No. 24-1056

IN THE

Supreme Court of the United States

ISABEL RICO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF OF DUE PROCESS INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Due Process Institute is a non-profit bipartisan public interest organization that seeks to ensure procedural fairness in the criminal justice system. Procedural due process requires courts' strict compliance with congressionally mandated limits on jurisdiction. Enforcing 18 U.S.C. § 3583(i)'s jurisdictional rule and rejecting judge-made exceptions to it will advance this due process imperative.

INTRODUCTION AND SUMMARY OF ARGUMENT

The answer to the Question Presented turns on whether Congress silently adopted a "fugitive tolling" doctrine when creating supervised release. The government contends that fugitive tolling flows from common-law background principles, which presumptively modify the statutes creating supervised release. Br. in Opp. 6–11. Petitioner makes compelling arguments against fugitive tolling, many of them based in the supervised release statutes' text and history. Pet. Br. 14–47.

This amicus brief expands on one of Petitioner's statutory arguments against fugitive tolling: that fugitive tolling would impermissibly "permit courts to exceed limitations on their jurisdiction." Pet. Br. 22

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amicus curiae certifies that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus made such a monetary contribution.

(citing *Bowles v. Russell*, 551 U.S. 205 (2007)). Congress circumscribed courts' jurisdiction to adjudicate supervised release violations in 18 U.S.C. § 3583(i). At best, fugitive tolling is an "equitable exception[] to [that] jurisdictional requirement[]," which courts have "no authority to create." *Bowles*, 551 U.S. at 214. Thus, even if the government were right—even if fugitive tolling were a presumptively available common-law background principle—fugitive tolling still could not extend jurisdiction beyond what § 3583(i) provides. *See United States v. Island*, 916 F.3d 249, 257 (3d Cir. 2019) (Rendell, J., dissenting) (pressing this view); *United States v. Pocklington*, 792 F.3d 1036, 1040 n.1 (9th Cir. 2015) (declining to rule out this view).

That conclusion follows from three premises. First, § 3583(i) is a jurisdictional provision. Jurisdictional statutes "speak . . . about a court's powers." *United States v. Kawi Fun Wong*, 575 U.S. 402, 411 n.4 (2015). And § 3583(i) does exactly that, conditioning "[t]he power of the court to revoke a term of supervised release." 18 U.S.C. § 3583(i). Unsurprisingly, then, this Court and eleven courts of appeals have placed § 3583(i) in the jurisdictional category. *See, e.g.*, *Mont v. United States*, 587 U.S. 514, 525 n.1 (2019); *United States v. Gulley*, 130 F.4th 1178, 1184 (10th Cir. 2025) (collecting cases).

Second, courts may not modify jurisdictional rules with equity-based tolling doctrines, even those deeply rooted in the common law. This Court has repeatedly held as much when it comes to civil equitable tolling doctrines. "Equitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods." *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S.

199, 208–09 (2022). Yet the "presumption" in favor of equitable tolling "may be rebutted" if a litigant "shows that Congress made the time bar at issue jurisdictional." *Kwai Fun Wong*, 575 U.S. at 407–09. The same rules must apply to fugitive tolling. No matter its pedigree, it cannot alter a jurisdictional deadline.

Third, as applied here, fugitive tolling impermissibly modifies § 3583(i) by extending jurisdiction beyond the number of calendar days reflected in an original supervised release sentence. Some courts have reasoned that fugitive tolling and § 3583(i) exist harmoniously: Section 3583(i) may set a jurisdictional deadline, but by positing that certain days do not count toward that deadline, fugitive tolling simply ensures that the deadline does not expire. *See e.g.*, *Island*, 916 F.3d at 256. By definition, however, that is how every tolling doctrine interacts with every deadline. *See Artis v. District of Columbia*, 583 U.S. 71, 80 (2018). By prohibiting courts from equitably tolling jurisdictional deadlines, the Court has necessarily rejected that harmonizing logic. Nor does § 3583(i) permit courts to adopt parallel jurisdiction-extending schemes, as the statute's language, purpose, and jurisdictional status all show. *See United States v. Janvier*, 599 F.3d 264, 267 (2d Cir. 2010).

