No. 22-7802

IN THE SUPREME COURT OF THE UNITED STATES

JAMES B. NORRIS, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NICOLE M. ARGENTIERI
Acting Assistant Attorney General

ETHAN A. SACHS
Attorney

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

QUESTION PRESENTED

Whether the district court was required to provide a more extensive explanation for its denial of petitioner's motion to terminate or modify the conditions of his term of supervised release, pursuant to 18 U.S.C. 3583(1) or (2).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Mo.):

Norris v. United States, No. 10-cv-247 (July 8, 2010)

United States v. Norris, No. 08-cr-238 (Oct. 28, 2021) (denying motion for early termination and modification of conditions of supervised release)

United States Court of Appeals (8th Cir.):

United States v. Norris, No. 21-3849 (Mar. 13, 2023)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A2-A21) is reported at 62 F.4th 441.

JURISDICTION

The judgment of the court of appeals was entered on March 13, 2023. The petition for a writ of certiorari was filed on June 12, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Missouri, petitioner was convicted of

possessing child pornography, in violation of 18 U.S.C. 2252A(a)(5)(B) (2006). Pet. App. A26. He was sentenced to 37 months of imprisonment, to be followed by a life term of supervised release. Id. at A27-A28. The district court denied a motion for postconviction relief under 28 U.S.C. 2255. 2010 WL 2720826.

Petitioner's supervised release was later revoked after he admitted that he violated three special conditions of his supervised release. Pet. App. A33-A34. The district court ordered three months of reimprisonment, to be followed by 20 years of supervised release. Id. at A35-A36. The court denied petitioner's subsequent motion to terminate or modify the conditions of supervised release. Id. at A22-A23. The court of appeals affirmed. Id. at A2-A21.

1. In November 2008, petitioner pleaded guilty to one count of possessing child pornography, in violation of 18 U.S.C. 2252A(a)(5)(B) (2006). Pet. App. A26. He was sentenced to 37 months of imprisonment, to be followed by a life term of supervised release. Id. at A27-A28. The district court imposed several special conditions of supervised release, including requirements that petitioner not "possess obscene material" or "use any Internet service * * * without the prior written approval of the probation office." Id. at A29.

In July 2021, the Probation Office filed a petition to revoke petitioner's supervised release based on violations of his release conditions. D. Ct. Doc. 49, at 1-4 (July 9, 2021). The Probation

Office alleged that petitioner had violated the conditions of his supervised release on six occasions between August 2016 and April 2021. Id. at 2-3. It also alleged that petitioner had recently admitted to violating his supervised release for a seventh time by accessing the internet and viewing pornographic images. Id. at 2.

On August 24, 2021, the district court held a revocation hearing. Pet. App. A41-A49. During the hearing, petitioner admitted that he had violated the conditions of his supervised release by accessing the internet on a daily basis and visiting pornographic websites on numerous occasions. Id. at A43-A44. Petitioner expressed frustration at being subject to supervised release for a life term. Id. at A46.

The district court observed that petitioner could have abided by the conditions of his supervised release and then applied for a reduction of his supervision, "[b]ut that's not what you did, unfortunately." Pet. App. A46. The court instructed petitioner that "[h]ad you been a perfect participant in supervised release, chances are [the court] might have been willing to reduce your time of supervised release," but because he had not, petitioner was "going to have to start over." Id. at A46-A47.

The district court revoked petitioner's supervised release and announced that, "[p]ursuant to the Sentencing Reform Act of 1984 and the provisions of Title 18, United States Code, Section 3553(a) and all the factors thereunder," petitioner was "to be imprisoned for a term of three months." Pet. App. A47-A48. The

court also decided to "give [petitioner] some relief" with respect to supervised release, reducing the lifetime term of supervised release to 20 years. Id. at A48.

2. A sentencing "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)" of Title 18, "terminate a term of supervised release" or "modify * * * the conditions of supervised release" under certain circumstances. 18 U.S.C. 3583(e)(1) and (2). A week after the revocation hearing, petitioner, proceeding pro se, filed "a one-page conclusory letter requesting termination of his supervised release" in the district court. Pet. App. A5; see D. Ct. Doc. 68 (Sept. 1, 2021); see also D. Ct. Docs. 71 to 71-5 (Oct. 26, 2021); D. Ct. Docs. 73 to 73-1 (Nov. 9, 2021); D. Ct. Docs. 74 to 74-4 (Nov. 15, 2021). Petitioner also requested that the court "modify the conditions of his supervised release," Pet. App. A5, in particular the condition requiring him to obtain approval from the Probation Office before accessing the internet, see D. Ct. Doc. 68, at 1.

