No. _____

IN THE
Supreme Court of the United States

_____

JOHN EDWIN CORN, JR.,
***Petitioner*,**

v.

UNITED STATES OF AMERICA,
***Respondent*.**

_____

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

_____

PETITION FOR A WRIT OF CERTIORARI

_____

Charles L. Pritchard, Jr.
Federal Public Defender
Middle District of Florida

M. Allison Guagliardo
Assistant Federal Defender
400 N. Tampa Street, Suite 2700
Tampa, FL 33602
Telephone: (813) 228-2715
E-mail: allison_guagliardo@fd.org
Counsel of Record for Petitioner

QUESTION PRESENTED

Following this Court's decisions in *United States v. Booker*, 543 U.S. 220 (2005), and *Gall v. United States*, 552 U.S. 38 (2007), whether a district court imposes a substantively unreasonable sentence when it upward varies from the sentencing guidelines range but affords no real weight to a defendant's mitigating history and characteristics under 18 U.S.C. § 3553(a)(1)?

RELATED PROCEEDINGS

This case arises from the following proceedings:

United States v. Corn, No. 24-13187 (11th Cir. Nov. 6, 2025);

United States v. Corn, No. 3:13-cr-100-TJC-MCR (M.D. Fla. Sept. 19, 2024);

Corn v. United States, No. 3:23-cv-978-TJC-MCR (M.D. Fla. Apr. 16, 2024); and

In re John Corn, Jr., No. 23-11623 (11th Cir. June 2, 2023).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Edwin Corn, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion is unpublished, 2025 WL 3099112, and is provided in the Petition Appendix (Pet. App.).

JURISDICTION

The Eleventh Circuit issued its opinion on November 6, 2025. Pet. App. at 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

RELEVANT STATUTORY PROVISIONS

Section 3553(a) of Title 18, U.S. Code, provides:

> **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--
>
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (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;

(3) the kinds of sentences available;

(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[;]

(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.

STATEMENT OF THE CASE

1. In 2014, Mr. Corn was convicted by a jury of Hobbs Act robbery in violation of 18 U.S.C. § 1951(a) (Count Two); two counts of attempted Hobbs Act robbery in violation of § 1951(a) (Counts One and Three); and brandishing a firearm in furtherance of a "crime of violence" (the attempted Hobbs Act robbery in Count Three) in violation of 18 U.S.C. § 924(c) (Count Four). Doc. 1-1; Doc. 53; Doc. 86; *see* Doc. 154 at 2-3; Doc. 158 at 1-2.[1] The robbery and attempted robberies were of Publix supermarkets in October 2012. Doc. 169 (PSR) at ¶¶ 12–15; *see* Doc. 1-1.

At the original sentencing held in 2014, the sentencing guidelines range on the robbery and attempted robbery offenses was 78 to 97 months, plus a consecutive 84-month term for the § 924(c) conviction. Doc. 113 at 3. The district court upward varied from the guidelines range, imposing 240-month concurrent terms on the Hobbs Act robbery and attempted robberies (Counts

[1] Mr. Corn cites the docket entries in Case No. 3:13-cr-100-TJC-MCR (M.D. Fla) as "Doc." and the docket entries in Case No. 3:23-cv-978-TJC-MCR (M.D. Fla.) as "Civ-Doc."

One through Three) and a consecutive 84-month term for brandishing the firearm (Count Four), for a total sentence of 324 months. Doc. 105 at 1-2; Doc. 113.

2. After this Court's decisions in *United States v. Davis*, 588 U.S. 445 (2019), and *United States v. Taylor*, 596 U.S. 845 (2022), the Eleventh Circuit authorized Mr. Corn to file a second/successive 28 U.S.C. § 2255 motion challenging his conviction and sentence under 18 U.S.C. § 924(c), which had been predicated on attempted Hobbs Act robbery (Count Three). Doc. 154.

Mr. Corn filed his authorized § 2255 motion in the district court. Doc. 155. The government agreed that Mr. Corn's § 924(c) conviction and sentence should be vacated, but it asked the district court to keep the 240-month sentence on the remaining three counts intact. Civ-Doc. 7. Mr. Corn argued instead that a full resentencing should be held. Civ-Doc. 11.

