

No. _____

IN THE
Supreme Court of the United States

JOHNNIE SIMS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF LOUISIANA

SAMANTHA J. KUHN
COUNSEL OF RECORD

500 POYDRAS STREET, SUITE 318
HALE BOGGS FEDERAL BUILDING
NEW ORLEANS, LOUISIANA 70130
(504) 589-7930
SAMANTHA_KUHN@FD.ORG

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED¹

- (1) Are district courts required to consider the sentencing factors listed in 18 U.S.C. § 3553(a) when deciding whether to impose a reduced sentence under Section 404 of the First Step Act?
- (2) Are district courts required to provide individualized explanations for discretionary denials of sentence reductions under Section 404 of the First Step Act?

¹ These questions are identical to those presented in the petitions for writ of certiorari in *Michael Carter v. United States*, No. 21-5047, and *James Bates v. United States*, 21-5348. Additionally, the first question is the same as that presented in *Eddie Houston, Jr. v. United States*, No. 20-1479. Accordingly, if the Court grants certiorari in any of those cases, it should hold this petition pending resolution of the issue(s).

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On Petition for Writ of Certiorari
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PETITION FOR WRIT OF CERTIORARI

Petitioner Johnnie Sims respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

JUDGMENT AT ISSUE

The Fifth Circuit Court of Appeals issued its decision on April 7, 2021, which is attached hereto as the Appendix and also is available at 842 F. App'x 947.

JURISDICTION

The Fifth Circuit's decision issued on April 7, 2021. Mr. Sims filed a timely petition for rehearing en banc, which was denied on June 2, 2021. His petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13, as modified by this Court's Order on March 19, 2020, because it is being filed within 150 days of the denial of rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 3553(a) provides, in relevant part:

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

18 U.S.C. § 3553(c) provides, in relevant part:

The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence

Section 404(b) of the First Step Act of 2018 provides, in relevant part:

A court that imposed a sentence for a covered offense may, on motion of the defendant . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

STATEMENT OF THE CASE

In 2005, law enforcement agencies were investigating the drug trafficking activity of Chris Walker, who is Petitioner Johnnie Sims's cousin. That investigation culminated in a search of Mr. Walker's home, his vehicle, and his girlfriend's home, where agents discovered various quantities of cocaine base and cocaine hydrochloride, as well as items associated with the manufacture of cocaine base and a firearm. Mr. Walker was arrested and indicted on federal drug and firearm offenses on November 4, 2005.

Shortly after his arrest, Mr. Walker contacted his girlfriend to ask for her help in hiring someone to kill former DEA Agent Chad Scott, who was involved in the investigation. She agreed to help. Two months later, Mr. Walker contacted Mr. Sims—who had no prior history of violent crime—about his plan, and he ultimately convinced Mr. Sims to help him hire a hitman. As a licensed psychiatrist would later explain, Mr. Sims was then suffering from undiagnosed antisocial personality disorder as well as a substance abuse disorder, which largely dictated his world view, relationships, and behavior at the time.

Law enforcement learned of Mr. Walker's murder plot through cooperating individuals in the same jail and arranged a sting operation in which a task officer posed undercover as a hitman. After the cooperating individuals facilitated an introduction between Mr. Walker and the undercover officer, Mr. Walker put Mr. Sims in contact with the officer. At the direction of Mr. Walker, Mr. Sims contacted and met with the officer to discuss the arrangement and payment. Mr. Sims

was immediately arrested upon providing an initial payment to the officer. Agents then searched his vehicle, where they located a handgun, small amount of marijuana, and small amount of powder cocaine.

As a result of his conduct and the vehicle search, Mr. Sims was charged with participating in Mr. Walker's drug conspiracy and murder conspiracy. He was also charged with violations of 18 U.S.C. §§ 922(g)(1) and 924(c) based on the firearm found in his car. The government filed a bill of information charging Mr. Sims with having one prior felony drug offense for possession of cocaine, thereby increasing the mandatory minimum for the drug conspiracy charge from 10 years to 20 years under the then-applicable version of 21 U.S.C. § 841(b)(1)(A). Mr. Sims pleaded guilty to all charges pursuant to a plea agreement.

Mr. Sims's Original Sentencing

Mr. Sims's advisory Guidelines range recommended a sentence of 30 years to life imprisonment for his crimes. Additionally, his statutes of conviction required the court to impose a mandatory minimum of 25 years—consisting of the mandatory 20-year minimum for the drug conspiracy and a consecutive 5-year minimum for his § 924(c) conviction.

