

No. 24-1056

IN THE
Supreme Court of the United States

ISABEL RICO,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the
U.S. Court of Appeals for the Ninth Circuit

**BRIEF OF THE RODERICK AND SOLANGE
MACARTHUR JUSTICE CENTER AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The Roderick and Solange MacArthur Justice Center (“RSMJC”) is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC attorneys have played a key role in advocacy on criminal legal system issues including sentencing, parole, and probation. In addition to direct representation on behalf of its

¹ No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or their counsel made a monetary contribution to its preparation or submission.

clients, RSMJC frequently files amicus briefs related to these issues throughout the federal circuits, in state supreme courts, and in this Court.

SUMMARY OF THE ARGUMENT

The life of someone returning from prison is likely complicated and difficult. These individuals face serious barriers to reentry, such as housing instability, inability to find employment, and lack of reliable transportation. Given these realities, many individuals on supervised release, like Ms. Rico, may miss supervision appointments or move without informing their parole officer. Thus, they may technically “abscond” from supervised release, but through little fault of their own. Yet the Government’s position would have these people treated the same as someone who plans and executes a prison break. In addition to the reasons this is wrong set out in Petitioner’s brief, the Government’s position ignores the reality of what it is like to live on supervised release.

ARGUMENT

I. Individuals Face Many Barriers When Returning From Incarceration.

Formerly incarcerated individuals face many barriers to successful reentry into society. Indeed, the Executive Branch has recognized as much. In a recent report to Congress by the Reentry Coordination Council, a body which included the Attorney General and the Secretaries of six federal agencies, the Council noted that “[i]ndividuals returning to their communities after a term of imprisonment face a number of barriers to success, including housing insecurity, inability to access health care, food

insecurity, and barriers to education and employment.” REENTRY COORDINATION COUNCIL, COORDINATION TO REDUCE BARRIERS TO REENTRY: LESSONS LEARNED FROM COVID-19 AND BEYOND 4 (2022) (herein after “Coordination Council Report”).² This “reentry collaboration effort” across the federal government was required by the First Step Act of 2018, *id.*, a signature piece of legislation from President Trump’s first term.

This section outlines some of the key barriers faced by individuals returning from prison.³

Housing Instability.

The transition from prison to the community is rife with challenges. But before formerly incarcerated people can find stable jobs, reintegrate with their family, and address health problems, they need a place to live. That is why stable housing is *the* foundation of successful reentry from prison. Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POLICY INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>; *see also* Elizabeth L. Beck, et al., *Addressing Barriers to Housing in Reentry Programs Working to Address a Variety of Needs*, 25 CITYSCAPE 13, 14 (2023) (“Housing [is] a primary

² <https://www.justice.gov/archives/opa/press-release/file/1497911/dl>.

³ Because the barriers faced by individuals are the same regardless of the *form* their release takes—or the prison from which they are exiting—this brief draws from sources that cover individuals who are paroled or otherwise released from state prisons, as well as those on supervised release from federal facilities.

determinant in one's ability to successfully reintegrate."); *see also* Stefan R. Underhill, *Supervised Release Needs Rehabilitation*, 10 VA. J. CRIM. L. 1, 22 (2024) (describing "stable housing and employment" as "[t]he most fundamental needs of those on supervised release"). Unfortunately, many formerly incarcerated people struggle to find stable places to live.

The United States faces a severe shortage of affordable housing. Coordination Council Report, at 8; *see also* Corinne A. Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 U. TOL. L. REV. 545, 549 (2005). But people with criminal convictions face greater-than-normal challenges when it comes to obtaining and maintaining housing. Coordination Council Report, at 8. As a result, formerly incarcerated people are almost ten times more likely to experience homelessness than the general public. *Id.* (citing Couloute, *supra*). And rates of homelessness are greater for formerly incarcerated women, and for individuals of color. Couloute, *supra*. Roughly 50,000 formerly incarcerated individuals per year spend time in homeless shelters following their reentry. Jordan S. Donohue, *Barriers to Successful Re-Entry*, UNLV CENTER FOR CRIME AND JUSTICE POLICY 2 (Dec. 2024).

