No. 17-8995

In the Supreme Court of the United States

JASON J. MONT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
BRIAN A. BENCZKOWSKI
Assistant Attorney General
ERIC J. FEIGIN
JENNY C. ELLICKSON
Assistants to the Solicitor General
JOSHUA K. HANDELL
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner was "imprisoned in connection with a conviction for a Federal, State, or local crime," 18 U.S.C. 3624(e), for purposes of tolling his federal supervised release, during the approximately ten-month period of state incarceration between his arrest and sentencing for state crimes, where that period was credited toward the term of imprisonment in his state sentence.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statutory provision involved 1
Statement:
A. Petitioner's offense conduct and sentence 2
B. Petitioner's post-release supervision and conduct 3
C. Petitioner's state guilty plea and delayed sentencing with credit for time served 8
D. Petitioner's supervised-release-violation proceedings 9
Summary of argument 12
Argument 15
I. Section 3624(e) tolls a term of supervised release during presentencing confinement that is credited toward a criminal sentence 16
A. Incarceration that is deemed part of the sentence for a crime is "imprison[ment] in connection with a conviction" 16
B. Prolonged incarceration for a separate criminal offense cannot meaningfully substitute for federal supervised release 22
1. Imprisonment for a separate crime interrupts the function of supervised release 23
2. The rationales for tolling supervised release when a defendant is incarcerated in connection with a conviction apply equally to all imprisonment credited toward a prison sentence 27
C. Petitioner's interpretation of Section 3624(e) is flawed 31

Table of Contents—Continued Page

II. The district court had authority to adjudicate petitioner's supervised-release violations because his term was tolled under Section 3624(e) 37
A. Petitioner's supervised-release term did not run during the presentencing state imprisonment that was credited against his state sentence 38
B. At a minimum, petitioner's supervised-release term tolled when he pleaded guilty to the state charges 39
Conclusion 44

TABLE OF AUTHORITIES

Cases:

Abbott v. *United States*, 562 U.S. 8 (2010) 41
Bell v. *Wolfish*, 441 U.S. 520 (1979) 17
Betterman v. *Montana*, 136 S. Ct. 1609 (2016) 39, 40
Boykin v. *Alabama*, 395 U.S. 238 (1969) 39
Burrage v. *United States*, 571 U.S. 204 (2014) 20
Caraco Pharm. Labs., Ltd. v. *Novo Nordisk A/S*, 566 U.S. 399 (2012) 33
Carr v. *United States*, 560 U.S. 438 (2010) 32
Cornell Johnson v. *United States*, 529 U.S. 694 (2000) ..... *passim*
Deal v. *United States*, 508 U.S. 129 (1993) 18, 41
Deck v. *Missouri*, 544 U.S. 622 (2005) 40
Dickerson v. *New Banner Inst., Inc.*, 460 U.S. 103 (1983) 41
Libretti v. *United States*, 516 U.S. 29 (1995) 39
Maracich v. *Spears*, 570 U.S. 48 (2013) 19, 21

Cases—Continued: Page

McDonald v. *Board of Election Comm'rs of Chi.*, 394 U.S. 802 (1969) 18
McGinnis v. *Royster*, 410 U.S. 263 (1973) 18
Merrill Lynch, Pierce, Fenner & Smith Inc. v. *Dabit*, 547 U.S. 71 (2006) 19
Reno v. *Koray*, 515 U.S. 50 (1995) 30, 40
Russello v. *United States*, 464 U.S. 16 (1983) 41
Spina v. *Department of Homeland Sec.*, 470 F.3d 116 (2d Cir. 2006) 39
United States v. *American Union Transp., Inc.*, 327 U.S. 437 (1946) 19
United States v. *Goins*, 516 F.3d 416 (6th Cir.), cert. denied, 555 U.S. 847 (2008) 11
United States v. *Loney*, 219 F.3d 281 (3d Cir. 2000) 19
United States v. *Roy Lee Johnson*, 529 U.S. 53 (2000) 22, 23, 26
United States v. *Thompson*, 32 F.3d 1 (1st Cir. 1994) 19
United States v. *Trainor*, 376 F.3d 1325 (11th Cir. 2004) 34
United States v. *Wilson*, 503 U.S. 329 (1992) 30
Zerbst v. *Kidwell*, 304 U.S. 359 (1938) 25

Statutes, guideline, and rules:

Bail Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. I, 98 Stat. 1976:
§ 209(d)(4), 98 Stat 1987 20
18 U.S.C. 3041 17
18 U.S.C. 3142(b) 40
18 U.S.C. 3143(a) 40

Statutes, guideline, and rules—Continued: Page

Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, 98 Stat. 1976:
Ch. II, § 212(a), 98 Stat. 2008 33
Ch. XII:
§ 1218(a), 98 Stat. 2167 33
18 U.S.C. 3292 ..... 33, 34
18 U.S.C. 3292(a)(1) 34
18 U.S.C. 3292(a)(2) 34
18 U.S.C. 3292(b) 33
Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 16, 100 Stat. 3595 22
Dictionary Act, 1 U.S.C. 1 32
Securities Exchange Act of 1934, 15 U.S.C. 78j(b) (§ 10(b)) 19
Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987 ..... 3, 21
§ 238(a), 98 Stat. 2037 43
§ 238(a), 98 Stat. 2038 43
§ 239, 98 Stat. 2039 (18 U.S.C. 3551 note) 42
18 U.S.C. 3552 43
18 U.S.C. 3562(b) 24, 43
18 U.S.C. 3563(b)(1) 24
18 U.S.C. 3563(b)(4) 24
18 U.S.C. 3563(b)(7) 24
18 U.S.C. 3563(b)(8) 25
18 U.S.C. 3572(b) 20
18 U.S.C. 3572(c) (Supp. II 1984) 43
18 U.S.C. 3582(a) 43
18 U.S.C. 3582(b) 43
18 U.S.C. 3582(c)(2) 3
18 U.S.C. 3582(d) 42

Statutes, guideline, and rules—Continued: Page

18 U.S.C. 3583 26
18 U.S.C. 3583(a) 4
18 U.S.C. 3583(d) (Supp. V. 2017) 24
18 U.S.C. 3583(e) 29
18 U.S.C. 3583(e)(3) 4
18 U.S.C. 3583(i) 10, 11, 36, 37
18 U.S.C. 3584(a) 29
18 U.S.C. 3585(b) 30
18 U.S.C. 3585(b)(1) 21, 30
18 U.S.C. 3585(b)(2) 30
18 U.S.C. 3603(1)-(3) 5
18 U.S.C. 3606 6
18 U.S.C. 3607(a) 43
18 U.S.C. 3613(a) (Supp. II 1984) 43
18 U.S.C. 3613(b)(1) (Supp. II 1984) 43
18 U.S.C. 3621(e)(2)(B) 35
18 U.S.C. 3622 35
18 U.S.C. 3624(e) ..... *passim*
18 U.S.C. 3624(e) (Supp. II 1984) 22
18 U.S.C. 5037(b) 42
18 U.S.C. 5037(c) 42
28 U.S.C. 994(a)(1)(A) 43
28 U.S.C. 994(h)(1) 42
28 U.S.C. 994(*l*)(1) 42
Shipping Act, 1916, ch. 451, 39 Stat. 728 19
18 U.S.C. 922(g)(1) 3
18 U.S.C. 1074(a) 20
18 U.S.C. 3626(g)(5) 17
20 U.S.C. 6472(1) 20
21 U.S.C. 841(a)(1) 2, 3

Statutes, guideline, and rules—Continued: Page

21 U.S.C. 841(b)(1)(A) (2000 & Supp. V 2005) 2, 3
21 U.S.C. 846 ..... 2, 3
29 U.S.C. 504(d) 20
38 U.S.C. 3103(b)(3) 33
United States Sentencing Guidelines § 5G1.3(a) 29
Fed. R. Crim. P.:
Rule 32(k)(1) 41
Rule 46(h) (1984) 20

Miscellaneous:

Black's Law Dictionary (5th ed. 1979) 17
Ohio Dep't of Rehabilitation & Corr., *Offender Details*, https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A694161 (last visited Jan. 15, 2019) 7
Aaron Rappaport, *The Institutional Design of Punishment*, 60 Ariz. L. Rev. 913 (2018) 35
S. Rep. No. 255, 98th Cong., 1st Sess. (1983) 21, 23, 43
The Oxford English Dictionary (reprint 1978) (1933) 17
Webster's Third New International Dictionary (1993) 17

In the Supreme Court of the United States

No. 17-8995

JASON J. MONT, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The decision of the court of appeals (J.A. 33-46) is not published in the Federal Reporter but is reprinted at 723 Fed. Appx. 325. The order of the district court (J.A. 14-15) is not published in the Federal Supplement but is available at 2017 WL 10541435.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 2018. The petition for a writ of certiorari was filed on May 15, 2018, and granted on November 2, 2018. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 3624(e) of Title 18 of the United States Code provides in pertinent part:

> [A] term of supervised release commences on the day the person is released from imprisonment and runs

> concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.

