No. 17-1154

In the Supreme Court of the United States

CALVIN COLEMAN, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court plainly erred in imposing a within-Guidelines sentence of 36 months of imprisonment following the third mandatory revocation of petitioner's term of supervised release under 18 U.S.C. 3583(g).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is not published in the Federal Reporter but is reprinted at 706 Fed. Appx. 618.

JURISDICTION

The judgment of the court of appeals was entered on November 30, 2017. The petition for a writ of certiorari was filed on February 16, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Alabama, petitioner was convicted of possessing crack cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). 3/7/06 Judgment (Judgment) 1. He was sentenced to 92 months of imprisonment, to be followed by four years of super-

vised release. Judgment 2-3. Petitioner's term of supervised release was twice revoked, in 2012 and 2015, for drug-related violations. D. Ct. Doc. 45, at 1-3 (June 13, 2012); D. Ct. Doc. 57, at 1-3 (Feb. 23, 2015). In 2016, the district court again revoked his supervised release and sentenced petitioner to 36 months of imprisonment. D. Ct. Doc. 72, at 1-2 (Jan. 12, 2017). The court of appeals affirmed. Pet. App. 1a-5a.

1. In 2005, petitioner sold approximately 12 grams of crack cocaine to a confidential informant. Presentence Investigation Report (PSR) ¶¶ 1, 6-8. After he was arrested, he also admitted to purchasing 56.7 grams of crack cocaine on other occasions. PSR ¶ 11. A federal grand jury returned an indictment charging petitioner with one count of possessing crack cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). PSR ¶ 1. Petitioner pleaded guilty, pursuant to a plea agreement. D. Ct. Doc. 17 (Oct. 18, 2005).

The Probation Office determined that petitioner was accountable for at least 68.7 grams of crack cocaine. PSR ¶ 18. In light of petitioner's extensive criminal history, which included multiple drug-related and domestic-violence convictions, petitioner's criminal-history category was VI. PSR ¶¶ 30-48. The district court sentenced petitioner to 92 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3. Among other conditions of his supervised release, petitioner was prohibited from possessing, using, or selling a controlled substance. Judgment 3-4.

The district court later reduced petitioner's term of imprisonment to 77 months, pursuant to a retroactive amendment to the advisory Sentencing Guidelines. D. Ct. Doc. 33 (June 13, 2008); see 18 U.S.C. 3582(c)(2).

2. a. In 2012, while petitioner was serving his post-imprisonment term of supervised release, his probation officer recommended that the supervised release term be revoked because petitioner had failed multiple drug tests, had failed to report for urinalysis on several occasions, and had been arrested for possessing cocaine. See 3/6/12 Am. Pet. for Warrant or Summons for Offender Under Supervision. The district court revoked petitioner's term of supervision and sentenced him to 33 months of imprisonment, to be followed by 18 months of supervised release. D. Ct. Doc. 45, at 2-3.

In 2015, while petitioner was serving that 18-month term of supervised release, he failed a drug test and admitted that he was using cocaine, but the district court declined to revoke his supervised release. See 1/9/15 Report on Offender Under Supervision. After petitioner continued to use cocaine and failed multiple additional drug tests, however, his probation officer recommended that petitioner's term of supervised release be revoked. See 2/4/15 Am. Pet. for Warrant or Summons for Offender Under Supervision. The district court agreed, revoking petitioner's supervised release and sentencing him to eight months of imprisonment, to be followed by 36 months of supervised release. D. Ct. Doc. 57, at 2-3.

b. In 2016, while petitioner was serving that 36-month term of supervised release, he was arrested on state charges for distributing a controlled substance, and his probation officer recommended yet another revocation of supervised release. See 11/15/16 Pet. for Warrant or Summons for Offender Under Supervision. The district court held a revocation hearing. Pet. App. 2a; see 18 U.S.C. 3583(e)(3); Fed. R. Crim. P. 32.1(b). At the hearing, petitioner's probation officer testified that, after his arrest on the state charges, petitioner admitted

that he had sold Xanax pills to a woman. 1/4/17 Tr. (Tr.) 4-8. The government also offered evidence that petitioner had sold Xanax to a female confidential informant during a controlled buy that was audio and video recorded. Tr. 28-39. Petitioner took the stand to deny that the activity caught on the recording involved a drug transaction; he claimed instead that it was a "sexual encounter" and that the money the woman had given him was repayment for a loan. Tr. 51-58.

