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**IN THE SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 2026

TRAVIS BESSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTIONS PRESENTED

1. Whether a district court can elicit and record a defendant's guilty plea before advising him of any constitutional and appellate rights, because the plea cannot therefore be knowing, intelligent and voluntary?

2. Whether a court of appeals may affirm a life-equivalent, within-Guidelines sentence without meaningfully reviewing whether the sentence is "sufficient, but not greater than necessary" under 18 U.S.C. § 3553(a).

Supreme Court Rule 14.1(b)(i)

Petitioner Travis Bessey was the defendant-appellant in the United States Court of Appeals for the First Circuit.

Respondent United States of America was the appellee in the United States Court of Appeals for the First Circuit.

All parties to the proceeding below are identified in the caption. There are no other parties to this proceeding.

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Petitioner, Travis Bessey, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit, decided on August 31, 2026.

OPINIONS BELOW

There was one opinion below, entered by the First Circuit Court of Appeals, filed on August 31, 2026.

JURISDICTION

The order of the Court of Appeals was filed on August 31, 2026, and this petition for a writ of certiorari is being filed within 90 days thereof, making it timely.

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 11(b)(1)(N) of the Federal Rules of Criminal Procedure and the Fifth Amendment Due Process Clause.

STATEMENT OF THE CASE

Petitioner,¹ Travis Bessey, pleaded guilty to two counts of sexual exploitation of a minor on June 17, 2025 in the United States District Court for the District of Maine (Hon. Lance E. Walker), and was sentenced to 60 years' imprisonment.

The First Circuit Court of Appeals affirmed his conviction on August 31, 2026. This petition for a writ of certiorari followed.

1. Bessey will be referred to as either "Petitioner" or "Defendant" in this petition.

STATEMENT OF FACTS

At the change of plea hearing, the District Court judge directed the Deputy Court Clerk to take Petitioner's guilty plea without first issuing any constitutional warnings. The Clerk then asked Petitioner:

Travis Bessey, on December 14, 2021, you entered a plea of not guilty to Counts 1 and 2 of the indictment bearing criminal number 1:21-cr-193-LEW. How do you now plead to Counts 1 and 2 of the indictment, do you plead guilty or not guilty? (Plea: 4).

The Petitioner said he was "guilty." The Court then issued his trial rights--after he had already pleaded guilty, and admitted his guilt.

At sentence, the government asked the Court to impose the statutory maximum of 60 years' imprisonment because Petitioner had engaged in sexual acts with a one-year-old child and a toddler. Defense counsel requested either a sentence of 20 years' imprisonment or two 15-year consecutive sentences, totaling no more than 30 years' imprisonment. The Court sentenced Petitioner to two consecutive 30-year terms, for a total of 60 years' imprisonment (Sentence: 29).

SUMMARY OF ARGUMENT

The Constitution does not permit a federal court to obtain a guilty plea first and explain the rights surrendered by that plea afterward. Knowledge must precede waiver. Here, before giving a single Rule 11 advisement, the District Court directed the clerk to ask petitioner how he pleaded. Petitioner answered “guilty,” and the clerk announced that “[t]he defendant pleads guilty.” Only afterward did the court explain petitioner’s constitutional trial rights and the plea agreement’s waiver of appellate review.

This was not an isolated mistake. The District Court followed an official District of Maine script directing the clerk to obtain the “tender of a guilty plea” before the Rule 11 advisements and then ask whether the Petitioner “still” adheres to that plea. The Government defended this sequence because the court formally accepted Petitioner’s plea only after the colloquy. But the Petitioner enters the plea; the judge accepts it. Rule 11 exists to inform the defendant’s decision whether to plead, not merely the judge’s later decision whether to accept an already-entered plea. The First Circuit avoided this recurring question by assuming error but finding it insufficiently plain. This Court should decide whether federal courts may institutionalize a procedure in which knowledge follows waiver.

The Court should also review Petitioner’s 60-year sentence. A 60-year term imposed on a 30-year-old Petitioner is a determination that he should die in prison. Petitioner does not minimize his appalling conduct or dispute that decades of imprisonment were warranted. The question is whether the District Court explained why no term shorter than lifelong incarceration could satisfy § 3553(a)’s command to impose a sentence “sufficient, but not greater than necessary.”

The District Court established why Petitioner deserved severe punishment but never explained why 60-years—rather than 30, 40, or 50—were necessary. It imposed the statutory maximum on both counts, ran them consecutively, and declared that petitioner’s lack of a prior record, traumatic childhood, medical conditions, acceptance of responsibility, institutional conduct, and prospects for treatment would have no effect on the sentence. The First Circuit affirmed because offense seriousness, deterrence, and public protection supplied a “plausible rationale.” But reasons supporting severe punishment do not establish that every additional year up to death in prison is necessary. If that review is sufficient whenever the Guidelines recommend life, § 3553(a)’s parsimony command and substantive-reasonableness review become meaningless when they matter most. The petition should be granted.

