

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD RUSTON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a district court is foreclosed from imposing a discretionary condition of supervised release under 18 U.S.C. 3583(d) unless it finds that the condition is reasonably related to every one of the factors set forth in 18 U.S.C. 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is available at 2025 WL 1528123.

JURISDICTION

The judgment of the court of appeals was entered on May 29, 2025. A petition for rehearing was denied on September 2, 2025 (Pet. App. 8a). The petition for a writ of certiorari was filed on November 21, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Kansas, petitioner was convicted of bank robbery, in violation of 18 U.S.C. 2113(a). Judgment 1. He was sentenced to 100 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-5a.

1. "When a district court sentences a federal defendant, the judge may impose a term of imprisonment, a term of probation, or a fine." Esteras v. United States, 606 U.S. 185, 191 (2025); see 18 U.S.C. 3551(b). "In determining the appropriate sentence, the court must consider certain factors set forth in [18 U.S.C.] 3553(a)." Esteras, 606 U.S. at 191. Those factors include:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; [and]

(2) the need for the sentence imposed --

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. 3553(a)(1) and (2). This Court has described Section 3553(a)(2)'s four subparagraphs by reference to the "four purposes

of sentencing": "retribution, deterrence, incapacitation, and rehabilitation." Esteras, 606 U.S. at 191-192 (citation omitted).

"A judge who imposes a term of imprisonment may -- and sometimes must -- impose a postimprisonment term of supervised release." Esteras, 606 U.S. at 192; see 18 U.S.C. 3583(a). "Supervised release is "a form of postconfinement monitoring" that permits a defendant a kind of conditional liberty by allowing him to serve part of his sentence outside of prison,' subject to conditions on his behavior." Esteras, 606 U.S. at 192 (citation omitted). While "[s]ome conditions are mandatory, such as requiring that the defendant not commit additional crimes," other conditions "are up to the discretion of the court." Ibid.; see 18 U.S.C. 3583(d). Under Section 3583(d), a court "may order" a discretionary condition "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

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

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

2. On July 20, 2022, petitioner entered the First Interstate Bank in Shawnee, Kansas, wearing a red bandana covering his face, a dark bandana covering his head, a pair of gloves, and sunglasses. Presentence Investigation Report (PSR) ¶¶ 8-9. Petitioner

approached a bank teller, lifted his shirt to display a firearm in his waistband, and ordered the teller to put money on the counter. Ibid. After the teller complied, petitioner took the money, which totaled \$2974, and fled the scene on a motorcycle. Ibid. Investigators then used traffic cameras, automated license-plate readers, and video surveillance footage to identify petitioner as the robber. PSR ¶¶ 10-13.

A federal grand jury in the District of Kansas indicted petitioner on one count of bank robbery, in violation of 18 U.S.C. 2113(a). Indictment 1-2. After a trial, a jury found petitioner guilty. Jury Verdict 1-2.

3. The Probation Office calculated advisory guideline ranges of 100 to 125 months of imprisonment and one to three years of supervised release. PSR ¶¶ 134, 137. The Probation Office also recommended that the district court impose various discretionary conditions of supervised release. PSR ¶¶ 145-163. One of the recommended conditions, described as the "search condition," PSR ¶ 194, provided:

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. * * * An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

PSR ¶ 160.

Petitioner objected to the portions of the recommended condition that would apply the condition to his "computers" and "other electronic communications or data storage devices or media." PSR ¶ 194. Petitioner contended that under Section 3582(d)(1), a discretionary condition of supervised release must be reasonably related to "each" of the factors set forth in Section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D). D. Ct. Doc. 56, at 3 (Mar. 21, 2024). And, proceeding from that premise, petitioner argued that the computer-related portions of the condition were not reasonably related to each and every one of the factors set forth in Section 3553(a)(1) -- and, in particular, were not related to the "nature and circumstances of the offense." PSR ¶ 194; see D. Ct. Doc. 56, at 6-7.

