No. 26-

In the Supreme Court of the United States

JONY RENE PEREZ-MONTANO, *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

Are the detailed Judiciary Sentencing Information (JSIN) statistics compiled by the United States Sentencing Commission relevant to considering whether a defendant's sentence creates an unwarranted sentencing disparity compared to similarly situated defendants under 18 U.S.C. § 3553(a)(6)?

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Jony Rene Perez-Montano, the defendant in the district court and appellant below.

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

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Jony Rene Perez-Montano,
No. 2:24-cr-02717-EG (Aug. 1, 2025)

United States Court of Appeals for the Fifth Circuit:

United States v. Jony Rene Perez-Montano,
No. 25-50710 (Aug. 11, 2026) (per curiam)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jony Rene Perez-Montano respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Congress's basic aim when enacting the Sentencing Reform Act of 1984 was "ensuring similar sentences for those who have committed similar crimes in similar ways." *United States v. Booker*, 543 U.S. 220, 252 (2005). So Congress instructed sentencing courts to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18

U.S.C. § 3553(a)(6). And when courts of appeals review whether a sentence is reasonable, a crucial purpose is "helping to avoid excessive sentencing disparities." *Booker*, 543 U.S. at 264.

To assist courts with this admittedly difficult task, the United States Sentencing Commission has compiled comprehensive, nationwide sentencing data in an online resource known as Judiciary Sentencing Information (JSIN). JSIN provides courts with detailed information—like the average sentence—for similarly situated defendants: defendants who were sentenced under the same guideline with the same total offense level and the same criminal history category. It is hard to imagine more precise or pertinent information for considering whether a defendant's sentence diverges from similarly situated defendants nationwide.

The Fifth Circuit, however, refused to consider JSIN statistics when reviewing Jony Rene Perez-Montano's sentence. Even though Perez's sentence was more than double the sentence received by similarly situated defendants, the court held that he had "failed to show that he was similarly situated to the other defendants cited in the national statistics in all relevant respects," and therefore that his "sentence was substantively unreasonable." App. 2a.

This is just the latest example of the Fifth Circuit rejecting attempts to show sentencing disparities based on JSIN data. The

court's flat rejection of these statistics frustrates Congress's goal of achieving increased uniformity in sentencing. And the court's decision is indefensible on the merits. The court relied entirely on circuit precedent rejecting reliance on much less precise pre-JSIN sentencing statistics. But the court ignored that JSIN's granular information remedies the court's criticisms of those earlier statistics. And if the detailed JSIN statistics are not enough to show an unwarranted sentencing disparity, the Fifth Circuit has made it impossible for defendants to *ever* make such a showing.

Not surprisingly, the Fifth Circuit is an outlier in refusing to consider JSIN statistics. The Sixth, Ninth, and Tenth Circuits have all reached the commonsense conclusion that JSIN is relevant—although not dispositive—when evaluating whether a sentence creates an unwarranted disparity. The government should also be concerned about the Fifth Circuit's rejection of the JSIN data because the government acknowledges that JSIN is relevant to § 3553(a)(6) and routinely cites JSIN to show that a defendant's sentence does *not* create a sentencing disparity.

This Court should grant certiorari to resolve the circuit split on this critically important sentencing issue.

OPINION BELOW

The Fifth Circuit's unpublished opinion is reproduced at App. 1a–2a.

JURISDICTION

The Fifth Circuit entered its judgment on August 11, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(a)(6) of Title 18 of the United States Code provides: "The court, in determining the particular sentence to be imposed, shall consider … the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

STATEMENT

A. Legal background.

1. Congress enacted the Sentencing Reform Act of 1984 to address "[f]undamental and widespread dissatisfaction" with the then-prevailing regime of discretionary sentencing. *Mistretta v. United States*, 488 U.S. 361, 366 (1989). That earlier regime resulted in "great variation among sentences imposed by different judges upon similarly situated offenders." *Id.* So a basic goal of the Sentencing Reform Act was to ensure "*uniformity* in sentencing by narrowing the wide disparity in sentences imposed by different

federal courts for similar criminal conduct." *Rita v. United States*, 551 U.S. 338, 349 (2007) (cleaned up); *see Booker*, 543 U.S. at 253 ("Congress' basic goal in passing the Sentencing Act was to move the sentencing system in the direction of increased uniformity.").

