

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for
2 the Second Circuit, held at the Thurgood Marshall United States
3 Courthouse, 40 Foley Square, in the City of New York, on the
4 23rd day of March, two thousand sixteen.

5

6 **PRESENT: DENNIS JACOBS,**
7 **PETER W. HALL,**
8 **Circuit Judges**
9 **JANE A. RESTANI,¹**
10 **Judge.**

11

12 - - - - -X

13 **UNITED STATES OF AMERICA,**
14 **Appellee,**

15

16 **-v.-** **15-231-cr**

17

18 **XIAO FENG XU,**
19 **Defendant-Appellant.**

20 - - - - -X

21

22 **FOR APPELLANT:** NICHOLAS J. PINTO, New York, NY.

23

24 **FOR APPELLEE:** BRIAN R. BLAIS (Diane Gujarati, on
25 the brief), for Preet Bharara,

¹ Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

1 United States Attorney for the
2 Southern District of New York, New
3 York, NY.
4

5 Appeal from a judgment of the United States District Court
6 for the Southern District of New York (Stein, J.).
7

8 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
9 **DECREED** that the judgment of the district court be **AFFIRMED**.
10

11 Xiao Feng Xu appeals from the judgment of the United States
12 District Court for the Southern District of New York (Stein,
13 J.) convicting him of immigration fraud and conspiracy to commit
14 immigration fraud. Xu was sentenced chiefly to 12 months'
15 imprisonment. Xu challenges the reasonableness of his
16 sentence. We assume the parties' familiarity with the
17 underlying facts, the procedural history, and the issues
18 presented for review.

19 **1.** We review a sentence for procedural reasonableness
20 under a "deferential abuse-of-discretion standard." Gall v.
21 United States, 552 U.S. 38, 41 (2007). That means a district
22 court's application of the Sentencing Guidelines is reviewed
23 de novo and its factual findings are reviewed for clear error.
24 United States v. Cossey, 632 F.3d 82, 86 (2d Cir. 2011). A
25 sentence is procedurally unreasonable if the district court
26 "fails to calculate (or improperly calculates) the Sentencing
27 Guidelines range, treats the Sentencing Guidelines as
28 mandatory, fails to consider the § 3553(a) factors, selects a
29 sentence based on clearly erroneous facts, or fails adequately
30 to explain the chosen sentence." United States v. Aldeen, 792
31 F.3d 247, 251 (2d Cir. 2015) (quoting United States v. Chu, 714
32 F.3d 742, 746 (2d Cir. 2013)). When a district court deviates
33 from the Sentencing Guidelines range, "it must consider the
34 extent of the deviation and ensure that the justification is
35 sufficiently compelling to support the degree of the variance."
36 Id. at 252 (internal quotation marks omitted).

37 Xu fails to establish that the district court committed any
38 procedural error. Xu argues that the district court failed to
39 adequately consider: his cooperation with the government, his
40 early plea, his personal characteristics, and the need to avoid

