No. 25-6563

IN THE SUPREME COURT OF THE UNITED STATES

GARY CRAIG STEPHENS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly denied plain error relief on petitioner's claim that the district court procedurally erred in ordering 24 months of reimprisonment on the third revocation of petitioner's supervised release.

ADDITIONAL RELATED PROCEEDINGS

The parties to the proceeding below were petitioner Gary Craig Stephens and the United States. There are no non-governmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

Proceedings related to this case are:

United States District Court (S.D. Cal.):

United States v. Stephens, No. 13-cr-828 (Nov. 12, 2024)

United States Court of Appeals (9th Cir.):

United States v. Stephens, No. 24-6889 (Oct. 10, 2025)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A2) is available at 2025 WL 2887275.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 2025. The petition for a writ of certiorari was filed on January 8, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of California, petitioner was convicted

on one count of conspiring to engage in sex trafficking of children, in violation of 18 U.S.C. 1594(c). Judgment 1. The district court sentenced petitioner to 120 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3. Petitioner violated his supervised release, and the court ordered a term of reimprisonment to be followed by supervised release. D. Ct. Doc. 94, at 1-3 (June 9, 2021). During his second term of supervised release, petitioner again committed violations, and the court again revoked his supervised release and ordered a term of imprisonment to be followed by supervised release. D. Ct. Doc. 113, at 1-3 (Dec. 13, 2022). During petitioner's third term of supervised release, petitioner again committed violations, and the court for a third time revoked petitioner's supervised release and ordered a 24-month term of imprisonment to be followed by five years of supervised release. D. Ct. Doc. 133, at 1-3 (Nov. 12, 2024). The court of appeals affirmed. Pet. App. A1-A2.

1. In December 2012, petitioner trafficked an underage girl he had met on a dating website, taking the victim to hotel rooms where she would engage in commercial sex acts and petitioner would collect the money. Presentence Investigative Report (PSR) ¶¶ 5-7. Petitioner was arrested by local law enforcement with the minor victim's assistance and cooperation. See PSR ¶¶ 14-15. On February 7, 2013, a federal warrant issued for petitioner's arrest, and he was transferred to federal custody the next day. PSR ¶ 16.

Petitioner waived his right to be prosecuted by indictment, see D. Ct. Doc. 30, at 1 (May 2, 2013), and was charged by information with one count of conspiring to engage in sex trafficking a minor, in violation of 18 U.S.C. 1594(c), see Superseding Information 1. Petitioner pleaded guilty, and the district court sentenced him to 120 months of imprisonment, to be followed by ten years of supervised release. Judgment 2-3. Petitioner voluntarily dismissed his appeal from the judgment. See D. Ct. Doc. 65, at 1 (July 28, 2014).

2. Petitioner began serving his first term of supervised release on September 11, 2020. D. Ct. Doc. 79, at 1 (Feb. 11, 2021). On May 3, 2021, petitioner was arrested for violating the terms of his supervised release by possessing a cell phone without approval. See D. Ct. Doc. 80, at 2 (May 3, 2021); D. Ct. Doc. 83, at 1 (May 3, 2021). On June 2, 2021, following a revocation hearing, his supervision was revoked, and the district court ordered 60 days of custody, to be followed by 10 years of supervised release. D. Ct. Doc. 94, at 1-3.

Petitioner began serving his second term of supervised release on July 1, 2021. D. Ct. Doc. 97, at 1 (Aug. 29, 2022). He was arrested on September 14, 2022, for violating the terms of his supervised release by driving while intoxicated; affiliating with a known gang member, including being a passenger in a vehicle that was part of a police pursuit; failing to notify his probation officer that he had been detained by local law enforcement; and

failing to comply with drug testing requirements, See D. Ct. Doc. 97, at 2-4; D. Ct. Doc. 102, at 1 (Sept. 19, 2022). On December 12, 2022, petitioner admitted to failing to comply with his drug-testing requirements, and the district court revoked his supervised release and ordered seven months of imprisonment, to be followed by five years of supervised release. D. Ct. Doc. 113, at 1-3.

3. On April 12, 2023, petitioner began serving his third term of supervised release. D. Ct. Doc. 116, at 1 (Apr. 4, 2024). A little more than a month later, on May 23, 2023, the district court issued a warrant for petitioner's arrest for violating the terms of his supervised release by driving a vehicle while drunk and by consuming alcohol. See D. Ct. Doc. 114, at 2 (May 23, 2023); D. Ct. Doc. 123, at 1 (July 25, 2024). Petitioner was on absconder status until his arrest on July 19, 2024. D. Ct. Doc. 123, at 1; see 11/8/2024 Tr. (Tr.) 17. The Probation Office alleged that during that time, he failed to register as a sex offender, D. Ct. Doc. 116, at 2, and failed to report to his probation officer, D. Ct. Doc. 128, at 2 (Oct. 2, 2024).

The Probation Office reported an advisory Sentencing Guidelines range for violating a supervised release condition by failing to register as a sex offender of 8 to 14 months of reimprisonment, D. Ct. Doc. 116, at 4, and an advisory range of 5 to 11 months of reimprisonment for the other alleged violations, see D. Ct. Doc. 128, at 4. Because petitioner was on his "third

term of supervised release, * * * sustained multiple new law violations * * * , and * * * made the conscious decision to systematically avoid legal responsibility," the Probation Office recommended 24 months of reimprisonment. D. Ct. Doc. 116, at 4.

The district court held a revocation hearing on November 8, 2024. Tr. 1. At the hearing, the parties agreed that petitioner would admit to the failure to report to his probation officer and that the court could consider all of the alleged violations in considering how much reimprisonment to order. Tr. 2-3. The parties also discussed the advisory Guidelines range--as to which each party accepted the Probation Office's calculation--and made sentencing recommendations: petitioner asked for eight months imprisonment and no term of supervised release, while the government agreed with the 24-month sentence that the Probation Office had recommended, acknowledging "it is an increase above the high end of the guideline range." Tr. 5, 15; see Tr. 17.

