

No. 25-6250

IN THE
Supreme Court of the United States

RICHARD RUSTON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Tenth Circuit**

REPLY BRIEF FOR THE PETITIONER

DANIEL T. HANSMEIER
KANSAS FEDERAL PUBLIC
DEFENDER
500 State Ave.
Suite 201
Kansas City, KS 66101

ELIZABETH B. PRELOGAR
EPHRAIM A. MCDOWELL
Counsel of Record
DEV P. RANJAN
COOLEY LLP
1299 Pennsylvania Ave.,
NW, Suite 700
Washington, DC 20004
(202) 842-7800
emcdowell@cooley.com

Counsel for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
A. The Circuits Are Divided Over the Question Presented.....	2
B. The Government Does Not Contest the Importance of the Question Presented.....	6
C. The Government’s Interpretation Is Incorrect	8
CONCLUSION.....	13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Esteras v. United States</i> , 606 U.S. 185 (2025)	8, 11
<i>Niz-Chavez v. Garland</i> , 593 U.S. 155 (2021)	12
<i>Pulsifer v. United States</i> , 601 U.S. 124 (2024)	9-11
<i>United States v. Brown</i> , 235 F.3d 2 (1st Cir. 2000).....	3, 7
<i>United States v. Brown</i> , 402 F.3d 133 (2d Cir. 2005).....	3, 7
<i>United States v. Cruz-Rivera</i> , 74 F.4th 503 (7th Cir. 2023).....	5
<i>United States v. Ellis</i> , 112 F.4th 240 (4th Cir. 2024).....	5
<i>United States v. Goodwin</i> , 717 F.3d 511 (7th Cir. 2013)	4-5
<i>United States v. Henry</i> , 979 F.3d 1265 (10th Cir. 2020)	4
<i>United States v. Johnson</i> , 529 U.S. 53 (2000)	8
<i>United States v. Kosth</i> , 943 F.2d 798 (7th Cir. 1991)	4
<i>United States v. McKissic</i> , 428 F.3d 719 (7th Cir. 2005)	5
<i>United States v. Merric</i> , 166 F.3d 406 (1st Cir. 1999).....	3

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>United States v. Palomar-Santiago</i> , 593 U.S. 321 (2021)	8
<i>United States v. Russell</i> , 45 F.4th 436 (D.C. Cir. 2022)	6
<i>United States v. Sicher</i> , 239 F.3d 289 (3d Cir. 2000)	7
<i>United States v. Stoterau</i> , 524 F.3d 988 (9th Cir. 2008)	3, 7
<i>United States v. Taylor</i> , 997 F.3d 1348 (11th Cir. 2021)	8
<i>United States v. Weatherston</i> , 567 F.3d 149 (5th Cir. 2009)	3
Statutes	
18 U.S.C.	
§ 3553(a)	11-12
§ 3553(a)(2)(B)	2, 7
§ 3553(a)(2)(C)	2, 7-8
§ 3553(a)(2)(D)	6
§ 3553(f)(1)	10
§ 3583(c)	10
§ 3583(d)(1)	1, 7-8, 10-13
§ 3583(d)(2)	12
§ 3583(d)(3)	12
U.S.S.G.	
§ 5D1.3(b)(2)	12
§ 5D1.3(b)(2)(H)	12

IN THE
Supreme Court of the United States

No. 25-6250

RICHARD RUSTON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Tenth Circuit**

REPLY BRIEF FOR THE PETITIONER

The government’s brief in opposition does not contest the exceptional importance of the question presented for criminal defendants and district courts. It does not claim that this case is an inadequate vehicle to resolve that question. And it offers no persuasive argument against a circuit conflict. Instead, the government primarily seeks to argue that the supervised-release condition here is proper under 18 U.S.C. § 3583(d)(1). By doing so, the government reinforces that this case raises a significant issue of statutory interpretation that only this Court can definitively resolve.

On the merits, the government presses a novel interpretation of Section 3583(d)(1) that it did not advance below and that neither the Tenth Circuit, nor any other court of appeals, has adopted. The Tenth Circuit held “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.” Pet. App. 2a (quoting *United States v. Barajas*, 331 F.3d 1141, 1146 (10th Cir. 2003)). But that is not the government’s interpretation here. Instead, the government now contends (at 10) that “a supervised-release condition satisfies Section 3583(d)(1) as long as it is reasonably related to” the “cross-referenced factors . . . as a whole.” That vague, holistic interpretation raises more questions than answers and renders Section 3583(c) largely superfluous. More fundamentally, the government’s decision to abandon the rationale offered by the circuits on its side of the split further underscores the need for this Court’s intervention.