REASONS FOR GRANTING THE WRIT

POINT I

THE COURT SHOULD GRANT CERTIORARI TO DECIDE WHETHER A DISTRICT COURT MAY ELICIT AND RECORD A GUILTY PLEA BEFORE ADVISING THE PETITIONER OF THE CONSTITUTIONAL AND APPELLATE RIGHTS HE IS SURRENDERING.

This case inverts the constitutional sequence: Petitioner pleaded guilty before the District Court told him what pleading guilty meant, let alone issued a single Rule 11 advisement.

The challenged sequence is an institutional practice, not an isolated mistake. This case does not concern a judge who inadvertently placed one warning in the wrong portion of an otherwise conventional plea colloquy. It challenges an established sequence incorporated into an official federal-court script.

The District of Maine’s published script directs the clerk to obtain the “tender of a guilty plea” before the court explains the purpose of Rule 11, advises the defendant of his trial rights, or examines the appellate waiver. United States District Court for the District of Maine, Rule 11—Guilty Plea, Script of Proceeding 2, 5, 9–10 (Sept. 12, 2018).

The script later directs the court to ask whether, “[i]n light of all that I have just explained to you,” the defendant “still” chooses to plead guilty. *Id.* at 6. It again asks at the end whether the defendant “still” wishes to plead guilty. *Id.* at 12.

The District Court followed that sequence here. The Clerk asked Petitioner for his plea. Petitioner answered “guilty.” The clerk formally announced that petitioner “pleads guilty.” Only then did the court explain the constitutional rights and appeal waiver implicated by that plea.

The official script demonstrates both recurrence and prospective importance. Unless this Court resolves the question, the same procedure may continue to be employed in federal plea hearings. The First Circuit’s refusal to decide whether the practice is lawful leaves district judges affirmatively instructed to follow a sequence that has never been reconciled with this Court’s constitutional-waiver decisions.

The question affects the validity of the procedure through which most federal convictions are obtained. The importance of the question extends far beyond Petitioner. Guilty pleas resolve the overwhelming majority of federal prosecutions. *Missouri v. Frye*, 566 U.S. 134, 143–44 (2012)(“Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas”)(citation omitted). The validity of the federal criminal system therefore depends heavily on the integrity of plea proceedings.

Rule 11 is the principal mechanism for ensuring that federal guilty pleas are knowing and voluntary. The order in which the plea and the Rule 11 warnings occur affects whether the warnings inform the defendant's decision or merely confirm an answer already placed on the record.

The distinction is fundamental. A defendant deciding whether to plead guilty can weigh the surrendered rights, sentencing exposure, and appeal waiver before answering. A defendant who has already publicly pleaded guilty must decide whether to retract an admission made before the judge, prosecutor, defense counsel, and public.

The latter defendant faces psychological and institutional pressures that did not exist before the plea. He may believe that withdrawing his answer will anger the judge, contradict counsel, jeopardize the plea agreement, or make him appear dishonest. He is no longer simply deciding how to plead. He is deciding whether to repudiate a solemn admission already entered on the record.

The proper sequence is also effortless to administer. The court need only provide the Rule 11 advisements before asking, for the first time, "How do you plead?" That procedure imposes no additional burden, avoids all constitutional uncertainty, and ensures that the warnings serve their intended purpose.

The First Circuit left the legality of the practice unresolved. The judgment below does not determine whether the challenged procedure is lawful. It assumes possible error but holds that any error was not “contrary to existing law.”

That disposition provides no guidance to federal judges. The official script remains in place. Future defendants may be required to plead guilty before learning their rights. And future panels may repeat that the error is not plain because no prior decision has resolved the issue.

Only this Court can supply a nationally authoritative answer to the question whether Rule 11 permits federal courts to obtain a plea first and advise the defendant afterward.

The decision below cannot be reconciled with this Court’s guilty-plea and constitutional-waiver decisions. A defendant must know his rights before relinquishing them.

A guilty plea is constitutionally valid only when it constitutes “a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). The requirement follows from the plea’s exceptional constitutional consequences. A guilty plea is “more than a confession which admits that the accused did various acts.” *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). It “is itself a conviction.” *Id.*

By pleading guilty, a defendant surrenders the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront his accusers. *Boykin v. Alabama*, 395 U.S. at 243. Courts therefore cannot presume waiver from an inadequate record. *Id.*

The controlling principle is straightforward: waiver requires “an intentional relinquishment or abandonment of a known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). The word “known” performs indispensable constitutional work. A person must possess knowledge of the right before relinquishing it. Information furnished after the purported waiver cannot inform the decision already made.

The District Court reversed that sequence. Petitioner entered his plea without having received a single judicial advisement about the trial rights or appellate rights surrendered by pleading guilty. The warnings came afterward.

The Government’s answer—that formal acceptance came later—does not resolve whether Petitioner understood his rights when he personally answered “guilty.”

The defendant’s plea and the court’s acceptance are distinct constitutional events. The Government’s position depends on equating two different acts performed by different actors. The defendant enters a plea. The court accepts or rejects it.