Formerly incarcerated people have a harder time finding housing than the general public in part because many property owners and public housing authorities screen people out based on criminal records. Couloute, *supra*; Carey, *supra*, at 553; Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. REV. 255, 278 (2004). Most federal housing programs are

difficult, if not impossible, to access for people with criminal records; federal statutes and regulations prohibit access for people with certain types of convictions, and authorize—and in some cases require—federally-assisted housing providers and public housing agencies to screen for and deny admission on the basis of criminal records. Coordination Council Report, at 8; *see also* Carey, *supra*, at 553. Layer on top of this the use of credit checks, exorbitant security deposits, and a requirement to list employment or professional references, all of which can inhibit the ability of returning individuals to access stable housing. Couloute, *supra*; *see also* Beck, *supra*, at 19 (study finding deposit amounts, poor or no credit, and income requirements as barriers to securing housing).

Many formerly incarcerated people may live with family members; indeed, for many it is their only option. Beck, *supra*, at 21. But this can come with its own problems, such as interpersonal conflict, unsafe neighborhoods, and lack of privacy. *Id.*; *see also* Underhill, *supra*, at 23 (“[T]he formerly incarcerated [are forced] into unsafe housing in the least desirable neighborhoods where crime is often rampant.”). Such housing situations can also risk a supervised release or parole violation for the individual—for example, one participant in a study was living with a family member who worked in security and had a firearm in the home. Beck, *supra*, at 20. But at least this person was able to find housing.

When formerly incarcerated people have trouble finding safe and stable housing, it can have devastating side effects, including making it harder to secure and hold a job, Couloute, *supra*, and to

reintegrate into their family and community structures, Thompson, *supra*, at 278-79. In contrast, stable housing is associated with employment, physical and mental health, and lower rates of recidivism. Beck, *supra*, at 14.

The difficulty in finding housing affects the ability of people reentering society to secure and maintain stable employment—so much so that these issues are “interconnected.” Thompson, *supra*, at 279. This brief turns to that barrier next.

Employment.

Finding a job is critical to successful reintegration. JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISON REENTRY 106, 112 (2009). And yet—individuals returning from incarceration face many barriers to finding and keeping employment.

Just as the use of criminal background checks may screen individuals returning from incarceration from housing, the widespread use of criminal background checks has resulted in people with convictions being unable to find employment. Coordination Council Report, at 11-12. Indeed, some occupations and industries explicitly bar the hiring of people with criminal records; there are 27,000 state occupational licensing restrictions based on criminal records. *Id.* at 12. Overall, individuals reentering society after incarceration are barred from participating in a quarter of the economy, even if they have or have gained relevant training and experience in a particular occupation while incarcerated. *Id.*; Nick Sibilia, *Federal Judge: Californians Who Fought Fires*

In Prison Can't Become Career Firefighters, FORBES (Feb. 16, 2021).⁴

And whether a person is *legally* eligible for a job or not, research suggests that most employers will ask about the applicant's criminal record and, once it is revealed, the applicant's chances of being hired are significantly reduced. Petersilia, *supra*, at 116. Employers have expressed concern about the general "trustworthiness" of individuals with criminal histories; this often limits people to the "spot market," where employers offer only temporary or seasonal employment, where "trustworthiness" is deemed to be less important. *Id.* A study involving more than 3,000 employers who had recently hired low-skill workers found that over 60% reported they would "probably not" or "definitely not" hire an applicant with a criminal record. *Id.*

Critically, the kinds of jobs into which employers are willing to hire people with criminal records (i.e., blue collar jobs and those in manufacturing) are decreasing in our economy, and those in which employers are most reluctant (i.e., involving customer contact, child care, or elder care) are increasing. *Id.* at 118; see also Christy A. Visher & Vera Kachnowski, *Finding Work on the Outside: Results from the "Returning Home" Project in Chicago*, in SHAWN BUSHWAY, ET AL., *BARRIERS TO REENTRY?* 80, 89 (2007) (reporting most common job types for individuals returning from incarceration as construction, manual labor, and maintenance).

⁴ <https://www.forbes.com/sites/nicksibilla/2021/02/16/federal-judge-californians-who-fought-fires-in-prison-cant-become-career-firefighters/>.

In addition to their conviction history, individuals returning from prison have a number of additional barriers to employment, including low education levels and of previous work experience, and residing in neighborhoods that have weak connections to stable employment opportunities. Petersilia, *supra*, at 113. In one study of people searching for work after release from prison, only one-quarter of respondents thought their neighborhood was a good place to find a job. Visser & Kachnowski, *supra*, at 88. What's more, individuals released from incarceration may lack appropriate clothing for interviews and employment, and may not have the resources to print resumes, search for online job listings, or even travel to the interview due to lack of transportation or bus fare. Michele Bisaccia Meitl, *Four Thousand Voices: Self-Reported Barriers to Reentry*, 85 FED. PROBATION 16, 16 (Sept. 2021); *see also infra*, at 10-12.