The district court found that the evidence established that petitioner had been selling drugs, in violation of the conditions of his supervised release. Tr. 62; see Tr. 62-63 (rejecting petitioner's testimony as "nonsensical," "absurd," and "untrue"). The court therefore revoked petitioner's term of supervised release and considered what sentence of imprisonment was appropriate. Tr. 63. It noted that petitioner's advisory Sentencing Guidelines range was 33 to 41 months in prison, and that the statutory maximum was 36 months. Tr. 68; see Sentencing Guidelines § 7B1.4(a); 18 U.S.C. 3583(e)(3); 21 U.S.C. 841(b)(1)(B); 18 U.S.C. 3559(a)(2). Petitioner argued for a below-Guidelines sentence of 20 months, asserting that he had a family who needed him and that he was on the verge of starting his own business. Tr. 63-65. The government, meanwhile, urged a statutory-maximum sentence of 36 months, noting petitioner's persistent drug trafficking while on supervised release. Tr. 62, 66.

In considering the "appropriate punishment" for petitioner's violations, the district court explained that petitioner's "comments here today * * * didn't fool me." Tr. 67. The court noted that petitioner's supervised release had been revoked twice before, and that the attendant sentences of 33 and 8 months of imprisonment

"[a]pparently * * * w[ere]n't enough to get your attention." *Ibid.* The court also observed that "the whole purpose of supervised release is to get you to reform your conduct to bring * * * [it] in line with what's required by law, and you refuse to do that." *Ibid.*

The district court then sentenced petitioner to 36 months of imprisonment, noting that "[i]f I could give you the high end of the guidelines, I would * * * because apparently nothing else is going to get your attention." Tr. 68; see *ibid.* ("Believe me, if the statutory maximum was higher, I would give it to you."). The court determined that the 36-month within-Guidelines sentence was "sufficient but not more than necessary to accomplish the sentencing objectives set forth in the statute." *Ibid.* Petitioner did not raise a procedural or substantive objection to his sentence. See Tr. 68-69.

3. On appeal, petitioner contended for the first time that his sentence was procedurally unreasonable, on the theory that the district court had failed to consider any of the sentencing factors in 18 U.S.C. 3553(a). Pet. App. 3a-4a. The court of appeals affirmed in an unpublished per curiam opinion. *Id.* at 1a-5a.

The court of appeals explained that, because "the procedural reasonableness of a sentence is raised for the first time on appeal, we review only for plain error." Pet. App. 4a. It did not find any plain error in the district court's sentencing determinations. See *id.* at 4a-5a. The court of appeals noted that because petitioner had possessed a controlled substance, revocation of his supervised release was mandatory under 18 U.S.C. 3583(g)(1). Pet. App. 2a. And the court relied on circuit precedent stating that "when revocation of supervised release is mandatory under 18 U.S.C. § 3583(g), the statute does not require consideration of the § 3553(a)

factors." *Id.* at 4a (quoting *United States* v. *Brown*, 224 F.3d 1237, 1241 (11th Cir. 2000), abrogated on other grounds by *Tapia* v. *United States*, 564 U.S. 319 (2011)). The court did not address the government's alternative arguments that the district court had adequately considered the Section 3553(a) factors, and that, in any event, petitioner had failed to show that any error affected his substantial rights. *Id.* at 5a n.5.