Rule 11 itself recognizes that distinction. It separately refers to the plea “offered” by the defendant, the plea’s “acceptance” by the court, and the subsequent entry of judgment. Fed. R. Crim. P. 11(b). The distinction is decisive because the constitutional waivers are accomplished through the defendant’s act. *Boykin* states that “[a] plea of guilty is more than a confession” and “is itself a conviction.” *Boykin v. Alabama*, 395 U.S. at 242. It does not hold that the court’s later pronouncement of acceptance is the event through which the defendant relinquishes his constitutional rights.

Petitioner’s initial answer was not an informal expression of future intent. The clerk asked the formal arraignment question: “How do you now plead?” Petitioner answered: “Guilty.” The clerk announced: “The defendant pleads guilty.” The court responded: “Thank you.” That exchange had only one objective meaning: Petitioner had entered a guilty plea. The District Court’s later acceptance made the plea effective for entry of judgment. It did not transform Petitioner’s earlier answer into something other than a plea. Nor could it retroactively provide Petitioner with information he lacked when answering.

Rule 11 protects the defendant’s decision whether to plead--not merely the court’s decision whether to accept the plea. Rule 11(b)(1) provides that, before accepting a guilty plea, the court must personally inform the defendant of the listed

rights and consequences and determine that the defendant understands them. The Rule also requires the court, before acceptance, to determine that the plea is voluntary. Fed. R. Crim. P. 11(b)(2). The official text identifies these required protections.

The phrase “before the court accepts” establishes the latest point at which the court must complete those duties. It does not affirmatively authorize the court to obtain the defendant’s dispositive plea before beginning them. The Government’s interpretation treats the Rule as protecting only the court’s decision to accept the plea. But this Court has explained that Rule 11 is designed to assist the judge in determining whether the defendant’s plea is knowing and voluntary. *McCarthy v. United States*, 394 U.S. 459, 465 (1969). The personal colloquy exists because the court cannot assume that counsel or a written agreement adequately informed the defendant. *Id.* at 466–67.

Rule 11’s purpose is therefore to produce an informed decision by the defendant and a record demonstrating that the decision was informed. It is not merely to give the judge sufficient information to pronounce acceptance.

The Government’s reading also deprives the required warnings of their intended function. An appellate-waiver advisement is supposed to inform the defendant’s decision whether to accept a plea agreement containing that waiver. A

warning delivered after the guilty plea cannot perform that function. It may persuade the defendant to adhere to the agreement, but it did not inform the plea already entered.

The same is true of the constitutional trial rights. Telling a defendant after his guilty plea that he possessed the right to persist in a not-guilty plea, the right to trial, and the privilege against self-incrimination is the procedural equivalent of explaining the alternatives after he has announced his selection.

A post-advisement request to adhere to an already-entered plea does not eliminate the constitutional defect. The Government emphasized that the District Court repeatedly asked Petitioner, after providing the warnings, whether he “still” wished to plead guilty. Those later inquiries may be relevant to prejudice, but they do not establish that the original plea was informed.

The word “still” exposes the problem. It presupposes a decision already made and asks whether the defendant will adhere to it. It does not restore the defendant to the position he occupied before publicly admitting guilt.

This Court has recognized in related contexts that the sequence of warnings and admissions can matter because a prior admission creates pressure to repeat it. *See Missouri v. Seibert*, 542 U.S. 600, 611–13 (2004) (plurality opinion). The Fifth Amendment problem here arises in a different procedural setting, but the practical

insight is the same: a warning delivered after an admission does not necessarily place the individual in the position he would have occupied if warned first.

The District Court could have cured the problem by expressly withdrawing or disregarding the initial plea, explaining that petitioner remained entirely free to plead not guilty without adverse consequence, allowing renewed consultation with counsel, and then requesting a new plea. It did not. Instead, every subsequent inquiry asked whether Petitioner “still” wished to adhere to the plea already entered. The initial plea remained the foundation of the proceeding.

The First Circuit’s plain-error analysis insulates novel Rule 11 violations from review. The absence of an identical precedent does not necessarily prevent an error from being plain. Rule 52(b) requires a defendant to establish an error that is plain and affects substantial rights. If those conditions are met, an appellate court may correct the error when it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *United States v. Olano*, 507 U.S. 725, 732–36 (1993). An error is ordinarily plain when it is clear or obvious at the time of appellate review. *Henderson v. United States*, 568 U.S. 266, 273–74 (2013). Neither *Henderson* nor *Olano* establishes a categorical requirement that a defendant identify an earlier decision involving the identical procedure.

Some errors are plain from constitutional principles, statutory language, or the structure and purpose of the governing rule. *Johnson v. United States*, 520 U.S. 461, 467–68 (1997), found an error plain even though the law had not been settled when the district court acted. *Henderson* subsequently confirmed that plainness is measured when the appellate court reviews the case. *Henderson v. United States*, 568 U.S. at 279.

