

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO RODRIGUEZ-CORTEZ,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether a combined 70-month sentence on an immigration offense and the underlying supervised release violation was substantively unreasonable?

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PETITION FOR WRIT OF CERTIORARI
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Petitioner Pedro Rodriguez-Cortez respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The district court sentenced Mr. Rodriguez to 64 months on an illegal reentry immigration offense, and tacked on an additional six months for the underlying supervised release violation. The Ninth Circuit affirmed Mr. Rodriguez's

conviction in an unpublished memorandum.¹ According to the court of appeals, “[t]he district court did not abuse its discretion. The sentences are substantively reasonable in light of the statutory sentencing factors and the totality of the circumstances, including Rodriguez-Cortez’s extensive criminal history, the need for deterrence, and his breach of the court’s trust.” App.A at 2 (citations omitted).

JURISDICTION

On December 3, 2018, the Ninth Circuit Court of Appeals affirmed Mr. Rodriguez’s sentence. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

18 U.S.C. §§ 3553(a), 3583(e).²

STATEMENT OF THE CASE

A. Circumstances of the offense.

On December 24, 2010, federal agents arrested Mr. Rodriguez and charged him with being a deported alien found in the United States, in violation of 8 U.S.C. § 1326, and making a false claim to United States citizenship, in violation of 18

¹ A copy of the memorandum is attached as Appendix A.

² A copy of the provisions are attached as Appendix B.

U.S.C. § 911. PSR:11.³ The case proceeded to trial, and a jury found him guilty on both counts. PSR:11. At sentencing, using the then-current Sentencing Guidelines, he received a 16-level enhancement for a 1993 conviction for possession of marijuana with intent to distribute. ER:42. The district court imposed a 77-month sentence, followed by three years of supervised release. ER:9; PSR:11. Mr. Rodriguez began his supervised-release term on July 26, 2016, and was deported the same day. ER:9; PSR:11.

B. The new crime, supervised release violation, and sentencing.

When Mr. Rodriguez returned to Mexico, it hardly felt like home. His parents brought him to the United States as an infant, and he had lived here for forty years. PSR:13. His family, including his six children, all lived in California. PSR:13. Accordingly, nearly four months after his deportation, Mr. Rodriguez returned to the United States to find his family. PSR:4; ER:40.

On November 13, 2016, federal agents were conducting line watch operations a half mile from the United States-Mexico border. PSR:4. They stopped Mr. Rodriguez among a group of people. PSR:4. Mr. Rodriguez was

³ “PSR” refers to the Presentence Report; “ER” refers to Appellant’s Excerpt of Record. All are on file with the Ninth Circuit.

cooperative, acknowledging he was a Mexican citizen without permission to be in the United States. PSR:4. He was arrested for illegal reentry. ER:1.

The government filed a new criminal case, once again charging illegal reentry (Case No. 16-cr-2834-DMS). ER:7. Thereafter, a United States Probation Officer in the Southern District of California filed a petition alleging Mr. Rodriguez violated his supervised release by committing the new crime. ER:9. Mr. Rodriguez pleaded guilty to the deported alien charge, and admitted the supervised release violation. ER:23.

The parties, the court, and United States Probation calculated his sentencing range on the illegal reentry charge as 120-151 months. ER:64; PSR:20. The district court imposed an 84-month sentence, and a consecutive six-month sentence for the violation. ER:26-27, 30-31. During the appellate process, the parties recognized a significant error in calculating the guidelines range. ER:64. The parties stipulated to a remand for re-sentencing. ER:34.

C. The resentencing.

At the sentencing hearing, the parties and the court agreed on the applicable guidelines:

Base offense level (§ 2L1.2(a)):	8
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Prior illegal entry offense (§ 2L1.2(b)(1)(A)):	+ 4
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Felony conviction pre-deportation (§ 2L1.2(b)(2)(A)): +10

Acceptance of responsibility (§ 3E1.1): -3

ER:36, 47, 63. With a total offense level of 19, at Criminal History Category V, the guideline range was 57-71 months. ER:63-64.

