CASE NO. ____

IN THE SUPREME COURT OF THE UNITED STATES

DOMINIC MILLER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

JOHN T. CARLSON
Counsel of Record
Ridley McGreevy & Winocur
303 16th St., Suite 200
Denver, CO 80202
(303) 629-9700
carlson@ridleylaw.com

QUESTION PRESENTED

Whether Federal Rule of Criminal Procedure 32.1(b)(2)(E) requires a district court to personally invite a defendant to allocute before imposing a sentence following revocation of supervised release, such that complete denial of that opportunity constitutes plain error warranting resentencing.

TABLE OF CONTENTS

INDEX TO APPENDICES

(Appendices in a separate volume titled Appendix)

TABLE OF AUTHORITIES

CASES

STATUTES

FEDERAL RULES

OTHER AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Petitioner Dominic Miller seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (Appendix A) is unpublished and is electronically available on Westlaw at 2026 WL 17536. The order denying rehearing en banc is unreported. (Appendix B.) The district court did not issue a written opinion at the revocation hearing, but a transcript of that proceeding can be found in Appendix C.

JURISDICTION

The judgment of the court of appeals was entered on January 2, 2026. The petition for rehearing en banc was denied on March 6, 2026. This petition is timely filed within 90 days of the denial of rehearing. 28 U.S.C. § 2101(c). The United States District Court for the District of Colorado had jurisdiction under 18 U.S.C. § 3231. The Tenth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

1. Federal Rule of Criminal Procedure 32(i)(4)(A)(ii) provides:

> Before imposing sentence, the court must ... address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence.

2. Federal Rule of Criminal Procedure 32.1(b)(2) provides in relevant part:

> (b) Revocation.
> ...
> (2) Disposition of the Violation. The court's disposition of the violation must be based on information in the presentence report or on reliable information provided by the probation officer or by the attorney for the government. The court may also receive relevant information offered by the defendant or the defendant's attorney. The defendant has the right to:
> ...
> (E) an opportunity to make a statement and present any information in mitigation.

3. The Advisory Committee Note to the 2005 amendment to Rule 32.1(b)(2) states in relevant part, with internal citations removed:

> New subdivision (b)(2)(E) addresses the defendant's right of allocution, and accords the defendant the opportunity to make a statement and present mitigating information. Although several circuits have held that the defendant has such a right during the revocation hearing, the Committee believed that it would be appropriate to explicitly address the issue in the rule itself. The Committee believed that it was important to recognize that right expressly, given the possibility of substantial incarceration as a result of revocation.
>
> The rule does not further define the right of allocution, and in that regard the Committee believed that existing case law can provide

> guidance as to any limitations that might be placed on the opportunity to speak.
>
> In the Committee's view, the right of allocution is a critical element because the court must consider revocation as an individualized determination. The court is required to give the defendant the opportunity to make a statement.

STATEMENT OF THE CASE

This case starkly illustrates the importance of the right to allocution and the consequences of denying it. Petitioner Dominic Miller, a man with severe cognitive disabilities, was sentenced to two years in federal prison following revocation of his supervised release, without ever being asked whether he wished to speak on his own behalf. The revocation hearing lasted 25 minutes; during three uninterrupted pages of transcript, the district judge spoke directly to Mr. Miller but never invited him to respond. The sentence imposed was 33 percent above the top of the applicable guideline range.

A. Factual Background

In 2015, Mr. Miller pleaded guilty to possessing a firearm as a prohibited person, in violation of 18 U.S.C. § 922(g), and possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). The district court sentenced him to 106 months of imprisonment and five years of supervised release. Mr. Miller was released from prison in 2023 and began serving his term of supervision.

Mr. Miller suffers from severe cognitive disabilities. His IQ scores range from 53 to 65. He has been diagnosed with intellectual disability and requires substantial support in daily functioning.

In March 2024, the United States Probation Office petitioned to modify the conditions of Mr. Miller's supervised release, alleging that he was associating with known gang members. On March 6, 2024, the district court held a modification hearing at which it imposed a curfew on Mr. Miller and required him to wear an ankle monitor. The court also warned Mr. Miller in stark terms: if he violated his supervised release again, "bring a toothbrush, because you're going to prison." At that hearing, the district court never invited Mr. Miller to allocute before modifying the conditions of his release.

