

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

YULISEY HERRERA GONGORA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

HECTOR A. DOPICO
Federal Public Defender
KATE MOLLISON
Counsel of Record
Assistant Federal Public Defender
150 West Flagler Street, Suite 1500
Miami, Florida 33130-1555
Telephone (305) 536-6900

Counsel for Petitioner

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QUESTION PRESENTED FOR REVIEW

This case involves an important question of federal law in which the Eleventh Circuit has recently sided with the Fifth and the Tenth Circuit and split from several of its sister circuits, including the First, Second, Sixth, and D.C. Circuit:

Does a district court's violation of 18 U.S.C. § 3553(c)(2) affect a defendant's substantial rights under plain error review, given that the right to meaningful appellate review is itself a "substantial" right?

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Ms. Gongora submits that there are no parties to the proceedings other than those named in the caption of the case.

Petitioner Gongora was the defendant in the district court and appellant below.

Respondent United States of America was the plaintiff in the district court and appellee below.

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PETITION FOR WRIT OF CERTIORARI

Yulisey Herrera Gongora respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 23-11999 in that court on December 17, 2025, *United States v. Yulisey Herrera Gongora*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on December 17, 2025. This petition is timely filed pursuant to SUP. CT. R. 13.1.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

18 U.S.C. § 3553(c)

Statement of reasons for imposing a sentence.--

The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

...

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28 .

...

STATEMENT OF THE CASE

Statement of Facts and Course of Proceedings

Petitioner Yulisey Herrera Gongora was charged in a four-count superseding information with possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1); conspiracy to tamper with a victim, witness, or informant, in violation of 18 U.S.C. § 1512(k); conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 846; and possession of a firearm and ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). (DE 97.) She pleaded guilty to all four counts. The district sentenced her to 180 months' imprisonment, followed by three years of supervised release. (Dist. Ct. Dkt. No. 142.)

At her sentencing hearing, the government and the defense both agreed that her advisory Guidelines range was 70 to 87 months, and the court adopted this as the correct calculation. (Dist. Ct. Dkt. No. 171:5; *see* PSI (Dist. Ct. Dkt. No. 168 ¶ 144.)) However, the government then recommended an upward variance to 15 years (180 months) of imprisonment. (Dist. Ct. Dkt. No. 171:5.) The government cited the serious nature of the offense, specific deterrence, Petitioner's criminal history, and her co-defendants' sentences. (*Id.* at 6–8.) The defense recommended a sentence at the top of her Guidelines range, 87 months. (*Id.* at 9.) The defense cited Petitioner's remorse, her cooperation, the many tragedies she had suffered in her life, including violence and abuse by her family and caretakers, her sentence in comparison with her co-defendants', her motivation to change, and the serious impact that even an 87-

month sentence would have on her life. (*Id.* at 9–15.)

The court, for its part, did not engage with either argument. In fact, the only statement the court made throughout the entirety of either party’s sentencing arguments was, when a question was raised about whether Petitioner’s son had previously possessed a BB gun or a real gun, the court responded, “[T]hat’s the least of my concerns.” (Dist. Ct. Dkt. No. 171:17.)

The court imposed a sentence that was in line with the government’s recommendation, and more than double the high end of the Guidelines range: 180 months in prison. In explaining its sentencing decision, the court stated only as follows:

The court has considered the statements of all parties, the presentence report which contains the advisory guidelines, and the statutory factors as set forth in 18 U.S.C. Section 3553(a).

A sentence will be imposed above the advisory guideline range, as this will be necessary to provide sufficient punishment and deterrence.

It is the finding of the Court that the defendant is not able to pay a fine.

It is the judgment of the Court that the defendant, Yulisey Herrera Gongora, is committed to the Bureau of Prisons to be imprisoned for 180 months. This term consists of 180 months as to each of counts 1, 2, and 3 and 120 months as to Court 4, all to be served concurrently.

