No. _____

In the Supreme Court of the United States

MIGUEL GABINO TRUJILLO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Tenth Circuit erroneously applied plain error standards when it held that facts found by the sentencing court were supported by the record and no reasonable probability existed that, but for any error, Petitioner would have received a lesser sentence.

PARTIES TO THE PROCEEDINGS

Miguel Gabino Trujillo, was the defendant and appellant in the proceedings below.

The United States of America was the plaintiff and appellee in the proceedings below.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

District Court (*United States v. Miguel Gabino Trujillo*, Case No. 25-CR-265-SEH):

On August 22, 2025, Miguel Trujillo, the Petitioner herein, pled guilty to a one-count indictment without a plea agreement. The District Court for the Northern District of Oklahoma accepted Petitioner's guilty plea. A sentencing hearing was held on December 29, 2025. In pronouncing its sentence, the Court relied on facts not contained in the record and never previously disclosed, injected *sua sponte* during the Court's rendering of the sentencing decision. The Court entered its Judgment in a Criminal Case. (Pet. Appx., at a012-019).

United States Court of Appeals for the Tenth Circuit (Case No. 26-5008):

Petitioner appealed the procedural reasonableness of the District Court's *sua sponte* factual assertions and reliance thereon. On August 10, 2026, the United States Court of Appeals for the Tenth Circuit affirmed the District Court's ruling. The Tenth Circuit's unpublished opinion may be accessed at 2026 WL 2295396. (Pet. Appx., at a003-010).

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PETITION FOR WRIT OF CERTIORARI

Miguel Gabino Trujillo petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINION BELOW

The Order and Judgment of the Tenth Circuit is an unpublished decision that may be accessed at 2026 WL 2295396. (Pet. Appx., at a003–a010). The District Court's Judgment and Commitment are reproduced in the appendix. (Pet. Appx., at a012–a019).

JURISDICTION

The Tenth Circuit entered judgment on August 10, 2026. Petitioner did not seek rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

FEDERAL RULE PROVISIONS INVOLVED

Federal Rule of Criminal Procedure 32(i)(1) states in relevant part:

(i) Sentencing.

(1) In General. At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report;

(B) must give to the defendant and an attorney for the government a written summary of--or summarize in camera--any information excluded from the presentence report under Rule 32(d)(3) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information;

(C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and

(D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(2) Introducing Evidence; Producing a Statement. The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)-(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

INTRODUCTION

Petitioner asks this Court to grant his petition for certiorari because the Tenth Circuit committed error in finding that the record supported the district court's conclusions at the sentencing hearing that Petitioner had engaged in habitual drug trafficking behavior and, at the time of sentencing, "has" a relationship with a drug trafficking organization. There was no evidence to support the district court's conclusions. The Petitioner had the right to require the government to prove uncharged conduct by a preponderance of evidence. *See United States v. Rodriguez-Felix*, 450 F.3d 1117, 1131 (10th Cir. 2006). Because the sentencing court made factual findings that had no support in the record, it may be inferred that the court based the findings on information outside the record, which was not disclosed to the Petitioner, in violation of Federal Rule of Criminal Procedure 32(i)(1).

The Tenth Circuit erroneously denied relief on a second ground—that there was no reasonable probability that without the error, Petitioner would have received a lower sentence, as required by the third prong of plain error review. The court of appeals concluded that other factors supported the sentencing court's finding that the offense was "very serious," but failed to consider the impact that the improper factual findings had on the selected sentence.

Supreme Court intervention is needed to ensure that plain error standards are correctly applied. For the reasons stated herein, Petitioner requests this Court grant his petition for writ of certiorari, vacate the underlying Order and Judgment, and remand to the Court of Appeals for reconsideration of plain error standards.

STATEMENT

A. Factual Background

On July 22, 2025, in Northern District of Oklahoma Case Number 25-CR-265-SEH, The United States charged Miguel Gabino Trujillo by indictment with a single count of violating 8 U.S.C. § 1326. Petitioner was convicted after pleading guilty. In his Petition to Enter Plea of Guilty and Order Entering Plea, which Petitioner signed, he admitted the following conduct:

> On June 29, 2005, I was found in the United States, after having knowingly entered the United States. I had previously been removed from the United States. I had not received the consent of any proper legal authority to reapply for admission to the United States. On June 29, 2025, I was an alien. One June 29, 2025, I was found in Tulsa, Oklahoma in the Northern District of Oklahoma.