Four months later, the Probation Office filed a petition to revoke Mr. Miller's supervised release. The petition alleged that Mr. Miller had violated multiple conditions: he had failed to participate in mental health treatment, failed to report to his probation officer as directed, and had committed new criminal conduct. Based on Chapter 7 of the Federal Sentencing Guidelines Manual, the probation officer calculated a guideline imprisonment range of 12-18 months and recommended a sentence at the top of that range.

At the revocation hearing on May 20, 2025, Mr. Miller admitted to one violation, that he possessed a firearm, in exchange for which the remaining

allegations against him were dismissed. After confirming the guideline calculation, the district judge imposed a sentence of 24 months' imprisonment, followed by three more years of supervised release. At no point during the hearing did the court ask Mr. Miller if he had anything to say on his own behalf, meaning Mr. Miller was never given an opportunity to explain the circumstances of his violation, to express remorse, to describe his rehabilitation efforts, or simply to be heard as a human being before being sentenced to prison.

To be sure, the hearing included three uninterrupted pages of the court's "comments … addressed directly to you, Mr. Miller." But those were the judge's comments to Mr. Miller, not Mr. Miller's opportunity to speak to the judge.

B. Proceedings Below

Mr. Miller appealed, arguing that the district court's failure to invite him to allocute before imposing sentence violated Federal Rule of Criminal Procedure 32.1(b)(2)(E) and constituted plain error requiring resentencing. He acknowledged that circuit precedent foreclosed panel relief, citing *United States v. Craig*, 794 F.3d 1234 (10th Cir. 2015) overruled in part by, *United States v. Bustamante-Conchas*, 850 F.3d 1130, 1144 (10th Cir. 2017) (en banc). But he preserved the issue for *en banc* consideration.

On January 2, 2026, the Tenth Circuit panel affirmed in an unpublished order. (Appendix A.) Quoting *Craig*, the panel held that the "alleged error wasn't

'plain' because neither Supreme Court nor Tenth Circuit precedent established that courts must invite defendants to allocute at revocation hearings."

Mr. Miller filed a petition for rehearing *en banc* on February 12, 2026, asserting that the panel decision conflicts with authoritative decisions of five other circuits and perpetuates an unresolved tension within the Tenth Circuit's own precedent. The Tenth Circuit denied the petition on March 6, 2026.

REASONS FOR GRANTING THE PETITION

This petition presents a question of federal criminal procedure on which the courts of appeals are intractably divided.

Five circuits—the Second, Seventh, Ninth, Eleventh, and D.C.—have held that Federal Rule of Criminal Procedure 32.1(b)(2)(E) requires a district court to personally invite a defendant to allocute before imposing a sentence following revocation of supervised release. In four of those circuits—the Second, Ninth, Eleventh, and D.C.—the complete denial of that opportunity in an unpreserved case has led the court to exercise its discretion to vacate the sentence and remand for resentencing. The Seventh Circuit likewise recognizes the personal-invitation requirement and applies full plain-error review, but has not yet exercised its discretion to order resentencing in an unpreserved allocution case. Meanwhile, three other circuits—the Sixth, Eighth, and Tenth—have reached the opposite conclusion, holding that the textual differences between Rule 32.1 and Rule 32

mean that no personal invitation is required and that denial of allocution does not rise to plain error.

The conflict is deep, acknowledged, outcome-determinative, and it affects thousands of federal defendants each year. The question also implicates this Court's recognition in *Green v. United States*, 365 U.S. 301 (1961), of the common-law right of allocution and the requirement that judges "unambiguously address themselves to the defendant" and "leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing." *Id.* at 305.

This case is an ideal vehicle to resolve the split. The issue was properly preserved, there are no alternative grounds for affirmance, and the facts starkly illustrate the importance of the right and the consequences of its denial. The Court should grant certiorari.

I. The Courts of Appeals Are Intractably Divided 5-3 on Whether Rule 32.1 Requires a Personal Invitation to Allocute

Eight courts of appeals have confronted this Rule 32.1 question. Five recognize that the rule requires a personal invitation to allocute (with four ordering resentencing in unpreserved cases), while three reject any such duty and deny relief at the threshold.