The government responded that the computer-related portions were reasonably related to the factors set forth in Section 3553(a)(1). PSR ¶ 195. In particular, the government pointed out that "three months after the robbery at issue, [petitioner] was convicted of Kansas felony theft for buying a stolen vehicle using Facebook." Pet. App. 1a; see PSR ¶¶ 55, 195. And the government explained that because petitioner had used "electronic communications" to "communicate about a stolen vehicle," the computer-related portions of the condition were reasonably related to "the history and characteristics of the defendant," which are among the factors set forth in Section 3553(a)(1). PSR ¶ 195.

The district court overruled petitioner's objection. Pet. App. 6a-7a. The court agreed with the government that petitioner's use of "electronic communication means about 90 days after he committed the robbery" justified the computer-related portions of the condition. Id. at 6a. Given that "history," the court determined that the computer-related portions were reasonably related to "the nature and circumstances of the offense and the defendant's history and characteristics" under Section 3553(a)(1). Ibid.; see Pet. 8. The court also found that the computer-related portions were reasonably related to the factors set forth in Section 3353(a)(2)(B), (a)(2)(C), and (a)(2)(D). Pet. App. 6a.

The district court sentenced petitioner to 100 months of imprisonment, to be followed by three years of supervised release. Sent. Tr. 42. The conditions of supervised release included the full search condition that the Probation Office had recommended. Id. at 43.

4. The court of appeals affirmed in an unpublished opinion. Pet. App. 1a-5a. The court rejected petitioner's contention that a discretionary condition of supervised release must be reasonably related to "each" of the factors set forth in Section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D), including the nature and circumstances of the offense of conviction. Id. at 2a. Relying on circuit precedent, the court explained that "a condition of supervised release may be imposed despite not being related to every enumerated factor, so long as it is reasonably related to

one or more of the factors.” Ibid. (quoting United States v. Barajas, 331 F.3d 1141, 1146 (10th Cir. 2003)). The court of appeals then observed that here, the district court had found that the computer-related portions of the search condition were “reasonably related” to petitioner’s “history and characteristics, as well as the need to deter criminal conduct and protect the public.” Id. at 1a; see id. at 3a-4a. The court of appeals accordingly determined that “the district court did not legally err by imposing a condition that was not related to his offense of conviction.” Id. at 3a.

ARGUMENT

Petitioner contends (Pet. 12-21) that under 18 U.S.C. 3583(d)(1), a discretionary condition of supervised release must be reasonably related to each and every one of the factors set forth in Section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D). The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly rejected petitioner’s contention that a discretionary supervised-release condition must be reasonably related to each and every one of the factors set forth in Section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D). Pet. App. 2a-3a.

Under Section 3583(d), a court may impose a discretionary condition of supervised release only “to the extent that such condition” satisfies certain requirements. 18 U.S.C. 3583(d). Among other things, Section 3583(d)(1) requires that such a condition be “reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D).” 18 U.S.C. 3583(d)(1). Those cross-referenced provisions, in turn, set forth the following factors: “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. 3553(a)(1); “the need for the sentence imposed * * * to afford adequate deterrence to criminal conduct,” 18 U.S.C. 3553(a)(2)(B); “the need for the sentence imposed * * * to protect the public from further crimes of the defendant,” 18 U.S.C. 3553(a)(2)(C); and “the need for the sentence imposed * * * to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner,” 18 U.S.C. 3553(a)(2)(D).

The word “and” appears in both Section 3583(d)(1) and one of the cross-referenced provisions, Section 3553(a)(1). 18 U.S.C. 3553(a)(1), 3583(d)(1). “‘And,’ in grammatical terms, is of course a conjunction -- a word whose function is to connect specified items.” Pulsifer v. United States, 601 U.S. 124, 133 (2024). Here, there are “two grammatically permissible ways” of understanding what “and” connects in Sections 3583(d)(1) and 3553(a)(1). Ibid.

One grammatical possibility is to read "and" as joining the various cross-referenced factors into a collective unit. See Pulsifer, 601 U.S. at 133. On that reading -- the "joint" reading -- a supervised-release condition satisfies Section 3583(d)(1) as long as it is reasonably related to the cross-referenced factors as a whole. The joint reading thus understands Section 3583(d)(1) as establishing a single requirement, which is or is not satisfied depending on the totality of the cross-referenced factors.

