25-6791 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

January Term 2026

DAVID SANO-PEREZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

DAVID SANO-PEREZ,
Petitioner,
Pro-Se,
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QUESTION PRESENTED

Whether a District Court's mere pronouncement at a criminal sentencing that it would have imposed the same sentence on a defendant without regard to the range advised by the Sentencing Guidelines suffices to make any erroneous calculation of that range "harmless" for purposes of Federal Rule of Criminal Procedure 52, and rather or not action to Appeal per rule 60(b) to be allowed?

LIST OF PARTIES PROCEEDING BELOW

1. United States of America
2. Andy Samuel De La Cruz
3. Luis Hernandez-Caripe
4. David Sano-Perez
5. Claudio Jose Mora-Torres
6. Jose Cespedes

TABLE OF EXHIBITS

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit rendered in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the First Circuit affirming Petitioners sentence reported at §§ 3:25-CV-01621-PAD 1st Cir. R. 27.0(d), infra..

JURISDICTIONAL GROUNDS

The corrected opinion of the United States Court of Appeals for the First Circuit affirming Petitioners sentence issued on June 14, 2024. App. 1, infra. On August 7, 2025 Petitioner submitted a request for rehearing and rehearing en banc which the First Circuit Court of Appeals denied on October 14, 2025. App.2, infra. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

STATUTORY PROVISIONS

Title 18, Section 3553(a), of the United States Code, states, in relevant part:

> The Court in determining the particular sentence to be imposed, shall consider... (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[;] (5) any pertinent policy statement (A) issued by the Sentencing Commission pursuant to 994(a)(1) of title 28, United States Code[;] and (6) the need to avoid unwarrented sentencing disparities among defendants with similar records who have been found guilty of similar conduct[.]

18 U.S.C. §§ 3553(a)(4)-(6).

Rule 52(a) of the Federal Rules of Criminal Procedure provides that "[a]ny error, defect, irreglarity, or variance that does not affect substantial rights must be disregarded."

STATEMENT OF THE CASE

On August 31, 2022, a grand jury sitting in the District of Puerto Rico returned a four count indictment against David Sano-Perez (the Petitioner) and his four Co-defendants "see Exhibit #1 page 1 through 6".

On June 14, 2024 the Petitioner pleaded guilty to all four charges of the criminal indictment that was imposed on June 14, 2024 "see Exhibit #2 page 1 through 2".

The district Court further sentenced the Petitioner to a term of imprisonment of 135 months per each count to be served concurrently and a total of 5 years supervised release for a total of (540 months and 5 years).

The district court did not hold the Petitioner in any kind of leadership role in his case, due to this fact the Petitioner now challenges this in relation to his imposed sentencing guidelines. Petitioner can now argue that his sentence should be vacated and remanded back to his sentencing court and placed on the Courts Docket for resentencing. The Petitioners case should have been reviewed with a Panel majority, and in doing so a panel majority would have addressed and rejected the merits of each of the Petitioners counts in this case.

However by not allowing that panel majority the district Court erroneously calculated his guideline range by mis-classifying him in his actual role in the crime, and then the court dismissed this argument in subsection "assumed error harmless review." (United States v. Gomez-Jimenez, 750 F.3d370, 382(4th Cir. 2014). Under this doctrine, the appellate Court will review alleged guideline errors by asking two questions: (1) Whether the district court would have reached the same result had it correctly decided the disputed guideline range issue, and (2) Whether the sentence inposed would be substantively reasonable had the guideline dispute been decided in the Defendants favor.

The District Court in this case simply relied on the typical Boilerplate

response typically used in cases such as this one:

> Considering all the 3553(a) factors and in imposing this sentence I do beleive that I have properly calculated the advisory guideline range. If however, for some reason someone were to determine that I did not, I would announce alternative variant sentence.....

Based soley on this statement used the appellate court found it did not need to reach the question of whether the district court properly calculated the guideline range. In particular the panel majority does not actually require a district court to demonstrate that it would have impossed the samersentence had it properly calculated the guideline range:

> The majority perceives the district court as speciffcally citing in a "seperate and particular explanation" for its alternative sentence, the § 3553(a) factors. In reality, that "separate and particular explanation" was a single sentence, in which the district court simply referenced our harmless error precedent and its § 3553(a) analysis, which was devoid of any indication that an upward varance was necessary to impose an appropriate sentence.