Notably, standard supervision conditions can restrict individuals from traveling to access better employment opportunities. Coordination Council Report, at 12; *see* U.S.S.G. § 5D1.3(c)(3) (“standard” condition 3, mandating “[t]he defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer”). A restriction on travel also makes it difficult for formerly incarcerated people to obtain certain jobs that have traditionally been open to these individuals—like truck driving and construction. And in some parts of the country, it results in truly ridiculous restrictions, like barring a plumber under supervision in Brooklyn from going to Manhattan for a call without advance permission.

It is no surprise that individuals returning from prison have high rates of unemployment—with only about half finding work within the first year postrelease. Nancy G. La Vigne et al., *One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas*, URBAN INSTITUTE, at 2 (June 22, 2009).⁵ In one study, most respondents felt their criminal record had impacted their job search, explaining that employers “do not want to hire people with records.” Visser & Kachnowski, *supra*, at 89. In all, previously incarcerated individuals will be unemployed for over six months following release. Donohue, *supra*, at 2. Studies have found that nearly half of previously incarcerated individuals earned less than \$500—and only 20 percent will earn more than \$15,000—during their first year after leaving prison. *Id.*

For individuals lucky enough to be hired, their criminal convictions often prevent them from being considered for advancement, and some unions exclude people with criminal convictions from membership. Petersilia, *supra*, at 114. This means that when those with criminal convictions are able to secure jobs, they earn roughly 30 percent less than individuals with the same characteristics who were not incarcerated. *Id.* at 119.

Transportation.

Transportation is another essential component of post-release success—and another area in which previously incarcerated individuals may struggle.

⁵ <https://www.urban.org/sites/default/files/publication/30436/411911-One-Year-Out-The-Experiences-of-Male-Returning-Prisoners-in-Houston-Texas.PDF>.

Anne Nordberg, et al., *Transportation Barriers to Successful Reentry among Returning Citizens: A Qualitative Interpretive Metasynthesis*, 101 PRISON J. 488, 489 (2021). Transportation is critical because it—quite literally—is necessary for individuals to navigate the various demands of their lives. *Id.* at 496. Research has shown that transportation is more important than work experience or education in the ability to locate and maintain employment. *Id.* at 501.

And yet transportation is a major stressor for people coming out of prison. See JOHN HALUSHKA, GETTING THE RUNAROUND: FORMERLY INCARCERATED MEN AND THE BUREAUCRATIC BARRIERS TO REENTRY 58 (2023). More than half of recently-released individuals do not have access to a car, and have to rely exclusively on public transportation. Nordberg, *supra*, at 490; see also Sam McCann, *People Need Transportation Access After Release from Jail and Prison*, VERA INSTITUTE (Oct. 5, 2023) (more than one-third of people released from incarceration have difficulty obtaining a car for emergencies).⁶ And even with access to a car, many may be barred from obtaining a driver’s license, or have trouble obtaining one. See Simmons University, *The Challenges of Prisoner Re-Entry into Society* (2021); Jennifer Miller, *The Endless Trap of American Parole*, THE WASH. POST (May 2021).⁷

⁶ <https://www.vera.org/news/people-need-transportation-access-after-release-from-jail-and-prison>.

⁷ <http://online.simmons.edu/blog/prisoner-reentry/>; <https://www.washingtonpost.com/magazine/2021/05/24/moral-outrage-american-parole/>.

Public transportation systems may not be a reliable means for accessing supervised release appointments, getting to and from job interviews and work, etc., and that is especially true for individuals who live in rural communities. Nordberg, *supra*, at 490; *see also* McCann, *supra* (transportation barriers primary obstacle to people in rural communities complying with probation or parole requirements).

For people who rely on public transportation, they are constantly under threat of missing obligations, many of which may be required as a condition of their release. Nordberg, *supra*, at 497. One woman described her experience:

I start my day running to drop my urine [for drug testing]. Then I go to see my children, show up for my training program, look for a job, go to a[n Alcoholics Anonymous] meeting and show up at my part-time job. I have to take the bus everywhere, sometimes eight buses for 4 hours a day. I don't have the proper outer clothes, I don't have the money to buy lunch along the way, and everyone who works with me keeps me waiting so that I am late to my next appointment. If I fail any one of these things and my [probation officer] finds out, [my probation is] revoked.

Id.