The other grammatical possibility is to read "and" as connecting several separate requirements by distributing the phrase "is reasonably related to" to each of the cross-referenced factors. 18 U.S.C. 3583(d)(1); see Pulsifer, 601 U.S. at 133-134. On that reading -- the "distributive" reading -- a supervised-release condition satisfies 3583(d)(1) only if it (1) is reasonably related to the nature of the offense; (2) is reasonably related to the circumstances of the offense; (3) is reasonably related to the history of the defendant; (4) is reasonably related to the characteristics of the defendant; (5) is reasonably related to the need for the sentence imposed to afford adequate deterrence to criminal conduct; (6) is reasonably related to the need for the sentence imposed to protect the public from further crimes of the defendant; and (7) is reasonably related to the need for the sentence imposed to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The distributive reading

thus interprets Section 3583(d)(1) as creating a "checklist" with seven distinct prerequisites, each one of which must be satisfied in order for the supervised-release condition to be imposed. Pulsifer, 601 U.S. at 127.

In determining which of those two grammatically permissible readings is the better interpretation, the statute "cannot be construed in the abstract." Pulsifer, 601 U.S. at 140 (interpreting "and" in 18 U.S.C. 3553(f)(1)). Instead, the determination "can sensibly be made only by examining" the relevant text "in context," including the "content" of the provisions involved. Id. at 133; see id. at 141 (emphasizing the importance of reading the "text in its legal context"). Here, context makes clear that the joint reading is correct: the word "and" joins together the cross-referenced factors into a collective unit, such that a supervised-release condition satisfies Section 3583(d)(1) as long as it is reasonably related to those factors as a whole.

First, the joint reading finds support in Section 3583(d)(1)'s use of the word "factors." 18 U.S.C. 3583(d)(1). "Ordinarily, 'factors' are thought of as items for consideration, not as 'prerequisites to be satisfied.'" United States v. Barajas, 331 F.3d 1141, 1146 (10th Cir. 2003) (citation omitted). Indeed, that is how Section 3553(a) (from which they are drawn) describes them -- as "factors to be considered." 18 U.S.C. 3553(a) (capitalization omitted). That context supports reading Section 3583(d)(1) as identifying a set of considerations to which a

condition of supervised release must be reasonably related, rather than as creating "a checklist of requisites, each of which must be found before any condition of supervised release may be prescribed." United States v. Johnson, 998 F.2d 696, 698 (9th Cir. 1993).

Second, the joint reading finds support in the structure of Section 3583(d). The part of that section at issue here consists of an introductory clause punctuated by an em-dash, followed by three separately indented paragraphs, labeled (1) through (3). 18 U.S.C. 3583(d). There is no dispute that a discretionary supervised-release condition must satisfy each of the three paragraphs. The structure of Section 3583(d) thus indicates that when Congress wanted to create a checklist of prerequisites, it gave each prerequisite its own paragraph. Cf. Pulsifer, 601 U.S. at 150 (analyzing the structure of 18 U.S.C. 3553(f)(1)). The joint reading is consistent with that structure, because it treats Paragraph (1) as setting out a single requirement. The distributive reading is not, because it treats Paragraph (1) as setting out seven distinct requirements. If Congress had intended each "factor[]" to be part of the checklist, however, consistency would suggest giving each its own paragraph or subparagraph. 18 U.S.C. 3583(d)(1).

Third, the joint reading finds support in the "content" of the cross-referenced factors and "how they relate to each other." Pulsifer, 601 U.S. at 141. This Court has described the factors set forth in Section 3553(a)(2)(B), (a)(2)(C) and (a)(2)(D) by reference to "deterrence," "incapacitation," and "rehabilitation,"

respectively. Esteras v. United States, 606 U.S. 185, 191 (2025) (citation omitted). It is well understood that an aspect of a sentence may serve some of those purposes without necessarily serving every single one of them. For instance, a part of a sentence may serve the purposes of deterrence and incapacitation without serving the purpose of rehabilitation. Cf. Tapia v. United States, 564 U.S. 319, 326-330 (2011) (discussing statutory purposes of incarceration). Nor would a district court be foreclosed from imposing a sentence focused on incapacitation on a defendant who appears incorrigible, even if it would not serve the purpose of deterrence.