At his original sentencing, Mr. Sims asked the Court to vary downward from the Guidelines range and sentence him to a total of 25 years, emphasizing his mental health issues and history of chronic substance abuse. In support of that request, trial counsel submitted an affidavit from a licensed psychiatrist, Dr. Sarah Deland, who explained his diagnoses of antisocial personality disorder and substance abuse

disorder. According to Dr. Deland, Mr. Sims's long-standing drug use "create[d] certain changes in the brain," and "[i]ndividuals with this type of chronic use develop very different ways of viewing the world and their relationships." They "tend to isolate" themselves with others who use drugs, "become paranoid and secretive," and "[e]verything in life relates to the dependence." She explained that "[m]any people behave in ways in the midst of their addiction that they never would when in recovery, including illegal and immoral activities."

In her assessment, Dr. Deland noted that Mr. Sims did not have a "history of serious violence" prior to this case and pointed to that fact as evidence of how his "continued spiral down into the drug world has had a serious negative effect on his behavior." She further explained that "[s]ymptoms in individuals with antisocial personality disorder tend to peak during teenage and early adulthood and begin to burn out as they reach middle age, meaning they no longer act out so much, *e.g.*, [are] less likely to commit crimes." Dr. Deland opined that Mr. Sims "may well be a very different man" once he is away from drugs, alcohol, and his previous lifestyle for many years and "obtain[s] the necessary substance abuse and mental health treatment while incarcerated[.]"

Mr. Sims's mother also testified, discussing Mr. Sims's childhood struggles with his father's abandonment as well as the loss of their house to a fire. She disclosed that Mr. Sims's teenage years were difficult and that he had mental health issues for which he ultimately had to be put on medication. She also described his strong work

ethic and generosity, stating that she did not know “what went wrong” and indicating her belief that he allowed himself to be influenced by others.

The district court denied Mr. Sims’s request for a 25-year sentence. The court recognized Mr. Sims’s “serious substance abuse and mental health issues” but explained that it could not grant the requested variance because it “would be a freebie” for the murder conspiracy, considering the drug conspiracy alone carried a 20-year mandatory minimum. The court explained:

If I gave you the same mandatory minimum that you would be getting if there had been no plan to kill a federal agent, basically that would be a freebie; in other words, you would be getting no penalty for that. You would be getting the same 20 plus 5 that you would get just for the drugs and the gun.

The district court thus sentenced Mr. Sims to 30 years (the bottom of the Sentencing Guidelines range) on the conspiracy counts, for a total aggregate sentence of 35 years when combined with the consecutive 5-year sentence for his § 924(c) conviction.

Mr. Sims’s First Step Act Proceeding

Section 404 of the First Step Act retroactively reduced the statutory minimum for Mr. Sims’s drug conspiracy conviction from 20 years to 10 years, upending the district court’s reason for originally denying his request for a downward variance. *See* 21 U.S.C. § 841(b)(1)(B). Mr. Sims moved for appointment of counsel to assist him in seeking relief under Section 404, and a screening committee reviewed his case and determined that he was eligible for a reduction based on his drug conspiracy conviction. The government conceded that Mr. Sims was sentenced for a “covered offense” but opposed a reduction of his sentence because his Guidelines range was

“driven by a non-covered offense.” The Federal Public Defender enrolled to represent Mr. Sims and filed a supporting memorandum on his behalf.

Through counsel, Mr. Sims asked the district court to reduce his sentence proportionally to the reduced statutory minimum for the drug conspiracy—*i.e.*, impose the previously requested 25-year sentence, which would be 10 years above his new aggregate statutory minimum. In support of that request, he highlighted the impact of the Fair Sentencing Act on the court’s previous reason for denying his requested downward variance. Specifically, Mr. Sims explained that a 25-year sentence would no longer amount to a “freebie” for the murder conspiracy in light of the 10-year reduction of the statutory minimum for his drug offense. Moreover, because Mr. Sims’s prior drug possession conviction no longer qualifies for an enhancement under the revised drug statute, Mr. Sims would actually face a statutory minimum of 5 years for the drug conspiracy if he were sentenced today. He thus urged that a reduction of his sentence by at least 10 years was warranted based on the court’s reasoning at his original sentencing alone.