The First Circuit nevertheless ended its analysis after stating that petitioner had not shown that the assumed error was “contrary to existing law.” But it did not determine whether existing law permitted the procedure, whether the governing principles clearly prohibited knowledge from following waiver, or whether the official script’s sequence was consistent with Rule 11’s purpose. The First Circuit used the absence of precedent as a substitute for deciding the governing question. The court’s reasoning creates a self-perpetuating obstacle to review.

The First Circuit declined to decide whether the procedure was erroneous because no existing decision had declared it unlawful. Because the court did not decide the question, district courts remain free to repeat the procedure. When another defendant challenges it, the Government can again contend that the error is not plain because no decision has resolved the issue.

A novel practice should not become effectively unreviewable merely because it is novel. Otherwise, the first defendant subjected to any unprecedented procedure could never obtain plain-error review, however clearly the practice conflicts with the governing text and constitutional principles.

The problem is particularly acute here because the challenged procedure is prescribed by an official district-court script. Defendants will repeatedly encounter it. Yet the First Circuit's reasoning prevents the law from developing unless a defendant anticipates the issue and objects during the brief interval between being ordered to plead guilty and being advised of the right to persist in a not-guilty plea.

Error and plainness should have been considered separately. The first two elements of plain-error review are analytically distinct. The reviewing court should determine whether an error occurred and then determine whether the error was plain. *Olano*, 507 U.S. at 732–34. The First Circuit assumed error but then only resolved plainness. That approach left unanswered the prospective question that matters to every future proceeding: may a district court lawfully obtain a guilty plea before providing the Rule 11 warnings?

Deciding the error question would not have required the First Circuit to grant petitioner relief. It could have held that the procedure was erroneous but that the error was not plain when it occurred, did not affect substantial rights, or did not satisfy

Rule 52(b)'s discretionary fourth prong. Instead, the First Circuit left the practice undisturbed and supplied no prospective rule. That disposition is especially problematic where an official script directs district judges to use the challenged sequence.

This case is an ideal vehicle for resolving the question presented. The material facts are undisputed. No factual dispute concerns the order of the hearing. The transcript establishes that the District Court directed the Clerk to proceed; The Clerk asked Petitioner how he pleaded; Petitioner answered “guilty;” the Clerk announced that Petitioner “pleads guilty;” only afterward did the court deliver the Rule 11 advisements and explain the sentencing component of the appeal waiver; and the Court later asked whether Petitioner “still” wished to plead guilty before formally accepting the plea. The legal significance of that undisputed sequence is squarely presented.

The Government defended the challenged sequence. It did not argue that the transcript had been misunderstood. It characterized the initial plea as a “tender” and argued that the procedure complied with Rule 11 because the warnings preceded formal acceptance. That is the precise legal theory presented by the question. Resolution requires no additional fact-finding.

The issue was pressed and passed upon below. Petitioner argued in both his opening and reply briefs that the District Court could not constitutionally elicit his guilty plea before delivering the Rule 11 warnings. The First Circuit expressly considered the claim, rejected petitioner's structural-error contention, applied plain-error review, assumed possible error, and held that any error was not plain. The issue is therefore preserved for this Court's review of the judgment below.

The appeal waiver presents no vehicle impediment. The First Circuit assumed in Petitioner's favor that the appeal waiver did not preclude either appellate claim. That assumption was consistent with its recognition that an appeal challenging the validity of the plea itself is not foreclosed by a waiver contained in the challenged plea. *United States v. Ramos-Mejía*, 721 F.3d 12, 14 (1st Cir. 2013). The Government therefore cannot defend the judgment solely by invoking the waiver. The merits of the Rule 11 question are properly before the Court.

The 60-year sentence demonstrates the importance of giving the warnings before obtaining the plea. Petitioner ultimately received the longest sentence authorized by the two counts: consecutive 30-year terms totaling 60 years.

The plea agreement purported to waive review of every sentence at or below that exact ceiling. Whether Petitioner would retain the right to challenge a life-equivalent sentence was therefore central to the consequences of the agreement.

Yet the court did not explain the waiver until after Petitioner had answered “guilty.” The warning could not inform that initial decision.

The record also demonstrates why a written agreement is not an adequate substitute for timely judicial advice. Rule 11(b)(1)(N) separately requires the court to inform the defendant of, and determine that he understands, the waiver’s terms. The Rule would not impose that personal judicial obligation if a signature on the agreement were sufficient.

The District Court’s oral explanation, moreover, addressed only the waiver of sentencing review. The written agreement additionally purported to waive review of Petitioner’s guilty plea and “any other aspect” of his conviction. But the court never comparably explained that broader language.

Under *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004), Petitioner ultimately bears the burden of showing a reasonable probability that he would not have pleaded guilty absent the Rule 11 error. The strength of the Government’s evidence, dismissal of two counts, signed agreement, and post-advisement confirmations are relevant to that question.

But those considerations concern prejudice, not whether the District Court committed error. This Court can decide the antecedent and nationally important legal question and remand for application of the remaining plain-error requirements.

At a minimum, a defendant facing imprisonment for the remainder of his natural life should receive the court's explanation of the rights and appellate review surrendered by pleading guilty before the court directs him to enter that plea.

