No. 24-1056

In the Supreme Court of the United States

ISABEL RICO, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

D. JOHN SAUER
Solicitor General
Counsel of Record
MATTHEW R. GALEOTTI
Acting Assistant
Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
JOSHUA K. HANDELL
Assistant to the
Solicitor General
W. CONNOR WINN
Attorney

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

QUESTION PRESENTED

Whether petitioner is entitled to credit for serving her term of supervised release during the period when she was absconding from supervision.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is not published in the Federal Reporter but is available at 2025 WL 720900. The district court's order (Pet. App. 4a-7a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on March 6, 2025. The petition for a writ of certiorari was filed on April 3, 2025, and granted on June 30, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 3583(a) of Title 18 of the United States Code provides:

> The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that

> the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute[.]

18 U.S.C. 3583(a).

Section 3601 provides, in part:

> A person who has been * * * placed on supervised release pursuant to the provisions of section 3583, shall, during the term imposed, be supervised by a probation officer to the degree warranted by the conditions specified by the sentencing court.

18 U.S.C. 3601.

Section 3603 provides, in part:

> A probation officer shall—
>
> (1) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions;
>
> (2) keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court; [and]
>
> (3) use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition[.]

18 U.S.C. 3603.

Section 3624(e) provides, in part:

> A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court.

18 U.S.C. 3624(e).

The full text of those provisions, along with other pertinent statutory provisions, is reproduced in an appendix to this brief. App., *infra*, 1a-22a.

INTRODUCTION

A fugitive from supervision is not entitled to credit for serving her term of "supervised release." The plain text of the Sentencing Reform Act of 1984 (SRA), Pub. L. No. 98-473, Tit. II, ch. II, 98 Stat. 1987, 18 U.S.C. 3551 *et seq.*, specifies that a federal prisoner whose sentence includes a term of supervised release will be "released by the Bureau of Prisons to the supervision of a probation officer," 18 U.S.C. 3624(e), and "shall, during the term imposed, be supervised by [her] probation officer," 18 U.S.C. 3601. As this Court has described it, supervised release is "a form of post-confinement monitoring," *Cornell Johnson* v. *United States*, 529 U.S. 694, 697 (2000), which is designed to "fulfill[] rehabilitative ends" by "provid[ing] individuals with postconfinement assistance," *United States* v. *Roy Lee Johnson*, 529 U.S. 53, 59-60 (2000).

Petitioner's abscondment from "the supervision of [her] probation officer," 18 U.S.C. 3624(e), rendered that supervision impossible. During her time as a fugitive,

she was neither complying with the "postconfinement monitoring" nor receiving the "postconfinement assistance" that together constitute supervision. While she was on the lam—with her whereabouts unknown to the probation officer charged with monitoring and assisting her—she was not, in any legal, linguistic, or logical sense, "be[ing] supervised." 18 U.S.C. 3601. The simple existence of release conditions—which she violated by, among other things, committing new crimes—was not in itself "supervision" that would discharge her term of supervised release. She thus owed the court the balance of her undischarged term: having absconded with 37 months of supervision remaining, she remained subject to 37 months of supervision upon recapture.

Both "a common-sense interpretation of the criminal judgment," Pet. Br. 24, and longstanding principles of "fugitive tolling" dictate that result. For centuries, courts have confronted situations like this one, where someone absconds in the middle of discharging his sentence. And for centuries, courts have adhered to the rule that the absconder does not reduce his sentence through time spent as a fugitive, as "[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). A releasee who absconds from the supervision of her probation officer is no more entitled to "take advantage of [her] own wrong," *Glus* v. *Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232 (1959), than a prisoner who escapes the custody of his jailer. In either case, withholding credit for time spent in fugitivity preserves the undischarged component of the judgment.

Congress—which "is understood to legislate against a background of common-law adjudicatory principles,"

Perttu v. *Richards*, 605 U.S. 460, 461 (2025) (citation omitted)—did not indicate that it was displacing fugitive-tolling principles when it enacted the supervised-release statutes. To the contrary, the text, structure, and history of the SRA confirm that Congress sought to ensure a meaningful term of post-release supervision. Congress had no more need to expressly codify commonsense fugitive-tolling principles for the supervised-release "component of a defendant's prison sentence," *Esteras* v. *United States*, 145 S. Ct. 2031, 2039 n.4 (2025) (emphasis omitted), than for the confinement component—to which petitioner acknowledges (Br. 24) that those principles apply. The courts below thus correctly held that petitioner was not entitled to run the clock on her supervised release while avoiding supervision.

STATEMENT

Following a guilty plea in the United States District Court for the Central District of California, petitioner was convicted of conspiring to distribute methamphetamine and heroin, in violation of 21 U.S.C. 841(b)(1)(B), (C), and 846. 10/5/11 Judgment 1. The district court sentenced her to 84 months of imprisonment and four years of supervised release. *Id.* at 1-2. After petitioner violated her release conditions, the court revoked her supervised release and ordered two months of reimprisonment and 42 months of supervised release. Pet. App. 11a. Approximately five months into her second term of supervised release, petitioner changed residences without notice and stopped reporting to her probation officer. *Id.* at 11a-12a. In 2023, she was returned to supervision; her release was revoked; and, after an appeal and remand, the court ordered 16 months of reimprisonment and two more years of supervised release. *Id.* at 5a, 12a-13a. The court of appeals affirmed. *Id.* at 1a-3a.

A. Statutory Framework

1. To help "protect[] the public against the risk of recidivism," the government has "long kept track" of, and provided assistance to, federal prisoners as they reintegrate into society. *United States* v. *Kebodeaux*, 570 U.S. 387, 396-397 (2013). From 1910 to 1987, it did so mostly through a system of parole, which granted well-behaving prisoners conditional liberty to spend the last part of their prison sentences among the general public "under the 'guidance and control' of a parole officer." *Mistretta* v. *United States*, 488 U.S. 361, 363 (1989) (citation omitted); see Parole Act, ch. 387, 36 Stat. 819.

Parole, however, created "confusion" and struck many as "implicit deception" because it allowed inmates out of prison long before they had completed the prison terms stated in their judgments. *Barber* v. *Thomas*, 560 U.S. 474, 482 (2010). Furthermore, because "better-behaved inmates, who presumably could handle life outside of prison on their own reasonably well," were more often granted parole and thus "left prison sooner than worse-behaved inmates," "the anomalous situation could arise whereby a defendant in great need of post-incarceration supervision would get little whereas a defendant who did not need such supervision would get a great deal." *United States* v. *Montenegro-Rojo*, 908 F.2d 425, 433 (9th Cir. 1990).

Congress sought to remedy those perceived deficiencies through the Sentencing Reform Act. See S. Rep. No. 225, 98th Cong., 1st Sess. 49 (1983) (Senate Report) (acknowledging "uncertainty about the length of time offenders will serve in prison" under the parole system); *id.* at 58 (recognizing that, under the parole system, "a prisoner who needs post-release supervision may not receive it because he has served his entire term of im-

prisonment, while a prisoner who does not require supervision might be placed on parole merely because part of his term remains unserved when he is released"). The SRA replaced "most forms of parole" with "supervised release." *Cornell Johnson* v. *United States*, 529 U.S. 694, 696-697 (2000).

Like parole, supervised release would serve as a transitional period between incarceration and freedom, during which a released prisoner would reacclimate to community life under the supervision of a probation officer and with specified release conditions. See *Mont* v. *United States*, 587 U.S. 514, 523-524 (2019). But under the revised system, supervised release would consist of a fixed term that would follow—not displace—a prisoner's fixed term of incarceration. *United States* v. *Buchanan*, 638 F.3d 448, 451 (4th Cir. 2011).

2. Under the current supervised-release scheme, a district court sentencing a defendant for a crime may (and, in certain cases, must) require a term of supervised release that will follow a term of incarceration. 18 U.S.C. 3583(a) and (k). If the court does so, it generally has discretion to decide the length of the term, within certain boundaries and in light of certain factors, as well as the conditions with which the defendant will be required to comply while on release. See 18 U.S.C. 3583(b)-(d). Certain conditions—such as drug testing, not possessing unlawful controlled substances, and refraining from further crimes—are mandated by statute. See 18 U.S.C. 3583(d). Others, like participation in a treatment program, are required in certain cases. *Ibid.* And further conditions beyond those may be added if the court considers them appropriate. *Ibid.*

Once the defendant has served out her incarceration, her term of supervision begins on the day that she is

"released by the Bureau of Prisons to the supervision of a probation officer." 18 U.S.C. 3624(e). At that point, the defendant "shall, during the term imposed, be supervised by [her] probation officer to the degree warranted by the conditions specified by the sentencing court." 18 U.S.C. 3601. If the court ordered a term of supervised release less than the statutory maximum, it may extend the length of that term at any time before it expires. 18 U.S.C. 3583(e)(2). It may also modify the release conditions at any time, see *ibid.*, and terminate the term early "at any time after the expiration of one year of supervised release," 18 U.S.C. 3583(e)(1).

Should a releasee violate a release condition, the court may (and in certain cases must) revoke her release and return her to prison. 18 U.S.C. 3583(e)(3) and (g). The Sentencing Commission has classified violations of supervised release into three categories based on their perceived severity, from Grade A (most serious) to Grade C (least serious), and provided recommended terms of reimprisonment based on the grade and the characteristics of the offender. See Sentencing Guidelines §§ 7B1.1, 7B1.4. If the court reincarcerates a defendant, it may order her to serve a new "term of supervised release" after that reincarceration ends. 18 U.S.C. 3583(h).

3. The statutory regime also explicitly addresses certain contingencies that can arise during a term of supervision. For example, the term will not run "during any period in which" the defendant is incarcerated for at least 30 days "in connection with a conviction for a Federal, State, or local crime." 18 U.S.C. 3624(e). Also, if during the term of supervised release the court receives an allegation that a defendant violated a release condition, it may issue a summons or warrant to pre-

serve its "power" to adjudicate the allegation beyond the expiration date of the term. 18 U.S.C. 3583(i). The statute does not expressly address the disposition of the supervised-release term when the releasee absconds from supervision.