Finally, the Court's equitable-tolling precedents yield one more insight: Even when a deadline is not jurisdictional, this Court still "extend[s] equitable relief only sparingly," limiting tolling to traditional "cases" or "situations." *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990). For good reason. "[I]t makes sense to infer Congress' intent to incorporate a background principle into a new statute" only "where

the principle has previously been applied in a similar manner." *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 175 (2014). "Congress' silence, while permitting an inference that Congress intended to apply *ordinary* background . . . principles, cannot show that it intended to apply an unusual modification of those rules." *Meyer v. Holley*, 537 U.S. 280, 286 (2003).

Fugitive tolling was not a well-established application of traditional equitable principles when Congress created supervised release. If the doctrine existed at all in 1984, it was in its infancy. *See United States v. Swick*, 137 F.4th 336, 343 n.5 (5th Cir. 2025). Thus, "any presumption that Congress wanted to incorporate [fugitive tolling], if it exists . . . at all, would be comparatively weak." *Hood*, 571 U.S. at 175.

Thus, whether because fugitive tolling conflicts with § 3583(i)'s jurisdictional requirements, or because it strays from traditional equitable tolling applications, this Court must not adopt this judge-made rule.

ARGUMENT

I. Fugitive tolling creates an impermissible equitable exception to § 3583(i)'s jurisdictional rule.

In 18 U.S.C. § 3583(i), Congress adopted a limited mechanism to extend courts' jurisdiction over supervised release violations beyond the supervised release term originally imposed. The statute provides:

> 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 . . . 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.

18 U.S.C. § 3583(i). This jurisdictional provision precludes equitable exceptions, including fugitive tolling.[2]

A. As the Court and eleven circuits have said, § 3583(i) is a jurisdictional statute.

Section 3583(i)'s opening words announce its subject: "[t]he power of the court to revoke a term of supervised release." Because jurisdictional statutes quintessentially speak to courts' power, it is no surprise that the Court and eleven circuits have deemed § 3583(i) jurisdictional.

Courts must "treat a provision as jurisdictional if Congress clearly states as much." *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 298 (2023) (cleaned up). Congress clearly marks a statute as jurisdictional when it references courts' power. "[J]urisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties." *Landgraf v. USI Film Prods.*, 511 U.S. 244,

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[2] This brief assumes *arguendo* that a common-law tolling principle could be incorporated into a criminal sentencing statute. But as Petitioner persuasively argues, this Court has used the common law only to interpret terms in criminal statutes. The Court has never extended a criminal sentence using the common law. Pet. Br. 34–36.

274 (1994) (cleaned up). A statute is therefore nonjurisdictional when it "makes no reference to jurisdiction and lacks any language demarcating a court's power." *Riley v. Bondi*, 145 S. Ct. 2190, 2202 (2025) (cleaned up). But "in case after case, [the Court] ha[s] emphasized" that statutes are jurisdictional when they "speak about jurisdiction, or more generally phrased, about a court's powers." *Kawi Fun Wong*, 575 U.S. at 411 n.4.

Section 3583(i) "speaks to the power of the court," *Landgraf*, 511 U.S. at 274, and does so in those exact words. Courts have therefore had "no trouble concluding § 3583(i) is a jurisdictional statute." *Gulley*, 130 F.4th at 1184. Eleven courts of appeals have described the provision as jurisdictional. *See id.*; *United States v. Talley*, 83 F.4th 1296, 1300 (11th Cir. 2023); *United States v. Thompson*, 924 F.3d 122, 126 (4th Cir. 2019); *United States v. Block*, 927 F.3d 978, 984–85 (7th Cir. 2019); *United States v. Marsh*, 829 F.3d 705, 710 (D.C. Cir. 2016), *abrogated in part on other grounds by Mont v. United States*, 587 U.S. 514 (2019); *United States v. Merlino*, 785 F.3d 79, 83–85 (3d Cir. 2015); *Pocklington*, 792 F.3d at 1039–40; *United States v. Juarez-Velasquez*, 763 F.3d 430, 433 (5th Cir. 2014); *United States v. Hernandez-Ferrer*, 599 F.3d 63, 66 (1st Cir. 2010); *Janvier*, 599 F.3d at 266; *United States v. Goins*, 516 F.3d 416, 418 (6th Cir. 2008).