This Court should grant review under Rule 10(c). This petition does not manufacture a circuit conflict where none has yet developed. The question appears to have evaded definitive appellate resolution precisely because courts and practitioners have treated the order of plea and advisements as a matter of ceremony rather than constitutional substance.

Supreme Court Rule 10(c), however, expressly recognizes certiorari review where a court of appeals “has decided an important question of federal law that has not been, but should be, settled by this Court,” or has decided a federal question in a manner conflicting with this Court's decisions.

Both considerations are present. First, this Court has never determined whether a district court may obtain and record a guilty plea before giving any Rule 11 warnings, provided that the court delays formal acceptance and later asks whether the defendant adheres to the plea.

Second, the First Circuit's disposition permits a practice that cannot readily be reconciled with *Boykin*, which makes the defendant's knowledge and choice—not the timing of the judge's formal acceptance—the foundation of a valid plea.

Third, the official District of Maine script demonstrates that the question is concrete, recurring, and institutional. Review would not merely correct an isolated error. It would resolve the permissible architecture of federal plea proceedings.

Fourth, the issue affects the mechanism responsible for nearly all federal convictions. Few procedural questions have broader practical significance.

Finally, the issue is exceptionally easy to resolve prospectively. A clear holding that the Rule 11 advisements must precede the first formal request for a defendant's plea would impose no measurable burden. Instead, it would only require that federal courts explain a defendant's rights before asking them to surrender them. Accordingly, this Court should grant certiorari.

POINT II

CERTIORARI SHOULD BE GRANTED TO DECIDE WHETHER A COURT OF APPEALS MAY AFFIRM A LIFE-EQUIVALENT, WITHIN-GUIDELINES SENTENCE WITHOUT MEANINGFULLY REVIEWING WHETHER THE SENTENCE IS “SUFFICIENT, BUT NOT GREATER THAN NECESSARY.”

Substantive-reasonableness review becomes meaningless if the words “within the Guidelines” permit an appellate court to affirm a death-in-prison sentence without examining whether its full duration was necessary. Here, the 60-year sentence imposed on a 30-year-old defendant for sex offenses is not merely lengthy; it is a judicial determination that he should die in prison.

Petitioner does not either minimize the nature of his conduct, or contend that a severe sentence was unwarranted. The question is whether the statutory command of individualized sentencing retains meaningful force when the Guidelines recommend life imprisonment and the sentencing court imposes consecutive statutory-maximum terms that ensure the defendant will die in prison.

The First Circuit answered that question through a two-paragraph summary disposition. It held that petitioner had not identified “anything” suggesting that the District Court improperly balanced the 18 U.S.C. § 3553(a) factors or reached an indefensible result. It reasoned that the seriousness of the offenses, respect for law,

deterrence, and protection of the public supplied a plausible rationale for the sentence. Pet. App. 2a–3a. And it concluded that petitioner “did not entitle himself to a shorter sentence simply by presenting mitigating factors at sentencing.”

That analysis did not meaningfully review whether 60 years—as opposed to 30, 35, 40, or another extremely severe term—was necessary to accomplish the statutory purposes of sentencing. Nor did it address whether the District Court genuinely considered petitioner’s mitigating circumstances, whether the sentence was effectively life imprisonment, whether incapacitation throughout Petitioner’s natural life was necessary, or whether consecutive maximum sentences complied with § 3553(a)’s parsimony command.

The decision thus presents an important question concerning the continued vitality of substantive-reasonableness review: whether a court of appeals may treat the existence of a plausible reason for a severe sentence as sufficient to affirm a life-equivalent term without determining whether its extraordinary length was greater than necessary.

A. Section 3553(a) requires the sentence to be no longer than necessary. Section 3553(a) begins with a controlling limitation. A sentencing court “shall impose a sentence sufficient, but not greater than necessary,” to comply with the purposes of federal sentencing. 18 U.S.C. § 3553(a).

The statute does not merely require a sentence that advances punishment, deterrence, incapacitation, or rehabilitation. Almost any term of imprisonment will advance one or more of those interests to some degree. The statute instead requires the court to impose the least severe sentence sufficient to accomplish them.

The requirement is especially important when the sentence ensures lifelong imprisonment. The difference between 30 and 60 years is not abstract to a 30-year-old defendant. A 30-year term leaves at least a possibility of release at an advanced age. A 60-year term extinguishes that possibility. It converts a severe sentence into a terminal one.

Before making that irreversible choice, the sentencing court should determine why no lesser sentence would adequately punish the offenses, deter comparable conduct, protect the public during the defendant's remaining period of dangerousness, and promote respect for law. The court must do more than establish that the offenses were sufficiently serious to warrant a very long sentence. It must explain why they required imprisonment for the remainder of the defendant's natural life.

Here the District Court found Petitioner's conduct was exceptionally grave. That finding supported a severe sentence. But it did not, without further analysis, establish that every year between the defense request of 30 years and the statutory maximum of 60 years was necessary.

