

No. 26-\_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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ISMAEL CAMACHO,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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O'DONNELL CHRISTOPHER LLP  
700 S. Royal Poinciana Blvd.  
#705  
Miami Springs, FL 33166  
Tel: 305.640.8958  
Email: sodonnell@  
odonnellchristopher.com

*/s/ Sonia E. O'Donnell* \_\_\_\_\_  
SONIA E. O'DONNELL  
Florida Bar No. 250643

*/s/ Robert A. O'Donnell* \_\_\_\_\_  
ROBERT A. O'DONNELL  
Florida Bar No. 1011567

February 26, 2026

*Counsel of Record for Petitioner*

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## **QUESTION PRESENTED**

Whether the calculation of appellant Camacho's offense level at re-sentencing following the vacatur of one count of the Complaint violates due process and fundamental fairness; the sentence imposed resulted in a harsher sentence without justification. The panel's reasoning permits district courts to manipulate Guidelines calculations to nullify the sentencing benefits of successful appeals, undermining both the constitutional protection against vindictive sentencing and the integrity of the Guidelines system itself.

## **PARTIES TO THE PROCEEDING**

The parties to the proceedings in the Eleventh Circuit Court of Appeals include the United States of America and Petitioner Ismael Camacho. The co-defendants associated in this proceeding are: Eladio Alberto Munoz, Ilvigio Hernandez, Humberto Munoz, Sergio Echevarria, John Doe, Orestes Hernandez, Vlademir Negrin, Carlos Escandell, Jose Blas Lopez, and Gloria Maria Diaz.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, there are no corporate parties in this case.

## RELATED PROCEEDINGS

The following proceedings are directly related to this Petition:

United States Court of Appeals, Eleventh Circuit:

*United States v. Camacho*, 24-12503 (11th Cir. Jan. 2, 2026), *order denying petition for rehearing*;

*United States v. Camacho*, 24-12503, 2025 WL 3310468 (11th Cir. Nov 28, 2025), *aff'd sentence*;

*United States v. Camacho*, 21-10943 & 21-11753, 2022 WL 4392447 (11th Cir. Sep 23, 2022), *vacated*;

United States District Court Southern District of Florida:

*Camacho v. United States*, 19-24658-Civ-Martinez/Otazo-Reyes, 2020 WL 13846007 (S.D. Fla Jun 25, 2020) *granting post-conviction relief in part, denying in part, adopting R&R*;

*Camacho v. United States*, 19-24658-Civ-Martinez, 2020 WL 13846010 (S.D. Fla. May 11, 2020).

*United States v. Diaz, et al.*, 96-Cr-0043-Martinez, 248 F.3d 1065 (11th Cir. 2001) *Camacho's sentence was affirmed, conviction of Count X vacated and remanded for resentencing as directed by the opinion. The sentence for Counts I, II, IV, VII, IX, and X vacated for resentencing consistent with Application Note 2 of U.S.S.G. § 2K2.4 as amended by Amendment 599 and Application Note 3 to U.S.S.G. § 1B1.10. The remaining sentences of Camacho for Counts III, VI, VIII, and XI affirmed.*

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner, Ismael Camacho, respectfully petitions this Court for a writ of certiorari to review the *Opinion* rendered by the Eleventh Circuit Court of Appeals on November 28, 2025, is unpublished but available at 2025 WL 3310468.

**JURISDICTION**

The Eleventh Circuit entered judgment on November 28, 2025 (App. A). It denied a timely petition for rehearing on January 2, 2026 (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS INVOLVED**

The United States Constitution's Fifth Amendment provides: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in

the militia, when in actual service in time of war or public danger; 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; nor shall private property be taken for public use, without just compensation.

### **STATEMENT OF THE CASE**

Petitioner Ismael Camacho respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit denied the appeal of the sentence and the rehearing which Petitioner argued violated due process and was intentionally and vindictively calculated so that he did not receive the benefit of the dismissal of one count.

The appeal to the Eleventh Circuit Court of Appeals arose from a long history of criminal proceedings against Defendant Ismael Camacho, beginning with his indictment in 1996. The defendant was initially charged in a second superseding indictment, and, following subsequent revisions, faced a fourth superseding indictment returned on April 7, 1998. This last indictment charged Camacho with 11 counts, including conspiracy to commit extortion, attempted extortion, carjacking, and using or carrying a firearm during a crime of violence under 18 U.S.C. § 924(c). (DE# 330). On April 20, 1998, trial commenced, and after 20 days of proceedings, the

jury convicted Mr. Camacho on 10 of the 11 counts. (DE# 433, 442). He was sentenced on November 12, 1998, to 1,145 months of imprisonment. (DE# 547).