So has this Court. In *Mont*, the Court held that pretrial detention tolls supervision in some circumstances. 587 U.S. at 516. During the analysis, the Court addressed how that tolling doctrine interacted with § 3583(i). *Id.* at 525 n.1. The Court noted that regardless of whether a particular period of detention tolls supervision, courts can always

independently "preserve [their] authority" using the § 3583(i) procedure. *Id.* But the Court qualified that "preserving *jurisdiction* through § 3583(i) is not a prerequisite." *Id.* (emphasis added); *see also id.* at 529 (Sotomayor, J., dissenting) (noting that the "court's revocation power generally lasts only as long as the supervised release term" but "revocation power can be extended" with § 3583(i)).

True, older cases from this Court and the courts of appeals sometimes use the jurisdictional label inconsistently. But all the precedents cited here postdate the Court's "cases, starting principally with *Arbaugh* in 2006, that bring some discipline to the use of the term 'jurisdictional.'" *Santos-Zacaria v. Garland*, 598 U.S. 411, 421 (2023) (cleaned up) (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006)). And three circuits have determined that § 3583(i) is jurisdictional after considerable analysis, sometimes over the government's objection. *Gulley*, 130 F.4th at 1183–85; *Merlino*, 785 F.3d at 83–85; *Pocklington*, 792 F.3d at 1039–40.

Finally, the provision's legislative history confirms that the obvious reading is the right one. "According to an 'Explanation of Provisions' included in the Congressional Record, § 3583(i) 'provid[es] continued court *jurisdiction* to adjudicate alleged supervised release violations and revoke supervised release' after its expiration." *Merlino*, 785 F.3d at 83 (quoting 137 Cong. Rec. S7769 (1991)) (emphasis added).

All of these sources therefore point to the same, clear conclusion: Section 3583(i) is a jurisdictional statute governing "the power of the court." 18 U.S.C. § 3583(i).

B. Equity-based tolling doctrines cannot modify jurisdictional rules, even if rooted in common-law background principles.

Section 3583(i)'s jurisdictional status "renders it unique." *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). "Jurisdictional requirements cannot be waived or forfeited, must be raised by courts sua sponte, and, as relevant to this case, do not allow for equitable exceptions." *Boechler*, 596 U.S. at 203. This last prohibition honors the separation of powers. "[B]ecause courts are not able to exceed limits on their adjudicative authority" as defined by Congress, "they cannot grant equitable exceptions to jurisdictional rules." *Santos-Zacaria*, 598 U.S. at 416.

As conceived by fugitive tolling's proponents, fugitive tolling is exactly the kind of equity-based tolling doctrine that exceeds these limits. Proponents claim that the doctrine tolls the supervised release period. *See United States v. Buchanan*, 638 F.3d 448, 454–57 (4th Cir. 2011); *but see* Pet. Br. 14–17 (explaining that fugitive tolling is not a true tolling doctrine). And the doctrine does not arise from any statutory source. It is instead "based on the long-standing principle that a defendant should not benefit from his own wrongdoing." *Swick*, 137 F.4th at 344. Adopting this equity-based tolling doctrine would therefore impermissibly "exceed limits on [courts'] adjudicative authority." *Santos-Zacaria*, 598 U.S. at 416.

It makes no difference that fugitive tolling purportedly flows from the common law. Fugitive tolling's proponents claim that because Congress "legislates against a background of common-law

adjudicatory principles," *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 572 (2021), and fugitive tolling was well established at common law, supervised release implicitly incorporates fugitive tolling, *see Swick*, 137 F.4th at 343. But even if fugitive tolling were a common-law background principle, it still could not modify § 3583(i)'s jurisdictional command. Jurisdictional statutes do not incorporate equitable exceptions, no matter how well established at common law.