B. Factual Background

1. a. In 2009, petitioner and her coconspirator sold methamphetamine and heroin to a federal informant. 12/7/10 Presentence Investigation Report (PSR) ¶¶ 9-13. A grand jury in the Central District of California charged petitioner with distributing those substances, in violation of 21 U.S.C. 841(b)(1)(B) and (C), and conspiring to distribute them, in violation of 21 U.S.C. 841(b)(1)(B), (C), and 846. Indictment 1-6. Petitioner pleaded guilty to the conspiracy count and was sentenced to 84 months of imprisonment and four years of supervised release. 10/5/11 Judgment 1-2.

In January 2017, petitioner was released from prison and began her four-year term of supervised release. Pet. App. 11a. But shortly thereafter, she violated her release conditions by using methamphetamine and failing to report for treatment and testing. *Ibid.*; see 10/5/11 Judgment 1-3. In November 2017, the district court revoked her release, ordered two months of reimprisonment, and required a new 42-month term of supervised release. Pet. App. 11a.

b. In December 2017, petitioner was again released from prison and began serving her second term of supervised release (set to expire in June 2021). Pet. App. 11a. She soon violated her release conditions again by returning to illegal drugs. *Ibid.* And in May 2018—roughly five months into her 42-month term of supervision—petitioner further violated the explicit conditions of her supervised release by changing her residence

without notifying her probation officer, as well as failing to stay in contact with the probation officer or any other authority thereafter. *Ibid.*; 5/14/18 PSR 3-4. The Probation Office filed a petition alleging that petitioner had violated her release conditions by using drugs and absconding. 5/14/18 PSR 3-4. The district court issued a warrant for her arrest. Pet. App. 12a.

Petitioner, however, remained at large for nearly the entirety of the scheduled term of supervised release. In January 2021, more than two-and-a-half years after ceasing contact with her probation officer, she was arrested by state authorities for evading a police officer, driving without a license, and possessing drug paraphernalia. Pet. App. 25a. In May 2021, she pleaded guilty to evading police and driving unlicensed. *Ibid.*; 2/21/23 PSR 4. And in January 2022, she was charged with (and later pleaded guilty to) possessing fentanyl for sale, receiving another two years in state custody. Pet. App. 24a-25a; C.A. E.R. 107-108.

c. In January 2023—four years and eight months after absconding from the supervision of her probation officer—petitioner appeared before a federal magistrate judge on the charged supervised-release violations from 2018 (drug use and failure to report). Pet. App. 12a. The next month, the Probation Office filed an amended violation petition. 2/21/23 PSR 1-9.

The amended petition dismissed the 2018 drug-related allegations but maintained the failure-to-report allegation. 2/21/23 PSR 3-4, 9. It also added two allegations stemming from petitioner's crimes in the intervening years: (1) evading police and unlicensed driving in January 2021, and (2) possessing a controlled substance for sale in January 2022. *Ibid.*; Pet. App. 12a-13a. At a March 2023 hearing, petitioner admitted to

the three allegations in the amended petition. Pet. App. 12a-13a; C.A. E.R. 119-121. The district court ordered a revocation term of 24 months of imprisonment, with no further supervision to follow. Pet. App. 13a.

Following an appeal and remand, the district court held a second hearing. The court treated petitioner's 2022 fentanyl conviction as a Grade A violation and her abscondment and 2021 offenses as Grade C violations. Pet. App. 24a-26a. Petitioner argued that she should not be subject to the Grade A violation from 2022, on the theory that, notwithstanding her abscondment, her term of supervised release—and thus the court's authority to sanction violations of release conditions—had terminated in June 2021, as originally scheduled. D. Ct. Doc. 202, at 2-8 (Mar. 8, 2024). The court rejected that argument based on circuit precedent declining to credit periods of fugitivity as service of supervised release. Pet. App. 26a-31a. Relying on circuit precedent, the court explained that "a defendant's fugitive status tolls the term of supervised release." *Id.* at 31a.

Based on petitioner's Grade A violation, she faced an advisory range of 33-36 months of reimprisonment, rather than 8-14 months for the Grade C violations. Pet. App. 31a-32a; see Sentencing Guidelines § 7B1.4(a) (2010). The district court revoked petitioner's supervised release and, varying downward, ordered 16 months of imprisonment and two years of further supervision. Pet. App. 35a.

2. The court of appeals affirmed. Pet. App. 1a-3a. The court rejected petitioner's challenge to the district court's consideration of her 2022 fentanyl offense, explaining that she was not entitled to credit against her supervised release for the period of her abscondment. *Id.* at 2a-3a.

SUMMARY OF ARGUMENT

Petitioner is not entitled to credit for serving her term of supervised release during the period when, due to her own abscondment, she was not "be[ing] supervised by [her] probation officer." 18 U.S.C. 3601. Counting unsupervised periods as supervised release would deprive lawful judgments of their force and drain meaning from the statutory language. It would also impute to Congress the intention to abandon centuries-old fugitive-tolling principles *sub silentio*—and, anomalously, as to only one of the several penalties addressed in the Sentencing Reform Act. There is no sound basis for construing the SRA to grant fugitives from supervision such an unjustified windfall.

A. Congress has made clear that receiving supervision is essential to serving out a term of supervised release. A defendant who is ordered to serve supervised release is "released by the Bureau of Prisons to the supervision of a probation officer," 18 U.S.C. 3624(e), and must thereafter "be supervised by [his] probation officer," 18 U.S.C. 3601. "[T]he ordinary, commonsense meaning," *United States* v. *Roy Lee Johnson*, 529 U.S. 53, 57 (2000), of "supervision" requires both observation and direction. Without those features, something essential is missing.

This Court's precedents have accordingly described supervised release as encompassing both "postconfinement monitoring," *Cornell Johnson* v. *United States*, 529 U.S. 694, 696 (2000), and "postconfinement assistance," *Roy Lee Johnson*, 529 U.S. at 60. And the Court has declined to credit, against a term of supervised release, periods during which a defendant was unavailable to be supervised by his probation officer. See *ibid.*; *Mont* v. *United States*, 587 U.S. 514 (2019). Although

those decisions do not directly address fugitives like petitioner, similar logic applies. A fugitive from supervision—who is neither subject to "postconfinement monitoring" nor receiving "postconfinement assistance"—is not "be[ing] supervised," 18 U.S.C. 3601, within the plain meaning of the statutory language, and she cannot be credited for "supervised" release.

The fact that an absconder remains subject to release conditions while on fugitive status, see Pet. Br. 15, does not mean that she is being "supervised." The release conditions do not substitute for the statutory requirement that the supervising probation officer continually monitor and report on the releasee's real-world "conduct and condition," 18 U.S.C. 3603(2), and "use all suitable methods * * * to aid" the releasee and "to bring about improvements in h[er] conduct and condition," 18 U.S.C. 3603(3). An absconder is interfering with that duty; supervised release is not a game of catch-me-if-you-can. And in practice, any sanctions for violating release conditions for conduct on the lam, beyond the sanction for the abscondment itself, would likely be limited to conduct that violates independent criminal laws—laws that bind everyone, not just releasees.

B. Declining to credit a period of fugitivity against a term of supervised release is consistent with centuries of common-law precedents reflecting "fugitive tolling" principles. Two related principles recognized by this Court—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), and that "no man may take advantage of his own wrong," *Glus* v. *Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232 (1959)—apply with full

force here. Congress legislates with "common-law adjudicatory principles" in mind and expects that they "will apply except when a statutory purpose to the contrary is evident." *Perttu* v. *Richards*, 605 U.S. 460, 468 (2025) (citation omitted). No such contrary purpose is evident in the supervised-release statutes.

Given the uniform judicial application of fugitive-tolling principles to carceral and conditional-liberty terms like supervised release, the absence of any provision expressly displacing those principles is telling. It is all the more telling because the SRA separately addressed a preexisting judicial dispute about another form of tolling for terms of conditional liberty—and resolved that dispute in favor of *more* tolling for supervised release by enacting 18 U.S.C. 3624(e). Petitioner's various attempts to divine displacement of common-law principles by negative implication from either Section 3624(e) or other provisions are unsound. A court's ability to "extend" and "revoke" supervised release and to order a new post-reimprisonment term of supervision, see 18 U.S.C. 3583(e)(2), (3), and (h), does not speak to abscondment in particular, and it is neither a conceptual nor practical substitute for fugitive-tolling principles. Similarly, the statutory authority to handle late-in-term violations after the supervised-release term's expiration, see 18 U.S.C. 3583(i), does not address the ability to continue supervising an absconder.

C. Finally, petitioner's appeals to equity lack merit. "A defendant does not become a fugitive for tolling purposes" just because she "miss[ed] a meeting" or "violate[d] a condition of supervised release." *United States* v. *Thompson*, 924 F.3d 122, 129 (4th Cir. 2019), cert. denied, 141 S. Ct. 1427 (2021). She only becomes a fugitive when, like petitioner, she has "ma[de] it impossible for

the Probation Office to supervise h[er] actions," *United States* v. *Ignacio Juarez*, 601 F.3d 885, 890 (9th Cir. 2010) (per curiam), despite "kn[o]w[ing] of h[er] obligation" to remain supervised, *United States* v. *Swick*, 137 F.4th 336, 347 (5th Cir. 2025), petition for cert. pending, No. 25-5376 (filed Aug. 13, 2025). An inequity would arise only if a fugitive could be credited with serving supervised release while remaining knowingly unsupervised. The courts below correctly rejected that result, and this Court should as well.