18 U.S.C. 3624(e).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Ohio, petitioner was convicted of conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2000 & Supp. V 2005), and 21 U.S.C. 846; and possession of firearms and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The district court sentenced him to 120 months of imprisonment, which was later lowered to 84 months, to be followed by five years of supervised release. Judgment 2-3; D. Ct. Doc. 65, at 1 (Aug. 24, 2009); D. Ct. Doc. 77, at 5-6 (Mar. 5, 2012). The district court subsequently determined that petitioner had violated conditions of his supervised release and ordered 42 months of imprisonment. J.A. 14. The court of appeals affirmed. J.A. 33-46.

A. Petitioner's Offense Conduct And Sentence

In 2004, petitioner began conspiring with William Black to possess and distribute cocaine and crack cocaine. Presentence Investigation Report (PSR) ¶¶ 11-18. Over the course of four drug transactions between January and March 2005, petitioner and Black sold 11.8 grams

of cocaine and 280.3 grams of crack cocaine to a confidential source for the Drug Enforcement Administration. PSR ¶¶ 12-17. In April 2005, agents searched petitioner's home pursuant to a warrant and found two loaded handguns and $2700 in cash. PSR ¶ 18.

A federal grand jury charged petitioner with eight drug and firearm offenses, Indictment 1-5, and petitioner later pleaded guilty to one count of conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. 841(a)(1), 21 U.S.C. 841(b)(1)(A) (2000 & Supp. V 2005), and 21 U.S.C. 846; and one count of possession of firearms and ammunition by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1; see 9/7/05 Minute Order. The district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court subsequently granted petitioner two sentence reductions pursuant to 18 U.S.C. 3582(c)(2), which together shortened the term of imprisonment in his sentence to 84 months (but did not shorten his term of supervised release). D. Ct. Doc. 65, at 1; D. Ct. Doc. 77, at 5-6.

B. Petitioner's Post-Release Supervision And Conduct

Petitioner was released from federal prison on March 6, 2012. J.A. 34. Upon his release from prison, petitioner began serving his five-year term of supervised release. *Ibid.*

1. Established by Congress in the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, supervised release is the principal "form of post-confinement monitoring" for defendants who are convicted of federal crimes. *Cornell Johnson* v. *United States*, 529 U.S. 694, 697 (2000). "The congressional policy in providing for a term of supervised release after

incarceration is to improve the odds of a successful transition from the prison to liberty." *Id.* at 708-709. Like parole, supervised release provides defendants with a form of conditional liberty by allowing them to provisionally serve "part of the[ir] sentence" out of prison, subject to revocation and reimprisonment if they violate the conditions of their release. 18 U.S.C. 3583(a) and (e)(3); see *Cornell Johnson*, 529 U.S. at 711.

The conditions of petitioner's supervised release included requirements that petitioner "not commit another federal, state, or local crime," "not illegally possess a controlled substance," "refrain from any unlawful use of a controlled substance," and "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." Judgment 3. The court also ordered petitioner to take certain actions during the term of supervised release, including "report[ing] to the probation officer," "support[ing] his * * * depend[e]nts and meet[ing] other family responsibilities," and "work[ing] regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons." *Ibid.*

2. Under 18 U.S.C. 3624(e), a "term of supervised release commences on the day the person is released from imprisonment." Accordingly, based solely upon the date of his release from imprisonment, petitioner's term of supervised release was "slated to end on March 6, 2017." J.A. 34. Section 3624(e) further provides, however, that "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. 3624(e). Prior to

March 6, 2017, petitioner committed state crimes and spent time in state jail. J.A. 35-36.

Petitioner's supervised release began in March 2012, when he was released from federal prison to the supervision of a federal probation officer, who was required to monitor petitioner in accordance with the conditions of supervised release and to report petitioner's conduct to the district court. J.A. 34; 18 U.S.C. 3603(1)-(3), 3624(e). During the first few months of his supervised release, petitioner underwent a substance-abuse assessment and successfully completed outpatient treatment. D. Ct. Doc. 90 (June 2016 Report), at 2 (June 13, 2016). But by 2015, petitioner had begun trafficking marijuana. J.A. 35. In March 2015, an Ohio state grand jury "secretly indicted" him on two marijuana-trafficking counts. *Ibid.* (citation omitted); June 2016 Report 1. In May 2015, petitioner was arrested on those charges and released on bond while awaiting trial. 15-cr-291 Docket entry (Ohio Mahoning Cnty. Ct. of Common Pleas May 5, 2015). Petitioner's federal probation officer continued to supervise petitioner while those state charges were pending. D. Ct. Doc. 89 (January 2016 Report), at 2 (Jan. 29, 2016).

Petitioner then began to show signs of renewed substance abuse, which eventually led his probation officer to report violations of his supervised-release conditions to the district court. January 2016 Report 1-2. After petitioner tested positive for cocaine and Oxycodone in October 2015, the probation officer referred him for another substance-abuse assessment and more individual counseling. *Id.* at 2. But in random drug tests between November 2015 and early January 2016, petitioner tested positive five times for controlled substances for which he lacked a prescription (Oxycodone and Oxymorphone). *Id.* at 1-2; J.A. 35. Petitioner also attempted to

pass two subsequent drug tests in January 2016 by filling the drug-testing cups with an "unknown" liquid from a bottle. *Ibid.*

The probation officer submitted the violation report to the district court in January 2016, informing the court of petitioner's pending state charges and alleging that petitioner had violated conditions of his supervised release by failing and tampering with his drug tests. J.A. 34-35; January 2016 Report 1-2. As the court "having supervision of" petitioner, the district court had authority to issue a warrant for petitioner's arrest for violation of a condition of release. 18 U.S.C. 3606. Although the court declined at that time to issue a warrant on the alleged supervised-release violations, it asked to "be notified of the resolution of the state charges." J.A. 35 (quoting January 2016 Report 4).

From approximately mid-2015 to mid-2016, petitioner was unemployed. June 2016 Report 2. His probation officer counseled him several times about job opportunities, but petitioner failed to follow up on those leads. *Ibid.* Instead, while petitioner was out on state bond in his marijuana-trafficking case and under federal supervision, he began trafficking cocaine. *Id.* at 1. In May 2016, an Ohio state grand jury issued a new indictment charging petitioner with five counts of cocaine trafficking, and the state court revoked petitioner's bond in his marijuana-trafficking case. J.A. 35; June 2016 Report 2; 15-cr-291 Docket entry (May 31, 2016); 16-cr-555 Docket entry (Ohio Mahoning Cnty. Ct. of Common Pleas May 26, 2016).

On June 1, 2016, approximately four years and three months into his five-year term of supervised release, petitioner was arrested by state authorities and "incarcerated in the Mahoning County Jail" as a result of the new

indictment. J.A. 35 (citation omitted); see J.A. 35 n.2 (noting "minor confusion" in the record regarding whether petitioner entered state custody on May 26 or June 1). Petitioner has been in state custody since that time.[1] J.A. 35; see Pet. Br. 8.

3. After petitioner was incarcerated by the State on June 1, 2016, the Probation Office "tolled" his federal supervision, on the ground that petitioner had "made himself unavailable for supervision." J.A. 21. Petitioner's federal probation officer later explained that, because petitioner was in jail, "[h]e wasn't available for supervision" because "he wasn't available for [the Probation Office] to supervise on the street." J.A. 21-22.

Also in June 2016, petitioner's probation officer filed a report advising the district court of petitioner's new drug-trafficking charges and alleging that those charges showed a failure to comply with the conditions of his federal supervised release. June 2016 Report 1-2. The probation officer also informed the district court that the state court had revoked petitioner's bond on the marijuana-trafficking charges and that petitioner was "currently being housed in the Mahoning County Jail." *Id.* at 2. The probation officer stated that he would continue to monitor petitioner's pending state cases and would ask the court to take action if petitioner were convicted on any of the state charges. *Ibid.*

---

[1] According to the public website for the Ohio Department of Rehabilitation & Correction, petitioner is currently imprisoned in the Lake Erie Correctional Institution. See Ohio Dep't of Rehabilitation & Corr., *Offender Details*, https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A694161 (offender details for Jason Mont) (last visited Jan. 15, 2019).

