No. _____

In the Supreme Court of the United States

CALVIN RAYMOND JONES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

FEDERAL COMMUNITY DEFENDER

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QUESTION PRESENTED

Title 18 U.S.C. § 3583(e) lists the factors district courts should consider when responding to a defendant's violation of the conditions of supervised release. It lists nearly all of the 18 U.S.C. § 3553(a) factors, but does *not* include § 3553(a)(2)(A), the section that describes the retributive purpose of punishment: "to reflect the seriousness of the offense," "to promote respect for the law," and "to provide just punishment for the offense." This petition presents the following question:

> **Does a district court abuse its discretion by considering the retributive purpose of punishment, as described in 18 U.S.C. § 3553(a)(2)(A), when revoking a term of supervised release pursuant to 18 U.S.C. § 3583(e)?**

PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those named in the caption of the case.

OPINIONS BELOW

The unpublished opinion of the Sixth Circuit Court of Appeals was issued on August 10, 2018 and is included in the Appendix at A-1. The November 6, 2018 order of the Sixth Circuit Court of Appeals denying en banc review is included in the Appendix at A-2. The transcript of the supervised release violation and sentencing hearing are included in the Appendix at A-3.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (2012) and Part III of the Rules of the Supreme Court of the United States. The order denying en banc review was entered on November 6, 2018. This petition is therefore timely.

STATUTORY PROVISIONS INVOLVED

The Question Presented revolves around the following sections of the United States Code.

18 U.S.C. §3583. Inclusion of a term of supervised release after imprisonment

> (e) **MODIFICATION OF CONDITIONS OR REVOCATION.**—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—
>
> > (3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case[.]

18 U.S.C. § 3553. Imposition of a Sentence

(a) **FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE**.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

PETITION FOR A WRIT OF CERTIORARI

Calvin Raymond Jones respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

STATEMENT OF THE CASE

This case presents a clear divide within the courts of appeals as to the interpretation and application of 18 U.S.C. § 3583(e) about whether a district court may consider the retributive factor found in 18 U.S.C. § 3553(a)(2)(A) when sentencing person who has violated supervised release. Section 3583(e) provides specific factors for the district court to consider when sentencing an individual for a violation in supervised release. Although the list of factors is similar to those enumerated in § 3553(a), § 3583(e) does not include the retributive factor found in § 3553(a)(2)(A). Nevertheless, the Second, Third, and Sixth Circuit Courts of Appeals have held that district courts have discretion to consider the retributive factor of § 3553(a)(2)(A) when sentencing under § 3583(e). In contrast, the Fourth, Fifth, and Ninth Circuits have held that district courts commit reversible error if they consider the need for the sentence for a supervised release violation "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). These courts reason that Congress intentionally omitted retribution as a factor in § 3583(e).

The result of the circuit split is trifold: confusion exists among the circuits of Congress's intent in the application § 3583(e); there are quantifiable discrepancies in sentence terms between similarly situated defendants; and there is an uneven application of the law at a time when individuals on supervised release is at an all-time high. Because of the fallout from the competing views on which factors may be considered by a district court when sentencing under § 3583(e), this writ should be granted.

A. The District Court Sentenced Mr. Jones to an 18-Month Term of Imprisonment for a Violation of Supervised Release.

Forty-eight year-old Calvin Jones has struggled with substance abuse disorder for decades. His trouble with cocaine abuse helps explain his history in federal court and the reason he is presently incarcerated.

After pleading guilty to one count of malicious use of a fire, 18 U.S.C. § 844(i), Mr. Jones was sentenced to a term of 84 months' imprisonment followed by three years of supervised release.

After Mr. Jones reentered the community, he did well for some time. He had a stable home and a stable job. In the spring of 2017, however, his old demons caught up with him. He met a woman and the two started using cocaine together. (*See* APP 020–21.) Embarrassed about his relapse and worried about being reincarcerated and losing his job, Mr. Jones stopped reporting to treatment and to his probation officer. (*See id.*) During that time, however, he never stopped working. And he did not have any contact with law enforcement. (*See id.*)

Mr. Jones's probation officer sought a warrant for Mr. Jones's arrest in October 2017. The warrant request listed the following violations: (1) failing to report to

probation; (2) failing to make restitution payments; (3) testing positive for cocaine; and, (4) failing to attend drug treatment as required. At Mr. Jones's hearing to suspend his supervised release, the district court dismissed the second alleged violation for insufficient evidence and accepted Mr. Jones admissions to the first, third, and fourth violations. The parties agreed that the advisory sentencing range was between 12–18 months.