ARGUMENT

PETITIONER IS NOT ENTITLED TO COUNT HER PERIOD OF ABSCONDMENT AS SERVICE OF HER TERM OF SUPERVISED RELEASE

Petitioner cannot claim to have completed her term of "supervised release" when she refused to be "supervised" for most of it. Having fled with 37 months of supervision remaining, she remained subject to 37 months of supervision upon recapture. For centuries, courts have applied fugitive-tolling principles to ensure that a defendant does not reduce a term of her sentence—including terms of conditional liberty like parole and probation—through her own wrongful flight. Congress did not displace those principles when it created supervised release, and effectuating the supervised-release system requires that the defendant be under supervision for the entire length of time specified by the court.

A. The Supervised-Release Statutes Do Not Allow Petitioner To Discharge Her Term Of Supervised Release While Absconding From Supervision

As this Court has recognized, supervised release is "a form of postconfinement monitoring overseen by the sentencing court," *Cornell Johnson* v. *United States*, 529 U.S.

694, 697 (2000), which is designed to "fulfill[] rehabilitative ends" by "provid[ing] individuals with postconfinement assistance," *United States* v. *Roy Lee Johnson*, 529 U.S. 53, 59-60 (2000). "[T]he supervision of a probation officer," 18 U.S.C. 3624(e), is accordingly essential to its function. A defendant therefore cannot continue to discharge her term of supervised release while she is absconding from supervision.

1. A defendant must "be supervised" to satisfy a requirement of post-release "supervision"

The Sentencing Reform Act specifies that a "prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer." 18 U.S.C. 3624(e). It directs that the probation officer "shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court." *Ibid.* And it places a reciprocal obligation on the releasee, who likewise "shall, during the term imposed, be supervised by [her] probation officer to the degree warranted by the conditions specified by the sentencing court." 18 U.S.C. 3601.

Therefore, under the statute's plain text, a releasee discharges her term of supervised release only when she is, in fact, "be[ing] supervised by a probation officer," 18 U.S.C. 3601, within "the ordinary, commonsense meaning" of those words, *Roy Lee Johnson*, 529 U.S. at 57. And those words have, since the time of the SRA's enactment, denoted observation and direction. See, *e.g.*, *Webster's Ninth New Collegiate Dictionary* 1185 (1985) ("supervision": "a critical watching and directing (as of activities or a course of action)"); *The American Heritage Dictionary* 1221 (2d coll. ed. 1982) ("supervise": "[t]o direct and inspect the performance

of; superintend"). The "supervision of a probation officer" contemplated by the SRA thus requires that the defendant is available to be both observed and directed in her transition to freedom.

When a defendant is not being supervised because she has absconded, she is not discharging the supervision component of her sentence. A defendant who absconds from "the supervision of [her] probation officer," 18 U.S.C. 3624(e), is evading both the "postconfinement monitoring" she is required to undergo, *Cornell Johnson*, 529 U.S. at 697, and the "postconfinement assistance" she is required to receive, *Roy Lee Johnson*, 529 U.S. at 60. This Court has effectively recognized as much in repeatedly construing the supervised-release statutes so as to preserve the full period of meaningful, active supervision required by the sentencing court.

In *United States* v. *Roy Lee Johnson*, for example, the Court declined to credit excess time in prison against a defendant's term of supervised release, noting that "[t]he objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release." 529 U.S. at 59. And in *Mont* v. *United States*, 587 U.S. 514, 521 (2019), the Court declined to credit time in pretrial detention (that later became part of a state sentence) against a defendant's term of supervised release. Observing that supervised release "facilitate[s] a 'transition to community life,'" the Court emphasized the importance of "giving full effect to the lawful judgment previously imposed on the defendant." *Id.* at 523-525 (quoting *Roy Lee Johnson*, 529 U.S. at 59).

If time that a defendant spends in the custody of a jailer does not discharge his term of supervised release, then time that a defendant spends on the lam—under

no supervision whatsoever—cannot do so either. "A supervising court cannot offer postconfinement assistance or ensure compliance with the terms of release while a defendant is truant." *United States* v. *Island*, 916 F.3d 249, 253 (3d Cir. 2019), cert. denied, 140 S. Ct. 405 (2019). Just as "[t]o say [a defendant] was released while still imprisoned diminishes the concept the word intends to convey," *Roy Lee Johnson*, 529 U.S. at 57, to say a defendant is "be[ing] supervised," 18 U.S.C. 3601, while absconding from supervision taxes the statutory language beyond what it can bear.

Petitioner does not even attempt to argue that she was, as a factual matter, "be[ing] supervised by [her] probation officer," 18 U.S.C. 3601, during her period as a fugitive. Nor could she. While on fugitive status, petitioner was not abiding by any of the restrictions intended to facilitate monitoring by her probation officer. *E.g.*, D. Ct. Doc. 147, at 1-2 (Nov. 16, 2017) (requiring petitioner to "submit to a search, at any time, * * * by any Probation Officer in the lawful discharge of the officer's supervision functions"). And she was not benefiting from any of the guardrails established to assist her reintegration. *E.g.*, *id.* at 2 (requiring petitioner to, *inter alia*, "participate in mental health treatment * * * until discharged from the treatment by the treatment provider, with the approval of the Probation Officer"). She is not entitled to credit that unsupervised time as service of her supervised release.

2. The continued applicability of release conditions does not amount to "supervision" for which a defendant is entitled to credit

Petitioner contends (Br. 15) that even if she was not being supervised, she should receive credit for her time as a fugitive because, "during that entire period, [she]

remain[ed] subject to the conditions of supervised release." But even assuming that petitioner had complied with those conditions—which she did not—they are neither the equivalent of supervision nor a substitute for it. A 15-year-old with a learner's permit who goes on a solo joyride cannot claim to be driving under adult supervision simply because she remains subject to the rules of the road. Much less can a defendant transform the continuing release conditions into the "supervision" required to satisfy her supervised-release term.

a. As petitioner recognizes (Br. 1, 15), becoming a fugitive from supervised release—itself a violation of the release conditions—does not carry with it a right to take a vacation from its conditions. But the continued applicability of release conditions is not "supervision" that would constitute creditable service of a supervised-release term.

The probation officer is required by statute to monitor the real-world "conduct and condition of * * * a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court." 18 U.S.C. 3603(2). In doing so, the probation officer must "supervise[the releasee] * * * to the degree warranted by the conditions specified by the sentencing court." 18 U.S.C. 3601; see Administrative Office of the U.S. Courts, *Overview of Probation and Supervised Release Conditions* 1 (July 2024) ("The conditions of supervision set the parameters of supervision."). And he must "use all suitable methods, not inconsistent with the conditions specified by the court, to aid * * * a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition." 18 U.S.C. 3603(3).

Thus, under the statutory scheme, "[t]he defendant's assigned probation officer * * * has discretion and plays a significant role in the day-to-day management of supervised release," and "the district court and the probation officer work together * * * in the crafting and management of supervised release." *United States* v. *Hamilton*, 986 F.3d 413, 417-418 (4th Cir. 2021). None of that is possible when a defendant absconds. "If probation officers are not aware of the defendant's whereabouts, they are unable to implement effective supervision practices." Administrative Office of the U.S. Courts, *Overview of Probation and Supervised Release Conditions* 20 (July 2024).

Even assuming arguendo that a fugitive is otherwise compliant with her release conditions, the necessary supervision is not occurring. It is not the responsibility of the probation officer to play hide-and-seek with a releasee who fails to maintain contact. Instead, on top of any specific reporting conditions set forth by the court, a "person who has been * * * placed on supervised release * * * shall, during the term imposed, be supervised by a probation officer to the degree warranted by the conditions specified by the sentencing court." 18 U.S.C. 3601. An out-of-contact fugitive is by definition not satisfying that obligation.

b. In reality, of course, many fugitives from supervised release *do* violate the conditions of their supervised release during their period of abscondment. Someone willing to evade supervision would be especially likely to return to drugs, commit crimes, or engage in other practices that would violate his release conditions—no doubt that is often one of the main goals of absconding. And more fundamentally, as discussed above, the very premise of supervised release is that

monitoring and assistance will reduce recidivism. Avoiding that monitoring and assistance thus increases the risk of lapsing into further misbehavior.

Contrary to petitioner's suggestion (Br. 14-17), there is nothing anomalous or inequitable about holding a fugitive from supervision accountable for her conduct while denying her credit for actual service of "supervised" release. Instead, the releasee's situation is similar to that of other defendants who abscond from conditional liberty. The abscondment of a pretrial releasee, for example, tolls the running of the deadlines in the Speedy Trial Act, thereby depriving the defendant of "credit" against his statutory speedy-trial clock. See 18 U.S.C. 3161(h)(3). But the defendant remains in pretrial-release status and, accordingly, subject to sanctions for violating court-ordered conditions. 18 U.S.C. 3148 (allowing "prosecution for contempt of court" of a pretrial releasee "who has violated a condition of his release"); see, *e.g.*, *United States* v. *Ribota*, 792 F.3d 837, 839 (7th Cir. 2015) (upholding contempt prosecution for post-abscondment violation of pretrial-release conditions); cf. *Milhem* v. *United States*, 834 F.2d 118, 121 (7th Cir. 1987) (rejecting bailee's "claim that the issuance of the [abscondment-based] arrest warrant * * * ended his obligations under the bail-jumping statute"), cert. denied, 484 U.S. 1046 (1988). Similarly, under Bureau of Prisons regulations, if a prisoner escapes from furlough and is recaptured, he remains subject to his full undischarged prison term and may suffer additional institutional consequences based on conduct during his period of fugitivity. 28 C.F.R. 570.38; cf. 28 C.F.R. 541.3 (calibrating "[s]everity [l]evel" of escape violation to, *inter alia*, duration of abscondment).