That conclusion follows inexorably from the Court's approach to equitable tolling in civil cases. "Equitable tolling," is among the "common-law adjudicatory principles" against which Congress normally legislates. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10 (2014) (cleaned up). "[A] long-established feature of American jurisprudence derived from the old chancery rule," *id.* (cleaned up), equitable tolling has a "long history of judicial application," *Holland v. Florida*, 560 U.S. 631, 651 (2010). This "traditional feature of American jurisprudence" is therefore "a background principle against which Congress drafts limitations periods." *Boechler*, 596 U.S. at 208–09. So entrenched in American law is equitable tolling that it "presumptively" applies to statutory time bars. *Kwai Fun Wong*, 575 U.S. at 407–08.

Yet, despite its status as a common-law background principle, equitable tolling does not modify jurisdictional statutes. The "presumption" in favor of equitable tolling "may be rebutted" if a litigant establishes that "Congress opted to forbid equitable tolling" for the statute in question. *Id.* at 408. And "[o]ne way to meet that burden . . . is to show that Congress made the time bar at issue jurisdictional." *Id.* If the statute is jurisdictional, "a court must

enforce the limitation . . . even if equitable considerations would support extending the prescribed time period." *Id.* at 409.

Accordingly, courts must confirm that a deadline "is not a jurisdictional requirement" before concluding that "a court can toll [it] on equitable grounds." *Id.* at 412; *see also Boechler,* 596 U.S. at 208 (observing that the applicability of equitable tolling "turns on whether" the statute "is jurisdictional"); *Holland*, 560 U.S. at 645 (holding that "AEDPA's statutory limitations period may be tolled for equitable reasons," in part, because the statute of limitations "is not jurisdictional" (cleaned up)).

When a statute is jurisdictional, this Court refuses to permit equitable exceptions, even longstanding ones. In *Bowles*, for example, this Court considered whether to continue modifying appeals deadlines under the "unique circumstances" doctrine, an exception originating in this Court and applied in lower courts for half a century. 551 U.S. at 214. The Court abrogated the exception because the governing statute was jurisdictional. *Id.*

The same reasoning extends to the government's proposed fugitive tolling principle. Even if fugitive tolling were a common-law background principle, it still could not modify a jurisdictional rule.

C. Fugitive tolling is an impermissible equitable exception to § 3583(i).

Finally, fugitive tolling is an equitable exception to § 3583(i)'s jurisdictional rule. No matter their views on fugitive tolling, the courts of appeals broadly agree about how § 3583(i) operates. Section 3583(i) provides that courts have jurisdiction to adjudicate supervised

release violations only during the supervised release term, unless they extend jurisdiction for a reasonable time by filing a warrant or summons. *See, e.g.*, *Hernandez-Ferrer*, 599 F.3d at 66; *Thompson,* 924 F.3d at 126; *Block*, 927 F.3d at 980. And absent fugitive tolling, the supervised release term lasts only for the number of calendar days set forth in the original judgment. *See, e.g.*, *Merlino*, 785 F.3d at 81, 88; *Janvier*, 599 F.3d at 265, 269.

With fugitive tolling, however, the court's jurisdiction can last for many more calendar days than contemplated in the original judgment, for reasons having nothing to do with warrants, summons, or reasonable necessity. *See, e.g.*, *Island*, 916 F.3d at 256; *United States v. Murguia-Oliveros*, 421 F.3d 951, 955 (9th Cir. 2005). Fugitive tolling therefore leads to materially different outcomes than would § 3583(i) alone. Even when a court would not have jurisdiction under § 3583(i), it may have jurisdiction by virtue of fugitive tolling. *See, e.g.*, *Thompson*, 924 F.3d at 126.

