

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LAFOREST CARMICHAEL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Should this Court resolve the current circuit split over whether a sentencing judge must consider the 18 U.S.C. § 3553(a) sentencing factors when imposing a sentence for a supervised release violation that requires mandatory revocation?

Where there is a five-year gap between a supervised release violation and probation's petition to revoke release on that violation, and during that period the supervisee has no other violations, is it substantively unreasonable to impose a statutory maximum three-year sentence for the violation?

LIST OF RELATED CASES

1. *United States v. Carmichael*, Case No. 1:98-cr-00024-SLB-SGC-1, U.S. District Court for the Northern District of Alabama. Judgment entered on February 7, 2019.
2. *United States v. Laforest Carmichael*, No. 19-10652, U.S. Court of Appeals for the Eleventh Circuit. Opinion entered on September 26, 2019.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Laforest Carmichael respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Eleventh Circuit's decision affirming Mr. Carmichael's sentence is unpublished, but is reported at 777 F. App'x 977 (11th Cir. 2019) and appears at Appendix "B" to the Petition.

JURISDICTION

The Eleventh Circuit affirmed the district court on September 26, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This petition is timely filed in accordance with Sup. Ct. R. 13.

The district court had original subject matter jurisdiction under 18 U.S.C. § 3231 and 18 U.S.C. § 3583(e)(2). It entered its judgment revoking Mr. Carmichael's supervised release and sentencing him to three years' imprisonment on February 7, 2019. The Eleventh Circuit had appellate jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

PROVISIONS INVOLVED

18 U.S.C. § 3553(a) provides:

(a) Factors to be considered in imposing a sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing

Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3582(a) provides:

Factors to be considered in imposing a term of imprisonment.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

18 U.S.C. § 3583(e) and (g) provide:

(e) Modification of conditions or revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

[...]

(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.--If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

- (3) refuses to comply with drug testing imposed as a condition of supervised release; or
- (4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

STATEMENT OF THE CASE

1. Factual Background.

In 2014, Mr. Carmichael violated his supervised release by committing various state-court offenses—trafficking in marijuana, possessing a firearm as a prohibited person, possessing oxycodone and methamphetamine, and possessing drug paraphernalia. Under 18 U.S.C. § 3583(g), these offenses required mandatory revocation of his federal supervised release. Instead of immediately petitioning for revocation, the probation officer waited five years, until January 2019.

During the five years that his state charges were pending, Mr. Carmichael was released on bond. He reported to his federal probation officer, had clean drug screens, and worked consistently to support his family. By the time of his final revocation hearing in 2019, Mr. Carmichael had become engaged to a woman he had been dating for over four years and they had a five-month-old baby together. Mr. Carmichael had also maintained relationships with his adult children, even assisting his son adjust to lifestyle changes that accompanied the loss of his son's foot.

2. The District Court's Sentence

At the revocation hearing, Mr. Carmichael stipulated to the violations of his supervised release. It was undisputed that he had no additional violations since 2014.

Mr. Carmichael argued that time-served sentence was appropriate. Mr. Carmichael recognized the seriousness of his offenses, but argued that his self-rehabilitation showed that a lower sentence was appropriate. Citing to the recently-passed First Step Act, he further argued that he had overserved his original sentence by nearly four years. The court, however, sentenced him to a 36-month term of imprisonment, the statutory maximum sentence, with no supervision to follow.

3. The Eleventh Circuit's Affirmance

Mr. Carmichael appealed his sentence to the Eleventh Circuit, arguing that his sentence was substantively unreasonable because it did not reflect his substantial self-rehabilitation in the years following his violations. The Eleventh Circuit affirmed Mr. Carmichael's sentence, holding that the district court was not required to consider the 18 U.S.C. § 3553(a) sentencing factors here, because Mr. Carmichael faced mandatory revocation under 18 U.S.C. § 3583(g). The Court, relying on its earlier decision in *United States v. Brown*, 224 F.3d 1237 (11th Cir. 2000), reasoned that, "[i]ndeed, when a defendant is sentenced to a mandatory term of imprisonment pursuant to § 3583(g), the only limitation is that the term of imprisonment must not 'exceed the maximum term of imprisonment authorized under § 3583(e)(3), which is three years' imprisonment when the original underlying offense was a Class B felony." Pet'r App. B, 3 (quotation and alteration omitted). The Court concluded that Mr. Carmichael's claim that the district court erred in weighing the § 3553(a) factors was "irrelevant" because the court was not required to consider those factors at all. *Id.* at 4. The Court further reasoned that Mr. Carmichael's sentence was, in any