The implications of the decision below are stark. Under the Tenth Circuit’s approach, a district court can order a supervised-release condition that has nothing to do with the defendant’s offense or criminal history, so long as it “reasonably relate[s]” to “deterrence” or “protect[ing] the public.” 18 U.S.C. § 3553(a)(2)(B)-(C). That view threatens to turn supervised release into a mechanism for further punishment. And it licenses arbitrary infringements of individual liberty—like the draconian computer-search condition imposed on Richard Ruston. This Court should grant certiorari.

A. The Circuits Are Divided Over the Question Presented

As the petition explains (at 10-12), three circuits have correctly determined that a supervised-release condition must satisfy *each* of the enumerated Section 3553(a) factors. Nine circuits—including the Tenth

Circuit below—disagree. The government’s effort to downplay that conflict lacks merit.

1. No circuit has adopted the government’s interpretation of Section 3583(d)(1). According to the government (at 9), Section 3583(d)(1) is satisfied if a condition “reasonably relate[s] to the cross-referenced factors as a whole,” and courts must assess a condition by looking to the “totality of the cross-referenced factors.” But the Tenth Circuit does not employ a “totality” test—it holds that a relationship to even just “one of the . . . § 3553(a) factors listed in § 3583(d)(1)” suffices to justify a condition. Pet. App. 2. And the government cites no other circuit embracing its view.

The First, Second, Fifth, and Ninth Circuits all articulate the test the same way as the Tenth Circuit. See *United States v. Brown*, 235 F.3d 2, 7 (1st Cir. 2000); *United States v. Brown*, 402 F.3d 133, 137 (2d Cir. 2005); *United States v. Weatherton*, 567 F.3d 149, 153 (5th Cir. 2009); *United States v. Stoterau*, 524 F.3d 988, 1008 (9th Cir. 2008). And those circuits uphold conditions based on a relationship to a single factor. For example, the Ninth Circuit has affirmed a condition based only on a relationship to deterrence, concluding that it need not assess any of the other factors. See *Stoterau*, 524 F.3d at 1008 (“[s]upervised release conditions need not relate to the offense for which the defendant was convicted”). And the First Circuit has likewise upheld a condition based solely on deterrence. See *United States v. Merric*, 166 F.3d 406, 410 (1st Cir. 1999). Those decisions are inconsistent with the government’s own interpretation before this Court. This Court’s review is needed to correct the indisputably erroneous rule adopted in several circuits.

The government maintains (at 13) that the Tenth Circuit “correctly adhered” to the government’s “joint reading in this case.” But that mischaracterizes the Tenth Circuit’s holding. The Tenth Circuit applies a “one or more of the factors” test, Pet. App. 2a (citation omitted), which is why it has expressly rewritten “and” as “or” in Section 3583(d), *United States v. Henry*, 979 F.3d 1265, 1268 (10th Cir. 2020). So, contrary to the government’s assertion (at 13), the Tenth Circuit does not “agree that ‘and,’ as used in Sections 3583(d)(1) and 3553(a)(1), is conjunctive.” And because a supervised-release condition can reasonably relate to one factor without being reasonably related to the factors “as a whole,” the government’s interpretation is fundamentally inconsistent with the Tenth Circuit’s. Pet. App. 1a (affirming solely because “the condition was reasonably related to Ruston’s history and characteristics”).

2. In contrast, the Fourth, Seventh, and D.C. Circuits have interpreted Section 3583(d)(1) in the same manner as Mr. Ruston.

The Seventh Circuit has emphasized that “[d]iscretionary conditions imposed by the district judge must be reasonably related to the nature and circumstances of the offense,” and upheld a “reporting requirement” only because it was “reasonably related to the nature and circumstances of th[e] offense.” *United States v. Kosth*, 943 F.2d 798, 800-01 (7th Cir. 1991). Similarly, in *United States v. Goodwin*, 717 F.3d 511 (7th Cir. 2013), the Seventh Circuit vacated a “condition[] requir[ing] [the defendant] to participate (at his own expense) in sex offender treatment and mental health counseling,” because there was no “connection between [the defendant’s] offense and the purposes that sex offender treatment and mental health counseling

typically serve.” *Id.* at 525-26. Had the Tenth Circuit applied that rule, Mr. Ruston’s challenge to the computer-search condition—which was unconnected to his bank-robbery offense—would have succeeded.