The court accepted the following factual basis for the plea from the prosecutor:

> If the case had proceeded to trial, the Government would have shown beyond a reasonable doubt the Defendant was a citizen of Mexico, an alien, on June 29, 2025; the Defendant was encountered and arrested by the Tulsa Police Department on June 29, 2025, in Tulsa, Oklahoma, which is within the Northern District of Oklahoma; the Defendant had been previously removed from the United States on December 21st, 2023, pursuant to a lawful order; the Defendant entered the United States knowingly prior to his encounter on June 29, 2025; and the Defendant had not received the consent of the proper legal authority to reapply for admission to the United States.

The Offense Conduct section of the PSR described Petitioner's history of removal from the United States in this way:

> Miguel Gabino Trujillo is a citizen and national of Mexico. He first entered the United States sometime prior to 1990 at an unknown location. On February 19, 2015, Gabino Trujillo was convicted of unlawful possession of a controlled drug and obstructing an officer in Tulsa County District Court Case CF-2015-346. He was subsequently removed from the United States for the first time on March 10, 2015,

> at Del Rio, Texas. On August 10, 2015, Gabino Trujillo was convicted of unlawful reentry of a removed alien in United States District Court Southern District of Texas Case 15-CR-337. Thereafter, on August 11, 2015, he was removed from the United States. On December 14, 2023, Gabino Trujillo was convicted of use of a communication facility in committing, causing, and facilitating the commission of a drug trafficking felony in United States District Court Northern District of Oklahoma Case 21-CR-506-6. Subsequently, on December 21, 2023, he was removed from the United States. This is his last removal on record.

The facts regarding Petitioner being found in the United States were as follows:

> On June 29, 2025, Gabino Trujillo was arrested by Tulsa Police Department officers for obstructing an officer and unlawful possession of a controlled drug. A subsequent records check revealed that Gabino Trujillo was a previously removed alien who had not received consent of the Secretary of Homeland Security to reenter the United States.

In the Criminal History section the PSR reported the following convictions:

- Operating Motor Vehicle without Being Licensed
- Public Intoxication
- Operating Motor Vehicle without Being Licensed
- Count One: Unlawful Possession of Controlled Drug;

  Count Four: Obstructing an Officer
- Illegal Reentry into the United States
- Count One: Possession of Controlled Substance

  Count Two: Eluding a Police Officer

  Count Three: Fail to Stop for Red Light

  Count Four: Transporting Open Container – Beer
- Use of a Communication Facility in Committing, Causing, and

Facilitating the Commission of a Drug Trafficking Felony

- Count One: Obstructing an Officer

  Count Two: Unlawful Possession of Controlled Drug

Three of the four convictions involving drugs were described as involving simple possession of drugs, without mentioning the quantity of drugs involved. Only one conviction involved drug trafficking—Use of a Communication Facility. The PSR provided this factual background:

> On May 4, 2021, Gabino Trujillo used his cellular telephone to arrange for the delivery of 493 grams of cocaine. Count one, drug conspiracy, and counts fifty-four and fifty-six, use of a communication facility in committing, causing, and facilitating the commission of a drug trafficking felony, were dismissed.

Petitioner's Motion for Nonguideline Sentence contained no admissions regarding his criminal history that added to what was already established in the PSR. At the sentencing hearing, neither party expanded on the underlying criminal history.

At the sentencing hearing the district court provided the following explanation, immediately followed by the announcement of sentence:

> While there certainly is some logic to the Defendant's arguments regarding what the appropriate range is in this case, and obviously I did consider those as part of my overall consideration of the factors, I cannot escape, nor can the Defendant escape, the lack of respect for the law that is evident in his behavior, not only the reentries but the habitual drug trafficking behavior. This is someone who clearly has a relationship with a DTO who has been back in this country not only in violation of the law but then violating the drug trafficking laws of this country, and that makes this a very serious case. And I think three years of supervised release is essential, and so is a sentence that communicates maybe to the Defendant for the first time that, you know, the laws of this country

> are something that I'm -- I have to enforce; I mean the Government has to enforce them, I have to enforce them.
>
> So, in accordance with applicable law, the Court hereby imposes the following sentence: It is the Order and Judgment of the Court that the Defendant, Miguel Gabino – Gabino Trujillo, is hereby committed to the custody of the Bureau of Prisons to be in prison for a term of 46 months.

B. Procedural History

Petitioner appealed the procedural reasonableness of the District Court's *sua sponte* insertion of facts, not contained in the record, and introduced for the first time during the Court's rendering of its decision that Petitioner had been engaged in "habitual drug trafficking behavior" and "clearly has a relationship with a DTO." While Petitioner did not object to the error at the time of sentencing, he argued that reversible error should be found under plain error standards. Petitioner argued that he had a right, pursuant to Federal Rule of Criminal Procedure 32(i)(1), to advance notice that would have allowed him to evaluate the new facts, determine whether they should be challenged for truthfulness or for proof by a preponderance of evidence, and ask the court to resolve the contradiction based on proven and reliable evidence. The undisclosed facts resulted in the court viewing Mr. Trujillo's case as "very serious." This was instrumental to the court's denial of the defense's request for a non-Guideline sentence of 30 months, and the imposition of a 46-month sentence.

