No. _____

In the

Supreme Court of the United States

_____

Jerrell Sims,

Petitioner,

v.

United States of America,

Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

Kevin Joel Page
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
Joel_Page@fd.org

QUESTION PRESENTED

Whether sentences of imprisonment following the revocation of supervised release should be reviewed for reasonableness or plain unreasonableness?

PARTIES TO THE PROCEEDING

Petitioner is Jerrell Sims, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jerrell Sims seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The district court's judgement revoking supervised release is attached as Appendix B. The opinion of the Court of Appeals is electronically reported at *United States v. Sims*, 2025 WL 1135016 (5th Cir. April 17, 2025) (unpublished). It is reprinted in Appendix A to this Petition.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on April 17, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This Petition involves 18 U.S.C. §3742, which states:

> (a) Appeal by a Defendant.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—
>
> (1) was imposed in violation of law;
>
> (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
>
> (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) [1] than the maximum established in the guideline range; or
>
> (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.
>
> (b) Appeal by the Government.—The Government may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment, probation, or supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) 1 than the minimum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.

(c) Plea Agreements.—In the case of a plea agreement that includes a specific sentence under rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure—

(1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in such agreement; and

(2) the Government may not file a notice of appeal under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence set forth in such agreement.

(d) Record on Review.—If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

(1) that portion of the record in the case that is designated as pertinent by either of the parties;

(2) the presentence report; and

(3) the information submitted during the sentencing proceeding.

(e) Consideration.—Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c);

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2); or

(ii) is not authorized under section 3553(b); or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

(f) Decision and Disposition.—If the court of appeals determines that—

(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

(3) the sentence is not described in paragraph (1) or (2), it shall affirm the sentence.

(g) Sentencing Upon Remand.—A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that—

(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that—

(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.

(h) Application to a Sentence by a Magistrate Judge.—

An appeal of an otherwise final sentence imposed by a United States magistrate judge may be taken to a judge of the district court, and this section shall apply (except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal) as though the appeal were to a court of appeals from a sentence imposed by a district court.

(i) Guideline Not Expressed as a Range.—

For the purpose of this section, the term "guideline range" includes a guideline range having the same upper and lower limits.

(j) Definitions.—For purposes of this section—

(1) a factor is a "permissible" ground of departure if it—

(A) advances the objectives set forth in section 3553(a)(2); and

(B) is authorized under section 3553(b); and

(C) is justified by the facts of the case; and

(2) a factor is an "impermissible" ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).

STATEMENT OF THE CASE

I. Facts and District Court Proceedings

Petitioner Jerrell Sims received an 87-month term of imprisonment and a three-year term of supervised release for unlawfully possessing a gun. *See* (Record in the Court of Appeals, at 184-186). Probation petitioned to revoke the term of release citing an assault arrest. *See* (Record in the Court of Appeals, at 240). But it subsequently withdrew that Petition on evidence that Petitioner acted in self-defense, securing secured a dismissal of the charges after seven months pre-trial incarceration. *See* (Record in the Court of Appeals, at 240, 512-513). But on May 3, 2024, Probation petitioned again, citing a lengthy series of positive urinalyses in the first months of 2024. *See* (Record in the Court of Appeals, at 240-243). The Petition found an advisory range of 5-11 months imprisonment under USSG §7B1.4, but a statutory maximum of two years imprisonment. *See* (Record in the Court of Appeals, at 242).

The district court convened a revocation hearing on May 28, 2024, *see* (Record in the Court of Appeals, at 508), and Petitioner pleaded true to the allegations of drug use in the Petition, *see* (Record in the Court of Appeals, at 511). However, the court continued the hearing 30 days to permit the defendant to continue with medical treatments and demonstrate a commitment to sobriety. *See* (Record in the Court of Appeals, at 523). It cautioned Petitioner:

> that if you come back here with additional violations of the law or violations of the terms of supervised release, you can expect 11 months, and you can expect 24 months of supervised release…

(Record in the Court of Appeals, at 523).

On June 13, 2024, Probation added to the Petition an allegation that Petitioner's previously submitted urinalysis was confirmed positive. *See* (Record in the Court of Appeals, at 253). This did not, however, reflect drug use following the first hearing. *See* (Record in the Court of Appeals, at 253).

Unfortunately, Petitioner did not appear at the hearing, scheduled June 25, 2024. *See* (Record in the Court of Appeals, at 256). On July 29, 2024, the district court agreed to add additional allegations to the Petition following Petitioner's arrest, including a new positive test for drug use submitted on June 19, 2024. *See* (Record in the Court of Appeals, at 259-263). The Petition also alleged a failure to attend mental health counseling, and it made reference to a new assault arrest. *See* (Record in the Court of Appeals, at 260-262). A sealed ECF entry immediately following the new Petition contained documents from the company that performed the drug test. *See* (Record in the Court of Appeals, at 260-262).

