment for that of the district court." *Id.* at 2a. The court also determined that Perkins had not "demonstrated an unwarranted sentencing disparity." *Id.* (citing *United States v. Miller*, 665 F.3d 114, 123 (5th Cir. 2011); *United States v. Willingham*, 497 F.3d 541, 544 (5th Cir. 2007)).

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are divided, and the Fifth Circuit is the outlier.

The courts of appeals are divided over whether the JSIN statistics are relevant to analyzing unwarranted sentencing disparities under § 3553(a)(6). The Sixth, Ninth, and Tenth Circuits have held that JSIN is relevant to this inquiry. In stark contrast, the Fifth Circuit has repeatedly held that the JSIN statistics offer

no insight into whether a sentencing disparity is unwarranted. This entrenched circuit split warrants the Court's review.

1. Most circuits to have considered the issue reach the commonsense conclusion that JSIN is relevant to analyzing sentencing disparities.

a. The Tenth Circuit recently held that a district court's sentence was substantively unreasonable because it failed to address unwarranted sentencing disparities "despite the JSIN statistics showing that the sentence imposed is an outlier sentence." *United States v. Guevara-Lopez*, 147 F.4th 1174, 1184–89 (10th Cir. 2025). The Tenth Circuit rejected the government's argument that the JSIN statistics "do not reveal any of the underlying conduct that the other defendants engaged in and therefore make an insufficient comparator for analyzing sentence disparities." *Id.* at 1186. The court explained that unlike older statistics that grouped a "wide range of defendants" (those who had committed "Firearms" offenses), "the JSIN statistics … sufficiently narrowed the comparator-defendants" because "[t]he comparator-defendants share a total offense level, criminal-history category, and primary guideline." *Id.* The Tenth Circuit does not "require district courts to follow national statistics when imposing

a sentence," but it explained that the JSIN statistics "aid our review of substantive reasonableness." *Id.* at 1186 n.7, 1188.

b. The Ninth Circuit has also 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"—the Sentencing Commission—and are "designed specifically for judges to use during sentencing to fulfill their obligations under § 3553(a)(6)." *Id.* at 1062.

c. The Sixth Circuit too has 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.* And 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.*

2. In sharp contrast, the Fifth Circuit below held that Perkins had not "demonstrated an unwarranted sentencing disparity"—

despite the fact that JSIN showed that his sentence was more than double the average sentence received by similarly situated defendants. App. 2a. And this case is not an isolated decision. The Fifth Circuit has repeatedly dismissed JSIN statistics as "irrelevant" and "basically meaningless." *United States v. Boukamp*, 105 F.4th 717, 738 (5th Cir. 2024) (citation omitted), *cert. denied*, 145 S. Ct. 595 (2024); *see also United States v. Garcia*, 2025 WL 1202209, at *2 (5th Cir. Apr. 25, 2025) (deeming defendant's reliance on JSIN statistics "misguided"), *petition for cert. pending*, No. 25-5205 (filed July 24, 2025); *United States v. Thibodeaux*, 2025 WL 1177266, at *1 (5th Cir. Apr. 23, 2025) (rejecting JSIN data as "unavailing").

* * *

This Court should grant certiorari to resolve this circuit split and correct the Fifth Circuit's outlier approach.

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 Circuit has cut off "'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 "basically meaningless," *Boukamp*, 105 F.4th at 738 (citation omitted), then "it is unclear … what further information a defendant could provide that would be relevant to this factor," *United States v. Cortez*, 139 F.4th 1146, 1158 (10th Cir. 2025) (McHugh, J., concurring); *see infra* 18–19.

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 Circuit's outlier approach prevents 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, guts 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. In determining that Perkins had not "demonstrated an unwarranted sentencing disparity," the court relied entirely on its earlier decisions in *Miller* and *Willingham*. App. 2a. (citing 665 F.3d at 123; 497 F.3d at 544). But both cases flatly 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.[1] 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

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[1] *Miller* involved even more general statistics, which showed how many sentences under the child pornography guideline were below, within, or above the Guidelines range. 665 F.3d at 122.

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* or the above- and within-Guidelines statistics in *Miller*, JSIN "reflect[s] the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases." *See Willingham*, 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* and *Miller* because it accounts for "the similarity (or lack thereof) of [a defendant's] record." *See*

Willingham, 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* and *Miller*, 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 is wrong. *See Guevara-Lopez*, 147 F.4th at 1187 (distinguishing earlier precent that rejected "bare national statistics" and emphasizing the "specificity of the JSIN statistics").

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, presentence reports usually have a detailed account of the offense conduct and a Guidelines calculation containing defendants' total offense level and criminal history

category. 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 Circuit's rejection of JSIN statistics directly tracking § 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. Perkins cited JSIN statistics both in the district court, C.A. ROA 2555, and on appeal. The district court never mentioned the statistics or disparities during sentencing, *see id.* at 1400–34, and the Fifth Circuit determined that Perkins had not demonstrated a sentencing disparity despite the fact that he received more than double the average sentence. App. 2a. The disparity was especially unwarranted here because this case involves a significant mitigating factor—autism spectrum

disorder—that courts across the country recognize diminishes a defendant's culpability in child pornography cases.[2]

To be sure, some cases may implicate other statutory sentencing factors that *justify* a sentencing disparity. *See United States v. Lucero*, 130 F.4th 877, 891 (10th Cir. 2025) (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. Putting aside autism spectrum disorder—a significant *mitigating* factor—this was a run-of-the-mill child pornography case. So if national uniformity is the goal, Perkins deserved—at most—a sentence close to the nationwide average. The sentence the district court imposed—more than double the average sentence—creates a clearly unwarranted sentencing disparity.

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[2] *See*, *e.g.*, *United States v. Knott*, 638 F. Supp. 3d 1310, 1317, 1320 (M.D. Ala. 2022) ("Knott's ASD contributed to his offense conduct" and "diminished his moral culpability"); *United States v. Huseth*, 2021 WL 4940915, at *10 (D. Kan. Oct. 22, 2021) (explaining that autism spectrum disorder "substantially contributed to the commission of the offense"); *United States v. Mallatt*, 2013 WL 6196946, at *14 (D. Neb. Nov. 27, 2013) (explaining that defendant's autism spectrum disorder "undoubtedly contributed to his actions and must be considered in determining his culpability").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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