

26-5790

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED

AUG 14 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Omar Deangelo Charleston PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Northern District of Mississippi / Fifth Circuit
Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Omar Deangelo Charleston
(Your Name)

FCI Forrest City - Medium
(Address)

P.O. Box 3000, Forrest City, AR 72334
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

- 1)- Whether Petitioner suffered prejudice in violation of the Sixth Amendment And equal protection principles because the Jury pool from which his petit was drawn lacked a fair cross-section of his peers and the composition of that pool resulted in systematic underrepresentation that prejudiced the defense.
- 2) whether the government's use of charged, inflammatory language during trial impermissibly prejudiced the jury against petitioner, denying him a fair trial.
- 3)- whether the sentence imposed 121 months imprisonment concurrent on counts 1, 3, followed by five years of supervised release was substantively unreasonable and excessive under 18 U.S.C. § 3553(a) in light of petitioner's background, the circumstances of the offense, and the advisory Guidelines range.
- 4)- whether the cumulative effect of these errors, including the failure to give proper weight to the alleged victim's recanting Affidavit and related trial testimony, requires vacatur of the conviction and sentence and remand for a new trial.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

1. Omar Charleston - Defendant / Appellant
2. Robert J. Mims Assistant United States Attorney, Northern District of Mississippi
3. Philip M. Levy, Assistant U.S. Attorney
4. Jacinta A. Hall, Attorney for Appeal
5. Honorable Glen H. Davidson, United States District Judge, Oxford Mississippi
6. United States of America (Plaintiff in this Matter)
(Northern District of Mississippi)
7. United States Court of Appeals for Fifth Circuit
 - (a) - Appeal Judge, Jones (5th circuit)
 - (b) - Appeals Judge, HO (5th circuit)
 - (c) - Appeals Judge, Wilson (5th circuit)

(Related Cases)

- 1- District Court Mississippi (Northern District)
- 2- Appeals Court (Fifth Circuit) 25-604639

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TABLE OF AUTHORITIES CITED

CASES

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Gail v. U.S. 552 U.S. 38 (2007)
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U.S. v. Lankford, 196 F.3d 563, 567 (5th Cir 1999)

STATUTES AND RULES

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18. U.S.C. §1201(a)(1)
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at No. 25-60639, Fifth Circuit Court of Appeals; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

☒ reported at Northern District of Mississippi; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 14 2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides in relevant parts: "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

The fifth Amendment Due Process Clause and the Equal Protection Principles incorporated against the states (and applicable to the federal government) prohibit systematic exclusion or underrepresentation that denies a fair cross-section of the community.

18. U.S.C. § 3553(a) requires the Sentencing Court to impose a sentence that is "sufficient that is sufficient, but not greater than necessary" to achieve the statutory purposes of sentencing.

Statement of Case

STATEMENT OF THE CASE

A. Procedural History

Petitioner was charged by indictment (filed January 5, 2024; ROA 10 11) with one count of kidnapping in violation of 18 U.S.C. § 1201(a)(1), one count of interstate domestic violence in violation of 18 U.S.C. § 2261(a)(2), and one count of interstate stalking in violation of 18 U.S.C. § 2261A.

Counsel was appointed. Trial commenced on June 30, 2025.

After adoption of the Presentence Investigation Report (PSR) and testimony of witnesses, the sentencing hearing was held on October 27, 2025.

Petitioner was sentenced to 121 months' imprisonment on Count 1, concurrent with 60 months on Counts 2 and 3, followed by five years of supervised release, a \$300 special assessment, and participation in mental-health and substance-abuse programs. Judgment was entered (ROA 148 149).

Petitioner timely appealed to the Fifth Circuit, raising the issues set forth in his Statement of Issues Presented for Review and Summary of Arguments.

The Court of Appeals denied relief. This petition follows.

B. Factual Background

Petitioner was born July 7, 1985, in Memphis, Tennessee, to Martha Williams and Anthony Charleston.

He was one of four children raised primarily by his mother after the early deaths of his sister (from a spider-bite infection causing pneumonia) and brother James Crawley (heart attack).

His father held intermittent employment. Petitioner experienced significant childhood trauma, began using marijuana at age 12 and alcohol around age 15, and continued substance use into adulthood.

He withdrew from high school after a gunshot wound, later obtained a GED, and worked productively (described by employers as an "awesome employee," "very hard worker," and "very reliable") at Ferrell Calhoun Paint and later DHL and Brentwood Originals until his arrest.

At the time of the events, Petitioner resided with his mother in Memphis Tennessee.

He is the father of two children.

The alleged victim, Gabriella Grosser (Petitioner's then-girlfriend), was identified by the Government as the victim. The relationship had been intermittent; she suffered a miscarriage in late 2022 or early 2023.