On appeal, the Eleventh Circuit affirmed Camacho's convictions but vacated his sentence under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), remanding for resentencing. *United States v. Diaz*, 248 F.3d 1065 (11th Cir. 2001). At resentencing on December 6, 2002, the Court reduced Camacho's sentence to 1,015 months. (DE# 661). Despite efforts to appeal the new sentence, Camacho's request for an out-of-time appeal was denied. (DE# 723).

Over the years, Camacho pursued various post-conviction motions, including successive motions under 28 U.S.C. § 2255 based on legal developments such as *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *United States v. Davis*, 139 S. Ct. 2319 (2019). The Court vacated certain § 924(c) convictions, including those related to Counts 3 and 6 of his indictment, but upheld others. (DE# 794). After resentencing on March 19, 2021, Camacho's sentence was reduced to 535 months. (DE# 826).

Most recently, following the Supreme Court's decision in *United States v. Taylor*, 142 S. Ct. 2015 (2022), Camacho successfully challenged his conviction under Count 8, which was *vacated* by the appellate court on January 24, 2024. (DE# 900).

After having his conviction overturned for Count 8, Camacho was resentenced to a harsher sentence than he had previously faced while his conviction for Count 8 still stood. (DE# 915). The present petition for certiorari review focuses on the due process implications of Appellant's sentence having been augmented simply as a

result of his having successfully petitioned to be exonerated from Count 8 of the convictions against him.

On appeal, the Eleventh Circuit affirmed *Camacho's* conviction in an unpublished opinion *United States v. Camacho*, 24-12503 (11th Cir. Nov. 28, 2025), and denied rehearing on January 2, 2026.

### **REASONS FOR GRANTING THE PETITION**

Certiorari is warranted in this case to address the important issue of whether a trial court violates due process when it increases a sentence, upon remand after vacatur, when no new facts exist to support the increase.

The Eleventh Circuit Court's panel held that a district court may raise a defendant's Guidelines offense level from 35 to 38 after he successfully vacated a conviction, so long as the court reimposed the same total sentence. The Court's holding in the case at bar conflicts with *North Carolina v. Pearce*, 395 U.S. 711 (1969), and misapplies its own decision in *United States v. Fowler*, 749 F.3d 1010 (11th Cir. 2014). The panel's reasoning permits district courts to manipulate Guidelines calculations to nullify the sentencing benefits of successful appeals, undermining both the constitutional protection against vindictive sentencing and the integrity of the Guidelines system itself. It violates fundamental principles of due process. See *United States v. Singletary*, 75 F.4th 416, 422 (4th Cir. 2023) (A defendant's fundamental due process right to appeal his sentence without fear of retribution by the sentencing court has been firmly established for half a century).

The Eleventh Circuit panel treated *Fowler* as establishing blanket immunity for any resentencing that produces the same total sentence, regardless of how that total was reached. The Eleventh Circuit interpreted *Fowler* as permitting a trial court to reverse-engineer a Guidelines range to reach a predetermined sentence. But if *Fowler* permits the trial court to manipulate a sentence in such a way, it is contrary to established principles of due process and fairness. The panel’s failure to require any objective, post-sentencing justification for the trial court’s using unchanged historical facts to offset the defendant’s appellate success, and its treatment of the increased Guidelines range as irrelevant because the final sentence remained identical (even though the range itself carries independent legal force and constitutes a meaningful increase in punishment) strips defendants of any rights given by the appellate decision to reverse a conviction.

If *Fowler* means what the panel says it means—that any resentencing producing the same total months is immune from *Pearce* scrutiny—then district courts may nullify every successful collateral or direct appeal that results in the vacatur of a count. A court need only locate unused enhancements in the Guidelines, apply them to offset the loss of the vacated count, and reimpose the original sentence. Because the total months remain the same, *Fowler* as interpreted would shield the sentence from challenge, regardless of how transparently the court manipulated the Guidelines to preserve the original term.

Such an outcome cannot be reconciled with the principle that “vindictiveness against a defendant for having successfully attacked his first conviction must play no

part in the sentence he receives” afterward. *Pearce*, 395 U.S. at 725. Defendants lose any practical benefit from vacating a count if a court may simply reclassify their conduct at a higher level to reach the same sentence. The right to challenge a conviction becomes an empty formality.