A court does not satisfy the parsimony command merely by identifying legitimate sentencing objectives. It must connect the chosen duration to those objectives and determine that a materially shorter sentence would be insufficient. Otherwise, the phrase “but not greater than necessary” performs no work.

The First Circuit’s review conflicts with this Court’s sentencing framework. This Court’s post-*Booker* decisions establish three relevant principles. First, the Guidelines are advisory. A properly calculated range is the “starting point and the initial benchmark,” but the sentencing court may not treat it as controlling. *Gall v. United States*, 552 U.S. 38, 49–50 (2007).

Second, the sentencing court must make an individualized assessment based on all the circumstances and adequately explain the selected sentence. *Gall v. United States*, 552 U.S. at 50. The explanation must be sufficient to permit meaningful appellate review. *Id.*

Third, appellate courts may apply a nonbinding presumption of reasonableness to a within-Guidelines sentence, but that presumption is an appellate presumption only. *Rita v. United States*, 551 U.S. 338, 347–51 (2007). It does not relieve the sentencing court of its obligation to consider the defendant’s circumstances or convert the Guidelines into a substitute for individualized judgment. *Id.* at 351.

The First Circuit’s analysis honored those principles in form but not substance. It recited deferential review, identified several legitimate sentencing objectives, and declared the result defensible. But it never examined whether the District Court sufficiently justified the extraordinary length of the sentence.

A “plausible rationale” standard becomes functionally indistinguishable from an irrebuttable presumption when any reference to offense seriousness and public protection suffices to affirm a life-equivalent, within-Guidelines sentence. Those rationales will exist in nearly every prosecution producing an offense level of 43. If their mere invocation conclusively establishes substantive reasonableness, then the Guidelines—not § 3553(a)—determine the sentence.

Rita permits an appellate presumption because the sentencing judge and Sentencing Commission may independently arrive at the same conclusion. *Rita v. United States*, 551 U.S. at 347. But the presumption remains rebuttable. It cannot mean that every within-range sentence possessing some plausible justification is immune from meaningful examination of its duration.

Gall similarly requires appellate deference, not appellate abdication. *Gall v. United States*, 552 U.S. at 51. Abuse-of-discretion review remains review. It requires the court of appeals to assess the totality of the circumstances and determine whether the chosen sentence falls within the range of reasonable outcomes. *Id.* A court cannot

perform that assessment without confronting the actual magnitude and practical effect of the sentence.

A life-equivalent sentence requires an explanation commensurate with its severity. This Court has recognized that the degree of justification should correspond to the magnitude of the sentencing decision. *Gall v. United States*, 552 U.S. at 50. Although *Gall* discussed variances from the Guidelines, the underlying principle is broader: consequential sentencing choices require reasons adequate to explain their consequences.

The decision to impose a term that guarantees death in prison is among the most consequential choices a sentencing court can make. Such a sentence permanently forecloses any opportunity for the defendant to demonstrate rehabilitation, maturity, medical decline, or diminished dangerousness. It rests on an implicit determination that no future change can justify release.

That determination requires more than a description of the past offense. The seriousness of the offense bears heavily on punishment and deterrence, but a terminal sentence also rests on incapacitation across decades. Section 3553(a)(2)(C) asks for a sentence sufficient “to protect the public from further crimes of the defendant.” That inquiry concerns the risk of Petitioner’s future crimes, not only the depravity of his past conduct.

The District Court identified the need to protect children but did not explain why Petitioner would remain dangerous throughout his seventies and eighties, why a sentence providing release only at an advanced age would be inadequate, or why lifetime supervised release could not mitigate any residual danger following a lengthy prison term.

Petitioner does not contend that a sentencing court must make actuarial findings or predict an exact date on which dangerousness will end. But where the difference between the defense request and the imposed sentence is the difference between possible eventual release and certain death in prison, the court should address why lifelong incapacitation is necessary.

The First Circuit did not require that explanation. It treated the general need to protect the public as sufficient to justify incapacitation for petitioner's entire natural life. That approach effectively presumes lifelong dangerousness from the offense itself and removes the individualized inquiry required by § 3553(a).

The sentencing court was required to meaningfully consider petitioner's individual circumstances. Petitioner presented substantial mitigation. He had no prior criminal convictions and was placed in criminal-history category I. Before his arrest, he had worked as a carpenter, lobsterman, and boat builder. He had graduated from high school and maintained employment.

Petitioner also endured an extraordinarily troubled childhood. He witnessed his father sexually abusing his sister and learned, at approximately 12 years old, that his mother wanted to relinquish him to state custody. As a result, he developed serious substance-abuse problems at an early age, involving alcohol, marijuana, cocaine, crystal methamphetamine, and even heroin.

Petitioner suffered from significant medical conditions, including insulin-dependent Type I diabetes and multiple sclerosis. His diabetes was so severe that it caused episodes of unconsciousness and hospitalization. His multiple sclerosis was equally severe, by affecting his nervous system, impairing his ability to walk, and requiring medication.