Only the joint reading accords with those “relevant background understandings.” Pulsifer, 601 U.S. at 141. By requiring only that a discretionary condition be reasonably related to the cross-referenced factors as a whole, the joint reading does not insist that every discretionary condition serve all three sentencing purposes simultaneously. The distributive reading, however, does. As a result, that reading would rule out a “number of routinely imposed conditions.” Barajas, 331 F.3d at 1146. “For example, it is difficult to see how [certain] ‘standard’ conditions” recommended in the Sentencing Guidelines, like “prohibiting a defendant from ‘entering into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court,’” “would ever be reasonably related to ‘providing the defendant with needed educational or vocational training, medical

care, or other correctional treatment.’” Id. at 1146-1147 (brackets and citations omitted).

For those reasons, the court of appeals correctly adhered to the joint reading in this case. Pet. App. 2a-3a. Under that reading, a discretionary condition satisfies Section 3583(d)(1) as long as it is reasonably related to the cross-referenced factors as a whole. Accordingly, the court correctly determined that a condition “need not be related to the offense of conviction so long as it [is] reasonably related to one of the other cross-referenced sentencing factors.” Id. at 1a.

2. Petitioner’s contrary arguments, in favor of the distributive reading, lack merit. Beginning with the question presented (Pet. i), and continuing throughout his petition for a writ of certiorari (Pet. 2, 10, 13-14, 20), petitioner accuses the court of appeals and the government of impermissibly turning “and” into “or.” But as the foregoing discussion demonstrates, see pp. 8-13, supra, that accusation is misplaced. All agree that “and,” as used in Sections 3583(d)(1) and 3553(a)(1), is conjunctive. The question is which of two grammatically permissible conjunctive readings is correct, a question that only context can answer. See Pulsifer, 601 U.S. at 140. And as explained above, the context is inconsistent with petitioner’s preferred distributive reading.

Petitioner errs in his invocation (Pet. 14-16) of the presumption of consistent usage and the meaningful-variation canon. “Those are the terms often given to a generally useful --

but still 'defeasible' -- interpretive principle: In a given statute, the same term usually has the same meaning and different terms usually have different meanings." Pulsifer, 601 U.S. at 149. Petitioner's particular invocation of the principle, however, rests largely on his erroneous characterization of the joint reading as construing "and" to mean "or." Furthermore, "[t]he principle is mostly applied to terms with some heft and distinctiveness, whose use drafters are likely to keep track of and standardize." Ibid. The principle thus has little to say about the meaning of words as "ubiquitous" and "context-dependent as 'and' and 'or.'" Ibid.; see id. at 151 (explaining that "conjunctions are versatile words, which can work differently depending on context").

Petitioner is likewise mistaken in contending (Pet. 18) that the joint reading violates the canon against superfluity. In petitioner's view (ibid.), the joint reading creates surplusage in the statute by interpreting Section 3583(d)(1) "merely to require courts to consider" the same factors that 18 U.S.C. 3583(c) "already requires" them to consider in determining the conditions of supervised release. But Section 3583(d)(1) does not require courts merely to "consider" the cross-referenced factors. Pet. 18. Rather, it requires courts to determine whether a condition is "reasonably related" to those factors. 18 U.S.C. 3583(d)(1). And, consistent with the provisions' individualized functions, the overarching instruction of Section 3583(c) lists more factors than

Section 3583(d)(1) does. Accordingly, under the joint reading of “and,” Section 3583(d)(1) plays a distinct role of focusing the district court on a different, and more particularized, inquiry.