The government cites (at 16) certain Seventh Circuit decisions upholding conditions without expressly discussing “each cross-referenced factor.” But the absence of such discussion is not illuminating because the defendants in those cases focused their appellate challenges on only some factors but not others. See *United States v. Cruz-Rivera*, 74 F.4th 503, 512 (7th Cir. 2023) (defendant “contend[ed] that his history and characteristics d[id] not justify the imposed search condition”); *United States v. McKissic*, 428 F.3d 719, 722 (7th Cir. 2005) (similar). The court thus naturally discussed only the factors directly at issue on appeal.

Like the Seventh Circuit, the Fourth Circuit has asked whether a condition is “reasonably related to the nature and circumstances of [the] underlying offense, [the defendant’s] history and characteristics, the goals of deterrence, protection of the public and rehabilitation, as required by § 3583(d)(1).” *United States v. Ellis*, 112 F.4th 240, 259 (4th Cir. 2024). The government maintains (at 15) that *Ellis* “did not address” the question presented here. But *Ellis* plainly disagreed with the Tenth Circuit’s holding that a condition need only “relate[] to one of the . . . § 3553(a) factors listed in § 3583(d)(1).” Pet. App. 2a. If the Fourth Circuit had agreed with that rule, it would not have needed to meticulously analyze each factor. *Ellis*, 112 F.4th at 259-61; see *id.* at 260 n.8.

Finally, the D.C. Circuit has upheld a “GPS monitoring” condition only because it was “reasonably

related to’ [the defendant’s] offense, his characteristics and history, deterrence, protection of the public, and correctional treatment.” *United States v. Russell*, 45 F.4th 436, 439 (D.C. Cir. 2022). Indeed, *Russell* took pains to explain why “GPS monitoring of [the defendant’s] travel is related to a jurisdictional component—travel—of [the defendant’s] underlying offense.” *Id.* at 440. If the Tenth Circuit had felt the same imperative to connect the computer-search condition here to the offense at issue (bank robbery), it would have reached a different result.

The government observes (at 17) that *Russell* does not explicitly discuss “rehabilitation.” But Section 3553(a)(2)(D) does not reference rehabilitation—it references “correctional treatment.” 18 U.S.C. § 3553(a)(2)(D). And *Russell* states that the GPS monitoring condition there would “discourage recidivism”—which means the condition facilitated “correctional treatment.” 45 F.4th at 439-40.

B. The Government Does Not Contest the Importance of the Question Presented

The question presented carries enormous significance for the federal criminal justice system. Pet. 21-23. That is because district courts impose supervised-release terms with numerous discretionary conditions in nearly every case in which a criminal defendant is convicted. *Id.* at 21. And each of those conditions must satisfy Section 3583(d)(1). Thus, the interpretive question here affects countless cases and defendants nationwide.

Under the majority rule in the circuits, courts may impose draconian supervised-release conditions across this large class of cases. Such conditions can be highly restrictive and entirely unrelated to the

defendant's offense or criminal history—so long as they are “reasonably related” to “deterrence” or “protect[ing] the public.” 18 U.S.C. §§ 3583(d)(1), 3553(a)(2)(B)-(C). This is no mere hypothetical. In the circuits aligned with the Tenth Circuit, district courts have imposed invasive conditions, such as “banish[ing]” a defendant from “two counties” in her home State and thereby “den[ying] her the ability to care for her mother, and forc[ing] her to either abandon her children or relocate them,” *United States v. Sicher*, 239 F.3d 289, 292 (3d Cir. 2000); “barring the consumption of alcoholic beverages,” *Brown*, 235 F.3d at 6; “requir[ing] [the defendant] to provide the Probation Office ‘with access to any requested personal and/or business financial information,’” *Brown*, 402 F.3d at 137; and prohibiting the defendant from “us[ing]” “the services of any commercial mail-receiving agency” or “maintain[ing] a post office box,” *Stoterau*, 524 F.3d at 1008. And courts of appeals have upheld those conditions because they “sufficiently relate[] to one” of the enumerated factors. *Brown*, 235 F.3d at 6.