Congress advanced this goal in several ways. *First*, Congress directed the Sentencing Commission to develop the Sentencing Guidelines, paying particular attention to the goal of "reducing unwarranted sentencing disparities." 28 U.S.C. § 994(f); *see also id.* § 991(b)(1)(B). *Second*, Congress required sentencing courts to impose a sentence within the applicable Guidelines range absent circumstances justifying a departure. 18 U.S.C. § 3553(b)(1). *Third*, Congress instructed sentencing courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *Id.* § 3553(a)(6).

Of course, this Court struck down the statutory provision requiring sentencing courts to impose a sentence within the Guidelines range, as well as a provision requiring de novo review of departures. *Booker*, 543 U.S. at 259. But the Court emphasized that the remaining system—advisory Guidelines with sentencing decisions subject to appellate review for reasonableness—would "continue to move sentencing in Congress' preferred direction,

helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary." *Id.* at 264–65. After all, appellate courts are guided by the § 3553(a) factors—including the need to avoid unwarranted sentencing disparities—when determining whether a sentence is unreasonable. *Id.* at 261. So the Court explained that appellate review would "tend to iron out sentencing differences." *Id.* at 263.

2. The Sentencing Commission developed JSIN to provide judges "access to sentencing data for similarly situated individuals, including the types of sentences imposed and average and median sentences." U.S. Sent'g Comm'n, *2023 Annual Report* 2; *see* U.S. Sent'g Comm'n, *Judiciary Sentencing Information (JSIN)*, http://jsin.ussc.gov/. The Commission "collects detailed sentencing data on virtually every federal criminal case" and "maintain[s] a comprehensive database on all federal sentences." *James v. United States*, 550 U.S. 192, 206 (2007) (cleaned up) (first quote); *United States v. Zuniga-Peralta*, 442 F.3d 345, 348 (5th Cir. 2006) (second quote). In 2021, the Commission harnessed this extensive database and launched JSIN "with the needs of judges in mind." U.S. Sent'g Comm'n, *Sentencing Resources Guide* 12.

In particular, JSIN allows a user to filter by the primary offense guideline—the guideline producing the highest final offense level—

that a defendant is sentenced under. *See* U.S. Sent'g Comm'n, *JSIN*, *supra*. After clicking on the cell in the sentencing table corresponding to a particular total offense level and criminal history category, JSIN will show information for other defendants who have been sentenced under the same guideline over the past five years with the same total offense level and the same criminal history score. *See id.* JSIN will show what percentage of those defendants received a sentence of imprisonment; how many of those defendants received a sentence within, above, and below the Guidelines range; and the average and median length of imprisonment. *See id.*

B. Proceedings below.

1. In late 2024, federal law enforcement officers found Perez in Carrizo Springs, Texas. Perez is a citizen of Mexico, not the United States. He had been previously deported and had not received consent to reenter the country. The government charged him with illegal reentry in violation of 8 U.S.C. § 1326(a) & (b)(1)/(2). Perez pleaded guilty.

2. Before sentencing, a probation officer prepared a presentence report. The report applied a base offense level of 8. *See* U.S.S.G. § 2L1.2(a). The report then added several enhancements based on Perez's criminal history. The report first added 4 levels because he had a prior illegal reentry conviction. *See* U.S.S.G. § 2L1.2(b)(1)(A).

Then it added 4 more levels because he was convicted of a felony offense before being deported or ordered removed for the first time. *See* U.S.S.G. § 2L1.2(b)(2)(D). Finally, the report added 10 levels because after being deported or removed for the first time, Perez was convicted of a felony offense for which the sentence imposed was more than five years. *See* U.S.S.G. § 2L1.2(b)(3)(A). After subtracting three levels because Perez accepted responsibility, *see* U.S.S.G. § 3E1.1, the total offense level was 23.

The report calculated a criminal history score of 13: 2 points for a 2016 misdemeanor theft conviction; 2 points for a 2016 burglary of a building conviction; 2 points for a 2016 conviction for possessing less than a gram of cocaine; 3 points for a 2021 state felon-in-possession conviction; 3 points for a 2022 illegal reentry conviction; and 1 point because Perez committed the instant offense while under a term of supervised release. A criminal history score of 13 put Perez in criminal history category VI.

A total offense level 23 and criminal history category VI resulted in an advisory Guidelines range of 92 to 115 months. *See* U.S.S.G. Ch. 5, Pt. A. Perez did not object to the presentence report.