Mr. Jones acknowledged that he had gone off track and violated the conditions of his release. He requested an opportunity to try treatment again, agreeing to home confinement or GPS monitoring to ensure his compliance with treatment requirements. This adjustment would have allowed Mr. Jones to continue working. (APP 021–22.) Counsel reminded the court that incarceration was not the only option available to send a message to Mr. Jones or to help him recover from his drug abuse disorder. (*See id.*)

When the district court imposed the sentence, it began by discussing the goals of a supervised release sentence:

> Those goals would include in this context the defendant's violations of conditions of supervised release and the need to vindicate the law that he's now flouted and in a broader context since these matters involve actual violations of criminal law, there's a need as well to deter this defendant from committing future crimes and deterring others who might imitate his conduct.

(APP 025.)

Turning to the specific reasons for imposing the ultimate sentence of 18 months in prison followed by three more years of supervised release, the district court offered two reasons: the specifics of the underlying offense, which were hotly contested, *see generally United States v. Jones*, 554 F. App'x 460 (6th Cir. 2014); and the nature of the violations

(namely, his cocaine use). (*See* APP 025–26.) The district court saw Mr. Jones's drug abuse disorder, not as a chronic disease, but as a sign that he "still hasn't come to the conclusion that he needs to get his life on the right side of the law." (*Id.*)

A. Mr. Jones Preserved the Question Presented.

Mr. Jones filed a timely appeal with the Sixth Circuit Court of Appeals. He argued, *inter alia*, that the district court committed reversible error because the district court stressed one factor upon imposing a new term of imprisonment that Congress believes is not an appropriate reason to incarcerate someone for a supervised release violation: retribution.

The Sixth Circuit responded to this argument in a simple, one paragraph dismissal:

> Finally, the district court did not base its sentence on an impermissible factor. Although Jones argues that the district court should not have considered the seriousness of the underlying offense, consideration of that factor is permissible in this circuit. *United States v. Lewis*, 498 F.3d 393, 399–400 (6th Cir. 2007). Jones even acknowledges that fact in his brief but simply disagrees with this court's position on the issue. This argument does not warrant reversal.

United States v. Jones, No. 18-1108, at 5 (6th Cir. Aug. 10, 2018) (APP 005.). The Sixth Circuit denied his petition for rehearing en banc. *United States v. Jones*, No.18-1108 (6th Cir. Nov. 6, 2018) (APP 007.).

REASONS FOR GRANTING THE WRIT

A sentence is substantively unreasonable when the district court, among other errors, "bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor." *United States v. Sexton*, 889 F.3d 262, 265 (6th Cir. 2018) (internal quotation marks omitted). And a district court abuses its discretion when it uses an impermissible factor to impose a sentence. *See, e.g.*, *United States v. Adams*, 873 F.3d 512, 520 (6th Cir. 2017). Thus, if 18 U.S.C. § 3583(e) does not permit district courts to consider retribution when responding to a supervised release violation, they abuse their discretion by doing so.

Sentencing for violations of supervised release is similar, but not identical, to sentencing for criminal convictions. When sentencing a defendant for a crime, courts must consider the factors listed in 18 U.S.C. § 3553(a). Section 3553(a)(2) outlines "the four purposes of sentencing generally"—retribution, deterrence, incapacitation, and rehabilitation. *United States v. Tapia*, 564 U.S. 319, 325 (2011). Subsection (a)(2)(A) reflects the retributive purpose of punishment.