Additionally, Mr. Sims presented the district court with a “a number of mitigating factors” further supporting his request for a reduction. In addition to reminding the court of his history of severe mental health and substance abuse issues, the impact of his untreated conditions on his psychological development and criminality, and the fact that his brief involvement in Mr. Walker’s murder plot was a “clear aberration in his otherwise nonviolent history,” Mr. Sims provided the court with recent scientific studies bolstering Dr. Deland’s predictions about his potential

for rehabilitation. Specifically, he cited studies discussing the impact of brain development on criminality and illustrating the dramatic changes that the brain undergoes from puberty into the mid-twenties—*i.e.*, Mr. Sims’s age at the time of these offenses—or even later for people who, like Mr. Sims, struggled with chronic substance abuse and behavioral disorders at a young age. While accepting full responsibility for his conduct, Mr. Sims asked the court to consider this information as “important context for how he came to make such poor decisions” and evidence “that his conduct in this case is not reflective of his true character.”

Finally, Mr. Sims presented the court with evidence of his successful rehabilitation and recovery in prison over the last 14 years. He showed that he had completed a drug treatment program, dozens of educational and reentry courses, and hundreds of hours of vocational training, while receiving only a few disciplinary citations for minor rule violations—with none in the last few years. He also highlighted his transfer from a high security to medium security Bureau of Prisons facility in 2012 and his full-time employment as an orderly. Mr. Sims also provided the court with numerous letters from family, friends, and community members, who corroborated that his offense conduct was an anomaly in his behavior and character and expressed confidence in his rehabilitation. Mr. Sims argued that his entire record shows that his current sentence—which will require him to remain in prison for another 16 years, into his late 50s—is far longer than necessary to comply with the statutory sentencing goals in his case, citing Sentencing Commission data on age and recidivism as additional support for that assertion.

A week after Mr. Sims filed his supporting memorandum, the court denied both his and Mr. Walker’s motions for sentence reductions in a single written order. In describing the “legal standard” for the motion, the court stated that it “*may* consider the 18 U.S.C. § 3553(a) sentencing factors and the defendant’s post-sentencing conduct in determining whether to exercise its discretion.” (emphasis added). Then, after briefly listing Mr. Sims’s arguments in support of his motion, the court “conclude[d] that a reduction is not warranted” for either him or Mr. Walker. With respect to Mr. Sims, the court explained:

Sims did not receive a mandatory minimum sentence at his original sentencing. Rather, the Court specifically imposed a sentence 10 years above the mandatory minimum to account for his participation in the conspiracy to murder a federal agent. His sentence was at the bottom of his guidelines range, which remains unchanged.

...

Considering the nature and circumstances of the offense and the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, *see* § 3553(a)(1)–(2)(A), the Court declines to exercise its discretion to reduce either sentence.

Notably, this generic explanation for the denial of Mr. Sims’s and Mr. Walker’s motions—despite their vastly different circumstances—was itself recycled from a previous denial issued by the same judge in an entirely separate case involving a murder conspiracy conviction. In other words, the same judge categorically denied relief to all three individuals based solely on the nature of their offense, without any consideration or analysis of the person’s unique circumstances or mitigation. The relevant excerpts are provided below:

<i>US v. Neal</i> ²	Considering the nature and circumstances of the offense and the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, <i>see</i> § 3553(a)(1)–(2)(A), the Court declines to exercise its discretion to reduce Neal’s sentence.
<i>US v. Walker</i> <i>US v. Sims</i>	Considering the nature and circumstances of the offense and the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, <i>see</i> § 3553(a)(1)–(2)(A), the Court declines to exercise its discretion to reduce either sentence.

Mr. Sims appealed the district court’s denial of his motion to the Fifth Circuit, arguing that the district court abused its discretion by, among other reasons, failing to conduct a renewed, individualized assessment of the § 3553(a) factors or adequately explain its denial. The Fifth Circuit affirmed in a single-paragraph decision, summarily holding:

Johnnie Sims has appealed the district court’s order denying his motion for a sentence reduction pursuant to Section 404 of the First Step Act of 2018. He asserts that the district court . . . failed to properly consider all of the statutory sentencing factors, and failed to conduct an individualized assessment of his unique circumstances. Sims fails to demonstrate an abuse of discretion. *See United States v. Batiste*, 980 F.3d 466, 477-79 (5th Cir. 2020).

United States v. Sims, 842 F. App’x 947, 947 (5th Cir. 2021).

