No. 26A518

IN THE

Supreme Court of the United States

CODY DEWAYNE KING,

Applicant,

v.

UNITED STATES,

Respondent.

APPLICATION FOR A FURTHER EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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November 9, 2026

APPLICATION

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Cody King respectfully requests a further 30-day extension of time, to and including December 28, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case. *See* Sup. Ct. R. 30.1. This is King's second extension request.

1. The Sixth Circuit entered judgment on July 28, 2026. *See United States* v. *King*, 184 F.4th 511 (2026); App. 2a. This Court previously extended the time to file the petition from October 26, 2026 to November 25, 2026. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).In the decision below, a panel of the Sixth Circuit erroneously resolved an important issue about the scope of the U.S. Sentencing Commission's statutory authority to impose draconian career offender sentencing enhancements based on prior state law convictions.

2. In 28 U.S.C. § 994(h), Congress instructed that the Commission "shall assure that the guidelines specify a sentence * * * at or near the maximum term authorized" where the defendant has previously been convicted of "an offense described in section 401 of the Controlled Substances Act."

3. Despite the clear cross-reference to the *federal* Controlled Substances Act in § 994(h), in the relevant provision of the Guidelines the Sentencing Commission has provided enhanced penalties for "'controlled substance offense[s]'" under both "federal *or state* law." U.S.S.G. § 4B1.2(b) (emphasis added); *see id.* § 4B1.1(a) & application note 1.

4. Before this Court's decision in *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024), the Sixth Circuit and other courts had concluded that the Sentencing Commission's interpretation of Section 994(h) to include state-law drug offenses was entitled to deference. *See, e.g.*, *United States* v. *Najar*, 225 F.3d 660, at *3 (6th Cir. 2000) (unpublished table decision); *United States* v. *Consuegra*, 22 F.3d 788, 790 (9th Cir. 1994).

5. Despite recognizing that the Sentencing Commission's interpretation is no longer entitled to a deferential review after *Loper Bright*, the Sixth Circuit nevertheless affirmed the application of the enhancement to Applicant based on prior state law drug convictions. App. 6a-7a. The court recognized Section 994(h) "doesn't explicitly mention state offenses" and that Congress generally "says so explicitly" when it wants "a federal statute to reach comparable state offenses." *See* App. 9a n.2. Nevertheless, relying heavily on "context," the Sixth Circuit concluded that Congress intended to reach state law offenses in addition to federal ones. *See* App. 5a-9a.

6. Good cause exists for a further 30-day extension of the time to file a certiorari petition. Counsel have a number additional commitments during the briefing period, including: (1) an opening brief due in *Kansas ex rel. Kobach* v. *Snap*,

No. 26-3181 (10th Cir.), due November 9, 2026; (2) preparation for oral argument in *Flynn-Murphy* v. *Jaguar Land Rover N. Am. LLC*, No. 26-1195 (3d Cir.), scheduled for November 17, 2026; (3) a motion to dismiss in *In re WilmerHale Data Breach Litigation*, No. 1:26-cv-2470 (D.D.C.), due November 18, 2026; (4) a petition for a writ of certiorari due in *United States* v. *Arthur*, No. 24-4306 (4th Cir.), due November 19, 2026; (5) a reply brief due in *JMB Shipping ATB 205, LLC et al.* v. *Unico Marine Services LLC*, No. 26-1957 (2d Cir.), due November 27, 2026; (6) a reply brief in *Ford Motor Company* v. *Mikhov*, No. 26-2317 (9th Cir.), due December 7, 2026; (7) an opening brief in *Gustafson* v. *Washington Nationals Baseball Club, LLC*, No. 26-7065 (D.C. Cir.), due December 7, 2026 (8) a reply brief in support of a petition for a writ of certiorari in *Novartis* v. *Fitch*, No. 26-457, due December 9, 2026; (9) a motion to dismiss in *Performance Pricing Holdings, LLC* v. *Google*, No. 1:26-cv-08815 (S.D.N.Y.), due December 14, 2026; (10) an reply brief due in *Kansas ex rel. Kobach* v. *Snap*, No. 26-3181 (10th Cir.), due December 30, 2026; (11) a response brief due in *Association for Education Fairness* v. *Montgomery County Board of Education*, No. 26-12, due January 19, 2027.

