

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

MARTIN CHAVEZ-ZARATE, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

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The Petitioner, MARTIN CHAVEZ-ZARATE, by his undersigned counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, without prepayment of costs and to proceed *in forma pauperis*. Vicki Marolt Buchanan was appointed counsel for Mr. Chavez-Zarate in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b).

* * *

This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Dated: March 27, 2027

Respectfully submitted,

s/ Vicki Marolt Buchanan

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QUESTION PRESENTED

The circuits are split on whether courts can consider the fact that a noncitizen cannot participate in programs that would reduce their sentence or are subject to more onerous conditions of confinement. Should this Court determine whether such circumstances can create an unwarranted sentencing disparity under 18 U.S.C. § 3553(a)(6) for variances at sentencing or in compassionate release motions?

PARTIES TO THE PROCEEDING

Petitioner, Martin Chavez-Zarate, is an individual. The Respondent is the United States of America.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
TABLE OF CONTENTS.....	iii
INDEX TO APPENDIX	v
TABLE OF AUTHORITIES	vi
OPINION BELOW	1
JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	2
Jurisdiction of Court Below	2
Background and District Court Proceedings.....	2
Decision Below.....	3
REASONS FOR GRANTING THE WRIT	4
I. Petitioner Was Denied Equal Protection Because, as a Noncitizen, He Was Not Entitled to Programs that Would Reduce His Sentence, thereby Creating a Sentencing Disparity Under 18 § 3553(a)(6), Which the Court Should Consider in Reducing His Sentence.	4
CONCLUSION	10

INDEX TO APPENDIX

- APPENDIX A: Ninth Circuit Memorandum Opinion, Ninth Circuit
Case No. 25-5742
January 28, 2026
- APPENDIX B: Ninth Circuit order denying defendant's motions
for sentence reduction pursuant to 18 U.S.C. §§
3582(c)(1)(a) and (c)(2)
August 13, 2025
- APPENDIX C: District Court Judgment in Criminal Case, United
States District Court for the Eastern District of
California
March 22, 2000
- APPENDIX D: Order Regarding Motion for Sentence Reduction
Pursuant to 18 U.S.C. §3582(c)(2)

TABLE OF AUTHORITIES

Cases:

<i>Chavez-Meza v. United States</i> , 585 U.S. 109 (2018)	7
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982)	5
<i>Rita v. United States</i> , 551 U.S. 338 (2007)	7
<i>United States v. Bakeas</i> , 987 F. Supp. 44 (D. Mass. 1997)	9
<i>United States v. Booker</i> , 543 U.S. 220, 253 (2005)	9
<i>United States v. Guzman</i> , 236 F.3d 830 (7th Cir. 2001).....	10
<i>United States v. Jones</i> , 980 F.3d 1098 (6th Cir. 2020).....	6
<i>United States v. Pacheco-Soto</i> , 386 F. Supp. 2d 1198 (D.N.M. 2005)	10
<i>United States v. Restrepo</i> , 999 F.2d 640 (2nd Cir. 1994).....	9
<i>United States v. Smith</i> , 27 F.3d 649 (D.C. Cir. 1994)	9
<i>United States v. Telles-Milton</i> , 347 F. App'x 522 (11th Cir. 2009)	9

TABLE OF AUTHORITIES – Continued

Constitution:

U.S. CONST. amend. V 2

U.S. CONST. amend. XIV 2

Statutes:

18 U.S.C. § 3231 2

18 U.S.C. § 3553(a)..... 6, 10

18 U.S.C. § 3553(a)(6)..... passim

18 U.S.C. § 3582(c)(1)(A) 1, 4, 6

18 U.S.C. § 3621(e)(2)(B)..... 5

18 U.S.C. § 3624(c)(2)..... 5

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 2

Guidelines:

USSG § 1B1.13(b)(1)..... 6

Other:

U.S. Sentencing Comm’n, Guidelines Manual, Ch. 1 Pt. A
(Nov. 2025) 10

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PETITION FOR WRIT OF CERTIORARI

MARTIN CHAVEZ-ZARATE petitions this Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

On January 28, 2026, the Ninth Circuit Court of Appeals issued a Memorandum Opinion that affirmed the denial of Petitioner’s compassionate release under 18 U.S.C. § 3582(c)(1)(A). (Appendix A.)

JURISDICTION

The Ninth Circuit Court of Appeals decision is dated January 28, 2026. (Appendix A.) Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. V

No person shall ... be deprived of life, liberty, or property, without due process of law.

U.S. CONST. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Jurisdiction of the Court Below

The district court had jurisdiction under 18 U.S.C. § 3231. The Court of Appeals had jurisdiction to review a sentence reduction under 28 U.S.C. § 1291.