ARGUMENT

Petitioner contends (Pet. 8-19) that the district court erred by failing to consider the sentencing factors in 18 U.S.C. 3553(a) when setting a term of imprisonment after his supervised release was mandatorily revoked under 18 U.S.C. 3583(g). Petitioner failed to preserve that claim in the district court, and he cannot prevail under a plain-error standard of review. Moreover, this case does not present a suitable vehicle to resolve any disagreement among the courts of appeals on the question presented because petitioner would not qualify for relief even under the rule that he advocates. Further review is not warranted.

1. In general, upon determining that a defendant has violated a condition of supervised release, a district court may revoke the term of supervision and impose a prison term. See 18 U.S.C. 3583(e)(3). Before doing so, the court must "consider[] the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)." 18 U.S.C. 3583(e). Those factors include the nature and circumstances of the crime and the history and characteristics of the defendant; the need for the sentence to afford adequate deterrence, protect the public, and provide the defendant with needed correctional treatment; the applicable Sentencing Guidelines range and any pertinent policy statements issued

by the Sentencing Commission;[1] and the need to avoid unwarranted sentence disparities.

In some circumstances, however, the revocation of supervised release is mandatory. As relevant here, under 18 U.S.C. 3583(g), "the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment" if, among other things, the defendant possesses a controlled substance in violation of a condition of supervised release. Unlike Section 3583(e), which governs permissive revocation, Section 3583(g) does not list or omit any of the Section 3553(a) sentencing factors. The only statutory limitation on mandatory terms of imprisonment under Section 3583(g) is that they not "exceed the maximum term of imprisonment authorized under [Section 3583](e)(3)," which in petitioner's case was three years. 18 U.S.C. 3583(g); see Tr. 68; 21 U.S.C. 841(b)(1)(B); 18 U.S.C. 3559(a)(2).

Given the explicit cross-reference to Section 3553(a) in Section 3583(e) and the absence of any such cross-reference in Section 3583(g), several courts of appeals have stated that a district court may, but need not, consider the Section 3553(a) factors when determining the term of imprisonment for a defendant whose supervised release has been mandatorily revoked. See, *e.g.*, Pet. App. 4a ("[W]hen revocation of supervised release is mandatory under 18 U.S.C. § 3583(g), the statute does not require consideration of the § 3553(a) factors.") (quoting *United States* v. *Brown*, 224 F.3d 1237, 1241 (11th Cir. 2000), abrogated on other grounds by *Tapia*

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[1] Once a defendant's term of supervised release is revoked, Sentencing Guidelines § 7B1.4 sets forth the advisory ranges of imprisonment based on the defendant's grade of violation and criminal-history category.

v. *United States*, 564 U.S. 319 (2011)); *United States* v. *Terry*, 574 Fed. Appx. 579, 581 (6th Cir. 2014) (per curiam) (same); *United States* v. *Illies*, 805 F.3d 607, 609 (5th Cir. 2015) ("When revoking a term of supervised release under § 3583(g), the district court may consider the § 3553(a) factors in determining the length of the resulting sentence, but is not required to do so."); *United States* v. *Tsosie*, 376 F.3d 1210, 1214 n.2 (10th Cir. 2004) (same), cert. denied, 543 U.S. 1155 (2005), abrogated on other grounds by *Tapia*, *supra*.[2]

At least in the published decisions on which petitioner relies (Pet. 4, 8-10), however, those courts of appeals did not confront circumstances in which district courts in fact declined to consider the Section 3553(a) factors. Instead, the question in each case was how those factors should apply. In the Eleventh Circuit's decision in *Brown*, for example, the question was whether a district court could consider the rehabilitative needs of a defendant under Section 3553(a)(2)(D) in determining the appropriate term of imprisonment upon the revocation of supervised release, see 224 F.3d at 1243—a question the Eleventh Circuit later revisited after this Court's decision in *Tapia*, see *United States* v. *Vandergrift*, 754 F.3d 1303, 1309 (2014). The same was true of the Tenth Circuit's decision in *Tsosie*, see 376 F.3d at 1214 & n.2, and the Sixth Circuit's decision in *United States* v. *Jackson*, 70 F.3d 874, 880 (1995).