C. Petitioner's State Guilty Plea And Delayed Sentencing With Credit For Time Served

In October 2016, approximately four months into his state incarceration, petitioner entered into plea agreements with state prosecutors in both of his state cases, agreeing to plead guilty to some of the charges in each case "in exchange for a predetermined six-year sentence." J.A. 36; see 15-cr-291 Docket entry at 1-7 (Oct. 7, 2016) (plea agreement in 2015 case); D. Ct. Doc. 95-1, at 1-7 (Nov. 2, 2016) (plea agreement in 2016 case). The state court accepted petitioner's guilty pleas at a hearing on October 6, 2016, setting the cases for sentencing in December 2016, and those pleas were entered on the state dockets on October 7, 2016. D. Ct. Doc. 95-1, at 8-9; 15-cr-291 Docket entry at 8-9 (Oct. 7, 2016); 16-cr-555 Docket entry at 8-9 (Oct. 7, 2016). Approximately three weeks later, petitioner filed a written "admission" in federal district court in which he "acknowledge[d] and admit[ted]" that he had violated the conditions of his supervised release "by virtue of his conviction following guilty pleas to certain felony offenses" in state court. D. Ct. Doc. 92, at 1 (Oct. 25, 2016) (capitalization omitted); see J.A. 36.

Petitioner sought a federal hearing on the pending allegations of federal supervised-release violations at the district court's "earliest convenience," even though he "had not yet been officially sentenced for the new, state-court convictions." D. Ct. Doc. 92, at 1; J.A. 36. The district court initially scheduled a hearing for November 9, 2016, J.A. 36, but ultimately declined to hold the hearing until the state sentencing had occurred. Over petitioner's objection, the court moved the original hearing date after learning that petitioner had not yet been sentenced in his state cases. *Ibid.*; D. Ct. Doc. 95,

at 2 (Nov. 2, 2016); 11/4/16 Order. After a postponement of petitioner's state sentencing to mid-January 2017, the district court moved petitioner's federal hearing to late January 2017. 12/21/16 Order. And when the state court entered an order delaying the state sentencing until after the federal supervised-release-violation hearing, the district court granted the government's motion (over petitioner's opposition) to continue the federal hearing, explaining that it would not set a new date for the supervised-release-violation hearing "until after the conclusion of the State sentencing." 1/20/17 Order; see D. Ct. Doc. 97, at 1-2 (Jan. 20, 2017).

Petitioner's state sentencing finally went forward on March 21, 2017, and the state court sentenced petitioner to a total of six years of imprisonment for his various state counts of conviction. J.A. 36. The state court "credited the roughly ten months that [petitioner] had already been incarcerated pending a disposition as time served" toward his sentences in both state cases. *Ibid.*; see 15-cr-291 Docket entry at 2 (Mar. 23, 2017); 16-cr-555 Docket entry at 2 (Mar. 23, 2017).

D. Petitioner's Supervised-Release-Violation Proceedings

1. Following petitioner's state sentencing, his federal probation officer filed a report apprising the district court of petitioner's state convictions and sentences. J.A. 37; see D. Ct. Doc. 100 (March 2017 Report), at 1-2 (Mar. 30, 2017). The report alleged that petitioner's state convictions indicated that petitioner had violated the conditions of supervised release. March 2017 Report 1. On March 30, 2017, the district court ordered the issuance of a warrant based on the allegations in the report. *Id.* at 4; J.A. 37. And the district court held a hearing on petitioner's supervised-release violations on June 28, 2017. J.A. 37.

Petitioner argued that the court lacked authority to adjudicate the alleged violations, asserting that his term of supervised release had expired on March 6, 2017, while he was in state jail. J.A. 37. The court, however, found that it did have such authority. J.A. 24, 37. It stated that it had "give[n] notice by way of a summons on November 1st of 2016 setting this for a supervised release violation hearing for November 9th of 2016." J.A. 37-38 (quoting J.A. 22) (brackets in original). And it cited 18 U.S.C. 3583(i), which provides that a court's "power" to revoke a term of supervised release for a violation of its conditions "extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation." *Ibid.*; see J.A. 23, 38. The court found that the period between petitioner's October 2016 guilty plea and the June 2017 supervised-release-violation hearing was "reasonably necessary" because petitioner's actions had "caused the various extensions of time of having the supervised release violation hearing." J.A. 24.

At the hearing, petitioner admitted to his state convictions, and the district court found that petitioner had violated the conditions of supervised release. J.A. 18-19. The court ordered a 42-month term of imprisonment, to run consecutive to petitioner's state sentences. J.A. 14, 32.

2. The court of appeals affirmed, rejecting petitioner's renewed contention that the district court had lacked continued authority over him because his supervised release had run its course while he was in state jail. J.A. 33-46.

The court of appeals observed that although petitioner's "supervised-release clock" was initially set to

expire on March 6, 2017, "the clock's countdown was not inexorable." J.A. 39. The court noted that 18 U.S.C. 3583(i) could have "extended" the time based on the issuance of a summons or warrant and that Section 3624(e) could have "paused" the time based on "'imprison[ment] in connection with a conviction for a Federal, State, or local crime'" for a period of at least 30 consecutive days. J.A. 39-40 (quoting 18 U.S.C. 3624(e)) (emphasis omitted).

Relying on circuit precedent, the court of appeals explained that Section 3624(e) tolls a term of supervised release when (1) "a defendant is held for thirty days or longer in pretrial detention," (2) "he is later convicted for the offense for which he was held," and (3) "his pretrial detention is credited as time served toward his sentence." J.A. 40 (quoting *United States* v. *Goins*, 516 F.3d 416, 417 (6th Cir.), cert. denied, 555 U.S. 847 (2008)). The court accordingly determined that petitioner's term of supervised release had been tolled during the "roughly ten months" that petitioner spent in state custody between his June 2016 arrest and his March 2017 state sentencing, a period that the state court had credited to his state sentence. J.A. 41; see J.A. 35-36. The court of appeals thus found "still quite a bit of time left on [petitioner's supervised-release] clock when the district court issued its warrant on March 30, 2017, triggering the 'extension' that 18 U.S.C. § 3583(i) in turn provides." J.A. 41-42 (citation omitted).

The court of appeals additionally observed that an extension under Section 3583(i) based on the warrant "was not itself necessary in this case because * * * there would have been time left on the clock in any event when [petitioner's] supervised-release-violation hearing finally occurred on June 28, 2017." J.A. 42 n.6. The

court concluded that, in light of its other determinations, it "need not consider" the government's alternative argument that "the district court's issuance of a summons" in November 2016 had itself "triggered an extension under § 3583(i)." J.A. 41 n.5 (citation and internal quotation marks omitted); see also J.A. 42 n.6.

SUMMARY OF ARGUMENT

The court of appeals correctly rejected petitioner's argument that he served the final nine months of his supervised-release term while in state jail awaiting trial and then sentencing on state charges. That period of incarceration, which interrupted his conditional liberty and derailed his transition back into the community, was not supervised release. It was instead part of his prison sentence for his state crimes. Particularly once petitioner had pleaded guilty to those crimes four months into his state confinement, that incarceration was "imprison[ment] in connection with a conviction" that tolled his term of supervised release under 18 U.S.C. 3624(e).

I. Section 3624(e) provides that "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. 3624(e). The broad wording of that provision encompasses pretrial or other presentencing confinement that is later credited to the defendant's sentence for a crime. Time that a defendant spends confined in a jail or prison is a "period in which [he] is imprisoned," and that imprisonment is "in connection with a conviction" when it is credited toward the sentence of imprisonment for that conviction. By using the expansive phrase "in connection with" to describe the relationship between a period of imprisonment and a conviction,

Congress signaled that it did not intend to limit the tolling provision's application solely to imprisonment occurring "after" or "as a result of" a conviction.

The capacious language of Section 3624(e) accords with the overall design of the supervised-release scheme. Supervised release is a transitional period between imprisonment and complete freedom, during which a defendant enjoys a form of conditional liberty and a probation officer supervises the defendant to help him reacclimate to life in the community. When the defendant is jailed for a new crime, however, that confinement interrupts his transition back into the community and generally prevents the full supervision that makes supervised release a meaningful tool for rehabilitation. As this Court has recognized in other contexts, it frustrates the objectives of supervised release if incarceration reduces the amount of time the defendant spends under supervision during a period of conditional liberty. Section 3624(e) embodies Congress's judgment that a defendant on supervised release who commits another crime is not entitled to double-count his incarceration for that crime as part of his supervised release. And that judgment applies equally to his entire prison sentence for that crime, regardless of whether it was served before or after the trial or sentencing hearing.

Petitioner's contrary view is unsound. He errs in interpreting Section 3624(e)'s present-tense phrasing as a limitation on the natural scope of the phrase "in connection with a conviction." Although it may not be clear at the precise moment when a defendant is first incarcerated whether he will eventually be convicted, and thus whether Section 3624(e) will apply, it was neither incongruous nor unique for Congress to use the present tense to refer to tolling that is contingent on a later event.

And even on petitioner's interpretation of Section 3624(e), an immediate tolling determination will not always be possible; because the tolling provision does not apply to imprisonment "for a period of less than 30 consecutive days," 18 U.S.C. 3624(e), its application may not be apparent until the imprisonment reaches its thirtieth day. Any initial indeterminacy in Section 3624(e)'s application is unproblematic because, whether or not Section 3624(e) applies, a probation officer cannot as a practical matter supervise an incarcerated defendant in the manner contemplated by the supervised-release scheme. The tolling analysis required by Section 3624(e) thus need not occur until a defendant's release from custody, at which point it should be apparent whether the imprisonment was "in connection with a conviction."

II. The district court had authority to adjudicate petitioner's supervised-release violations at the hearing it held on June 28, 2017. Under Section 3624(e), the tolling of petitioner's term of supervised release began on June 1, 2016, when he was first imprisoned for state crimes for which he was later convicted, and will end upon his release from imprisonment for those state convictions. The state court deemed that entire period of incarceration to be part of the penalty for petitioner's state convictions, and the entire period is thus imprisonment "in connection with a conviction" that tolls supervised release.

At a minimum, tolling began on October 6, 2016, when petitioner pleaded guilty to his state crimes and remained imprisoned while awaiting his state sentencing. The period of incarceration that followed was both punishment for the state crimes and a means of ensuring petitioner's appearance for sentencing and the imposition of judgment. The "connection" between the

confinement and petitioner's state convictions was immediately apparent once the plea was accepted, and the supervised-release term was tolled at that time under any reasonable construction of Section 3624(e). Section 3624(e)'s use of the word "conviction" bolsters that conclusion because, in the context of that provision, the term refers to the finding of guilt by trial or plea that occurs before sentencing and the entry of judgment.

ARGUMENT

Petitioner is not entitled to count his ten months of presentencing state imprisonment, which were deemed part of his sentence for other crimes, as part of his term of federal supervised release for the underlying offenses in this case. Rather than spending that time reacclimating to society under the supervision of the Probation Office, demonstrating his ability to behave lawfully when entrusted with conditional liberty, petitioner spent it in state jail after he was taken into custody for drug-trafficking crimes for which he has been convicted and credited for time served. His state incarceration was accordingly a period of "imprison[ment] in connection with a conviction for a Federal, State, or local crime" that tolled his term of supervised release under 18 U.S.C. 3624(e). That is particularly so with respect to the more than five months of imprisonment that followed petitioner's formal admission of guilt by plea to the state charges, a period during which petitioner was awaiting the imposition of punishment for his convictions. Petitioner accordingly errs in suggesting that his term of supervised release in fact expired during that time.

I. SECTION 3624(e) TOLLS A TERM OF SUPERVISED RELEASE DURING PRESENTENCING CONFINEMENT THAT IS CREDITED TOWARD A CRIMINAL SENTENCE

A federal defendant cannot run out the clock on his supervised release while sitting in jail for an extended period following his commission of another offense for which he is ultimately convicted and credited with time served. Under 18 U.S.C. 3624(e), "[a] term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." As a matter of plain language, any period of confinement that is credited against a sentence of imprisonment for a crime is "imprison[ment] in connection with a conviction" for that crime. *Ibid.* The evident meaning of the text is confirmed by the design of supervised release, which is to help the defendant reintegrate into the population at large—not into the population of another prison—and the statutory presumption against double-counting prison terms toward sentences imposed at different times. Contrary to petitioner's contention, it is both unsound and unnecessary to bifurcate a continuous state prison sentence into different periods that are treated inconsistently for purposes of tolling a term of federal supervised release.

A. Incarceration That Is Deemed Part Of The Sentence For A Crime Is "Imprison[ment] In Connection With A Conviction"

The expansive text of Section 3624(e) plainly encompasses a defendant's pretrial or other presentencing confinement that is later incorporated as part of the sentence for a crime of which he is found guilty. The

time behind bars is a "period in which [he] is imprisoned"; the adjudication or judgment of his guilt is a "conviction for a * * * crime"; and the crediting of the time against the sentence for that crime is a "connection" between the two. 18 U.S.C. 3624(e).

1. The phrase "period in which the person is imprisoned" unambiguously includes any length of time during which the defendant is confined in jail or otherwise incarcerated, regardless of the reason or timing of that incarceration. Even if a defendant has not yet been tried or sentenced, his confinement means that he is "imprisoned" within the ordinary meaning of that word. See *The Oxford English Dictionary* 113 (reprint 1978) (1933) (defining "imprison" to mean "[t]o put into prison, to confine in a prison or other place of confinement; to detain in custody, to keep in close confinement; to incarcerate"); *Webster's Third New International Dictionary* 1137 (1993) (defining "imprison" to mean "to put in prison: confine in a jail" or "to limit, restrain, or confine as if by imprisoning"); *Black's Law Dictionary* 681 (5th ed. 1979) (defining "imprison" to mean "[t]o put in a prison; to put in a place of confinement" or "[t]o confine a person, or restrain his liberty, in any way").

Congress's use of "imprisoned" and similar terms elsewhere in Title 18 confirms its understanding that the term encompasses pretrial detention and other presentencing confinement. See 18 U.S.C. 3041 ("[T]he offender may * * * be arrested and imprisoned or released * * * for trial."); 18 U.S.C. 3626(g)(5) (defining "prison" to include "any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of * * * violations of criminal law"). And this Court has itself used the words "imprison" or "imprisoned" to describe pretrial confinement. See *Bell* v. *Wolfish*, 441 U.S.

520, 534 n.15 (1979) (discussing requirements with which the government must comply "[i]n order to imprison a person prior to trial"); *McDonald* v. *Board of Election Comm'rs of Chi.*, 394 U.S. 802, 806 (1969) (referring to "pretrial detainees imprisoned in other States"); see also *McGinnis* v. *Royster*, 410 U.S. 263, 281 (1973) (Douglas, J., dissenting) ("In New York City as of 1964, 49% of those accused were imprisoned before trial.").

2. As this Court has recognized, "the word 'conviction' can mean either the finding of guilt or the entry of a final judgment on that finding." *Deal* v. *United States*, 508 U.S. 129, 131-132 (1993). The context here indicates the former meaning, see Part II.B, *infra*, but either definition would dictate that a defendant who has been sentenced to a term of imprisonment and credited for time served has a "conviction for a * * * crime," 18 U.S.C. 3624(e).

A sentence to a term of imprisonment necessarily reflects—and is inherently connected to—the presence of a "conviction." The "conviction" is either a "finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction" or the "judgment of conviction" itself, which "includes both the adjudication of guilt and the sentence." *Deal*, 508 U.S. at 132. Thus, the imposition of a sentence indicates either that the defendant has already been convicted or that a conviction was entered simultaneously.

3. The crediting of time served before sentencing—including time served before trial—against a sentence establishes that the time served was "in connection with" the "conviction" for which the sentence was imposed, 18 U.S.C. 3624(e). Although the precise point at

which one thing ceases to be "in connection with" another can in many circumstances be "indeterminate," *Maracich* v. *Spears*, 570 U.S. 48, 59 (2013) (brackets and citation omitted), the clear and direct "connection" between the conviction and the time served in prison fits comfortably within the scope of any reasonable construction of the phrase in the context of Section 3624(e).

This Court, like other courts, has recognized the capaciousness of the phrase "in connection with." See, *e.g.*, *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 84-85 (2006) (noting that the Court "has espoused a broad interpretation" of the phrase "'in connection with the purchase or sale'" in the context of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b)); *United States* v. *American Union Transp., Inc.*, 327 U.S. 437, 441-443 (1946) (describing the use of "in connection with" in the Shipping Act, 1916, ch. 451, 39 Stat. 728, as "broad and general"); see also *United States* v. *Loney*, 219 F.3d 281, 283-284 (3d Cir. 2000) (observing that dictionaries and usage experts give "expansive" scope to the phrase "'in connection with'" as "express[ing] some relationship or association, one that can be satisfied in a number of ways"); *United States* v. *Thompson*, 32 F.3d 1, 7 (1st Cir. 1994) ("[T]he phrase 'in connection with' should be interpreted broadly."). Conscious that, as a literal matter, "connections * * * 'stop nowhere,'" the Court has emphasized the need to apply a "limiting principle" tailored to the context in which the phrase appears. *Maracich*, 570 U.S. at 59-60 (citation omitted). Here, however, a limiting principle that excludes all pretrial or other presentencing incarceration from the scope of tolling under Section 3624(e) would effectively rewrite the statute.

If Congress had intended such a limitation, it had many other terms at its disposal—ones that appear elsewhere in the federal code but are conspicuously absent from Section 3624(e)'s tolling provision. For example, if Congress had wanted to restrict the tolling provision to imprisonment *following* a conviction, it could have written the provision to cover only imprisonment "after" a conviction. See, *e.g.*, 18 U.S.C. 1074(a) (criminalizing "mov[ing] or travel[ing] in interstate or foreign commerce with intent * * * to avoid prosecution, or custody, or confinement after conviction" for certain damage or destruction of property); Bail Reform Act of 1984, Pub. L. No. 98-473, Title II, Ch. I, § 209(d)(4), 98 Stat. 1987 (amending Fed. R. Crim. P. 46(h) (1984) to permit a court to "dispos[e] of any charge by entering an order directing forfeiture of property * * * if the value of the property is an amount that would be an appropriate sentence after conviction of the offense charged").

Likewise, if Congress had wanted to limit the tolling provision to imprisonment *caused* by a conviction, it could have conveyed such a requirement by drafting the provision to apply when a person is imprisoned "because of," "as a result of," or "based on" a conviction. See *Burrage* v. *United States*, 571 U.S. 204, 212-214 (2014) (citations omitted) (discussing the effect of such terms); see, *e.g.*, 18 U.S.C. 3572(b) (addressing imposition of monetary penalty "[i]f, as a result of a conviction, the defendant has the obligation to make restitution"); 20 U.S.C. 6472(1) ("The term 'adult correctional institution' means a facility in which persons * * * are confined as a result of a conviction for a criminal offense."); 29 U.S.C. 504(d)(1) (addressing certain persons who "ha[ve] been barred from office or other position in a

labor organization as a result of a conviction"); cf. 18 U.S.C. 3585(b)(1) (addressing credit for certain presentencing time a defendant "has spent in official detention * * * as a result of the offense for which the sentence was imposed").

Congress, however, did neither of those things. It instead used the broader phrase "in connection with." In doing so, it made clear that it did not intend to require either a temporal or a causal connection between a conviction and a period of imprisonment. And no reason exists to infer any atextual limitation under which a portion of a sentence would lack a "connection" to the underlying conviction. This is not a context in which applying a naturally broad meaning of the phrase "in connection with" would give a statute unlimited reach or otherwise extend it beyond any conceivable congressional intent. See, *e.g.*, *Maracich*, 570 U.S. at 59. The range of ways in which a period of imprisonment could reasonably be "in connection with" a conviction is quite limited.

Nothing suggests that Congress was averse to including all of them—or, at least, the one at issue here. Not only did Congress choose the broader language over narrower alternatives, but the Senate Report on the original version of the tolling provision, which was part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. II, 98 Stat. 1987, does not include a limiting phrase at all when describing the tolling rule's effect. S. Rep. No. 225, 98th Cong., 1st Sess., at 148-149 (1983) (Senate Report) (explaining that a term of supervised release "runs concurrently with any other term of supervised release, probation, or parole unless the person is imprisoned other than for a brief period as a con-

dition of probation or supervised release").[2] Thus, neither context nor any other potential evidence of legislative intent suggests an artificially narrow interpretation of imprisonment "in connection with a conviction" that would exclude pretrial or presentencing incarceration that is counted as part of the sentence for a conviction.

B. Prolonged Incarceration For A Separate Criminal Offense Cannot Meaningfully Substitute For Federal Supervised Release

The breadth of Section 3624(e) in this respect furthers the design and purpose of supervised release. "Congress intended supervised release to assist individuals in their transition to community life," *United States* v. *Roy Lee Johnson*, 529 U.S. 53, 59 (2000), not prison life. It is therefore undisputed that Section 3624(e) requires that a term of supervised release be tolled for any period of imprisonment that *follows* a conviction for a separate criminal offense. See Pet. Br. 17-19, 24-26. And the same logic applies to any other period of imprisonment attributable to that conviction.

---

[2] The original version of the tolling rule provided that a term of supervised release runs concurrently with a term of probation, supervised release, or parole for another offense, "except that it does not run during any period in which the person is imprisoned, other than during limited intervals as a condition of probation or supervised release, in connection with a conviction for a Federal, State, or local crime." 18 U.S.C. 3624(e) (Supp. II 1984). The current tolling provision, enacted in 1986, modified the original exception for short periods of confinement but retained the other operative language in the provision without altering its meaning. See 18 U.S.C. 3624(e); Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 16, 100 Stat. 3595.

1. Imprisonment for a separate crime interrupts the function of supervised release

A defendant who is imprisoned for a separate crime while on supervised release cannot meaningfully continue his supervised release during his period of incarceration. During that period, he is not reacclimating to liberty through the mechanism of supervised release; he is instead back in a correctional facility as a result of his own recidivist criminal behavior.

a. This Court has recognized that "the evident congressional purpose" of supervised release "is to improve the odds of a successful transition from the prison to liberty." *Cornell Johnson* v. *United States*, 529 U.S. 694, 708-709 (2000). The Senate Report accompanying the Sentencing Reform Act "was quite explicit about this, stating that the goal of supervised release is 'to ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release." *Id.* at 709 (quoting Senate Report 124).

Because it is designed to facilitate a former prisoner's reassimilation into the community, supervised release is fundamentally incompatible with incarceration. As its name suggests, supervised release is a "form of *postconfinement* monitoring," *Cornell Johnson*, 529 U.S. at 697 (emphasis added), that does not begin until "the person is released from imprisonment," 18 U.S.C. 3624(e). "Supervised release has no statutory function until confinement ends." *Roy Lee Johnson*, 529 U.S. at 59. And it cannot meaningfully be sustained when a defendant *returns* to prison for a prolonged period.

Although a probation officer may sometimes continue monitoring a defendant during a period of incarceration, any such contact generally will not constitute the supervision that supervised release demands. A defendant's lack of freedom while incarcerated will often prevent him from exercising the autonomy required for proactive compliance with conditions of supervised release. Supervised-release conditions typically include affirmative steps intended to rehabilitate the defendant and make him a productive member of the community—*e.g.*, a requirement to "support his dependents and meet other family responsibilities," 18 U.S.C. 3563(b)(1), or to "work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment," 18 U.S.C. 3563(b)(4); see 18 U.S.C. 3583(d) (Supp. V 2017); Judgment 3 (imposing similar conditions on petitioner's supervised release). But a defendant who is confined is unlikely to be able to take such steps.

At the same time, an imprisoned defendant's compliance with prohibitory supervised-release conditions—conditions that require the defendant to refrain from certain actions that are antithetical to a successful transition to the community—will largely be meaningless when the defendant is incarcerated. For example, an imprisoned defendant will not have the same opportunities to violate the mandatory conditions that he "not commit another Federal, State, or local crime" or "not unlawfully possess a controlled substance," 18 U.S.C. 3583(d) (Supp. V 2017), as he would on the outside. See also *ibid.* (authorizing imposition of discretionary conditions set forth in 18 U.S.C. 3563(b)); 18 U.S.C. 3563(b)(7) (requiring defendant to "refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled

substance * * * without a prescription"); 18 U.S.C. 3563(b)(8) (requiring defendant to "refrain from possessing a firearm, destructive device, or other dangerous weapon"); Judgment 3 (imposing similar conditions in petitioner's case). As a result, a defendant's compliance with such conditions while he is imprisoned may well reflect only his incapacitation, rather than any rehabilitation that would signal his readiness to reenter society unconditionally and without further monitoring.

b. This Court has accordingly recognized on multiple occasions that imprisonment cannot itself do the work of a postconfinement-monitoring scheme like supervised release. The Court first did so in a case that considered the former federal parole system, which was the precursor and close analogue of the current supervised-release system, see *Cornell Johnson*, 529 U.S. at 710-711. In *Zerbst* v. *Kidwell*, 304 U.S. 359 (1938), the Court rejected the claim of two defendants that their terms of parole had continued running while they were imprisoned for separate offenses committed during that parole. See *id.* at 360-364. The Court reasoned that when a defendant has "committed a federal crime while on parole, for which he was arrested, convicted, sentenced and imprisoned, not only was parole violated, but service of his original sentence was interrupted and suspended." *Id.* at 361. "It is not reasonable," the Court explained, "to assume that Congress intended that a parolee whose conduct measures up to parole standards should remain under control of the [Parole] Board until expiration of the term of his sentence, but that misconduct of a parole violator could result in reducing the time during which the Board has control over him to a period less than his original sentence." *Id.* at 363.

The only case in which this Court has considered Section 3624(e) at any length is to similar effect. In *United States* v. *Roy Lee Johnson*, *supra*, the Court held that Section 3624(e) "does not reduce the length of a supervised release term by reason of excess time served in prison." 529 U.S. at 60; see *id.* at 56-60. The defendant in that case had been released from federal prison after two of his convictions were declared invalid, indicating that he had served too much prison time. *Id.* at 54. The defendant argued that "the excess prison time should be credited to the supervised release term" on the remaining convictions. *Ibid.*; see *id.* at 56-60. In rejecting that argument, the Court relied not only on the text of Section 3624(e) but also on "the statute's purpose and design." *Id.* at 59. The Court explained, in particular, that "time in prison" is not "interchangeable with [a] term of supervised release," observing that "supervised release, unlike incarceration, provides individuals with postconfinement assistance." *Id.* at 60. Emphasizing the "rehabilitative ends" of supervised release and its role in "assist[ing] individuals in their transition to community life," the Court observed that "[t]he objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release." *Id.* at 59.

Indeed, the Court has recognized that defendants who are imprisoned during a term of supervised release may have a particularly *acute* need for supervised release when they emerge. In *Cornell Johnson* v. *United States*, *supra*, the Court construed a prior version of 18 U.S.C. 3583 to allow a court that had ordered a defendant's reimprisonment following a violation of his supervised-release conditions to also order that the de-

fendant serve additional time on supervised release after his reimprisonment (as the current version of the statute now explicitly authorizes). See 529 U.S. at 702-713. The Court explained that "forbidding the reimposition of supervised release after revocation and reimprisonment would be fundamentally contrary to th[e supervised-release] scheme," which relies on district courts "to allocate supervis[ed]" release to the defendants who most need it. *Id.* at 709. The Court reasoned, in part, that "if any prisoner might profit from the decompression stage of supervised release, no prisoner needs it more than one who has already tried liberty and failed." *Ibid.*

2. The rationales for tolling supervised release when a defendant is incarcerated in connection with a conviction apply equally to all imprisonment credited toward a prison sentence

Consistent with the rehabilitative aim of supervised release, the tolling requirement of Section 3624(e) embodies Congress's judgment that a defendant's incarceration in connection with a separate criminal offense should not shorten a preexisting term of supervised release. In the absence of Section 3624(e)'s tolling requirement, a defendant who begins supervised release and then is imprisoned for another crime would spend less time in the community under the supervision of a probation officer than the district court deemed necessary, simply because of his own criminal conduct. Indeed, that defendant's period of actual supervision would be shorter than that of a defendant who received an equivalent supervised-release term but complied with all laws and conditions of supervised release. The reasons for avoiding that result, by tolling the term of supervised release during a defendant's incarceration

for a separate crime, apply in equal measure both to pretrial (or presentencing) incarceration and to posttrial (or postsentencing) incarceration.

a. A defendant is no more available for supervised release during confinement before trial or sentencing than he is during confinement after. And tolling only for the latter period would create unjustifiable disparities between the situations of similarly situated defendants. Two defendants who each receive five-year terms of supervised release, and then commit state crimes for which they are sentenced to three years of state imprisonment, should each have their supervised-release terms tolled for the whole three years in which they are not reassimilating into the community at large. It would make no sense to distinguish between the defendants based simply on how long it took for each case to reach sentencing, which in turn depends on circumstances wholly unrelated to the purposes of the tolling provision. Neither the quirks of state judges' schedules, the defendants' different timelines for pleading guilty, nor the delay of a trial due to the unavailability of a witness should affect how long each defendant spends reacclimating to life on the outside, under the auspices of supervised release, once the three-year prison sentence concludes.

Section 3624(e)'s mandatory tolling rule draws only two distinctions, neither of which suggests differential treatment of pretrial (or other presentencing) incarceration and posttrial (or postsentencing) incarceration. First, the rule excepts periods of incarceration that last less than 30 days. See 18 U.S.C. 3624(e). That limitation reflects that a relatively short interruption will not unduly disrupt or delay the defendant's efforts to transition into the community. No analogous reason exists

to except longer periods of pretrial or other presentencing incarceration. Second, the tolling requirement does not apply to defendants who are incarcerated but are later acquitted or released without trial. See *ibid.* That limitation reflects that such a disposition does not itself contain any adjudication of wrongdoing that would warrant *automatic* tolling; the arrest and imprisonment may, for example, have simply been a mistake. Without an adjudication of guilt, it is unclear that a defendant has "tried liberty and failed," *Cornell Johnson*, 529 U.S. at 709; instead, the court with authority over the defendant's supervised release may independently determine what happened and, potentially, adjust the term of supervised release accordingly, see 18 U.S.C. 3583(e). But when a defendant *has* been found guilty of a crime and sentenced for it, no sound reason exists to presumptively treat differently the portion of the sentence served before trial or sentencing and the portion of the sentence served after.

b. Treating the entirety of a prison sentence as an interruption—rather than a continuation—of supervised release is also in harmony with the federal sentencing scheme's default rule against allowing a newly imposed prison sentence to ameliorate a preexisting punishment. Federal law provides, for example, that "[m]ultiple terms of imprisonment imposed at different times run consecutively" unless the court orders otherwise. 18 U.S.C. 3584(a). Accordingly, a defendant who is serving (or about to serve) a term of imprisonment for one offense, and then commits a second offense, typically has no expectation that his sentence for the second crime will offset the first. See *ibid.*; United States Sentencing Guidelines § 5G1.3(a) (recommending that sentences should run consecutively in that circumstance).

No reason exists to create such an expectation for a defendant who is on supervised release, rather than in prison, when he commits the second crime.

The principle against double counting is made even more explicit in 18 U.S.C. 3585(b), which addresses whether and when prior confinement can be credited against a subsequently imposed federal prison sentence. In addition to giving a defendant credit for time served on the underlying offense of conviction (such as time in pretrial detention), 18 U.S.C. 3585(b)(1), it also gives a defendant credit for certain other time spent in detention, 18 U.S.C. 3585(b)(2)—but only if that time "has not been credited against another sentence," 18 U.S.C. 3585(b). By limiting credit to time served and time that would otherwise be uncredited, "Congress made clear that a defendant could not receive *double* credit for his detention time." *United States* v. *Wilson*, 503 U.S. 329, 337 (1992) (emphasis added). Such "double credit" is similarly unwarranted in the context of a defendant who seeks to count prison time against his term of supervised release.

Indeed, the principle against double counting carries particular force when the penalties are of different types. This Court has recognized that "[i]t would be anomalous to interpret § 3585(b) to require sentence credit for time spent confined in a community treatment center," because "Congress generally views such a restriction on liberty as a part of a sentence of 'probation' or 'supervised release,' rather than part of a sentence of 'imprisonment.'" *Reno* v. *Koray*, 515 U.S. 50, 59 (1995) (citations omitted). The mirror-image scenario—allowing a portion of a term of imprisonment for one crime to offset a defendant's term of supervised release for another crime—would be equally, if not more, "anomalous."

Nothing in the statutory scheme suggests that Congress intended that such a period of imprisonment presumptively count as *both* the sentence for the second crime *and* part of the supervised-release term for the original crime. Section 3624(e) is instead best interpreted, under its plain terms, to require precisely the opposite result.

C. Petitioner's Interpretation Of Section 3624(e) Is Flawed

On petitioner's view, Section 3624(e) excises the pretrial (or presentence) portion of a prison sentence for purposes of tolling, allowing any such period to qualify as both imprisonment on one offense and supervised release for another. That view is unsound.

1. Petitioner errs in suggesting (Br. 27-28) that the broad phrase "in connection with" serves only to ensure that federal supervised release is tolled during a period of "imprisonment for violation of parole or supervised release" for a separate crime. Congress's language plainly does more than simply ensure that a period of supervised release for crime B is tolled during reincarceration for a violation of parole or supervised release on crime A. As this Court has recognized, incarceration for such a violation amounts to "reimprisonment" that should be treated "as part of the penalty for the initial offense." *Cornell Johnson*, 529 U.S. at 700. Because such incarceration is thus "attribut[able] * * * to the original conviction," *id.* at 701, it would constitute a period in which a defendant is imprisoned "after" or "as a result of" a conviction. Accordingly, Congress did not need to use the more expansive phrase "in connection with" to ensure that the tolling provision covered such confinement, and the phrase should not be artificially limited to that circumstance. The natural import of the language Congress chose covers *all* imprisonment that is

related to a conviction, necessarily including time served that is credited against the sentence imposed for that conviction.

Petitioner's focus (Br. 17-22) on Section 3624(e)'s use of the present tense—namely, its specification that a supervised-release term "does not run" during certain periods in which a defendant "is imprisoned in connection with a conviction," 18 U.S.C. 3624(e)—is likewise misplaced. The Dictionary Act, 1 U.S.C. 1, provides that, "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise[,] * * * words used in the present tense include the future as well as the present." *Ibid.*; see, *e.g.*, *Carr* v. *United States*, 560 U.S. 438, 449 (2010) (observing that "a statute's undeviating use of the present tense is a striking indicator of its prospective orientation") (brackets, citation, and internal quotation marks omitted). Accordingly, Section 3624(e)'s use of the present tense dictates that the tolling provision applies to imprisonment whose "connection with a conviction" is apparent either at its inception or at the time of a later inquiry.

Petitioner acknowledges (Br. 22) that a slightly tweaked version of the current language—with a different tense of the verb "is"—would, even in his view, unambiguously have tolled supervised release during the pretrial (or presentencing) portion of a prison sentence. In recognizing that such a minor change would be sufficient, petitioner tacitly acknowledges that the phrase "in connection with" itself encompasses such incarceration. And he errs in faulting Congress for not adopting a different verb tense. Given the breadth of the phrase "in connection with a conviction" and the other language of the provision, Congress would have been leaning on a slender reed if it had relied upon the verb tense of the

word "is" to exclude all pretrial and presentence confinement.

Even if some alternative version of the word "is" might have done a better job of reinforcing the undisputed breadth of the phrase "in connection with," Congress had ample reason to believe that the language it adopted was sufficient. See *Caraco Pharm. Labs., Ltd.* v. *Novo Nordisk A/S*, 566 U.S. 399, 416 (2012) ("[T]he mere possibility of clearer phrasing cannot defeat the most natural reading of a statute."). Although some tolling provisions employ a mixture of present and past tenses (see, *e.g.*, 38 U.S.C. 3103(b)(3)), Section 3624(e) is not the only one in which Congress has used the present tense to describe tolling that may be determined in a later inquiry. Indeed, Congress did so in 18 U.S.C. 3292, which it enacted in the same omnibus legislation that included the Sentencing Reform Act's original version of Section 3624(e). See Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, Chs. II, XII, §§ 212(a), 1218(a), 98 Stat. 2008, 2167.

Section 3292 authorizes a "period of suspension" of a criminal statute of limitations that "shall begin on the date on which [an] official request is made" by the government for evidence from a foreign country. 18 U.S.C. 3292(b). The tolling effect of the official request, however, is contingent on a district court's *later* exercise of authority to "suspend the running of the statute of limitations," upon a finding that the request satisfied certain requirements. 18 U.S.C. 3292(a)(1); see 18 U.S.C. 3292(a)(2) (timing requirements for court ruling). Notwithstanding the retrospective nature of the court's action, the statute uses present- and future-tense phrases —allowing the court to "*suspend* the running of" the statute of limitations for a period that "*shall* begin"

when the "official request *is* made"—to describe the tolling. 18 U.S.C. 3292(a)(1) and (b) (emphasis added). Just as Congress saw no incongruity in that formulation, it would have seen no incongruity in its similar use of the present tense in Section 3624(e).

2. Petitioner separately contends (Br. 26-27) that Congress could not have intended to toll supervised release during the pretrial portion of a criminal sentence, because a probation officer—who will not know the outcome of a future trial or sentencing—will lack certainty about whether a defendant should be supervised while he is incarcerated pending trial or sentencing. That contention is flawed. The just-discussed example of Section 3292, which requires a judicial determination to trigger an earlier period of tolling, illustrates that Congress sometimes enacts tolling provisions whose application may not be determinable up front. See, *e.g.*, *United States* v. *Trainor*, 376 F.3d 1325, 1330-1336 (11th Cir. 2004) (affirming district court's refusal to issue Section 3292 tolling order after an official request). Section 3624(e) is another such provision; even on petitioner's reading, an immediate tolling determination will not always be possible. And any indeterminacy in the potential supervision of an incarcerated defendant, who is inherently unable to participate in supervised release while behind bars, creates no significant practical difficulties.

Regardless of how the question presented here is resolved, Section 3624(e) would not always allow for instant determination of whether a defendant's supervised-release clock is continuing to run while he is imprisoned. Because the tolling provision does not apply to any period of imprisonment "for a period of less than 30 consecutive days," 18 U.S.C. 3624(e), its application may

not be apparent until the thirtieth day of a defendant's imprisonment. Even when a defendant is imprisoned after a conviction, it may not be clear how long the imprisonment will last—and thus whether the supervised-release term should be tolled. Not only do some States have indeterminate sentencing schemes, see Aaron Rappaport, *The Institutional Design of Punishment*, 60 Ariz. L. Rev. 913, 920-921 & nn.26-27 (2018), but even in a determinate system like the federal one, the length of imprisonment will not always be apparent up front. See, *e.g.*, 18 U.S.C. 3621(e)(2)(B) (authorizing the Bureau of Prisons to reduce "[t]he period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program"); 18 U.S.C. 3622 (authorizing temporary release in certain circumstances).

Congress had no reason to be troubled by such indeterminacy—or by indeterminacy as to whether imprisonment is "in connection with a conviction"—because it has little practical import. So long as a defendant remains incarcerated, he and his probation officer need not know whether that period of imprisonment will toll the defendant's term of supervised release. Whether or not the supervised-release term is tolled, an incarcerated defendant cannot be supervised in the normal manner. See pp. 23-25, *supra*. In this case, for example, the Probation Office determined that petitioner was "unavailable for supervision" once he was imprisoned because, at that point, he was no longer "available for [the Probation Office] to supervise on the street." J.A. 21-22.

To the extent that some degree of supervision may be possible while a defendant is imprisoned, such supervision would be significantly impaired. A clean drug

test behind bars does not demonstrate an ability to resist the temptations the defendant would face on the outside. Similarly, circumstances that would be supervised-release violations on the outside—*e.g.*, failure to attend his normal (out-of-prison) drug-counseling sessions, or to hold down a steady (out-of-prison) job—would not sensibly be deemed violations while the defendant is incarcerated. And if a defendant does engage in conduct that could meaningfully be considered a supervised-release violation even in prison—*e.g.*, commission of a crime—a probation officer can report it to the court, which can defer adjudication until other proceedings that may be relevant to his status are fully resolved (as the district court did here). See pp. 6-9, *supra;* see also 18 U.S.C. 3583(i) (allowing for postponement of supervised-release-violation adjudications when "reasonably necessary").

The tolling analysis required by Section 3624(e) thus need not occur in real-time. Aside from the circumstance where a probation officer alleges supervised-release violations while the defendant was imprisoned, which can be handled at an appropriate time by the district court, a tolling inquiry becomes necessary only after a defendant is released from imprisonment and it is necessary to know whether, or how long, the probation officer will continue to supervise the defendant in the community. But by that point, it should be apparent whether the imprisonment was "in connection with a conviction." Although petitioner asserts (Br. 28-29) that the connection may sometimes be difficult to determine, he provides no evidence that the rule reflected in the decision below—which four courts of appeals have followed for years, see Br. in Opp. 13-14—has in fact been problematic.

II. THE DISTRICT COURT HAD AUTHORITY TO ADJUDICATE PETITIONER'S SUPERVISED-RELEASE VIOLATIONS BECAUSE HIS TERM WAS TOLLED UNDER SECTION 3624(e)

The court of appeals correctly determined that the district court had authority to adjudicate his supervised-release violations at the hearing it held on June 28, 2017. Petitioner contends (Br. 29-35) that the district court lacked such authority, on the theory that his term of supervised release ended on March 6, 2017, and that the district court did not issue a warrant or summons before that date that might have preserved its adjudicatory authority under 18 U.S.C. 3583(i). See *ibid.* (allowing extension of authority beyond expiration of supervised-release term, where "reasonably necessary," following issuance of summons or warrant before the term's expiration).[3] His term of supervised release did not expire on that date, however, because Section 3624(e) tolled it starting on June 1, 2016, when his sentence for his state drug-trafficking crimes was deemed to begin. At a minimum, petitioner's supervised release was tolled by October 6, 2016, when he pleaded guilty to those crimes. Either way, the court of appeals' decision should be affirmed.

---

[3] The parties have debated whether the district court issued a summons in November 2016, when petitioner's supervised-release term undisputedly had yet to expire. See 18 U.S.C. 3583(i); Gov't C.A. Br. 13-14; Br. in Opp. 17-18; Pet. Br. 34-35. Should the Court determine not to affirm the judgment below, it would be appropriate to remand for further proceedings on that issue, which the court of appeals did not fully consider in the first instance. See J.A. 41 n.5.

A. Petitioner's Supervised-Release Term Did Not Run During The Presentencing State Imprisonment That Was Credited Against His State Sentence

For the reasons set forth in Part I, *supra*, Section 3624(e) tolls a term of federal supervised release during any period that a defendant spends in presentencing confinement for another offense, where that period is later credited as time served on the defendant's term of imprisonment for that other crime. Application of that rule to the facts of this case results in the tolling of petitioner's supervised release beginning on June 1, 2016, when he was first imprisoned on state drug-trafficking charges, and ending when his prison sentence for his conviction on those charges concludes.

Petitioner was placed in state jail on his drug-trafficking charges on June 1, 2016. J.A. 35 & n.2. Petitioner has not disputed that the ensuing state custody—which continues to this day, see p. 7 & n.1, *supra*—is "imprison[ment]" for purposes of Section 3624(e). See Pet. Br. 25-27. On March 21, 2017, a state court sentenced him to a six-year prison term and "credited the roughly ten months that [he] had already been incarcerated pending a disposition"—*i.e.*, the time from June 1, 2016, through March 21, 2017—"as time served." J.A. 36; see 15-cr-291 Docket entry at 2 (Mar. 23, 2017); 16-cr-555 Docket entry at 2 (Mar. 23, 2017).