The parties held the second revocation hearing on August 20, 2024. Petitioner first said that he wished to plead not true to all allegations. *See* (Record in the Court of Appeals, at 537). The government noted that Petitioner had already pleaded guilty, and it stated that it would withdraw the allegation in Paragraph II of the newest Petition, which alleged a defendant's failure to attend mental health counseling. *See* (Record in the Court of Appeals, at 537). Defense counsel then pointed out that Petitioner had not previously pleaded true to the allegation of a June 19, 2024, positive drug test, as it was not performed until after the first hearing. *See* (Record

in the Court of Appeals, at 538, lines 4-10). The government withdrew that allegation as well. *See* (Record in the Court of Appeals, at 538, lines 11-18). After questioning the defendant personally, the court learned that the defendant would persist in his plea of true to the allegations before it at the last hearing. *See* (Record in the Court of Appeals, at 539).

The defense presented information regarding Petitioner's failure to attend the scheduled hearing and advocated for a sentence of five months. *See* (Record in the Court of Appeals, at 539-546). Petitioner presented information from a character witness, *see* (Record in the Court of Appeals, at 543), and gave allocution, during which time he denied all drug use, *see* (Record in the Court of Appeals, at 544-546).

The court ultimately imposed the statutory maximum term of imprisonment, two years, with no further release. *See* (Record in the Court of Appeals, at 547). Answering an objection to the reasonableness of the sentence, both substantive and procedural, *see* (Record in the Court of Appeals, at 548), the court explained that:

> [h]e continued to use illegal controlled substances, and he failed to report to the Court for that hearing on June 25th, and did not bother to call anybody to say why he couldn't be present, and he wasn't in the hospital at the time.

(Record in the Court of Appeals, at 549)(emphasis added).

II. Proceedings in the Court of Appeals

Petitioner appealed, attacking the district court's reliance on its finding that the defendant "continued to use illegal controlled substances" in choosing a sentence at the statutory maximum. *See* Initial Brief, at 12-13. He contended that such reliance violated due process, both because the government had dismissed the

allegation at the outset of the hearing and because it lacked sufficient indicia of reliability. *See id.* But he also contended that reliance on this finding rendered the ultimate sentence plainly unreasonable. *See id.*, at 9-12. In support, he cited circuit precedent holding that an abandoned or unreliable allegation might impair the reasonableness of a revocation sentence. *See id.* (citing *United States v. Foley*, 946 F.3d 681 (5th Cir. 2020)). Although acknowledging that the Fifth Circuit reviewed all supervised release sentences only for "plain unreasonableness," he contended that the proper standard of review was simply for "unreasonableness." *See id.* at 6-7 (citing *United States v. Booker*, 543 U.S. 220 (2005), and *Holguin-Hernandez v. United States*, 589 U.S. 169 (2020)).

The Fifth Circuit affirmed. *See* [Appx. A]; *United States v. Sims*, No. 24-10779, 2015 WL 1135016 (5th Cir. April 17, 2025)(unpublished). It rejected the due process claim as unpreserved, *see Sims*, 2015 WL 1135016, at *2, and expressly reviewed the reasonableness claim for "plain unreasonableness" rather than mere "unreasonableness," *see id.* at *1. ("Although Sims asserts that his revocation sentence should be reviewed for reasonableness, he does so only to preserve that issue for further review. That contention lacks merit.")(citing *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011)). Citing the lack of clarity as to whether an abandoned allegation constituted an improper consideration, it affirmed on this standard. *See id.* at *1. It said:

> Sims relies on our court's precedent that "a district court errs when it relies on a bare allegation of a new law violation contained in a revocation petition unless the allegation is supported by evidence adduced at the revocation hearing or contains other indicia of reliability,

> such as the factual underpinnings of the conduct giving rise to the arrest". *United States v. Foley*, 946 F.3d 681, 687 (5th Cir. 2020). It is not clear that the June 2024 positive urinalysis result included in the withdrawn revocation allegation is the equivalent of a bare allegation of a new law violation, however, as the probation officer submitted that June 2024 result to the district court prior to the final revocation hearing.

Id. It also said that reliance on the allegation did not render the sentence unreasonable because it was not a "dominant consideration" in the selection of the sentence. *See id.*

REASONS FOR GRANTING THIS PETITION

There is a long-standing division of federal authority regarding the proper standard of review for terms of imprisonment following the revocation of supervised release.

Section 3742(e) of Title 18 provides a standard of review for the appeal of federal criminal sentences. Specifically, it provides that sentences should be reviewed to determine whether they were "imposed as a result of an incorrect application of the sentencing guidelines." 18 U.S.C. §3742(e)(2). But under the statute a sentence "for which there is no applicable sentencing guideline" is reviewed to determine whether it is "plainly unreasonable." 18 U.S.C. §3742(e)(4). Because the revocation of supervised release is governed by policy statements rather than sentencing guidelines, revocation sentences were long thought to be reviewed only for "plain unreasonableness." *See e.g. United States v. Stiefel*, 207 F.3d 256, 259 (5th Cir.2000).