This case is a prime illustration of how the majority rule authorizes arbitrary infringements of liberty. The district court required Mr. Ruston to “submit to warrantless searches” of his “computers and electronic devices,” Pet. App. 1a—but Mr. Ruston was convicted of bank robbery, and that offense did not involve the use of computers or electronic devices. Nonetheless, the Tenth Circuit upheld the condition because, in committing an entirely separate offense, Mr. Ruston used Facebook from an unknown device to communicate about a stolen vehicle. *Id.* at 3a-4a. And under the Tenth Circuit’s theory, that separate offense was not even necessary—the government could have

simply claimed that warrantless computer and phone searches would “protect the public from further crimes” by impeding Mr. Ruston’s ability to communicate about hypothetical future crimes. 18 U.S.C. § 3553(a)(2)(C). Indeed, the Eleventh Circuit has embraced that very argument when upholding an “electronic search condition [that] did not relate directly to [the defendant’s] firearm offense.” *United States v. Taylor*, 997 F.3d 1348, 1353 (11th Cir. 2021) (per curiam).

The majority rule threatens not only incursions on individual liberty, but also impermissible double-punishment of defendants who have completed their prison terms. “Supervised release fulfills rehabilitative ends.” *United States v. Johnson*, 529 U.S. 53, 59 (2000). It “is not a punishment in lieu of incarceration.” *Esteras v. United States*, 606 U.S. 185, 196 (2025) (citation omitted). Yet by authorizing draconian restrictions based only on deterrence, the majority rule can yield further punishment under the guise of supervised-release conditions.

C. The Government’s Interpretation Is Incorrect

As the petition explains (at 12-21), Section 3583(d)(1) requires that discretionary conditions be “reasonably related to” each of the listed “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) (emphasis added). Ordinarily, when elements “are connected by the conjunctive ‘and,’” that “mean[s]” the relevant actor—here, district courts—“must meet all” of them. *United States v. Palomar-Santiago*, 593 U.S. 321, 326 (2021). That is particularly true where, as here, the statutory provision elsewhere uses the term “and” in the same

fashion. Indeed, the government (at 11) does “no[t] dispute that a discretionary supervised-release condition must satisfy each of the three paragraphs” in Section 3583(d)(1) through (3). There is no sound basis for interpreting “and” differently as applied to the specific factors described in Section 3583(d)(1). See *Pulsifer v. United States*, 601 U.S. 124, 150 (2024) (emphasizing that “[t]he ‘and’” in one provision “works identically to the ‘and’” in another provision).

The government relies heavily on *Pulsifer*, but that decision supports Mr. Ruston. There, the Court adopted the government’s reading that the term “and” “create[d] an eligibility checklist.” 601 U.S. at 141. That is precisely Mr. Ruston’s interpretation of “and” here. Yet after prevailing on that “distributive” interpretation of “and” in *Pulsifer*, the government now presses a “joint” interpretation of “and” in this case. Br. in Opp. 9-10.

The government cannot justify its about-face based on “context.” Br. in Opp. 10. In fact, its joint interpretation makes no sense in the context of Section 3583(d)(1). What does it mean for a supervised-release condition to reasonably relate to seven distinct factors “as a whole”? If a condition reasonably relates to two factors, is that sufficient? And how can a condition reasonably relate to the factors “as a whole” if (as here) it is entirely unrelated to one of those factors? At least the Tenth Circuit’s position—that a condition need only reasonably relate “to one or more of the factors,” Pet. App. 2a (citation omitted)—is easily administered, even if it is textually erroneous. The government’s interpretation here is both unmanageable and atextual.

Notably, the government’s joint interpretation of “and” here is far more strained than the defendant’s “grammatically permissible” joint reading of “and” in *Pulsifer*. 601 U.S. at 133. There, the statute was framed in the negative—if “the defendant does not have” three attributes, 18 U.S.C. § 3553(f)(1), he can qualify for “safety-valve relief,” *Pulsifer*, 601 U.S. at 132. Thus, a joint reading yielded a straightforward and determinate result: a defendant was ineligible for relief “only if he ha[d] the complete combo” of all three attributes. *Id.* Here, because Section 3583(d)(1) is framed in the affirmative, a joint reading would require something much more amorphous: that a condition somehow “reasonably relate[]” to seven disparate factors “as a whole.” Br. in Opp. 10. Nothing in *Pulsifer* indicates that the Court would consider this interpretation “grammatically permissible.”

