

No. _____

In the
Supreme Court of the United States

Jose Omar Sanchez-Facundo,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether substantive reasonableness review of a federal criminal sentence requires a court of appeals to reweigh the sentencing factors?

PARTIES TO THE PROCEEDING

Petitioner is Jose Omar Sanchez-Facundo, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jose Omar Sanchez-Facundo seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is available at *United States v. Sanchez-Facundo*, No. 25-10737, 2026 WL 311956 (5th Cir. Feb. 5, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on February 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTE

Section 3553(a) of Title 18 provides:

(a) **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

A. Facts and Proceedings in District Court

Jose Omar Sanchez-Facundo entered a plea of guilty to reentering the United States following removal under 8 U.S.C. § 1326(a). Although Mr. Sanchez had been arrested on a local offense and come to the attention of federal immigration authorities on July 6, 2023, and was indicted on September 26, 2023, the federal court did not issue a writ of *habeas corpus ad prosequendum* until March 4, 2024, and did not appoint counsel until May 15, 2024. Meanwhile, he had pleaded guilty and received two years' imprisonment for state drug offenses.

This delay in federal prosecution resulted in a final sentencing range of 70-87 months imprisonment based on a final offense level of 21 and a criminal history of V.¹ Had Mr. Sanchez been sentenced in federal court before he received those drug convictions, his criminal history score would have been eight, and his criminal history category would have been IV. Thus, a primary defense argument at sentencing was that the delay in the defendant's federal court appearance increased the Guidelines range from 24-30 months to 70-87.

At sentencing, the district court imposed a 70-month sentence, several times representing that it thought a Guideline sentence appropriate.

¹ The final offense level included an eight-level adjustment under U.S.S.G. § 2L1.2(b)(3)(B): engaging in criminal conduct after the defendant's first (and, in this case, only) removal that resulted in a felony sentence of two years or more. This adjustment was based on the intervening drug offenses. The criminal history category of V came from a criminal history score of 11, three points of which came from those same state drug offenses. Otherwise the final offense level would be 13, and the criminal history category IV.

B. Proceedings in the Court of Appeals

Petitioner appealed. He contended that the sentence imposed was substantively unreasonable because it did not give significant weight to the objectively compelling mitigating evidence, that is, the delay in his federal prosecution tripled his Guidelines range. He argued this accident of timing did not pertain to culpability or dangerousness, yet it resulted in a needless sentencing disparity with respect to defendants sentenced in the opposite order, *see* 18 U.S.C. § 3553(a)(6), and a substantively unreasonable sentence. *See* Br. Of Petitioner, *Sanchez-Facunda*, No. 25-10737 (5th Cir.).

The court of appeals affirmed, stating the following regarding its substantive reasonableness review:

[A within-guidelines sentence] is presumed reasonable, and Sanchez-Facundo has not rebutted this presumption. Instead, he essentially asks this court to reweigh the sentencing factors, which we decline to do.

[Appx. A]; *Sanchez-Facundo*, 2026 WL 311956, at *1 (internal citations omitted).

REASONS FOR GRANTING THE PETITION

The courts of appeals are in conflict as to the nature of substantive reasonableness review. This Court should clarify whether substantive reasonableness review of a federal criminal sentence requires a court of appeals to reweigh the sentencing factors.

A. The courts are divided.

The length of a federal sentence is determined by the district court's application of 18 U.S.C. § 3553(a). *See United States v. Booker*, 543 U.S. 220, 261

(2005). A district court must impose a sentence that is adequate, but no greater than necessary, to achieve the goals set forth in 18 U.S.C. § 3553(a)(2). *See* 18 U.S.C. § 3553(a)(2). The district court’s compliance with this dictate is reviewed for reasonableness. *See Rita v. United States*, 551 U.S. 338, 359 (2007). In *Gall v. United States*, 552 U.S. 38 (2007), this Court emphasized that all federal sentences, “whether inside, just outside, or significantly outside the Guidelines range” are reviewed on appeal “under a deferential abuse-of-discretion standard.” *Gall*, 552 U.S. at 51. This review “take(s) into account the totality of the circumstances, including the extent of any variance from the Guidelines range.” *Id.* And “a major departure should be supported by a more significant justification than a minor one.” *Id.* at 50.