No basis exists to conclude that the supervised-release statutes uniquely require a choice between accountability for a fugitive's violations and supervision for the full amount of time specified in the fugitive's criminal judgment. Abscondment does not vest the fugitive with the right to take a complete leave of absence from the obligations of his criminal judgment. And requiring the releasee to be actually supervised for the entire prescribed period is not an extension of the supervised-release term; it is a preservation of the required service. Nothing in the supervised-release statutes allows a releasee to simply reschedule her service to her liking by taking a break in the middle, during which she is free to violate any release condition set out in the judgment without the consequences that Congress has prescribed for that additional breach of trust. See 18 U.S.C. 3583(e)(3).

c. In any event, in practice, the only significant sanctions that a fugitive is likely to receive (beyond the sanction for the abscondment itself) for her conduct as a fugitive are for breaking criminal laws—rules with which *everyone* must comply. As petitioner acknowledges (Br. 45), "absconding itself is a violation of supervised release that can result in revocation." See 18 U.S.C. 3583(e)(3); Sentencing Guidelines § 7B1.2(b). And in determining the length of any reimprisonment for a fugitive, the only additional violations that could affect the defendant's advisory Sentencing Guidelines range are federal, state, and local felonies—not technical violations, like skipping appointments and missing drug tests, that may be inherent to fugitive status.

Under the Sentencing Guidelines, all nonfelonious violations of supervised-release conditions—including abscondment—are Grade C violations (the least seri-

ous). See Sentencing Guidelines § 7B1.1(a)(3). And the grade does not increase simply because numerous such violations are charged. See *id.* § 7B1.1(b). Thus, even if a probation officer's obligation to "promptly report" Grade C violations that are "part of a continuing pattern," *id.* § 7B1.2, required reporting both abscondment and its inevitable violative consequences, that does not mean that a fugitive will be subject to a profusion of sanctions simply for absconding.

The commission of a felony while a fugitive would increase the grade of the collective violations. See Sentencing Guidelines § 7B1.1(a)(1), (2), and (b). But the obligation not to commit such crimes stems from the general obligation to follow the law—not some rule of conduct unique to releasees. Cf. *Black* v. *Romano*, 471 U.S. 606, 623 n.21 (1985) (Marshall, J., concurring) ("Probation typically is conditioned on a general obligation to obey all state and local laws, but all citizens live under similar obligations."). No unfairness inheres in recognizing that such crimes are also violations of federal release conditions. Cf. *Mont*, 587 U.S. at 526 (finding "nothing unfair" about a defendant in pretrial detention "not knowing" whether he was also subject to release conditions when compliance with those conditions was "generally mandated by virtue of being in prison—for example, no new offenses or use of drugs").

B. In Accord With Longstanding Common Law, A Releasee Who Absconds With Time Remaining On Her Term Of Supervised Release Must Serve That Remaining Time

An absconder's inability to discharge a supervised-release term while she is a fugitive necessarily implies that she must discharge that remainder when and if supervision recommences. That is not only the obvious implication of the statutory text, but also consistent

with centuries-old principles under which fugitives' sentences are tolled for the duration of their abscondment. Congress legislates with "common-law adjudicatory principles" in mind and expects that they "will apply except when a statutory purpose to the contrary is evident." *Perttu* v. *Richards*, 605 U.S. 460, 468 (2025) (citation omitted). Here, the windfall credit that petitioner seeks cannot be squared with either the text or the common law that Congress presumably adopted.

1. Suspension of an absconder's remaining term of imprisonment or conditional liberty has deep historical roots

No matter the era or the penalty, flight has never allowed a convict to serve less than the full sentence ordered by the court. For at least four centuries, courts have instead hewed to the common-law maxim that a person "shall not take advantage of his own wrong," *Boyton's Case*, (1592), 76 Eng. Rep. 733 (K.B.) 741, and have applied that rule to the absconding convict.

a. Both English and early American courts required captured fugitives to serve out their prison terms

By 1592, English courts had recognized that a prisoner could not avoid or diminish imprisonment through flight. In *Boyton's Case*, for example, the King's Bench denied release to an imprisoned debtor who claimed to have escaped beyond the auspices of the writ held by his jailers, holding instead that a fugitive "shall not take advantage of his own wrong"—namely, improperly "escap[ing]" and needing to be "re-taken." 76 Eng. Rep. at 733-741; accord *Rigeway's Case*, (1594) 76 Eng. Rep. 753 (K.B.) 755 (reaffirming *Boyton's Case*).

That principle held true in the criminal context as well. Convicts who escaped "out of the gaol" could be

"retake[n] * * * at any time" and required to serve the time remaining when they escaped so as to ensure that "the felon shall not take the advantage of his own wrong." 1 Matthew Hale, *The History of the Pleas of the Crown* 602 (1736); see 2 William Hawkins, *A Treatise of the Pleas of the Crown* 200 (6th ed. 1788) (agreeing that one who gained liberty through a "wrong"—flight—could take no "manner of advantage from it").

The proposition that a convict could not outrun his sentence migrated across the Atlantic and into American law. Early state courts agreed that arresting an escaped prisoner resulted in "a continuance of the former imprisonment." *Nicolls* v. *Ingersoll*, 7 Johns. 145, 155 (N.Y. Sup. Ct. 1810). By the first half of the nineteenth century, American courts broadly confirmed that a felon's "escape from prison is no discharge" of his sentence, *Commonwealth* v. *Mott*, 38 Mass. (21 Pick.) 492, 498 (1839), and that there was "no question of the authority of [a] court to recommit" an escaped convict to satisfy the full terms of his judgment, *Luckey* v. *State*, 14 Tex. 400, 401-402 (1855); cf. *Schwamble* v. *Sheriff*, 22 Pa. 18, 19 (1853) (finding that an escapee "was legally retaken, and must remain in custody until he is delivered in due course of law").

By the early twentieth century, state courts explicitly affirmed that an escaped prisoner's sentence would not run during his fugitivity. "The only way" to "satisfy[] a judgment" was "fulfilling its requirements," *Hollon* v. *Hopkins*, 21 Kan. 638, 645 (1879), and a convict could never satisfy his sentence through his "wrong[s]," such as flight, *id.* at 648. Thus, the runaway convict's sentence was "not executed, not revoked, not annulled, nor exhausted by lapse of time." *Ibid.* And, when the authorities retook that fugitive, his arrest and

reimprisonment for the time left on his sentence were "lawful." *Id.* at 645, 648.

This Court has followed the same course for more than 100 years. At least since the late nineteenth century, the Court has refused to allow a prisoner to shorten a term of imprisonment or other penalty through "any act * * * caused by his own conduct." *Dimmick* v. *Tompkins*, 194 U.S. 540, 548-549 (1904); see *In re Cross*, 146 U.S. 271, 278 (1892). And in *Anderson* v. *Corrall*, 263 U.S. 193, 196 (1923), the Court expressly held that "[e]scape from prison interrupts service" of a sentence and that "the time elapsing between escape and retaking" does not count toward discharging the prisoner's term. As the Court recognized, "[m]ere lapse of time without imprisonment or other restraint contemplated by the law does not constitute service of sentence." *Ibid.*

b. Fugitive-tolling principles likewise applied to terms of conditional liberty for parolees and probationers

Similar fugitive-tolling principles carried over to forms of conditional liberty that began to proliferate around the turn of the twentieth century: parole and probation. Those mechanisms of conditional liberty allowed convicts to live outside a prison's walls partly or entirely in lieu of incarceration, but under specified conditions and active supervision. Just as in the case of imprisonment, a parolee or probationer who absconded from the supervision of the court (or its proxy) was deemed to have fled from custody and treated like any other escapee—as a fugitive who was failing to discharge his sentence.

Under the Parole Act of 1910, for example, putatively rehabilitated convicts could be released from

prison early, subject to "such terms and conditions" as a parole board prescribed and "under the control of the warden," who could "retak[e]" the parolee upon "reliable information" that he had "violated his parole." Parole Act, ch. 387, §§ 3, 4, 36 Stat. 819-820. For purposes of serving out the full sentence, nineteenth- and early-twentieth-century courts drew a legal equivalence between fugitive prisoners and parolees who absconded entirely from supervision. Because supervision served as "an extension or enlargement of the walls of the prison," an abscondment from supervision constituted "an escape from the prison." *Drinkall* v. *Spiegel*, 36 A. 830, 832 (Conn. 1896).

The absconding parolee's flight thus suspended credit for serving her parole term, see *Biddle* v. *Asher*, 295 F. 670, 670-671 (8th Cir. 1924), just as a prisoner's flight suspended credit for serving a term of imprisonment. This Court also described a violation of parole conditions as "in legal effect on the same plane as an escape from the" warden's "custody and control," *Anderson*, 263 U.S. at 196, and deemed such a violation to have "interrupted and suspended" service of his sentence, *Zerbst* v. *Kidwell*, 304 U.S. 359, 361 (1938). As the Second Circuit explained, "tolling a parolee's sentence for the period during which he is in abscondence does not 'extend' or increase the original sentence. It merely incorporates the common law rule that lapse of time does not constitute service of sentence and, hence, stops the sentence from running for that period during which the offender, through some fault of his own, has failed to serve his sentence." *Caballery* v. *United States Parole Comm'n*, 673 F.2d 43, 46 (2d Cir.), cert. denied, 457 U.S. 1136 (1982).

Similar principles animated the treatment of probationers. The 1925 Probation Act, ch. 521, 43 Stat. 1259-1260, gave district courts the power, where the offense was not punishable by death or life imprisonment, "to suspend the imposition or execution of [a prison] sentence and to place the defendant upon probation for" up to five years "and upon such terms and conditions as they may deem best." Probation officers were required to report to the court on the defendant's compliance with his supervision. *Id.* § 2, 43 Stat. 1260. And Congress provided that, "[a]t any time within the probation period[,] the probation officer may arrest the probationer without a warrant, or the court may issue a warrant for his arrest," and that the court "may revoke the probation * * * and may impose any sentence which might originally have been imposed." *Ibid.*

Drawing on parole case law, courts tolled the probation terms of those who absconded from their supervision. In *Nicholas* v. *United States*, 527 F.2d 1160 (1976), for example, the Ninth Circuit explained that the five-year term of a probationer who absconded two years in "was extended by operation of law by the amount of time within the five-year period during which [the] probationer, in violation of the terms of his probation, and for whom an arrest warrant has issued, has voluntarily absented himself from the jurisdiction." *Id.* at 1161-1162. The Third Circuit similarly recognized that courts "cannot credit * * * probationary time" between the date a defendant "absconded" and the date he was returned to custody. *United States* v. *Lancer*, 508 F.2d 719, 734 (3d Cir.) (en banc), cert. denied, 421 U.S. 989 (1975). As with parole, "[t]he unifying principle" across cases was to refuse credit for serving a term of probation "for any period of time during which [the pro-

bationer] was not, in fact, under probationary supervision by virtue of his own wrongful act." *United States* v. *Workman*, 617 F.2d 48, 51 (4th Cir. 1980).