Title 18 U.S.C. § 3583(e) lists the factors district courts should consider when responding to a defendant's violation of the conditions of supervised release. It lists nearly all of the 18 U.S.C. § 3553(a) factors, but does not include § 3553(a)(2)(A), the section that describes the retributive purpose of punishment: "to reflect the seriousness of the offense," "to promote respect for the law," and "to provide just punishment for the offense." When discussing a similarly worded provision of § 3583, this Court said the omission of

§ 3553(a)(2)(A) means "a court may *not* take account of retribution . . . when imposing a term of supervised release." *Tapia*, 564 U.S. at 326 (discussing § 3583(c)).

Despite retribution's omission from the list of relevant factors in § 3583(e), in *United States v. Lewis*, 498 F.3d 393, 399–400 (6th Cir. 2007), the Sixth Circuit held that district courts do not commit reversible error if they "consider § 3553(a)(2)(A) when imposing a sentence for violation of supervised release." Not only is the Sixth Circuit's holding wrong, it reflects a long-standing circuit split that has resulted in disparate treatment of similarly situated defendants across the United States. Resolution of this circuit split will have a significant impact on the large number of people who are sentenced for supervised release violations in federal court every day. This is an ideal time for this Court to settle the issue.

A. The Question Presented has Divides the Courts of Appeals.

The Sixth Circuit's unpublished decision in Mr. Jones's case reflects the Sixth Circuit's entrenched view that retribution is an appropriate consideration at a supervised release sentencing hearing. *See generally Lewis*, 498 F.3d at 399–400. That is the view of three circuits, but three others hold the opposite. In 2011, this Court offered new guidance that courts holding the Sixth Circuit's view have not yet addressed.

1. The Second, Third, and Sixth Circuits hold that a district court does not commit reversible error by imposing a sentence for a supervised release violation for the purpose of retribution.

The Sixth Circuit has aligned with the Second Circuit, which held that § 3583(e) permits a district court to consider other factors not enumerated, including

the retributive purpose of sentencing. *United States v. Williams*, 443 F.3d 35, 47 (2d Cir. 2006). Like the Sixth Circuit, the Third Circuit also appears to have agreed with the *Williams* Court in *United States v Bunger*, 478 F.3d 540, 543 n.2 (3d Cir. 2007).

The primary argument advanced in *Lewis* and adopted by other courts is that § 3583(e) uses permissive language: courts "may, after considering the [specified] factors . . . revoke a term of supervised release." 498 F.3d at 400. The Sixth Circuit reasoned that this permissive language did not restrict courts from considering other factors. *Id.* In addition, the Sixth Circuit said that § 3553(a)(2)(A) is "essentially redundant with matters courts are already permitted to take into consideration when imposing sentences for violation of supervised release." *Id.*

The Sixth Circuit also advanced a number of non-textual arguments to conclude that retribution was an appropriate purpose of sentencing for a supervised release violation. First, the Sixth Circuit stated that imposing a sanction for retributive purposes is consistent with the requirement that courts consider the nature and circumstances of the offense. 498 F.3d at 400; *see also Williams*, 443 F.3d at 48. The second justification was the purpose of supervised release: to teach a defendant to obey the court's conditions. *Lewis*, 498 F.3d at 400. The final justification offered was based on the Federal Sentencing Guidelines' Chapter 7 Policy Statements, not the text of the statute. The Sixth Circuit reasoned that because the Guidelines state that revocation sentences are "intended to sanction the violator for failing to abide by the conditions of the court-ordered supervision," district courts may consider just punishment for either the violation or the underlying offense. *Lewis*, 498 F.3d at 400 (discussing 18 U.S.C. App'x § 3(b)).

2. The Fourth, Fifth, and Ninth Circuits hold that retribution is not an appropriate consideration during a supervised release sentencing hearing.

