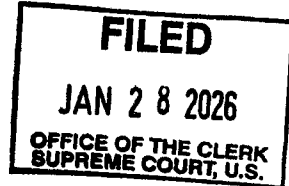


25-7168
Case No. _____

ORIGINAL

SUPREME COURT OF THE UNITED STATES



JUAN CARLOS AVILA GONZALEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit

Juan Carlos Avila Gonzalez
Reg. No. 46958-177
USP Terre Haute
P.O Box 33
Terre Haute, IN 47808

QUESTION PRESENTED

IF RULE 36 OF FEDERAL RULES OF CRIMINAL PROCEDURE WAS ENACTED TO CORRECT AN ERROR IN THE RECORD ARISING FROM OVERSIGHT OR OMISSION. CAN THE COURT OF APPEALS WHITEWASH A CLERICAL ERROR IN THE PSR, AND LEAVED UNCORRECTED WITHOUT CONSIDERING THE HARM CAUSED TO PETITIONER BY RELYING SOLELY IN THE DISPOSITION OF THE CASE, AND IN THE RESPONSE OF THE ADDENDUM WHERE THE PROBATION OFFICE ADMITTED THE ERROR BUT REFUSED TO CORRECT IT. ?

IN THE
SUPREME COURT OF THE UNITED STATES

JUAN CARLOS AVILA GONZALEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit

Petitioner Juan Carlos Avila Gonzalez ("Avila Gonzalez")
hereby respectfully prays that a writ of issues to review the
opinion of the United States Court of Appeals for the Fifth
Circuit issued on November 14, 2025, dismissing the appeal as
frivolous.

OPINION BELOW

The opinion of the United States Court of Appeals for
the Fifth Circuit issued on November 14, 2025, appear in the
Appendix to this petition

JURISDICTION

Avila Gonzalez seeks review in this court of the Judgment and order dated November 14, 2025 from the United States Court of Appeals for the Fifth Circuit in case No. 25-10525, pursuant to 28 U.S.C.S § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- a). Rule 36 of Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

1. Avila Gonzalez's arrest.

On September 18, 2023, Avila Gonzalez was arrested pursuant to a criminal complaint for drug conspiracy. See Document 2¹ "ROA.23".

2. The Preliminary Hearing, and the Offense Report of the Arlington, Texas Police Department.

On september 24, 2013, at the preliminary and detention hearing, in order to convey the court to deny Avila Gonzalez's bond for his drug offense, by trying to prove that he was a danger for the community, the government brought to the court's attntion through a police officer's testimony, an offense report of the Arlington Texas police Department where a victim reported to a hospital that he had been raped on May 05, 2013 by a male at 2713 Hollywood Drive in Arlington, Texas. See Document 141 at pages 7-9, and 163 at page 11.; "ROA.822-824" and "ROA.1688".

¹ During this petition, the word document followed by a number, refers to the files in the original record of the district court, Case No. 4:13-CR-185-P. ROA. = Record of Appeal.

3. The crossexamination. Evidence of no arrest and no charges filed against Avila Gonzalez for sex assault.

In the same preliminary hearing, during the cross examination, when Avila Gonzalez's counsel asked the witness Police Officer ("Armando Garza") if any charges had been filed on that case, he answered that no charges were filed and no warrant was pending as a result of the offense report. See Document 141 at page 15-16. "ROA.830-831").

4. The PSR's clerical errors in the subheading of Paragraph 53.

As outlined above, no arrest was generated and no charges were filed as a result of the Police Offense report. Then, later the Probation Office committed two merely clerical mistakes by writing in the subheading of Paragraph 53 the following information:

<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
05-05-2013	Sex Assault	Arlington,Tx Police Dept.	No case filed victim choose not prosecute.

See Document 97 at page 13. "ROA.1582".

5. Avila Gonzalez's objections to the PSR.

Moreover, in a pro se style, Avila Gonzalez made his objections to the PSR, arguing in regards to Paragraph 53, that he was never arrested for sex assault by Arlington, Texas Police Officers, and the information to this paragraph was corrupt and false. See Document 120 at page 8. "ROA.1628".

6. The Addendum to the PSR.

In the addendum to the Presentence Report, the Probation Office wrote that the information in paragraph 53 was obtained from offense report prepared by Arlington, Texas, Police Department Officers, admitting that Avila Gonzalez "was not arrested as reflected in this paragraph, and stating that no changes will be made to this paragraph unless otherwise directed by the court. See Document 102 at page 12. "ROA.1613".

7. The Federal Bureau of Prisons (FBOP) custody classification.

The FBOP's custody classification scores Avila Gonzalez as high or gratest severity and imposed a safety factor against him, by considering in part that Avila Gonzalez's other criminal conduct includes that he was arrested and charged for a sex assault. Id. at Document 163 at page 4. "ROA.1681".

8. The motion to correct the PSR's record and its denial.

On March 04, 2025, Avila Gonzalez filed in the district court a motion to correct the PSR's record pursuant to Rule 36 of Federal Rules of Criminal Procedure. See Document 163 at pages 1-19. "ROA.1678-1695". The district court denied on April 01, 2025, concluding that Avila Gonzalez was not seeking to correct a minor clerical error in the PSR, and he was seeking to alter a matter of substance, holding that the PSR accurately described an offense report of the Arlington, Texas Police Department revealing that on May 05, 2013, Avila Gonzalez had

been accused of sexual assault but that no case was filed because the victim choose not to prosecute. See Document 166 at page 1. "ROA.1701".