event, reasonable, because the district court considered and rejected Mr. Carmichael's arguments regarding his sentence. *Id.* at 4-5.

REASONS FOR GRANTING THE PETITION

Mr. Carmichael's petition provides this Court with an ideal vehicle to resolve a current circuit split over whether a district court must consider the 18 U.S.C. § 3553(a) sentencing factors when imposing a sentence for a violation of supervised release that mandates revocation. The question is an important one because federal district courts revoke supervised release in many cases each year and the Eleventh Circuit is entrenched in its position that where revocation is mandatory, the sentencing judge may select any sentence for any reason. The "only limitation" in the Eleventh Circuit is that the sentence may not exceed the statutory maximum. Under this standard, a sentencing judge could select a particular sentence on the basis that the offense was committed on a Tuesday, or because the defendant's hair was blonde, or for any other equally arbitrary reason. This absurd reading of the statute, which has created a circuit split, calls for this Court to intervene.

The first question presented is also dispositive in this case because, under the § 3553(a) factors, Mr. Carmichael's three-year sentence is patently unreasonable. The district court ignored this Court's directive that a sentence must be based on the defendant, as he appears on the day of sentencing, because the district court gave virtually no weight to Mr. Carmichael's five-year period of substantial self-rehabilitation.

I. The courts of appeal are divided over the first question presented.

A. The federal Courts of Appeal are divided over whether a district court must consider the § 3553(a) factors when imposing a sentence of imprisonment following a mandatory revocation of supervised release under 18 U.S.C. § 3583(g).

The federal Courts of Appeal are currently split on whether a district court must consider the § 3553(a) factors when imposing a sentence upon supervised release. The Eleventh and Fifth Circuits have held that a district court is not required to consider the statutory sentencing factors. *See 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); *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.”). The Third Circuit, on the other hand, has held that a district court must consider the § 3553(a) factors when imposing a sentence on mandatory revocation of supervised release. *United States v. Thornhill*, 759 F.3d 299, 309 (3d Cir. 2014). The three circuits to have decided this issue are firmly entrenched in their contrary positions. The question presented therefore needs resolution by this Court. And because of the importance of this federal question, affecting thousands of defendants each year, this Court should not wait for other circuits to weigh in before granting certiorari to resolve it.

B. The approach of the Eleventh and Fifth Circuits is wrong, ignores § 3583's place in the broader statutory context of the Sentencing Reform Act, and leads to absurd results.

Congress has made clear that, when imposing a sentence of imprisonment, a district court must look to the sentencing factors found in 18 U.S.C. § 3553(a). But the Eleventh Circuit has held that a sentencing court is not required to perform that analysis in one type of case—the imposition of a term of imprisonment following a mandatory revocation of supervised release, pursuant to 18 U.S.C. § 3583(g). In so ruling, the Eleventh Circuit further entrenches itself in a split among several federal Courts of Appeal. Moreover, in so holding, the Eleventh Circuit ignores § 3583(g)'s place within the broader context of the Sentencing Reform Act. Reviewing § 3583(g) in its broader statutory context shows that, in mandatory revocation proceedings, while the sentencing factors do not apply to a district court's determination of whether to revoke a defendant's supervised release, they apply in determining the appropriate sentence. Finally, this Court's rulings show that the § 3553(a) factors apply in such proceedings, because this Court has framed appellate review of the reasonableness of a sentence around these factors.