On the other side of the split are the Fourth, Fifth, and Ninth Circuits, which prohibit consideration of the factor described in § 3553(a)(2)(A). *See United States v. Miller*, 634 F.3d 841, 844 (5th Cir. 2011) (adopting the Ninth Circuit's approach); *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006) ("Given that § 3553(a)(2)(A) is a factor that Congress deliberately omitted from the list applicable to revocation sentencing, relying on that factor when imposing a revocation sentence would be improper."); *United States v. Cudrup*, 461 F.3d 433, 439 (4th Cir. 2006) ("According to § 3583(e), in devising a revocation sentence the district court is not authorized to consider whether the revocation sentence 'reflect[s] the seriousness of the offense, . . . promote[s] respect for the law, and . . . provide[s] just punishment for the offense,' § 3553(a)(2)(A), or whether there are other 'kinds of sentences available,' § 3553(a)(3).").[1]

These courts reason that the differences between § 3553(a) and § 3583(e) reflect an intentional choice that consideration of some of the factors included in § 3553(a) is not appropriate in the context of a supervised release violation. They rely on the presumption that, when "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." *Russello v. United*

[1] The Fourth Circuit subsequently refined its holding in *Crudup* and held that a district court does not commit error by merely referencing § 3553(a)(2)(A) before pronouncing a sentence for a supervised release violation. *See United States v. Webb*, 738 F.3d 638, 642 (4th Cir. 2013).

States, 464 U.S. 16, 23 (1983). *See Miqbel*, 444 F.3d at 1182; *Miller*, 634 F.3d at 844 (citing *Russello*, 464 U.S. at 36). "The improper reliance on a factor Congress decided to omit from those to be considered at revocation sentencing, as a primary basis for a revocation sentence, would contravene the statute in a manner similar to that of a failure to consider the factors specifically included in § 3583(e)." *Miqbel*, 444 F.3d at 1182.

These courts found that the rule of *Russello* naturally applies here. Had Congress intended for § 3553(a)(2)(A) to be a consideration during a revocation of supervised release it would have done so expressly either by including subsection (a)(2)(A) in the list of relevant factors or by referring to § 3553(a) as a whole. Instead, Congress identified the specific § 3553(a) factors it deemed relevant to sentencing a defendant for a supervised release violation and purposefully omitted others. Guided by *Russello*, these courts hold that district courts should refrain from concluding that the omission of § 3553(a)(2)(A) was a simple mistake in draftsmanship.

According to these courts, Congress's exclusion of § 3553(a)(2)(A) means that, while district courts may consider deterrence and incapacitation when deciding whether to incarcerate a defendant for a supervised release violation, they may not consider the following excluded factors:

- the need "to reflect the seriousness of the offense";
- the need "to promote respect for the law"; or
- the need "to provide just punishment for the offense."

United States v. Sanchez, 900 F.3d 678, 683–84 (5th Cir. 2018) (discussing 18 U.S.C. § 3583(e)).

3. This Court has already indicated that retribution is not an appropriate consideration at a supervised release sentencing hearing.

In *United States v. Tapia*, 564 U.S. 319 (2011), this Court offered helpful guidance about how to read § 3583(c), a provision similar to § 3583(e). For example, subsection (c) lists the factors district courts should consider when deciding whether to impose a term of supervised release. Missing from that list is § 3553(a)(2)(A), *i.e.*, retribution. This Court interpreted § 3583(c) to mean "a court may not take account of retribution (the first purpose listed in § 3553(a)(2)) when imposing a term of supervised release." *Id.* at 326 (discussing § 3583(c)). Thus, given the rule from *Russello* and the subsequent application in *Tapia*, there is clear guidance that § 3553(a)(2)(A)'s absence from § 3583(e) means district courts may not consider retribution when responding to a supervised release violation. And yet the courts of appeals have not corrected course.

B. The Sixth Circuit is Incorrect that Retributive Sentencing is Appropriate for Supervised Release Violations.

The structure of 18 U.S.C. § 3583 confirms that the Fourth, Fifth, and Ninth Circuits have correctly interpreted § 3583(e) to prohibit district courts from using retribution to guide sentencing decisions for supervised release violations.

1. The structure of § 3583 makes clear that retribution is not a purpose of supervised release.

Section 3583(c) outlines how district courts should decide whether to impose a term of supervised release. Subsection 3583(d) provides guidance about which conditions to impose. And § 3583(e) tells courts what to do when a defendant violates those conditions.

Congress referenced the factors listed in 18 U.S.C. § 3553(a) in each of these three subsections, and selected each factor it deemed appropriate to consider. Not one of them lists retribution, § 3553(a)(2)(A), as one of the factors courts should weigh.