7. An additional extension will not prejudice the government. Mr. King was sentenced on March 5, 2025. App. 15a. He is currently incarcerated and serving his 188-month sentence pending appeal. *King*, 184 F.4th at 514.

8. For the foregoing reasons, Applicant respectfully requests that the Court extend the time to file a certiorari petition to and including December 28, 2026.

Respectfully Submitted,

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November 9, 2026

APPENDIX

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APPENDIX A

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 26a0207p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CODY DEWAYNE KING,

Defendant-Appellant.

No. 25-5195

Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.
No. 1:24-cr-00003-1—Curtis L. Collier, District Judge.

Argued: April 29, 2026

Decided and Filed: July 28, 2026

Before: CLAY, McKEAGUE, and NALBANDIAN, Circuit Judges.

COUNSEL

ARGUED: Jennifer Niles Coffin, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Chattanooga, Tennessee, for Appellant. Brian Samuelson, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee. **ON BRIEF:** Jennifer Niles Coffin, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Chattanooga, Tennessee, for Appellant. Debra A. Breneman, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee.

OPINION

NALBANDIAN, Circuit Judge. Police arrested Cody King for dealing a prolific amount of fentanyl and he ended up pleading guilty to a federal drug crime. Before sentencing, he moved for a downward variance on policy grounds. The district court denied his motion and sentenced him as a career offender because of his prior state-law convictions. Now King argues that the career-offender guideline is invalid because the Sentencing Commission lacked the statutory authority to include state-law convictions as career-offender predicates. He also contends that his sentence is procedurally infirm and substantively unreasonable. But we find his challenges meritless, so we AFFIRM.

I.

King has spent most of his adult life either dealing drugs or serving prison terms for drug dealing. In 2018, King pleaded guilty to two state-law felony counts of possessing meth for resale. A Tennessee court sentenced him to eight years in prison, though the state paroled him after five. So in 2023, King was back out on the street. And it didn't take long for him to reacquaint himself with his old profession. The police found this out later that year when they pieced together clues they found in King's abandoned car—his iPhone and his Glock pistol—that led to his arrest. And when they arrested him, they realized that he was moving volume. He had a drug ledger, digital scales with white residue, about 1,200 fentanyl pills, about 48 grams of high-purity meth, and roughly three grams of fentanyl powder. King confessed to possessing about a thousand fentanyl pills and an ounce of meth. He explained that he consumed about 20 to 30 pills a day and bought about a thousand more "every day or every other day," which maps on to his admission that he sold "400 to 500 fentanyl pills a day."

II.

A federal grand jury charged King with possessing a firearm as a felon, possessing with intent to distribute at least five grams of meth, and possessing with intent to distribute at least 40 grams of a fentanyl mixture. *See* 18 U.S.C. § 922(g); 21 U.S.C. § 841(a)(1), (b)(1)(B).

King struck a plea agreement with the government. Under the agreement, he pleaded guilty to the fentanyl count. In exchange, the government dismissed the other two counts, opted not to file a notice of enhancement under 21 U.S.C. § 851 (given King's prior convictions), and dismissed the section of the indictment referring to "enhanced penalties."

King moved for a variance shortly before his sentencing. His argument combined mitigating circumstances with a policy-based challenge. He pointed to his harsh upbringing, in which his father "[g]roomed" him to sell drugs. R.44, Mot. for Variance, PageID 175. And he highlighted his middling criminal history: two drug convictions shortly after his high school graduation. So he argued that he wasn't the type of career-offender recidivist that Congress and the Commission had in mind.

At sentencing, King sought to escape a Guidelines range of 188 to 235 months' imprisonment, which reflected his career-offender status and the drug quantities he trafficked. He didn't object to the math and conceded that he's "technically a career offender." R.55, Sent'g Tr., PageID 387, 389. But he raised his youth, his disadvantaged upbringing, and the time gap between his old convictions and his current offense as mitigating circumstances. He put it plainly: The career-offender guideline is "aimed at a particular type [of] person," and he's "[not] that guy." *Id.* at PageID 389. So King asked the district court to "take a policy disagreement with the . . . Guidelines." *Id.* at PageID 399–400. He also argued for the first time that the career-offender guideline covers only federal drug priors. He suggested that the Commission exceeded its statutory authority by looping in state offenses. And he noted that the Commission was considering an amendment to correct this purported overreach.