1. Though fugitive tolling prevents the supervised release term from expiring, that is true any time an equitable doctrine purports to toll a jurisdictional deadline.

The Third and Fifth Circuits, however, have concluded that fugitive tolling is consistent with § 3583(i). *See Island*, 916 F.3d at 256; *accord Swick*, 137 F.4th at 340. According to these courts, § 3583(i) permits the exercise of "jurisdiction during the defendant's service of his supervised release term." *Island*, 916 F.3d at 256. But the fugitive tolling doctrine posits that "a defendant does not serve his term while fugitive." *Id*. Thus, when he is

apprehended, "part of [his] term remains to be served." *Id.*; In other words, because fugitive tolling prevents the supervised release term from expiring, it does not violate the rule that district courts lose jurisdiction once the term expires.

This logic proves too much, because that is how every tolling doctrine affects every deadline to which it is applied. "'[T]olled,' in the context of a time prescription . . . means that the limitations period is suspended (stops running) . . . , then starts running again when the tolling period ends, picking up where it left off." *Artis*, 583 U.S. at 80. By definition, then, tolling always operates to stop the clock, preventing a deadline from arriving until the equitable circumstance has abated. If the Third and Fifth Circuits were right, equitable tolling doctrines would always peacefully coexist with jurisdictional deadlines: Jurisdiction would not end until the deadline expired, and tolling would merely prevent the deadline from expiring.

Yet the Court has repeatedly held that jurisdictional statutes cannot be equitably tolled. *See, e.g.*, *Kwai Fun Wong*, 575 U.S. at 420; *Wilkins v. United States*, 598 U.S. 152, 164 (2023); *Sebelius*, 568 U.S. at 154. By barring the equitable tolling of jurisdictional deadlines, this Court has necessarily rejected the Third and Fifth Circuits' reasoning.

For an illustration, consider one of the equitable tolling questions that arose in *Kwai Fun Wong*, 575 U.S. at 405. One petitioner sued a federal official for false imprisonment. *Id.* She timely moved for leave to file an amended complaint, and a magistrate judge recommended granting that motion on April 5, 2002, within the statute's six-month deadline. *Id.* But the

district court did not formally grant leave until June 25, 2002, three weeks after the deadline expired. *Id.* at 406. The district court held that the six-month limitations period was tolled for the 111 days between April 5 and June 25, meaning that several weeks' worth of filing time remained when the amendment became final. *Id.*

Using the Third and Fifth Circuits' logic, this would be permissible even if the six-month deadline were jurisdictional. After all, the statute plainly gives litigants six months to file their claim. And equitable tolling simply posits that the six months do not run while a judge considers a recommendation for leave to amend, meaning that when the motion is granted, part of the six-month period still remains. But that is not how the Court treated the question in *Kwai Fun Wong*. To the contrary, this Court agreed with the government that if the deadline were jurisdictional, it would "forbid equitable tolling." *Id.* at 408–09. The Court permitted equitable tolling only after finding that the statute was non-jurisdictional. *Id.* at 409–12. Because § 3583(i) is jurisdictional, it cannot be equitably tolled.

2. Section 3583(i) cannot coexist with fugitive tolling.

Additionally, the government has argued in other contexts that § 3583(i) is "not exclusive," and it therefore permits judges to employ parallel, judge-made, equitable doctrines alongside § 3583(i). *Janvier*, 599 F.3d at 267. This theory posits that while § 3583(i) "permits the retention of jurisdiction under one particular set of circumstances, it does not preclude the retention of jurisdiction under other . . . circumstances." *Id.* "These arguments are

unpersuasive," *id.*, however, in light of the statute's language, history, and jurisdictional status.

As an initial matter, § 3583(i)'s plain language refutes the notion that the statute is not exclusive. "Although it is true that Congress could have made the exclusivity of the condition for extension of jurisdiction even clearer by emphasizing that the court's power exists 'if and only if' or 'provided that' a warrant or summons issues during the period of release, the language chosen by Congress is more than clear enough on that score: where a power is granted upon a condition, it can hardly be argued that the power also exists when the condition is unmet." *Id.*

Even if § 3583(i) were in some sense "not exclusive," however, it still would "exclu[de]" the fugitive tolling doctrine. *Id.* Two considerations lead to that conclusion.