2. The supervised-release scheme incorporates fugitive-tolling principles

When Congress created the supervised-release regime in 1984, it did so "against [the] background of [the] common-law adjudicatory principle[]," *Perttu*, 605 U.S. at 468, that a fugitive could not shorten her sentence through her wrongful flight. Congress is presumed to have carried that "usual practice" into the new regime, *ibid.*, unless it "directly" rejected it through clear statutory language, *Pasquantino* v. *United States*, 544 U.S. 349, 359 (2005) (citation omitted). Nothing in the SRA's text, structure, or history reflects an "evident" "statutory purpose," *Perttu*, 605 U.S. at 468, to displace fugitive-tolling principles and instead award fugitives from supervision an unjustifiable windfall.

a. As just discussed, historical practice had applied fugitive-tolling principles to imprisonment and conditional liberty alike. Supervised release—"a kind of conditional liberty," *Mont*, 587 U.S. at 523—would naturally incorporate those principles as well, unless Congress provided otherwise. Petitioner highlights (*e.g.*, Br. 47) that Congress did not expressly address fugitive tolling in the SRA, but that simply means that Congress never indicated that absconding from supervision would shorten a term of supervised release. Measured against the traditional rule that a defendant cannot outrun his sentence, the "congressional silence is audible." *United States* v. *Bestfoods*, 524 U.S. 51, 62 (1998); cf. *Edmonds* v. *Compagnie Generale Transatlantique*, 443 U.S. 256, 266-267 (1979) ("[S]ilence is most eloquent, for such ret-

icence while contemplating an important and controversial change in existing law is unlikely.").

It is undisputed that the SRA's silence as to fugitive tolling for *other* kinds of sentences—notably, imprisonment—reflects incorporation of commonsense common-law fugitive-tolling principles. See Pet. Br. 24. The natural implication is that it did so for supervised release as well. That is especially true because, as this Court recently explained, "a term of supervised release is not itself a 'sentence' at all; it is a component of a defendant's *prison* sentence." *Esteras* v. *United States*, 145 S. Ct. 2031, 2039 n.4 (2025); see 18 U.S.C. 3583(a) ("The court, in imposing a sentence to a term of imprisonment * * * , may include *as a part of the sentence* a requirement that the defendant be placed on a term of supervised release.") (emphasis added). That understanding of postconfinement supervision—as the continuation of "a term of imprisonment," *ibid.*—is consistent with the pre-SRA precedents treating parole as an "amelioration of punishment" that remains "in legal effect imprisonment," *Anderson*, 263 U.S. at 196.

b. Further reinforcing the inference of fugitive-tolling principles, the only way in which the SRA expressly addressed the running of supervised release was to *promote* service of the full period of supervision. Specifically, in 18 U.S.C. 3624(e), Congress addressed the scenario in which a supervised releasee is imprisoned for a crime that he may have committed before his supervised release began, specifying that nontrivial breaks in supervision would not be credited toward service of a term of supervised release.

As the Senate Report accompanying the SRA recognized, courts in the parole and probation contexts had disagreed on whether to toll the period of conditional

liberty when releasees were incarcerated for such crimes. Senate Report 100-101 & n.347; see *United States* v. *Pisano*, 266 F. Supp. 913, 915-916 (E.D. Pa. 1967) (discussing variation in the case law). Because the crime itself predated the term of parole or probation, it could not be addressed through the mechanisms for dealing with violations of release conditions. *Pisano*, 266 F. Supp. at 916. But the term of conditional liberty would nonetheless be interrupted, as the releasee went to prison rather than continuing to integrate with society at large. See *United States* v. *Gerson*, 192 F. Supp. 864, 865 (E.D. Tenn. 1961) (observing that "[t]he directives of the Act itself cannot be performed while [the probationer] is incarcerated"), aff'd, 302 F.2d 430 (6th Cir. 1962) (per curiam).

Congress addressed the divide in the case law by specifying that a term of probation or supervised release would "not run during any period in which the defendant is imprisoned" for at least 30 days in connection with a conviction, regardless of when the underlying offense conduct occurred. 18 U.S.C. 3624(e); see Senate Report 101. As this Court has recognized, Section 3624(e) embodies the principle that "[t]he objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release," because "[s]upervised release has no statutory function until confinement ends." *Mont*, 587 U.S. at 523-524 (citation omitted). That same "understanding of supervised release," *id.* at 524, underscores that Congress did not silently discard fugitive-tolling principles that likewise foreclose crediting *un*supervised time as "supervised" release.

c. Reading such a loophole into the statute would also be irreconcilable with the logic underlying the

adoption of supervised release as a replacement for parole. As previously discussed (see pp. 6-7, *supra*), when drafting the SRA, Congress recognized a "significant problem with the current law," which tied early release for parole to a prisoner's good behavior, because it meant that "a prisoner who needs post-release supervision may not receive it because he has served his entire term of imprisonment, while a prisoner who does not require supervision might be placed on parole merely because part of his term remains unserved when he is released." Senate Report 58. Congress thus designed the new system to ensure that "every releasee who does need supervision will receive it." *Cornell Johnson*, 529 U.S. at 709 (quoting Senate Report 125).

But crediting a fugitive for time spent absconding from supervision would recreate a significant aspect of the problem that supervised release was designed to solve. A nonfugitive releasee, "whose conduct measures up," *Zerbst*, 304 U.S. at 363, would receive his full term of supervision, while a fugitive could "reduc[e] the time" of supervision, *ibid.*, by absconding from it. The SRA provides no indication that Congress intended to adopt such a self-defeating approach, in derogation of the common law.

3. Petitioner's arguments for discarding fugitive-tolling principles are unsound

Petitioner fails to show otherwise. She correctly recognizes (Br. 24) that a fugitive "does not get credit for serving a sentence unless he is actually serving it—that is, actually subject to the burdens the sentence imposes." She does not dispute the general principle that criminal sentences are tolled during periods of abscondment. See *ibid.* Nor does she contest (Br. 23-26) that courts (including this one) have throughout the last cen-

tury specifically applied those principles to conditional-liberty terms. Her efforts to nonetheless get credit for service of supervised release while absconding from supervision are unsound.

a. Petitioner's approach to the common law is inconsistent with history and canons of statutory construction

As a threshold matter, petitioner suggests that the common law is either irrelevant on its own terms (Br. 23-26, 36-47) or, at least, irrelevant to the statutory analysis (Br. 33-36). Both suggestions are misplaced.

i. Petitioner's primary argument for disregarding fugitive-tolling principles is simply a continuation of her erroneous conflation of supervision, on the one hand, and release conditions, on the other. Petitioner asserts (Br. 25-26) that, "[u]nlike the escaped prisoner or the incarcerated parolee, [she] actually *was* on supervised release during the entire abscondment period" because "she remained subject to the disabilities and conditions of supervised release." But as explained above (see pp. 16-23, *supra*) petitioner was not "on supervised release," Pet. Br. 25, while she was avoiding "the supervision of [her] probation officer," 18 U.S.C. 3624(e).

Pre-SRA courts considering parole and probation recognized that *actual supervision* was the hallmark of such conditional liberty. See *Caballery*, 673 F.2d at 46 ("Parole, of course, constitutes a 'restraint contemplated by the law' since the parolee is bound to remain under the control of his parole supervisor.") (quoting *Anderson*, 263 U.S. at 196); *Gerson*, 192 F. Supp. at 865 ("If a probationer, voluntarily or because of his wrongdoing, is not available to be under the control of the Court and the supervision of the probation officer, the probation period is not running."). And petitioner errs

in asserting (Br. 37) that no authority supports "[a] version of fugitive tolling" under which "an absconder is subject to the conditions of parole for longer than the scheduled term." In *Nicholas*, the defendant was held accountable for violations of reporting obligations that continued beyond the moment of abscondment and throughout his period as a fugitive. 527 F.2d at 1161 (noting "allegations that [the defendant] had failed to file his monthly supervision reports after July 31, 1971, * * * and that he had failed to keep the Department advised of his whereabouts").

Petitioner, meanwhile, identifies no pre-SRA authority at all for the proposition that a fugitive can either avoid release conditions while absconding from supervision, or invoke the existence of those conditions in order to treat an unsupervised period as service of the required term. Much less does she show that such a proposition was so well-established that Congress should be presumed to have adopted it, notwithstanding its inconsistency with the statutory supervised-release scheme. And if no such approach pervaded the common law, Congress is unlikely to have frustrated its improved system by—silently—unearthing and incorporating the idea on its own.

ii. Petitioner also resists the very "idea * * * that common-law notions flow through to new criminal statutes," contending that this "presumption * * * 'applies only when Congress makes use of a statutory *term* with established meaning at common law.'" Pet. Br. 34 (quoting *Carter* v. *United States*, 530 U.S. 255, 264 (2000)). But her argument conflates two distinct interpretive principles.

Imputing common-law meaning to an undefined statutory *term* generally requires that the statutory and

common-law verbiage match. See Antonin Scalia & Bryan A. Garner, *Reading Law* 320 (2012) (defining the "canon of imputed common-law meaning" as: "A statute that uses a common-law term, without defining it, adopts its common-law meaning.") (capitalization altered). But a separate canon provides that Congress does not *displace* common-law principles—here, background principles of fugitive tolling—without a clear statement to that effect. See *id.* at 318 (defining the "presumption against change in common law" as: "A statute will be construed to alter the common law only when that disposition is clear.").