C. The Affidavit of Gabriella Grosser

On or about November 15, 2024, Gabriella Grosser executed a sworn affidavit before Notary Public Katelin Wilson (commission expires May 23, 2028).

In relevant part, Ms. Grosser stated under oath:

"On or around January 5, 2024, I, Gabriella Grosser, did leave a hotel (I forgot the name of the hotel), with my boyfriend Omar Charleston. I left the hotel on or January 5, 2024, on my own free will with my boyfriend Omar Charleston, however, when subsequently questioned by law enforcement I only said that I left against my will because I was angry at Omar Charleston, but the truth is that I left with Omar Charleston on my own free will from the hotel on or around January 5, 2024.

The above statement is made on my own free will because it is the truth, and I have not been threatened, coerced, or promised

anything in no way whatsoever."

A handwritten notation on the copy indicates the affidavit "was one read at trial" or that it was not read / was withheld from the jury in the manner asserted by Petitioner.

This affidavit directly contradicts the theory that Petitioner kidnapped or held Ms. Grosser against her will and constitutes critical exculpatory and impeachment evidence.

D. Trial Testimony of Gabriella Grosser

Ms. Grosser's trial testimony further undermines the Government's theory of non-consensual kidnapping and interstate violence.

On direct examination (Tr. 163), the Government pressed her regarding a hotel security-camera video:

Q. And you still live with his mother; right?

A. Yes.

Q. But you've seen the video, and you don't dispute that what we saw on that video is an accurate representation of what happened that day, do you?

That video shows what happened, didn't it?

A. Which one?

Q. I'm sorry. The video from the hotel -- the security camera, video from the hotel, it shows what --

A. Yes.

Q. -- happened that day; right?

A. Yes.

Q. You don't dispute that that is an accurate representation of what happened? That's a fair representation of what happened that day; is that correct?

A. I'm not understanding what you're asking.

Q. Is the video lying?

MS. HALL: Your Honor, I'm going to object to --

THE COURT: Okay. That's sustained. I think we've covered this point. The video speaks for itself.

On cross-examination (Tr. 181), Ms. Grosser confirmed that no one attempted to flee when Petitioner was arrested and that she did not volunteer the word "kidnapped" to police:

Q. Okay. When Omar was arrested, did anybody try to run?

A. No.

Q. Did Omar try to run?

A. No.

Q. You didn't try to run?

A. No.

Q. Thoreau didn't try to run?

A. No, ma'am.

Q. Everybody was right where they were; is that correct?

A. (Nods head up and down.)



Q. You have to say "yes" or "no."

A. Yes. I'm sorry.

Q. And there was a lot of questioning just now about the word "kidnapped." Did you tell them or volunteer to them that you were kidnapped?

A. Not that I recall ever saying it myself, except for hearing it.

Q. Okay. When did you -- when did you first recall hearing the word "kidnapped"?

A. I don't know. I heard it so much.

6 Honestly, I don't remember when I first heard it.

Later on cross-examination (Tr. 183), defense counsel explored the pressure surrounding her court appearance and the threat of jail time:

A. Go ahead.

Q. And what was your response to that?

A. I really didn't have one. M

Q. And what do you mean you didn't have one?

A. Like, I -- I just brushed by it. Because that was the day of when I went to court --

Q. Okay.

A. -- to state that he didn't have a weapon.

Q. Uh-huh.

A. Because his bond was 250,000. And his attorney at that time told me that it was that high --

Q. So not saying what anyone else said but your response to learning about that, as you were preparing to tell them what your truth was, how did that make you feel as a witness or an alleged victim telling them what happened to you?

A. I'm not understanding what you're asking.

Q. So if you -- your testimony is that you were told that if you didn't tell the truth you could face jail time?

A. Yes.

Q. How did that make you feel, telling them your truth and being told that if you didn't give them their truth that you would face jail time?

MR. MIMS: Your Honor, I object. That's not -- she was not told if you didn't tell them their truth. That's not -- that's improper phrasing.

Taken together, the affidavit and trial testimony establish that Ms. Grosser left the hotel of her own free will, that the word "kidnapped" was introduced by others rather than volunteered by her, that no one fled when Petitioner was arrested, and that she faced pressure and the threat of jail time in connection with her statements.

These facts directly contradict the Government's theory of non-consensual kidnapping and interstate domestic violence.

E. Issues Raised Below

Petitioner's issues on appeal, as stated in the Fifth Circuit brief, were:

Whether Mr. Charleston suffered prejudice due to having a jury pool lacking his peers;
Whether the composition of the jury pool resulted in prejudice against Mr. Charleston;

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Whether the government's use of charged language impermissibly prejudiced the jury; and
Whether Mr. Charleston's sentencing was excessive.