In response to petitioner's motion, the Probation Office filed under seal a "Report on Offender Under Supervision," which included a summary of petitioner's time on supervised release and a recommendation that petitioner's "motion for early termination and modification of conditions be denied due to the fact [that petitioner] was recently revoked for violating conditions of his supervision that were put in place to protect the community." Pet.

App. A22-A23. The report also noted that the Probation Office had contacted the prosecutor, who had indicated that the government "would be opposed to an early termination of supervision or modification of conditions at this time." Id. at A22.

The district court denied petitioner's motion by marking a box on the bottom of the Probation Office's report that stated, "I agree with the recommendation of the Probation Officer." Pet. App. A23.

3. The court of appeals affirmed. Pet. App. A2-A21.

Petitioner contended, inter alia, that the district court had erred by denying his motion for early termination or modification without making "findings of fact on the record" or "engag[ing] in * * * discussion * * * of the facts alleged by the probation office." Pet. C.A. Br. 17. The court of appeals rejected that contention, relying on its prior decision in United States v. Mosby, 719 F.3d 925 (8th Cir. 2013), cert. denied, 571 U.S. 1133 (2014) (No. 13-6596). The court observed that the defendant in Mosby, like petitioner, had contended that a district court abuses its discretion when it does not "explain its reasoning for denying" a motion to terminate supervised release, but that the court of appeals had rejected that contention in part because no statute or case law "required the district court to explain its denial of early termination of supervised release." Pet. App. A15 (citation and emphasis omitted). The court of appeals stated that other circuits "have held to the contrary." Id. at A15 n.4.

The court of appeals further determined that the district court here had not abused its discretion in "refus[ing] to modify [petitioner's] restrictions on internet and computer use." Pet. App. A16. The court of appeals observed that petitioner "has a 'past history of using electronic devices during both his offense conduct of possessing child pornography and while on supervised release,'" id. at A17-A18 (brackets, citation, and ellipsis omitted); had "stipulated to knowingly possessing" certain "'graphic'" electronic depictions of child pornography, id. at A18 (citation omitted); and "admittedly violated the ban on his usage of computers to access the internet without approval" while on supervised release, ibid. The court also made clear that "the condition is not an absolute prohibition, and it specifically contemplates that [petitioner's] probation officer may allow access to these devices for employment purposes." Id. at A18-A19 (brackets and citation omitted).

Judge Kelly concurred. Pet. App. A19-A21. She agreed that "in light of our case law and the specific facts here, [petitioner] raises no procedural error warranting reversal." Id. at A19. She also agreed that "on the record before [the court of appeals], the district court did not abuse its discretion in denying [petitioner's] pro se motion to modify the supervised release conditions," observing that he "did not address those conditions at his revocation hearing" and had "offered no concrete details * * * as to why the conditions would be unreasonably restrictive"

or "why they are otherwise unrelated to the relevant sentencing factors in his case." Ibid.

ARGUMENT

Petitioner contends (Pet. 14-25) that the district court abused its discretion in not explicitly addressing the statutory factors set forth in 18 U.S.C. 3553 in denying his motion for early termination or modification of the conditions of supervised release. The court of appeals correctly rejected that contention, and its decision does not implicate any circuit conflict warranting this Court's review. Every court of appeals to have addressed the issue has agreed that a district court need not explicitly cite the Section 3553(a) factors in denying such a motion when, as here, the record as a whole reflects the court's consideration of those factors. This Court has previously denied petitions for writs of certiorari presenting the same question. See Warren v. United States, 137 S. Ct. 626 (2017) (No. 16-6088); Mosby v. United States, 571 U.S. 1133 (2014) (No. 13-6596). The same course is warranted here.

1. The court of appeals correctly determined that the district court did not abuse its discretion by allegedly failing to consider the relevant statutory factors in denying petitioner's motion for termination or modification of the conditions of his supervised release.

a. Section 3583(e) provides that a district court may terminate or modify the conditions of a term of supervised release

under certain circumstances "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)" of Title 18. 18 U.S.C. 3583(e). Although Section 3583(e) expressly requires a district court to consider the listed Section 3553(a) factors before terminating or modifying the conditions of a term of supervised release, it does not expressly state that the requirement applies when a court denies a motion to terminate or modify the conditions of a term of supervised release -- much less impose a further requirement that the court provide a particularized explanation of its denial.

A denial of termination or modification would simply leave in place the original term and conditions of supervised release -- which did require consideration of the requisite factors, see 18 U.S.C. 3583(c). Accordingly, a district court would not abuse its discretion if it declined to consider those factors anew when denying a motion to terminate or modify the conditions of a term of supervised release. See United States v. Warren, 650 Fed. Appx. 614, 615 (10th Cir. 2016), cert. denied, 137 S. Ct. 626 (2017) (No. 16-6088); United States v. Mosby, 719 F.3d 925, 931 (8th Cir. 2013), cert. denied, 571 U.S. 1133 (2014) (No. 13-6596); cf. United States v. Mathis-Gardner, 783 F.3d 1286, 1287 (D.C. Cir. 2015).

