

25-6212

No:

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In the  
Supreme Court of the United States

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NICOLAS MONDRAGON-GONZALEZ

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

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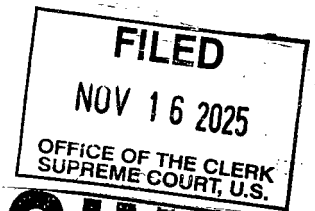
ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Nicolas Mondragon-Gonzalez  
Register Number 71391-380  
Lee USP  
P.O. Box 305  
Jonesville, VA 24263



**ORIGINAL**

## QUESTIONS PRESENTED FOR REVIEW

In the case of petitioner Nicolas Mondragon Gonzalez, he received a forty year sentence under the death enhancement in USSG § 2L1.1(b)(7)(D) based solely on but for causation for migrant deaths in a crash he did not directly cause, and this petition asks the Court to resolve the circuit split on the required causation standard and to enforce 18 U.S.C. § 3553(a)'s command that punishment be just and no greater than necessary.

Does the death enhancement in USSG 2L1.1(b)(7)(d) require proof of direct or proximate causation, as held by the Eighth and Ninth Circuits, or may it be imposed based only on but for causation, as held by the Fifth, Tenth, and Eleventh Circuits?

Whether the Fifth Circuit erred in holding that a forty-year sentence was substantively reasonable when the causal connection between the defendant's conduct and the deaths was indirect, attenuated, and inconsistent with the statutory command that punishment be just and no greater than necessary?

**PARTIES TO THE PROCEEDINGS  
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Texas. None of the parties is a company, corporation, or subsidiary of any company or corporation.

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**PETITION FOR WRIT OF CERTIORARI**

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Nicolas Mondragon-Gonzalez, (“Mondragon-Gonzalez”) the Petitioner herein, respectfully prays that a writ of certiorari is issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled cause.



## **OPINION BELOW**

The opinion of the Court of Appeals for the Fifth Circuit, whose judgment is herein sought to be reviewed, was entered on August 27, 2025, *United States v. Mondragon-Gonzalez*, No. 24-50758, 2025 U.S. App. LEXIS 22099 (5th Cir. Aug. 27, 2025) and is reprinted in the separate Appendix A to this Petition.

## **STATEMENT OF JURISDICTION**

The Judgment of the Court of Appeals was entered on August 27, 2025. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED**

The Fifth Amendment to the Constitution of the United States provides in relevant parts:

No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

*Id.* Fifth Amendment

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

*Id.* Sixth Amendment

### **STATEMENT OF THE CASE AND FACTS**

This case arises from the prosecution of Mr. Mondragon- Gonzalez in the Western District of Texas following an investigation into an alien smuggling operation based in Austin. The government linked Mr. Mondragon- Gonzalez to several smuggling events conducted by various drivers and facilitators. One of those events involved a fatal crash on March 15, 2021, near Del Rio, Texas, when a load driver named Sebastian Tovar fled from a traffic stop at speeds exceeding one hundred miles per hour and collided with an oncoming vehicle. Eight migrants who were being transported in the truck died, and the occupants of the struck vehicle suffered serious injuries. Mr. Mondragon- Gonzalez was not present at the scene and remained at his residence in Austin, roughly

two hundred fifty miles away. There is no evidence that he communicated with the driver during the incident or directed the flight from law enforcement.

A superseding indictment charged Mr. Mondragon- Gonzalez and several others with offenses under 8 U.S.C. 1324. Mr. Mondragon- Gonzalez entered open guilty pleas to four counts, including one count of transportation resulting in death. No plea agreement was offered. The remaining counts concerned unrelated smuggling events that did not involve fatalities. Using the 2021 Guidelines Manual, the Presentence Investigation Report assigned a total offense level of 42. Central to that calculation was a ten-level enhancement under USSG 2L1.1(b)(7)(D) based on the eight deaths that occurred during the March 2021 incident. The probation office applied the enhancement on the theory that Mr. Mondragon- Gonzalez' role in the broader smuggling operation satisfied the but for causation standard adopted by the Fifth Circuit. Mr. Mondragon- Gonzalez objected, arguing that the crash was not a foreseeable result of jointly undertaken activity and that the Sentencing Guidelines should require direct or proximate causation for a death enhancement of this magnitude.

The district court overruled these objections. Relying on Fifth Circuit precedent, the court held that USSG 1B1.3 requires only but for causation and that direct or proximate causation is not required. The court adopted the PSR's findings and sentenced petitioner to 480 months on the death count, together with concurrent 120-month terms on each of the remaining counts, for a total sentence of forty years. The court also imposed supervised release and monetary assessments.