The district court denied King's motion for a downward variance and applied the career-offender guideline. It acknowledged King's difficult upbringing, his "brain development," and the "long interval between [his] initial crimes and this crime," but concluded that the seriousness of his drug trafficking and considerations of just punishment, respect for the law, deterrence, and public safety justified a within-Guidelines sentence. *Id.* at PageID 403–06; *see* 18 U.S.C. § 3553(a). And although the district court recognized its power to "disagree with the [G]uidelines on policy issues," R.55 at PageID 417, it opted to "abide by the law as it exists," *id.* at PageID 408. So it sentenced King to a bottom-of-the-Guidelines 188 months' imprisonment.

III.

King appealed. He raises three challenges to his sentence. First, he contends that the career-offender guideline shouldn't extend to state-drug priors. Second, he argues that the district court procedurally erred in sentencing him. And third, he thinks his sentence is substantively unreasonable. None of these challenges holds water. We'll address each in turn.

A.

On King's view, the Commission exceeded its statutory authority by issuing the career-offender guideline. The guideline imposes enhanced penalties on defendants who have "at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1(a). "[C]ontrolled substance offense" covers both federal and state offenses. *Id.* § 4B1.2(b). King thinks that definition exceeds Congress's command in 28 U.S.C. § 994(h). That statute charges the Commission with "assur[ing] that the guidelines specify a sentence . . . at or near the maximum term" for defendants "previously . . . convicted of two or more" offenses "described in" federal drug statutes. 28 U.S.C. § 994(h); *see* 21 U.S.C. §§ 841, 952(a), 955, 959; 46 U.S.C. §§ 70501–08.

According to King, "described in" refers only to the specific federal offenses listed in the statute. King argues that this language isn't emphatic enough to extend to state offenses—and that statutory context shows that it doesn't. In other words, King thinks that Congress limited the Commission to designating only those enumerated federal offenses as career-offender predicates. And, consequently, the Commission was not allowed to include state-law prohibitions that applied to conduct that was similar to the conduct prohibited by the federal statutes.

But we disagree.

To start, the parties dispute whether King preserved this argument for review.[1] King said he did enough by raising his relevant authority and making a general argument for "invalidity" of

[1]At oral argument, the government stressed that King waived this argument because he agreed "not to challenge" his career-offender status under the Guidelines. *See also* R.23, Plea Agreement, PageID 48. But we decline to interpret that provision of the plea agreement—or hold it against King—because the government itself didn't mention that provision at sentencing or in its appellate brief.

the guideline. R.55 at PageID 400. The government counters that, at sentencing, he didn't challenge the career-offender guideline itself on the theory that Congress authorized enhancements only for federal drug priors. He just packaged that point as one reason why the district court should "take a policy disagreement with the . . . Guidelines." *Id.* ("[W]e're in a circumstance now where I believe it's an appropriate one for the Court to consider based on policy disagreement, particularly when . . . there is a proposed amendment."). And that the reference to the guideline's purported "invalidity" was only in passing. *Id.*

If the government is correct, King would've forfeited his argument. And this would call for plain-error review. But the first prong of plain-error review is that there be an error. *United States v. Bauer*, 82 F.4th 522, 530 (6th Cir. 2023). And we don't see any error—much less a plain one—in the district court's application of the career-offender guideline. So King's purported forfeiture doesn't matter.

In this case, Congress's reference to offenses "described in" federal drug statutes covers state-law offenses which map onto their federal counterparts. *See* 28 U.S.C. § 994(h). We start by noting that we've already read § 994(h) as authorizing the Commission to include state-law priors—albeit in an unpublished opinion. *United States v. Najar*, 2000 WL 799331, at *3 (6th Cir. June 9, 2000). The *Najar* court relied on legislative history and policy considerations to reach the correct result: It read "described in" as "reasonably includ[ing] state convictions for conduct criminalized under the federal statutes mentioned." *Id.*; *see also United States v. Williams*, 53 F.3d 769, 772 (6th Cir. 1995) ("Congress's mandate directed the Commission to accord career offender treatment to whatever drug-related crimes the Commission believed to be on a par with the [enumerated] offenses." (citation modified)).