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[2] In *United States* v. *Le*, the Tenth Circuit noted that a district court is not required to consider the Section 3553(a) factors in deciding whether to revoke supervision under 18 U.S.C. 3583(g), but it withheld judgment as to whether the district court was required to consider the Section 3553(a) factors "in formulating the length" of the sentence. 259 Fed. Appx. 115, 117-118 & n.4 (2007).

And in *Illies*, the Fifth Circuit addressed whether a district court could consider the seriousness of the offense under Section 3553(a)(2)(A) in determining the appropriate term of imprisonment upon the mandatory revocation of supervised release. See 805 F.3d at 609.

The Third Circuit, in *United States* v. *Thornhill*, 759 F.3d 299 (2014), addressed a defendant's claim that the district court had not considered the Section 3553(a) factors at all in determining the duration of imprisonment imposed under Section 3583(g)'s mandatory-revocation provision. It concluded that such lack of consideration would be error. *Id.* at 309. The court reasoned that "[t]he penalty dictated by § 3583(g)—'a term of imprisonment'—is not unique to revocation of supervised release under § 3583(g)" but rather "incorporates" a separate statutory "directive to consider the § 3553(a) sentencing factors." *Ibid.* (citation omitted); see 18 U.S.C. 3582(a). But the court found that no such error had occurred in that case. See *Thornhill*, 759 F.3d at 314.

2. In this case, the court of appeals correctly affirmed the district court's decision on plain-error review.

Because petitioner failed to raise his claim about the Section 3553(a) factors in the district court, it was reviewable only for plain error. Pet. App. 4a; see Fed. R. Crim. P. 52(b); *United States* v. *Olano*, 507 U.S. 725, 731 (1993). To establish reversible plain error under Federal Rule of Criminal Procedure 52(b), a defendant must demonstrate that (1) the district court committed an "error"; (2) the error was "plain," meaning "clear" or "obvious"; (3) the error "affect[ed] [his] substantial rights"; and (4) the error "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" *Olano*, 507 U.S. at 732-736 (citation omitted).

"Meeting all four prongs is difficult, 'as it should be.'" *Puckett* v. *United States*, 556 U.S. 129, 135 (2009) (quoting *United States* v. *Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)).

Even if petitioner could establish that the district court procedurally erred in sentencing him without regard to the Section 3553(a) factors, but see pp. 11-17, *infra*, the combination of some disagreement among the circuits and adverse circuit precedent means that petitioner cannot demonstrate that any error was "clear or obvious, rather than subject to reasonable dispute." *Puckett*, 556 U.S. at 135; see *Olano*, 507 U.S. at 734 ("At a minimum, a court of appeals cannot correct an error pursuant to Rule 52(b) unless the error is clear under current law."). Indeed, the Eleventh Circuit has determined that, when "the Supreme Court has not ruled on the issue and there is a circuit split, any alleged error cannot be 'plain.'" *Vandergrift*, 754 F.3d at 1309; see *United States* v. *Teague*, 443 F.3d 1310, 1319 (10th Cir.) (same), cert. denied, 549 U.S. 911 (2006). Thus, because any error was not plain, the court of appeals correctly affirmed the district court's decision, regardless of whether the Eleventh Circuit's statement in *Brown* about permissive, rather than mandatory, consideration of the Section 3553(a) factors is correct.