Reading § 3583(g) in its broader statutory context makes clear that a sentencing court must consider the statutory sentencing factors before imposing a sentence of imprisonment, even if revocation is mandatory. In its decisions holding to the contrary, the Eleventh Circuit reasons that mandatory revocation of supervised release does not require the consideration of the § 3553(a) factors because, unlike § 3583(e), the provision governing discretionary revocation, § 3583(g) does not expressly reference the § 3553(a) factors. *Brown*, 224 F.3d at 1240-42. But this

interpretation of § 3583(g) reads the words of § 3583 in a vacuum, focusing only on the reference to the § 3553(a) factors in § 3583(e) and the lack of reference to those factors in § 3583(g). Such a reading ignores: (1) key procedural differences in mandatory and discretionary revocation proceedings and (2) § 3583's place in the overall Sentencing Reform Act. Instead, "the text and structure of § 3583 and the Sentencing Reform Act require a district court to consider the sentencing factors in § 3553(a) in determining the duration of the term of imprisonment imposed under the mandatory revocation provision in § 3583(g)." *Thornhill*, 759 F.3d at 309.

Courts do not construe the words of a statute in a vacuum. *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019). "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Id.* (quoting *National Assn. of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 666 (2007)). This is because "[c]ontext is a primary determinant of meaning." Scalia & Garner, *Reading the Law: The Interpretation of Legal Texts* 167 (2012). Because statutes often contain many interrelated parts comprising the whole, the entirety of a statute provides the context for each of its parts. *Id.* Thus, § 3583(g), cannot be analyzed in a vacuum. Instead, this Court must look to that subsection in the context of both § 3583 as a whole and the Sentencing Reform Act, 18 U.S.C. §§ 3551-3586.

A complete reading of § 3583 shows that, while a court is not required to consider the § 3553(a) factors in deciding whether to revoke supervised release where revocation is mandated by § 3583(g), the court must still consider the factors in

imposing an appropriate sentence. Section 3583 governs federal supervised release and sets forth two types of revocation—mandatory and discretionary. Under § 3583(e), discretionary review, “The court may, after considering the factors set forth in § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—terminate supervised release, extend supervised release, revoke a term of supervised release and impose a sentence of imprisonment, or order the defendant be placed on home detention and location monitoring. Under the mandatory revocation scheme, the court is required to revoke supervised release if a defendant possesses a controlled substance, possesses a firearm, refuses to comply with drug testing, or tests positive for drugs more than three times in one year. 18 U.S.C. § 3583(g).

Accordingly, these statutes set out two methods for a court to assess a person on supervised release. Discretionary revocation involves a three-step process: (1) the court must decide whether a defendant violated the conditions of his supervised release; (2) the court must, after considering the § 3553(a) factors, determine whether to revoke the defendant’s supervised release; and (3) if the court chooses to revoke supervised release, then it must decide the appropriate term of imprisonment. 18 U.S.C. § 3583(e); *Thornhill*, 759 F.3d at 308. On the other hand, mandatory revocation cuts out the second step, requiring only that the court: (1) decide whether the defendant violated supervised release in one of four specific ways; and (2) impose a “term of imprisonment.” 18 U.S.C. § 3583(g); *Thornhill*, 759 F.3d at 308.

Reading the statutory text of § 3583 together then, where revocation of supervised release is discretionary, a district court must look to the § 3553(a) factors

to determine whether revocation of supervised release is appropriate. Of course, a court need not consider the § 3553(a) factors to determine whether to revoke supervised release where revocation is mandatory—the court *must* revoke supervised release where the requisite conditions are met. But this does not mean that the § 3553(a) factors play no role in the court’s determination of an appropriate sentence following mandatory revocation.