Background and District Court Proceedings

Petitioner is a Mexican citizen and a permanent legal resident of the United States. On August 27, 1998, a superseding indictment charged him for his participation in a large cocaine distribution ring. On October 14, 1999, after a nine-day jury trial, the jury found him guilty on all counts. On March 20, 2000, he was sentenced to life in prison. Judgment entered on March 22, 2000. (Appendix C.)

On September 14, 2018, Petitioner's sentence was reduced to 405 months' imprisonment due to retroactive amendments to the sentencing Guidelines. (Appendix D.) An Order Reducing the Sentence was entered on October 23, 2018. Petitioner is currently 70 years old. He suffers from chronic health conditions of coronary atherosclerosis, hyperlipidemia, and hypertension.

According to the Bureau of Prisons, Petitioner is scheduled for release from custody on August 28, 2026. At the time of his motion, he had been in federal custody for over 26 years and was in in-state custody for 567 days before that. He had served 86% of his statutory time. He is likely subject to an ICE detainer and may be deported to Mexico upon release.

On May 19, 2023, Petitioner filed a Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A). On July 10, 2023, he filed an additional motion. On October 27, 2023, he filed a supplemental motion. The court denied his request on August 13, 2025. (Appendix B.)

Decision Below

Petitioner appealed the denial of his motion to reduce his sentence. He argued that as an immigrant, he was treated differently from citizen prisoners. Because he was not eligible for programs that would have reduced his sentence, he was denied equal protection under the Constitution. The district court acknowledged the argument, but did not address it, choosing instead to rely on the 18 U.S.C. 3553(a) factors. However, the court did not address that the unequal treatment also created a sentencing disparity under 18 U.S. C. § 3553(a)(6). (Appendix B.) On January 28, 2028, the Court of Appeals affirmed the trial court's decision. (Appendix A.)

REASONS FOR GRANTING THE WRIT

- I. Petitioner Was Denied Equal Protection Because, as a Noncitizen, He Was Not Entitled to Programs that Would Reduce his Sentence, thereby Creating a Sentencing Disparity Under 18 § 3553(a)(6), Which the Court Should Consider in Reducing His Sentence.**

In his 18 U.S.C. § 3582(c)(1)(A) motion for a reduced sentence, Petitioner raised many issues related to his age, the length of time he has spent serving his sentence, his rehabilitation, and his medical conditions. Additionally, he argued that he was treated differently from other similarly situated defendants because he is not a citizen.

Specifically, under 18 U.S.C. § 3621(e)(2)(B), Petitioner would be entitled to up to one year of credit if he attended a 500-hour RDAP course. Because he is not a citizen, he is not entitled to participate in the program. Additionally, under 18 U.S.C. § 3624(c)(2), he would be allowed up to 10% of his remaining sentence in home confinement. Because he is likely subject to an ICE detainer, this part of the act is also not available to him. If he were a citizen, Petitioner would have already been released regardless of his medical condition.

This Court holds that undocumented persons living in the United States are entitled to equal protection and due process of law just like citizens. *Plyler v. Doe*, 457 U.S. 202 (1982). Different treatment of citizens and non-citizens violates the equal protection clause of the Constitution. Petitioner argued the different treatment also resulted in a sentencing disparity under 18 U.S.C. § 3553(a)(6), warranting a lower sentence or early release.

In an earlier compassionate release decision, a district court judge found Petitioner had extraordinary and compelling reasons for reduction of his sentence under 18 U.S.C. § 3582(c)(1)(A) and USSG § 1B1.13. It found that it was undisputed that he met the age requirements under USSG § 1B1.13(b)(2). Additionally, it found that under USSG § 1B1.13(b)(1), he was “suffering from a serious deterioration in physical ... health because of the aging process” and his “coronary artery disease.”

As to this motion, the district court “assumed without deciding, that Defendant’s further deterioration of health over the last 5 years, despite the end of the COVID-19 pandemic, likewise amounts to extraordinary and compelling reasons...” In evaluating any reduction or alternative to prison, the First Step Act, 18 U.S.C. § 3582(c)(1)(A) directs the court to consider the sentencing factors under 18 U.S.C. § 3553(a). Thus, its analysis focused on whether a reduced sentence was appropriate under the 18 U.S.C. § 3553(a) factors.

In *United States v. Jones*, 980 F.3d 1098, 1112 (6th Cir. 2020), the court set the groundwork for evaluating the factors in the context of a compassionate release motion:

We must strike the proper balance under the abuse-of-discretion standard, which demands that we both accord

due deference to district judges and correct their factual and legal errors. We start by requiring “a thorough factual record for our review”: district courts must supply “specific factual reasons, including but not limited to due consideration of the § 3553(a) factors, for its [compassionate release] decision.” *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020) (footnote omitted). We look at the “whole” record in sentence-modification proceedings, including the records from the original sentencing, records on the modification motion, and the final compassionate release decision. *See Ruffin*, 978 F.3d at 1008–09; *Curry*, 606 F.3d at 331; *United States v. Latham*, 809 F. App’x 320, 321 (6th Cir. 2020).