First and foremost, § 3583(i)'s "power of the court" language signals Congress's intent to pass a jurisdictional statute. And if there is one thing that a jurisdictional statute excludes, it is equitable tolling. *See, e.g.*, *Harrow v. Dep't of Def.*, 601 U.S. 480, 483–84 (2024); *Wilkins*, 598 U.S. at 164; *Sebelius*, 568 U.S. at 154. A statute's jurisdictional language provides "an affirmative indication from Congress that it intends to preclude equitable tolling." *Kwai Fun Wong*, 575 U.S. at 420. Just by virtue of passing a jurisdictional statute, then, Congress excluded the possibility of a parallel equity-based tolling scheme.

Second, grafting an "additional equitable tolling" scheme onto § 3583(i) "is unwarranted," because "Congress has already considered [the government's] equitable concerns and limited the relief available." *Arellano v. McDonough*, 598 U.S. 1, 10 (2023). As

Petitioner explains, 18 U.S.C. § 3583(e)(3) confers power to revoke a fugitive's supervised release and impose a revocation sentence without credit for time served on supervision. Pet. Br. 26. The revocation sentence may then account for a fugitive's misconduct under 18 U.S.C. § 3553(a). Pet. Br. 46.

Just as importantly, Congress adopted a limited solution to the problems created by supervised release terms' expiration. Congress gave courts the tools needed to address such violations—but only if they were committed during the supervised release term, if a warrant or summons timely issued, and if the court resolved the matter in a reasonable time. 18 U.S.C. § 3583(i).

These limits were intentional, as § 3583(i)'s statutory history shows. Congress first addressed courts' jurisdiction to revoke supervision in the probation context. *See United States v. Neville*, 985 F.2d 992, 998 n.13 (9th Cir. 1993). Originally, Congress allowed courts to preserve jurisdiction over a probation violation by filing a warrant or summons within five years of sentencing, "even if the defendant had received less than five years of probation." *Id.* (citing 18 U.S.C. § 3653 (1949), *amended by* 18 U.S.C. § 3565(c) (1984)). Five years was the maximum probation term at the time. *Id.*

But Congress later amended the statute to scale back that grant. As the Senate Report accompanying the bill recognized, the new statute "more narrowly restrict[ed] the time within which probation may be revoked than d[id] current law." Sen. Rep. No. 225, at 103 (1983), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3285–86. Under the new statute, courts could revoke probation "if a violation of a condition occurred prior

to the expiration, if the adjudication occurs within a reasonable period of time, and if a warrant or summons on the basis of an allegation of such a violation was issued prior to the expiration of the term of probation." *Id*. These were the same "restrict[ions]," *id*., later adopted in § 3583(i).

Having already created a limited mechanism for punishing violations after the supervised release term expires, then, Congress would be perplexed to learn that courts had invented their own parallel solution—one that ignores the limits Congress set. Indeed, fugitive tolling is even more expansive than the probation predecessor law that Congress intentionally replaced. At least that law had some time limits tied to the maximum permissible term of probation. *Neville*, 985 F.2d at 998 n.13. Fugitive tolling can extend the term even beyond the statutory maximum. Pet. Br. 33.

Finally, it is true, as the government says, that § 3583(i) is not a tolling provision. Br. in Opp. 8–9. But that is precisely the point. Congress plainly knew how to use tolling to fix an equitable problem. It did so in 18 U.S.C. § 3624(e), when considering periods of custody. And it knew how to expand courts' jurisdiction beyond the supervision term originally imposed. It did so in 18 U.S.C. § 3653 (1949). But when it came to punishing supervised release violations, Congress elected to let the term run while extending jurisdiction. 18 U.S.C. § 3583(i). Contrary to the government's counterintuitive suggestion, Congress need not enact a tolling provision in order to preclude tolling. *See Arellano*, 598 U.S. at 10 (precluding equitable tolling, because Congress "accounted for equitable factors in setting effective dates"); *United States v. Beggerly*, 524 U.S. 38, 48 (1998) (precluding

equitable tolling, because the provision governing the claim's accrual date "already effectively allowed for equitable tolling").