This Court has repeatedly applied the latter canon to situations in which the modern statute is silent on the relevant question—and thus permits no word-by-word comparison at all. *E.g.*, *Perttu*, 605 U.S. at 474 ("The [statute]'s complete silence on th[e] question [of resolving intertwined factual disputes at the merits stage] is therefore 'strong evidence' that this 'usual practice should be followed.'") (citation omitted); *Federal Bureau of Investigation* v. *Fazaga*, 595 U.S. 344, 355 (2022) (observing that where the statute "makes no reference to the state secrets privilege[,] * * * the privilege should not be held to have been abrogated or limited") (citation and footnote omitted). Indeed, petitioner herself appears to be applying that canon when she acknowledges—despite congressional silence on the issue—that the SRA carried over fugitive-tolling principles into the imprisonment context. See Pet. Br. 25.

Petitioner attempts (Br. 42-43) to distinguish imprisonment from supervised release by arguing that "whatever common-law baggage parole and probation had adopted by 1984 is irrelevant" because "supervised release was a new system that started on fresh footing."

But "when a new legal regime develops out of an identifiable predecessor, it is reasonable to look to the precursor in fathoming the new law." *Cornell Johnson*, 529 U.S. at 710. This Court has identified "probation and parole" as two such precursory forms of "nondetentive monitoring," with parole "the one more closely analogous to supervised release." *Id.* at 710-711; see *id.* at 711 ("Courts have commented on the similarity.") (collecting cases). And, absent clear indicia to the contrary, this Court has interpreted the supervised-release statutes in "continuity" with "the old scheme." *Id.* at 713.

b. Petitioner cannot justify derogation of common-law fugitive-tolling principles through negative implication

In the absence of any statutory provision abrogating fugitive-tolling principles, petitioner's argument relies on attempting to draw negative inferences from statutory provisions directed at other matters. "The force of any negative implication, however, depends on context." *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 381 (2013). The statutes invoked by petitioner serve independent purposes and neither individually nor collectively function to "evident[ly]" displace centuries-old fugitive-tolling principles. *Perttu*, 605 U.S. at 468; see 2B Norman J. Singer & J.D. Schambie Singer, *Statutes and Statutory Construction* § 50.5, at 171-173 (7th ed. Aug. 2012) ("The maxim of interpretation, 'mention of one thing implies the exclusion of others,' may have less force where the exclusion is a common law rule."); Scalia & Garner 318 ("A fair construction ordinarily disfavors implied change" to the common law.).

Petitioner repeatedly cites (Br. 20-21, 26, 32) Section 3624(e) as "dispositive" evidence that Congress wanted "exactly one tolling rule" and thereby sought to pre-

clude fugitive tolling. But as discussed (see pp. 30-31, *supra*), Section 3624(e) addressed a disagreement in the case law involving the distinct scenario of a releasee's incarceration for an offense committed before her release. And by adopting a provision that requires more supervision rather than less, Congress followed the course consistent with the statutory scheme's overall focus on supervision as an essential component to the service of supervised release. See *ibid.*

Petitioner also asserts that Section 3583(e)—which provides courts limited discretion to "terminate," "extend," and "revoke a term of supervised release," 18 U.S.C. 3583(e)(1), (2), and (3)—is a "structural indicator pointing against the government's position," Pet. Br. 21-22. But such mechanisms are useful, and in some cases necessary, whether or not a fugitive should be credited for unsupervised "supervised" release. Petitioner's focus (Br. 22-23) on Section 3583(e)(3), which permits reimprisonment for violation of release conditions, is especially misplaced. That provision applies to all kinds of violations. And even when applied to abscondment, petitioner "err[s] in treating [a releasee's] time in prison" as a sanction for his abscondment "as interchangeable with his term of supervised release." *Roy Lee Johnson*, 529 U.S. at 60; see pp. 6-7, *supra*. Only the latter "assist[s] individuals in their transition to community life." *Roy Lee Johnson*, 529 U.S. at 59.

Petitioner notes (Br. 18) that an order requiring reimprisonment for a supervised-release violation may also "include[] an additional supervision term." But the new supervision term may "not exceed the [statutory maximum] term of supervised release * * * less any term of imprisonment that was imposed upon revocation of supervised release." 18 U.S.C. 3583(h). And it

does not provide the court with the default option—consistent with fugitive-tolling principles—of handling some abscondments by forgoing imprisonment and instead keeping intact the full supervision period that the court previously ordered. Nor could the court necessarily accomplish such a continuation by "extend[ing]" the preexisting supervised-release term under 18 U.S.C. 3583(e)(2) to make up for any time lost while the releasee was a fugitive. Because Section 3583(e)(2) can only be applied "prior to the expiration or termination of the term of supervised release," it would have no application to a fugitive who was able to run out the clock. In sum, Section 3583(e) is an inadequate substitute for fugitive-tolling principles, and it cannot support an inference that it was designed to displace them.

Petitioner likewise errs in claiming that Section 3583(i)—which "extends" the court's "power * * * to revoke a term of supervised release for [a] violation * * * arising before [the term's] expiration," 18 U.S.C. 3583(i)—"addresses abscondment from supervised release," Pet. Br. 21. As petitioner elsewhere acknowledges (Br. 6), Section 3583(i) serves a role independent of abscondment: it allows the court to address "violations occurring late in a supervision term" that might otherwise "evade adjudication." *Mont*, 587 U.S. at 526 (identifying Section 3583(i) as a suitable mechanism in cases of "an impending conclusion to supervised release"). Before Section 3583(i)'s enactment, courts confronting end-of-term violations by parolees and probationers invoked various related doctrines to infer authority to adjudicate such late-breaking violations. See *United States* v. *Janvier*, 599 F.3d 264, 265-266 (2d Cir. 2010) (collecting cases).

As this Court has recognized, Section 3583(i) is not a tolling statute and does not affect tolling under other authorities.* See *Mont*, 587 U.S. at 525 n.1 ("[P]reserving jurisdiction through § 3583(i) is not a prerequisite to a court maintaining authority under § 3624(e), nor does it impact the tolling calculation under 3624(e)."). Nor could that provision ensure that a captured fugitive whose term of release has ended will receive the rehabilitation that Congress and the court deemed appropriate. At most, a district court relying on Section 3583(i) could adjudicate a discrete violation (or violations), revoke the defendant's release, order reimprisonment, and require a new term of supervision—one that is necessarily reduced by the length of the reimprisonment itself. See 18 U.S.C. 3583(h).

Like the other provisions that petitioner identifies, Section 3583(i) neither explicitly nor implicitly addresses the fundamental defect of petitioner's approach: that a fugitive may reduce her term of supervision through abscondment. Indeed, the deficiencies of those authorities to ensure service of the full original judgment reinforce the presumption that the SRA in-

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* Petitioner suggests in passing that applying common-law fugitive-tolling principles here "would permit courts to exceed limits on their jurisdiction" reflected in Section 3583(i). Br. 22 (citing *Bowles* v. *Russell*, 551 U.S. 205, 214 (2007)); see Due Process Inst. Amicus Br. 4-17. That is incorrect. Section 3583(i) extends (not restricts) the court's "power * * * to revoke a term of supervised release * * * beyond the expiration of the term of supervised release." Even assuming a term's expiration had "jurisdictional" consequences in the strict sense, the issue in this case is simply *when* the term expires. Petitioner is therefore begging the question presented by arguing that it would exceed a court's jurisdiction to calculate time served in line with long-extant common-law principles.

corporates longstanding common-law principles that do ensure such service.

c. Statutory history does not support petitioner's position

Finally, petitioner errs in contending (Br. 27-31) that fugitive tolling was built into the parole system by statute and that Congress's repeal of the parole statutes in the SRA should be understood to implicitly foreclose fugitive-tolling principles for supervised release. As a threshold matter, it is doubtful whether any decision by Congress not to adopt an analogue to a fugitive-tolling statute would indicate a derogation of longstanding common-law principles that are in themselves effective even in the absence of an explicit statute. Indeed, petitioner implicitly acknowledges (Br. 24) that those principles continue to apply to imprisonment under the SRA, even though it likewise contains no explicit fugitive-tolling provision as to escaped prisoners. But in any event, no pre-SRA provision in fact addressed fugitive tolling, and Congress thus gave no indication—implicit or explicit—that it was discarding the principles of that doctrine.

Petitioner principally relies (Br. 28-29) on 18 U.S.C. 4210(c) (1976), which provided that, "[i]n the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the [Parole] Commission[,] * * * the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond." But as with Section 3583(i), see pp. 38-39, *supra*, petitioner misreads a jurisdiction-extending statute as a tolling provision.

As was recognized at the time, Section 4210(c) was designed to extend the Commission's authority to ad-

dress identified but ignored matters beyond the scheduled expiration date of the defendant's parole. As the Sixth Circuit explained, "the statute, and regulations promulgated thereunder, merely provide the Parole Commission with the jurisdiction to hear and determine the allegation of violations contained within the warrant, even when, due to the fortuitous nearness of the parolee's maximum term expiration, the hearing must be had after the Parole Commission's authority to supervise the parolee's conduct had terminated." *Barrier* v. *Beaver*, 712 F.2d 231, 237 (6th Cir. 1983).

The language of the provision addresses not the parole term writ large, but instead particular "request[s], order[s], summons[es], or warrant[s]"; it is thus not expressly focused on abscondment but instead on discrete instances of ignoring particular requests. In any event, while Congress prospectively repealed Section 4210(c), it did so alongside all of the other parole statutes—not as a targeted repudiation of that approach. And since 1994, there has in fact been a provision of the supervised-release scheme that accomplishes much of what Section 4210(c) did: Section 3583(i). See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 110505(3), 108 Stat. 2017.

