No. __-_____

IN THE

Supreme Court of the United States

PHILLIP JAZIR THOMPSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a term of supervised release is tolled during the time in which the person on supervised release is a fugitive.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

(1) *United States v. Thompson*, No. 19-4807, United States Court of Appeals for the Fourth Circuit. Judgment entered July 31, 2020.

(2) *United States v. Thompson*, No. 18-4100, United States Court of Appeals for the Fourth Circuit. Judgment entered May 10, 2019.

(3) *United States v. Thompson*, No. 3:03-cr-420, United States District Court for the Eastern District of Virginia. Initial judgment entered July 26, 2004; order revoking supervised release entered January 30, 2018, and reinstated after remand on October 16, 2019.

TABLE OF CONTENTS

Question Presented. i

Parties to the Proceedings. ii

Related Cases. ii

Table of Contents. iii

Table of Authorities. v

Opinions Below. 1

Jurisdiction. 1

Statutory Provisions Involved. 1

Statement of the Case. 1

Introduction. 1

Background and Revocation. 2

First Appeal. 4

Remand and Second Appeal. 6

Reasons for Granting the Petition. 7

I. The courts of appeals are divided over whether the doctrine of fugitive tolling applies to a term of supervised release. 7

II. Fugitive tolling is contrary to the text and structure of the Sentencing Reform Act. 10

A. Basic canons of statutory interpretation weigh against courts adopting fugitive tolling. 10

B. Rejecting fugitive tolling would not reward those who abscond from supervision. 13

III. This case is a good vehicle to decide this important question. 16

Conclusion. 18

APPENDIX

United States v. Thompson, 813 F. App'x 918 (No. 19-4807) (4th Cir. 2020). 1a

United States v. Thompson, 924 F.3d 122 (No. 18-4100) (4th Cir. 2019). 3a

18 U.S.C. § 3583. . . . . 14a

18 U.S.C. § 3624(e). 18a

TABLE OF AUTHORITIES

Cases

Gozlon–Peretz v. United States, 498 U.S. 395 (1991). 11

Johnson v. United States, 529 U.S. 694 (2000). 10

Mistretta v. United States, 488 U.S. 361 (1989). 10-11

Mont v. United States, 139 S. Ct. 1826 (2019). 6, 7, 10, 16

Montanile v. Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan, 577 U.S. 136 (2016). 11

N.L.R.B. v. SW Gen., Inc., 137 S. Ct. 929 (2017). 11

Skilling v. United States, 561 U.S. 358 (2010). 15

United States v. Balogun, 146 F.3d 141 (2d Cir. 1998). 12

United States v. Barinas, 865 F.3d 99 (2d Cir. 2017). 8, 13

United States v. Bristow, No. 89-cr-268, 2007 WL 2345037 (S.D. Cal. Aug. 16, 2007). 15

United States v. Buchanan, 638 F.3d 448 (4th Cir. 2011). . . . . *passim*

United States v. Cartagena-Lopez, 979 F.3d 356 (5th Cir. 2020). 8, 9, 17

United States v. Cole, 567 F.3d 110 (3d Cir. 2009). 12

United States v. Davis, 139 S. Ct. 2319 (2019). 13

United States v. Ertell, No. 11-cr-278, 2016 WL 7491630 (E.D. Cal. Dec. 29, 2016). 15