Bessey had no prior opportunity to receive meaningful psychological treatment or sex-offender therapy. While detained before sentencing, his conduct was exemplary and supplied at least some objective evidence that he could comply with institutional rules. He accepted responsibility and apologized to his children and their mother.

Clearly, these considerations did not compel leniency. A sentencing court may conclude that extraordinary aggravating circumstances outweigh substantial mitigation. But individualized sentencing requires the court to decide what effect the mitigating evidence has, not merely acknowledge that it exists. *Pepper v. United*

States, 562 U.S. 476, 487–93 (2011), emphasizes the longstanding principle that a sentencing court must possess the fullest information possible about the defendant’s life and characteristics. The purpose of receiving that information is not ceremonial. It must bear upon the selection of an individualized sentence.

Here, the District Court stated that it had considered Petitioner’s history and characteristics but then “reject[ed]” the mitigation “thoroughly as having any effect” on the sentence. That statement raises a question materially different from assigning the mitigation limited weight. It indicates that none of Petitioner’s history, medical condition, lack of prior convictions, institutional conduct, or potential for treatment affected the sentence at all.

A sentencing court has discretion to assign greater weight to aggravating factors. It does not have discretion to eliminate § 3553(a)(1) from the analysis merely because the offense is appalling. The statutory direction to consider “the history and characteristics of the defendant” applies in the most disturbing cases as well as ordinary ones. 18 U.S.C. § 3553(a)(1).

The First Circuit answered that Petitioner “did not entitle himself to a shorter sentence simply by presenting mitigating factors.” That proposition is true but incomplete. Petitioner did not claim an automatic entitlement to a reduction. He

argued that the District Court gave the mitigation no operative weight and failed to explain why a terminal sentence remained necessary despite it.

By recasting that contention as a demand for an automatic reduction, the First Circuit avoided the actual question: whether a sentencing court may acknowledge substantial mitigation yet categorically assign all of it no effect when imposing imprisonment for life.

Consecutive statutory-maximum terms required a distinct justification. The 60-year sentence did not result from the statutory penalty for a single count. Congress authorized a range of 15 to 30 years for each conviction. The District Court reached 60 years only by selecting the maximum on both counts and directing that the terms run consecutively.

That decision contained two distinct discretionary judgments: each offense warranted the maximum 30-year term, and the purposes of sentencing required those maximum terms to run consecutively. The existence of two victims supported separate punishment. But separate punishment does not invariably require consecutive maximum sentences. The court could have imposed partially concurrent terms, partially consecutive terms, or consecutive terms below the maximum. Each alternative would have recognized the existence of two victims while producing a sentence shorter than life.

The District Court stated that the advisory life range “strongly suggest[ed]” consecutive sentences and that the two victims independently supported them. But the Guidelines recommendation could not substitute for an individualized examination of whether 60 years was necessary. Nor did the existence of two victims explain why each count required the statutory maximum.

The First Circuit’s summary affirmance did not separately examine either decision. It concluded that the seriousness of the conduct and other general sentencing purposes supported “consecutive terms at the statutory maximum.” That reasoning treated the maximum and consecutive character of the terms as a single inevitable consequence of the offenses.

Section 3553(a), however, requires more. A sentencing court should explain why the maximum punishment on each count is necessary and why those terms must be accumulated to ensure lifelong incarceration. Otherwise, the advisory life recommendation effectively compels consecutive statutory maxima, contrary to *Booker* and *Gall*.

The sentence’s placement within the Guidelines did not answer whether it was substantively reasonable. The Government emphasized below that the Guidelines recommended life and that Petitioner’s 60-year sentence fell within the resulting range. The First Circuit similarly described the sentence as “within-guidelines.”

That label, however, cannot carry dispositive force. The Guidelines' recommendation of life resulted from an offense level of 43. Once the offense level reached 43, the Guidelines ceased distinguishing among defendants based on the degree by which their circumstances exceeded or fell below that threshold. Every defendant at level 43 receives the same recommendation of life, whether the combined numerical calculation barely reaches 43 or greatly exceeds it.

The Guidelines also do not determine whether a 60-year term is materially different from a shorter term for a particular defendant of a particular age and health. Section 3553(a) assigns that individualized judgment to the sentencing court.

The practical consequences here were extraordinary. A 20-year sentence, the primary defense request, would have released petitioner at approximately age 50. A 30-year sentence, the alternative request, would have permitted release at approximately age 60. A 40-year sentence would have delayed release until approximately age 70. The imposed sentence extends until approximately age 90, assuming Petitioner survives it.

Those alternatives demonstrate why the term "within-guidelines" does not complete the analysis. Every sentence from a lengthy term through death in prison might advance punishment and deterrence. The statutory inquiry is which term is sufficient and no greater than necessary for this defendant.

The question presented is nationally important. The interaction between within-Guidelines deference and life-equivalent sentences affects federal sentencing throughout the country. Whenever the Guidelines recommend life but the statutory maximum for a single count is lower, district courts must decide whether to construct a life sentence through consecutive terms.