Furthermore, even if the requirement to consider the Section 3553(a) factors did apply to denials of motions to terminate or modify the conditions of supervised release, nothing in Section

3553(e) requires a particularized explanation of such a denial. In contrast to an initial sentencing, at which a court must "state in open court the reasons for its imposition of the particular sentence," 18 U.S.C. 3553(c), Section 3583(e) does not mention a statement of reasons. The two provisions were adopted together in the same section of Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, Ch. 2, § 212(a)(2), 98 Stat. 1989-1990, 2000, and the natural inference of Congress's inclusion of the requirement for initial sentencings but not denials of supervised-release termination or modification motions is that Congress required such explanations only as to the former. See State Farm Fire & Casualty Co. v. United States ex rel. Rigsby, 580 U.S. 26, 34 (2016) ("This Court adheres to the general principle that Congress' use of 'explicit language' in one provision 'cautions against inferring' the same limitation in another provision.") (citation omitted).

b. Even assuming that Section 3583(e) did require consideration of the listed Section 3553(a) factors as a prerequisite to maintaining the status quo, and further assuming that it required an explanation of a sentencing court's reasons akin to what is required under Section 3553(c), the court of appeals correctly found that the district court did not abuse its discretion in this case. The record makes clear that the district court did in fact consider the listed factors and satisfied any explanation requirement that might exist. Cf. Chavez-Meza v. United States, 138 S. Ct. 1959, 1966-1968 (2018) (assuming Section

3553(c) applied to requests for sentence reductions based on retroactive amendments to the Sentencing Guidelines, and finding relatively "minimal" explanation for extent of reduction to be sufficient).

The district court made clear that it "agree[d] with the recommendation of the Probation Officer" that petitioner's "motion for early termination and modification of conditions [should] be denied due to the fact [that petitioner] was recently revoked for violating conditions of his supervision that were put in place to protect the community." Pet. App. A23. The endorsed recommendation, in turn, observed that petitioner's recent revocation was based on "seven violation reports," including ones for "accessing the internet without permission" and "viewing obscene material," and that petitioner held a "belief that he did not have to abide by the Court ordered special conditions." Id. at A22. Section 3583(e) did not require any additional consideration or explanation. Cf. Chavez-Meza, 138 S. Ct. at 1967 (finding no error where original sentencing judge "certified (on a form) that he had 'considered' petitioner's 'motion' and had 'taken into account' the relevant Guidelines policy statements and the § 3553(a) factors") (brackets and citation omitted).

The district court itself had found the existence of the charged violations -- and consequently revoked petitioner's prior term of supervised release -- at a hearing held only a week before petitioner filed his motion. See Pet. App. A43-A44. At that

hearing, the court had explained to petitioner that he was "entitled to have an evidentiary hearing," which petitioner, represented by counsel, waived. Id. at A42; see id. at A43. The court also "review[ed]" the applicable sentencing options with petitioner, id. at A44, and issued its revocation order -- which included a modification that reduced petitioner's life term of supervised release to 20 years -- only after considering "Section 3553(a) and all the factors thereunder," id. at A47 (emphasis added).

Moreover, in conducting the colloquy with petitioner regarding petitioner's "frustrati[on]" with supervised release, the district court focused on petitioner's inability to "abide by all the conditions" of that release, explaining that it "might have been willing to reduce your time of supervised release" had petitioner "been a perfect participant." Pet. App. A46-A47. Then, notwithstanding the court's "question[ing] whether it would be appropriate" to do so "given [petitioner's] current violations," the court decided "to go ahead and give [petitioner] some relief" by reducing his lifetime term of supervised release to 20 years. Id. at A48. At the same time, however, the court reiterated that petitioner was "required to comply with all of the conditions of supervision," including "the special conditions that I imposed against you originally." Ibid. Nothing required a verbose reiteration of the court's considered reasoning in denying

petitioner's near-instantaneous motion to completely terminate, or modify the conditions of, that term of supervised release.