United States v. Hernandez-Ferrer, 599 F.3d 63 (1st Cir. 2010). . . 8, 9, 12, 14

United States v. Ignacio Juarez, 601 F.3d 885 (9th Cir. 2010). 14

United States v. Island, 916 F.3d 249 (3d Cir. 2019). . . . . *passim*

United States v. Juan-Manuel, 222 F.3d 480 (8th Cir. 2000).. 12

United States v. Johnson, 529 U.S. 53 (2000). 12

United States v. Murguia-Oliveros, 421 F.3d 951 (9th Cir. 2005). 8, 14

United States v. Okoko, 365 F.3d 962 (11th Cir. 2004).. 12

United States v. Ossa-Gallegos, 491 F.3d 537 (6th Cir. 2007) (en banc). . . . 12

United States v. Warren, No. 91-72, 2016 WL 3457161 (D. Or. June 23, 2016).. 15

Statutes and Rules

18 U.S.C. § 401. 14

18 U.S.C. § 3231. 1

18 U.S.C. § 3290. 13

18 U.S.C. § 3583. . . . . *passim*

18 U.S.C. § 3624. . . . . *passim*

28 U.S.C. § 1254. 1

28 U.S.C. § 1291. 1

S. Ct. R. 10. 10

S. Ct. R. 14.1. 15

Other Sources

28 C.F.R. § 2.52 (1981). 11

28 C.F.R. § 2.40 (1983). 11

Admin. Office of U.S. Courts, Federal Probation System—Persons Received For and Removed From Post-Conviction Supervision For the 12-Month Period Ending September 30, 2020, *available at* http://www.uscourts.gov/sites/default/files/data_tables/jb_e1_0930.2020.pdf. 17

Pub. L. No. 98-473, 98 Stat. 1999. 10

A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* (2012). 12

PETITION FOR WRIT OF CERTIORARI

Phillip Thompson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at pages 1a to 2a of the appendix to the petition and is also available at 813 F. App'x 918 (4th Cir. 2020). An earlier decision in this case appears at pages 3a to 13a of the appendix and is reported at 924 F.3d 122 (4th Cir. 2019).

JURISDICTION

The district court in the Eastern District of Virginia had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231 and 18 U.S.C. § 3583. The court of appeals had jurisdiction under 28 U.S.C. § 1291. That court issued its opinion and judgment on July 31, 2020. This Court's order of March 19, 2020, extended the time for filing a petition for certiorari to 150 days after the date of the lower court's judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions, 18 U.S.C. § 3583 and 18 U.S.C. § 3624(e), are set out at pages 14a to 18a of the appendix to this petition.

STATEMENT OF THE CASE

Introduction

Phillip Thompson's term of federal supervised release began in 2010 and should have ended in 2015. But the district court stopped the clock from running out by

applying the judge-made doctrine of "fugitive tolling" during the period when Mr. Thompson's whereabouts were unknown to the probation officer. Although supervised release is a creature of statute, there is no statutory authority for tolling a term when the supervisee is deemed a fugitive. The circuit courts are openly divided over whether such tolling is proper. This Court's review is necessary to resolve that dispute.

Background and Revocation

Phillip Thompson pled guilty in the Eastern District of Virginia to drug and firearm offenses in 2004 and received a sentence of 180 months in prison, plus five years of supervised release. Mr. Thompson is a citizen of Jamaica, and one of the supervised release conditions was that he be deported to that country after his prison term. He was also ordered not to return to the United States without authorization, and was told that if he did return, he had to report to a probation officer within 72 hours. App. 1a, 5a–6a.[1]

Mr. Thompson was released from prison and began his supervised release term in June 2010, and he was deported within a few weeks. App. 1a, 6a, C.A.J.A. 20.[2] At some point after that, he reentered the United States without authorization. In April 2011, Mr. Thompson was arrested in California and charged with illegal reentry after deportation. App. 1a, 6a. He was deported again in May 2011. App 1a, 6a.

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[1] "App. ___" refers to the appendix to this petition. "C.A.J.A." refers to the joint appendix filed in the court of appeals.

[2] "The term of supervised release commences on the day the person is released from imprisonment[.]" 18 U.S.C. § 3624(e).

The probation officer in Mr. Thompson's Virginia case was notified within days of his April 2011 arrest, C.A.J.A. 57, but did not file a petition charging him with violating the terms of his supervised release until July 2011, weeks after he had been deported, App. 1a, 6a. The district court issued a warrant for Mr. Thompson's arrest, but, as noted, he was already out of the country as a result of being deported. App. 6a.