² *United States v. Neal*, No. 07-425, 2020 WL 1169192, at *3 (E.D. La. March 11, 2020). That decision has also been appealed but it is still awaiting a ruling from the Fifth Circuit.

REASONS FOR GRANTING THE PETITION

This petition presents two distinct but related questions regarding the mechanics of Section 404 proceedings, which have also been presented in petitions for writs of certiorari by Michael Carter, No. 21-5047, and James Bates, No. 21-5348.³ First, do district courts have to consider—*i.e.*, reevaluate—the § 3553(a) factors when deciding whether to impose a reduced sentence for an eligible movant? Second, when denying relief to eligible movants, are district courts required to provide individualized explanations for their decisions?

In denying Mr. Sims’s motion for a sentence reduction, the district court made clear that it believed consideration of the § 3553(a) factors was merely permissive, and it expressly relied on only two factors to deny him relief. The court also suggested that a reduction was “not warranted” based on the single fact that Mr. Sims’s Guidelines range “remains unchanged”—only one of the many § 3553(a) factors. Moreover, the district court’s “explanation” for denying the motion was a generic, non-individualized statement directed to Mr. Sims and Mr. Walker together, despite their separate motions and different circumstances—a statement that was itself recycled from a previous denial by the same judge.

The Fifth Circuit’s affirmance of this ruling conflicts with this Court’s precedent and deepens circuit conflict over the proper implementation of Section 404

³ In the event this Court grants certiorari in either of those cases or in *Eddie Houston, Jr. v. United States*, No. 20-1479, it should hold Mr. Sims’s petition pending resolution of the issue(s) on which certiorari is granted.

of the First Step Act, as discussed below. Accordingly, this Court’s intervention is needed to ensure uniformity and fairness in the application of this important statute, as well as similar laws that may be passed in the future. At present, a defendant’s ability to receive fair consideration for relief under Section 404 is largely dependent on his district and, in some cases, specific sentencing judge, resulting disparate treatment of eligible movants across the country.

I. The Fifth Circuit’s ruling adds to a growing circuit split and circuit conflict over the proper implementation of Section 404.

In the nearly three years since the First Step Act became law, important legal questions have arisen related to the proper interpretation and application of Section 404. The issues presented in this petition—whether courts must consider the § 3553(a) factors and the degree of explanation required for their decisions—have been addressed by several Courts of Appeals. On both issues, clear disagreement has emerged among the circuits. This conflict has resulted in disparate treatment of eligible defendants based solely on geography, which will not be resolved without this Court’s intervention.

A. Courts of Appeals are split over whether district courts must consider the § 3553(a) factors in Section 404 proceedings.

There is a growing circuit split among the Courts of Appeals over whether district courts *must* consider the § 3553(a) factors in deciding whether to impose a reduced sentence under Section 404 of the First Step Act. The First, Second, Seventh, Eighth, and Tenth Circuits have held that consideration of the factors is permitted but not required. *See United States v. Concepcion*, 991 F.3d 279, 290 (1st Cir. 2021), *cert. granted*, __ S. Ct. __, 2021 WL 4464217 (U.S. Sept. 30, 2021) (No. 20-1650);

United States v. Moyhernandez, 5 F.4th 195, 198 (2d Cir. 2021), *petition for cert. filed* (U.S. Oct. 19, 2021) (No. 21-6009); *United States v. Fowowe*, 1 F.4th 522, 524 (7th Cir. 2021); *United States v. Moore*, 963 F.3d 725, 727 (8th Cir. 2020); *United States v. Mannie*, 971 F.3d 1145, 1158 n.18 (10th Cir. 2020). In contrast, the Third, Fourth, and Sixth Circuits have held that courts are required to consider all applicable § 3553(a) factors in evaluating Section 404 motions by eligible defendants. *See United States v. Easter*, 975 F.3d 318, 326 (3d Cir. 2020); *United States v. Chambers*, 956 F.3d 667, 674 (4th Cir. 2020); *United States v. Smith*, 959 F.3d 701, 703 (6th Cir. 2020).

