

No. _____

In the Supreme Court of the United States

Gerardo Perez-Checa,
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

- I. Whether, after *Holguin-Hernandez v. United States*, 589 U.S. 169, 174-75 (2020), a criminal defendant may advance a preserved procedural-reasonableness challenge on appeal when the district court fails to reference or address substantial arguments for a sentence outside the range suggested by the Guidelines Manual even if the defendant did not lodge an after-the-fact objection to the district court's failure to do so?

PARTIES TO THE PROCEEDING

Petitioner, Gerardo Perez-Checa, was the Defendant-Appellant before the Court of Appeals. Respondent, the United States of America, was Plaintiff-Appellee. No party is a corporation.

RELATED PROCEEDINGS

- *United States v. Gerardo Perez-Checa*, No. 4:25-CR-00046, U.S. District Court for the Northern District of Texas. Judgment and sentence entered on August 29, 2025.
- *United States v. Gerardo Perez-Checa*, No. 25-11003, U.S. Court of Appeals for the Fifth Circuit. Opinion and judgment entered on April 21, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gerardo Perez-Checa seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's unpublished opinion is reproduced at Pet.App.a1-a2.

JURISDICTION

The Court of Appeals issued a panel opinion on April 21, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This Petition involves the preservation-of-error standard set by the Federal Rules of Criminal Procedure:

A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection.

FED. R. CRIM. P. 51(b).

STATEMENT OF THE CASE

Appellant Gerardo Perez-Checa received 21 months imprisonment and one-year supervised release for re-entering the United States following removal and without authorization, a violation of 8 U.S.C. §1326. On July 20, 2019, Perez-Checa was deported and removed to Mexico. On December 23, 2023, Perez-Checa was encountered by immigration authorities at the Tarrant County Jail in Fort Worth, Texas, within the Northern District of Texas. He had re-entered the United States Illegally, and he had not applied for nor received permission from the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States at any time after being deported.

At the sentencing hearing, defense counsel urged the court to impose a sentence of a year and a day. In support, she noted that Mr. Perez-Checa had already done two years in custody at Texas Department of Criminal Justice, for which he would not get credit.

The government declined to be heard on the matter of sentencing. The court imposed 21 months' imprisonment and one year of supervision. In support, it said only that it adopted the facts and findings in the presentence report and Title 18 U.S.C. Section 3553.

The Fifth Circuit Court of Appeals affirmed Mr. Perez-Checa's revocation sentence after rejecting an argument about the applicable standard of review. In his appeal, Mr. Perez-Checa faulted the district court for failing to address his

lawyer's non-frivolous arguments for a sentence below the range suggested by the Guidelines Manual. He argued, in turn, that the arguments themselves preserved for appeal his claim that the district court erred by failing to address them on the record. The Fifth Circuit had previously rejected the same claim in a published opinion. Pet.App.a2 (citing *United States v. Coto-Martinez*, 986 F.3d 583, 585-86 (5th Cir. 2021)). The government cited this opinion in a motion for summary affirmance and argued that the Fifth Circuit should address Mr. Perez-Checa's arguments under the plain-error standard of review. *See* Pet.App.a2. The Fifth Circuit denied the motion for summary affirmance but dispensed with further briefing, and affirmed Mr. Perez-Checa's revocation sentence in a short, unpublished opinion. *See* Pet.App.a1-a2.

REASONS FOR GRANTING THIS PETITION

I. The Fifth Circuit’s standard-of-review authority conflicts with this Court’s guidance and binding precedent from multiple courts of appeals.

a. The Fifth Circuit’s approach conflicts with *Rita v. United States* and *Holguin-Hernandez v. United States*.

A federal criminal sentence should be sufficient but not greater than necessary to accomplish the goals of sentencing set forth by Congress. *See* 18 U.S.C. §3553(a)(2)(A)-(D). This Court’s authority requires a two-part test to judge a sentence’s reasonableness against the standard set by statute. *See Gall v. United States*, 552 U.S. 38, 51 (2007). Courts of appeal will review a preserved challenged to a sentence’s substantive reasonableness under the abuse-of-discretion standard. *See id.* But before it reaches this question, the reviewing court “must first ensure that the district court committed no significant procedural error.” *Id.* “[F]ailing to adequately explain the chosen sentence,” this Court has recognized, is one such error. *Id.* (emphasis added).