Through counsel, Mr. Rodriguez argued for the court to impose a low-end sentence of 57 months. ER:38-44, 47. Mr. Rodriguez highlighted that the 77-month sentence on his 2011 illegal reentry case was an inflated benchmark. First, that was a trial case, where he did not receive a reduction for acceptance of responsibility. ER:53. Second, the illegal reentry guideline, § 2L1.2, had been substantially modified in the interim. ER:53. This change reflected the Sentencing Commission's evolving views on the appropriate consideration of prior convictions in illegal reentry cases. Had that sentencing taken place now, Mr. Rodriguez's range would have been much lower. ER:42-43; 53-54. Moreover, increasing the punishment in this instance would not provide specific deterrence, thus, counsel suggested the court "ought not emphasize th[is] factor." ER:41, 54.

On the supervised release violation, Mr. Rodriguez urged the court to impose a six-month sentence to run concurrent, rather than consecutive, to the sentence on the new offense. ER:47, 55.

Although the court did find merit in counsel’s benchmark argument, it declined to follow the ultimate recommendation. ER:65, 68. In considering the 18 U.S.C. § 3553(a) sentencing factors, the court focused on Mr. Rodriguez’s criminal history. ER:66-67. It further noted a need to “impose a sentence to protect society, and to simply punish for punishment’s sake for another immigration conviction.” ER:67. Thus, the court imposed a sentence of 64 months. ER:68.

The court then turned to the violation. It calculated the guideline range as 12-18 months. ER:68. The court imposed a six-month sentence, to run consecutive to the 64-month sentence, “to address the violation, the breach of trust.” ER:69. Thus, Mr. Rodriguez’s total sentence was 70 months. ER:69. He timely appealed the substantive reasonableness of his sentence. ER:75-76.

D. The Ninth Circuit’s affirmance.

On appeal, Mr. Rodriguez argued the district court erred in imposing a combined sentence of 70 months. The 64-month sentence for the illegal reentry case was substantively unreasonable. Moreover, a consecutive six-month revocation sentence was unnecessary. The Ninth Circuit summarily affirmed, finding no abuse of discretion. *See* App.A. This petition for writ of certiorari follows.

REASON FOR GRANTING THE PETITION

Review is necessary to correct an injustice

According to the Ninth Circuit, Mr. Rodriguez's sentence was substantively reasonable in light of the totality of the circumstances and the statutory sentencing factors under 18 U.S.C. §§ 3553(a) and 3583(e). *See* App.A. This conclusion is legally incorrect and finds no basis in the record. Indeed, an objective evaluation of the sentencing factors proves the point. *See Gall v. United States*, 552 U.S. 38, 49-51 (2007).

A sentence is substantively unreasonable if it is “‘greater than necessary’ to accomplish [the statutory] sentencing goals.” *United States v. Crowe*, 563 F.3d 969, 977 n.16 (9th Cir. 2009) (citing 18 U.S.C. § 3553(a)). Ultimately, “the touchstone of ‘reasonableness’ is whether the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a).” *United States v. Grier*, 475 F.3d 556, 571 (3d Cir. 2007) (en banc) (internal citation omitted).

Beginning with the underlying illegal reentry offense, under section 3553(a), the sentencing court is required to evaluate a broad range of considerations to ensure the sentence is “sufficient, but not greater than necessary.” 18 U.S.C. § 3553. It must look to:

- (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, promote respect for the law, and provide just punishment; (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;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established in the Guidelines;
- (5) any pertinent policy statements" issued by the Sentencing Commission;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

In this case, when considered in their totality, these factors demonstrate the sentence was excessive.