In fact, other provisions of the Sentencing Reform Act show the opposite. Section 3583(g) requires the district court to impose a “term of imprisonment.” That penalty is a common component of most sentences imposed following a conviction. *Thornhill*, 759 F.3d at 309. Nothing in § 3583(g) suggests that the court must stray from its typical role in imposing a term of imprisonment, as set out in § 3582(a). That section requires that, “if a term of imprisonment is to be imposed, in determining the length of the term, [the court] shall consider the factors set forth in section 3553(a) to the extent that they are applicable”

In reviewing § 3583(g) within statutory context, the Third Circuit noted that nothing in the language of § 3553(a) limits its application in mandatory revocation proceedings. *Thornhill*, 759 F.3d at 309. “Nor does § 3582(a) include language concerning the factors to be considered in determining the length of a term of imprisonment that renders § 3553(a) inapplicable to a mandatory revocation proceeding.” *Id.* Accordingly, “the text and structure of § 3583 and the Sentencing Reform Act require a district court to consider the sentencing factors in § 3553(a) in

determining the duration of the term of imprisonment imposed under the mandatory revocation provision of § 3583(g).” *Id.*

C. The Eleventh Circuit’s approach conflicts with this Court’s decisions outlining the “reasonableness” review of sentences.

The Eleventh Circuit’s holding that a sentencing court is not required to consider the § 3553(a) factors predates this Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), and thus does not account for the myriad of decisions from this Court outlining the appropriate appellate review of a sentence. Those decisions setting forth the standard of substantive reasonableness review frame the appellate analysis around the § 3553(a) factors. *See Gall v. United States*, 552 U.S. 38 (2007) (assessing the reasonableness of a sentence in light of the § 3553(a) factors); *Rita v. United States*, 551 U.S. 338 (2007) (same). Because appellate review of the reasonableness of a sentence is framed around the § 3553(a) factors, holding that a sentencing court is not required to consider these factors in imposing a sentence in a mandatory revocation proceeding insulates such sentences from appellate review.

D. This case provides an ideal vehicle to address this issue.

This case provides the ideal vehicle to resolve the question presented. The arguments on both sides of the circuit split are fully developed. The Eleventh Circuit analyzed the issue in *Brown* and the Third Circuit analyzed the issue extensively in *Thornhill*. Moreover, this case presents an important issue of federal law, as the Eleventh Circuit’s current ruling effectively precludes substantive reasonableness review of sentences imposed in mandatory revocation proceedings.

In this case, the Eleventh Circuit did address Mr. Carmichael's unreasonableness claim. But that does not preclude this Court's review, because, as explained below, the Eleventh Circuit incorrectly concluded that Mr. Carmichael's sentence was substantively reasonable.

II. Mr. Carmichael's sentence is substantively unreasonable, where, contrary to this Court's reasoning in *United States v. Pepper*, the district court imposed the statutory maximum sentence of incarceration, despite Mr. Carmichael's significant rehabilitation during the five years following the violation.

To be substantively reasonable, a sentence imposed must be sufficient, but not greater than necessary to serve the purposes set forth in 18 U.S.C. § 3553(a): (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed: (a) to afford adequate deterrence, (b) to protect the public, (c) to effectively provide needed correctional treatment; (3) the types of sentences available; (4) the sentencing range established by the Sentencing Guidelines; (5) pertinent policy statements from the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims. 18 U.S.C. § 3553(a)(1), (a)(2)(B)-(D), (a)(4)-(7); 18 U.S.C. § 3583(e). It is key that a sentencing court impose a sentence that is not greater than necessary to comply with the relevant sentencing factors, because "[a] sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing." *Gall*, 552 U.S. at 54.

When sentencing a defendant, a court must “sentence the defendant as he stands before the court on the day of sentencing.” *United States v. Pepper*, 562 U.S. 476, 492 (2011) (quoting with approval *United States v. Bryson*, 229 F.3d 425, 426 (2d Cir, 2000)). In *Pepper*, this Court held that a district court imposing a new sentence on remand could consider a defendant’s post-sentencing rehabilitative conduct. *Id.* at 493. Following his release from prison at the expiration of his original sentence, Mr. Pepper’s conduct changed drastically—he had been drug-free for almost five years, he had excelled both at college and in his employment, he had re-established a relationship with his estranged father, he had married, and had begun supporting his stepdaughter. *Id.* at 492. This Court recognized that this postsentencing conduct undoubtedly shed light on critical § 3553(a) factors, including Mr. Pepper’s history and characteristics, the likelihood he would engage in future criminal conduct, and the diminished need for educational and vocational training. *Id.* The Court reasoned that his “exemplary postsentencing conduct may be taken as the most accurate indicator of ‘his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him.’” *Id.* at 492-93 (quoting *Pennsylvania v. Sullivan*, 302 U.S. 51, 55, 58 (1937)).