Najar is instructive, but we won't follow its reasoning to a T. The *Najar* court "defer[red]" to the Commission's interpretation of § 994(h). 2000 WL 799331, at *3. And that doesn't jibe with the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which ended *Chevron* deference. Now, courts "may look to agency interpretations . . . for guidance, but [they] do not defer to the agency." *Seldon v. Garland*, 120 F.4th 527, 531 (6th Cir. 2024) (citation modified). The Commission is no exception. *Rutherford v. United States*, 508 U.S. ___, 146 S. Ct. 1320, 1334 (2026) ("[T]he Commission's policy

statements must be consistent with the governing statute, and courts have a duty to independently interpret the statute and effectuate the will of Congress." (citation modified)); *see also United States v. Bricker*, 135 F.4th 427, 439–41 (6th Cir. 2025) (noting the "duty" to "independently interpret the statute" rather than "defer" to the "Commission's view of a statute" (citation modified)).

So instead of deferring to the Commission, we base our decision today solely on text and context.

Consider the statute's plain text. An "offense" is a "violation of the law; a crime." *Offense*, Black's Law Dictionary (12th ed. 2024). And to "describe" is "[t]o give a verbal account of." *Describe*, Webster's II New Riverside University Dictionary 366 (2d ed. 1984). So read naturally, § 994(h) refers to the *conduct* "described in" federal statutes—not to the statutes themselves. We're mindful, however, that "'describe' takes on different meanings in different contexts," and we don't "interpret . . . words in a vacuum." *Torres v. Lynch*, 578 U.S. 452, 459 (2016) (citation modified). We must therefore read § 994(h) "with reference to the statutory context." *Id.*

And statutory context drives the point home. Consider 18 U.S.C. § 3559(e)(3). There, Congress referred to offenses "described in" two federal sex-offense statutes specifically but carved out acts "not . . . punishable by more than one year in prison" under state law. *Id.* That carve-out wouldn't make sense if "described in" didn't reach underlying conduct—regardless of which sovereign brought the charges. In addition, Congress chooses narrower language when it refers exclusively to federal crimes. *See, e.g.*, 18 U.S.C. §§ 924(e)(2)(A)(i) (referring to "an offense *under* the Controlled Substances Act" (emphasis added)), 1961(1) (referring to acts "indictable under" various federal laws).

We also note that every other circuit to consider the question has reached the same conclusion. And although some of these decisions have relied on deference to the Commission to reach that conclusion, many have decided the issue largely on textual grounds. *See, e.g.*, *United States v. Jones*, 15 F.4th 1288, 1294 (10th Cir. 2021) ("[N]othing in § 994(h) prohibits the Commission from recommending an enhanced sentence for a state-law controlled-substance

offense."); *United States v. Gonsalves*, 121 F.3d 1416, 1419 (11th Cir. 1997) (state convictions are "within the statutory mandate"); *United States v. Hightower*, 25 F.3d 182, 185 (3d Cir. 1994) ("Congress referred to offenses 'described in'—not convictions 'obtained under'—those statutes." (citation modified)); *United States v. Consuegra*, 22 F.3d 788, 790 (8th Cir. 1994) (same); *United States v. Rivera*, 996 F.2d 993, 995–96 (9th Cir. 1993) (same); *United States v. Beasley*, 12 F.3d 280, 283 (1st Cir. 1993) (Breyer, J.) (same). In *Beasley*, for example, then-Judge Breyer explained that a "literal reading of the statute" compels that result. 12 F.3d at 283.

King disagrees, hanging his hat on *United States v. LaBonte*, 520 U.S. 751 (1997). In that case, the Supreme Court rejected the Commission's reading of another phrase in § 994(h). But *LaBonte* isn't relevant. King cites the general proposition that "[t]he Commission has no authority to stray from plain language in 28 U.S.C. § 994." Appellant Br. at 34. That's undoubtedly true. But he doesn't explain *how* the Commission strayed from its mandate in this case—or how *LaBonte* illustrates that point. Indeed, a careful examination of *LaBonte* clarifies that the Commission misread its mandate in that case but not here.