A. Five Circuits Hold That Rule 32.1 Requires a Personal Invitation

Five courts of appeals have concluded that Rule 32.1(b)(2)(E) requires district courts to personally invite defendants to allocute before imposing

revocation sentences. In four of those circuits—the Second, Ninth, Eleventh, and D.C.—failure to do so in an unpreserved case has led the court to exercise its discretion to vacate the sentence and remand for resentencing, reflecting the view that denial of this right ordinarily warrants a new sentencing hearing. The Seventh Circuit likewise holds that the Rule 32.1 allocution right is substantively identical to Rule 32's, that counsel's argument cannot substitute for the defendant's personal statement, and that textual differences between Rules 32 and 32.1 are immaterial, but it has not yet ordered resentencing in an unpreserved allocution case.

1. The Eleventh Circuit: *Carruth*

In *United States v. Carruth*, 528 F.3d 845 (11th Cir. 2008), the Eleventh Circuit held: "It is clear under current law that, at a revocation hearing, permitting only a defendant's lawyer to speak does not suffice. The court must personally extend to the defendant the right of allocution." *Id.* at 847. The Eleventh Circuit reasoned that Rule 32.1's allocution right is "clearly not substantively different" from Rule 32's. *Id.*

To support extending Rule 32's personal-invitation requirement to revocation proceedings, *Carruth* invoked *Green v. United States*, 365 U.S. 301 (1961), this Court's seminal recognition of the common-law right of allocution. *Carruth* observed that *Green* had interpreted a version of Rule 32 whose language

tracks current Rule 32.1. As *Green* made clear, and as *Carruth* recognized, "judges before sentencing should, as a matter of good judicial administration, unambiguously address themselves to the defendant. Hereafter, trial judges should leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing." *Id.* at 846-47 (quoting *Green*, 365 U.S. at 305).

The Eleventh Circuit applied plain-error review and held that the district court's failure to invite allocution satisfied all four *Olano* prongs. *Id.* at 847-48. The court vacated the sentence and remanded for resentencing with allocution. *Id.* at 847.

2. The Second Circuit: *Gonzalez*

In *United States v. Gonzalez*, 529 F.3d 94 (2d Cir. 2008), the Second Circuit held: "This right of presentence allocution applies to sentences imposed for revocation of supervised release." *Id.* at 97. The district court had revoked supervised release and imposed a sentence without first affording the defendant an opportunity to address the court. *Id.* The Second Circuit ruled that the remedy for this error was "to vacate the sentence, accord the right of allocution, and sentence anew." *Id.* at 98.

Although *Gonzalez* did not formally apply plain-error review—the court exercised its supervisory powers to establish resentencing as the standard

remedy—the decision reflects the Second Circuit's determination that allocution at revocation is a mandatory right requiring a personal invitation from the court. *Id.* at 97-98.

3. The Seventh Circuit: *Pitre*

In *United States v. Pitre*, 504 F.3d 657 (7th Cir. 2007), the Seventh Circuit ruled: "Rule 32.1 requires a district court to ask the defendant if she wishes to make a statement for the court to consider before imposing a term of reimprisonment following revocation of supervised release." *Id.* at 662. Rejecting the government's argument that Rule 32.1 imposed a lesser obligation than Rule 32, the court stated: "We therefore hold that the right to allocution created by Rule 32.1 is not substantively different than the right created by Rule 32." *Id.*

The Seventh Circuit reviewed the unpreserved allocution claim for plain error and held that the district court erred and that the error was plain, and it presumed that the denial of allocution affected substantial rights. 504 F.3d at 661–62. The court nevertheless concluded that the error did not warrant correction under the final prong of plain-error review because, based on the particular circumstances of the revocation and sentencing in that case, the omission of allocution did not seriously affect the fairness, integrity, or public reputation of judicial proceedings, and it therefore affirmed. *Id.* at 662–63. *Pitre* thus aligns the Seventh Circuit with the majority on the existence and scope of

the Rule 32.1 allocution right, while leaving remedial questions under the fourth plain-error prong to case-specific discretion in individual cases.

4. The Ninth Circuit: *Daniels*

The Ninth Circuit provided the most thorough analysis of the question in *United States v. Daniels*, 760 F.3d 920 (9th Cir. 2014). The court held: "We hold that Rule 32.1(b)(2)(E) requires a court to address a supervised releasee personally to ask if he wants to speak before the court imposes a post-revocation sentence." *Id.* at 924. In reaching this conclusion, the court systematically dismantled every textual distinction the government offered between Rules 32 and 32.1. *Id.* at 923-25.