A. The factors in section 3553(a)(1) weigh against the sentence.

Beginning with the "nature and circumstances of the offense," there is nothing particularly aggravating about this offense. As discussed, Mr. Rodriguez was spotted on foot a half-mile from the U.S.-Mexico border. PSR:4. He was cooperative with the agents and confessed immediately. PSR:4. There was no

violence involved or injury to others. He pleaded guilty, accepting full responsibility for his conduct. Mr. Rodriguez was simply a poor man who wanted to be with his children. ER:39-40; PSR:4.

Moreover, Mr. Rodriguez's history and characteristics weigh against the sentence:

- He is 55 years old. He moved to the United States when he was an infant, and lived in the United States most of his life. ER:39-40; PSR:13.
- He returned to the United States to see his six children, all of whom live in California. ER:40; PSR:13.
- His eldest son, Peter, died in a drive-by shooting in 2009. PSR:13.
- All of his cultural ties are in the United States. PSR:13.
- He has a work history in maintenance, as a cook, and installing countertops. PSR:10.
- All of his education was in the United States, including attending high school in Los Angeles. While in custody, he received his GED and started community college courses. PSR:14.

And although Mr. Rodriguez cannot ignore his criminal history, it ought not be the solitary focus, given his other mitigating factors. Indeed, his non-immigration

related offenses occurred over 25 years ago, when Mr. Rodriguez was in his twenties. PSR:7-10.

B. The factors in section 3553(a)(2) weigh against the sentence.

Moving to the factors in section 3553(a)(2), the “seriousness of the offense, to promote respect for the law, and to provide just punishment,” illegal reentry is not a particularly serious offense. Nor did Mr. Rodriguez’s conduct involve violence, flight, or obstruction. Surely, over five years in prison is a harsh punishment for an immigration-status offense. Moreover, upon release, Mr. Rodriguez will be deported and permanently separated from his children. A result this Court has held to be “a particularly severe penalty.” *United States v. Padilla*, 559 U.S. 356, 365 (2010).

A closer look at the next two factors – the need for “adequate deterrence” and the need “to protect the public,” also shows the sentence was unduly harsh.

A sentence at the low end of the range, 57 months, would have been a substantial sentence, with substantial deterrent impact. Although the district court disagreed, there was nothing in the record to suggest that 64 months was necessary to deter others.

As for the need to protect the public, most of Mr. Rodriguez’s prior convictions involve immigration and drug-related offenses. PSR:7-11. They are

non-violent offenses. Further, he has not had any drug-related offenses since 1993.

PSR:10-12.

But there is more. There is nothing in the record that indicates Mr. Rodriguez is *currently* a danger to society. Indeed, his previous sentences did just what the government sought: protect the public. He has not committed a drug offense in over 25 years. Accordingly, there was little need to protect the public via his incarceration.

As to the other factors in section 3553(a)(2), they are either irrelevant or cut against the sentence. For example, there is no evidence Mr. Rodriguez needed 64 months to obtain education, vocational training, medical care, or other corrective treatment. *See* 18 U.S.C. § 3553(a)(2)(D). And considering he will have to make a life for himself in Mexico upon his release, delaying the inevitable will not help.

C. The remaining factors in section 3553(a) weigh against the sentence.

As to the remaining factors in section 3553(a) – the sentencing range and avoiding unwarranted sentencing disparities – a sentence at the low end of 57 months, or below, would have been sufficient and in line with similarly situated cases. Indeed, the “Guidelines are only one factor to consider when imposing sentence.” *Gall*, 552 U.S. at 59 (“the Guidelines are not mandatory, and thus the

range of choice dictated by the facts of the case is significantly broadened.”) (citation omitted).

A re-calculation of Mr. Rodriguez’s 2011 illegal reentry sentence under the current guidelines proves this point. Mr. Rodriguez received a 16-level enhancement under the former guidelines based on his 1993 conviction for possession with intent to distribute marijuana.⁴ PSR:10. Based on this enhancement, Mr. Rodriguez was sentenced to 77 months. PSR:11.