The panel majority ignores this Courts guidance on proper post Booker review of sentences Specifically:

> The evolution of the [fourth circuits] harmless error jurisprudence has reached the point where any procedural error may be ignored simply because the district court has asked us to ignore it. In other words, so as long as the [district] court announces, without any explanation as to why, that it would impose the same sentence, the court may err with respect to any number of enhancments or calculations. More to this point a Defendant may be forced to suffer the courts errors without a chance at a meaningful review. Gall is essentially an academic excerise in most circuits now, never to be put to pratical use if district courts follow the encourgement to announce alternative, variant sentences. If the Majority wishes to abdicate its responsibility to meaningfully review sentences for procedural error, the least it can do is acknowledge that it has placed [Gall] in mothballs, avaliable only to review those sentences where a district court fails to cover its mistakes with a few [magic] words.

Petitioner submitted a request for rehearing and rehearing En Banc which the First Circuit Court of Appeals denied on October 14, 2025 this petition follows:

MANNER IN WHICH THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner in his Appellate Brief and oral Argument,,presented tothe First Circuit Court of Appeals the question of: Whether a District Court's mere pronouncement at a criminal sentencing that it would have imposed the same sentence on a defendant without regard to the range advised by the sentencing guidelines suffices to make any erroneous calculation of that range "Harmless" for purposes of Federal Rule of Criminal Procedure 52, and rather or not action to Appeal per rule 60(b) to be allowed ? Mullaney v. Wilbur, 421 U.S. 684 (1975)....

REASONS FOR GRANTING THE WRIT

> This Court should grant reviewto clarify whether a district court mere pronouncement at a criminal sentencing that ity would have imposed the same sentence on a Defendant without regard to the range advised by the sentencing guidelines suffices to make any erroneous calculation of that range "Harmless" forthepurposes of Federal Rule of Criminal Procedure (52) and rather or not to allow action of appeal per rule 60(b) allowed ?

The First Circuits conclusion that the sentencing courts erroneous guidelines applications where harmeless based on the district courts stated intent that it would impose the same sentence regardless of any such errors. "See exhibit #3 page #1"

This Court has not yet addressed whether the "assumed error" was harmless in Petitioners case, standard the panel employed can excuse significant proceduarl errors without first dismanteling the intergeral sentencing framework that this court constructed following "United States v. Booker, 543 U.S. 220 (2005) and further more in Gall v. United States, 552 U.S. 38 (2007)."

While in UNited States v. Booker rendered the guidelines advisory in nature, it did however peserve the role of the Sentencing Commission and the function of the Guidelines which, toegether , would continue to "provide certainty and fairness in meeting the purposes of sentencing, while advoiding

unwarrented sentencing disparities[.] "543 U.S. 220, 264 (2005)."

In Gall v. United States, the Court should emphasized the continued importance of the guidelines, directing that "a district court should began allisentencing proceedings by correctly calculating the applicable guideline range. "552 U.S. at 49." in keeping with this emphasis , the Court established a sequential,,two-step process for appellate review of post Booker sentences. Id. At 49-51. First an appellate Court must "ensure that the district court committed no significant procedural error such as failing to calculate (or impoperly calculating) the guideline range[.] id at 51. Only upon finding the sentence contained no "significant procedural errors" could the appellate court conduct step two, a review of the sentence for substantive reasonableness. id . at 49-50; see also United States v. Delgado-Martinez, 564 F.3d 750, 752 (5th Cir. 2009)(noting "Galls directive to treat the two steps as sequential, dispositive inquires"). Gall aslso emphasized that "[a]s a matter of fact and adminstration and to secure national consistency the guidelines should be the starting point and intial benchmark." Gall, 552 U.S. at 49 (emphasis added). This intial benchmark continues to have an important function throughout the sentencing process and provides a standard by which to measure the reasonablness of the sentence ultimately imposed. A proper guideline range calculation also serves an essential role in the appellate reviewe of a sentence. In Rita v. United States, the court condoned the use of a presumption of reasonableness by an appellate court when reviewing the guideline within sentences. 551 U.S. 338, 348-49 (2007). However the validty of such a presumption depends upon a proper application of the guidelines:

> [T]his presumption reflects the fact that, by the time an appeals court is condsidering a within-guidelines sentence on review, both the sentencing judge and the sentencing commission will have reached the same conclusion as to the proper sentence in a particular case. That doubt determination significantly increases the likeihood that the sentence is a reasonable one.... Id. at 347..