This Court has provided special guidance regarding the district court’s duty to explain a defendant’s sentence. A district court’s explanation may be brief so long as it offers enough substance to allow for meaningful appellate review. *See Rita v. United States*, 551 U.S. 338, 356-357 (2007). This Court has also noted that a comparison between the sentence imposed and the range suggested by the Guideline Manual may inform appellate challenges to the adequacy of a district court’s explanation. *See id.* Two circumstances, however, may call for additional scrutiny: (1) where the sentence falls outside the

suggested range, and (2) where a party offers a nonfrivolous argument for a different sentence than the one the district court imposes. *See id.* at 357 (“Where the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence, however, the judge will normally go further and explain why he has rejected those arguments.”).

The Fifth Circuit has ignored this Court’s guidance, and its contrary approach affected the outcome here. In the Fifth Circuit, a district court need not address nonfrivolous arguments from the defendant so long as the record suggests the district court’s implicit consideration and rejection of the same. *See Coto-Martinez*, 986 F.3d at 586-87. In the revocation context, the Fifth Circuit has held that a bare reference to the sentencing factors listed in 18 U.S.C. § 3553(a) would be sufficient on appeal to defeat any claim from a defendant concerning the district court’s failure to address on the merits nonfrivolous arguments in support of a sentence shorter than the one ultimately imposed.

As a matter of substantive sentencing law, the Fifth Circuit’s approach cannot be squared with *Rita*. That decision emphasized the importance of sentence explanations in building public confidence in the legal system and in facilitating reasonableness review. *See Rita*, 551 U.S. at 356-357. The opinion then distinguished between cases involving the simple selection of a sentence within the suggested range and those in which the court is confronted with nonfrivolous arguments for a below-the-range sentence. *See id.* The former cases may require only a minimal explanation, but in the end, *Rita* requires “more” for

cases falling within the latter category. *See id.* Mr. Perez-Checa's case plainly falls in the second bucket, but the district court failed to provide any response to the arguments from Mr. Perez-Checa's lawyer concerning both a less severe term of imprisonment and no additional term of supervision.

The Fifth Circuit's approach also contravenes this Court's guidance on how defendants may preserve a claim for appeal. In the Fifth Circuit, a defendant must first present a district court with a nonfrivolous argument in support of a lower sentence and then object when the district court fails to provide a meaningful response when explaining the sentence imposed. *Coto-Mendoza*, 986 F.3d at 586. This requirement persists even where the defendant requests a sentence outside the range and offers nonfrivolous arguments in support of that sentence. *See id.*

In setting those rules, the Fifth Circuit unfortunately ignored this Court's guidance from *Holguin-Hernandez v. United States*. In *Holguin-Hernandez*, this Court held that substantive-reasonableness challenges may be preserved without an after-the-fact objection. *See* 589 U.S. 169, 174-75 (2020). Instead, this Court explained, a simple request for a lesser sentence would by itself adequately communicate to a district court the defendant's belief that a more severe sentence would be greater than necessary under §3553(a). *See id.* at 173-74. That request, in fact, does exactly what the Federal Rule of Criminal Procedure require, and by itself, and “‘inform[s] the court’ of the ‘action’” the defendant “‘wishes the court to take.’” *Id.* at 173 (quoting FED. R. CRIM. P.

51(b)). Those rules, this Court emphasized in *Holguin-Hernandez*, did not require defendants to further bolster their challenge to the district court's sentencing decision by addressing in the district court the abuse-of-discretion standard that would later apply on appeal. *See id.* at 174-75.

To be sure, this Court in *Holguin-Hernandez* ultimately reserved the question of what objections would be necessary to preserve claims of procedural error. *See id.* at 175. The reasoning of *Holguin-Hernandez* nevertheless provides significant support for the notion that formulaic after-the-fact objections are not required by the Federal Rules of Criminal Procedure so long as the defendant has made some effort to inform the district court of the action it wishes to take and the reasons therefor. In *Holguin-Hernandez*, this Court found that a request for a lesser sentence sufficiently apprised the district court of its “overarching duty” to impose a sentence no greater than necessary under §3553(a). *Id.* at 173-74 (quoting *Pepper v. United States*, 562 U.S. 476, 491 (2011)). Similarly, a nonfrivolous argument presented by the defendant triggers a duty on the district court's part to fairly explain its rejection of that argument. *See Rita*, 551 U.S. at 51. *Holguin-Hernandez* thus undermines the Fifth Circuit's requirement for a separate objection to preserve for appeal a procedural-reasonableness challenge concerning the district court's failure to respond to nonfrivolous arguments for a sentence outside suggested range.

b. The Fifth Circuit's approach conflicts with published opinions from two other circuit courts of appeals.