The Fifth Circuit has avoided directly weighing in on this split.⁴ However, in affirming the district court’s ruling in Mr. Sims’s case and others, it implicitly joined the circuits holding that consideration of the § 3535(a) factors is merely permissive. Indeed, the district court explicitly stated that it “*may consider*” the factors—making it clear that it viewed such consideration as optional. It also explicitly relied on only two specific sentencing factors to deny relief—those related to the seriousness of the offense—while disregarding those that weighed heavily in favor of a reduction for Mr. Sims. In particular, the district court did not consider “the history and characteristics of the defendant”—including his age, otherwise nonviolent history, mental health and substance abuse issues, and post-conviction record—or the need

⁴ See, e.g., *United States v. Jackson*, 945 F.3d 315, 322 n.8 (5th Cir. 2019) (stating that it “reserve[d] the issue for another day”); *United States v. Whitehead*, 986 F.3d 547, 551 n.4 (5th Cir. 2021) (“While consideration of the pertinent § 3553(a) factors certainly seems appropriate in the FSA resentencing context, we have left open whether district courts must undertake the analysis.”).

for the sentence imposed to “afford adequate deterrence,” “to protect the public from further crimes of the defendant,” and to provide necessary rehabilitation in the most effective manner. *See* § 3553(a)(1), (2)(B)–(D).

Additionally, the district court appeared to defer to its previous sentencing determination in concluding that a reduction was “not warranted,” explaining that Mr. Sims “did not receive a mandatory minimum sentence” but received the “bottom of his guidelines range, which remains unchanged.” *Cf. United States v. Domenech*, 819 F. App’x 341, 344 (5th Cir. 2020) (vacating a denial where the court’s analysis “lacked through renewed consideration of the § 3553(a) factors” and instead “primarily relied on its analysis at the [defendants’] original sentencing hearings”). The court did not address Mr. Sims’s point that the change in the mandatory minimum for his drug conviction was directly relevant to—and necessarily altered—the court’s previous reasoning. Nor did it consider how any of Mr. Sims’s new mitigating evidence factored into its § 3553(a) analysis, including the overarching determination of what sentence would be “sufficient, but not greater than necessary” to comply with the statutory sentencing goals.

The Fifth Circuit’s affirmance thus sanctioned the denial of sentence reductions based on selective consideration of certain § 3553(a) factors and information, contradicting the rulings of other courts of appeals. *Compare, e.g., United States v. Boulding*, 960 F.3d 774, 784 (6th Cir. 2020) (“[T]he language of § 404 and our cases that interpret it[] stand for the proposition that the necessary review—at a minimum—includes . . . thorough renewed consideration of the § 3553(a)

factors.”); *Easter*, 975 F.3d at 327 (vacating a ruling for failing to consider all of the applicable § 3553(a) factors, including post-sentencing developments); *United States v. Collington*, 995 F.3d 347, 355 (4th Cir. 2021) (“As with initial sentencing, the First Step Act tasks district courts with making a holistic resentencing determination as to whether the original sentence remains appropriate in light of the Fair Sentencing Act’s reforms.”). This divide among the Courts of Appeals will not be resolved absent intervention by this Court.

B. Courts of Appeals are also divided over the extent to which district courts must explain their rulings on Section 404 motions.

In addition to the above circuit split, Courts of Appeals have faced numerous challenges—and reached conflicting conclusions—regarding the degree of explanation required for Section 404 rulings. Here, the Fifth Circuit endorsed a district court’s practice of categorically denying relief to anyone convicted of a specific offense without providing any individualized analysis or explanation. The district court treated Mr. Sims and his co-defendant as one, denying their motions in a single written order using the same exact language that it used to deny relief in an entirely separate case. And while the court briefly mentioned Mr. Sims’s arguments in support of his motion, it did not address them in any substance or explain why they were insufficient to justify any reduction at all.

The Fifth Circuit’s affirmance of that ruling created independent circuit conflict regarding what explanation is required for discretionary Section 404 rulings. At least the Fourth and Sixth Circuits have vacated Section 404 denials based on a district court’s failure to address the specific mitigating arguments presented by a

defendant. Thus, if Mr. Sims's case had been in one of those circuits, his appeal likely would have resulted in vacatur and remand of the district court's inadequate ruling.

In *United States v. Williams*, for example, the Sixth Circuit vacated a Section 404 denial when a district court relied on a defendant's "substantial criminal record" and the fact that his "Guidelines range remained unchanged" to deny relief. 972 F.3d 815, 817 (2020). The Sixth Circuit found the court's analysis to be inadequate because it "did not mention Williams's argument regarding his postconviction conduct," explaining: "When considering the adequacy of the district court's explanation for its decision regarding a sentencing modification, we consider the record both for the initial sentence and the modified one," and "the record as a whole must indicate the reasoning behind the court's sentencing decision." *Id.* While the district court in this case "mentioned" Mr. Sims's post-conviction conduct argument, it did not address the argument in any substance or explain why his conduct was insufficient to justify a reduction. Instead, just like in *Williams*, the court relied solely on his unchanged Guidelines range and an unchangeable sentencing factor—here, the nature of his offense—to deny relief.