Whatever else it permits, then, this jurisdictional statute—which adopts a limited solution to the government's equitable concerns—plainly excludes fugitive tolling.

II. Even nonjurisdictional statutes incorporate only well-settled applications of background principles, but fugitive tolling was not well settled in 1984.

Finally, even if § 3583(i) did not limit courts' jurisdiction, the inquiry would not end there. "The mere fact that a time limit lacks jurisdictional force . . . does not render it malleable in every respect." *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 192 (2019). Even nonjurisdictional statutes incorporate only limited exceptions, if they incorporate any at all. *See id.* at 192–94; *Kwai Fun Wong*, 575 U.S. at 409 n.2. The government therefore would still have to support the claim that Congress incorporated fugitive tolling into the statutes governing supervised release. Because non-jurisdictional statutes incorporate only well-established applications of equitable principles, and fugitive tolling was not well established when Congress created supervised release, the supervised release statute did not incorporate it.

As a general matter, the Court hesitates to recognize new equitable exceptions, even to nonjurisdictional rules. As the Court "held long ago, the cases in which 'a statute of limitation may be suspended by causes not mentioned in the statute itself . . . are very limited in character, and are to be admitted with great

caution; otherwise the court would make the law instead of administering it." *Gabelli v. S.E.C.*, 568 U.S. 442, 454 (2013) (quoting *Amy v. Watertown (No. 2),* 130 U.S. 320, 324 (1889)). Accordingly, "[f]ederal courts have typically extended equitable relief only sparingly." *Irwin*, 498 U.S. at 96.

The Court has reined in equitable exceptions by prohibiting litigants from expanding them beyond their traditional applications. In *Irwin*, for example, the Court held that though equitable tolling might apply to a statute, the petitioner could not benefit from it. 498 U.S. at 95–96. The Court reached that conclusion through "an examination of the cases in which [the Court] ha[d] applied the equitable tolling doctrine." *Id.* at 96. The Court had "allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Id.* But these "principles of equitable tolling . . . d[id] not extend to . . . a garden variety claim of excusable neglect" like the one the petitioner raised. *Id.*

Likewise, in *Menominee Indian Tribe*, petitioners urged this Court not to adopt an "overly rigid" approach to tolling, "given the doctrine's equitable nature." 577 U.S. at 255. The petitioners argued that courts should be able to consider the array of equitable circumstances in a given case, like parties' diligence, the difficulty and expense of bringing the litigation, and the lack of prejudice to the other party. *Id.* at 256, 258, 259 n.5. This Court rejected that argument as out of step with past practice. Not only had the Court set forth two "elements" of equitable tolling. *Id.* at 256.

The Court had treated them "as elements in practice, too, rejecting requests for equitable tolling where a litigant failed to satisfy one without addressing whether he satisfied the other." *Id*. Finally, the Court even questioned whether the two-element equitable tolling test "necessarily applie[d] outside the habeas context" where it arose—an "even stricter test might apply to a nonhabeas case" like the one before the court. *Id*. at 257 n.2.

As these examples illustrate, this Court generally limits equitable tolling doctrines to the kinds of "cases," "situations," *Irwin*, 498 U.S. at 95–96, "practice[s]," and "context[s]," *Menominee Indian Tribe*, 577 U.S. at 256, 257 n.2, instantiated in the Court's prior precedents. For good reason: Equitable exceptions to statutory rules are justifiable only if Congress implicitly blessed them, legislating with the background expectation that the exception would apply. *See Arellano*, 598 U.S at 6–7.