LaBonte concerned § 994(h)'s requirement that the Commission craft a guideline "at or near the maximum term authorized" for certain repeat offenders. The Commission read that phrase to refer to the base sentence before statutory repeat-offender enhancements. *LaBonte*, 520 U.S. at 754–55; *see* 21 U.S.C. §§ 841, 851. Why? Because the Commission understood § 994(h) to cover what it viewed as a single category: repeat offenders who received enhancement notices under another statute and those who didn't. *LaBonte*, 520 U.S. at 759; *see* 21 U.S.C. § 851. So, on its view, the relevant "maximum" sentence that could apply to that whole category was the pre-enhancement sentence. The Supreme Court disagreed. It explained that Congress carefully distinguished defendants who received enhancement notices from those who didn't by prescribing a stiffer penalty to the former. *See LaBonte*, 520 U.S. at 759; 21 U.S.C. § 841(b)(1)(C). And it hitched the career-offender mandate to that harsher punishment. *See LaBonte*, 520 U.S. at 759. So the Commission bucked its statutory mandate by failing to craft a guideline that reflected post-enhancement sentences.

This case isn't *LaBonte*. The difference turns on context. The statutory maximum for certain drug traffickers with a *single* qualifying prior drug conviction is 30 years. 21 U.S.C. § 841(b)(1)(C). Congress charged the Commission with crafting a guideline to punish defendants with *two* such convictions. 28 U.S.C. § 994(h). But the Commission's view in *LaBonte* was that Congress didn't align the career-offender guideline with the enhanced-penalty "category" because the government must file an enhancement notice to seek a longer sentence. 520 U.S. at 759. That view exalted a procedural technicality over statutory context. Here, by contrast, reading "described in" to cover state-law priors mirrors Congress's consistent usage. *See, e.g.*, 18 U.S.C. § 3559(e) (referring to offenses "described in" federal sex-offense statutes and carving out certain state offenses); *cf., e.g.*, 18 U.S.C. §§ 924(e)(2)(A)(i) (referring to "an offense under the Controlled Substances Act"), 1961(1) (referring to acts "indictable under" various federal laws).

So the Commission didn't overstep. The career-offender guideline comports with Congress's broad command.[2] *See Williams*, 53 F.3d at 772 (Congress broadly sought to impose "substantial prison terms" on "repeat drug traffickers").

[2]To King's credit, 28 U.S.C. § 994(h) doesn't explicitly mention state offenses. And in other statutes in different contexts, when Congress wants "an offense described in" a federal statute to reach comparable state offenses, the language sometimes says so explicitly. *See, e.g.*, 18 U.S.C. § 3559(c)(2)(F) (explaining that for purposes of mandatory life imprisonment, "the term 'serious violent felony' means . . . *a Federal or State offense*, by whatever designation and wherever committed, consisting of murder (*as described in* [18 U.S.C. §] 1111); manslaughter other than involuntary manslaughter (*as described in* [18 U.S.C. §] 1112)," or a number of other crimes "as described in" federal statutes (emphasis added)); 8 U.S.C. § 1101(a)(43) (listing a number of offenses "described in" federal statutes and clarifying that "[t]he term [aggravated felony] applies to an offense *described in* this paragraph whether in violation of *Federal or State law*" (emphasis added)). But even on King's view that 28 U.S.C. § 994(h) reaches only federal offenses, Congress merely instructed the Sentencing Commission to "assure" that these prior federal convictions count toward career-offender status. Congress didn't cabin the Sentencing Commission's general authority to issue guidelines on other prior offenses that should also count toward a defendant's career-offender status. "Section 994(h) provides the *minimum obligation* of the Commission and does not prohibit the inclusion of additional offenses that qualify for [enhanced penalties]." *Williams*, 53 F.3d at 772 (emphasis added) (quoting *United States v. Damerville*, 27 F.3d 254, 257 (7th Cir. 1994)); *see also Jones*, 15 F.4th at 1294 (explaining that § 994(h) "does not represent an exclusive list of crimes for which enhancement under the career offender guidelines may be imposed," and "§ 994(a) . . . gave the Sentencing Commission . . . the authority to determine what constitutes a 'controlled substance offense' for the purpose of enhancing a career offender's sentence" (citation modified)). Simply put, even on King's view, 28 U.S.C. § 994(h) sets the floor of what the Sentencing Commission must include with regard to prior convictions, not a ceiling. So the Sentencing Commission can add state-law offenses as countable prior convictions for career-offender status under its general power to promulgate guidelines. *See* 28 U.S.C. § 994(a).

B.