9. Appeal and its dismissal.

Avila Gonzalez moved for appeal, and the Fifth Circuit dismissed as frivolous concluding that there was no error, let alone a "mindless and mechanistic mistake" constituting clerical error, holding that the PSR specifies that the date in the "Date of Arrest" column is the "Offense Date" rather than a date of arrest, and the probation Officer acknowledged in the PSR Addendum that Avila Gonzalez was not arrested for the Offense and also that the PSR specifically states under the "Disposition" column that "no case (was) filed" because the victim choose not to prosecute, and the body of the paragraph likewise explains the vicitms decision not to continue with the prosecution.

ARGUMENT IN SUPPORT OF GRANTING THE WRIT OF CERTIORARI

A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. See Erickson v. Pardus, 167 LED 2D 1081 (2007).

QUESTION PRESENTED:

IF ~~RULE~~ RULE 36 OF FEDERAL RULES OF CRIMINAL PROCEDURE WAS ENACTED TO CORRECT AN ERROR IN THE RECORD ARISING FROM OVERSIGHT OR OMISSION. CAN THE COURT OF APPEALS WHITEWASH A CLERICAL ERROR IN THE PSR, AND LEAVED UNCORRECTED WITHOUT CONSIDERING THE HARM CAUSED TO PETITIONER BY RELYING SOLELY IN THE DISPOSITION OF THE CASE, AND IN THE RESPONSE OF THE ADDENDUM WHERE THE PROBATION OFFICE ADMITTED THE ERROR BUT REFUSED TO CORRECT IT. ?

a) Importance of this question.

Is to determine the authority of the Court of Appeals to whitewash the clerical errors in the PSR, and leaved uncorrected without taking in consideration that Rule 36 of Federal Rules of Criminal procedure authorizing the correction of said errors.

As mentioned in the statement of the case, Avila Gonzalez was never arrested nor charged for a sex assault, there was a sole an false offense report where the supposed victim choose not to prosecute, therefore, no case was filed. See Document 141 at page 15-16. "ROA.1582". See also Document 97 at page 13. "ROA.1582". But, the probation Office wrote in paragraph 53 that on May 05, 2013, Avila Gonzalez was arrested and charged with sex assault.

Additionally, at penalty trial, Avila Gonzalez made his objections to paragraph 53 stating that he were never arrested or charged, and the information in this paragraph was corrupt and false, causing the Probation Office to respond in the addendum that Avila Gonzalez was not arrested by reflected in this paragraph; but however because the alleged offense date was May 05, 2013, no changes will made to this paragraph unless otherwise directed by the court. See Document 102 at page 12. "ROA.1613"

As outlined above, the probation Office admitted the error of paragraph 53, but refused to correct it. Then, later, following the denial of the district court, the Court of Appeals using the response of the probation Office, and

the "disposition column" of paragraph 53, dismissed the appeal as frivolous concluding that there was no error because: (1) The PSR specifies that the date of arrest column is the offense date rather than the date of arrest. (2) The Probation Office acknowledged in the PSR addendum that Avila Gonzalez was not arrested for the offense. (3) The PSR specifically states under the "Disposition" column that no case was filed because the victim choose not to prosecute. Likewise leaving intact the error in paragraph 53.

The question again is how in this world the court of Appeals can legally whitewash a clerical error acknowledged by the Probation Office relying on the disposition of the case, and in an annotation in the addendum.?

"The Answer is no"

An error is an error, and the clerical error is still there, and is part of paragraph 53 which recites that Avila Gonzalez was arrested on May 05, 2013, and charged for sex assault. Here, although the disposition of the case states that the case was not filed, victim choose not to prosecute, this is not enough to cure the clerical error in the uncorrected paragraph regarding an arrest and charges. Additionally, the acknowledgement of the Probation Office in the PSR addendum admitting that Avila Gonzalez was not arrested for the offense, is not enough to whitewash said error because as a result of the Probation Office's refusal to correct, the clerical error remains there. See Document 102 at page 12. "ROA.1613".

Therefore, because the recitation of arrest and charges are not

true and totally amounts to a clerical error, the correction of these errors should be ordered to comply with Rule 36 of Federal Rules of Criminal Procedure. See for reference. United States v. Mackay, 757 F.3d 195 (5th Cir. 2014); United States v. Alcaraz Juarez, 2024 U.S App. LEXIS 30458 (5th Cir. 2024).

The other part of the question refers to the harm caused to petitioner by leaving uncorrected paragraph 53. Although Avila Gonzalez is unaware of any binding authority requiring that a defendant allege harm from a clerical error to secure correction. Here, there can be no doubt that the PSR's clerical mistakes are affecting Avila Gonzalez's rights and obligations in regards to the place of incarceration, chances for parole, and relationships with social services. As mentioned before, the Federal Bureau of Prisons custody classification scores Avila Gonzalez as high or greatest severity, and imposed a safety factor against him, by considering in part that he was arrested and charged for a sex assault. This consideration is not true. See Document 163 at page 4. "ROA.1681".

Accordingly, because said arrest and charges were never generated by the false offense report. The Court of Appeals order is undoubtedly totally questionable, and should respectfully be reviewed.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and order of the United States Court of Appeals for the Fifth Circuit on November 14, 2025. Dated on March 11, 2026.

Respectfully Submitted,



Juan Carlos Avila Gonzalez