The Summary of Arguments emphasized that the jury pool lacked a fair cross-section of Petitioner's peers, that the Government used charged language that prejudiced the jury, that the sentence was excessive, and that any one of these deficiencies requires reconsideration of the conviction and sentence, with vacatur and remand for a new trial.



Reasons for Granting The Petition

REASONS FOR GRANTING THE WRIT

I. The Fair-Cross-Section and Jury-Composition Claims Present Important Questions Warranting This Court's Review
The Sixth Amendment guarantees an impartial jury drawn from a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Duren v. Missouri*, 439 U.S. 357 (1979).

Systematic underrepresentation of a distinctive group in the jury pool that results in a jury lacking the defendant's peers can constitute structural or reversible error when prejudice is shown.
Petitioner is African-American.

The jury pool from which his petit jury was selected lacked adequate representation of his peers.

The district court's findings on this issue are reviewed under a clearly-erroneous standard for factual determinations and de novo for legal questions concerning purposeful discrimination or systematic exclusion. *United States v. Pofahl*, 990 F.2d 1456, 1466 (5th Cir. 1993); *United States v. Freeman*, 77 F.3d 812, 815 (5th Cir. 1996).

When the evidence is viewed in the light most favorable to the verdict, the reviewing court must still determine whether a reasonable trier of fact could have found guilt beyond a reasonable doubt. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *United States v. Restrepo*, 994 F.2d 173 (5th Cir. 1993).

Here, the absence of a representative cross-section combined with the charged language used by the Government created a substantial likelihood of prejudice that the Fifth Circuit failed to remedy.

This Court should grant certiorari to clarify the standards applicable when a defendant demonstrates both statistical underrepresentation and concrete prejudice flowing from the composition of the pool.

II. The Government's Use of Charged Language Requires Correction

Prosecutorial statements that inflame the passions of the jury or inject extraneous, prejudicial characterizations violate due process.

The Government's use of charged language in this case particularly in light of the victim's subsequent sworn affidavit recanting any claim of non-consensual departure and her trial testimony that she never volunteered the word "kidnapped," that no one fled upon arrest, and that she left the hotel of her own free will impermissibly tipped the scales.

When such language is combined with a non-representative jury pool, the cumulative effect denies the fundamental fairness guaranteed by the Fifth and Sixth Amendments.

III. The Sentence Is Substantively Unreasonable

The advisory Guidelines range was 121 to 151 months. The district court imposed 121 months concurrent across the counts.

While within the range, a within-Guidelines sentence is not presumed reasonable in every case, and appellate courts must still review for substantive reasonableness under the totality of the § 3553(a) factors. *Gall v. United States*, 552 U.S. 38 (2007); *Rita v. United States*, 551 U.S. 338 (2007).

Petitioner's history of childhood trauma, early substance abuse stemming from that trauma, productive employment history, family support, and the recanting affidavit and trial testimony of the alleged victim all weigh heavily in favor of a sentence below the advisory range or, at minimum, at the low end with greater weight given to rehabilitation and the actual circumstances of the offense.

The Fifth Circuit's affirmance without meaningful engagement with these mitigating factors warrants review.

IV. Cumulative Error and the Victim's Affidavit and Trial Testimony Compel Vacatur

Any one of the identified deficiencies jury-pool composition, charged language, or excessive sentence requires reconsideration. Collectively, and particularly in light of the sworn affidavit of Gabriella Grosser stating that she left the hotel of her own free will and that her contrary statement to law enforcement was made out of anger rather than truth, and her trial testimony confirming that she never volunteered the word "kidnapped," that no one attempted to flee when Petitioner was arrested, and that she faced the threat of jail time in connection with her statements, the conviction and sentence cannot stand.

The affidavit was executed under oath, notarized, and directly contradicts the Government's theory of non-consensual kidnapping and interstate violence. Ms. Grosser's trial testimony on both direct and cross-examination further corroborates the affidavit and undermines the prosecution's narrative. Failure to give these materials controlling or substantial weight, or to ensure the jury fully considered them, constitutes reversible error.

This Court should grant the writ, vacate the judgment of the Court of Appeals, and remand with instructions to vacate the conviction and sentence and order a new trial, or alternatively to resentence Petitioner after full consideration of all mitigating evidence, the victim's affidavit, and her trial testimony.

(See Conclusion of Enclosed memorandum/motion)



CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that this court grant the petition for writ of Certiorari, reverse the Judgment of the United States Court of Appeals for the fifth, vacate the conviction and sentence, remand the case to district court for New trial or such other relief as this court deems proper.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A. Omar Charleston

Date: 9/30/26