Next, King argues that his sentence isn't procedurally reasonable. He lodged a procedural-reasonableness objection at sentencing, so we review his challenge for an abuse of discretion. *United States v. Gardner*, 32 F.4th 504, 529 (6th Cir. 2022). That means our task is to ferret out any "significant procedural error." *United States v. Johnson*, 79 F.4th 684, 705 (6th Cir. 2023) (citation modified). A district court can commit a significant procedural error by "failing to consider the § 3553(a) factors" or "failing to adequately explain the chosen sentence." *Gall v. United States*, 552 U.S. 38, 51 (2007).

On King's view, the district court "committed significant procedural error" because it "refused to consider" his argument for a downward variance based on a proposed amendment[3] that would've limited the guideline to federal priors. Appellant Br. at 48. He thinks that the district court "abdicated its duty to consider relevant § 3553(a) factors animating the proposed amendment." *Id.* The court did so, he posits, because it announced a "categorical rule" against considering the proposed amendment's rationale in its § 3553(a) analysis and erroneously relied on the possibility that any final amendment would have retroactive effect. *Id.* at 48–53.

In other words, King invites us to apply tomorrow's Guidelines today. We decline.

First, it's not clear that the district court even needed to address the proposed amendment. *See, e.g.*, *United States v. Penaloza*, 648 F. App'x 508, 526 n.11 (6th Cir. 2016) (noting that "the proper venue for such an argument" is a motion to modify an imposed prison term under 18 U.S.C. § 3582(c)). But it did so anyway. It predicted that an eventual amendment would have retroactive effect—and sought assurance that it could shorten King's sentence as a matter of discretion regardless.

[3]That amendment failed. *See* U.S.S.G. § 4B1.2 (2025). As did another federal-only amendment proposed this year. *See* U.S. Sent'g Comm'n, Proposed Amendments to the Sentencing Guidelines 20 (Jan. 2026) (describing amendment); U.S. Sent'g Comm'n, Amendments to the Sentencing Guidelines (no change to the career-offender guideline for 2026).

And second, the district court exhaustively considered the § 3553(a) factors. It homed in on the nature of the offense ("thousands upon thousands . . . have been killed from ingesting fentanyl" and King's crime was "motivated by greed"), King's history ("brain development, violence in the household, and . . . [the] long interval between the initial crimes and this crime"), the offense's severity, as well as considerations of just punishment and respect for the law (trafficking "specifically fentanyl" is a "serious . . . offense"), the need for deterrence ("[o]ther people in Mr. King's situation . . . should look at Mr. King and say, 'Because of what Mr. King got, I will not do it'"), and the need to protect the public ("[o]ne predictor of future crimes is what they've done in the past"). R.55 at PageID 403–06 (citation modified). That's plenty. *See United States v. Sweeney*, 891 F.3d 232, 239 (6th Cir. 2018) (a district court needn't "engage in a formulaic point-by-point refutation of a defendant's mitigation arguments" so long as it "conducts a meaningful sentencing hearing and truly considers the defendant's arguments" (citation modified)).

So we don't see any procedural error in King's sentence.

C.

Finally, King contends that his sentence is substantively unreasonable. We review substantive-reasonableness challenges, which are claims that a sentence is too long, for an abuse of discretion regardless of whether the defendant raised the challenge before the district court. *Gardner*, 32 F.4th at 530; *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018).

"A sentence will be found to be substantively unreasonable when the district court selects the sentence arbitrarily, bases the sentence on impermissible factors, fails to consider pertinent § 3553(a) factors or gives an unreasonable amount of weight to any pertinent factor." *United States v. Sexton*, 512 F.3d 326, 332 (6th Cir. 2008) (citation modified). Here, because the district court imposed a within-Guidelines sentence, we afford King's sentence a presumption of reasonableness. *See United States v. Vonner*, 516 F.3d 382, 389 (6th Cir. 2008) (en banc).

King faults the district court for failing to justify his sentence "wholly independent of the [career-offender] guideline." Appellant Br. at 54. His argument unfolds in two parts. First, he insists that his within-Guidelines sentence isn't presumptively reasonable because the

Commission opposes applying the career-offender guideline to "offenders like [him]." *Id.* at 55. In this vein, he cites a decade-old Career Offender Report published by the Commission which relied on recidivism statistics to recommend that the guideline apply to violent criminals but not to career drug traffickers. And he notes that the Judicial Conference's Criminal Law Committee echoed that view in 2025. Second, he takes the district court to task for purportedly failing to justify his sentence under the § 3553(a) factors.