Fifth Circuit precedent imposes several important barriers to relief from substantively unreasonable sentences. By forbidding the “substantive second guessing” of the district court, it nearly forecloses substantive reasonableness review. *United States v. Cisneros-Gutierrez*, 517 F.3d 751, 767 (5th Cir. 2008). To similar effect is its oft-repeated unwillingness to “reweigh the sentencing factors.” *United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017); *United States v. Cotten*, 650 Fed. Appx. 175, 178 (5th Cir. 2016) (unpublished); *United States v. Mosqueda*, 437 Fed. Appx. 312, 312 (5th Cir. 2011) (unpublished); *United States v. Turcios-Rivera*, 583 Fed. Appx. 375, 376-377 (5th Cir. 2014); *United States v. Douglas*, 667 Fed. Appx. 508, 509 (5th Cir. 2016) (unpublished). Although *Gall* affords the district court extensive latitude, it is hard to understand what substantive reasonableness review

is supposed to be, if not an effort to reweigh the sentencing factors, vacating those sentences that fall outside a zone of reasonable disagreement.

Other circuits have declined to abdicate their roles in conducting substantive reasonableness review. The Second Circuit has emphasized that it is not the case that “district courts have a blank check to impose whatever sentences suit their fancy.” *See United States v. Jones*, 531 F.3d 163, 174 (2d Cir. 2008). The Eleventh and Third Circuits have likewise read *Gall* to “leave no doubt that an appellate court may still overturn a substantively unreasonable sentence, albeit only after examining it through the prism of abuse of discretion, and that appellate review has not been extinguished.” *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008); *accord United States v. Levinson*, 543 F.3d 190, 195-196 (3d Cir. 2008). These cases conform to the consensus among the federal circuits that it remains appropriate to reverse at least some federal sentences after *Gall* as substantively unreasonable. *See United States v. Ofray-Campos*, 534 F.3d 1, 44 (1st Cir. 2008); *United States v. Abu Ali*, 528 F.3d 210, 269 (4th Cir. 2008); *United States v. Funk*, 534 F.3d 522, 530 (6th Cir. 2008); *United States v. Shy*, 538 F.3d 933 (8th Cir. 2008).

The Fifth Circuit explicitly applied this restrictive approach to substantive reasonableness review here. In affirming the sentence, the court said it would decline to reweigh the sentencing factors. *Sanchez-Facundo*, 2026 WL 311956, at *1. Further, it cited published, binding, authority for this proposition. *See United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017) (“[Appellant’s] claim amounts to a request that we reweigh the sentencing factors and substitute our judgment for that

of the district court, which we will not do.”). This case then squarely presents the issue that has divided the courts of appeals. The court said that it simply would not reweigh the factors; in other circuits – and according to this Court’s precedent, *see Booker*, 543 U.S. at 261 – that is precisely the task of substantive reasonableness, albeit with deference.

That issue is recurring and important. It is potentially implicated in nearly every federal criminal case that proceeds to sentencing, and it serves as an important check on the substantive injustice of sentences that are too long or too short.

B. this case is the right vehicle.

This case presents a strong vehicle to address the nature of substantive reasonableness review. Petitioner is not expected to be released from prison until 2029, providing plenty of time to consider the issue and offer meaningful relief.

Further, there is good reason to think a court willing to “reweigh the statutory factors,” that is, to apply substantive reasonableness review, could find the sentence infirm. Taking the undisputed facts as presented, it was only by random error that Mr. Sanchez’s Guidelines range, that the district court abided, was tripled by the fortuitousness of timing. The court gave unreasonably little weight to factors that should have been predominant, including needless disparity, and made a clear error of judgment in balancing the factors under § 3553(a).

This case is one in which the Petitioner could levy a persuasive critique of the sentence as substantively unreasonable. The restrictive approach of the Fifth Circuit

foreclosed consideration of this argument. This Court should resolve the circuit split so his contentions may have a fair evaluation.

CONCLUSION

Petitioner argues that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 6th day of May 2026.

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