For example, Congress granted district courts authority to require compliance with any discretionary condition of probation or any other condition provided such condition "is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D)." 18 U.S.C. § 3583(d)(1). Such additional conditions must also "involve[] no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D)." *Id.* § 3583(d)(2). Once again, Congress did not reference retribution, *i.e.*, § 3553(a)(2)(A).

Reading § 3583(e) to prohibit consideration of retribution comports with the understanding that "[p]ostrevocation sanctions are part of the penalty for the original offense because 'construing revocation and reimprisonment as punishment for the violation of the conditions of supervised release' raises 'serious constitutional questions.'" *United States v. Johnson*, 640 F.3d 195, 203 (6th Cir. 2011) (quoting *Johnson v. United States*, 529 U.S. 694, 700 (2000)). Supervised release is part and parcel of the sanction for the underlying criminal conviction, and the original term of supervised release was imposed to reflect the seriousness of the offense of conviction and to promote respect for law. *Johnson*, 529 U.S. at 701 (explaining that "postrevocation penalties relate to the *original* offense," rather than the violation conduct." (emphasis in original)).

2. Constitutional concerns counsel against allowing retribution to guide supervised release sentencing decisions.

Consideration of § 3553(a)(2)(A) at a supervised release revocation hearing also raises serious constitutional concerns when "the violative conduct need not be criminal and need only be found by a judge under a preponderance of the evidence standard, not by a jury beyond a reasonable doubt. " *Johnson*, 529 U.S. at 700 (discussing 18 U.S.C. § 3583(e)(3) (1988 ed., Supp. V)). "Where the acts of violation are criminal in their own right," there would be a double jeopardy issue "if the revocation of supervised release were also punishment for the same offense." *Id.*

3. The reasons offered to allow retributive sentencing are unpersuasive.

The Sixth Circuit's textual arguments fall flat. To start, the court suggested that the permissive language "may" suggested the factors district courts could consider were unlimited. *Lewis*, 498 F.3d at 400. That is not, however, the most logical reading of the statute. "May" refers to the list of permissible responses a district court may have to a violation—termination, extension, revocation of supervised release, or home confinement. *See* 18 U.S.C. § 3583(e). This "may" does not affect the specified factors courts must consider before settling on the appropriate course of action.

Next, the court claimed § 3553(a)(2)(A) is "essentially redundant with matters courts are already permitted to take into consideration when imposing sentences for violation of supervised release." *Lewis*, 498 F.3d at 400. That view runs head on into another interpretive canon, which says that courts should be "reluctant to treat

statutory terms as surplusage in any setting." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotation marks and alteration omitted). This Court has described the four factors listed in § 3553(a)(2) as the "four purposes of sentencing generally." *Tapia*, 564 U.S. at 325. Those four purposes are distinct and do not overlap.

The non-textual reasons offered by the Sixth Circuit and other courts fare no better. They reason that considering retribution is no different than taking into account the nature and circumstances of the offense. *Lewis*, 498 F.3d at 400; *see also Williams*, 443 F.3d at 48. But there is a difference. Retribution involves imposing a sentence because the defendant lacks respect for law, *Miller*, 634 F.3d at 844; or to punish, or to promote respect the law, or to impose a sentence the defendant deserves, *see Sanchez*, 900 F.3d at 684 (explaining references to the seriousness of the offense, desert, and "respect for law" indicate a retributive purpose). Those are retributive purposes for imposing punishment, which are not necessarily intertwined with considering the defendant's personal characteristics, criminal history, or conduct.

Second, retribution and teaching someone about the importance of following the court's orders are not one and the same, as the Sixth Circuit suggested. *See Lewis*, 498 F.3d at 400. "Although a court may consider the need to sanction an individual for violating the conditions of probation or supervised release when formulating its sentence at a revocation proceeding, that type of 'sanction' is distinct from the 'just punishment' referred to in § 3553(a)(2)(A)." *Miqbel*, 444 F.3d at 1182.