The Fourth Circuit likewise has held that district courts are required "to consider a defendant's arguments, give individual consideration to the defendant's characteristics in light of the § 3553(a) factors, determine—following the Fair Sentencing Act—whether a given sentence remains appropriate in light of those factors, and adequately explain that decision." *Collington*, 995 F.3d at 360. In *United States v. McDonald*, the Fourth Circuit vacated the denial of a sentence reduction

when “it [was] not at all clear that the district court considered or gave any weight to [the defendants’] post-sentencing conduct” in denying their reduction requests. 986 F.3d 402, 412 (4th Cir. 2021). Quoting a previous holding from a different sentence reduction context, the Fourth Circuit explained: “A district court cannot ignore a host of mitigation evidence and summarily deny a motion to reduce a sentence and leave both the defendant and the appellate court in the dark as to the reasons for its decision.” *Id.* at 411 (quotation marks and citation omitted). The court found that the district court’s failure to provide an individualized explanation for its decision prevented meaningful appellate review and required vacatur. *Id.* at 412.⁵

The district court’s failure to explain its rejection of Mr. Sims’s mitigating arguments, including his post-conviction conduct, is no different than failing to acknowledge those arguments at all. Indeed, “it is not at all clear that the district court considered or gave any weight to [his] post-sentencing conduct,” and the ruling “leave[s] both the defendant and the appellate court in the dark as to the reasons for its decision.” *McDonald*, 986 F.3d at 411. The Fifth Circuit’s affirmance thus creates further circuit conflict regarding whether generic, non-individualized “explanations” are sufficient in the Section 404 context.

⁵ See also, e.g., *Collington*, 995 F.3d at 360 n.6 (finding the “brevity of the court’s analysis . . . problematic” when it was “silent as to several § 3553(a) factors that are particularly salient in the First Step Act context”); *United States v. Lancaster*, 997 F.3d 171, 176 (4th Cir. 2021) (vacating a Section 404 denial when “the district court seemingly did not review the § 3553(a) factors to determine whether its balancing of the factors was still appropriate in light of intervening circumstances”).

II. The Fifth Circuit’s ruling is wrong and conflicts with this Court’s past decisions.

The Fifth Circuit’s affirmation of Mr. Sims’s non-individualized sentence reduction denial betrays Congress’s intent in passing Section 404 of the First Step Act—*i.e.*, to eliminate unjust sentencing disparities for those sentenced under the unduly harsh, pre-Fair Sentencing Act sentencing framework by providing them an opportunity for resentencing. This is especially true in light of the district court’s explicit reliance on the pre-Fair Sentencing Act mandatory minimums to impose Mr. Sims’s original sentence. The Fifth Circuit’s ruling also conflicts with this Court’s prior decisions, which have repeatedly emphasized the highly individualized nature of sentencing proceedings, the importance of full consideration of the § 3553(a) sentencing factors, and the need for judges to adequately explain their sentencing decisions.

“It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Koon v. United States*, 518 U.S. 81, 113 (1996). And, as this Court has repeatedly emphasized, “possession of the fullest information possible concerning the defendant’s life and characteristics” is “highly relevant—if not essential—to the selection of an appropriate sentence[.]” *Pepper v. United States*, 562 U.S. 476, 488 (2011) (quotation marks, alterations, and citations omitted). While the Sentencing Guidelines provide a benchmark for sentencing decisions, they “are not the only consideration[.]” *Gall v. United States*, 552 U.S. 38,

49 (2007). “[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Id.* at 49–50. “In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented.” *Id.* at 50.

Likewise, a fundamental principle of sentencing is the need for judges to adequately explain their ultimate decisions, both “to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Id.* at 50. As this Court explained in *Rita v. United States*, the requirement that judges state their reasons for imposing a particular sentence “reflects sound judicial practice” because:

Judicial decisions are reasoned decisions. Confidence in a judge’s use of reason underlies the public’s trust in the judicial institution. A public statement of those reasons helps provide the public with the assurance that creates that trust.