(Dist. Ct. Dkt. No. 171:18–19.) The court went on to discuss the term of supervised release, but did not justify or explain its sentencing decision any further. Defense counsel then objected to the sentence by stating, “We object to the procedural and substantive reasonableness of the sentence.” (*Id.* at 20.)

The Opinion Below

Petitioner appealed her sentence to the United States Court of Appeals for the

Eleventh Circuit. She argued that her sentence was both procedurally and substantively unreasonable.

As to procedural reasonableness, Petitioner argued that the court did not properly explain its basis for such a severe upward variance from the Sentencing Guidelines, as is required under 18 U.S.C. § 3553(c)(2). As Petitioner argued in her appeal, this Court has cautioned that, in order to permit meaningful appellate review, major variances from the Guidelines must be accompanied by significant explanations of the need for the sentence imposed. *See Gall v. United States*, 552 U.S. 38, 50 (2007). Yet here, the district court imposed its 180-month sentence—a sentence more than double the high end of the Guidelines range of 70–87 months—with no explanation at all about the need for a variance of that degree. As to substantive reasonableness, Petitioner argued that the sentence did not comport with the substantial mitigation presented, and was more severe than all her co-defendants’ sentences, including those involved in more serious, violent conduct. Because her sentence was devoid of meaningful justification for these disparities, it was also substantively unreasonable.

The Eleventh Circuit agreed that the district court had violated 18 U.S.C. § 3553(c)(2), and that the district court had failed to specifically explain its reasons as that statute required. *United States v. Herrera Gongora*, No. 23-11999, slip op. at 18–19 (11th Cir. Dec. 17, 2025). Yet, because the panel *incorrectly* found that Petitioner’s objection as to the procedural unreasonableness of the sentence was unpreserved, it analyzed her appellate claim regarding procedural reasonableness

using the plain error standard of review. And under this standard, the court found that Petitioner could not show plain error because she could not show a violation of her substantial rights. Further, the Eleventh Circuit also found that the sentence was not substantively unreasonable, relying exclusively on disputed facts provided by the government.

The court thus affirmed Petitioner's sentence.

However, even assuming arguendo that Petitioner's procedural reasonableness objection was unpreserved and that the plain error approach was proper here, the Eleventh Circuit's standard regarding whether and when substantial rights have been affected in the sentencing context is misguided. Indeed, the Eleventh Circuit's recently adopted rule has been rejected by several other circuits. These other circuits have considered this same issue and found that because the substantial rights analysis raises unique considerations during sentencing, the plain error standard must be relaxed for the mandate of 18 U.S.C. § 3553(c)(2) to have any meaningful force.

Thus, this petition follows.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to resolve a circuit split regarding whether and when a defendant's substantial rights are violated by a district court's failure to properly explain a sentence.

This Court has long held that a district court's failure to adequately explain a sentence affects more than any particular defendant's rights. As the Court stated in *Gall v. United States*, a district court has an obligation to "promote the perception of fair sentencing" and to publicly justify its decision-making. 552 U.S. 38, 50 (2007). This mandatory obligation of the sentencing court has been codified in 18 U.S.C. § 3553(c): "The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence . . . is not of the kind, or is outside the [Guidelines range], the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form"

In most circuits, when a district court fails to adequately explain a sentence and the error is not properly objected to, plain error review is applied on appeal. And for a defendant to prevail on plain error review, she must show that the error affected her substantial rights. *See* Fed. R. Crim. P. 52(b) ("A plain error that affects substantial rights may be considered even though it was not brought to the court's attention."). Given this demanding standard, several circuit courts have recognized the district court's unique sentencing obligations by appropriately relaxing the requirements for remand when the district court fails to explain its sentence.