Mr. Mondragon-Gonzalez appealed. He argued that the forty-year sentence was greater than necessary under 18 U.S.C. 3553(a) and that the district court applied the wrong causation standard under USSG 2L1.1(b)(7)(D). The Fifth Circuit affirmed in an unpublished opinion, holding that existing circuit law foreclosed proximate cause arguments and that the district court did not plainly err in imposing the within Guidelines sentence.

Mr. Mondragon-Gonzalez now seeks review because the courts of appeals remain divided on the causation required for death enhancements under USSG 2L1.1(b)(7)(D), and the Fifth Circuit's adherence to a strict but for approach allows punishment for deaths that

were neither directed, intended, nor foreseeable. The case presents a clean vehicle for resolving a recurring question of federal sentencing law.

### **REASONS FOR GRANTING THE WRIT**

**THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT**

Supreme Court Rule 10 provides relevant parts as follows:

#### **Rule 10**

#### **CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI**

(1) A review of writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal

question in a way that conflicts with applicable decision of this Court.

*Id.* Supreme Court Rule 10.1(a), (c).

## ARGUMENT

### **A. DOES THE DEATH ENHANCEMENT IN USSG 2L1.1(B)(7)(D) REQUIRES PROOF OF DIRECT OR PROXIMATE CAUSATION, AS HELD BY THE EIGHTH AND NINTH CIRCUITS, OR MAY BE IMPOSED BASED ONLY ON BUT FOR CAUSATION, AS HELD BY THE FIFTH, TENTH, AND ELEVENTH CIRCUITS.**

The Sentencing Guidelines provide a ten level increase under USSG 2L1.1(b)(7)(D) when “any person died” during an alien transportation offense, but the provision does not specify a causation standard. The courts of appeals are divided on whether the enhancement requires direct or proximate causation, or whether it may be imposed based solely on but for causation under USSG 1B1.3.

The courts of appeals are openly divided on the causation required for the ten level enhancement under USSG 2L1.1(b)(7)(D), which applies when “any person died” during an alien transportation offense. Because the Guideline itself is silent as to causation, courts have adopted conflicting approaches. The Eighth and Ninth Circuits require proof of proximate causation. The Fifth, Tenth, and Eleventh Circuits apply a but for standard. This conflict warrants resolution because the enhancement

often drives sentencing outcomes to extreme ranges, frequently adding a decade or more of imprisonment.

### **I. The Eighth and Ninth Circuits Require a Showing of Direct or Proximate Causation**

The Eighth and Ninth Circuits hold that the death enhancement cannot apply unless the government demonstrates that the defendant's conduct proximately caused the death, meaning that the death was a reasonably foreseeable result of the defendant's actions.

The Eighth Circuit has long required proximate causation for the application of the death enhancement. In *United States v. Flores-Flores*, 356 F.3d 861, 863–64 (8th Cir. 2004) the court held that “the death must be the direct result of the defendant’s conduct” and that a proximate cause standard is necessary to avoid transforming the Guideline into a form of strict liability. The court rejected a but for approach and found that a smuggler could not be held responsible for a death unless “the death was a foreseeable result of the criminal activity.” *Id.* at 864.

The Ninth Circuit adopted proximate cause. In *United States v. Herrera-Rojas*, 243 F.3d 1139, 1144–45 (9th Cir. 2001) the court held that the enhancement applies only where the defendant’s conduct “was the proximate cause of the deaths,” and the government must show “a

sufficient causal connection” between the defendant’s acts and the fatality. The court reasoned that a but for interpretation would be inconsistent with the “individualized sentencing” required by federal law and would impose “automatic liability for every death occurring in the course of smuggling.” *Id.* at 1145.

## **II. The Fifth, Tenth, and Eleventh Circuits Apply a “But For” Standard**

In contrast, the Fifth, Tenth, and Eleventh Circuits hold that the Sentencing Guidelines require only but for causation, relying on USSG 1B1.3, which provides that “relevant conduct” includes all harm that “resulted from” the defendant’s acts. The Fifth Circuit adopted the but for standard in *United States v. Ramos-Delgado*, 763 F.3d 398, 401–02 (5th Cir. 2014) holding that proximate causation is not required because the Guidelines’ “resulted from” language “invokes a but for standard.” The court acknowledged the contrary positions of the Eighth and Ninth Circuits but expressly rejected them. *Id.* at 402.

The Tenth Circuit adopts the same but for approach. In *United States v. Cardena-Garcia*, 362 F.3d 663, 666 (10th Cir. 2004) the court held that the enhancement applies if “but for the defendant’s conduct, the death



would not have occurred.” The Tenth Circuit emphasized that the Guidelines do not require “direct or immediate causation.” *Id.* at 667.