We disagree.

First, King's bottom-of-the-Guidelines sentence runs headlong into the presumption of reasonableness. We routinely reject efforts to amend the Guidelines by citing crime statistics. *See, e.g.*, *United States v. Hymes*, 19 F.4th 928, 936 (6th Cir. 2021) ("[W]e have never adopted the view that district courts *must* consider national sentencing statistics . . . ."); *United States v. Barcus*, 892 F.3d 228, 235 (6th Cir. 2018) ("[C]hanging the Guidelines to correspond to new empirical data is in the hands of the Commission, not this court."). Ditto for defendants who read the Commission's tea leaves to arrive at their preferred versions of the Guidelines. *See United States v. Cooper*, 739 F.3d 873, 883 (6th Cir. 2014) ("We have never held . . . that a district court must depart downward from a guidelines-recommended sentence" because, though "[t]he career-offender guidelines may be less than perfect, . . . district courts are best positioned . . . to sift through the facts of an individual case and determine an appropriate sentence."); *United States v. Blackman*, 678 F. App'x 400, 400–01 (6th Cir. 2017) (considering the *same* report King cites and concluding that "while sentencing judges may certainly consider arguments based on research compiled by the Commission pursuant to its mission, the recommendations are not law at this point").

And second, we reject King's attempt to repackage a procedural challenge into a substantive one. To the extent King argues that his sentence is substantively unreasonable because the district court skimped on its § 3553(a) analysis, his argument is misplaced. That point sounds in *procedural* reasonableness. *See United States v. Hawkins*, 165 F.4th 442, 449 (6th Cir. 2026) (procedural reasonableness requires "adequate consideration [of] the § 3553(a) factors." (citation modified)). And we already explained that the district court adequately justified its sentence. Relatedly, if King's argument is that the district court

should've balanced the factors differently, that's simply "beyond the scope of [this Court's] review." *Sexton*, 512 F.3d at 332 (quoting *United States v. Ely*, 468 F.3d 399, 404 (6th Cir. 2006)).

So we reject King's substantive-reasonableness challenge.

IV.

For these reasons, we AFFIRM.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION

UNITED STATES OF AMERICA

v.

CODY DEWAYNE KING

USM#96827-510

JUDGMENT IN A CRIMINAL CASE

Case Number: **1:24-CR-00003-CLC-CHS(1)**

Clayton Maxwell Whittaker
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s): **Three of the Indictment.**
☐ pleaded nolo contendere to count(s) which was accepted by the court.
☐ was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense	**Date Violation Concluded**	**Count**
21 U.S.C. § 841(a)(l) and 21 U.S.C. § 841(b)(l)(B)	12/05/2023	3
Possession with the Intent to Distribute 40 Grams or More of Fentanyl (Career Offender)		

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. § 3553.

☐ The defendant has been found not guilty on count(s).
☒ All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

March 5, 2025
Date of Imposition of Judgment

/s/
Signature of Judicial Officer

Curtis L. Collier, United States District Judge
Name & Title of Judicial Officer

March 6, 2025
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

188 months. **This sentence shall run consecutively to the sentence imposed for the probation revocation in Docket Number 18-CR-264 and to any anticipated sentences imposed in the defendant's pending charges in the East Ridge City Court, Docket Numbers 167045-167048 and 168808.**

☒ The court makes the following recommendations to the Bureau of Prisons: **The Court recommends that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program.**

The Court also recommends that the defendant undergo a mental health evaluation and receive any treatment deemed appropriate.

Lastly, the Court recommends that defendant be placed at a facility where the defendant can earn wages while in the custody of the Bureau of Prisons.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on

to ,

at ,

with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **four (4) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentencing of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant must participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

2. The defendant must participate in a program of mental health treatment, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

3. The defendant must waive all rights to confidentiality regarding mental health and substance abuse treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the treatment providers.

4. The defendant must submit his property, house, residence, vehicle, papers, computers, or office, to a search conducted by a United States Probation Officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when a reasonable suspicion exists that the defendant has violated a condition of his supervision, and the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment **
TOTALS	$100.00	$.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately, balance due
☐ not later than , or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: **The defendant shall forfeit to the United States the defendant's interest in property as specified in the Notice of Forfeiture**.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.