However, the Eleventh Circuit has recently narrowed its interpretation

regarding the question of whether a defendant’s “substantial rights” were affected by a court’s 18 U.S.C. § 3553(c)(2) error. Under current Eleventh Circuit precedent, if the appellate record provides *possible* reasons for the court’s sentence, a defendant cannot establish plain error—even if the court made no indication that it agreed with those reasons. *See United States v. Steiger*, 99 F.4th 1316, 1325–27 (11th Cir. 2024). This falls in line with the reasoning of at least two other circuits. *See, e.g., United States v. Whitelaw*, 580 F.3d 256 (5th Cir. 2009); *United States v. Mendoza*, 543 F.3d 1186 (10th Cir.2008). The precedent of this alternative approach is misguided, as it fails to account for the district court’s obligation at sentencing not only to the defendant, but to the public—as identified by this Court in *Gall*.

As the Second Circuit has explained, “the ‘substantial rights’ affected by a court’s failure to comply with section 3553(c) are of a somewhat different nature from those which we typically deal” because of these additional obligations to the public. *United States v. Lewis*, 424 F.3d 239, 248 (2d Cir. 2005). Specifically, as that court explained, “the First Amendment guarantees of a public trial extend to a defendant’s sentencing proceedings.” *Id.* Thus, a violation of § 3553(c) is “akin to the deprivation of the defendant’s right to a public trial,” which the Supreme Court has “enumerated as one of the limited class of ‘structural errors’ for purposes of plain error analysis.” *Id.* (citing *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991); *Waller v. Georgia*, 467 U.S. 39, 49, n.9 (1984) (discussing Sixth Amendment right to public trial)).

Further, the Second Circuit has been explicit that “in the sentencing context there are circumstances that permit us to relax the otherwise rigorous standards of

plain error review to correct sentencing errors.” *Id.* (citations omitted). That is, because neither judicial efficiency nor finality are undermined by a limited remand for a proper resentencing, there is no concern that “a generous reading of the ‘statement of reasons’ requirement at sentencing will adversely interfere with trial proceedings or affect their finality.” *Id.*

Finally, the Second Circuit has also relaxed its review standard in this context because—operating in practical terms—the failure to do so would mean that such errors would almost always be left uncorrected. As that court has explained,

[I]t seems unlikely that a court’s failure to state its reasons for imposing a particular sentence would except in the rarest of cases “affect” the sentence imposed, in the sense that a court would impose a materially different sentence if required to state its reasons. Therefore, if an error affecting “substantial rights” in the sentencing context is understood only as an error that materially affected the sentence that was imposed, the error of failure to comply with the requirements of section 3553(c) would virtually never be “plain.” Even if preserved, such an error would be left uncorrected on appeal because the error would appear virtually always to be harmless.

Id. at 248–49. Thus, the court has reasoned that relaxing the plain error standard so that § 3553(c) violations may be corrected on appeal “will help maintain the provisions of section 3553(c) as truly mandatory, as they are apparently intended to be.” *Id.*

Other circuits have agreed with this approach. The First Circuit, for example, has explained that “[t]hough plain error is a demanding standard, failure to explain a sentence casts a shadow over the court’s reputation for fairness. And we cannot rule out the possibility of a lower sentence until the district court explains its reasons for selecting the sentence.” *United States v. Munoz-Fontanez*, 61 F.4th 212, 215 (1st

Cir. 2023) (citations omitted). The same is true for the Sixth Circuit, which, in holding that “§ 3553(c)(2) confers a substantial right to meaningful appellate review,” has thus found that “a violation of section 3553(c)(2) affects a defendant’s substantial rights.” *United States v. Blackie*, 548 F.3d 395, 403 (6th Cir. 2008).

Likewise, the D.C. Circuit has held both that “failure to provide a statement of reasons as required by § 3553(c) is plain error,” and that “the required showing of prejudice should be slightly less exacting for sentencing than it is in the context of trial errors.” *In re Sealed Case*, 527 F.3d 188, 193 (D.C. Cir. 2008). As that court has explained:

The absence of a statement of reasons is prejudicial in itself because it precludes appellate review of the substantive reasonableness of the sentence, thus seriously affecting the fairness, integrity, or public reputation of judicial proceedings. A district judge must adequately explain the chosen sentence . . . to promote the perception of fair sentencing. It is important not only for the defendant but also for the public to learn why the defendant received a particular sentence. Arbitrary decisionmaking undermines understanding of, trust in, and respect for the court and its proceedings. . . . Thus, a failure to comply with § 3553(c) causes grave institutional harm, as well as simultaneously depriving the defendant of the benefit of our review. This failure is therefore plain error.