In imposing the statutory maximum sentence, the district court failed to consider Mr. Carmichael as he stood before the court on February 7, 2019, five years after the violation. Mr. Carmichael’s history and characteristics demonstrate that such a lengthy prison sentence was not necessary to deter him from committing future offenses or to protect the public. Although this Court’s holding in *Pepper*

applied to a sentencing proceeding on remand, the underlying rationale applies with equal force here. The district court was required to sentence Mr. Carmichael as he appeared before the court on the day of his revocation hearing. The probation officer did not immediately petition the court to revoke Mr. Carmichael's supervised release upon his arrest for the state charges, and instead waited five years while his state charges remained pending. During those five years, Mr. Carmichael had been compliant with the terms of supervision and had taken significant steps toward rehabilitation. As he stood before the district court on the day of his final revocation hearing, the statutory maximum 36-month sentence was outside the range of reasonable sentences dictated by the circumstances of the case. Mr. Carmichael had served seven years of his eight-year term of supervised release, and the 2014 offenses were his only violation. For the previous five years, Mr. Carmichael had complied with the terms of his supervision—he reported to his probation officer as directed and had clean drug screens.

Furthermore, Mr. Carmichael had taken rehabilitative steps in his personal life to turn the corner from his prior criminal activity, and these changes show that neither concerns over his potential recidivism nor protecting the public warranted a lengthy sentence. Since Mr. Carmichael's release from prison, he had been involved in his family's life and his family had grown. Mr. Carmichael was engaged to a woman he had been dating for four years. The couple had an infant son. Mr. Carmichael had also been involved in the lives of his two adult sons. Mr. Carmichael's recent behavior is the most accurate indicator of his present tendencies, and it should have governed

the court's determination of the appropriate sentence. Although the district court noted that it had considered Mr. Carmichael's arguments, in imposing a statutory-maximum sentence, the court showed that it had not adequately weighed the § 3553(a) factors in light of Mr. Carmichael's progress.

The purpose of supervised release is to assist in the transition from incarceration to liberty, and Mr. Carmichael's conduct following the state charges shows that he could meet these goals. He had turned his life around in the five years his state charges were pending—working, supporting his family, entering into a long-term relationship, and welcoming a new son. Though Mr. Carmichael's underlying conduct was serious, his revocation proceedings were not the context in which to punish the new offense. *See* U.S.S.G. Ch. 7 Pt. A. ("imposition of an appropriate punishment for any new criminal conduct would not be the primary goal of a revocation sentence."). Instead the focus should have been on the breach of trust stemming from the violation. *Id.* Although the violation was serious, Mr. Carmichael's compliance with the terms of his supervised release show that he had taken significant steps, over a long period of time, to restore trust and successfully transition back into the community. By the time the court sentenced Mr. Carmichael, by all accounts his supervision had been successful in that he had proved he could live as a law-abiding, productive member of the community. Accordingly, the statutory maximum sentence fell outside the range of reasonable sentences in this case.

Thus, the Eleventh Circuit erred in concluding that, even if the district court were required to consider the § 3553(a) factors in imposing his sentence, Mr. Carmichael's sentence was nevertheless reasonable. Moreover, the Eleventh Circuit's holding that a district court is not required to consider the § 3553(a) factors in imposing a sentence upon revocation of supervised release, under § 3583(g) ignores that section's place in the broader scheme of the Sentencing Reform Act. It likewise further entrenches a split between the federal courts of appeal. Accordingly, this Court should grant Mr. Carmichael's request for a writ of *certiorari* to resolve the issue.

CONCLUSION

The petition should be granted.

Respectfully Submitted,

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