

No. 07-287

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**In the Supreme Court of the United States**

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MARK RADER, PETITIONER

*v.*

UNITED STATES OF AMERICA

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

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**MEMORANDUM FOR THE UNITED STATES**

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**OPINIONS BELOW**

Petitioner contends that the standards applied by the court of appeals in reviewing his within-Guidelines sentence for unreasonableness are inconsistent with *United States v. Booker*, 543 U.S. 220 (2005). On June 11, 2007, this Court granted certiorari in *Gall v. United States*, No. 06-7949, to address the standards to be applied in reviewing a sentence outside the Guidelines for unreasonableness under *Booker*. Petitioner challenges the requirement that is before the Court in *Gall*: that a sentence constituting an extraordinary variance from the Guidelines be supported by a substantial justification. Although that principle is not directly implicated in this case, the decision in *Gall* is likely to clarify the extent of a district court's sentencing discretion under *Booker* and therefore may shed light on the proper disposition of

petitioner's claim. Accordingly, the Court may wish to hold the petition for a writ of certiorari pending its decision in *Gall*, and then dispose of the petition as appropriate in light of the decision in that case.\*

Respectfully submitted.

PAUL D. CLEMENT  
*Solicitor General*

SEPTEMBER 2007

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\* The government waives any further response to the petition unless this Court requests otherwise.