UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2504

UNITED STATES OF AMERICA

v.

HECTOR CRUZ CIPRIAN,
Appellant

On Appeal from the U.S. District Court, D.N.J.
Judge Jamel K. Semper, No. 2:24-cr-00781-001

Before: HARDIMAN, MCKEE, and AMBRO, *Circuit Judges*
Submitted: Nov. 16, 2026; Filed: November 18, 2026

NONPRECEDENTIAL OPINION*

HARDIMAN, *Circuit Judge*.

Hector Cruz Ciprian appeals his judgment of sentence imposed on revocation of his supervised release. We will affirm.

I

In 2021, Cruz Ciprian, a native and citizen of the Dominican Republic, pleaded guilty in the United States District Court for the District of Massachusetts to false representation of a social security number and aggravated identity theft in violation of 42 U.S.C. § 408(a)(7)(B) and 18 U.S.C. § 1028A(a)(1).

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* This disposition is not an opinion of the full Court and pursuant to Third Circuit I.O.P. 5.7 does not constitute binding precedent.

The District Court sentenced Cruz Ciprian to 30 months' imprisonment and three years' supervised release. One condition of his supervised release prohibited him from returning to the United States, if deported, "without prior permission of the Secretary of the Department of Homeland Security." App. 11. In August 2022, after completing his term of imprisonment, Cruz Ciprian was deported to the Dominican Republic.

Cruz Ciprian had unlawfully returned to the United States by 2023. In July 2024, U.S. Customs and Border Protection officers arrested him at Newark Liberty International Airport, and a grand jury in the United States District Court for the District of New Jersey indicted him on charges of illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(1). Citing that criminal charge, his probation officer petitioned for revocation of his supervised release. In February 2025, Cruz Ciprian pleaded guilty to illegal reentry and made his initial appearance on the revocation petition.

In July 2025, the District Court held back-to-back sentencing hearings on the supervised release violation and the illegal reentry conviction. Each hearing had its own case number and transcript, and the second hearing started immediately after the first. For the supervised release violation, the Government recommended a sentence within the Guidelines range, which was eight to 14 months. Defense counsel requested a sentence of time served, which "would be about 14 months." App. 64.

Before the Court pronounced sentence on the supervised release violation, the Court engaged in the following exchange with counsel for Cruz Ciprian:

> COURT: Does Mr. Ciprian wish to address the Court on this matter or does he want me to just roll into sentencing?

DEFENSE COUNSEL: Well, Your Honor, given that we probably have—that we and the government probably have more arguments to make—

COURT: You'll save your water.

DEFENSE COUNSEL: Yeah, but I mean, Mr. Cruz—

COURT: I understand.

DEFENSE COUNSEL: —Mr. Cruz—I just worry about him being confused if he's asked to speak now. He's certainly expressed to me that he's very sorry for violating his terms of supervised release.

COURT: And just for clarity purposes, he is not confused about what's happening today with respect to sentencing for violation of supervised release and sentencing for the offense he pled guilty to; correct?

DEFENSE COUNSEL: Not at all, Your Honor.

COURT: But I understand his position. Do you want to talk to him briefly or I can just roll into it?

INTERPRETER: I'm sorry, Your Honor. Let me go over there.

(Off-the-record discussion between defendant and his counsel.)

. . .

DEFENSE COUNSEL: Your Honor, Mr. Cruz waives his right to allocute on the [violation of supervised release].

COURT: Thank you, sir.

App. 64–65. The Court then found that Cruz Ciprian violated his supervised release, revoked his term of supervision, and sentenced him to 14 months' imprisonment to run consecutive to any previous sentence.