3. At sentencing, Perez asked the district court to impose a below-Guidelines sentence. C.A. ROA.158. The government requested an above-Guidelines sentence of 150 months based on

Perez's "criminal history and his repeated illegal reentries into the United States." *Id.* at 161. The district court sentenced Perez to 160 months' imprisonment. *Id.* at 163; *see id.* at 63 (judgment). In varying upward, the court relied primarily on Perez's "criminal history and the manner in which some of your criminal history was committed." *Id.* at 160, 165–66. In particular, the district court pointed to "acts of violence" in his criminal history, noting that the felon-in-possession conviction was based on an alleged kidnapping. *Id.* at 160. The district court also noted that Perez "quick[ly] return[ed]" after his last removal. *Id.* at 166.

4. Perez appealed, arguing that the 160-month, above-Guidelines sentence was substantively unreasonable for two reasons. *First*, the district court's sentence created a drastic and unwarranted sentencing disparity. In particular, Perez pointed to the Judiciary Sentencing Information (JSIN) to argue that its granular statistics—which compare sentences for offenders sentenced under the same guideline with the same offense level and same criminal history category—provide a valid basis to evaluate the factors that 18 U.S.C. § 3553(a)(6) is concerned with: whether the defendant and other offenders committed "similar conduct" and have "similar records." In comparison to similar situated offenders, Perez's 160-month sentence is an extreme

outlier because it is more than double the average sentence and more than triple the median sentence of defendants sentenced under the same guideline (§ 2L1.2) with the same offense level (23) in the same criminal history category (VI). Indeed, among those similarly situated defendants, Perez was the only defendant to receive an upward variance, and nearly three-quarters received a below-Guidelines sentence. *Second*, Perez argued that the court placed unjustifiable weight on criminal history that was already accounted for in his criminal history category and Guidelines range, which resulted in a triple-counting of Perez's criminal history.

The Fifth Circuit affirmed. App. 1a–2a. The court concluded that Perez "failed to show that he was similarly situated to the other defendants cited in the national statistics in all relevant respects," citing *United States v. Waguespack*, 935 F.3d 322, 337 (5th Cir. 2019), and that the district court "permissibly relied on his criminal history as a basis for an upward variance." App. 2a. The court concluded that, because "we have upheld proportionally greater variances," Perez had failed to establish that the sentence was substantively unreasonable. App. 2a.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are divided, and the Fifth Circuit is the outlier.

The courts of appeals are divided over whether the JSIN statistics are relevant to analyzing unwarranted sentencing disparities under § 3553(a)(6). The Sixth, Ninth, and Tenth Circuits have held that JSIN is relevant to this inquiry. In stark contrast, the Fifth Circuit has repeatedly held that the JSIN statistics offer no insight into whether a sentencing disparity is unwarranted. This entrenched circuit split warrants the Court's review.

1. Most circuits to have considered the issue reach the commonsense conclusion that JSIN is relevant to analyzing sentencing disparities.

a. The Tenth Circuit held that a district court's sentence was substantively unreasonable because it failed to address unwarranted sentencing disparities "despite the JSIN statistics showing that the sentence imposed is an outlier sentence." *United States v. Guevara-Lopez*, 147 F.4th 1174, 1184–89 (10th Cir. 2025). The Tenth Circuit rejected the government's argument that the JSIN statistics "do not reveal any of the underlying conduct that the other defendants engaged in and therefore make an insufficient comparator for analyzing sentence disparities." *Id.* at 1186. The court explained that unlike older statistics that grouped

a "wide range of defendants" (those who had committed "Firearms" offenses), "the JSIN statistics … sufficiently narrowed the comparator-defendants" because "[t]he comparator-defendants share a total offense level, criminal-history category, and primary guideline." *Id.* The Tenth Circuit does not "require district courts to follow national statistics when imposing a sentence," but it explained that the JSIN statistics "aid our review of substantive reasonableness." *Id.* at 1186 n.7, 1188.

b. The Ninth Circuit has also held that the JSIN statistics are "highly relevant" to the task of avoiding unwarranted sentencing disparities. *United States v. Brewster*, 116 F.4th 1051, 1060 (9th Cir. 2024). As the court explained, the JSIN statistics come from "a reliable source"—the Sentencing Commission—and are "designed specifically for judges to use during sentencing to fulfill their obligations under § 3553(a)(6)." *Id.* at 1062.