Mr. Thompson returned to the United States no later than December 2014, "six months before [his] supervised release term was to end in June of 2015." App. 6a. He later came under investigation for drug and money laundering offenses. During this time, he did not report to a probation officer. App. 6a. Mr. Thompson was eventually arrested in Florida in June 2017 and was charged there with illegal reentry. In Virginia, he was charged in a new indictment with conspiracy to distribute marijuana and conspiracy to commit money laundering. App. 7a, C.A.J.A. 75.

The probation officer in Mr. Thompson's original Virginia case also filed an addendum to the 2011 supervised release petition, listing as new violations the most recent illegal reentry as well as the new drug and money laundering charges. C.A.J.A. 21–22. The district court scheduled a revocation hearing for January 2018. App. 7a.

To summarize the timeline of events:

- June 2010: Release from prison and start of five-year supervised release term
- June 2010: Deportation from the United States
- April 2011: Arrest in California
- May 2011: Deportation from the United States
- July 2011: Petition on supervised release filed
- By December 2014: Return to the United States
- June 2017: Arrest in Florida
- September 2017: Addendum to petition filed
- January 2018: Revocation hearing

Mr. Thompson filed a motion to dismiss the petition for lack of jurisdiction, arguing that his five-year supervised release term expired in 2015. App. 7a. His position was that (a) the addendum was untimely because it was filed after the term expired, and (b) the 2011 petition could not be adjudicated under 18 U.S.C. § 3583(i) ("delayed revocation") because the delay in filing it was not "reasonably necessary." App. 7a, C.A.J.A. 54–58.

The district court held that it did have jurisdiction, based on the doctrine of "fugitive tolling," adopted by the Fourth Circuit in *United States v. Buchanan*, 638 F.3d 448 (4th Cir. 2011). The court found that Mr. Thompson was a fugitive from justice beginning from when he reentered the United States without permission and without reporting to probation, and ending on the date of his revocation hearing. In other words, the court found that Mr. Thompson was a fugitive from December 2014 until January 2018. According to the court, that fugitive status stopped the clock on his supervision term about six months before it ran out, and the clock never restarted, so the revocation proceeding was timely (with no need to resort to § 3583(i)). App. 8a.

The court imposed a 30-month prison sentence for the supervised release violations, to run consecutively to a 105-month sentence in the new Virginia drug and money laundering case. Mr. Thompson received a concurrent 100-month sentence in Florida for illegal reentry. C.A.J.A. 53.

First Appeal

Mr. Thompson appealed his supervised release revocation and sentence to the Fourth Circuit. He acknowledged that the court was bound by its prior decision in

Buchanan, but he preserved his objection to the validity of the doctrine of fugitive tolling. App. 8a n.1. On the application of that doctrine, the court of appeals agreed with the district court about when tolling began, but disagreed about when it ended.

Specifically, the Fourth Circuit found that the December 2014 date was a reasonable one for the beginning of tolling. The court noted that it was possible that Mr. Thompson had returned to the United States before then, but that the government had only presented evidence that Mr. Thompson was in this country "no later than December of 2014." App. 11a. The December 2014 date tolled the supervised release term without about six months to go before it was scheduled to end in June 2015.

With regard to when tolling ended, the appeals court disagreed with the district court's conclusion that supervision did not re-start at any point before the January 2018 hearing. The Fourth Circuit held that tolling stopped when Mr. Thompson was taken into custody in June 2017, relying on the standard in *Buchanan* that tolling stops when "federal authorities are *capable* of resuming supervision." App. 12a (quoting *Buchanan*, 638 F.3d at 457) (emphasis in *Thompson*).

That holding meant that Mr. Thompson's release term was paused from December 2014 to June 2017. App. 12a. The court recognized, though, that Mr. Thompson only had six months left on his term, and those six months would have ended in December 2017, about a month *before* the January 2018 revocation hearing. App. 12a.