The *Daniels* court began with the text of Rule 32.1 and the Advisory Committee Note to the 2005 amendment. The Note states that the amendment was "intended to address a gap in the rule"—the absence of any explicit allocution provision—and that "the court is required to give the defendant the opportunity to make a statement." *Id.* at 923 (quoting advisory committee note) (emphasis added). The court held that denying this opportunity amounts to "clear or obvious" error "because the plain language of Rule 32.1—and particularly of the advisory committee note accompanying the 2005 amendment to that Rule—makes clear that, despite the linguistic differences between Rules 32 and 32.1, a court engaging in post-revocation sentencing must personally

address a supervised releasee to ask if he wants to speak before sentencing." *Id.* at 925.

The Ninth Circuit applied plain-error review in full. Because the trial court "*could have* imposed a more lenient sentence after hearing Daniels speak," its failure to satisfy Rule 32.1's allocution requirement was prejudicial. *Id.* at 926 (emphasis in original). And the error affected the fairness, integrity, and public reputation of the judicial proceedings: "The right to allocute, and to be told that allocution is an option, is both important to the person being sentenced and fundamental to our criminal justice system. Supervised releasees—like criminal defendants—have an absolute right to speak before the penalty imposed by law is handed down. A district court that does not offer a supervised releasee the chance to exercise that right commits plain error." *Id.*

5. The D.C. Circuit: *Abney*

In *United States v. Abney*, 957 F.3d 241 (D.C. Cir. 2020), the D.C. Circuit held: "Despite the rules' wording differences, we hold that the same allocution right applies whether the context is initial or revocation sentencing. The timing of the opportunity to allocute—*before* the sentence is imposed—is widely and appropriately recognized as essential both to the reality and public perception that the judge will fairly consider it before deciding on the sentence." *Id.* at 250 (emphasis in original).

The D.C. Circuit emphasized the foundational values served by allocution: "[P]ermitting a defendant to speak reaffirms human dignity in the face of severe punishment." *Id.* at 254. "Allocution disrupts the reality or appearance of 'assembly-line justice.'" *Id.* at 253. The court applied plain-error review and held that a complete denial of allocution satisfied all four *Olano* prongs. *Id.* at 252-54. It vacated the sentence and remanded for resentencing. *Id.* at 254.

B. Three Circuits Deny Relief Based on Purported Textual Differences

In contrast to the majority view, three circuits—the Sixth, Eighth, and Tenth—have declined to order resentencing when a district court does not invite a defendant to allocute at a revocation hearing.

The Eighth Circuit, in *United States v. Robertson*, 537 F.3d 859 (8th Cir. 2008), held that there is a "significant textual difference" between Rules 32 and 32.1. *Id.* at 862. While Rule 32 specifies what the sentencing court "must do" before imposing sentence (ask the defendant directly whether he wishes to allocute), the Eighth Circuit stated that "Rule 32.1(b)(2)(E) provides what the defendant 'is entitled to' at the revocation hearing," namely, the opportunity to allocute. *Id.* at 862. Under this reading, the rule does not impose an affirmative obligation on the court to extend a personal invitation. *Id.*

The Sixth Circuit adopted the same reasoning in *United States v. Dowl*, 956 F.3d 904 (6th Cir. 2020): "The text of Rule 32.1 suggests it does not impose a

direct-address requirement," a conclusion informed by its view that "[d]ifferences in language usually lead to differences in meaning." *Id.* at 907.

The Tenth Circuit, in *United States v. Craig*, 794 F.3d 1234 (10th Cir. 2015), held that denying allocution at a revocation hearing under Rule 32.1 does not constitute plain error. *Id.* at 1238-39. *Craig* rested on three grounds: (1) the "significant textual differences between Rules 32.1 and 32," (2) the absence of precedent from the circuit and this Court establishing that Rule 32.1 "require[s] a personal invitation to allocute," and (3) the conclusion that "the fairness, integrity, or public reputation of the proceeding could [not] be called into question." *Id.* The panel decision below applied *Craig* and affirmed.

