

No. _____

IN THE

Supreme Court of the United States

ANTHONY FRANK SCOVOTTO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When the government appeals from criminal sentencing, the courts of appeals review both whether the sentencing court gave adequate, record-based reasons *and* whether those reasons were substantively reasonable.

When a criminal defendant appeals in the Ninth Circuit, that court reviews only the former procedural-reasonableness question. Even when the criminal defendant separately raises substantive reasonableness, the Ninth Circuit commonly resolves that challenge on procedural rather than substantive considerations. It thus denies defendants that second-step inquiry into the substance of their sentences, as it did with Mr. Scovotto here.

The question presented is:

Whether, like the government when it is appellant, criminal defendant-appellants are entitled to resentencing when a district court's reasons for the sentence are substantively unreasonable?

PARTIES TO THE PROCEEDING

Petitioner is Anthony Scovotto, who was Defendant-Appellant below.

Respondent is the United States of America, which was Plaintiff-Appellee below.

RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

United States v. Scovotto,
No. 2:22-cr-306-DSF-1 (Apr. 1, 2024)

United States Court of Appeals (9th Cir.):

United States v. Scovotto,
No. 24-1996 (Mar. 18, 2026),
reh'g denied (June 9, 2026)

TABLE OF CONTENTS

Question Presented	ii
Parties to the Proceeding	iii
Related Proceedings	iii
Table of Contents	iv
Table of Authorities	v
Petition for a Writ of Certiorari	1
Opinions Below	1
Jurisdiction	1
Statutory Provisions Involved.....	1
Introduction	2
Statement.....	4
Reasons for Granting the Petition.....	6
I. The decision below conflicts with the decisions of this Court, other courts of appeals, and settled sentencing law.....	6
II. The Ninth Circuit’s differential treatment of government appeals presents an important question of federal law warranting this Court’s intervention.	10
Conclusion	13

TABLE OF AUTHORITIES

Cases

<i>Gall v. United States</i> , 552 U.S. 38 (2007)	4, 6, 7, 8, 9, 10, 12
<i>United States v. Bryan</i> , No. 21-10372, 2023 WL 5628628 (9th Cir. Aug. 31, 2023) (unpublished)	10
<i>United States v. Campoy-Rubalcaba</i> , 829 F. App'x 298 (9th Cir. 2020) (unpublished) ...	10
<i>United States v. Gomez-Cruz</i> , 793 F. App'x 544 (9th Cir. 2020) (unpublished) ...	10
<i>United States v. Morris</i> , 71 F.4th 475 (2023)	4, 9
<i>United States v. Ressam</i> , 679 F.3d 1069 (9th Cir. 2012)	7, 11, 12
<i>United States v. Santoyo</i> , No. 24-82, 2024 WL 4988981 (9th Cir. Dec. 5, 2024) (unpublished)	10
<i>United States v. Thompson</i> , 130 F.4th 1158 (9th Cir. 2025)	2, 3, 7, 11, 12

Statutes

18 U.S.C. § 2251	9
18 U.S.C. § 3553	6, 9, 12, 16, 17

PETITION FOR A WRIT OF CERTIORARI

Anthony Scovotto respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The memorandum disposition of the court of appeals (Pet. App. 1a–3a) is unreported but is available at 2026 WL 766734. The judgment of the district court is not reported.

JURISDICTION

The court of appeals entered judgment on March 18, 2026. Pet. App. 1a–3a. It denied a petition for rehearing on June 9, 2026. Pet. App. 4a. Petitioner invokes this Court’s jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3553(c) provides, in pertinent part:

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—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range;

....

INTRODUCTION

When the government appeals a criminal sentence, like other courts of appeals, the Ninth Circuit reviews for both procedural and substantive reasonableness. Procedurally, it asks whether the district court articulated adequate reasons and whether those reasons were clearly erroneous based on the factual record. Substantively, it asks whether the district court failed to “meaningfully weigh” the statutory factors under 18 U.S.C. § 3553(a) and whether that weighing involved “a clear error of judgment.” *United States v. Thompson*, 130 F.4th 1158, 1170 (9th Cir. 2025).