The Fourth Circuit remanded the case to the district court to consider whether any other provision gave it jurisdiction to act in January 2018. App. 12a–13a. It

pointed to 18 U.S.C. § 3624(e) (regarding tolling while in custody) and 18 U.S.C. § 3583(i) (providing for delayed revocation) as possibilities. App. 12a–13a.

Remand and Second Appeal

Shortly after the Fourth Circuit's decision, this Court issued its ruling in *Mont v. United States*, 139 S. Ct. 1826 (2019). *Mont* held that a period of "pretrial detention later credited as time served for a new conviction is 'imprison[ment] in connection with a conviction' and thus tolls the supervised release term under § 3624(e)." 139 S. Ct. at 1832.

Mr. Thompson conceded that *Mont* resolved the issue that the Fourth Circuit remanded for the district court to decide. C.A.J.A. 56, 58. That is, under *Mont*, Mr. Thompson's supervised release tolled from June 2017 to January 2018, because he received credit for that time towards the sentence for his new drug conviction. Mr. Thompson maintained that § 3583(i) should not apply, but admitted that the district court need not address it, given the holding in his first appeal and by this Court in *Mont*. C.A.J.A. 56–58.

The district court agreed that those two decisions resolved the matter. App. 2a, C.A.J.A. 76–77. Having satisfied itself of its own jurisdiction, the court reimposed the original 30-month sentence for the supervised release violations. App. 2a, C.A.J.A. 78.

Mr. Thompson appealed again, but acknowledged that *Buchanan*, *Mont*, and the law of the case had defeated his arguments. He maintained his objection that *Buchanan* was wrongly decided and that fugitive tolling had no basis in law. App. 2a. The Fourth Circuit adhered to its prior precedent, and concluded that the district court

had correctly applied *Mont*. The court of appeals accordingly affirmed Mr. Thompson's revocation and 30-month prison sentence. App. 2a.

REASONS FOR GRANTING THE PETITION

The circuit courts are firmly divided over whether a term of supervised release is tolled during the time the person under supervision is a fugitive. The split is long-standing and will not resolve without this Court's intervention. A judge-made tolling provision is contrary to the text of the Sentencing Reform Act, and this extra-textual gloss is not necessary to punish those who abscond. Mr. Thompson's case offers this Court a suitable vehicle to settle the dispute and to provide clarity to supervisees, probation officers, and courts. The Court should grant the petition for certiorari.

I. The courts of appeals are divided over whether the doctrine of fugitive tolling applies to a term of supervised release.

The Sentencing Reform Act expressly provides for tolling of supervised release in only one situation: when the defendant "is imprisoned in connection with a conviction for a . . . crime unless the imprisonment is for a period of less than 30 consecutive days." 18 U.S.C. § 3624(e); *see Mont v. United States*, 139 S. Ct. 1826, 1832 (2019) (holding that § 3624(e) tolls supervised release for pretrial detention later credited as time served for a new conviction). Yet a split has emerged among the courts of appeals as to whether a term of supervised release should also be tolled when the defendant absconds from supervision and becomes a fugitive.

The Second, Third, Fourth, Fifth, and Ninth Circuits have adopted the extra-textual doctrine of fugitive tolling based on the theory that it "helps realize the design and purpose of supervised release." *United States v. Island*, 916 F.3d 249, 254 (3d Cir.