Before transitioning to sentencing on the illegal reentry conviction, the Court added that "[w]e are going to give a sentence coming up now; so I just want the record to be clear it is the Court's intent that this violation of supervised release be consecutive to what the

Court will impose next." App. 67. Defense counsel objected that it was "premature to rule" that the supervised release revocation sentence would run consecutive to "a sentence that Your Honor has not yet imposed." App. 67–68. The Court clarified that, "when we get to the next part of the sentencing I will hear you. To the extent that you say something that persuades the Court, I will entertain that; but that is the Court's position and that is the basis for its sentencing with respect to the [violation of supervised release]." App. 68. The Government took no position on whether the sentences for violation of supervised release and the illegal reentry conviction should be consecutive.

The District Court then proceeded to sentencing on the illegal reentry conviction. Given Cruz Ciprian's extensive criminal history, his Guidelines range was 24 to 30 months' imprisonment and up to three years' supervised release. The Government recommended a sentence within the Guidelines. Counsel for Cruz Ciprian again requested a time-served sentence (about 14 months' imprisonment). The Court then stated: "Mr. Ciprian, you have the right to address the Court and to speak on your own behalf. . . . I see you rising. I'll hear from you, sir." App. 97. Cruz Ciprian then gave a lengthy allocution, taking responsibility and expressing regret.

The District Court rejected Cruz Ciprian's request for a downward variance and sentenced him to 30 months' imprisonment, to run consecutive to the 14-month sentence it had imposed for the supervised release violation.

Cruz Ciprian timely appealed only his revocation sentence.

II[1]

A

Cruz Ciprian first argues that the District Court erred by failing to personally address him and advise him of the right to allocute before imposing sentence for his violation of supervised release. Because Cruz Ciprian did not raise this objection during his violation of supervised release sentencing, we review for plain error. *United States v. Flores-Mejia*, 759 F.3d 253, 255 (3d Cir. 2014) (en banc). To obtain relief, Cruz Ciprian must show: "(1) there was an 'error'; (2) the error was 'plain'; (3) the error prejudiced or 'affect[ed] substantial rights'; and (4) not correcting the error would 'seriously affect[] the fairness, integrity or public reputation of judicial proceedings.'" *United States v. Greenspan*, 923 F.3d 138, 147 (3d Cir. 2019) (quoting *United States v. Olano*, 507 U.S. 725, 732, 734–36 (1993) (alterations in original)).

A district court's failure to personally address a defendant when inviting him to allocute is generally plain error. *Greenspan*, 923 F.3d at 156. The court must "unambiguously address . . . the defendant" and "leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing." *United States v. Adams*, 252 F.3d 276, 279 (3d Cir. 2001) (citation and internal quotation marks omitted). To be plain, an error must be "obvious on the face of the record." *Greenspan*, 923 F.3d at 156; *see also Puckett v. United States*, 556 U.S. 129, 135 (2009). Here, the Court made a

[1] The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

third-person invitation for Cruz Ciprian to allocute, to which his counsel responded. After an off-the-record discussion with Cruz Ciprian assisted by an interpreter, his counsel represented to the Court that Cruz Ciprian waived his right to allocute at that time and would allocute during sentencing on the illegal reentry conviction. Although we have no direct precedent for this type of allocution error, we assume that the Court's failure to unambiguously address Cruz Ciprian personally was plain error.

It is not clear that this error affected Cruz Ciprian's "substantial rights." We presume prejudice when a defendant shows an allocution error "could have played a role in the district court's sentencing decision." *United States v. Plotts*, 359 F.3d 247, 249–50 (3d Cir. 2004) (quoting *Adams*, 252 F.3d at 287) (internal quotation marks omitted). But "[w]e have never held this presumption is irrebuttable." *Greenspan*, 923 F.3d at 156. The Government seeks to rebut this presumption by arguing that Cruz Ciprian essentially received a time-served sentence for his violation of supervised release, so the District Court could not have imposed a lower sentence. We need not resolve this issue, however, because Cruz Ciprian does not satisfy the fourth element of plain-error review.