Moreover, in *Pulsifer*, the canon against “superfluity” provided the key contextual clue favoring the distributive reading. 601 U.S. at 141. The same is true here: the government’s joint reading gives Section 3583(c) scarce “operative significance.” *Id.* Specifically, Section 3583(c) already requires courts to “consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), [and] (a)(2)(D)” when “determining whether to include a term of supervised release.” 18 U.S.C. § 3583(c). Yet on the government’s view (at 10-11), Section 3583(d)(1) *also* “identif[ies] a set of considerations to which a condition of supervised release must be reasonably related.” Under Mr. Ruston’s view, by contrast, Section 3583(d)(1) serves the distinct function of ensuring that courts find a reasonable relationship to each of the factors.

Contrary to the government’s assertion (at 12), “relevant background understandings” favor Mr.

Ruston. *Pulsifer*, 601 U.S. at 141. The most relevant background understanding is that supervised release “is not a punishment” but instead “fulfills rehabilitative ends.” *Esteras*, 606 U.S. at 196 (citations omitted). As already explained, the government’s interpretation disregards that understanding. That is why the government rests (at 11-12) not on the supervised-release context, but instead on the sentencing context. But that analogy fails because sentencing courts must only “*consider*” the enumerated factors “in determining the particular sentence to be imposed.” 18 U.S.C. § 3553(a) (emphasis added). Because only consideration is required, a sentence may naturally “serve some of th[e] purposes” codified in the factors “without necessarily serving every single one of them.” Br. in Opp. 12. Conversely, Section 3583(d)(1) requires more than just consideration: it says that “[t]he court may order” a supervised-release condition only “to the extent that such condition” is “reasonably related to” the enumerated factors. 18 U.S.C. § 3583(d)(1). That distinct language creates a checklist of factors that must be satisfied.

The government’s reliance (at 10) on the word “factors” in Section 3583(d)(1) is misplaced. Congress used that word because it was cross-referencing Section 3553(a), which provides “[f]actors to be considered in imposing a sentence.” 18 U.S.C. § 3553(a). Had Congress used a different term (like “prerequisites”), its incorporation of Section 3553(a)’s factors would have been garbled. But critically, Congress departed from Section 3553(a) in the way just discussed: it required that any discretionary supervised-release condition be “reasonably related” to the enumerated Section 3553(a) factors, 18 U.S.C. § 3583(d)(1), rather

than merely requiring courts to “consider” those factors, *id.* § 3553(a).

The government’s argument (at 11) based on “the structure of Section 3583(d)” is equally flawed. The “separately indented paragraphs,” *id.*, in Section 3583(d)(1) through (3) correspond to subsection (d)’s overarching requirements: “reasonabl[e] relat[ion-ship]”; “no greater deprivation of liberty than is reasonably necessary”; and consistency with the Sentencing Commission’s “pertinent policy statements.” 18 U.S.C. § 3583(d)(1)-(3). It would have been unwieldy for Congress to create separate paragraphs for each sub-requirement within those broader requirements. Congress’s decision to draft the provision more cleanly affords no basis for combining discrete factors into one “totality” test.

Finally, the government worries that Mr. Ruston’s interpretation would preclude courts from imposing certain “standard conditions” recommended by the Sentencing Commission. Br. in Opp. 12 (quoting *Barajas*, 331 F.3d at 1146). But “no amount of policy-talk can overcome a plain statutory command.” *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021). That is particularly true where the “standard conditions” are simply the Commission’s gloss on the statute—not a congressional directive. See U.S.S.G. § 5D1.3(b)(2). In any event, commonplace supervised-release conditions can be justified under Mr. Ruston’s interpretation. For instance, one “‘standard’ condition[] of supervised release” is that “[t]he defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity.” *Id.* § 5D1.3(b)(2)(H). That standard condition (and several others in Section 5D1.3(b)(2)) would almost always “reasonably relate[]” to the enumerated factors.

18 U.S.C. § 3583(d)(1). The government's speculation that standard conditions will routinely fail Section 3583(d)(1) is unfounded.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

DANIEL T. HANSMEIER
KANSAS FEDERAL PUBLIC
DEFENDER
500 State Ave., Suite 201
Kansas City, KS 66101

ELIZABETH B. PRELOGAR
EPHRAIM A. MCDOWELL
Counsel of Record
DEV P. RANJAN
COOLEY LLP
1299 Pennsylvania Ave.,
NW, Suite 700
Washington, DC 20004
(202) 842-7800
emcdowell@cooley.com

Counsel for Petitioner

May 5, 2026