And transportation is not cheap, especially in comparison to the low-paying jobs individuals may have obtained (if they are lucky). *Id.* at 498. One person described the Catch-22 of the interplay of employment and transportation this way:

I was working at a job that I was able to get. I made less than \$200 a month. I quit the job because the pay was low and I lived so far away from the job. I ended up spending my salary on bus fare, cab, or paying someone to take me to work when a family member was not available to take me.

Id.

This quote also reflects the patchwork approach to transportation that many individuals released from incarceration rely on. *Id.* People are lucky if they have family members they can prevail upon for rides, but when a ride falls through and there is no time to catch a bus, individuals must rely on cabs, further inflating the proportion of income spent on transportation. *Id.*

Transportation woes may also make schooling or job training programs functionally inaccessible. *See id.* (“[I]t was far away to school. So I couldn’t go because I didn’t have a ride.”). In short, despite transportation’s key role in meeting post-incarceration obligations, issues with transportation can frustrate those attempts. *Id.* at 499.

II. Given These Barriers, Individuals May Find It Difficult to Report.

As of this time last year, there were over 120,000 individuals on federal post-conviction supervised release. *QuickFacts: Supervised Release*, U.S. SENTENCING COMMISSION, at 2 (Aug. 2025) (reporting 121,777, as of Sept. 30, 2024).⁸ Given the barriers described above, many of these individuals may miss supervision appointments or move without informing

⁸ https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Supervised_Release_FY24.pdf.

their parole officer—and thus “abscond” from supervised release—through little fault of their own. Yet the Government’s position would have them considered the same as someone who plans and executes a prison break. This position ignores the reality of living on supervised release.

Supervised release has many requirements. Among the “mandatory conditions” required by the Sentencing Guidelines are that individuals must submit to several drug tests, provide a DNA sample, and make their court-ordered restitution. *See* U.S.S.G. § 5D1.3(a). The Sentencing Guidelines also recommend certain “standard” conditions, including:

- reporting to a probation officer within three days of release and “as instructed” thereafter;
- “not knowingly leav[ing] the federal judicial district where he or she is authorized to reside” without permission in advance;
- living “at a place approved by the probation officer,” and “notify[ing] the probation officer” in advance if “anything about his or her living arrangements” change, including “the people the defendant lives with”;
- working full-time or looking for work; and
- “not communicat[ing] or interact[ing] with someone” who is engaged in criminal activity or who has been convicted of a felony, without first getting permission.

U.S.S.G. § 5D1.3. Other conditions, depending on the situation, may include attending programming, *see*, U.S.S.G. §§ 5D1.3(a)(3), (d)(4), (d)(5), providing child

support, *id.* § 5D1.3(d)(1), and a curfew, *id.* § 5D1.3(e)(5).

Although these conditions might be “reasonable when considered individually, in the aggregate, the sheer number of requirements imposes a nearly impossible burden on many offenders.” Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1035 (2013). Think of “[t]he time and coordination required to navigate supervision meetings, drug and alcohol testing, and various treatment programs, while also juggling family obligations.” Kate Weisburd, *Carceral Control: A Nationwide Survey of Criminal Court Supervision Rules*, 58 HARV. C.R.-C.L. L. REV. 1, 26 (2023); *see also* Brittany L. Deitch, *Rehabilitation or Revolving Door: How Parole Is A Trap for Those in Poverty*, 111 GEO. L.J. ONLINE 46, 66 (2022) (noting individuals “may find it burdensome to manage their work schedules, family schedules, and parole officer meetings”).

One scholar has referred to this as the “institutional circuit,” which forces individuals to “circumnavigate the city every week.” John Halushka, *supra*, at 29. As one individual put it: “They give you too much to do and not enough time to do it.” *Id.* at 55. These demands can have the perverse effect of “undermin[ing] their efforts to achieve economic independence.” *Id.*

In addition to being numerous, these demands are sometimes directly at odds with each other. For example, in one study, a respondent complained that he was unable to take a job because the hours would have prevented him from reporting as required. Christine S. Scott-Hayward, *The Failure of Parole:*

Rethinking the Role of the State in Reentry, 41 N.M. L. REV. 421, 448 (2011). In another study, a participant described difficulties she experienced because of mandatory programming:

Every Wednesday at 2:00pm, I have a program. I got a job but I still gotta deal with the program. Every Wednesday I gotta leave work and take a one hour bus to the halfway house to be at the program. Then I gotta take the one-hour bus back to the job in the middle of my shift.