Even assuming Cruz Ciprian can meet the first three elements, the District Court's error does not "seriously affect[] the fairness, integrity, or public reputation of judicial proceedings." *Greenspan*, 923 F.3d at 147 (citation and internal quotation marks omitted). We "sparingly" exercise discretion to grant relief under the fourth element of plain-error review, *id.* at 157 (citation and internal quotation marks omitted), considering "the seriousness of the error in the context of the entire case," *Adams*, 252 F.3d at 285.

We are unconvinced that the District Court's failure to personally invite Cruz Ciprian seriously affected the legitimacy of the proceedings. The record shows the Court invited allocution (albeit indirectly), allowed counsel to consult privately with Cruz Ciprian, and moved on only after assuring itself that Cruz Ciprian understood the proceedings and after counsel indicated to the Court that Cruz Ciprian waived allocution at that time. The record does not indicate that he misunderstood his right to allocute or did not knowingly waive allocution for his revocation sentencing. To the contrary, Cruz Ciprian did not object when his counsel told the Court that he was waiving allocution, and just one hour later, he provided a lengthy allocution on his sentencing for the illegal reentry conviction. Since there is no indication that the allocution error "seriously" affected the "fairness" or "integrity" of his sentencing for the violation of supervised release, we decline to exercise our discretion to grant him relief.

Because Cruz Ciprian has failed to clear the high bar for plain-error review, we will not vacate the District Court's sentence on that basis.

B

Cruz Ciprian also requests resentencing because the District Court "prematurely" ran his sentence for the violation of supervised release offense consecutively to his sentence for the illegal reentry offense, which the Court imposed approximately an hour later. Ciprian Br. 22–23, 30. Under 18 U.S.C. § 3584(a), "[i]f multiple terms of imprisonment are imposed on a defendant at the same time, . . . the terms may run concurrently or consecutively." 18 U.S.C. § 3584(a). Cruz Ciprian contends that the Court could not run his sentences consecutively because the illegal reentry sentence "had not yet [been]

imposed." Ciprian. Br. 26. Because Cruz Ciprian objected to the Court's decision as "premature" when sentenced on the violation of supervised release, we exercise plenary review of this statutory interpretation issue. *United States v. Dees*, 467 F.3d 847, 851 (3d Cir. 2006).

We reject Cruz Ciprian's argument that the District Court violated § 3584(a). *First*, Cruz Ciprian embraces a cramped reading of § 3584(a), such that a district court may run terms of imprisonment consecutively *only if* they are imposed *exactly* "at the same time." No court has adopted such a narrow reading. Cruz Ciprian urges this Court to join a "chorus" of circuits that "unanimously agree[] . . . the plain language of § 3584(a) bars district courts from running a sentence consecutive to a sentence that has not yet been imposed in another federal case." Ciprian Br. 13. But those circuit courts have merely read § 3584(a) to prohibit one federal district court from preemptively running a sentence consecutively to a sentence imposed either in a pending proceeding before a different federal district court or in any future proceedings. *See, e.g.*, *United States v. Ramon*, 958 F.3d 919, 922 (10th Cir. 2020) (precluding a federal district court from ordering a sentence to run consecutively to any federal sentences imposed by a later court). Cruz Ciprian's sentences were imposed within one hour of each other by the same judge. There is thus no concern that a "first court would be usurping the sentencing authority that § 3584(a) declares belongs exclusively to the second court." *Id.*

Second, even if we adopted Cruz Ciprian's narrow reading of § 3584(a), the District Court did not make a final decision whether to run the two sentences consecutively until after the Court imposed sentence for his illegal reentry conviction. When sentencing him

on the violation of supervised release, the Court merely stated its "intent" to run the sentences consecutively and reserved final judgment on this issue until after it heard arguments and Cruz Ciprian's allocution for the illegal reentry conviction. App. 67–68. The Court's forecasting of its intent did not deprive Cruz Ciprian "of a decision made with the benefit of full information." Ciprian Br. 30. Therefore, the District Court did not violate § 3584(a).

* * *

For the stated reasons, we will affirm.