

IN THE
SUPREME COURT
OF THE UNITED STATES

MICHAEL D. FORBES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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

REPLY BRIEF OF PETITIONER

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November 22, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
REPLY ARGUMENT.....	1
CONCLUSION	2

TABLE OF AUTHORITIES

Cases

<i>Gall v. United States,</i> 552 U.S. 38 (2007).....	1
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<i>Rita v. United States,</i> 551 U.S. 338 (2007).....	1
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Statutes

18 U.S.C. § 3553(a)	1
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REPLY ARGUMENT

The government does not dispute and thus concedes that the courts of appeal have not settled on the appropriate review standard following the denial of a motion for a reduction of sentence under the First Step Act. And the government acknowledges that this Court has granted review of whether district courts *may or must* consider the factors in 18 U.S.C. § 3553(a) when addressing a First Step Act motion. *See* (Gov't Mem. Opp. at 4) (citing *Concepcion v. United States*, No. 20-1650). The government maintains, however, that Petitioner does not explain how the division of authority at issue in *Concepcion* affects his case. *See* (Gov't Mem. Opp. at 4).

But whether district courts must consider the Section 3553(a) factors when evaluating a First Step Act motion bears directly on whether the denial of the motion is subject to reasonableness review. As this Court has explained, review of a sentence is for reasonableness based on the Section 3553(a) factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007). And it's those factors that an appellate court reviews when, as here, the sentence reflects an upward variance or departure from the guideline range. *See id.* In Petitioner's case, therefore, application of the reasonableness review standard affects whether his sentence, which was within the advisory range but is now well above it, is adequately supported under Section 3553(a). *E.g., Rita v. United States*, 551 U.S. 338, 364 (2007) (Stevens, J. concurring) (Observing that "guided by these § 3553(a) factors, *Booker's* abuse-of-discretion standard directs appellate courts to evaluate what motivated the district judge's individualized sentencing decision.").

CONCLUSION

For these reasons and those developed in the petition for a writ of certiorari, this Honorable Court should grant review.

Respectfully submitted,

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