C. The Split Is Deep, Acknowledged, and Outcome-Determinative

The conflict is stark: in the Second, Ninth, Eleventh, and D.C. Circuits, a defendant whose supervised release is revoked without being invited to allocute receives a new sentencing hearing. And the Seventh Circuit, while yet to exercise its discretion to order a new sentencing hearing in the face of unpreserved error, has squarely held that Rule 32.1 requires a sentencing judge to personally invite the defendant to allocute at his or her revocation hearing. The Sixth, Eighth, and Tenth Circuits all deny relief at the threshold because they reject the personal-invitation requirement.

The circuits themselves have acknowledged the split. *See Daniels*, 760 F.3d at 924 (noting conflict with Eighth Circuit); *Abney*, 957 F.3d at 249-50 (discussing split); *Dowl*, 956 F.3d at 907 (acknowledging contrary authority). The Tenth Circuit's denial of *en banc* review here perpetuates the conflict and deepens the division. This split is not merely theoretical. It affects outcomes in individual cases at a critical juncture: revocation hearings, where defendants face substantial reincarceration based on alleged violations of conditions imposed years earlier.

II. The Question Presented Is a Recurring Issue of National Importance Affecting Thousands of Federal Revocation Proceedings Annually

The issue presented arises every day in federal courts. Each year, tens of thousands of defendants are on post-conviction supervision, and more than 50,000 supervision cases are closed. Of the 51,576 cases closed in fiscal year 2024, one-third (33.9 percent) ended in revocation. U.S. Sentencing Comm'n, Quick Facts: Supervised Release, Fiscal Year 2024 (2024) (summarizing data gathered by the Admin. Office of the U.S. Courts).[1]

The question whether a defendant must be personally invited to allocute before such a sentence is imposed remains unresolved in every one of these cases. It also affects the broader universe of supervised-release modification hearings, probation revocation proceedings, and other post-conviction

[1] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Supervised_Release_FY24.pdf

sentencing events governed by Rule 32.1.

Beyond its numerical significance, the issue implicates core values of the criminal justice system: fairness, dignity, individualized sentencing, and public confidence in judicial proceedings. Sentencing errors that deprive defendants of important procedural protections—such as the correct use of the sentencing guidelines—undermine both the accuracy of sentences and public confidence in the criminal justice system. *See, e.g., Molina-Martinez v. United States*, 578 U.S. 189, 200 (2016). The same is true here. Allocution is not a technicality. It is a fundamental feature of the sentencing process, rooted in centuries of common law and codified in the Federal Rules. Denying a defendant the opportunity to speak before being sent to prison—or denying him even the knowledge that he *has* the right to speak—transforms sentencing into what the D.C. Circuit aptly called "assembly-line justice." *Abney*, 957 F.3d at 253.

This case vividly illustrates the point. Mr. Miller, a man with severe cognitive disabilities, sat silently through a 25-minute revocation hearing while the district judge spoke directly to him for three uninterrupted pages. The judge then imposed a sentence 33 percent above the guideline range—without ever asking Mr. Miller if he wished to respond. Mr. Miller never had the chance to explain his circumstances, express remorse, or simply be heard. Whether one views his silence as consent (as the minority circuits do) or as the product of a

system that failed to honor his right (as the majority circuits do) determines the outcome of his case. The Court should resolve this recurring and important question.

III. The Decision Below Conflicts with This Court's Recognition of the Common-Law Right of Allocution in *Green v. United States*

The split cannot be reconciled with this Court's decision in *Green v. United States*, cited above. *Green* traced Rule 32(a) to the common-law right of allocution and held that the Rule requires judges to personally invite defendants to speak before sentence is imposed. 365 U.S. at 304. "The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself," wrote the Court. *Id*. It added that the version of Rule 32 then in effect—which used permissive language nearly identical to the current language of Rule 32.1—required district courts to personally and unambiguously invite defendants to speak before imposing sentence. *Id.* at 304-05.

Green interpreted a version of Rule 32 that stated: "Before imposing sentence, the court shall afford the defendant an opportunity to make a statement in his own behalf." *Id.* at 303, n.1. The Court held this language triggered an affirmative obligation: "judges before sentencing should, as a matter of good judicial administration, unambiguously address themselves to the defendant. Hereafter, trial judges should leave no room for doubt that the

defendant has been issued a personal invitation to speak prior to sentencing." *Id.* at 305. *See also id*. at 304 ("Taken in the context of its history, there can be little doubt that the drafters of Rule 32(a) intended that the defendant be personally afforded the opportunity to speak before imposition of sentence.")