The Eleventh Circuit is in agreement. In *United States v. Zaldivar*, 615 F.3d 1346, 1351–52 (11th Cir. 2010) the court held that “a defendant is accountable for death that would not have occurred but for his conduct,” and that the Guideline contains no proximate cause requirement. The court explicitly declined to follow the Eighth and Ninth Circuits. *Id.* at 1352.

### **III. The Split Is Acknowledged by the Courts and Has Deep Sentencing Consequences**

Several circuits have expressly recognized that the causation standard is unsettled across the federal courts. For example, the Ninth Circuit noted that “other circuits have adopted a different standard” but reaffirmed proximate causation. *Herrera-Rojas*, 243 F.3d at 1145. The Fifth Circuit acknowledged that the Eighth and Ninth Circuits reached the opposite conclusion but declined to follow them. *Ramos-Delgado*, 763 F.3d at 402. The existence of such direct disagreement on a recurring sentencing issue demonstrates a concrete and entrenched conflict.

The enhancement often adds ten offense levels, which, in combination with criminal history, routinely increases sentences by decades. In Mr.

Mondragon-Gonzalez' case, the enhancement alone moved the sentence from a range capped by statute on the lesser counts to a forty-year term. Whether a defendant must have directly caused or foreseen a death when facing such a dramatic sentencing increase is a question of national importance.

#### **IV. This Case Presents a Suitable Vehicle to Resolve the Circuit Conflict**

This case squarely presents the question that has divided the courts of appeals for more than two decades. The district court applied the ten level enhancement under USSG 2L1.1(b)(7)(D) solely on the basis of but for causation, and the Fifth Circuit affirmed on the strength of its own precedent. No alternative ground for affirmance exists. The causation issue was raised in the written objections to the PSR, renewed at sentencing, and fully argued. The court of appeals acknowledged that the outcome was dictated by its prior decisions and did not rely on any unresolved factual matters. The record is clear and complete.

The facts of this case also highlight the consequences of the divergent standards. Mr. Mondragon Gonzalez was more than two hundred miles from the scene of the crash, had no contact with the driver, and took no action that influenced the driver's decision to flee. The fatal event was

initiated by the independent choices of a separate individual who disregarded all caution. Under the proximate cause approach used in the Eighth and Ninth Circuits, these circumstances would foreclose application of the enhancement. Under the rule followed by the Fifth Circuit, the same improvement applies automatically. This case therefore demonstrates the concrete disparity produced by the split in authority.

In addition, the enhancement had a decisive effect on the sentence imposed. Without the ten-level increase, Mr. Mondragon Gonzalez's total offense level would have been markedly lower, and the advisory range would have been significantly reduced. With the enhancement, the district court determined that a forty-year sentence was appropriate, a term that effectively functions as a life sentence for a defendant in his mid-thirties. The Court has repeatedly exercised certiorari jurisdiction when a disputed Guidelines question determines the length or structure of a federal sentence and the courts of appeals are divided. In *Koon v. United States*, 518 U.S. 81, 91 (1996), the Court granted review to resolve conflicting appellate approaches to Guidelines departures. *Rita v. United States*, 551 U.S. 338, 344 (2007), the Court intervened because federal courts had adopted divergent rules governing the review of Guidelines sentences. The

same pattern appears in *Gall v. United States*, 552 U.S. 38, 46 (2007), where the Court granted certiorari to correct disparate standards among the circuits concerning variances from the Guidelines. In *Kimbrough v. United States*, 552 U.S. 85, 90 (2007), the Court again took the case to address conflicting treatments of the crack and powder cocaine Guidelines. More recently, in *Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016), the Court granted review because a dispute among the circuits over the handling of Guidelines miscalculations under plain-error review produced substantially different sentences for similarly situated defendants. In *Hughes v. United States*, 138 S. Ct. 1765, 1773 (2018), the Court accepted review to resolve a division over whether a defendant sentenced under a Rule 11(c)(1)(C) agreement may benefit from retroactive Guideline reductions. Taken together, these cases show that when the proper interpretation of a Sentencing Guideline directly shapes the advisory range and there is acknowledged disagreement among the circuits, the Court has consistently deemed the issue worthy of review. The legal question is cleanly framed because it arises in the ordinary course of a Guidelines calculation, without any complicating statutory issues. The district court expressly ruled on the standard of causation, the

court of appeals expressly relied on its precedent, and the issue is dispositive of the most severe portion of the sentence. No factual development is required to decide the question.