In addition, petitioner cannot establish the third prong of plain-error review—*i.e.*, that any error affected his substantial rights. See *Olano*, 507 U.S. at 734 (explaining that, on plain-error review, "[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice"). Not only did the district court consider the Section 3553(a) factors, see pp. 11-17, *infra*, but it also made clear that it

would not have imposed any lower sentence. After correctly calculating an advisory Guidelines range of 33 to 41 months and a statutory maximum of 36 months—neither of which petitioner challenges—the court emphasized that, "if the statutory maximum was higher, I would give it to you." Tr. 68. It then repeated that "[i]f I could give you the high end of the guidelines, I would give it to you." *Ibid.* Given the court's clear statements that petitioner had received a *lower* sentence than the court would have deemed appropriate, petitioner cannot "show a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *Molina-Martinez* v. *United States*, 136 S. Ct. 1338, 1343 (2016) (citation and internal quotation marks omitted). Although petitioner notes (Pet. 15) that the court of appeals did not base its decision on the third prong, see Pet. App. 5a n.5, at a minimum the existence of that independent ground for affirmance makes this case a poor vehicle to determine whether the district court plainly erred in the first place.

3. In any event, even if petitioner had preserved his claim and even if the question presented otherwise warranted this Court's review, this case would not be a suitable vehicle for such review. If the court of appeals in this case had applied the Third Circuit's opinion in *Thornhill*, as petitioner urges (Pet. 16-19), the outcome would have been the same.

The record demonstrates that the district court adequately considered the Section 3553(a) factors. The court determined that a within-Guidelines sentence was "sufficient but not more than necessary *to accomplish the sentencing objectives set forth in the statute*." Tr. 68 (emphasis added). In referring to "the sentencing objectives set forth in the statute," the court clearly meant

the Section 3553(a) factors; petitioner does not suggest any different statutory objectives that the court may have pursued. The record thus refutes petitioner's assertion (Pet. 19) that the district court "exercised * * * 'carte blanche'" in selecting a term of imprisonment. Rather, the court's consideration of and explanation of the Section 3553(a) factors were consistent with this Court's precedents and with the Third Circuit's *Thornhill* decision.

a. In *Rita* v. *United States*, 551 U.S. 338 (2007), this Court explained, in the context of an original sentencing, that where the parties make "straightforward, conceptually simple arguments" and the district court imposes a sentence within the Guidelines range, the court need not provide a lengthy explanation for its decision. *Id.* at 356. It may instead "rely[] upon context and the parties' prior arguments to make [its] reasons clear." *Ibid.*; see *id.* at 357 ("Circumstances may well make clear that the judge rests his decision upon the Commission's own reasoning that the Guidelines sentence is a proper sentence (in terms of § 3553(a) and other congressional mandates) in the typical case, and that the judge has found that the case before him is typical."). And because district courts are "in a superior position" to select an appropriate sentence, *Gall* v. *United States*, 552 U.S. 38, 51 (2007) (citation omitted), "[t]he appropriateness of brevity or length, conciseness or detail, when to write, [and] what to say" are matters best left to "the judge's own professional judgment." *Rita*, 551 U.S. at 356; see, *e.g.*, *United States* v. *Johnson*, 534 F.3d 690, 695 (7th Cir. 2008) (noting that "a district court judge need not apply all § 3553(a) factors in a systematic or checklist fashion") (internal quotation marks and citation omitted); *United States* v. *Kirchhof*,

505 F.3d 409, 413 (6th Cir. 2007) ("If the record demonstrates that the sentencing court addressed the relevant factors in reaching its conclusion, the court need not explicitly consider each of the § 3553(a) factors or engage in a rote listing or some other ritualistic incantation of the factors."); *United States* v. *Smith*, 440 F.3d 704, 707 (5th Cir. 2006) ("[A] checklist recitation of the section 3553(a) factors is neither necessary nor sufficient for a sentence to be reasonable.").