c. The Sixth Circuit too has held that JSIN statistics are relevant to analyzing unwarranted sentencing disparities. *United States v. Martin*, No. 24-5829, 2025 WL 1835928, at *3 (6th Cir. July 3, 2025). In *Martin*, the "the district court recognized that JSIN offered 'the best tool ... we have to discern' unwarranted sentencing disparities" and sentenced the defendant "in line with the average sentence under the JSIN statistics." *Id.* And the Sixth

Circuit held that the district court was well within its discretion to consider JSIN. *Id.* As the court explained, JSIN statistics "provide a snapshot of how judges nationally have sentenced individuals with comparably serious offenses and criminal histories." *Id.*

2. In sharp contrast, the Fifth Circuit below held that Perez had "failed to show that he was similarly situated to the other defendants cited in the national statistics in all relevant respects"—despite the fact that JSIN showed that his sentence was more than double the average sentence received by defendants sentenced under the same guideline with the same offense conduct score and criminal history category. App. 2a. And this case is not an isolated decision. The Fifth Circuit has repeatedly dismissed JSIN statistics as "irrelevant" and "basically meaningless." *United States v. Boukamp*, 105 F.4th 717, 738 (5th Cir. 2024) (citation omitted), *cert. denied*, 145 S. Ct. 595 (2024); *see also United States v. Garcia*, No. 24-50257, 2025 WL 1202209, at *2 (5th Cir. Apr. 25, 2025) (deeming defendant's reliance on JSIN statistics "misguided"), *cert. denied*, 146 S. Ct. 238 (Oct. 6, 2026); *United States v. Thibodeaux*, No. 24-30392, 2025 WL 1177266, at *1 (5th Cir. Apr. 23, 2025) (rejecting JSIN data as "unavailing").

* * *

This Court should grant certiorari to resolve this circuit split and correct the Fifth Circuit's outlier approach.

II. This is a critically important question.

The Court should grant the petition because the question is critically important. Congress has instructed sentencing courts to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). And when a court of appeals reviews whether a sentence is unreasonable, a crucial purpose is "helping to avoid excessive sentencing disparities." *Booker*, 543 U.S. at 264. But the Fifth Circuit has cut off "'the best tool ... we have to discern' unwarranted sentencing disparities." *Martin*, 2025 WL 1835928, at *3 (quoting district court). Indeed, if the Sentencing Commission's comprehensive JSIN statistics are "basically meaningless," *Boukamp*, 105 F.4th at 738 (citation omitted), then "it is unclear … what further information a defendant could provide that would be relevant to this factor," *United States v. Cortez*, 139 F.4th 1146, 1158 (10th Cir. 2025) (McHugh, J., concurring).

Even the government agrees that "JSIN data … ties into a Section 3553(a) factor, specifically, the need to avoid unwarranted sentencing disparities." Gov't Br. 30, *United States v. McDaniel*, No. 22-1448 (8th Cir. Sept. 2, 2022). And the government routinely

cites JSIN as evidence that a defendant's sentence does *not* create a sentencing disparity. *See*, *e.g.*, Gov't Br. 10 n.4, *United States v. Hines*, No. 24-60172 (5th Cir. July 24, 2024) (citing JSIN to argue that the median sentence was not "disproportionately lower" than the defendant's sentence); Gov't Br. 26, *United States v. Butler*, No. 21-5589 (6th Cir. Dec. 8, 2021) (citing JSIN to argue that "Butler's sentence is typical rather than disparate").

In short, this question is critically important because the Fifth Circuit's outlier approach prevents both defendants and the government from citing the most relevant information for evaluating whether a defendant's sentence diverges from similarly situated defendants and, by doing so, guts a central aim of the Sentencing Reform Act—nationwide uniformity in sentencing.

III. The decision below is wrong.

The Fifth Circuit's refusal to consider the JSIN statistics is wrong on the merits. In determining that Perez "failed to show he was similarly situated," the court relied entirely on its earlier—and outdated—decision in *United States v. Willingham*, 497 F.3d

541 (5th Cir. 2007). *See* App. 2a.[1] But that case flatly rejected reliance on more rudimentary pre-JSIN sentencing statistics, and the court's criticisms of those statistics do not apply to the detailed, more granular JSIN data.