Courts of appeals must then decide what substantive-reasonableness review requires. If identifying a plausible rationale is sufficient without examining the necessity of lifelong incarceration, substantive review becomes nominal in the cases where it matters most.

The question does not ask this Court to establish a numerical sentencing rule or substitute its judgment for the District Court's. Rather, it asks the Court to clarify the minimum analysis required before federal courts may impose and affirm a sentence that ensures death in prison.

Specifically, the Court should hold that review of a life-equivalent sentence must address: 1. whether the sentencing court recognized that the term was effectively imprisonment for life; 2. whether the court explained why a materially shorter sentence would not sufficiently accomplish § 3553(a)(2)'s purposes; 3. whether the court meaningfully considered the defendant's nonfrivolous mitigating evidence; 4. whether lifelong incapacitation was justified by an individualized assessment rather

than inferred solely from the offense; and 5. whether consecutive statutory-maximum terms were necessary to produce a sentence no greater than required.

Those requirements follow from the existing statutory framework. They would preserve district-court discretion while ensuring that the parsimony command and substantive appellate review remain meaningful.

This case squarely presents the question. Petitioner preserved his substantive-reasonableness challenge by requesting a materially shorter sentence. *Holguin-Hernandez v. United States*, 589 U.S. 169, 173–75 (2020), holds that a defendant who advocates for a particular, shorter sentence sufficiently informs the court that a longer sentence is greater than necessary. The First Circuit accordingly reviewed the sentence for abuse of discretion rather than plain error.

The practical effect of the sentence is undisputed. Petitioner was approximately 30 years old and received 60 years. The District Court selected the statutory maximum on both counts and imposed the terms consecutively.

The mitigating evidence is also undisputed. The disagreement concerns its legal treatment and the adequacy of the sentencing explanation.

The First Circuit passed directly upon substantive reasonableness. It held that the District Court supplied a plausible rationale and reached a defensible result. The

case therefore presents no preservation or vehicle impediment concerning the standard and substance of appellate review.

The appeal waiver is likewise no obstacle because the First Circuit expressly assumed that it did not apply and decided the sentencing claim on the merits.

This Court can therefore decide whether meaningful substantive-reasonableness review of a life-equivalent sentence requires more than identifying legitimate sentencing considerations that could support a severe term.

The decision below warrants review under Supreme Court Rule 10(c). This argument does not ask the Court to correct an ordinary error in the application of settled law. It presents an important question concerning the content of substantive-reasonableness review following *Booker*, *Rita*, and *Gall*.

The First Circuit’s “plausible rationale” and “defensible result” formulation may be appropriate as a shorthand for ordinary sentencing review. But when applied without further examination to consecutive statutory maxima ensuring death in prison, it risks reducing § 3553(a)’s individualized and parsimony requirements to formalities.

The First Circuit found the sentence reasonable because the offenses were extraordinarily serious and because punishment, deterrence, and public protection supported a severe term. It did not determine, however, why those considerations

required 60 years rather than another exceptionally long sentence. It did not address the sentence's terminal character. It did not address why Petitioner's lack of criminal history, serious illnesses, traumatic upbringing, institutional conduct, and potential for treatment had no effect. It did not assess the necessity of incapacitation into extreme old age. And it did not separately analyze the decision to impose the maximum sentence on each count and run the terms consecutively.

If that review is sufficient, then substantive reasonableness has little operative content whenever the Guidelines recommend life. The sentencing court need only describe the offense, cite legitimate statutory purposes, and impose consecutive maximum sentences. The court of appeals may then affirm because a plausible rationale exists.

That is not the individualized sentencing regime required by § 3553(a), *Rita*, *Gall*, and *Pepper*. The Court should grant review to clarify that deference does not eliminate the duty to determine whether a life-equivalent sentence is greater than necessary. Accordingly, the petition should be granted.

CONCLUSION

This case presents two questions of exceptional importance to the administration of federal criminal justice. First, whether a federal court may obtain and record a defendant's guilty plea before advising him of the constitutional and appellate rights surrendered by that plea. Second, whether a court of appeals may affirm a life-equivalent sentence merely because it can identify a plausible reason for severe punishment, without meaningfully determining whether the full sentence was "greater than necessary" under 18 U.S.C. § 3553(a). Certiorari should be granted to address both questions.

Dated: September 6, 2026
Manhasset, New York

Respectfully Submitted,

/s/ Steven A. Feldman
Steven A. Feldman
Attorney for Petitioner

UNITED STATES
SUPREME COURT

TRAVIS BESSEY,

Petitioner,

v.

CERTIFICATE OF SERVICE

UNITED STATES OF AMERICA,

Respondent.

I, Steven A. Feldman, affirm under oath that, on September 7, 2026, I served a copy of this Petition for a Writ of Certiorari by United States mail on the United States Attorney for the District of Maine, 100 Middle Street, East Tower, 6th Floor, Portland, ME 04101, the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001, and on Travis Bessey, 47967-509, FCI Butner, Old NC Hwy. 75, Butner, NC 27509.

/s/ Steven A. Feldman

Steven A. Feldman