In these circumstances, petitioner's entire state term of imprisonment for drug-trafficking crimes—from June 1, 2016, through his state release date—is imprisonment "in connection with a conviction" that Section 3624(e) excludes from petitioner's term of supervised release. That term of supervised release had therefore not expired on June 28, 2017, when the district court adjudicated the supervised-release violations.

B. At A Minimum, Petitioner's Supervised-Release Term Tolled When He Pleaded Guilty To The State Charges

Like the court of appeals below, petitioner appears to use the term "pretrial detention" to describe both his initial detention and his time in presentencing confinement after his guilty plea. Pet. Br. 29; J.A. 41; see also Pet. Br. 15; Pet. 9, 18; Br. in Opp. 7. His asserted (Pet. Br. 29) "10 months of pretrial detention," however, straddles his guilty plea to the state crimes on October 6, 2016. Thus, even if petitioner were correct that his supervised release was not tolled for his period of pre-plea imprisonment, he cannot prevail on the question presented about the proper treatment of his "pretrial detention" (Pet. i) unless his supervised-release term also was not tolled during his post-plea imprisonment. But that latter period of imprisonment was even more clearly "in connection with a conviction."

1. Incarceration after a defendant has pleaded guilty, but before he is sentenced, is imprisonment "in connection with a conviction" under 18 U.S.C. 3624(e). A guilty plea is an "admission of guilt of a substantive criminal offense as charged in [the] indictment." *Libretti* v. *United States*, 516 U.S. 29, 38 (1995). Once a defendant has entered such a plea, "nothing remains but to give judgment and determine punishment." *Boykin* v. *Alabama*, 395 U.S. 238, 242 (1969). During that interim period, the admission of guilt in the plea provides a foundation for the defendant's imprisonment.

When a defendant is confined after a finding of guilt in anticipation of sentencing, that incarceration "is considered punishment for the offense" for which "a defendant will ordinarily earn time-served credit." *Betterman* v. *Montana*, 136 S. Ct. 1609, 1617 n.9 (2016); cf. *Spina* v. *Department of Homeland Sec.*, 470 F.3d 116, 127 &

n.9 (2d Cir. 2006) (citing statutes, rules, and court decisions from all 50 states and the District of Columbia that "provide * * * that time spent by a defendant in pre-conviction detention is to be treated as a day-for-day credit or reduction of the term of imprisonment imposed upon conviction"). And a key purpose of such confinement is to ensure that the defendant appears for sentencing and the imposition of judgment. See, *e.g.*, 18 U.S.C. 3143(a) (addressing detention of a defendant "who is awaiting imposition or execution of sentence").

Thus, whether viewed from the contemporaneous perspective of petitioner and his probation officer, or the later perspective of the district court, petitioner's guilty plea triggered a new "phase of the criminal-justice process"—one that this Court has in fact recently referred to as the phase "between *conviction* and sentencing." *Betterman*, 136 S. Ct. at 1617 (emphasis added); see *id.* at 1613. During that time, "the presumption of innocence no longer applies," *Deck* v. *Missouri*, 544 U.S. 622, 632 (2005), and the defendant may be treated as subject to incarceration as a convict, see *Betterman*, 136 S. Ct. at 1617 n.9. Indeed, under the Bail Reform Act—which Congress enacted in conjunction with the Sentencing Reform Act that included the original version of Section 3624(e), see *Koray*, 515 U.S. at 56-57—"bail [is] presumptively available for [an] accused awaiting trial" but is "presumptively unavailable for those convicted awaiting sentence." *Betterman*, 136 S. Ct. at 1614 (comparing 18 U.S.C. 3142(b) and 3143(a)). Thus, under any reasonable construction of Section 3624(e), the entirety of petitioner's post-plea incarceration was (and continues to be) "in connection with a conviction."

2. That result is reinforced by Section 3624(e)'s use of the term "conviction" to refer to an adjudication of

guilt, such as a guilty plea, rather than a formal criminal judgment. As previously noted, see p. 18, *supra*, "the word 'conviction' can mean either the finding of guilt or the entry of a final judgment on that finding." *Deal*, 508 U.S. at 131. Accordingly, although some federal statutes use the term in the narrower sense, others apply the terms "convicted" or "conviction" to refer to a circumstance in which a "guilty plea has been accepted whether or not a final judgment has been entered." *Dickerson* v. *New Banner Inst.*, 460 U.S. 103, 112 n.6 (1983).

That is the meaning of "conviction" in Section 3624(e). To determine what "conviction" means in a particular statute, this Court applies the "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal*, 508 U.S. at 132. Here, context indicates that Section 3624(e)'s tolling provision uses the word "conviction" to refer to an adjudication of guilt.

The text of Section 3624(e) includes not only the term "conviction" but also the term "sentence." See 18 U.S.C. 3624(e) (describing "[a] prisoner whose sentence includes a term of supervised release after imprisonment"). The term "sentence" is typically coextensive with a formal judgment of conviction. See, *e.g.*, Fed. R. Crim. P. 32(k)(1) (requiring that a judgment of conviction set forth the sentence); *Abbott* v. *United States*, 562 U.S. 8, 22 (2010) ("A determination of guilt that yields no sentence is not a judgment of conviction at all.") (citation omitted). The tolling provision's distinct use of the term "conviction" thus indicates that a formal judgment is *not* required. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the

same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted).

That inference is reinforced by the remainder of the Sentencing Reform Act, which repeatedly used the terms "conviction" and "convicted" in reference to a presentence finding of guilt. For example, 18 U.S.C. 3582(d) addresses the sentence that a court may "impos[e] * * * upon a defendant convicted of a [specified] felony," necessarily viewing a "convict[ion]" as a presentencing adjudication of guilt. Similar language appears in the current or original versions of other provisions of the Act. See, *e.g.*, 18 U.S.C. 5037(b) and (c) (providing that a term of probation or official detention for certain juveniles found to be juvenile delinquents may not exceed the maximum term that would be authorized "if the juvenile had been tried and convicted as an adult"); 28 U.S.C. 994(h)(1) (requiring the Sentencing Commission to ensure that the Sentencing Guidelines "specify a sentence to a term of imprisonment at or near the maximum term" for certain categories of defendants who "ha[ve] been convicted of a [specified] felony"); 28 U.S.C. 994(*l*)(1) (requiring the Sentencing Commission to ensure that the Sentencing Guidelines reflect "the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of * * * multiple offenses"); see also Sentencing Reform Act § 239, 98 Stat. 2039 (18 U.S.C. 3551 note) (referring to "imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense").

The Senate Report accompanying the Sentencing Reform Act reflects the same usage. For example, it

characterizes the Act as "an important attempt to reform the manner in which we sentence convicted offenders," thus indicating that Congress believed a defendant would be "convicted" first and "sentence[d]" later. Senate Report 65. Other statements in the report likewise use the words "convicted" and "conviction" to refer to a finding of guilt that precedes sentencing. See, *e.g.*, *id.* at 74 (stating that 18 U.S.C. 3552 "will provide a court with the resources necessary to acquire adequate information about a convicted offender * * * in order to assure a sound basis in fact for the sentencing decision"); *id.* at 119 (stating that 18 U.S.C. 3582(a) would require a court "to consider specified factors prior to the imposition of a sentence of imprisonment in all cases in which a defendant was convicted of a federal offense") (footnote omitted); *id.* at 163 ("Under [28 U.S.C. 994(a)(1)(A)], the [Sentencing G]uidelines are required to provide guidance for the judge in determining whether to sentence a convicted defendant to probation, to pay a fine, or to a term of imprisonment.").

Conversely, where the Sentencing Reform Act refers (or originally referred) to the formal judgment of conviction, or the entry of such a judgment, it employs the more descriptive phrases "judgment of conviction" and "entry of the judgment." See 18 U.S.C. 3562(b) ("judgment of conviction"); 18 U.S.C. 3572(c) (Supp. II 1984) ("judgment of conviction"); 18 U.S.C. 3582(b) ("judgment of conviction"); 18 U.S.C. 3607(a) ("entering a judgment of conviction"); 18 U.S.C. 3613(a) and (b)(1) (Supp. II 1984) ("entry of the judgment"); Sentencing Reform Act § 238(a), 98 Stat. 2037 (repealed) ("entry of the judgment"); Sentencing Reform Act § 238(a), 98 Stat. 2038 (repealed) ("entry of the judgment"). Congress's decision not to use those terms in Section 3624(e) shows

that it considered the guilty plea of a defendant like petitioner to itself be a "conviction." And any subsequent incarceration related to the underlying offense would plainly be "in connection with [the] conviction," thereby tolling a preexisting term of supervised release.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
BRIAN A. BENCZKOWSKI
Assistant Attorney General
ERIC J. FEIGIN
JENNY C. ELLICKSON
Assistants to the Solicitor General
JOSHUA K. HANDELL
Attorney

JANUARY 2019