This Court holds that, as it does at sentencing, the district court must provide reasons in sentence modification decisions, *Chavez-Meza v. United States*, 585 U.S. 109, 112 (2018), *Rita v. United States*, 551 U.S. 338, 356–58 (2007). As this Court said in *Chavez-Meza*, the judge should “set forth enough to satisfy the appellate court that he has considered the parties’ arguments and has a reasoned basis for exercising his own legal decisionmaking authority.” *Chavez-Meza*, 585 U.S. at 113.

In this case, the court found:

... the Court acknowledges that Defendant is 71 years old, and his physical health is declining. He has a low risk of recidivism, a clean disciplinary record, and has displayed exceptional rehabilitation while in BOP custody. He has served approximately 323 months of his 405-month sentence to date. However, the Court agrees with the government that these factors, when coupled with the seriousness of Defendant’s offense, are

insufficient to justify the reduced sentence Defendant seeks. Both Judge Wanger and Judge O'Neill previously considered the nature and characteristics of Defendant's offense, along with the remaining relevant § 3553(a) factors, in determining that the sentence imposed was reasonable and sufficient, but not greater than necessary, to comply with the purposes stated at 18 U.S.C. § 3553(a)(2).

In sum, any further reduction of Defendant's sentence would not reflect the seriousness of his offense, promote respect for the law, provide just punishment, or afford adequate deterrence to criminal conduct. See 18 U.S.C. §§ 3553(a)(2)(A)-(B). Therefore, Defendant's motion pursuant to 18 U.S.C. § 3582(c)(1)(A) is denied.

Neither of the referenced judges considered sentencing disparity under 18 U.S.C. § 3553(a)(6) "the need to avoid unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct."

Although the court acknowledged that Petitioner had additional reasons for compassionate release related to his citizenship status, it did not address those reasons in its findings, particularly with respect to sentencing disparity under Section 3553(a)(6). The Court of Appeals similarly failed to address how citizenship in sentencing creates sentencing disparities and violates the equal protection of the law.

The circuits are split on whether alienage should affect sentencing, particularly in terms of sentencing disparity. Prior to *Booker*,¹ in *United States v. Restrepo*, 999 F.2d 640 (2nd Cir. 1994), the Second Circuit held that more severe prison circumstances for deportable aliens did not justify a departure from the mandatory Guidelines. At the same time, in *United States v. Smith*, 27 F.3d 649, 650 (D.C. Cir. 1994), the court held that if a defendant faces more severe circumstances of confinement because of their alienage, a downward departure may be warranted. Also, in *United States v. Bakeas*, 987 F. Supp. 44 (D. Mass. 1997), the district court departed downward because, if the defendant were a citizen, he would be eligible for a minimum-security prison. The court noted that a “downward departure [can be] appropriate when a defendant’s non-citizenship is more than collateral to his sentence but instead threatens to change the nature of the entire sentence.” *Id.* at 48.

The split continued after *Booker*. For example, in *United States v. Telles-Milton*, 347 F. App’x 522 (11th Cir. 2009), the court continued to apply prior authorities that there was no basis to reduce the sentence because of conditions of confinement due to the

¹ *United States v. Booker*, 543 U.S. 220, 253 (2005)

defendant's noncitizen status. On the other hand, the Seventh Circuit held in *United States v. Guzman*, 236 F.3d 830 (7th Cir. 2001), that a departure because of adverse conditions of confinement was appropriate. Similarly, in *United States v. Pacheco-Soto*, 386 F. Supp. 2d 1198, 1205 (D.N.M. 2005), the district court held that the noncitizens' ineligibility for early release, lack of access to a minimum security facility, and unavailability to participate in drug treatment programs were "severe and unfair" and found those factors justified a downward departure.

Since these cases, the sentencing Guidelines have eliminated departures. *See* U.S. Sentencing Comm'n, Guidelines Manual, Ch. 1 Pt. A (Nov. 2025). Now, the same considerations for departures have been replaced by a more structured approach to variances that relies on the statutory factors set forth in 18 U.S.C. § 3553(a). Thus, this Court should resolve the lingering split to make it clear that a sentencing court may consider the collateral consequences of being a deportable alien in assessing sentencing disparities under 18 U.S.C. § 3553(a)(6).

CONCLUSION

For these reasons, the Court should grant the petition and

consider this case.

Dated: March 27, 2026

Respectfully submitted,

s/ Vicki Marolt Buchanan
Vicki Marolt Buchanan
Counsel for Petitioner
Martin Chavez-Zarate