The district court granted Mr. Corn's § 2255 motion and vacated his § 924(c) conviction and sentence. Doc. 158 at 4-5. The district court also determined that "a resentencing [wa]s appropriate" and accordingly (i) vacated the sentences on Counts One, Two, and Three, (ii) ordered that a resentencing hearing would be held with Mr. Corn present, and (iii) requested that the probation office prepare an updated presentence report (PSR). *Id.* at 5-6.

3. The district court held the resentencing on September 18, 2024. Doc. 187. Without the § 924(c) conviction, the probation office recalculated the sentencing guidelines range to be 87 to 108 months in prison. *Id.* at 4.[2]

Mr. Corn presented evidence and argument to mitigate the sentence to be imposed. At the resentencing, Mr. Corn was now 74 years old. Doc. 187 at 11. He had suffered a heart attack requiring the placement of stents just months before resentencing, and he continued to experience deterioration from other medical conditions, including scoliosis (which defense counsel stated could be "evidenced by looking at him"), arthritis, COPD, an inguinal hernia, and essential hypertension. *Id.* at 11-16; *see* Doc. 170 (sealed medical records). Counsel also reported that Mr. Corn had not had any disciplinary infractions in the Bureau of Prisons for almost five years and, before his medical issues, had been working at a Unicor job. Doc. 187 at 13. Further, while Mr. Corn had maintained his innocence at the original sentencing, he now expressed remorse for his offenses. *Id.* at 17, 20-23, 33.

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[2] Mr. Corn's offense level on the robbery and attempted robbery offenses had increased to total offense level 28 because the guidelines now added the enhancement for brandishing the firearm in place of the vacated § 924(c) conviction. Doc. 169 (PSR) at ¶ 36. Moreover, because of a change in the guidelines' calculation of criminal history, Mr. Corn's criminal history category was reduced to II. *Id.* at ¶¶ 60, 101. No party disputed this guidelines range at Mr. Corn's resentencing. Doc. 187 at 4.

The government asked the district court to resentence Mr. Corn to 240 months, the same sentence it had previously imposed on the robbery and attempted robbery counts. The government emphasized Mr. Corn's offense conduct and criminal history in making this request. *Id.* at 5-10; Doc. 168.

The district court resentenced Mr. Corn to the same 240-month prison term on Counts One, Two, and Three. Doc. 187 at 35; Doc. 175 at 2-3. The court stated that it understood it was "de novo here, but" it observed that the "facts of the case from before haven't changed" and "Mr. Corn's criminal history hasn't changed." Doc. 187 at 28. The district court acknowledged that it could look at post-sentence rehabilitation, medical history, and such, and said that it was taking those factors into account. *Id.* at 31. But it declined to afford any mitigating weight to Mr. Corn's medical conditions when it reimposed the same sentence it had imposed ten years before. *See id.* at 32-35. Mr. Corn objected to the sentence before the district court. *Id.* at 38.

4. On direct appeal to the Eleventh Circuit, Mr. Corn challenged the substantive reasonableness of the district court's sentence. As Mr. Corn explained, the district court's sentence of 240 months in prison was more than double the undisputed guidelines range of 87 to 108 months in prison. Moreover, by imposing the same 240-month sentence that it had given ten years before, the district court showed it had afforded no real weight to Mr.

Corn's mitigation, including his advancing age, declining health, and expression of remorse.

The Eleventh Circuit affirmed. The appellate court agreed that the upward variance in Mr. Corn's case, an 122% increase, was a "major" one. Pet. App. at 3a (internal quotation marks omitted). But the Eleventh Circuit stated that its "review of a sentence is limited." *Id.* As it explained, "a district court may weigh some § 3553(a) factors above others" and it, as the appellate court, "will not scrutinize weight allocation as long as the total sentence is reasonable." *Id.* The Eleventh Circuit thus affirmed Mr. Corn's sentence, leaving the weight to be afforded to his mitigation "to the sound discretion of the district court." *Id.* at 4a (quoting *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015)) (internal quotation marks omitted).

REASON FOR GRANTING THE PETITION

This Court's guidance is needed to address the standards governing an appellate court's review of a sentence for substantive reasonableness

As this Court has explained, "[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Concepcion v. United States*, 597 U.S. 481, 492 (2022) (quoting

Koon v. United States, 518 U.S. 81, 113 (1996)) (internal quotation marks omitted). Before a district court imposes sentence, it is statutorily required to "consider" several factors, including the "history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1)-(7).

