

No: **25-6212**

**In the
Supreme Court of the United States**

NICOLAS MONDRAGON-GONZALEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The opposition does not defeat review. It chiefly shows why the petition should have framed the conflict with greater precision. Petitioner does not insist that every court outside the Fifth has used the label "proximate cause." The conflict is still real, however, and the government's own cases confirm it. The question is whether U.S.S.G. § 2L1.1(b)(7)(D), when applied through § 1B1.3, requires only bare but-for causation, as the Fifth Circuit held in *Ramos-Delgado*, or instead requires a stronger causal nexus, such as a causal connection to dangerous conditions created by the defendant's unlawful conduct or reasonable foreseeability that the venture would create the sort of danger likely to produce death.

I. The opposition confirms a mature conflict over the causal nexus required for § 2L1.1(b)(7)(D).

The opposition's own discussion of the cases demonstrates the split. The Fifth Circuit held that "resulted from" in § 1B1.3 means actual or but-for causation and that courts have no warrant to add proximate cause or any comparable limitation. *United States v. Ramos-Delgado*, 763 F.3d 398, 401-02 (5th Cir. 2014). Under that rule, once actual causation is shown, the enhancement applies.

The Eighth Circuit requires more. *United States v. Flores-Flores*, 356 F.3d 861, 862-63 (8th Cir. 2004) held that the death "must be causally connected to dangerous conditions created by the unlawful conduct" and analyzed whether later

driver negligence was an intervening cause. The Ninth Circuit, at minimum, has assumed the same requirement. *United States v. Herrera-Rojas*, 243 F.3d 1139, 1144 n.1 (9th Cir. 2001). The Eleventh Circuit adopted an expressly foreseeability-based rule: the enhancement applies only when it was "reasonably foreseeable" that the defendant's acts, or those of the smuggling operation, could create the kind of dangerous circumstances likely to result in death. *United States v. Zaldivar*, 615 F.3d 1346, 1350-52 (11th Cir. 2010).

Those are not verbal variations on a single rule. They ask materially different questions. Under *Ramos-Delgado*, a sentencing court asks whether the death would not have occurred absent the defendant's relevant conduct. Under *Flores-Flores*, *Herrera-Rojas*, and *Zaldivar*, the court asks whether the death bore a sufficient nexus to dangers created by the unlawful conduct and whether the fatal outcome was foreseeable in the pertinent sense. The difference matters most where, as here, the defendant was not the driver, did not personally direct the flight from police, and objected that the fatal chase was not a foreseeable consequence of the jointly undertaken activity. The First Circuit has already described these decisions as "widely divergent views" and placed the Fifth, Eighth, and Eleventh Circuits at different points on the causation spectrum. *United States v. De La. Cruz-García*, 842 F.3d 1, 6-8 (1st Cir. 2016). That description captures the problem exactly. The courts

are not merely using different words. They are applying different limits, or no meaningful limit at all, before adding ten offense levels for death.

II. This case is a clean vehicle because the Fifth Circuit treated its but-for rule as dispositive.

The causation issue was preserved. Petitioner objected in writing and again at sentencing that the deaths were not a foreseeable consequence of the conduct for which he was being sentenced. The district court overruled the objection because Fifth Circuit precedent foreclosed anything more demanding than but-for causation. The court of appeals affirmed for the same reason, expressly stating that *Ramos-Delgado* controlled. There is no antecedent waiver problem and no unresolved factual issue standing between this Court and the legal question presented.

The opposition answers the split by arguing that petitioner would lose even in the Eighth or Ninth Circuits. That contention only underscores why review is warranted. The district court did not apply an Eighth Circuit nexus inquiry or an Eleventh Circuit foreseeability inquiry. It did not decide whether petitioner himself created the dangerous conditions that caused these deaths. It did not decide whether the fatal flight was reasonably foreseeable to him in the sense required by *Zaldivar*. It instead held that Fifth Circuit law required only but-for causation.

That distinction is outcome-significant. The sentencing court expressly recognized that petitioner did not order anyone to drive carelessly. Sent. Tr. 25. Yet it still applied the death enhancement because *Ramos-Delgado* made that fact legally

immaterial. If the governing rule requires more than bare but-for cause, the lower courts must decide that question in the first instance under the correct standard. The government cannot deny the split and then fill the gap by asking this Court to make findings the courts below never made.

III. The government's *Braxton* point does not justify denial.

This Court often leaves ordinary Guidelines disputes to the Commission. But this case does not involve an ordinary dispute. The split has persisted for decades. The Commission has not resolved it. And the question is not minor: the enhancement adds ten offense levels and can alter the advisory range by many years, as it did here. *Booker* does not diminish the need for review. Even advisory Guidelines remain the starting point and anchor for every federal sentencing. A conflict over the causal showing required for a ten-level death enhancement will continue to produce materially different ranges, and materially different sentencing leverage, depending solely on geography. That is the sort of recurring federal sentencing question for which this Court's intervention remains necessary when the Commission has not acted.

IV. The Court need not grant review on the second question to grant review on the first.


The opposition is correct that the second question, standing alone, presents preservation complications because the Fifth Circuit reviewed substantive reasonableness for plain error. But that does not weaken the case for reviewing Question One. If petitioner is correct that the wrong causation standard governed the ten-level enhancement, the sentence cannot stand as imposed. The court of appeals can then reconsider any remaining reasonableness issues under the correct advisory range.

Question Two thus serves a narrower function at this stage. It shows the practical importance of the causation question. A 40-year sentence turned on a legal rule that other courts do not share. The Court need not say more now to conclude that the first question warrants review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Done this 10, day of April 2026.



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