Jennifer M. Ortiz & Hayley Jackey, *The System Is Not Broken, It Is Intentional: The Prisoner Reentry Industry as Deliberate Structural Violence*, 99 PRISON J. 485, 493 (2019). It felt to another like all the obligations were “collid[ing] with each other.” Halushka, *supra*, at 58.

These types of tradeoffs can have “potentially devastating financial consequences.” Deitch, *supra*, at 65; *see also* Halushka, *supra*, at 57 (“[M]anaging conflicting obligations creates a series of opportunity costs for returning citizens.”). Or, put another way, “Supervision isn’t supposed to be punishment, but it often feels that way to supervisees.” Miller, *supra*.

When compounded with the barriers discussed previously, individuals may find it difficult to comply with the terms of their supervised release—in particular reporting requirements—despite their best intentions. For example, “[i]t is difficult to imagine successful completion of supervised release for one unable to secure stable housing and employment.” Underhill, *supra*, at 23. Indeed, in one study, lack of stable housing was mentioned by respondents who had failed to comply with contact requirements as “the

area of greatest need.” Kelly Lyn Mitchell and Ebony Ruhland, *Understanding Failure to Maintain Contact Violations*, ROBINA INSTITUTE, at 10 (Sept. 2023).⁹ And although individuals are required to pay their restitution and child support obligations, the difficulty in finding employment, and restrictions on where they can live, and who they can live with, “make it difficult—if not impossible—to meet the supervision-related obligations.” Weisburd, *supra*, at 25.

People are regularly reincarcerated for violating supervision by failing to attend meetings with their parole officers, and transportation issues are among the most common explanations for these failures to attend. *See* Deitch, *supra*, at 46; *see also* Mitchell & Ruhland, *supra*, at 11 (documenting transportation struggles and reasons for failure to report). As noted above, dependence on unreliable public transportation is common, and doing so may cause well-meaning individuals to miss their appointments. Deitch, *supra*, at 66. Because of the essential nature of transportation, some may be forced to “relinquish[] shelter for transportation.” Nordberg, *supra*, at 499.

Surveying this landscape, one federal judge has remarked that

When we add to these common barriers to reentry the burdens of reporting to probation, submitting to location monitoring, restricting travel out of state, providing periodic urine samples for drug tests, allowing searches of residences and

⁹ https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2023-10/understanding_failure_to_maintain_contact_violations.pdf.

automobiles, and avoiding contact with other felons, it is hardly surprising that a large number of supervisees are unable to maintain complete compliance.

Underhill, *supra*, at 22.

No wonder, then, that technical violations abound. *Cf.* Miller, *supra* (documenting technical violations by person on parole in California, including traveling to visit a girlfriend without permission and working with a youth violence prevention nonprofit, as well as being forced to quit a job his parole officer didn't approve of). One parole officer explained that "if you can't write up a report, and cite at least a technical violation," then you aren't trying "very hard." Klingele, *supra*, at 1035.

The data on supervision revocations reflects this. Every year since 2010, one-third of federal supervision cases are closed due to revocation. Underhill, *supra*, at 15; *see also* U.S. SENTENCING COMMISSION, *supra*, at 2 (showing 33.9% of the 51,576 federal supervision cases closed in fiscal year 2024 were due to revocations). Of those revocations, at least half—and more recently—more than two-thirds—are technical violations, rather than new criminal offenses. Underhill, *supra*, at 15-16; *see also* U.S. SENTENCING COMMISSION, *supra*, at 2 (showing 23.1% of *all* supervised release closures were due to technical violations). In total, this amounts to nearly 100,000 federal prison sentences since 2012 for violations not involving new criminal conduct. Underhill, *supra*, at 20.¹⁰

¹⁰ This federal data is consistent with that from states in which the MacArthur Justice Center has offices. For example, a report

In sum, the life of someone returning from prison is likely complicated and difficult. As a result, individuals may fail to report to their probation officer, or move without notifying them, in the case of Ms. Rico, without any *intent* to “abscond.” These missteps should not serve to lengthen the time they spend on probation through the fugitive tolling doctrine.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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out of Mississippi found that 75 percent of individuals who entered prison on a revocation of probation were revoked on technical violations, such as “missing drug tests or failing to report to probation officers.” *Final Report*, MISSISSIPPI CORRECTIONS AND CRIMINAL JUSTICE TASK FORCE, at 9 (Dec. 2013), https://www.mdoc.ms.gov/sites/default/files/2023-01/Dec%202013%20Final%20Report_Task%20Force.pdf.