United States v. Booker, 543 U.S. 220 (2005), however, severed and excised this portion of the criminal code. *Booker* held that the facts determining the maximum of a defendant's mandatory guideline sentence must be determined by a jury and proven beyond a reasonable doubt. *See Booker*, 543 U.S. at 226-227. But it further concluded that Congress would have preferred advisory guidelines to mandatory guidelines whose factual components were decided by a jury beyond a reasonable doubt. *See id.* at 245. In order to effectuate what it perceived as Congress's second choice, it "severed and excised" those portions of the Code that enforced or contemplated mandatory Guidelines. *See id.* at 245. Section 3742(e) was among those provisions, and was replaced by a single standard of review for "reasonableness." *See id.* at 259, 261. The

Court did not distinguish between different portions of 18 U.S.C. §3742(e). *See id*. at 259, 261.

The result of the *Booker* opinion on this point has been a deep and persistent circuit split on the current standard of review for sentences of imprisonment following the revocation of supervised release. Some circuits have understood the *Booker* opinion to mean what it says – that none of 18 U.S.C. §3742(e) is enforceable, including §3742(e)(4), and that all of it has been supplanted by review for reasonableness. *See United States v. Lewis*, 424 F.3d 239, 243 (2d Cir. 2005); *United States v. Cotton*, 399 F.3d 913, 916 (8th Cir.2005); *United States v. Miqbel*, 444 F.3d 1173, 1176, n.5 (9th Cir. 2006); *United States v. Sweeting*, 437 F.3d 1105, 1106-1107 (11th Cir.2006). But other courts, like the one below, have concluded that the standard for revocation sentences remains "plain unreasonableness." *See United States v. Crudup*, 461 F.3d 433, 437 (4th Cir. 2006); *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011); *United States v. Sanchez*, 900 F.3d 678, 682 (5th 2018); *United States v. Kizeart*, 505 F.3d 672, 674–75 (7th Cir.2007).

In the court below, this means that some acknowledged errors in revocation cases will be affirmed because they are not clearly established under existing law, even if error has been impeccably preserved. *See Miller*, 634 F.3d at 844 ("…the court clearly considered § 3553(a)(2)(A) and in doing so, that court erred. Despite this mistake, the district court's error was not plainly unreasonable. When the district court sentenced Miller, our circuit's law on this question was unclear and therefore, that court's consideration of § 3553(a)(2)(A) was not an obvious error.")(footnote

omitted); *Sanchez*, 900 F.3d at 682 ("…the 'plainly unreasonable' standard, … has two steps… At the second step, however, we vacate the sentence only if the identified error is 'obvious under existing law,' such that the sentence is not just unreasonable but plainly unreasonable….Law from the 'obviousness' prong of Rule 52(b)'s plain error test informs this latter inquiry, …. notwithstanding that the error was in fact preserved.")(internal citations omitted).

And as this case shows, that view has persisted in the court below even after *Holguin-Hernandez v. United States*, 589 U.S. 169 (2020), which mandated substantive reasonableness review for a sentence imposed following revocation. Indeed, the court below has repeatedly held that *Holguin-Hernandez* is limited to the narrow question presented -- whether substantive reasonableness review must be preserved by an objections – and declared it irrelevant to closely related issues. *See United States v. Merritt*, 809 F. App'x 243, 244 (5th Cir. 2020)(unpublished)("The Supreme Court's decision in *United States v. Holguin-Hernandez* is inapplicable to this case of alleged procedural error…"); *United States v. Cuddington*, 812 F. App'x 241, 242 (5th Cir. 2020)(unpublished)("Our case law requiring a specific objection to preserve procedural error remains undisturbed, as we have previously held in at least one unpublished decision.")(citing *United States v. Gonzalez-Cortez*, 801 F. App'x 311, 312 n.1 (5th Cir. 2020)).

Petitioner's case provides an appropriate vehicle to address this conflict. The court below expressly applied the "plainly unreasonable" standard of review. *See* [Appx. A, at 1]; *United States v. Sims*, No. 24-10779, 2025 WL 1135016, at *1 (5th

Cir. Apr. 17, 2025)(unpublished). Notably, it did not hold that the district court relied only on proper considerations. Rather, it held only that the impropriety of the considerations was "not clear" under its precedent, and that any such reliance was not "dominant." *See id.* These reflect the relaxed standards applied by the court below on challenges to a revocation sentence.

The standard of review thus may well have decided the outcome of the case. This Court should grant certiorari to resolve the issue that has divided the courts of appeals and then either decide the merits of the case or remand to the Fifth Circuit.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 16th day of July, 2025.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Kevin Joel Page
Kevin Joel Page
Assistant Federal Public Defender
Federal Public Defender's Office
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: (214) 767-2746
E-mail: joel_page@fd.org

Attorney for Petitioner