In *Willingham*, the district court relied on statistics showing the average sentence imposed under the same guideline with no further details. 497 F.3d at 543. The Fifth Circuit held that the district court clearly erred. *Id.* at 544. The court explained that "[n]ational averages of sentences that provide no details underlying the sentences are unreliable to determine unwarranted disparity because they do not reflect the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases." *Id.* For example, the court was concerned that the average sentence did not reflect "serious aggravating factors" that added 13 levels to the defendant's base offense level. *Id.* The statistics also said "nothing about the similarity (or lack thereof) of [the defendant's] record" compared to other defendants. *Id.* at 545. In other words, the average sentence

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[1] The opinion below cites to *United States v. Waguespack*, 935 F.3d 322 (5th Cir. 2019), which in turn relies summarily on *Willingham* for the proposition that sentencing data is "'basically meaningless in considering whether a disparity with respect to a particular defendant is warranted or unwarranted.'" *Waguespack*, 935 F.3d at 337 (quoting *Willingham*, 497 F.3d at 544–45).

"only reflect[s] a broad grouping of sentences" and is "basically meaningless in considering whether a disparity with respect to a particular defendant is warranted or unwarranted." *Id.* at 544–45.

The JSIN statistics, by contrast, are far more detailed. *First*, unlike the average sentence at issue in *Willingham*, JSIN "reflect[s] the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases." *See Willingham*, 497 F.3d at 544. After all, JSIN shows the average sentence for offenders sentenced under the same guideline *with the same total offense level*, reflecting aggravating or mitigating factors based on specific offense characteristics in Chapter 2 of the Guidelines and any adjustments in Chapter 3. *Second*, JSIN differs from the statistics at issue in *Willingham* because it accounts for "the similarity (or lack thereof) of [a defendant's] record." *See Willingham*, 497 F.3d at 545. Indeed, JSIN provides the average sentence for defendants *with the same criminal history category*. Unlike the bare-bones statistics in *Willingham*, the granular JSIN statistics provide a valid basis to evaluate the factors that § 3553(a)(6) is concerned with: whether the defendant and other offenders committed "similar conduct" and have "similar records." So the Fifth Circuit's rejection of JSIN data based on inapposite precedent is wrong. *See Guevara-Lopez*, 147 F.4th at 1187 (distinguishing earlier precent

that rejected "bare national statistics" and emphasizing the "specificity of the JSIN statistics").

Even more concerning, the Fifth Circuit's refusal to consider JSIN makes it effectively impossible for a defendant to *ever* establish an unwarranted sentencing disparity. A defendant would presumably start by searching for other defendants nationwide convicted of the same crime. Even putting aside the time-consuming nature of that task, a defendant would soon run into roadblocks. A defendant could not determine the "enhancements or adjustments for the aggravating or mitigating factors" that applied in each case or the criminal records of these other defendants. *See Willingham*, 497 F.3d at 544–45. To be sure, presentence reports usually have a detailed account of the offense conduct and a Guidelines calculation containing defendants' total offense level and criminal history category. But those reports are "ordinarily kept confidential to protect the sentencing process, the defendant's privacy interest, and those people who have cooperated with criminal investigations." *United States v. Huckaby*, 43 F.3d 135, 136 (5th Cir. 1995). Although the Sentencing Commission has access to that information—and has compiled it in JSIN—individual defendants do not. Thus, the Fifth Circuit's rejection of JSIN statistics directly tracking

§ 3553(a)(6) effectively reads that provision out of the statute—not only on appellate review but also in district courts at sentencing.

IV. This case is an ideal vehicle.

This case presents an ideal vehicle for addressing whether JSIN statistics are relevant to analyzing unwarranted sentencing disparities. There are no jurisdictional problems, factual disputes, or preservation issues. Perez cited JSIN statistics on appeal, and the Fifth Circuit determined that he had not demonstrated a sentencing disparity despite the fact that he received more than double the average sentence. App. 2a.

To be sure, some cases may implicate other statutory sentencing factors that *justify* a sentencing disparity. *See United States v. Lucero*, 130 F.4th 877, 891 (10th Cir. 2025) (McHugh, J., concurring) (explaining that defendant's "egregious conduct underlying the offense of conviction and his long history of similar conduct" warranted a sentence more than double the average sentence). Not so here. This is a run-of-the-mill illegal reentry case. Perez's criminal history was accurately accounted for in his total offense conduct and his criminal history category. So if national uniformity is the goal, Perez deserved—at most—a sentence close to the nationwide average. The sentence the district court imposed—more

than double the average sentence—creates a clearly unwarranted sentencing disparity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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