The Tenth Circuit affirmed the decision of the District Court and Petitioner did not seek rehearing.

REASONS FOR GRANTING THE PETITION

I. This Court should grant Petitioner's petition to address the Tenth Circuit's misapplication of plain error standards.

Petitioner's sentence was procedurally flawed due to the district court's *sua sponte* reliance on extra-record facts not previously disclosed without an opportunity for Petitioner to object. This error, which was affirmed by the Tenth Circuit, violated Federal Rule of Criminal Procedure 32 (i)(1)'s strict requirements, implicated Petitioner's due process rights and requires this Court's intervention to provide guidance and clarity to lower courts on the proper scope and application of Federal Rule of Criminal Procedure 32 (i)(1).

A. It was Procedurally Unreasonable for the District Court to Rely on Extra-Record Facts Introduced for the First time by the Court Sua Sponte During Sentencing.

In its announcement of the sentence the district court said that it could not escape the lack of respect for the law evident in Petitioner's "*habitual* drug trafficking behavior." According to the Presentence Report (PSR), there was only one prior conviction that can be deemed drug trafficking behavior—a conviction for Use of a Communication Facility in Committing, Causing, and Facilitating the Commission of a Drug Trafficking Felony. The district court's conclusion was unsupported by the PSR it adopted or any other evidence. This violated Tenth Circuit precedent which requires the government to prove uncharged conduct by a preponderance of evidence. *United States v. Rodriguez-Felix*, 450 F.3d 1117, 1131 (10th Cir. 2006) ("[W]e have routinely permitted a district court to enhance a defendant's sentence using uncharged conduct proved to a court by a preponderance of the evidence.").

Reviewing under plain error standards pursuant to *United States v. Lucero*, 130 F.4th 877, 884, (10th Cir. 2025), the Tenth Circuit held that Petitioner failed to show that the district court's finding was clearly erroneous. The court reasoned that "given Trujillo's pattern of unlawful entries, repeated possession of illegal drugs, and his prior drug trafficking offense, the record has ample support for an inference that he had engaged in 'drug trafficking behavior.'" As for the district court's finding that the behavior was "habitual," the Court of Appeals concluded that "the district court's characterization is not totally "without factual support in the record."

The Tenth Circuit's conclusion was itself clearly erroneous. Petitioner's previous convictions for simple possession of drugs, which are not described by the PSR as involving circumstances suggesting drug trafficking, does not provide any support for a conclusion that trafficking was afoot. This incident occurred in May 2021, four years prior to the case at hand. This is not habitual drug trafficking behavior. As for Petitioner's illegal entries into the United States, the crimes fail to connote any suggestion of drug trafficking; nor did the Tenth Circuit mention anything in the PSR supporting a conclusion that the entries were for the purpose of drug trafficking. He was only ever convicted in one case involving drug trafficking, and his role was limited to using his cellular telephone. It is apparent that the district court relied on one drug trafficking conviction to conclude that there were enough occurrences to be called "habitual." There was nothing in the PSR to support the finding.

Petitioner also challenged the district court's conclusion that Petitioner "clearly has a relationship with a DTO," referring to a drug trafficking organization. The other erroneous finding of fact was that Petitioner "clearly has a relationship with a DTO[.]" The PSR said nothing about a DTO, drug cartel, or criminal gang. It is noteworthy that the court did not say "had", but instead said he "has" a relationship at the time of sentencing on December 29, 2025. The PSR and the court record provided no support for this factual conclusion. All the Tenth Circuit said about this claim was "Similarly, Trujillo's past offenses support a plausible inference that he has some sort of relationship with a drug trafficking organization." This conclusion was clearly erroneous. Petitioner's conviction for using a telephone in connection with drug trafficking occurred in May, 2021. His offense of conviction occurred in June, 2025, and sentencing occurred in December, 2025. There was utterly no evidence that he had an ongoing relationship with a trafficking organization at the time of the offense or sentencing.