2019); *see also United States v. Cartagena-Lopez*, 979 F.3d 356, 359 (5th Cir. 2020); *United States v. Barinas*, 865 F.3d 99, 107–09 (2d Cir. 2017); *United States v. Buchanan*, 638 F.3d 448, 455–57 (4th Cir. 2011); *United States v. Murguia-Oliveros*, 421 F.3d 951, 953–54 (9th Cir. 2005); App. 1a–2a, 9a (applying *Buchanan*). These circuits recognize that the "statutory provisions regarding supervised release do not expressly provide for tolling during fugitive status." *Murguia-Oliveros*, 421 F.3d at 953; *see also Cartagena-Lopez*, 979 F.3d at 361–62. But they hold that fugitive tolling is "necessary to the purpose of supervised release," *Murguia-Oliveros*, 421 F.3d at 954, since it supposedly prevents the defendant from "benefit[ing] from his fugitivity," *Barinas*, 865 F.3d at 109, and furthers "the congressional intent . . . for defendants to serve their full release terms," *Buchanan*, 638 F.3d at 455; App. 9a. Most recently, the Fifth Circuit opined that fugitive tolling is also derived from "the common law of parole." *Cartagena-Lopez*, 979 F.3d at 363.

The First Circuit, by contrast, does not apply fugitive tolling to supervised release, concluding that it is contrary to the text and structure of the governing statutes. *See United States v. Hernandez-Ferrer*, 599 F.3d 63, 67–69 (1st Cir. 2010). As that court held, "[t]he only tolling provision that Congress saw fit to enact . . . provided for tolling when [the defendant] was imprisoned for another offense," not "tolling during periods when offenders were in fugitive status." *Id.* at 67–68. The interpretive canon of *expressio unius est exclusio alterius* should lead courts to recognize that Congress's intent was to limit tolling to periods of imprisonment,

prohibiting courts from assuming authority to toll a term of supervised release "for any other reason (including an offender's fugitive status)." *Id.* at 68–69.

The First Circuit further explained why fugitive tolling does not promote any purpose of supervised release. Under § 3583(i), "as long as a warrant or summons issues before the expiration of the term, an offender who remains a fugitive will still be subject to the court's jurisdiction once located, and his conduct while a fugitive will be considered at sentencing." *Id.* at 69. "It follows that a judicially contrived tolling mechanism is not necessary to deter offenders from absconding." *Id.*

A dissenting Third Circuit judge agreed with this reasoning. *See Island*, 916 F.3d at 256–59 (Rendell, J., dissenting). As Judge Rendell explained, "Congress chose not to toll when a person absconds from supervised release, and in the absence of clear congressional intent, the plain language of § 3583(i) should control." *Id.* at 259. Her dissent further noted that adopting the doctrine of fugitive tolling would create "an onerous task for the courts, and a complicated regime for the supervisee in attempting to determine the applicable period of tolling, and thus, when his term of supervised release ends." *Id.*

This split is entrenched, and will not resolve itself. The courts that have disagreed with the First Circuit have openly acknowledged the conflict. *See, e.g.*, *Cartagena-Lopez*, 979 F.3d at 359 & nn.1–2; *Island*, 916 F.3d at 253; *Buchanan*, 638 F.3d at 454–55. But the First Circuit has shown no sign of reversing course, and Judge Rendell's recent dissent makes clear that the First Circuit's position retains persuasive force. Further percolation would only deepen the divide without adding anything to

the discussion. The split is mature enough for this Court to weigh in, and it should do so now. S. Ct. R. 10(a).

As it stands, two people with identical supervised release terms could commit the same violations but not even know if their terms had ended or if the district court had jurisdiction over them, depending on whether the person is in Boston, Massachusetts, or South Boston, Virginia. The Court should grant this petition to settle the conflict. *See Mont*, 139 S. Ct. at 1831 (stating that Court granted certiorari to resolve 4-to-2 split over interpretation of § 3624(e)).

II. Fugitive tolling is contrary to the text and structure of the Sentencing Reform Act.

On the merits, this Court should reject the doctrine of fugitive tolling. The courts that have adopted it have acknowledged that they are acting without clear statutory authority. Their approach has created uncertainty and needless complexity in application. This Court should correct these mistakes and ensure that the lower courts remain faithful to the statutory text.