3. Contrary to petitioner’s contention (Pet. 10-12), the decision below does not conflict with the decision of another court of appeals. Every court of appeals that has addressed the issue has recognized that under Section 3583(d)(1), “a condition of supervised release may be imposed despite not being related to every enumerated factor, so long as it is reasonably related to one or more of the factors.” Pet. App. 2a (citation omitted); see United States v. York, 357 F.3d 14, 20 (1st Cir. 2004); United States v. Oliveras, 96 F.4th 298, 314 (2d Cir. 2024); United States v. Sicher, 239 F.3d 289, 291 (3d Cir. 2000); United States v. Weatherton, 567 F.3d 149, 153 & n.1 (5th Cir.), cert. denied, 558 U.S. 914 (2009); United States v. Carter, 463 F.3d 526, 529 (6th Cir. 2006); United States v. Kent, 209 F.3d 1073, 1076 n.3 (8th Cir. 2000); United States v. Johnson, 998 F.2d 696, 697-699 (9th Cir. 1993); United States v. Bull, 214 F.3d 1275, 1276-1278 (11th Cir.), cert. denied, 531 U.S. 1056 (2000).

Petitioner errs in asserting (Pet. 10-11) that the decision below conflicts with the Fourth Circuit’s decision in United States v. Ellis, 112 F.4th 240 (2024). The Fourth Circuit in that case paraphrased the relevant statutory language using “and.” Id. at 252 (citation omitted). But the Fourth Circuit’s description was consistent with the joint reading, and the court did not address

whether the conjunction should be given a joint or distributive reading. Indeed, deciding the issue did not matter because the challenged supervised-release condition satisfied each of the cross-referenced factors in any event. See id. at 259-261. Moreover, the Fourth Circuit has since (in an unpublished decision) upheld a discretionary condition under Section 3583(d)(1) without finding that the condition was reasonably related to each cross-referenced factor, indicating that it itself does not read Ellis in the manner that petitioner does. See United States v. Jackson, No. 25-4416, 2025 WL 3124651, at *1 (Nov. 7, 2025) (per curiam) (upholding a discretionary condition under Section 3583(d)(1) without finding that the condition was reasonably related to rehabilitation).

For similar reasons, petitioner errs in asserting (Pet. 11) that the decision below conflicts with the Seventh Circuit's decisions in United States v. Cruz-Rivera, 74 F.4th 503 (2023), and United States v. Temple, 464 Fed. Appx. 541 (2012) (per curiam). Those decisions merely paraphrased the relevant statutory language, without suggesting that "and" should be given a distributive reading. See Cruz-Rivera, 74 F.4th at 510; Temple, 464 Fed. Appx. at 544. In fact, both decisions upheld a discretionary condition under Section 3583(d)(1) without finding that the condition was reasonably related to each cross-referenced factor. See Cruz-Rivera, 74 F.4th at 511-512 (upholding a discretionary condition under Section 3583(d)(1) without finding that it was reasonably

related to rehabilitation); Temple, 464 Fed. Appx. at 544 (upholding a discretionary condition under Section 3583(d)(1) after addressing only “the underlying offense and the defendant’s history and characteristics”); see also United States v. McKissic, 428 F.3d 719, 722-723 (7th Cir. 2005) (upholding a discretionary condition under Section 3583(d)(1) without finding that it was reasonably related to deterrence), cert. denied, 547 U.S. 1028 (2006).

Finally, petitioner again errs in a similar way in asserting (Pet. 11-12) that the decision below conflicts with the D.C. Circuit’s decisions in United States v. Russell, 45 F.4th 436 (2022), United States v. Burroughs, 613 F.3d 233 (2010), and United States v. Stanfield, 360 F.3d 1346 (2004). While some of those decisions paraphrased the relevant statutory language using “and,” none suggested that “and” should be given a distributive reading. See Russell, 45 F.4th at 439; Stanfield, 360 F.3d at 1352-1353. To the contrary, the D.C. Circuit in Russell upheld a discretionary condition under Section 3583(d)(1) without finding that the condition was reasonably related to each cross-referenced factor. See 45 F.4th at 439-440 (upholding a discretionary condition under Section 3583(d)(1) without finding that it was reasonably related to rehabilitation). And although the government in Burroughs did “not even attempt to argue” that the challenged condition was “reasonably related to two of the statutory factors,” 613 F.3d at 243, the D.C. Circuit did not find that omission dispositive; instead, the court deemed the condition impermissible on other

grounds, see id. at 243-244. The question presented is therefore not the subject of any circuit conflict.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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