Congress cannot be presumed to expect that background principles will be applied in novel ways. "[I]t makes sense to infer Congress' intent to incorporate a background principle into a new statute where the principle has previously been applied in a similar manner." *Hood*, 571 U.S. at 175. But when "that is not the case"—when a litigant proposes to extend a background principle "to [a] new circumstance"—"any presumption that Congress wanted to incorporate the [principle], if it exists . . . at all, would be comparatively weak." *Id*. Thus, "Congress' silence, while permitting an inference that Congress intended to apply *ordinary* background . . . principles, cannot show that it intended to apply an unusual modification of those rules." *Meyer*, 537 U.S. at 286.

These considerations refute the claim that supervised release incorporated fugitive tolling. When Congress created supervised release in 1984, fugitive tolling was not a well-established background principle that Congress would expect to modify the new statutes.

On the one hand, this Court has never adopted the fugitive tolling doctrine—not today, and not in 1984. Nor was there any robust or longstanding tradition of fugitive tolling in the courts of appeals. Courts and the government have identified only a handful of pre-1984 cases supposedly endorsing fugitive tolling. *See Swick*, 137 F.4th at 343 n.5; Br. in Opp. 6–7. Petitioner's careful review of these precedents shows that none endorsed a longstanding, common-law fugitive tolling tradition. Pet. 36–41.

Even if they had, they are too recent and too few in number to comprise a common-law background principle. Given the doctrine's sparse adoption, the Fifth Circuit had to admit that the fugitive tolling doctrine was still "emerging" in 1984. *Id*. at 343. An emerging doctrine, adopted by only a few courts of appeals in a different context, is not a "well established" background principle against which Congress expects to legislate. *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991); *cf. Wilkins*, 598 U.S. at 165 (rejecting a jurisdiction-based congressional acquiescence argument, because "none of [this Court's] decisions established" the statute's jurisdictional status and a "handful of lower court opinions [cannot] stand in for a ruling of this Court" (cleaned up)).

On the other hand, the only potentially applicable background principles with any pedigree were too

generalized, and applied too differently, to raise an expectation of fugitive tolling. Fugitive tolling proponents rely on general principles, like the "maxim that no man may take advantage of his own wrong," *Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232 (1959), or that "[m]ere lapse of time without imprisonment or other restraint contemplated by the law does not constitute service of sentence," *Anderson v. Corall*, 263 U.S. 193, 196 (1923).

But by 1984, this Court had only ever tolled sentences in two particular circumstances: when a prisoner escaped, and when a parolee was in prison. *Id*. at 196. Congress therefore would have expected this background principle to apply to its new supervision statute, if at all, in the way it always had: to toll supervised release when the supervisee was in prison. And indeed, Congress anticipated the problem of tolling during periods of custody and addressed it in the statute. 18 U.S.C. § 3624(e).

There is no reason to think that Congress also expected its statute to incorporate a quite different and (at best) still-emerging fugitive tolling doctrine. As the Fifth Circuit itself acknowledged, "absconding from supervision is not the same thing as escaping from prison or serving a custodial sentence while on probation or parole." *Swick*, 137 F.4th at 343.

In short, "[i]t is one thing to acknowledge and accept such well-defined . . . generally applicable, background principles of assumed legislative intent," *Brogan v. United States*, 522 U.S. 398, 406 (1998), like tolling for escaped prisoners and imprisoned parolees. "It is quite another to espouse [a] broad proposition," *id*., like the notion that wrongdoers should not profit from their misdeeds, and apply it in whatever way judges deem

fair. "The problem with adopting such an expansive, user-friendly judicial rule is that there is no way of knowing when, or how, the rule is to be invoked." *Id.* at 406–07. And if Congress could not have known that some courts would apply that rule to invent fugitive tolling, then those courts are "mak[ing] the law," not "administering it." *Gabelli*, 568 U.S. at 454 (cleaned up).

CONCLUSION

Fugitive tolling is an impermissible exception to a jurisdictional rule. In any case, it is not the kind of well-established tolling doctrine that supervised release statutes would have incorporated. For both reasons, this Court should reverse the judgment of the court of appeals.

Respectfully submitted,

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