But when a defendant like Mr. Scovotto appeals, the Ninth Circuit limits its review to those procedural questions. Even when purporting to resolve a substantive challenge, it does not conduct those latter substantive inquiries.

Mr. Scovotto’s father provides an illustrative example. Mr. Scovotto had asked the district court to consider the mitigating impact of the fact that his father abandoned him and his family when Anthony was just eight months old. The district court refused to weigh that fact at all, and the reason it gave was that it was “not clear whether Mr. Scovotto’s father abandoned the family or whether something happened to him that prevented him from returning.” Pet. App. 27a.

On appeal, Mr. Scovotto did not challenge the procedural reasonableness of that ruling: the district court articulated a reason that was based in the record. But he did challenge its substantive reasonableness: the cause of the abandonment was immaterial, and the district court unreasonably failed to weigh this history-and-characteristics factor, committing a clear error of judgment.

The Ninth Circuit purported to reject that substantive-reasonableness challenge. But its reasons for doing so all sounded in procedure: the district court articulated adequate reasons that had support in the record. Pet. App. 2a–3a (“The district court adequately explained its reasons for sentencing Scovotto to 360 months, and those reasons have support from the facts in the record.”). The court of appeals never addressed the failure to meaningfully weigh and the clear error of judgment. *Id.* Mr. Scovotto raised this step-skipping in a petition for rehearing, Pet. App. 5a–15a, but the court of appeals denied the petition without reasoning. Pet. App. 4a.

That approach gives district courts a free pass in defense appeals, holding them to their procedural obligations but not their substantive ones. It does so in a manner that is not even-handed: the government does get substantive scrutiny when it appeals a sentence. *E.g., Thompson*, 130 F.4th at 1170. And it conflicts with the precedent of this

Court and other courts of appeals, which test substantive reasonableness even when a defendant is the appellant. *E.g.*, *Gall v. United States*, 552 U.S. 38, 51–52 (2007); *United States v. Morris*, 71 F.4th 475, 483–85 (2023).

To correct the Ninth Circuit’s lopsided departure from settled law, this Court should grant certiorari and reverse.

STATEMENT

1. Mr. Scovotto pleaded guilty to attempting to produce child pornography in violation of 18 U.S.C. § 2251(a), (e). Before sentencing, the presentence report calculated a Guidelines range of 600 months—i.e., the statutory maximum. Mr. Scovotto challenged that calculation, asserting that certain so-called pseudo-counts should not have been included. Without those pseudo-counts, the correct range would have been 292 to 365 months.

Under § 3553(a)(1), Mr. Scovotto asked the district court to weigh several mitigating facts about his personal history and characteristics. These included the lifelong impact of his father’s abandonment of the family when Mr. Scovotto was just eight months old. Mr. Scovotto had received loving support from his mother and grandparents, and he asked the district court also to consider the traumatic loss of his grandmother, as well as the

years he spent after her death as the sole caregiver for his severely disabled mother.

The district court refused to weigh those facts at all. As for the abandonment, the district court reasoned that it was “not clear whether Mr. Scovotto’s father abandoned the family or whether something happened to him that prevented him from returning.” Pet. App. 27a. It said nothing about the death of Mr. Scovotto’s grandmother. And although his mother’s disability and the need for caregiving were “unfortunate for both him and his mother,” the district court refused to weigh those facts at all. *Id.* (“[B]ut I reject any suggestion that this somehow caused or contributed to his conduct here. It’s a very common experience as parents and grandparents live to be older and older.”).

2. The court of appeals assumed the pseudo-count error under the Guidelines, but it affirmed because “any such error was harmless.” Pet. App. 2a. In the Ninth Circuit’s view, the district court had sufficiently explained that it would have imposed the same sentence even absent the Guidelines error. *Id.*

Mr. Scovotto also challenged the sentence as substantively unreasonable. He argued that the district court unreasonably failed to weigh his personal history and characteristics at all, giving illogical reasons for doing so.