Current Rule 32.1(b)(2)(E) uses strikingly similar language, stating that the defendant "is entitled to: ... an opportunity to make a statement and present any information in mitigation." The Advisory Committee Note to the 2005 amendment—the amendment that added the allocution provision—makes clear that the drafters intended to codify the right recognized in *Green*: "the court is *required* to give the defendant the opportunity to make a statement." Fed. R. Crim. P. 32.1 advisory committee's note to 2005 amendment (emphasis added).

The Tenth Circuit's contrary interpretation—that Rule 32.1 imposes no obligation on the court to invite allocution and that defendants must claim the right themselves or forfeit it—is inconsistent with *Green*. Under *Green*, the personal invitation is not a courtesy; it is a procedural imperative rooted in the common-law right of allocution and infused with the recognition that sentences must be imposed with due regard for the defendant's individual circumstances. *Id.* at 304. The right cannot depend on whether the defendant knows to assert it.

The majority of circuits have recognized this principle and have applied *Green* to Rule 32.1 revocation proceedings. *See Carruth*, 528 F.3d at 847 (citing

Green and holding that a personal invitation is required); *Daniels*, 760 F.3d at 924-25 (same); *Abney*, 957 F.3d at 250-53 (same). The minority circuits have declined to do so, effectively treating *Green* as limited to the precise version of Rule 32 that existed in 1961. That reading slights *Green*.

Green was not a narrow holding about specific rule language. It recognized a substantive right rooted in the common law and embodied in the Federal Rules. The right does not evaporate because of slight syntactic differences between Rule 32 and Rule 32.1. If anything, the 2005 amendment to Rule 32.1—which for the first time explicitly codified the allocution right at revocation—strengthens the case for applying *Green*'s requirement of a personal invitation. The Advisory Committee stated that it added the provision to "recognize[] the importance of allocution" and to ensure that "the court is required to give the defendant the opportunity to make a statement." Fed. R. Crim. P. 32.1 advisory committee's note to 2005 amendment.

Under the Tenth Circuit's rule, however, the "right" to allocution is an empty promise. Defendants who do not know to demand it—or who, like Mr. Miller, suffer from cognitive disabilities that make self-advocacy difficult—forfeit the right through silence. A right that must be demanded to be honored is scarcely a right at all.

The Court should grant certiorari to reaffirm that the common-law right of allocution recognized in *Green* applies with equal force to revocation proceedings under Rule 32.1, and that district courts must personally invite defendants to speak before imposing sentence.

IV. This Case Is an Ideal Vehicle to Resolve the Split

This case presents a clean vehicle for resolving the circuit split and clarifying the scope of the allocution right under Rule 32.1.

First, the issue was properly preserved. Mr. Miller raised the allocution issue in his opening brief on appeal, acknowledged that *Craig* foreclosed panel relief, and explicitly preserved the issue for en banc review. The Tenth Circuit panel applied *Craig* as binding precedent. Mr. Miller then filed a timely petition for rehearing en banc, which was denied. There is no question of waiver or procedural default.

Second, there are no alternative grounds for affirmance. The panel rested its decision entirely on *Craig*'s holding that denial of allocution at revocation does not constitute plain error. The government did not argue—and the panel did not hold—that any other *Olano* factor was absent or that any other defect warranted affirmance.

Third, the facts starkly illustrate the importance of the right and the consequences of its denial. Mr. Miller is a man with severe cognitive disabilities

(IQ 53-65) who was sentenced to 24 months' imprisonment—33 percent above the guideline range—without ever being invited to speak. The revocation hearing lasted 25 minutes. The district judge spoke at length directly to Mr. Miller, but never asked whether Mr. Miller wished to respond. This case shows why allocution matters: when a court's disposition seems fixed, and the sentence exceeds the guideline range, the dignity-enhancing function of allocution does not diminish; it intensifies. The defendant who most needs to be heard is the one least likely to be heard absent a rule requiring a personal invitation.

Fourth, the issue is exceptionally important and recurs frequently in the federal system. Thousands of revocation proceedings occur each year. The question whether defendants must be personally invited to allocute before reimprisonment affects all of them.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

By: */s/John T. Carlson*
JOHN T. CARLSON
Counsel of Record
Ridley McGreevy & Winocur
303 16th St., Suite 200
Denver, CO 80202
(303) 629-9700
Email: carlson@ridleylaw.com