This Court has directed appellate courts to review the district court's sentence in two steps. The appellate court should first ensure the district court committed no procedural error, such as incorrectly calculating the guidelines range or failing to "consider" the § 3553(a) factors. *Gall v. United States*, 552 U.S. 38, 51 (2007). Second, assuming no procedural error, the appellate court should review the substantive reasonableness of the sentence "under an abuse-of-discretion standard," "tak[ing] into account the totality of the circumstances." *Id*.

Mr. Corn respectfully petitions this Court to provide additional guidance to the appellate courts in conducting this second step of substantive reasonableness review. There is a recognized need for such guidance. *See, e.g.*, *Sentencing--Appellate Review--Seventh Circuit Holds Above-Guidelines Sentence was Inadequately Justified, But Foreshadows Same Sentence on Remand*, 134 Harv. L. Rev. 2855, 2855-60 (June 2021) (expressing that "[t]oday, appellate courts police district courts for adherence to procedural formalities but do little to promote substantive reasonableness in sentencing," noting that "98.3% of sentences that appellate courts reversed or remanded on

reasonableness review in 2019 were decided on procedural, not substantive, grounds"); Nancy Gertner, Apprendi/Booker *and Anemic Appellate Review*, 99 N.C. L. Rev. 1369, 1373-77, 1387-89 & n.28 (June 2021) (explaining that the abuse-of-discretion standard "leads the appellate court to be overly deferential to the trial court, abdicating any responsibility to articulate substantive sentencing standards" and that "[o]n the rare occasions when the appellate courts do determine that an outside-the-Guidelines sentence is unreasonable, the analysis is muddy"); D. Michael Fisher, *Still in Balance? Federal District Court Discretion and Appellate Review Six Years After* Booker, 49 Duq. L. Rev. 641, 648 (Fall 2011) ("[T]he courts of appeals have remained uncertain about the 'contours' of substantive reasonableness review.").

Mr. Corn's case illustrates the need for this Court's review. At sentencing, Mr. Corn presented evidence and argument in mitigation of his sentence, including his advancement in age, decline in health, and expression of remorse. Although the district court "consider[ed]" Mr. Corn's mitigation and thus did not procedurally err, the court afforded no real weight to that mitigation when it sentenced Mr. Corn to more than double the high end of the guidelines range. On appeal, the Eleventh Circuit affirmed, deferring to the district court's discretion. Pet. App. at 4a (affirming Mr. Corn's sentence as substantively reasonable, stating that the "decision about how much weight to assign a particular sentencing factor is committed to the sound discretion of

the district court") (quoting *Rosales-Bruno*, 789 F.3d at 1254) (internal quotation marks omitted). But an appellate court's complete deference to a district court's sentencing discretion is not a substantive review of it. *See* Gertner, 99 N.C. L. Rev. at 1375 n.28.

Mr. Corn's case presents a good vehicle for this Court to provide additional substance to substantive reasonableness review. Because the district court reimposed the same 240-month sentence that it had given ten years before despite Mr. Corn's advancing age, declining health, and expression of remorse, the district court showed it had afforded no real weight to his mitigation.[3] The Eleventh Circuit, on substantive reasonableness review, completely deferred to the district court's decision to afford no real weight to Mr. Corn's mitigating history and characteristics under § 3553(a)(1). Pet. App. at 3a, 4a.

This Court's guidance is accordingly needed to address an appellate court's review of the weight that a district court afforded (or did not afford) to the statutory sentencing factors in § 3553(a), including a defendant's mitigation. Without this Court's intervention, appellate courts' substantive reasonableness review will remain unclear and unduly deferential. *See* pp. 8-

[3] The district court may not have been not required to reduce Mr. Corn's sentence, *Pepper v. United States*, 562 U.S. 476, 505 n.17 (2011), but the district court's resentencing decision is subject to substantive reasonableness review like any other sentencing.

9, *supra*; *see also United States v. Wunderlich*, 342 U.S. 98, 101 (1951) (Douglas, J., dissenting) ("Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions.").

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

Charles L. Pritchard, Jr.
Federal Public Defender
Middle District of Florida

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Florida Bar No. 0800031
Assistant Federal Defender
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Telephone: (813) 228-2715
Facsimile: (813) 228-2562
Email: allison_guagliardo@fd.org
Counsel of Record for Petitioner