Two circuit courts of appeals would have treated Mr. Perez-Checa's claim

as preserved. For its part, the Fourth Circuit has long held, even before *Holguin-Hernandez*, that defendants may preserve a failure-to-respond claim by simply offering nonfrivolous arguments for a lesser sentence on the front end and need not object to the explanation after the sentence is pronounced. *See United States v. Lynn*, 592 F.3d 572, 578 (4th Cir. 2010). The Fourth Circuit has reaffirmed this rule after *Holguin-Hernandez*. *See United States v. Solis-Rodriguez*, 144 F.4th 617, 626 (4th Cir. 2025).

The Seventh Circuit would have also treated Mr. Perez-Checa’s claim as preserved. In *United States v. Cunningham*, it sided with the defendant on a failure-to-explain challenge after the district court “passed over in silence the principal argument” advanced by the defendant in mitigation at sentencing. 429 F.3d 673, 679 (7th Cir. 2005) (Posner, J.). The government argued that the defendant’s failure to make an after-the-fact objection required plain-error review on appeal, but the Seventh Circuit disagreed. “[A] lawyer in federal court,” the Seventh Circuit explained, “is not required to except to rulings by the trial judge.” *Id.* at 679-80 (citing FED. R. CRIM. P. 51(b); *United States v. Rashad*, 396 F.3d 398, 401 (D.C. Cir. 2005)). The Seventh Circuit has not reconsidered this rule after *Holguin-Hernandez*, but its analysis presaged this Court’s guidance. *See* 589 U.S. at 174-75.

The Fifth Circuit’s approach creates a split on an important question of federal law. “A party may preserve a claim of error by informing the [district] court—when the court ruling or order is made or sought—of the action the party

wishes the court to take,” and under the Federal Rules of Criminal Procedure, “[e]xceptions to rulings or orders of the court are unnecessary.” FED. R. CRIM. P. 51(b). When a defendant like Mr. Perez-Checa advances a nonfrivolous argument for a sentence below the range suggested by the Guidelines Manual, the request itself informs the district court “of the action” the defendant “wishes the court to take,” and at the very least, the district court should explain on the record why it has chosen to reject that argument and impose a different sentence. *See, e.g.*, 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.”). The Fourth and Seventh Circuits have correctly interpreted the Federal Rules of Criminal Procedure and thus treat the nonfrivolous argument as sufficient by itself to preserve for appeal a challenge to the district court’s failure to address that argument in explaining the sentence. The Fifth Circuit has taken the opposite approach, but that interpretation cannot be squared with the text of the relevant rule or this Court’s guidance in *Rita* and *Holguin-Hernandez*. On top of that, the issues presented by Mr. Perez-Checa’s petition are applicable to every sentencing hearing and can impact any appeal where the defendant advances nonfrivolous arguments for a sentence different than the one imposed.

c. Mr. Perez-Checa’s petition presents an appropriate vehicle to resolve the split.

This petition provides the Court with an opportunity to ensure across-the-board continuity on an important question of federal law. The Fifth Circuit

originally adopted its requirement for an after-the-fact objection in a published opinion, and both the government and the panel below cited that opinion to support summary affirmance in this case. Pet.App.a2 (citing *Coto-Martinez*, 986 F.3d at 585-86). That allowed the Fifth Circuit to dispense with Mr. Perez-Checa's procedural-reasonableness claim on plain error's second prong, *see* Pet.App.a2, but in the Fourth and Seventh Circuits, the same claim would have been treated as preserved. The Fifth Circuit's approach obviously impacted the result below, and both Mr. Perez-Checa's term of imprisonment and term of additional supervision provide enough time for this Court to correct the Fifth Circuit's error while ensuring meaningful relief on remand.

CONCLUSION

Petitioner respectfully asks this Court to grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Submitted July 20, 2026.

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