A. Basic canons of statutory interpretation weigh against courts adopting fugitive tolling.

Congress created supervised release as a replacement for parole in the federal system as a part of the Sentencing Reform Act of 1984. *See* Pub. L. No. 98-473, Title II, § 212(a)(2), 98 Stat. 1999 (codified as amended at 18 U.S.C. § 3583). "[T]he Sentencing Reform Act's adoption of supervised release was meant to make a significant break with prior practice." *Johnson v. United States*, 529 U.S. 694, 724–25 (2000) (Scalia, J., dissenting) (citing *Mistretta v. United States*, 488 U.S. 361, 366

(1989) (describing the Act's "sweeping reforms"); *Gozlon–Peretz v. United States*, 498 U.S. 395, 407 (1991) ("Supervised release is a unique method of postconfinement supervision invented by the Congress for a series of sentencing reforms.")).

Courts adopting fugitive tolling have done so based on their sense of the "design and purpose of supervised release." *Island*, 916 F.3d at 254. They have treated a purported congressional "silence" as leaving a gap for courts to fill. *Id.* at 255; *Buchanan*, 638 F.3d at 456. These holdings, however, violate basic canons of statutory construction.

First, when "[t]he text is clear," courts should "not consider . . . extra-textual evidence" such as "legislative history, purpose, and post-enactment practice." *N.L.R.B. v. SW Gen., Inc.*, 137 S. Ct. 929, 941–42 (2017); *see also Montanile v. Bd. of Trustees of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 150 (2016) ("[V]ague notions of a statute's 'basic purpose,' are inadequate to overcome the words of its text regarding the specific issue under consideration.") (quotation, citation, and alteration omitted).

Second, this is not an example of congressional silence, but rather a choice by the legislature *not* to retain fugitive tolling of parole when it enacted the supervised release regime. *Compare* 28 C.F.R. § 2.52(c)(1) (1981) (fugitive tolling of parole), and id. § 2.40(i) (1983) (same), *with* 18 U.S.C. § 3624(e) (no fugitive tolling of supervised release). Thus, there was no "common law of parole" applicable to fugitive tolling; it was a parole regulation that was not carried forward into the Sentencing Reform Act. Intentional silence on the part of Congress is not an adequate basis for a court to invent a non-statutory form of tolling.

Third, the appropriate interpretive canon is the "venerable" canon *expressio unius est exclusion alterius*. *Hernandez-Ferrer*, 599 F.3d. at 67-69. Indeed, this Court reiterated in a case construing § 3624(e) itself that "[w]hen Congress provides exceptions in a statute, it does not follow that courts have authority to create others." *United States v. Johnson*, 529 U.S. 53, 58 (2000). "The proper inference, and the one we adopt here, is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth." *Id.*; *see also Island*, 916 F.3d at 258 (Rendell, J., dissenting) ("[W]here Congress has explicitly allowed for tolling only when the defendant is imprisoned on another charge, it does not intend for district courts to toll supervised release under any other circumstance."); A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (discussing the "negative-implication canon").

Courts have uniformly applied this construction to reject tolling of supervised release after a defendant has been deported, reasoning that deportation is not expressly listed as a basis for pausing the term. *E.g.*, *United States v. Cole*, 567 F.3d 110, 114–15 (3d Cir. 2009); *United States v. Ossa-Gallegos*, 491 F.3d 537, 543 (6th Cir. 2007) (en banc); *United States v. Okoko*, 365 F.3d 962, 967 (11th Cir. 2004); *United States v. Juan-Manuel*, 222 F.3d 480, 487–88 (8th Cir. 2000); *United States v. Balogun*, 146 F.3d 141, 146–47 (2d Cir. 1998). It makes no sense to apply the *expressio unius* canon in that context but not here: either § 3624(e) is exclusive in listing its single tolling provision, or it is not.

Finally, "[r]espect for due process and the separation of powers suggests a court may not, in order to save Congress the trouble of having to write a new law, construe a criminal statute to penalize conduct it does not clearly proscribe." *United States v. Davis*, 139 S. Ct. 2319, 2333 (2019). It would be easy enough for Congress to expressly provide for fugitive tolling of supervised release. *Cf.* 18 U.S.C. § 3290 ("No statute of limitations shall extend to any person fleeing from justice."). Until it does, the courts should not perform the legislature's job.