Id. More recent cases from the D.C. Circuit have continued to affirm these principles. *See, e.g., United States v. Brown*, 892 F.3d 385, 405 (D.C. Cir. 2018) (“Because the duty to provide the required individualized explanation is settled law, a district court’s failure to spell out its reasoning constitutes plain error. That error, moreover, affects the defendant’s substantial rights and implicates the fairness and integrity of the justice system because it precludes meaningful appellate review.”); *United States v. Akhigbe*, 642 F.3d 1078, 1087-88 (2011) (“The district court’s failure to explain

adequately the sentence it imposed is prejudicial in itself because it precludes appellate review of the substantive reasonableness of the sentence, thus seriously affecting the fairness, integrity, or public reputation of judicial proceedings.”) (citations omitted).

As noted, the Eleventh Circuit has recently taken a different tack, holding that “when the sentencing record makes clear a district court’s reasons for imposing a particular sentence, a district court’s failure to explain its reasons for the chosen sentence does not affect the defendant’s substantial rights.” *United States v. Steiger*, 99 F.4th 1316, 1319 (11th Cir. 2024); *see also Herrera Gongora*, No. 23-11999, slip op. at 20 (citing *Steiger*). The *Steiger* decision overruled a previous Eleventh Circuit case, *United States v. Williams*, 438 F.3d 1271 (2006), which had instead applied a “per se rule of reversal” (rather than plain error review) that “mandated automatic reversal anytime a district court does not explicitly lay out the logic behind its sentence.” *Steiger*, 99 F.4th at 1322 (discussing *Williams*). In departing from its per se rule, *Steiger* was an overcorrection, as other circuits (as cited above) have managed to maintain a relaxed plain error standard in this context—for good reason.

At least two other circuits fall on the Eleventh Circuit’s side of the split. The Fifth Circuit, for its part, has held that at least in circumstances in which the record still allows “a meaningful appellate review,” a district court’s failure to state its reasons may not always result in an error that affects the defendant’s substantial rights. *See United States v. Whitelaw*, 580 F.3d 256, 264 (5th Cir. 2009). In the Tenth Circuit, the precedent is somewhat muddled, though at least some cases seem to

agree. Compare *United States v. Mendoza*, 543 F.3d 1186, 1194 (10th Cir. 2008) (“[T]he government apparently asks us to assume prejudice in every instance involving noncompliance with the verbal statement requirement of § 3553(c)(2). This approach would swallow the third prong of plain error review.”) with *United States v. Acevedo*, 219 F. App’x 828, 833 (10th Cir. 2007) (holding that because “the defendant is entitled to informed appellate review of his sentence, the district court’s failure to adequately articulate its reasoning substantially affected the defendant’s rights”).

This question demands this Court’s consideration. As this Court has reasoned, the district court’s obligation to “adequately explain the chosen sentence” is an integral part of its responsibility to the public to “promote the perception of fair sentencing.” *Gall*, 552 U.S. at 50. The circuits that are failing to presume a violation of substantial rights when § 3553(c)(2) is violated allow district courts to avoid or even to shirk these obligations. And the district court’s obligations under *Gall* should not vary depending on the circuit a defendant finds herself in. This Court should now step in to consider when, and whether, the prejudice may be presumed in this context.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

HECTOR A. DOPICO
Federal Public Defender

By: /s/*Kate Mollison*
Kate Mollison
Assistant Federal Public Defender
Counsel of Record
150 West Flagler Street
Suite 1700
Miami, FL 33130
(305) 530-7000
Kate_Mollison@fd.org

Counsel for Petitioner

Miami, Florida
June 12, 2026