After twenty years and two prior re-sentencings (in 2001 and 2021), neither the probation office nor the government applied brandishing enhancements to Mr. Camacho’s case. Those enhancements appeared for the first time in 2024, immediately after Count 8 was vacated by the appellate court. The factual record did not change; the only intervening event was Mr. Camacho’s success in eliminating a conviction. The trial court had no new evidence that would justify altering its calculation for the remaining counts, so that the total sentence was unchanged despite the defendant having successfully eliminated one count against him.

The record demonstrates that the district court did not engage in a genuine recalculation. Mr. Camacho was originally sentenced in 2001. He was re-sentenced in 2021 after a count against him was vacated. See Appellant’s Br. at 3–5. Neither the 2001 presentence report nor the 2021 presentence report applied firearm-brandishing enhancements under U.S.S.G. § 2B3.1(b)(2)(A) or (b)(2)(C). The government did not seek those enhancements. The district court did not impose them.

The enhancements in Mr. Camacho’s sentence instead appeared for the first time in the 2024 presentence report—prepared immediately after Count 8 was vacated. The probation office applied them even though the underlying facts had been in the record of the case since 1996. The government endorsed them even though it

had never pursued them in the prior two decades. The district court adopted them without identifying any new conduct, any new evidence, or any legal development that would explain why enhancements appropriate in 2024 were inappropriate in 2001 and 2021. The new conduct must be justified by relevant new conduct. The district court did not conduct a neutral reevaluation of Mr. Camacho's culpability based on his remaining convictions. Instead, the court, together with the probation office, discovered brandishing enhancements that no prior presentence report had ever included. Op. at 6 (acknowledging that "his total offense level rose from 35 to 38 because of the addition of certain firearm brandishing enhancements"). Neither the factual record nor the Guidelines themselves had changed in the intervening time between the defendant's first sentence and his last; the only change was Mr. Camacho's success in vacating Count 8.

In *United States v. Chang*, 121 F.4th 1044, 1049 (4th Cir. 2024), the Fourth Circuit stated that a harsher sentence after remand from a successful appeal cannot stand where there appears a reasonable likelihood of vindictiveness. To rebut a presumption of vindictiveness, the sentence must be based upon objective subsequent conduct identified by the court as the basis for the harsher sentence; see also, *Nulph v. Cook*, 333 F.3d 1052 (9th Cir. 2003); *United States v. Tucker*, 581 F.2d 602 (7th Cir. 1978) *Singletary*, supra, 75 F.4th at 425-26. Here, no new conduct was used in the resentencing to support the increased change. Rather, the government went back to old conduct it had previously disregarded. Although an intervening conviction could

be a legitimate basis to consider in re-sentencing, *Wasman v. United States*, 468 U.S. 559 (1984), there are no new convictions nor any new facts to have justified what the district court did and what the Eleventh Circuit panel approved.

If the facts justified a level 38 in 2024, they had to have justified a level 38 in 2001 and 2021, because the underlying facts have not changed. If, to the contrary, the facts did not justify that level earlier—when Mr. Camacho had more counts of conviction, not fewer—then they cannot justify it now, after he succeeded in eliminating one of those counts. The only variable in the facts was the loss of the eighth count; yet, successfully eliminating an entire count against a defendant resulted in an enhancement of his conduct level on the PSR.

The panel acknowledged the increase in offense level but treated it as immaterial because the total sentence remained 535 months. Op. at 6. That reasoning inverts the constitutional analysis. *Pearce* does not permit a court to raise the Guidelines range after a defendant eliminates a conviction, so long as the court then selects the same number of months it selected before. An unjustified increase in the range is itself a constitutional violation. The Supreme Court should accept certiorari review so that *Pearce* is consistently applied throughout. There are now inconsistent decisions in the Circuits on what can be considered on a re-sentencing after a vacatur of a count in an indictment. The Court should clarify *Pearce* so as to achieve consistency in the Circuits and to ensure due process.

Certiorari is proper for this reason.

## CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

O'DONNELL CHRISTOPHER LLP  
700 S. Royal Poinciana Blvd.  
#705  
Miami Springs, FL 33166  
Tel: 305.640.8958  
Email: sodonnell@  
odonnellchristopher.com

*/s/ Sonia E. O'Donnell*

\_\_\_\_\_  
SONIA E. O'DONNELL  
Florida Bar No. 250643

*/s/ Robert A. O'Donnell*

\_\_\_\_\_  
ROBERT A. O'DONNELL  
Florida Bar No. 1011567

February 26, 2026

*Counsel of Record for Petitioner*