The text of the Sentencing Reform Act does not provide for fugitive tolling. The courts that have applied that form of tolling have rewritten the statute in a manner that Congress did not intend or authorize. This Court should step in and correct the error.

B. Rejecting fugitive tolling would not reward those who abscond from supervision.

Attempts to justify the extra-textual judicial creation of fugitive tolling are unpersuasive. The courts that have adopted fugitive tolling have generally concluded that a failure to do so would reward absconders. *See Island*, 916 F.3d at 253–54; *Barinas*, 865 F.3d at 107–08; *Buchanan*, 638 F.3d at 455. That is not the case.

First, fugitive tolling is unnecessary in light of the "delayed revocation" provision of § 3583(i). That subsection extends the power of the court to adjudicate a violation of supervised release "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." 18 U.S.C. § 3583(i). So long as the probation

officer files a petition and obtains a warrant, the defendant can be punished upon his recapture, including for the act of absconding. *Hernandez-Ferrer*, 599 F.3d at 69; *Island*, 916 F.3d at 257 (Rendell, J., dissenting). And at that revocation hearing, the court can impose a new (or extended) period of supervision to account for the time the defendant was away. Fugitive tolling effectively renders § 3583(i) superfluous.

Second, even if § 3583(i) was insufficient to deter and punish absconding, the defendant could still face new substantive criminal charges, even if revocation was not available. For instance, the defendant could be charged with contempt of court under 18 U.S.C. § 401, or with failure to appear. And the defendant could, of course, be charged with any state or federal crimes he committed during his absence from supervision. Simply put, a revocation proceeding is not the only way to punish someone who absconds. The "warning" that a defendant will be rewarded for absconding "cannot withstand scrutiny." *Hernandez-Ferrer*, 599 F.3d at 69.

Third, the adoption of fugitive tolling leads to a host of administrative concerns. Courts have fractured over the standard for determining precisely when a defendant becomes a fugitive. According to at least some of the circuits that have adopted fugitive tolling, a term of supervision should be tolled whenever the defendant "absconds" simply by "failing to comply with the terms of his supervised release," *Murguia-Oliveros*, 421 F.3d at 953, even if no arrest warrant has been issued, *United States v. Ignacio Juarez*, 601 F.3d 885, 888–91 (9th Cir. 2010). *See also Island*, 916 F.3d at 253 (defining "fugitive status" to attach whenever defendant "fails to report and comply with the terms of his postrelease supervision"); *but see* App. 10a ("A defendant

does not become a fugitive for tolling purposes by virtue of missing a meeting with a probation officer, or simply because he violates a condition of supervised release.").[3] Rather than a "windfall" for the person on supervision, fugitive tolling produces uncertainty among all parties over even basic issues like whether the supervised release term is running and when it is due to end. *See Island*, 916 F.3d at 259 (Rendell, J., dissenting) (explaining that fugitive tolling creates "an onerous task for the courts, and a complicated regime for the supervisee in attempting to determine the applicable period of tolling, and thus, when his term of supervised release ends").[4]

It is not as if the First Circuit is beset with defendants who thumb their noses at supervision and flee with impunity. There are sufficient deterrents in place—particularly § 3583(i)—to prevent that. A judicially created tolling provision

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[3] District courts frequently have deemed defendants to be fugitives, and have extended the supervised release term as a result, for minor violations, where the defendants had done little more than commit a minor violation or fail to report as ordered. *See, e.g.*, *United States v. Ertell*, No. 1:11-cr-278, 2016 WL 7491630, at *3–*4 (E.D. Cal. Dec. 29, 2016) (applying fugitive tolling when defendant failed to pay fine, complete community service, or attend review hearing); *United States v. Warren*, No. 3:91-72, 2016 WL 3457161, at *3 (D. Or. June 23, 2016) (same, when defendant moved without informing probation office and did not report for work); *United States v. Bristow*, No. 89-cr-268, 2007 WL 2345037, at *4–*5 (S.D. Cal. Aug. 16, 2007) (same, when defendant failed to surrender to probation office after submitting a fraudulent urine sample).