The errors in district court, whereby Petitioner was sentenced on the basis of facts that first emerged when the district court announced the sentence, deprived Petitioner of his right to advance notice. Federal Rule of Criminal Procedure 32(i)(1)(B) "requires a sentencing court to provide both parties with any information on which it will rely in sentencing and give them a reasonable opportunity to comment on the information." *United States v. Rakes*, 510 F.3d 1280, 1285 (10th Cir. 2007). Additionally, Fed. R. Crim. P. 32(i)(1)(C) requires courts to "allow the parties' attorneys to comment on the probation officer's determinations and other matters

relating to an appropriate sentence." "This provision ensures that a defendant's sentence is subjected to 'thorough adversarial testing.'" *United States v. Bustamante-Conchas*, 735 F. App'x 515, 518 (10th Cir. 2018) (unpublished), *quoting United States v. Angel-Guzman*, 506 F.3d 1007, 1016 (10th Cir. 2007). *See also United States v. Berzon*, 941 F.2d 8, 21 (1st Cir. 1991) ("[N]otwithstanding the wide scope of the sentencing court's discretion, a defendant may not be placed in a position where, because of his ignorance of the information being used against him, he is effectively denied an opportunity to comment on or otherwise challenge material information considered by the district court."). Rule 32(i)(3)(B) also protects a defendant's due process right to a ruling on a disputed sentencing issue. *United States v. Atencio*, 476 F.3d 1099, 1107 (10th Cir. 2007) (relying on Rule 32(i)(3)(B). Petitioner should have been afforded advance notice that would have allowed him to identify the contradictory facts, investigate, and ask the court to resolve the contradiction based on proven and reliable evidence.

The Tenth Circuit alternatively held that Petitioner did not meet the third plain error standard, an effect on substantial rights, because there was not a reasonable probability that but for error, the result of the proceeding would have been different. The court specifically found that Petitioner could not meet his burden of showing that that had the district court applied the proper sentencing framework, he would have received a lesser sentence.

Petitioner argued on direct appeal that the unfounded facts were pivotal to the district court's conclusion that the case was "very serious" and rejection of Petitioner's

request for a 30-month sentence. He argued that had the error not occurred, the facts that motivated the court to deem Petitioner's criminal history "very serious" would not have been considered, and it is more probable than not that the sentence would have been closer to Petitioner's well-supported request.

Rejecting this contention, the Tenth Circuit concluded that had the district court not "characterized" Petitioner's record as it did, the district court...

> ...nevertheless would have considered the case "very serious" without those findings. The district court said that it based its sentence on its consideration of the "Section 3553(a) factors" including "the nature of the offense, the Defendant's criminal history and his personal characteristics." R., Vol. III at 40. It highlighted Trujillo's "serious criminal history," "history of substance abuse," and "history of habitual reentry." R., Vol. III at 40. And it considered "the Defendant's arguments regarding what the appropriate range is . . . as part of [its] overall consideration of the factors." R., Vol. III at 41. In judging the case to be very serious, it noted that Trujillo "has been back in this country not only in violation of the law but then violating the drug trafficking laws of this country." R., Vol. III at 41. So while the district court determined some downward variance was warranted, there is not a reasonable probability that it would have reduced Trujillo's sentence even further if not for its allegedly erroneous statements.

A different analysis of the substantial right prong of plain error is furnished by *United States v. Wilson*, 614 F.3d 219 (6th Cir. 2010). While sentencing Wilson for mail fraud, the district court found that he had stolen 1,000 money orders and 500 cashier's checks, which the Sixth Circuit found to be conspicuously false assertions. The Sixth Circuit found it apparent that the conclusion was an important factor in the determination of the sentence. The appellate court concluded that the district court based the sentence on the "fallacious premise" that Wilson had stolen the instruments. Accordingly, the court found that the unsupported facts were "an

important factor" in the selection of the sentence, and sided with Wilson on plain error.

In the present case, the court of appeals did not ask whether the disputed facts were an important factor at sentencing, or consider the impact the that disputed facts had on the sentencing determination. Rather, the court pointed to other facts that supported the district court's conclusion that the case was very serious. The district court concluded that the case was "very serious" based on the unsupported factual conclusions described above. It also based that conclusion on Petitioner's "serious criminal history, "history of substance abuse", and "history of habitual reentry", as the court of appeals noted. It is obvious that had the district court not perceived Petitioner as a habitual drug trafficker and a person involved in a drug trafficking organization years after a drug trafficking conviction, it would have deemed the case less serious. The omission of analysis of the impact the improper facts had on the sentencing determination, and focus on the impact of the unchallenged facts, demonstrates an approach to plain error analysis that is inconsistent with the approach used in the Sixth Circuit. It also fails as a matter of basic legal reasoning, because in order to determine whether there is a reasonable likelihood of a lower sentence without occurrence of error, it is necessary to determine the impact that the occurrence of error had on the sentence imposed.

CONCLUSION

For the reasons stated herein, this Court should grant the Petition for Writ of Certiorari, reverse the Order and Judgment, and remand to the Tenth Circuit for reconsideration in light of this Court' Opinion.

Respectfully submitted,

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