Here, the district court heard from petitioner's probation officer and from the deputy sheriff who arranged the controlled drug transaction with petitioner. See Tr. 4-12, 28-39. The court saw pictures and video of the exchange, and it listened to petitioner's testimony denying any knowledge about a drug transaction. Tr. 28-39, 57-58 (asserting that petitioner and the informant "had a sexual encounter relationship" and that the money was repayment for "a loan"). In arguing for a lenient sentence, petitioner's counsel stated that petitioner "has family ties, he has a job, he's been working faithfully. * * * He's trying to get along with his life." Tr. 63. Petitioner also asserted that he previously had a "real drug problem" but had made "huge progress"; that he was "a good man to my father, to my mother, to my kids"; and that he was about to "start[] my own business, which is like a snap and a finger away." Tr. 64-65. He stated that he had been "doing everything I'm supposed to do" and asked that he not "be judged off of my past." Tr. 64. The government responded that, although petitioner "keeps talking about his past," he failed to acknowledge that his supervised release had previously been revoked for selling drugs or that he was "still out there selling drugs while he's on supervision." Tr. 66.

The district court then addressed petitioner personally, indicating that it disbelieved his testimony. See Tr. 67 ("your comments * * * don't fool me"). The court referred to petitioner's past and current activities. See *ibid.* (noting that petitioner continued to "sell[] pills to undercover confidential informants"); Tr. 68 ("[Y]ou talk to me about your future. You're the guy that's in charge of your future, and as long as you continue to * * * violate the law, you've got no future."). The court reviewed petitioner's past supervised-release revocations, noting that "this is your third revocation hearing," and that petitioner had received a 33-month sentence in 2012 and an eight-month sentence in 2015. Tr. 67. The court observed that, "[a]pparently, that wasn't enough to get your attention." *Ibid.* It further observed that "the whole purpose of supervised release is to get you to reform your conduct to bring your conduct in line with what's required by law, and you refuse to do that." *Ibid.* The court then considered petitioner's advisory Guidelines range of 33 to 41 months and determined that a 36-month sentence in the middle of that range "accomplish[ed] the sentencing objectives set forth in the statute." Tr. 68.

As in *Rita*, the district court here "listened to each argument" and "considered the supporting evidence." 551 U.S. at 358. And in the process of imposing a within-Guidelines sentence, the court explicitly or implicitly accounted for "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. 3553(a)(1); the need for the sentence to "promote respect for the law," "afford adequate deterrence," and "protect the public from further crimes of [petitioner]," 18 U.S.C. 3553(a)(2)(A), (B), and (C); and the Guidelines range and policy statement for supervised-

release violations, 18 U.S.C. 3553(a)(5). The court's stated reasons for imposing the sentence—namely, petitioner's persistent refusal to "bring [his] conduct in line with what's required by law," Tr. 67—more than sufficed to demonstrate that it had "considered the parties' arguments and ha[d] a reasoned basis for exercising [its] own legal decisionmaking authority." *Rita*, 551 U.S. at 356.

b. The district court's consideration of and explanation of the Section 3553(a) factors would have sufficed in the Third Circuit, just as it did in the Eleventh Circuit. In *Thornhill*, the district court revoked the defendant's supervised release under Section 3583(g) and imposed an above-Guidelines sentence. See 759 F.3d at 306 & n.6. Although an outside-Guidelines sentence typically requires a more significant justification than a within-Guidelines sentence, see *Gall*, 552 U.S. at 46-47; *Rita*, 551 U.S. at 347, 350-351; 18 U.S.C. 3553(c)(2), the Third Circuit found that the district court's application of the Section 3553(a) factors was "more than adequate" where it listened to the defendant's allocution about her personal difficulties; responded to her; reviewed her previous revocation violations; and addressed the applicable Guidelines ranges. *Thornhill*, 759 F.3d at 312-313. The Third Circuit noted that the defendant's recidivism, which was of central concern to the district court (as it was here), had brought "to the forefront of th[e] revocation hearing" many of Section 3553(a)'s considerations—including the need to "promote respect for the law," to "provide just punishment," to "deter further criminal conduct," to "protect the public," and to "provide correctional treatment in the most effective manner." *Id.* at 313 (citing 18 U.S.C. 3553(a)(2)(A), (B), (C), and (D)); see, *e.g.*, *United States* v. *Plummer*,