Finally, the issue recurs frequently. Alien smuggling prosecutions are common in several districts, and multi fatality pursuits often lead to sharply increased Guideline ranges. The causation standard used in applying USSG 2L1.1(b)(7)(D) has major consequences not only for Mr. Mondragon Gonzalez but for sentencing courts across the country. A clear national rule is needed. This case provides an orderly and direct path for resolving the conflict.

**II. WHETHER THE FIFTH CIRCUIT ERRED IN HOLDING THAT A FORTY-YEAR SENTENCE WAS SUBSTANTIVELY REASONABLE WHEN THE CAUSAL CONNECTION BETWEEN THE DEFENDANT'S CONDUCT AND THE DEATHS WAS INDIRECT, ATTENUATED, AND INCONSISTENT WITH THE STATUTORY COMMAND THAT PUNISHMENT BE JUST AND NO GREATER THAN NECESSARY.**

Under 18 U.S.C. 3553(a), a sentencing court must impose a sentence that is sufficient but not greater than necessary to comply with the purposes of federal sentencing. Petitioner received a forty-year sentence even though he was not present at the fatal crash, did not instruct the driver involved, and took no action that directly caused or contributed to the deaths. The forty-year sentence imposed on Mr. Mondragon Gonzalez

cannot be reconciled with the obligation in 18 U.S.C. 3553(a) to impose a punishment that is just and no greater than necessary. The substantive reasonableness of a sentence must take account of the defendant's own conduct and the degree to which that conduct contributed to the harm at issue. *Gall v. United States*, 552 U.S. 38, 50 (2007). Here, the record shows that the tragic deaths resulted from an independent and reckless decision by the lead driver to flee at extreme speeds, a decision Mr. Mondragon Gonzalez neither directed nor anticipated. He was more than two hundred miles from the scene. There is no evidence of communication with the driver during the event. Nothing suggests that he instructed any driver to flee from law enforcement. These facts sharply limit the extent of his personal responsibility for the fatal outcome.

The Fifth Circuit nevertheless affirmed a severe forty-year sentence on the grounds that it fell within the advisory Guideline range. Yet the Court has cautioned that the Guidelines are not to be applied in a manner that mechanically substitutes Guideline calculations for individualized sentencing judgment. *Pepper v. United States*, 562 U.S. 476, 488 (2011). When a sentencing court fails to evaluate the defendant's actual involvement in the harm, it abandons the requirement that the sentence

reflects the character and conduct of the defendant. See *Kimbrough*, 552 U.S. at 101 (sentences must reflect the defendant's personal culpability). A sentence that attributes the deaths entirely to Mr. Mondragon Gonzalez, despite a record devoid of any direct causal involvement, does not satisfy this requirement.

The Fifth Circuit's approach permits a near automatic imposition of catastrophic punishment based solely on a mechanical reading of the Guideline rather than on the individualized assessment required by federal law. Under that approach, the sentence is driven not by what Mr. Mondragon Gonzalez did, but by what another person did on a remote highway. This Court has long held that punishment must be proportionate to the defendant's own acts. See *Dean v. United States*, 581 U.S. 62, 70 (2017). The appellate court's conclusion that a forty-year term is substantively reasonable disregards the principle that individuals may not be held responsible for consequences they neither intended nor could reasonably foresee.

The attenuated chain of events in this case illustrates the problem. The high-speed flight arose when the driver, acting entirely on his own, chose to ignore an officer's attempt to conduct a traffic stop. The collision

occurred after a lengthy chase across open roads. The fatal injuries resulted from the manner in which the vehicle rolled and struck an oncoming car. This extraordinary sequence of events is far removed from the conduct attributed to Mr. Mondragon Gonzalez. A sentence that treats him as fully responsible for every link in this chain cannot be squared with the statutory direction that punishment be limited to what is necessary to reflect the defendant's true culpability. The Fifth Circuit's decision also creates unwarranted disparity. A defendant charged under identical circumstances in the Eighth or Ninth Circuits, where proximate causation is required for the death enhancement, would not be subject to anything near a forty-year term. When the length of a sentence depends entirely on the happenstance of location rather than the actual conduct of the defendant, the result is incompatible with the uniform administration of federal sentencing law. *United States v. Booker*, 543 U.S. 220, 264 (2005) (noting the importance of avoiding unwarranted disparities).

For these reasons, the Fifth Circuit's conclusion that this sentence is substantively reasonable conflicts with the statutory mandate in 3553(a) and with this Court's decisions requiring individualized sentencing and proportionality. The extreme disparity between the defendant's limited



role and the extraordinary punishment imposed underscores the need for this Court's review.

### CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the Fifth Circuit.

Done this 16 day of November 2025.



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Nicolas Mondragon-Gonzalez  
Register Number 71391-380  
Lee USP  
P.O. Box 305  
Jonesville, VA 24263