551 U.S. 338, 356 (2007). At base, the law requires that the “record make[] clear that the sentencing judge considered the evidence and arguments” in determining the appropriate sentence. *Id.* at 359. Accordingly, “[w]here the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence . . . the judge will normally go further and explain why he has rejected those arguments.” *Id.* at 357.

The failure “to consider the § 3553(a) factors” or “adequately explain the chosen sentence” are procedural errors at sentencing. *See Gall*, 552 U.S. at 51. While Courts of Appeals review sentencing decisions under a deferential abuse of discretion standard, that deference is only afforded to a district court’s “reasoned and reasonable decision that the § 3553(a) factors, on the whole, justified the sentence.” *Id.* at 59–60.

A sentencing determination that is based on an outdated or incomplete assessment of the § 3553(a) factors is neither reasoned nor reasonable, and a generic, boilerplate rejection of mitigating arguments prevents any perception of fairness or meaningful appellate review.

These foundational sentencing requirements are no less applicable in the Section 404 context. The statute itself specifically uses the word “impose” to describe Section 404 resentencings, signaling Congress’s expectation that the traditional sentencing factors and framework outlined in § 3553(a) and (c) will apply. Moreover, defendants who are eligible for Section 404 resentencings necessarily have accumulated years, if not decades, of new information that is “highly relevant to several of the § 3553(a) factors that Congress has expressly instructed district courts to consider at sentencing.” *Pepper*, 562 U.S. at 491.

In this case, the new information Mr. Sims presented to the court was overwhelmingly mitigating and proved that his current, 35-year sentence is far longer than necessary to comply with the statutory sentencing goals. His new evidence also confirmed the predictions made by the psychiatrist at his original sentencing, *i.e.*, that Mr. Sims’s aberrational offense conduct was driven by his untreated disorders and that he would likely become “a very different man” once he received treatment and spent several years away from his previous lifestyle and triggers. Finally, the changed mandatory minimum for Mr. Sims’s drug conspiracy conviction plainly affected the district court’s original explanation for imposing the current sentence, making the denial inconsistent with the court’s own reasoning.

The district court’s failure to consider how any of this new information impacts the § 3553(a) analysis or provide any individualized explanation for its rejection of his arguments constituted a clear abuse of discretion. The Fifth Circuit’s contrary holding violated this Court’s precedent and deprived Mr. Sims of any meaningful review of the district court’s ruling.

III. These issues are important and warrant this Court’s intervention.

The questions presented in this petition are important and warrant this Court’s attention. In addition to creating and contributing to circuit conflict, the Fifth Circuit has endorsed the categorical denial of relief to defendants convicted of a particular offense regardless of their unique mitigating circumstances, thereby sanctioning the non-individualized treatment of countless other litigants.

This issue is also likely to reappear in other contexts. A bill that would eliminate the disparity between crack and powder cocaine offenses entirely recently passed in the U.S. House of Representatives and has garnered bipartisan support in the U.S. Senate. *See* H.R. 1693, 117th Cong. (2021) (the “EQUAL Act”). Like the First Step Act, the bill would allow individuals convicted of covered offenses to request resentencing by their sentencing courts. *Id.* at § 2(c)(2). While the EQUAL Act specifically instructs courts to consider the § 3553(a) factors prior to imposing a reduced sentence, *see id.*, the unresolved question of how much explanation must be provided for denial decisions will inevitably resurface if the EQUAL Act becomes law—an outcome that appears likely given its progress and widespread support, including from the Department of Justice.

Accordingly, absent this Court’s intervention, the Fifth Circuit’s decision in this case will perpetuate arbitrary and unreasoned sentence reduction denials like Mr. Sims’s, making the availability of Section 404 relief dependent on the specific district and judge responsible for a defendant’s sentencing. It will also lead to continued confusion and inconsistencies in the implementation of similar sentence reduction laws that may pass in the future. This Court’s intervention is thus necessary to ensure uniformity, avoid unwarranted sentencing disparities, and restore fairness to these types of federal resentencing proceedings.

CONCLUSION

Mr. Sims respectfully requests that a writ of certiorari be granted in his case.

Respectfully submitted,

CLAUDE J. KELLY
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF LOUISIANA

/s/ Samantha Kuhn
SAMANTHA J. KUHN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
500 Poydras Street, Suite 318
Hale Boggs Federal Building
New Orleans, Louisiana 70130
(504) 589-7930
samantha_kuhn@fd.org

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Counsel for Petitioner