Petitioner also points (Br. 28-29) to a 1983 Parole Commission regulation providing that "[a]ny parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of the warrant, whether before or after the original expiration date, may be charged as a basis for revocation, and a warrant may be supplemented at any time." *Paroling, Recommitting, and Supervising Federal Pris-*

oners, 48 Fed. Reg. 22,917, 22,917 (May 23, 1983). But the absence of an analogue to that administrative regulation in the supervised-release statutes does not show that Congress rejected fugitive-tolling principles.

The regulation on which petitioner relies did not address an issue that fugitive-tolling principles would: namely, whether the undischarged portion of the parole term would continue beyond the time that the parolee is presented for a revocation hearing. Instead, the question whether a fugitive from parole would be required to serve out the entire period of parole that he skipped was left as an exercise for the courts, which they resolved in accord with common-law fugitive-tolling principles. See pp. 26-29, *supra*.

Furthermore, to the extent that the regulation was animated by fugitive-tolling principles—or an assumption that such principles informed Section 4210(c), which the regulation cited—it simply provides further evidence of the predominance of those principles at the time of the SRA's enactment. See *Moody* v. *Daggett*, 429 U.S. 78, 82 (1976) ("The Parole Commission and Reorganization Act" was enacted "principally to codify the [Parole] Board's existing practices."). Congress's failure to codify a rule that had never previously been codified by statute provides little indication that it deliberately did away with fugitive-tolling principles.

C. Petitioner's Appeals To Equity Lack Merit

The final pages of petitioner's brief (Br. 44-50) attempt to marshal equity-based arguments for treating her unsupervised abscondment as service of supervised release. Even assuming those arguments could overcome the statutory text and the common law, it is petitioner's own position that is highly inequitable.

1. Declining to credit unsupervised time to a term of supervised release raises no fair-notice or lenity concerns.

Invoking the rule of lenity, petitioner asserts (Br. 47-49) that "application of the fugitive-tolling doctrine creates serious concerns of fair notice" and "makes it impossible for defendants on supervised release to know their own status." But that argument is question-begging. It is undisputed that a parolee or probationer can equitably be held to account for service of a conditional-liberty term that he deliberately sought to avoid. So too can fugitives from supervised release.

a. The fugitive-tolling principles that are embodied in the supervised-release scheme obviate petitioner's fair-notice concerns. First of all, not every violation of release conditions constitutes abscondment. As the Fourth Circuit has explained, "[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." *United States* v. *Thompson*, 924 F.3d 122, 129 (4th Cir. 2019), cert. denied, 141 S. Ct. 1427 (2021). Rather, the relevant question is whether the releasee's actions, such as moving out of the jurisdiction without notice and ceasing contact with any supervening authority, have rendered the probation officer incapable of supervising his conduct at all. As the Ninth Circuit has explained, "[f]ugitive tolling begins when the defendant absconds from supervision—making it impossible for the Probation Office to supervise his actions—and ends when federal authorities are capable of resuming supervision." *United States* v. *Ignacio Juarez*, 601 F.3d 885, 890 (9th Cir. 2010) (per curiam).

Furthermore, a releasee will be held to account for abscondment only if he was on notice of the supervision that he avoided. See *United States* v. *Swick*, 137 F.4th 336, 345 (5th Cir. 2025) ("[K]nowledge of the obligation and intent to evade it are required."), petition for cert. pending, No. 25-5376 (filed Aug. 13, 2025); *Thompson*, 924 F.3d at 129 ("It is that sustained and knowing course of conduct, which 'precludes the sentencing court from exercising [the] supervision' contemplated by a supervised release term, that justifies fugitive tolling.") (citation omitted). Preserving an undischarged term of supervision for a releasee who knowingly rendered supervision impossible by absconding appropriately applies the "[d]eeply rooted * * * principle" that "no man may take advantage of his own wrong." *Glus* v. *Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232 (1959). It is no more a trap for the unwary than are longstanding fugitive-tolling principles in other contexts.

b. Petitioner's resort to the rule of lenity is similarly misplaced. This Court instructs that "the rule of lenity only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute, such that the Court must simply guess as to what Congress intended." *United States* v. *Castleman*, 572 U.S. 157, 172-173 (2014) (citation omitted); see *Shular* v. *United States*, 589 U.S. 154, 167 (2020) (Kavanaugh, J., concurring); *Huddleston* v. *United States*, 415 U.S. 814, 830-831 (1974). Here, text, structure, history, and purpose all *support* the application of fugitive-tolling principles. It should not come as a surprise that the same centuries-old fugitive-tolling principles that apply to other forms of conditional liberty (as well as imprisonment) are likewise applicable to supervised release.

This Court has rejected every request to apply lenity in the context of supervised release. See *Cornell Johnson*, 529 U.S. at 713 n.13; *Roy Lee Johnson*, 529 U.S. at 59; *Gozlon-Peretz* v. *United States*, 498 U.S. 395, 409-410 (1991). There is no sound reason to deviate from that course here, on the hypothesis that a releasee might harbor the unrealistic and ahistorical expectation that she can refuse supervision and still get credit for serving a term of supervised release.

2. Crediting a period of abscondment would result in unjustified windfalls to fugitives.

Petitioner additionally claims (Br. 44-47) that unsupervised fugitives should presumptively receive credit for serving supervised release, on the theory that "[u]nder [her] position, there is no circumstance under which absconding makes the supervisee better off." But the existence of this very case undermines that assumption: if petitioner did not believe that she would benefit from her rule, she presumably would not be advancing it. See, *e.g.*, Pet. 29 (claiming that "resolution of the question presented in [petitioner's] favor is highly likely to affect her" sanction). And petitioner's argument is also belied by logic and experience.

Under petitioner's approach, a fugitive could abscond from the supervision of her probation officer and simply run out the clock on her term. If credited with the service of supervised release during the period of abscondment, a fugitive who is located only after her term expires could not have that term extended to compensate. See 18 U.S.C. 3583(e)(2) (authorizing extension "at any time prior to the expiration or termination of the term of supervised release").

Such a fugitive could also avoid facing any consequences for various violations of the conditions of her

judgment while on fugitive status. Although Section 3583(i) provides a mechanism for a court to adjudicate alleged violations after the scheduled expiration of the supervision term, it is contingent on "a warrant or summons ha[ving] been issued" before the term expired. 18 U.S.C. 3583(i). If petitioner were correct that the term could expire while the fugitive remains at large, the probation officer may not learn about a violation in time to issue such a warrant or summons. Indeed, in many cases, the probation officer may not realize until too late that the fugitive has absconded in the first place.

There can, for example, be "case[s] where a defendant absconds late in the release term and his absence is not detected in time for a warrant or summons to be issued before the term expires." *United States* v. *Buchanan*, 638 F.3d 448, 456 n.7 (4th Cir. 2011). Or a defendant might simply walk out of a residential treatment facility, which then fails to timely notify his probation officer of his departure. Or, perhaps most commonly, a defendant serving a separate term of state imprisonment might fail to report, upon release, to his federal probation officer, who thus remains unaware that the defendant is now available to be supervised.

Indeed, while the petition for a writ of certiorari was pending in this case, the Fifth Circuit confronted a "circumstance under which absconding [would have] ma[d]e[] the supervisee better off," Pet. Br. 44, had it applied petitioner's approach. The defendant in that case had been federally convicted of knowingly possessing a stolen firearm and "sentenced to 33 months in prison, to run concurrently with longer state sentences, and two years of supervised release." *Swick*, 137 F.4th at 338. He "was released from state prison but did not report to federal supervision as required by the condi-

tions of his supervised release." *Ibid.* And because his "failure to report was not noticed until after his supervised release should have ended," *ibid.*, no "warrant or summons ha[d] been issued" under 18 U.S.C. 3583(i). Meanwhile, while at large, he repeatedly violated his release conditions—not just by failing to report but also by "commit[ing] a slew of state crimes" while a fugitive. *Swick*, 137 F.4th at 338.

If that period had been deemed service of his supervised release, then that fugitive would have succeeded in turning his supervised-release term into a nullity. And that case is no solitary outlier. With some frequency, the lower courts confront cases in which releasees have escaped supervision in a manner that evaded notice, precluding the issuance of a summons or warrant to preserve the court's jurisdiction under Section 3583(i). See, *e.g.*, *Thompson*, 924 F.3d at 127-128; *Ignacio Juarez*, 601 F.3d at 890. And in other cases, a warrant or summons might inadvertently fail to issue due to an administrative oversight. See *Mont*, 587 U.S. at 519; cf. *United States* v. *Watson*, 633 F.3d 929, 931 (9th Cir.) (applying fugitive-tolling principles rather than delayed-revocation procedure where probation officer's warrant petition had technical defect), cert. denied, 565 U.S. 849 (2011). But either way, a releasee should not be able to "take advantage of his own wrong," *Glus,* 359 U.S. at 232, to avoid supervised release, the supervision it requires, and any consequences for his conduct.

At all events, even putting aside the potential windfall of consequence-free violations of release conditions, the avoidance of supervision alone would render petitioner's approach inequitable. The point of supervision is not just to verify that the releasee stays on the straight-

and-narrow; it is to help her do so. See, *e.g.*, *Roy Lee Johnson*, 529 U.S. at 60. A judgment that includes a term of supervised release reflects a determination that the defendant is more likely to successfully reintegrate into the law-abiding population with a watchful eye and a guiding hand than if left to her own devices. See Senate Report 124 ("[T]he primary goal [of supervised release] is to ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release."). The monitoring, the drug tests, and the regular interaction with the probation officer may provide what is needed to avoid recidivism. Allowing a fugitive to skip all of that, but nonetheless receive credit for it, lacks a basis in law or logic.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
MATTHEW R. GALEOTTI
Acting Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
JOSHUA K. HANDELL
Assistant to the Solicitor General
W. CONNOR WINN
Attorney

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APPENDIX

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APPENDIX

1. 18 U.S.C. 3583 provides:

Inclusion of a term of supervised release after imprisonment

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

(b) AUTHORIZED TERMS OF SUPERVISED RELEASE.—Except as otherwise provided, the authorized terms of supervised release are—

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) FACTORS TO BE CONSIDERED IN INCLUDING A TERM OF SUPERVISED RELEASE.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth

in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

(d) CONDITIONS OF SUPERVISED RELEASE.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The

condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4).[1] The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

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

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

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[1] See References in Text note below.