Finally, the courts have relied on the policy statements in the Guidelines. But the Sentencing Guidelines' Chapter 7 Policy Statements do not support the conclusion that

revocation sentences are "intended to sanction the violator for failing to abide by the conditions of the court-ordered supervision," and that district courts may, therefore, consider just punishment for either the violation or the underlying offense. *Lewis*, 498 F.3d at 400 (discussing 18 U.S.C. App'x § 3(b)). To start, the Guidelines do not supplant Congress's clear directive. Nor should they control how courts should read § 3583(e). The Guidelines are the result of "an express congressional delegation of authority for rulemaking," and are thus "the equivalent of legislative rules adopted by federal agencies." *Stinson v. United States*, 508 U.S. 36, 44–45 (1993). And so the Guidelines must be consistent with the statute. For when "a statute is unambiguous[,] the statute governs." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). Such is the case here.

In any event, the Chapter 7 policy statements bolster the conclusion that retribution is not an appropriate consideration at supervised release revocation hearings. The Commission has explained that supervised release violations are "breach[es] of trust," which are different from punishment for any new or old crime. *Miqbel*, 444 F.3d at 1183 (discussing Chapter 7, Pt. A). Instead, "at a revocation sentencing, a court may appropriately sanction a violator for his 'breach of trust,' but may not punish him for the criminal conduct underlying the revocation." *Id.*

In short, none of the reasons offered support the conclusion that district courts may consider retribution for the supervised release violation or the underlying criminal offense when responding to a supervised release violation.

C. This Case Presents the Ideal Vehicle to Remedy Significant Impact and Uneven Sentencing Practices at Supervised Release Hearings.

Retributive purposes motivated the district court's decision to sentence Mr. Jones to serve an 18-month term in prison. The district court heavily relied on § 3553(a)(2)(A) when it imposed the sentence for Mr. Jones's supervised release violations. (*See* APP 024–26.) The court said the sentence imposed was intended to "vindicate the law that [Mr. Jones]'s now flouted and in a broader context since these matters involve actual violations of criminal law." (APP 025.) The court further indicated that the lengthy custodial sentence was intended to teach Mr. Jones to "get his life on the right side of the law." (APP 025–26.) These are retributive reasons for imposing punishment, and so the district court abused its discretion.

Mr. Jones preserved this issue in the Court of Appeals, arguing that basing a sentence on a retributive purpose constitutes an abuse of discretion. That court made clear that it rejected Mr. Jones's argument based on a prior opinion. Mr. Jones then sought en banc review. The question is thus preserved and clearly presented for this Court.

Finally, resolving the question presented is important to Mr. Jones and numerous other federal supervisees who are sentenced daily in federal courts nationwide. Nearly 115,000 federal defendants are subject to supervised release annually, which is three times as many as in 1995. (PEW CHARITABLE TRUST, NUMBER OF FEDERAL OFFENDERS REACHES AN ALL-TIME HIGH 1 (January 2017), APP 030.) "More than two-thirds of all federal offenders who are revoked from supervised release each year committed technical violations but were not convicted of new

crimes." (APP 030.) This means that 75,900 will be re-sentenced pursuant to § 3583(e). Of that number, at least 20,700 federal criminal defendants may receive longer sentences if judges continue to consider retribution as a basis to punish someone for a supervised release violation.

Depending on the jurisdiction, the same violation could receive more than double the amount of prison time because the district judge is permitted by controlling circuit precedent to consider punitive factors in addition to the factors enumerated under § 3583(e). For example, a federal defendant in Monroe, Louisiana who violates supervised release on the same grounds as Mr. Jones could receive a year less of prison time than Mr. Jones simply because of the circuit split. An additional year of incarceration for a defendant in the Second, Third, or Sixth Circuit simply resulting from a differing interpretation of a statute is an unfortunate and unnecessary result, especially given this Court's guidance on the matter.

For Mr. Jones, who desires to overcome his substance abuse disorder and regain lawful employment, the disparity represents a fundamental unfairness that has plagued his life since childhood when one considers privilege and the vicious cycle of loss begetting loss.

CONCLUSION

This Court should grant this petition for Writ of Certiorari.

Respectfully Submitted,

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