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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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IRIZARRY *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 06–7517. Argued April 15, 2008—Decided June 12, 2008

Petitioner pleaded guilty to making a threatening interstate communication to his ex-wife, in violation of federal law. Although the presentence report recommended a Federal Sentencing Guidelines range of 41-to-51 months in prison, the court imposed the statutory maximum sentence—60 months in prison and 3 years of supervised release—rejecting petitioner's objection that he was entitled to notice that the court was contemplating an upward departure. The Eleventh Circuit affirmed, reasoning that Federal Rule of Criminal Procedure 32(h), which states that "[b]efore the court may depart from the applicable sentencing range on a ground not identified . . . either in the presentence report or in a party's pre-hearing submission, the court must give the parties reasonable notice that it is contemplating such a departure," did not apply because the sentence was a variance, not a Guidelines departure.

Held: Rule 32(h) does not apply to a variance from a recommended Guidelines range. At the time that *Burns* v. *United States*, 501 U. S. 129, was decided, prompting Rule 32(h)'s promulgation, the Guidelines were mandatory; the Sentencing Reform Act of 1984 prohibited district courts from disregarding most of the Guidelines' "mechanical dictates," *id.,* at 133. Confronted with the constitutional problems that might otherwise arise, the *Burns* Court held that the Rule 32 provision allowing parties to comment on the appropriate sentence—now Rule 32(i)(1)(C)—would be "render[ed] meaningless" unless the defendant were given notice of a contemplated departure. *Id.* at 135–136. Any constitutionally protected expectation that a defendant will receive a sentence within the presumptively applicable Guidelines range did not, however, survive *United States* v. *Booker*, 543 U. S. 220, which invalidated the Guidelines' mandatory features. Faced

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with advisory Guidelines, neither the Government nor the defendant may place the same degree of reliance on the type of "expectancy" that gave rise to a special need for notice in *Burns*. Indeed, a sentence outside the Guidelines carries no presumption of unreasonableness. *Gall* v. *United States*, 552 U. S. ___, ___. Thus, the due process concerns motivating the Court to require notice in a mandatory Guidelines world no longer provide a basis for extending the *Burns* rule either through an interpretation of Rule 32(h) itself or through Rule 32(i)(C)(1). Nor does the rule apply to 18 U. S. C. §3553 variances by its terms. Although the Guidelines, as the "starting point and the initial benchmark," continue to play a role in the sentencing determination, see *Gall,* 552 U. S., at ___, there is no longer a limit comparable to the one in *Burns* on variances from Guidelines ranges that a district court may find justified. This Court is confident that district judges and counsel have the ability—especially in light of Rule 32's other procedural protections—to make sure that all relevant matters relating to a sentencing decision have been considered before a final determination is made. Pp. 5–8.

458 F. 3d 1208, affirmed.

STEVENS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which KENNEDY, SOUTER, and GINSBURG, JJ., joined.