[4] Mr. Thompson preserved, and the Fourth Circuit addressed, the issue of the appropriate standard for deeming a person to be a fugitive. App. 9a–10a (noting and rejecting his argument that "only the active and knowing evasion of charges pending in a supervised release petition can trigger fugitive tolling"). If the Court grants the petition on the question of whether fugitive tolling is valid at all, it could also consider the intertwined and underlying issue of exactly when a person becomes a fugitive. *See* S. Ct. R. 14.1(a) ("The statement of any question presented is deemed to comprise every subsidiary question fairly included therein."); *Skilling v. United States*, 561 U.S. 358, 377 n.10 (2010).

is not necessary, even if it could be reconciled with the statutory text. Aside from being inconsistent with the Sentencing Reform Act, the majority approach creates vexing application problems. For all of these reasons, this Court should reject the doctrine of fugitive tolling.

III. This case is a good vehicle to decide this important question.

Mr. Thompson's petition gives this Court an excellent opportunity to resolve the circuit split. He has maintained his objection to fugitive tolling throughout the case, including both appeals to the Fourth Circuit. That court issued a published opinion not only reaffirming its adoption of the fugitive tolling doctrine, but also delving into the question of when one becomes a fugitive. App. 3a–13a.

A ruling in Mr. Thompson's favor would mean that his supervised release term ended in 2015, and that the probation officer's 2017 petition was untimely. The district court would only be able to adjudicate the 2011 petition if § 3583(i) applied. Because of its holding on fugitive tolling, the court of appeals did not reach the § 3583(i) issue, instead leaving it for the district court on remand. App. 13a. Because of its application of *Mont*, the district court did not need to address § 3583(i), either. C.A.J.A. 71. But without fugitive tolling, the "*Mont* tolling" would not apply, because the term would have ended by then. In short, fugitive tolling is necessary to make Mr. Thompson's revocation timely. If this Court concludes that fugitive tolling is invalid, it could then leave the § 3583(i) issue for remand.

Importantly, Mr. Thompson's revocation sentence is long enough that it will not end before this Court could decide the case. Many supervised release sentences are

short, and they would escape the Court's review by becoming moot. For example, the defendant in *Cartagena-Lopez* received a 12-month sentence that has already expired. 979 F.3d at 360 (noting 12-month sentence and that custody began in October 2019). The defendant in *Island* received a 24-month sentence, but it is consecutive to a state sentence of 33 to 100 years, meaning that he may never even serve the federal portion and making this Court's review less urgent. 916 F.3d at 252 (noting defendant's argument that revocation term was unnecessary in light of "practical realities" that he might never serve it). Mr. Thompson's sentence, in contrast, is 30 months, consecutive to a 105-month federal sentence. C.A.J.A. 78. A decision in his favor would make a material difference to his overall prison time, and there is no chance that his interest in the outcome will become moot before this Court could rule.

The question presented in this case is an important and recurring one. The answer has significant consequences for many criminal defendants and affects the uniform administration of federal criminal law. More than 125,000 people are under supervision,[5] yet the exact length of their terms—which should be set by statute—depends on the circuit in which they are being supervised.

Mr. Thompson's case squarely presents an issue that is worthy of the Court's attention. The Court should grant his petition and resolve the circuit split by rejecting the doctrine of fugitive tolling.

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[5] *See* Admin. Office of U.S. Courts, Federal Probation System—Persons Received For and Removed From Post-Conviction Supervision For the 12-Month Period Ending September 30, 2020, *available at* http://www.uscourts.gov/sites/default/files/data_tables/jb_e1_0930.2020.pdf (last accessed Dec. 27, 2020).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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