579 Fed. Appx. 141, 144-145 (3d Cir. 2014) (concluding that the district court gave "meaningful consideration" to the Section 3553(a) factors where it reviewed the defendant's multiple violations of his terms of supervised release; considered the need to deter his future criminal conduct; and addressed his need for treatment); *United States* v. *Smith*, 568 Fed. Appx. 187, 192-193 (3d Cir. 2014) (concluding that the district court gave "meaningful consideration" to the Section 3553(a) factors where it was familiar with the defendant; recommended mental health treatment; discussed the defendant's nature and characteristics; and noted that the defendant had failed to follow through with drug treatment).

Here, too, the record amply illustrates that the district court considered the Section 3553(a) factors and explained its reasons for imposing a 36-month sentence. See Tr. 62-63, 66-68. The court's explanation, with its emphasis on petitioner's continued inability to abide by the conditions of his supervised release, mirrors the explanation that the district court gave in *Thornhill*, which the Third Circuit deemed sufficient to demonstrate the meaningful consideration of the Section 3553(a) factors. Compare *ibid.*, with *Thornhill*, 759 F.3d at 305-306. Moreover, the court here provided that explanation even though it imposed a within-Guidelines sentence, as compared to the above-Guidelines sentence in *Thornhill*. See Tr. 68; see generally *Rita*, 551 U.S. at 356-358 (explaining the limited explanation requirement for within-Guidelines sentences).

Because the district court adequately considered the Section 3553(a) factors in sentencing petitioner within the advisory Guidelines range, this case does not implicate the conflict that petitioner identifies, and he would not benefit from the rule that he advocates.

Indeed, that may often or always be true. In the Eleventh Circuit, district courts—like the district court here—consider the Section 3553(a) factors as a matter of course in imposing a sentence upon the revocation of supervised release. See, *e.g.*, *United States* v. *Ray*, 719 Fed. Appx. 919, 925 (2017) (per curiam); *United States* v. *Henderson*, 706 Fed. Appx. 626, 627 (2017) (per curiam); *United States* v. *Baker*, 712 Fed. Appx. 903, 906 (2017) (per curiam); *United States* v. *Arellano*, 605 Fed. Appx. 959, 960-961 (2015) (per curiam), cert. denied, 136 S. Ct. 1695 (2016); *United States* v. *Stafford*, 599 Fed. Appx. 899, 903 (2015) (per curiam); *United States* v. *Shealey*, 580 Fed. Appx. 773, 775-776 (2014) (per curiam); *United States* v. *Revere*, 571 Fed. Appx. 866, 867 (2014) (per curiam); *United States* v. *Griffin*, 529 Fed. Appx. 980, 981 (2013) (per curiam); *United States* v. *Wells*, 314 Fed. Appx. 184, 186-187 (2008) (per curiam); *United States* v. *Hall*, 221 Fed. Appx. 955, 960 (2007) (per curiam); see also, *e.g.*, *Illies*, 805 F.3d at 609; *United States* v. *Jones*, 774 F.3d 399, 404 (7th Cir. 2014); *Terry*, 574 Fed. Appx. at 581; *United States* v. *Lowe*, 556 Fed. Appx. 541, 542 (7th Cir. 2014); *United States* v. *Brooks*, 472 Fed. Appx. 236, 237 (4th Cir. 2012) (per curiam); *United States* v. *Le*, 259 Fed. Appx. 115, 118 n.4 (10th Cir. 2007); *United States* v. *Larison*, 432 F.3d 921, 923 (8th Cir. 2006); cf. *United States* v. *Santiago-Rivera*, 594 F.3d 82, 85 (1st Cir. 2010) (noting "that the federal district courts, when faced with the need to sentence a defendant upon revocation of supervised release, seldom rely upon impermissible factors in reaching sentencing decisions"). Petitioner's concern (Pet. 14) that district courts will apply "different procedures

based solely on the happenstance of their geographic location" thus appears unfounded. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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