However, the Guidelines underwent a significant change in 2016. Notably, the Guidelines eliminated the 16-level enhancement. As the Sentencing Commission stated, “[] the existing 16 [] level enhancements for certain prior felonies committed before a defendant’s deportation were overly severe.” 2016 Amendments to the Sentencing Guidelines, available at <http://bit.ly/2ydh1gs>, at 24. Indeed, to “impose an enhancement of up to 16 levels [was] often disproportionate to a defendant’s culpability or recidivism risk.” *Id.* at 26; *see also United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055 (9th Cir. 2009) (“application of the Guidelines sentence with its 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A) substantially overstates ‘the nature and circumstances of [the defendant’s] offense

⁴ The 2011 Guidelines mandated a sixteen-level increase for illegal reentry after “a conviction for a felony that is [] a drug trafficking offense for which the sentence imposed exceeded 13 months[.]” 2011 U.S.S.G. § 2L1.2(b)(1)(A)(i).

[and] . . . the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.”) (quoting 18 U.S.C. § 3553(a)(1)-(2)(A)). The 2016 Guideline amendments, then, were designed to prevent inappropriately lengthy sentences like what Mr. Rodriguez received in 2011. *See Gall* 552 U.S. at 54 (“avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges.”).

Therefore, applying the current guidelines to Mr. Rodriguez’s 2011 case, the calculation would be similar to the current one: a base offense level of 8, +4 for a prior illegal entry felony, +10 for a post-deportation sentence, but with no credit for acceptance of responsibility. With a total adjusted offense level of 22, in then-criminal history category IV, his sentencing range would have been 63-78 months. Had the court imposed the low-end then, 63 months would be the benchmark, as opposed to the 77-month benchmark. Surely now, with credit for acceptance of responsibility, a sentence of 57 months, or below, would be sufficient. Thus, the section 3553(a) factors demonstrate that 64 months for the underlying offense is excessive for Mr. Rodriguez.

D. The six-month consecutive sentence for the supervised release violation was greater than necessary.

Additionally, adding a consecutive sentence for the supervised-release violation compounded the substantive unreasonableness. Plainly, the new *criminal* sentence accounted for the supervised-release sentencing goals.

A comparison of the statutory factors relevant to supervised-release sentencing to those applicable to criminal sentencing illustrates this point. In sentencing a defendant for violating supervised release, the district court must consider the sentencing factors in 18 U.S.C. § 3583(e). Section 3583(e), in turn, directs the court to the majority of the sentencing factors in 18 U.S.C. § 3553(a).

In other words, much of the supervised-release sentencing factors are subsumed within the criminal-conviction sentencing factors in section 3553(a). Therefore, when a new criminal conviction forms the basis of a supervised-release violation, the new criminal sentence – assuming it is imposed first – should ordinarily be sufficient to account for the factors relevant to supervised-release sentencing. Thus, tacking on an additional six months to Mr. Rodriguez's 64-month sentence was unnecessary.

Accordingly, considering the totality of the sentencing factors, Mr. Rodriguez's sentence was substantively unreasonable.

CONCLUSION

The Court should grant the petition for a writ of certiorari to fix the Ninth Circuit's flawed affirmance.

Respectfully submitted,

Dated: March 3, 2019

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APPENDIX

Appendix A

NOT FOR PUBLICATION**FILED**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 3 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PEDRO RODRIGUEZ-CORTEZ,

Defendant-Appellant.

Nos. 18-50112
18-50113D.C. Nos. 3:16-cr-02834-DMS
3:11-cr-00287-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted November 27, 2018**

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

In these consolidated appeals, Pedro Rodriguez-Cortez challenges the 64-month sentence imposed following his guilty-plea conviction for being a removed alien found in the United States, in violation of 8 U.S.C. § 1326, and the consecutive 6-month sentence imposed following the revocation of his supervised

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

release, which he was serving in connection with a 2010 illegal reentry conviction.