The district court rejected that substantive-reasonableness challenge on three grounds. First, the district court “adequately explained its reasons.” Pet. App. 2a–3a. Second, “those reasons have support from the facts in the record.” Pet. App. 3a. Third, the resulting sentence was “within the Guidelines range” after correcting the pseudo-count error and within the “mandatory minimum ... mandatory maximum.” Pet. App. 3a.

3. In a petition for rehearing, Mr. Scovotto pointed out that none of those three reasons sounds in substantive reasonableness. Whether the district court sufficiently articulated record-based reasons are procedural-reasonableness questions. And whether the sentence was within the statutory maximum goes to its legality, not its substantive reasonableness.

The court of appeals denied the rehearing petition without explanation. Pet. App. 4a.

REASONS FOR GRANTING THE PETITION

I. The decision below conflicts with the decisions of this Court, other courts of appeals, and settled sentencing law.

This Court has made clear that appellate review of a sentence proceeds in two steps: procedural and substantive reasonableness. *Gall v. United States*, 552 U.S. 38, 51–52 (2007). The Ninth Circuit’s approach collapses these two steps into the

first one—and denies defendants the opportunity to raise substantive challenges to their sentences at the second step.

At the first, procedural step, an appellate court asks questions like whether the sentencing court “fail[ed] to adequately explain the chosen sentence” and whether the sentence was “based on clearly erroneous facts” given the evidentiary record. *Id.* at 51.

The second, substantive step requires additional scrutiny. “Assuming that the district court’s sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.” *Id.*

For government sentencing appeals, the Ninth Circuit applies that substantive step with teeth. District courts “enjoy significant discretion in bringing their individual judgment to bear,” but they may not commit “a clear error of judgment” in weighing the § 3553(a) factors, and it must “meaningfully weigh” each of them. *United States v. Thompson*, 130 F.4th 1158, 1170 (9th Cir. 2025) (quoting *United States v. Ressam*, 679 F.3d 1069, 1087 (9th Cir. 2012)).

But when Mr. Scovotto raised precisely those sorts of substantive-reasonableness arguments, the Ninth Circuit pivoted back to procedure. Although

its memorandum disposition purported to be rule on substantive reasonableness, it listed only three considerations—none of which is responsive to the substantive inquiry.

First, the court of appeals held that the district court “adequately explained its reasons.” Pet. App. 2a–3a. As this Court has explained, the provision of adequate reasons is a requirement for procedural—not substantive—reasonableness. *Gall*, 552 U.S. at 51 (“It must first ensure that the district court committed no significant procedural error, such as ... failing to adequately explain the chosen sentence....”).

Second, the court of appeals held that the district court’s “reasons have support from the facts in the record.” Pet. App. 3a. But again, this Court has explained that whether a reason is supported by the factual record is a question for the procedural step. *Gall*, 552 U.S. at 51 (“It must first ensure that the district court committed no significant procedural error, such as ... selecting a sentence based on clearly erroneous facts....”).

Third, the court of appeals held that the sentence “was within the Guidelines range under Scovotto’s calculation, and within the mandatory minimum (300 months) and mandatory maximum (600 months).” Whether the sentence was within the mandatory minimum and statutory maximum are questions that go to its bare legality, no its

substantive reasonableness. If legality were the test for substantive reasonableness, it would be no test at all. Nor did the fact that the sentence was within the Guidelines range save it from substantive scrutiny. As *Gall* held, that abuse-of-discretion review applies “[r]egardless of whether the sentence imposed is inside or outside the Guidelines range.” 552 U.S. at 51.

In short, Mr. Scovotto raised a challenge at step two (substance), and the court of appeals rejected it based on step one reasons (procedure). The Ninth Circuit denied him that substantive review in violation of *Gall*.

That approach also splits with other circuits’ even-handed application of *Gall*. In the Sixth Circuit, as in virtually every other circuit, criminal defendants are entitled to challenge the substantive—not just procedural—reasonableness of their sentences. *United States v. Morris*, 71 F.4th 475, 483–85 (2023). Even if *Gall* had not clearly prescribed the two-step review with substantive testing, this split of authority would warrant the Court’s intervention in order to provide a nationally uniform standard for sentencing appeals.

II. The Ninth Circuit’s differential treatment of government appeals presents an important question of federal law warranting this Court’s intervention.

Mr. Scovotto’s case is not an aberration. When criminal defendants have challenged the substantive reasonableness of their sentences, the Ninth Circuit has commonly violated *Gall* and affirmed based on *procedural* compliance. *See, e.g., United States v. Santoyo*, No. 24-82, 2024 WL 4988981, at *1 (9th Cir. Dec. 5, 2024) (unpublished) (finding sentence substantively reasonable in part because district court “adequately explained its reasons”); *United States v. Bryan*, No. 21-10372, 2023 WL 5628628, at *3 (9th Cir. Aug. 31, 2023) (unpublished) (same); *United States v. Campoy-Rubalcaba*, 829 F. App’x 298, 299 (9th Cir. 2020) (unpublished) (finding sentence substantively reasonable in part because district court did not rely “on any erroneous facts concerning [the dismissed] charges”); *United States v. Gomez-Cruz*, 793 F. App’x 544, 545 (9th Cir. 2020) (unpublished) (finding sentence substantively reasonable in part because district court “adequately explained its reasons” and “did not rely on any clearly erroneous facts”).

That treatment diverges from how the Ninth Circuit approaches government sentencing appeals. When the government appeals, the Ninth Circuit applies *Gall*’s substantive step with teeth. That

cash out in two ways that would have benefitted Mr. Scovotto here—had the Ninth Circuit applied its substantive analysis even handedly.

First, when the government appeals, it can ask the appellate court to examine whether the sentencing court “gave [each] factor meaningful weight in selecting the sentence that it imposed.” *Thompson*, 130 F.4th at 1167. If the district court “significantly overvalued” or “undervalued” one of the § 3553(a) factors, the Ninth Circuit will reverse as substantively unreasonable. *Ressam*, 679 F.3d at 1092, 1096; *accord Thompson*, 130 F.4th at 1167 (“[I]t does not appear that it gave this [deterrence] factor meaningful weight in selecting the sentence that it imposed.”); *id.* at 1169 (“Rather, the district court abused its discretion by failing to meaningfully weigh the sentencing disparity that its chosen sentence created....”).

Mr. Scovotto argued that the district court failed to give any meaningful weight to his personal history and characteristics. Indeed, the district court admitted as much. Pet. App. 27a (“There is nothing mitigating about his history or characteristics.”). By affirming based on procedural considerations, the Ninth Circuit did not address this substantive argument.

Second, even assuming all the factors are given meaningful weight, the government as appellant can ask the appellate court to reverse

based on a “clear error of judgment in its weighing of ... the § 3553(a) factors,” because such a mis-weighing “result[s] in a substantively unreasonable sentence.” *Thompson*, 130 F.4th at 1165; *accord Ressam*, 679 F.3d at 1087.

In *Thompson*, for example, the Ninth Circuit held that the sentence substantively unreasonable because the district court had over-weighed the defendant’s “personal vulnerabilities” to the exclusion of other factors like deterrence and disparity. 130 F.4th at 1170. The same was true here: the district court imposed sentence based on the seriousness of the offense to the total exclusion of personal history and characteristics. But because the district court had provided reasons—i.e., had complied procedurally—the Ninth Circuit refused to inquire into whether those reasons represented a clear error of judgment.

Had the government appealed this sentence, *Ressam* and *Thompson* would have compelled the court of appeals to apply *Gall*’s substantive step and set the sentence aside. When Mr. Scovotto raised this differential treatment, the Ninth Circuit refused rehearing without explanation. This Court’s intervention is necessary to ensure that *Gall*’s two-step analysis is applied even-handedly—no matter the appellant.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

September 8, 2026 Respectfully submitted,

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