Given this is important role a correct guideline range and application along with calculation have as the "intial benchmark" in the post Booker process, "an error at that step infects all that follows at the sentencing proceeding, including the ultimate sentence chosen by the district court. "United States v. Lewis, 606 F.3d 193, 201(4th Cir, 2010).

In the absence of guidance from this Court, appellate courts have began to routinely treat significante procedure errors as "Harmless". See Delgado-Martinez, 564 F.3d at 752 ("while Gall is silent on this point, we agree with several sister circuits that cerain harmless [procedural] errors do not warrent reversal".) United States v. Tavares, 705 F.3d 4, 25-26 (1st Cir. 2013)(holding that harmless error review applies to the "failure to calculate[Defendants] guideline sentencing range") See United States v. Zabielski, 711 F.3d 381, 388-89 (3d Cir. 2013)(permitting harmless error review where the record containes an "explicits statement that the district court would ahve imposed the same sentence" regardless of a courts failure to calculate the proper guideline range): United States v. Keene, 470 F.3d 1347, 1349 (11th Cir. 2006)(same) In Petitioners case the panel simply followed suit, employing an "assumed error harmless inquiry". Petitioner recognizes that use of harmless review of sentencing may not appear superfically problematic in all cases. See Williams v. United States, 503 U.S. 193, 202-03 (1992)(Condoning harmless error review of an upward departure in a pre-Booker case.) Petitioner also acknowledges that this court has used a similar standard here- whether "the district court would have imposed the same sentence" even without the error. Id. see Tavares, 705 F.3d at 25-26 & n.33 (we routinely apply Williams harmless error analysis to procedural errors at sentencing.")

The fourth Circuits "assumed harmless error" approach, however does not merely employ a typical "harmless error" analysis, however it does convert harmless error analysis into a vehicle that precludes appellate review of certain procedural errors at and during sentencing and by doing so it

eviscerates the Courts guidance from "Gall". The First Circuit does not properly review all District Court records to find a carefully crafted sentence that respects the prominent place that guidelines have in a federal sentencing , instead it relies upon (a single sentence) in which the district court simply referances [the First Circuit] harmless error precedent and §3553(a) analysis, that is devoid of any indication of a upward variance was even necessary to ev even impose a appropriate sentence. Gomez-Jimenz, 750 F.3d 370, 390-91.

The First Circuits "assumed harmless error" approach merts review due to this Courts guidance, it effectively eliminates the role of the guidelines in any Federal sentencing. A simple misapplication and mistaken calculation differs in kind from other "significant procedural errors" (Lewis, 606 F 3d at 199-200). Simply put a courts calculation of the guidelines is either right or wrong, by contrast the steps in a sentencing process allow for a Judges discreation to determine the nature and degree of any such upward or downward departure or variance , and in selecting [a] reasonable sentence,not the [only] one. United States v. Evans, 526 F.3d 155, 166 (4th Cir 2008) (explaining the sentence imposed "may not be the only reasonable sentence, but it is a reasonable sentence" , and the Supreme Court has directed that any reasonable sentence may[and] can be upheld. And secondly these steps depend upon the correct calculation of the guideline range. Gall, 552 U.S. at 50, since the miscalculation of the guidelines "Infects....the ultimate sentence that is chosen", [United States v. Diaz-Ibarra, 522 F.3d 343, 347 (4th Cir. 2008] errors that improperly increase or decrease the guideline range cannot be divorced from the ultimate sentence, any appellate court should apply a more rigorous standard than any deferential "assumed harmless error" [review] to affirm any "infected sentence". This so called harmless approcah will also reduce the inative of an appellate panel to address and resolve guideline issues. By merely assuming and error and resting affirmance guideline ranges

future panel decisions would merly consitute [dicta] regarding guideline issues.

On a pratical level minimizing the importance of proper guideline ranges in a appellate review will no longer serve the intrests of judical effciency.

Moreover the inconstiant application of Rule 60(b) in the First Circuit is inconstistant with any set precedent "See Exhibit #4 Page 1-2". The purpose of any such precident is to simply secure [national Consistency], moreso in Post Booker sentencing issues.

CONCLUSION

In short the Fisrst Circuit has improperly converted a harmless error review into a vehicle that precludes any appellate review of any [and] all guideline errors based soly on the say so of the District Court, and at the same time committing an abuse of discretion on rule [.] 60(b) disreguarding its very own set precedent.

For the foregoing reasons, Petitioner requests a Writ of Certiorara issue to review the decisionof the United States Court of Appeals for the Fourth Circuit.

Respectfully Submitted
This 9th day of January 2026.

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