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Rodriguez-Cortez contends that the 64-month sentence is substantively unreasonable in light of mitigating factors such as his age, his reason for reentering, the nature and age of some of his prior felony convictions, and amendments to the illegal reentry Guideline that went into effect after his 2010 illegal reentry conviction. He also argues that the consecutive 6-month revocation sentence is unnecessary because the 64-month sentence adequately serves the purposes of sentencing.

The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentences are substantively reasonable in light of the statutory sentencing factors and the totality of the circumstances, including Rodriguez-Cortez's extensive criminal history, the need for deterrence, and his breach of the court's trust. *See* 18 U.S.C. §§ 3553(a), 3583(e); *Gall*, 552 U.S. at 51; *United States v. Simtob*, 485 F.3d 1058, 1062 (9th Cir. 2007) (breach of the court's trust is a proper consideration at a revocation sentencing).

AFFIRMED.

Appendix B

18 USCS § 3553

Current through PL 115-182, approved 6/6/18

United States Code Service - Titles 1 through 54 > TITLE 18. CRIMES AND CRIMINAL PROCEDURE > PART II. CRIMINAL PROCEDURE > CHAPTER 227. SENTENCES > SUBCHAPTER A. GENERAL PROVISIONS

§ 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;

(3)the kinds of sentences available;

(4)the kinds of sentence and the sentencing range established for--

(A)the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

(i)issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments

have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii)that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced; or

(B)in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5)any pertinent policy statement--

(A)issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B)that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced.[]

(6)the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7)the need to provide restitution to any victims of the offense.

18 USCS § 3583

Current through PL 115-182, approved 6/6/18

United States Code Service - Titles 1 through 54 > TITLE 18. CRIMES AND CRIMINAL PROCEDURE > PART II. CRIMINAL PROCEDURE > CHAPTER 227. SENTENCES > SUBCHAPTER D. IMPRISONMENT

§ 3583. Inclusion of a term of supervised release after imprisonment

(a) In general. The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b) [18 USCS § 3561(b)].

(b) Authorized terms of supervised release. Except as otherwise provided, the authorized terms of supervised release are--

- (1)** for a Class A or Class B felony, not more than five years;
- (2)** for a Class C or Class D felony, not more than three years; and
- (3)** for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release. The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider 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) [18 USCS § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)].

(d) Conditions of supervised release. The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) [18 USCS § 3561(b)] that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition

Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 [42 USCS § 14135a]. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) [18 USCS § 3583(g)] when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition--

(1)is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D) [18 USCS § 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D)];

(2)involves 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) [18 USCS § 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D)]; and

(3)is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) [18 USCS § 3563(b)] and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) [28 USCS § 3563(b)(10)] shall be imposed only for a violation of a

condition of supervised release in accordance with section 3583(e)(2) [18 USCS § 3583(e)(2)] and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(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) [18 USCS § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)]--

(1)terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2)extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(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 postrelease 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; or

(4)order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f)Written statement of conditions. The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g)Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing. If the defendant--

(1)possesses a controlled substance in violation of the condition set forth in subsection (d);

(2)possesses a firearm, as such term is defined in section 921 of this title [18 USCS § 921], in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3)refuses to comply with drug testing imposed as a condition of supervised release; or

(4)as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h)Supervised release following revocation. When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i)Delayed revocation. The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, 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.

(j) Supervised release terms for terrorism predicates. Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B) [18 USCS § 2332b(g)(5)(B)] is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 [18 USCS § 1201] involving a minor victim, and for any offense under section 1591, 1594(c), 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425 [18 USCS § 1591, 1594(c), 2241, 2242, 2244(a)(1), 2244(a)(2), 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425], is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591 [18 USCS §§ 2241 et seq., 2251 et seq., 2421 et seq., 1201, or 1591], for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.