2. Some circuit disagreement exists concerning whether and to what extent a district court must explain the basis for its denial of a motion to terminate or modify the conditions of supervised release. The court of appeals here has explained that "[n]either 18 U.S.C. § 3583(e) nor relevant case law require[s] the district court to explain its denial of early termination of supervised release." Mosby, 719 F.3d at 931; see Pet. App. A16 (acknowledging that "Mosby controls the present case"). Other courts of appeals to have addressed the issue have stated that, in reviewing a district court's denial of a motion for early termination of supervised release, the record as a whole should reflect the district court's consideration of the relevant Section 3553(a) factors -- but that the district court need not expressly cite those statutory factors.[1]

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[1] See United States v. Gammarano, 321 F.3d 311, 315-316 (2d Cir. 2003) (affirming denial of motion to terminate supervised release because "review of" hearing transcript made "clear" "that the District Court properly considered the factors" under Section 3553(a)); United States v. Lowe, 632 F.3d 996, 998 (7th Cir. 2011) ("[A] court need not make explicit findings as to each of the [Section 3553(a)] factors" as long as "the record * * * reveal[s] that the court gave consideration to [them]."); United States v. Emmett, 749 F.3d 817, 821-822 (9th Cir. 2014) (the "required explanation" under Section 3583(e)(1) may "'be inferred from the record as a whole'") (citation and ellipsis omitted); Warren, 650 Fed. Appx. at 615 (10th Cir.) (all that is required in denying a Section 3583(e)(1) motion is that "it [be] apparent from the record" "that the court considered the relevant factors"); United States v. Johnson, 877 F.3d 993, 998 (11th Cir. 2017) (per curiam)

Because the record in this case reflects the district court's consideration of the relevant Section 3553(a) factors, petitioner would not be entitled to relief in any of those circuits because no court of appeals would have found an abuse of discretion. The courts of appeals consider "the real question on review" of a Section 3583(e)(1) motion to be "whether the record allows the appellate court to discern that the district court appropriately exercised its discretion after considering the statutory factors." Mathis-Gardner, 783 F.3d at 1288; see United States v. Johnson, 877 F.3d 993, 998 (11th Cir. 2017) (per curiam) ("[T]he record must clearly imply that the relevant factors were considered -- enough so that meaningful appellate review of the factors' application can take place."). Here, as discussed above, the record provided a basis for meaningful appellate review -- namely, the district court's reasoning when imposing the revised term of supervised release at the revocation hearing held just a week before petitioner filed his motion. See Pet. App. A41-A50; cf. Chavez-Meza, 138 S. Ct. at 1966-1968 (finding comparable amount of explanation sufficient). Because the record in this case reflects the district court's consideration of the relevant Section 3553(a) factors, petitioner would not be entitled to relief in any circuit.

(an order denying a Section 3583(e)(1) motion need not contain "explanation" as long as "the record * * * clearly impl[ies] that the relevant factors were considered"); Mathis-Gardner, 783 F.3d at 1286-1287 (D.C. Cir.) ("[T]here is no requirement that the district court explain its decision to deny [a Section 3583(e)(1)] motion so long as the court's reasoning is discernible from the record.").

Petitioner's reliance (Pet. 17-24) on decisions in which courts of appeals have vacated denials of motions for relief from supervised release is misplaced. Those are inapposite decisions that involved circumstances where -- unlike this case -- the district court completely failed to consider the relevant factors.[2] Petitioner's reliance (Pet. 16) on the Fourth Circuit's decision in United States v. Pregent, 190 F.3d 279 (1999), likewise is misplaced. The court there addressed the portion of Section 3583(e)(1) providing that a sentencing court may terminate a term of supervised release "if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice," 18 U.S.C. 3583(e)(1), and found that the district court's discussion of the defendant's criminal background in that case satisfied "the statutory mandate to consider both [his] conduct and the interest of justice." Pregent, 190 F.3d at 283. Nothing in Pregent's affirmance of the denial of the defendant's request to reduce his term of supervised release suggests that

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[2] The district court in Lowe "completely disregard[ed]" the statutory requirements in a case where the motion was filed two years after the original sentencing, and the government and Probation Office had "agreed that early termination was appropriate." 632 F.3d at 997, 999. In Mathis-Gardner, the district court denied without explanation a motion that was supported by the government and filed three years after the most recent hearing in the case. 783 F.3d at 1287. In Emmett, the "only explanation in the record" the district court provided was a statement that the defendant had not demonstrated "undue hardship" from continuing supervised release. 749 F.3d at 821. And in Johnson, the district court "provided no explanation whatsoever" for its summary denial of the defendant's motion. 877 F.3d at 996.

Fourth Circuit would reverse the district court's denial of petitioner's request to terminate or modify his term of supervised release here.

3. This Court denied certiorari in Mosby, supra (No. 13-6596), and the decision below simply applied Mosby as binding circuit precedent. The decision below thus does not break new legal ground in the court below or deepen or alter any circuit disagreement. Accordingly, the same reasons that resulted in the denial of certiorari in Mosby should lead to the same result here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NICOLE M. ARGENTIERI
Acting Assistant Attorney General

ETHAN A. SACHS
Attorney

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