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

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(e) MODIFICATION OF CONDITIONS OR REVOCATION. —The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after

the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

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

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years

in prison if such offense is a class C or D felony, or more than one year in any other case; or

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

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

(g) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR FOR REFUSAL TO COMPLY WITH DRUG TESTING.—If the defendant—

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

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

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

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

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

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

(i) DELAYED REVOCATION.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) SUPERVISED RELEASE TERMS FOR TERRORISM PREDICATES.—Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B) is any term of years or life.

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

2. 18 U.S.C. 3601 provides:

Supervision of probation

A person who has been sentenced to probation pursuant to the provisions of subchapter B of chapter 227, or placed on probation pursuant to the provisions of chapter 403, or placed on supervised release pursuant to the provisions of section 3583, shall, during the term imposed, be supervised by a probation officer to the degree warranted by the conditions specified by the sentencing court.

3. 18 U.S.C. 3603 provides:

Duties of probation officers

A probation officer shall—

(1) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions;

(2) keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court;

(3) use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition;

(4) be responsible for the supervision of any probationer or a person on supervised release who is known to be within the judicial district;

(5) keep a record of his work, and make such reports to the Director of the Administrative Office of the United States Courts as the Director may require;

(6) upon request of the Attorney General or his designee, assist in the supervision of and furnish information about, a person within the custody of the Attorney General while on work release, furlough, or other authorized release from his regular place of

confinement, or while in prerelease custody pursuant to the provisions of section 3624(c);

(7) keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision and report thereon to the court placing such person on probation and report to the court any failure of a probationer under his supervision to pay a fine in default within thirty days after notification that it is in default so that the court may determine whether probation should be revoked;

(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243, 4246, or 4248 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee;

(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and

(10) perform any other duty that the court may designate.

4. 18 U.S.C. 3624 provides:

Release of a prisoner

(a) DATE OF RELEASE.—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) CREDIT TOWARD SERVICE OF SENTENCE FOR SATISFACTORY BEHAVIOR.—(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year[1] other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence of up to 54 days for each year of the prisoner's sentence imposed by the court, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress

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[1] So in original. Probably should be followed by a comma.

toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

(3) The Attorney General shall ensure that the Bureau of Prisons has in effect an optional General Educational Development program for inmates who have not earned a high school diploma or its equivalent.

(4) Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

(c) PRERELEASE CUSTODY.—

(1) IN GENERAL.—The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

(2) HOME CONFINEMENT AUTHORITY.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the ex-

tent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.

(3) ASSISTANCE.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) NO LIMITATIONS.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

(5) REPORTING.—Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and number of prisoners not being placed in community corrections facilities for each reason set forth, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

(6) ISSUANCE OF REGULATIONS.—The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Reauthorization Act of 2018, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is—

(A) conducted in a manner consistent with section 3621(b) of this title;

(B) determined on an individual basis; and

(C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community.

(d) ALLOTMENT OF CLOTHING, FUNDS, AND TRANSPORTATION.—Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner with—

(1) suitable clothing;

(2) an amount of money, not more than $500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) SUPERVISION AFTER RELEASE.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of

Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(f) MANDATORY FUNCTIONAL LITERACY REQUIREMENT.—

(1) The Attorney General shall direct the Bureau of Prisons to have in effect a mandatory functional literacy program for all mentally capable inmates who are not functionally literate in each Federal correctional institution within 6 months from the date of the enactment of this Act.

(2) Each mandatory functional literacy program shall include a requirement that each inmate participate in such program for a mandatory period suffi-

cient to provide the inmate with an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to successful completion of such programs shall be developed and implemented.

(3) As used in this section, the term "functional literacy" means—

(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test.

(5) The Chief Executive Officer of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.

(g) PRERELEASE CUSTODY OR SUPERVISED RELEASE FOR RISK AND NEEDS ASSESSMENT SYSTEM PARTICIPANTS.—

(1) ELIGIBLE PRISONERS.—This subsection applies in the case of a prisoner (as such term is defined in section 3635) who—

(A) has earned time credits under the risk and needs assessment system developed under

subchapter D (referred to in this subsection as the "System") in an amount that is equal to the remainder of the prisoner's imposed term of imprisonment;

(B) has shown through the periodic risk reassessments a demonstrated recidivism risk reduction or has maintained a minimum or low recidivism risk, during the prisoner's term of imprisonment;

(C) has had the remainder of the prisoner's imposed term of imprisonment computed under applicable law; and

(D)(i) in the case of a prisoner being placed in prerelease custody, the prisoner—

(I) has been determined under the System to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner; or

(II) has had a petition to be transferred to prerelease custody or supervised release approved by the warden of the prison, after the warden's determination that—

(aa) the prisoner would not be a danger to society if transferred to prerelease custody or supervised release;

(bb) the prisoner has made a good faith effort to lower their recidivism risk through participation in recidivism reduction programs or productive activities; and

(cc) the prisoner is unlikely to recidivate; or

(ii) in the case of a prisoner being placed in supervised release, the prisoner has been determined under the System to be a minimum or low risk to recidivate pursuant to the last reassessment of the prisoner.

(2) TYPES OF PRERELEASE CUSTODY.—A prisoner shall be placed in prerelease custody as follows:

(A) HOME CONFINEMENT.—

(i) IN GENERAL.—A prisoner placed in prerelease custody pursuant to this subsection who is placed in home confinement shall—

(I) be subject to 24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time, in the case of any violation of subclause (II);

(II) remain in the prisoner's residence, except that the prisoner may leave the prisoner's home in order to, subject to the approval of the Director of the Bureau of Prisons—

(aa) perform a job or job-related activities, including an apprenticeship, or participate in job-seeking activities;

(bb) participate in evidence-based recidivism reduction programming or productive activities assigned by the System, or similar activities;

(cc) perform community service;

(dd) participate in crime victim restoration activities;

(ee) receive medical treatment;

(ff) attend religious activities; or

(gg) participate in other family-related activities that facilitate the prisoner's successful reentry such as a family funeral, a family wedding, or to visit a family member who is seriously ill; and

(III) comply with such other conditions as the Director determines appropriate.

(ii) ALTERNATE MEANS OF MONITORING.—If the electronic monitoring of a prisoner described in clause (i)(I) is infeasible for technical or religious reasons, the Director of the Bureau of Prisons may use alternative means of monitoring a prisoner placed in home confinement that the Director determines are as effective or more effective than the electronic monitoring described in clause (i)(I).

(iii) MODIFICATIONS.—The Director of the Bureau of Prisons may modify the conditions described in clause (i) if the Director determines that a compelling reason exists to do so, and that the prisoner has demonstrated exemplary compliance with such conditions.

(iv) DURATION.—Except as provided in paragraph (4), a prisoner who is placed in home confinement shall remain in home confinement until the prisoner has served not less than 85 percent of the prisoner's imposed term of imprisonment.

(B) RESIDENTIAL REENTRY CENTER.—A prisoner placed in prerelease custody pursuant to this subsection who is placed at a residential reentry center shall be subject to such conditions as the Director of the Bureau of Prisons determines appropriate.

(3) SUPERVISED RELEASE.—If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.

(4) DETERMINATION OF CONDITIONS.—In determining appropriate conditions for prisoners placed in prerelease custody pursuant to this subsection, the Director of the Bureau of Prisons shall, to the extent practicable, provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody, so as to most effectively prepare such prisoners for reentry.

(5) VIOLATIONS OF CONDITIONS.—If a prisoner violates a condition of the prisoner's prerelease custody, the Director of the Bureau of Prisons may impose such additional conditions on the prisoner's prerelease custody as the Director of the Bureau of Prisons determines appropriate, or revoke the prisoner's prerelease custody and require the prisoner to serve the remainder of the term of imprisonment to which the prisoner was sentenced, or any portion thereof,

in prison. If the violation is nontechnical in nature, the Director of the Bureau of Prisons shall revoke the prisoner's prerelease custody.

(6) ISSUANCE OF GUIDELINES.—The Attorney General, in consultation with the Assistant Director for the Office of Probation and Pretrial Services, shall issue guidelines for use by the Bureau of Prisons in determining—

(A) the appropriate type of prerelease custody or supervised release and level of supervision for a prisoner placed on prerelease custody pursuant to this subsection; and

(B) consequences for a violation of a condition of such prerelease custody by such a prisoner, including a return to prison and a reassessment of evidence-based recidivism risk level under the System.

(7) AGREEMENTS WITH UNITED STATES PROBATION AND PRETRIAL SERVICES.—The Director of the Bureau of Prisons shall, to the greatest extent practicable, enter into agreements with United States Probation and Pretrial Services to supervise prisoners placed in home confinement under this subsection. Such agreements shall—

(A) authorize United States Probation and Pretrial Services to exercise the authority granted to the Director pursuant to paragraphs (3) and (4); and

(B) take into account the resource requirements of United States Probation and Pretrial Services as a result of the transfer of Bureau of

Prisons prisoners to prerelease custody or supervised release.

(8) ASSISTANCE.—United States Probation and Pretrial Services shall, to the greatest extent practicable, offer assistance to any prisoner not under its supervision during prerelease custody under this subsection.

(9) MENTORING, REENTRY, AND SPIRITUAL SERVICES.—Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring, reentry, or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated, except that the warden of the facility at which the prisoner was incarcerated may waive the requirement under this paragraph if the warden finds that the provision of such services would pose a significant security risk to the prisoner, persons who provide such services, or any other person. The warden shall provide written notice of any such waiver to the person providing such services and to the prisoner.

(10) TIME LIMITS INAPPLICABLE.—The time limits under subsections (b) and (c) shall not apply to prerelease custody under this subsection.

(11) PRERELEASE CUSTODY CAPACITY.—The Director of the Bureau of Prisons shall ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners.