

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUAN GONZALEZ-LOPEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether the right to be sentenced based on accurate information that the Court recognized in Federal Rules of Criminal Procedure Rule 32(i)(1)(C) and *Townsend v. Burke*, 334 U.S. 736 (1948), is limited to uncounseled defendants and errors about the defendant's own criminal histories or applies to any assumption or fact cited as a basis of a sentence without giving the defendant a chance to object.

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Juan Gonzalez-Lopez and the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are:

- *United States v. Gonzalez-Lopez*, No. 24-CR-2115-JAH (S.D. Cal. 2024)
- *United States v. Gonzalez-Lopez*, No. 25-2536, U.S. Court of Appeals for the Ninth Circuit, memorandum disposition issued March 22, 2026 (attached at Appendix A).
- *United States v. Gonzalez-Lopez*, No. 25-2536, U.S. Court of Appeals for the Ninth Circuit, order denying petition for rehearing and petition for rehearing en banc issued June 4, 2026 (attached at Appendix B).

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	<i>prefix</i>
PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT.....	<i>prefix</i>
TABLE OF CONTENTS	i
APPENDIX INDEX	v
INTRODUCTION	1
OPINION BELOW	2
JURISDICTION	3
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION	9
I. The courts of appeals are divided as to whether it offends due process to sentence a person based on inaccurate information.....	9
A. The Second, Third, Fourth, and Seventh Circuits hold that Townsend proscribes basing a sentence on an erroneous fact.	11
B. The First, Fifth, Eighth, and Tenth Circuits have limited the due process concerns to cases involving uncounseled defendants or sentences premised on clear misreadings of past convictions.....	13
C. The Ninth Circuit has conflicting holdings about the scope of the due process right.	14
II. Whether courts can sentence people based on erroneous assumptions without a chance to object is a question of profound importance for millions of people.....	15
III. Mr. Gonzalez-Lopez’s case presents the right vehicle to examine the scope of Townsend.....	16
CONCLUSION	17

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Beckles v. United States</i> , 580 U.S. 256 (2017)	10
<i>Burns v. United States</i> , 501 U.S. 129 (1991)	2
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	2
<i>Kinder v. United States</i> , 504 U.S. 946 (1992)	10
<i>Long v. Collins</i> , 988 F.2d 1210 (5th Cir. 1993)	13
<i>Moore v. United States</i> , 571 F.2d 179 (3d Cir. 1978).....	11
<i>Rosales-Mireles v. United States</i> , 138 S. Ct. 1897 (2018)	16
<i>Roussell v. Jeane</i> , 842 F.2d 1512 (5th Cir. 1988)	13
<i>Townsend v. Burke</i> , 334 U.S. 736 (1948)	1, -2, 9–13, 15–16
<i>United States v. Ausburn</i> , 502 F.3d 313 (3d Cir. 2007).....	11
<i>United States v. Baldrich</i> , 471 F.3d 1110 (9th Cir. 2006)	14
<i>United States v. Dalzell</i> , 455 F. App'x 306 (4th Cir. 2011).....	12
<i>United States v. Delacruz</i> , 862 F.3d 163 (2d Cir. 2017).....	12, 15
<i>United States v. Doe</i> , 810 F.3d 132 (3d Cir. 2015).....	11

<i>United States v. Dupont</i> 15 F.3d 5 (1st Cir. 1994).....	13
<i>United States v. Gonzalez-Lopez</i> , No. 25-2536, 2026 WL 834736 (9th Cir. Mar. 26, 2026)	8, 9, 14
<i>United States v. Griffiths</i> , 504 F. App'x 122 (3d Cir. 2012)	11
<i>United States v. Guajardo-Martinez</i> , 635 F.3d 1056 (7th Cir. 2011)	12
<i>United States v. Jones</i> , 454 F.3d 642 (7th Cir. 2006)	12
<i>United States v. Lee</i> , 540 F.2d 1205 (4th Cir. 1976)	12
<i>United States v. Mulay</i> , 642 F. App'x 853 (10th Cir. 2016).....	13
<i>United States v. Nappi</i> , 243 F.3d 758 (3d Cir. 2001).....	1
<i>United States v. Oaks</i> , 606 F.3d 530 (8th Cir. 2010)	13
<i>United States v. Propst</i> , 959 F.3d 298 (7th Cir. 2020)	12
<i>United States v. Tucker</i> , 404 U.S. 443 (1972)	10, 15
<i>United States v. Warr</i> , 530 F.3d 1152 (9th Cir. 2008)	14
<i>United States v. Weston</i> , 448 F.2d 626 (9th Cir. 1971)	15
<i>United States v. Yeigh</i> , 725 F. App'x 207 (4th Cir. 2018).....	11
STATUTES	
8 U.S.C. § 1324.....	8

28 U.S.C. § 1254(1)	3
---------------------------	---

RULES

Fed. R. Crim. P. 32.....	3
--------------------------	---

APPENDIX INDEX

APP. No.	DOCUMENT	PAGE
A.	<i>United States v. Gonzalez-Lopez</i> , U.S. Court of Appeals for the Ninth Circuit. Memorandum Disposition, filed March 26, 2026	1a
B.	<i>United States v. Gonzalez-Lopez</i> , U.S. Court of Appeals for the Ninth Circuit. Order Denying Petition for Rehearing and Petition for Rehearing En Banc, filed June 4, 2026	6a
C.	<i>United States v. Gonzalez-Lopez</i> , U.S. Court of Appeals for the Ninth Circuit. Excerpts of Record. Transcript excerpts of Sentence with PSR, April 16, 2025	7a

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
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Petitioner Juan Gonzalez-Lopez respectfully prays that the Court issue a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION

Nearly eighty years ago, this Court held that a person cannot, consistent with due process, be sentenced based on information “extensively and materially false, which the prisoner had no opportunity to correct.” *Townsend v. Burke*, 334 U.S. 736, 741 (1948). “Federal Rule of Criminal Procedure 32, which governs sentencing procedures in the federal courts, emanates from [the] concern for protecting a defendant’s due process rights in the sentencing process.” *United States v. Nappi*, 243 F.3d 758, 763 (3d Cir. 2001) (citing *Townsend*, 334 U.S. at 741). “[T]o safeguard this [due process] right, Rule 32 contains specific requirements that ensure that the defendant is . . . sentenced based on accurate information.” *Nappi*, 243 F.3d at 763.

This includes the “opportunity to comment” which “provides for focused, adversarial development of the factual and legal issues relevant to determining the appropriate Guidelines sentence.” *Burns v. United States*, 501 U.S. 129, 134 (1991). Moreover, this Court has held that is significant procedural error for a court to “select[] a sentence based on clearly erroneous facts.” *Gall v. United States*, 552 U.S. 38, 51 (2007)

In the decades since *Townsend* and the passing of Rule 32, and increasingly as of late, the courts of appeals have divided over that holding’s meaning. The Second, Third, Fourth, and Seventh Circuits hold that the Court, as it usually does, meant what it said in *Townsend*. A person cannot, consistent with due process, be sentenced based on false information. Specifically, the Third Circuit holds that this includes false information about a sentencing court’s prior sentencings of other defendants.

Meanwhile, the First, Fifth, Eighth, and Tenth Circuits have all-but limited *Townsend* to its facts. They hold that it governs only when the defendant lacks a lawyer or when the district court misstates a defendant’s prior convictions.

Finally, the Ninth Circuit has given conflicting holdings suggesting that there is no violation when the alleged false information is not related to the defendant’s own case.

OPINION BELOW

The Ninth Circuit Court of Appeals affirmed the sentence of Petitioner in an unpublished memorandum on March 26, 2026. *See* Appendix A at 1a–2a. Petitioner

then petitioned for panel rehearing and rehearing en banc. The Ninth Circuit also denied Petitioner's petition for panel rehearing and rehearing en banc on June 4, 2026. *See* Appendix B.

JURISDICTION

On March 26, 2026, the Ninth Circuit denied Petitioner's appeal and affirmed his conviction. *See* Appendix A. The Ninth Circuit then denied the petition for rehearing and or rehearing en banc on June 4, 2026. Appendix B. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

Federal Rule of Criminal Procedure 32 provides: Sentencing. (1) In General. At sentencing, the court: (C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence.

STATEMENT OF THE CASE

Juan Gonzalez-Lopez was convicted of transportation of undocumented persons under 8 U.S.C. § 1324 after he entered the United States. His fee to smugglers was reduced when he agreed to drive the truck that carried other people entering the country. He had no prior criminal history or any other type of contact with any law enforcement agency. Although both parties recommended a sentence

within the Guidelines range of 8 to 14 months, the district court increased the sentence to 40 months. It relied heavily on the belief that it had previously given similar sentences to other defendants in cases “like this one” and that those sentences were affirmed on appeal by the Ninth Circuit Court of Appeals. The district court did not give notice of these cases or an opportunity to rebut them. On appeal, Mr. Gonzalez-Lopez pointed to a review of Westlaw research showing that the district court’s assumptions of the prior cases like this one was inaccurate. Appendix C at 7a–8a. He argued that the lack of notice and opportunity to rebut the evidence that the district court used to significantly increase the sentence was a violation of Rule 32 and due process.

The day of Mr. Gonzalez-Lopez’s arrest, agents saw 12 people get into the truck near the border fence in the town of Winterhaven, California. Winterhaven is a small rural desert town with a population of less than 400 people. After the truck drove off, agents attempted to stop the truck by deploying a vehicle immobilization device, but the truck swerved around the device into the shoulder of the road and continued to drive. An agent observed several people in the bed of the truck underneath the camper shell while the truck was driving approximately 80 to 90 miles per hour, failing to yield to border patrol. As the truck was heading towards the port of entry, the southbound lanes were shutdown. The truck then stopped on the sidewalk north of the Andrade Port of Entry.

Mr. Gonzalez-Lopez, who was the driver, along with the front passenger, and six people in the rear seat of the truck exited and attempted to flee into Mexico. All were arrested. Six other people were found in the truck bed under the camper shell.

Post arrest, Mr. Gonzalez-Lopez told agents that he agreed to drive in exchange for a \$2,000 discount on his \$10,000 smuggling fee. Three other people, who were at a nearby house where Mr. Gonzalez-Lopez was instructed to drive, were also arrested. They admitted to taking in undocumented people into their home in return for payment. Mr. Gonzalez-Lopez and the three others were all charged with the same criminal complaint. All four of them pled guilty.

Mr. Gonzalez-Lopez agreed to a factual basis in his plea agreement. He agreed to knowingly transporting an undocumented citizen, along with 11 other persons, all of whom were noncitizens without lawful status in the United States. As part of his factual basis, Mr. Gonzalez-Lopez agreed that he failed to yield to law enforcement when there was an attempted vehicle stop.

At sentencing, the parties agreed to a Guidelines range of 8-to-14 months, which included an enhancement for substantial risk. The government recommended a low end of 8 months custody and 3 years of supervised release. Mr. Gonzalez-Lopez requested a time served sentence with one year of supervised release.

The district court continued the sentencing stating that it intended to vary upward from the guidelines range and impose a sentence closer to 60 months, the statutory maximum sentence.

The district court continued the sentencing stating that it intended to vary upward from the guidelines range and impose a sentence closer to 60 months, the statutory maximum sentence.

Prior to the next hearing, Mr. Gonzalez-Lopez filed a supplemental sentencing memo, which addressed the issue of substantial risk. The memorandum included a list of cases from the Southern District of California where defendants received sentences below 12 months despite a substantial risk enhancement. It also provided information of three cases where the substantial risk included high speed chases during the defendant's flight from law enforcement.

At the second sentencing hearing, the parties made their oral recommendations for a sentence within the 8-to-14-month Guidelines range. The defense acknowledged the seriousness of the conduct but noted that defendants in the district regularly receive sentences within guidelines for similar conduct. The defense discussed how Mr. Gonzalez-Lopez's history and characteristics further supported, at minimum, a sentence within Guidelines. He had no law enforcement contact, had never done this before, and was someone coming to the United States to find work to help his family in Mexico. Government counsel noted that the district court's concerns regarding the aggravated facts were adequately reflected with the sentencing guidelines.

The district court then imposed the sentence by first calculating the Guidelines range at 8-to-14 months in accordance with the parties' agreed upon

calculation. The district court then specifically discussed the circumstances of the case including the substantial risk created by Mr. Gonzalez-Lopez's conduct.

As to the unwarranted disparities compared to other cases from other judges in the district, the district court justified a sentence closer to the statutory maximum of 60 months because it looked to "two to three" unnamed cases from its own courtroom where a 60-month sentence was later affirmed on appeal by the Ninth Circuit Court of Appeals. Appendix C at 7a–8a. The district court stated:

But it's notable to the Court that the Court has had two to three cases like this one where I've given 60 months, and the Ninth Circuit has affirmed. I was affirmed by the Ninth Circuit.

Appendix C at 7a–8a. The district court discussed the procedural history of one of the unnamed cases where the defendant was sentenced to "60 months in custody, and the Ninth Circuit affirmed it, based on the nature of their conduct." Appendix C at 8a. It repeated its belief that the Ninth Circuit has affirmed its imposition of a 60-month sentence. Appendix C at 9a.

The district court then imposed a 40-month sentence and three years of supervised release. Appendix C at 10a. After imposing the sentence, the district court noted that it trusted "the Ninth Circuit would tell you this conduct is unacceptable." Appendix C at 10a.

On appeal, Mr. Gonzalez-Lopez argued that the reliance on prior unnamed cases was a violation of Due Process and Rule 32 because it was factual information that had not been disclosed and the defense had no opportunity to respond prior to the announcement of the sentence. Had defense counsel been notified of the cases to which the district court was referring, counsel could have reviewed the record to see

if the district court's recollection was accurate. Had defense counsel been able to review the sentencing materials for these other unnamed cases, counsel could have pointed out that those cases did not involve similarly situated defendants.

Mr. Gonzalez-Lopez pointed out that a Westlaw review of appeals to the Ninth Circuit Court of Appeals of sentences imposed by this district judge involving 8 U.S.C. § 1324 shows that the court had critical facts wrong. It turns out that the other cases the district court was relying on involved Guidelines that were more than double the Guidelines in Mr. Gonzalez-Lopez's case. In one case, the district court erroneously assumed that the Ninth Circuit had affirmed a variance, when the Ninth Circuit had not. And in another case, it appeared that the variance was less than nine months compared to the 26 months or 285% upward variance given in this case. Mr. Gonzalez argued that because the district court's analysis was based on facts that he did not receive notice or an opportunity to rebut and turned out to be false, a remand was required.

In an unpublished memorandum, the panel of the Ninth Circuit affirmed the sentence. It found that there is no authority prohibiting reliance on clearly erroneous facts when the facts are outside of the defendant's "own case." *United States v. Gonzalez-Lopez*, No. 25-2536, 2026 WL 834736, at *2 (9th Cir. Mar. 26, 2026). It concluded that because the facts "in Gonzalez-Lopez's own case" were undisputed, the district court did not rely on clearly erroneous facts. The panel could find no "authority for the proposition that failure to accurately recall the facts of another case referenced at sentencing constitutes procedural error." *Id.* And

because the “district court did not specifically name the cases on which it relied,” it could not affirmatively determine that the facts as stated by the district court were wrong. *Id.*

REASONS FOR GRANTING THE PETITION

The courts of appeals are divided on whether due process and Rule 32 requires a person to be sentenced on accurate and reliable information and a chance to object to information expressly cited in selecting a sentence. That split means that a court can premise a person’s sentence on baseless assumptions in one circuit that are prohibited in another. The Court should use this case to resolve that split. Mr. Gonzalez-Lopez squarely presents the issue, and it is outcome determinative. The Court should grant the petition.

I. The courts of appeals are divided as to whether it offends due process to sentence a person based on inaccurate information.

The courts of appeals have long been divided about whether a sentencing court violates due process when it premises a term of imprisonment on an erroneous assumption and does not give the defendant a chance to respond. That dispute can be traced back to how one reads the Court’s decision in *Townsend*. In *Townsend*, the sentencing court read aloud a lawyer-less defendant’s criminal record and made assertions about past offenses just before imposing sentence. 334 U.S. at 739–40. Some assumptions were wrong. *Id.* at 740. The sentencing court did not recognize that the defendant had been acquitted of two of the charges it cited and that a third had been dismissed. *Id.*

Because those false assumptions were “given such emphasis” by the sentencing judge, the Court held that it was “not at liberty to assume that . . . [those assumptions] did not influence the sentence which the prisoner is now serving.” *Id.* Thus, the person “was sentenced on the basis of assumptions concerning his criminal record which were materially untrue.” *Id.* at 741. And the Court held that “[s]uch a result, whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand.” *Id.*

The Court placed some limits on its holding. It made clear that due process does not guarantee faultless fact-finding at sentencing, especially when the judge engaged in a “scrupulous and diligent search for truth.” *Id.* Rather, it held that due process prohibits “the careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by the services which counsel would provide.” *Id.* (emphasis added).

In the years since, the Court has noted in passing that *Townsend* placed some limits on a sentencing court’s use of materially false information. *See Beckles v. United States*, 580 U.S. 256, 268 (2017); *United States v. Tucker*, 404 U.S. 443, 447 (1972); *see also Kinder v. United States*, 504 U.S. 946, 947 (1992) (White, J., dissenting from denial of certiorari) (citing *Townsend*). But the Court has never clarified the extent to which *Townsend*’s sweeping holding applies beyond its facts. The result is that the courts of appeals have applied various—and incompatible—glosses to the case in the many years since.

A. The Second, Third, Fourth, and Seventh Circuits hold that Townsend proscribes basing a sentence on an erroneous fact.

Four circuits give *Townsend*'s broad language a broad meaning: Due process proscribes a sentencing court's reliance on false information. The Third Circuit cites *Townsend* for the proposition that "be[ing] sentenced on the basis of materially false information[is] a well-established due-process violation." *United States v. Doe*, 810 F.3d 132, 156 (3d Cir. 2015); *see also United States v. Ausburn*, 502 F.3d 313, 322 (3d Cir. 2007) (same); *Moore v. United States*, 571 F.2d 179, 183 (3d Cir. 1978) (same).

Moreover, in *United States v. Griffiths*, 504 F. App'x 122 (3d Cir. 2012), the Third Circuit held that this right to be sentenced to accurate information extends to information about other cases that are not the defendant's own. In that case, the district court gave a fraud defendant an eight-level substantial-assistance reduction because she thought that was the greatest departure that she had granted in similar cases. *Id.* 126–27. But that was a false assumption and in fact, the greatest substantial-assistance reduction the district court had given in other cases was ten levels. *Id.* Relying on this Court's rulings in *Townsend* and *Gall*, the Third Circuit held that "a sentence cannot be predicated on false information," even if it involves information from another case that is not the defendant's own. *Id.* at 126.

Similarly, the Fourth Circuit reads *Townsend* to hold that "due process forbids reliance on materially false or unreliable information in imposing a sentence." *United States v. Yeigh*, 725 F. App'x 207, 209 (4th Cir. 2018) (per curiam) (unpublished) (citing *Townsend*, 334 U.S. at 740–41). Thus, that court

“emphasize[s] that Supreme Court precedents ‘recognize a due process right to be sentenced only on information which is accurate.’” *United States v. Dalzell*, 455 F. App’x 306, 310 (4th Cir. 2011) (unpublished) (collecting cases, including *Townsend*); see also *United States v. Lee*, 540 F.2d 1205, 1211 (4th Cir. 1976).

So too in the Seventh Circuit, where “[a] convicted defendant has a due process right to be sentenced based on accurate information.” *United States v. Propst*, 959 F.3d 298, 304 (7th Cir. 2020) (citing *Townsend*, 334 U.S. at 741); see also *United States v. Guajardo-Martinez*, 635 F.3d 1056, 1059 (7th Cir. 2011); *United States v. Jones*, 454 F.3d 642, 652 (7th Cir. 2006). There, a defendant makes out a *Townsend* violation when showing “that information before the sentencing court was inaccurate, and second, that the sentencing court relied on the misinformation in passing sentence.” *Propst*, 959 F.3d at 304. A defendant shows such reliance simply by showing that the sentencing court gave “explicit attention to it.” *Id.* (citation omitted).

The Second Circuit gives *Townsend* the most muscular reading. It cites it for the proposition that “what the Due Process Clause does require is that a defendant not be sentenced on the basis of ‘materially untrue’ assumptions or ‘misinformation,’ and that he have an opportunity to respond to material allegations that he disputes, in order that the court not sentence him in reliance on misinformation.” *United States v. Delacruz*, 862 F.3d 163, 175 (2d Cir. 2017). In other words, regardless of whether the information can be proven false, the Due Process Clause guarantees the opportunity to respond to material allegations at sentencing.

B. The First, Fifth, Eighth, and Tenth Circuits have limited the due process concerns to cases involving uncounseled defendants or sentences premised on clear misreadings of past convictions.

By contrast, the Fifth, Eighth, and Tenth Circuits have all-but limited *Townsend* to its facts. The First Circuit limited the case to uncounseled defendants. In *United States v. Dupont*, that court dismissed concerns about people sentenced “on the basis of ‘materially untrue assumptions or misinformation.’” 15 F.3d 5, 7 (1st Cir. 1994). It then distinguished *Townsend* by noting that it “involved a defendant, unrepresented by counsel at sentencing.” *Id.*

The Tenth Circuit appears to have done the same. *See United States v. Mulay*, 642 F. App’x 853, 854 (10th Cir. 2016) (unpublished) (holding that *Townsend* does not apply because it “involve[d] sentencing determinations at odds with the right to counsel”).

The Fifth Circuit, by contrast, limits *Townsend* to when a sentence is based on a “nonexistent or constitutionally invalid conviction.” *Roussell v. Jeane*, 842 F.2d 1512, 1524 (5th Cir. 1988); *see also Long v. Collins*, 988 F.2d 1210 (5th Cir. 1993) (rejecting *Townsend*’s applicability because “[t]he inaccurate information . . . did not focus on [the defendant’s] criminal record at all”). The Eighth Circuit limits *Townsend* to cases where “the defendant was uncounseled and [the] sentenced [was] based upon inaccurate information in his criminal record.” *United States v. Oaks*, 606 F.3d 530, 542 (8th Cir. 2010).

C. The Ninth Circuit has conflicting holdings about the scope of the due process right.

The Ninth Circuit's cases meanwhile contain tension. Nearly twenty years ago, that court held due process and the requirements of Rule 32(i)(1)(C) are explicitly broad, "require[ing] the disclosure of *all relevant factual information* to the defendant for adversarial testing." *United States v. Warr*, 530 F.3d 1152, 1162 (9th Cir. 2008) (quoting *United States v. Baldrich*, 471 F.3d 1110, 1114 (9th Cir. 2006)) (emphasis added). In that case, the district court relied on a study done by the Bureau of Prisons measuring how age and criminal history category affect an offender's likelihood of recidivism. *Warr*, 530 F.3d at 1157. The study was done by looking at cases involving other defendants. *Id.* The district court then used that study to compare Warr and determine Warr's likelihood of recidivism. *Id.* The Ninth Circuit found that to be a violation of due process and Rule 32 because there was a lack of notice and inability to determine the accuracy of the information. *Id.* That would seem to put the Ninth Circuit in the company of the broad approach used in Second, Third, Fourth, and Seventh Circuits.

But in Petitioner's case, a panel of the Ninth Circuit limited the due process and Rule 32 restrictions. The panel concluded that when the issue of accuracy involves a fact that is not specific to the defendant's "own case," there are no due process concerns. *Gonzalez-Lopez*, 2026 WL 834736, at *2. The panel stated it could not find any "authority for the proposition that failure to accurately recall the facts of another case referenced at sentencing constitutes procedural error." *Id.*

In other words, the lower courts have deeply divergent views about what satisfies due process at sentencing under Townsend and Rule 32. Four circuits hold that people cannot be sentenced based on false information. Another four circuits hold that they can, so long as they had lawyers or that the false information was not a blatant misreading of their criminal histories. And the Ninth Circuit seems to now hold that people can be sentenced based on at least some false information, so long as the information is not about their own case. Again, clarity is needed.

II. Whether courts can sentence people based on erroneous assumptions without a chance to object is a question of profound importance for millions of people.

More than 400,000 people in the United States go to prison each year. Bureau Of Justice Statistics, Prisoners in 2021—Statistical Tables 17 (2022). Indeed, there generally is no limitation on the kinds of information that a sentencing court can consider in increasing or decreasing a term of imprisonment. *United States v. Tucker*, 404 U.S. 443, 446 (1972). But a sentencing court’s expansive discretion comes with a catch. “A rational penal system must have some concern for the probable accuracy of the informational inputs in the sentencing process.” *United States v. Weston*, 448 F.2d 626, 634 (9th Cir. 1971). That requirement is foundational not just to the Constitution, but to the legitimacy of the criminal legal system.

The right to be heard is not the thing itself. Rather, it is a mechanism to ensure that a “court not sentence [a person] in reliance on misinformation.” *Delacruz*, 862 F.3d at 175. This Court has recognized the necessity of such protections. That is because “the public legitimacy of our justice system. relies on

procedures that are ‘neutral, accurate, consistent, trustworthy, and fair,’ and that ‘provide opportunities for error correction.’” *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1908 (2018) (citation omitted). Allowing people to have their sentenced premised on baseless assumptions—with allowing no opportunity for error correction—undermines any such legitimacy. That makes the question presented here one of vital importance.

III. Mr. Gonzalez-Lopez’s case presents the right vehicle to examine the scope of *Townsend*.

Mr. Gonzalez-Lopez’s case presents the right vehicle to resolve this circuit split for two reasons. First, the issue is squarely presented. The district court cited false statistics about prior cases to justify the significant variance in this case. It amounted to a variance of 285%. And, as the Ninth Circuit recognized, the district court “any real opportunity to object” to the factual accuracy of the court’s memory” regarding the other comparable cases. Appendix A at 5a. On appeal, Mr. Gonzalez relied on the Rule 32 violation, the lack of notice and opportunity to be heard, and argued that he was sentenced based on materially false information.

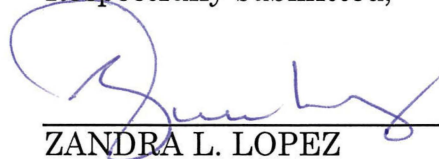
Second, the question presented will determine this case’s outcome. If the Court holds that Rule 32 and *Townsend* prevents the Court from premising a sentence on a false assumption on relevant information without a chance to object, Mr. Gonzalez-Lopez should get a remand. And if the Court holds that it does not offend due process to premise a sentence on a baseless assumption without giving the defendant a chance to object, the sentence must be affirmed. That makes this case an excellent vehicle to resolve lower courts’ disagreement.

CONCLUSION

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

Respectfully submitted,

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