The probation officer's oral recommendation reiterated the Probation Office's recommendation for a 24-month sentence, acknowledging that it would be "large" term for petitioner. Tr. 16. In response, petitioner's counsel explained that 24 months was significantly above the advisory Guidelines range for the violation petitioner was admitting--5 to 11 months--and "ten months above" the advisory range of 8 to 14 months for the most serious violation of the terms of his release. Tr. 17. Petitioner's counsel argued that "a recommendation that is ten

months above the high end" of the advisory Guidelines range was "highly unusual" and not "justified." Tr. 18.

The district court ordered the 24-month term of imprisonment recommended by the Probation Office and the government. Tr. 21. The court made clear that it had "gone through the record" and "the history of the case." Tr. 19. The court found that petitioner had taken "a very troubling approach to supervised release." Ibid. The court pointed to petitioner's "multiple violations" of the terms of his supervised release, including "two DUIs [that] are serious violations" and his failure "to register as a sex offender," and observed that petitioner seemed to believe that he was "in control of the terms of [his] supervised release." Tr. 20. The court also observed that while petitioner had been aware that he had an outstanding arrest warrant, he had not turned himself in, but had instead called his parole officer and sought "to negotiate the terms of [his] surrender"--then ultimately decided "not to honor [his] obligation" to surrender and to "remain[] in the community as a fugitive." Ibid.

The district court ultimately found that petitioner's violation and "conduct while on supervised release [were] aggravated in nature." Tr. 20. And, viewing petitioner's violation "in light of the context of" his conviction for conspiracy to traffic a minor, the court observed that it needed to ensure "the safety of the community." Tr. 20-21. The court

revoked petitioner's supervised release and ordered 24 months of imprisonment. Tr. 21.

4. The court of appeals affirmed in an unpublished per curiam decision. Pet. App. A1-A2. Applying plain error review, the court rejected petitioner's contentions--raised for the first time on appeal--"that the district court procedurally erred by failing to calculate the sentencing Guidelines range and by failing to explain the need for an upward variance." Ibid.

The court of appeals observed that the district court "was aware of the range applicable to the admitted violation and the range for the additional conduct [petitioner] agreed the court could consider" because the Probation Office's report of petitioner's violations contained them and defense counsel "discussed the ranges" during the revocation hearing. Pet. App. A2. And the court of appeals found that petitioner had "not demonstrated a reasonable probability" of a different result "had the court stated the Guidelines range." Ibid. The court also found that the district court's explanation for the reimprisonment term--that it was "based on [petitioner's] 'very troubling approach to supervised release' and 'the safety of the community'" --allowed for "meaningful appellate review." Ibid.

ARGUMENT

Petitioner renews his contentions (Pet. 8-12) that the district court committed plain error by failing to calculate the advisory Guidelines range and by failing to provide a meaningful

explanation for his sentence. Petitioner's claims, however, are moot because he was released from custody on March 31, 2026. In any event, the court of appeals properly applied plain-error review and its decision does not conflict with any decision of this Court. Petitioner fails to provide a sound reason to review the court of appeals' fact-bound decision, see Sup. Ct. R. 10, and no further review is warranted.

1. According to the Federal Bureau of Prisons, petitioner was released from his term of reimprisonment on March 31, 2026. See Federal Bureau of Prisons, U.S. Dep't of Justice, Find An Inmate, https://www.bop.gov/inmateloc/ (Gary Craig Stephens) (last visited May 5, 2026). Further consideration of the length of the term of imprisonment that followed his third revocation of supervised release would therefore not result in any meaningful relief. Because he has been released, petitioner's challenge to his term of imprisonment for his supervised-release violation is moot and this petition should be denied. See Spencer v. Kemna, 523 U.S. 1, 12-14 (1998) (declining to extend presumption of continuing collateral consequences when challenging conviction to parole revocation); see also Church of Scientology v. United States, 506 U.S. 9, 12 (1992) ("It has long been settled that a federal court has no authority 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."') (quoting Mills v. Green, 159 U.S. 651, 653 (1895)).

Petitioner has identified no continuing collateral consequences of the question presented. Although petitioner is now serving a further term of supervised release, "[t]he possibility that the [district] court will use its discretion to modify the length of [a defendant's] term of supervised release * * * is so speculative" that it does not suggest that review of the length of the completed incarceration could result in meaningful relief. Burkey v. Marberry, 556 F.3d 142, 149 (3d Cir.), cert. denied, 558 U.S. 969 (2009); see Rhodes v. Judiscak, 676 F.3d 931, 934-935 (10th Cir.) (similar), cert. denied, 567 U.S. 935 (2012).[1] And nothing specific to this case suggests that petitioner's challenge to his term of imprisonment would have an effect on his current service of that supervised-release term. Cf. United States v. Johnson, 529 U.S. 53, 59 (2000) ("Supervised release fulfills rehabilitative ends, distinct from those served by incarceration," and is "intended * * * to assist individuals in their transition to community life.").

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[1] Other courts of appeals have concluded that the possibility that the sentencing court would exercise its discretion to reduce a defendant's supervised-release term can be sufficient to prevent a sentencing challenge from becoming moot upon completion of his prison term. See, e.g., United States v. Ketter, 908 F.3d 61, 66 (4th Cir. 2018); Pope v. Perdue, 889 F.3d 410, 414 (7th Cir. 2018); Levine v. Apker, 455 F.3d 71, 77 (2d Cir. 2006); Johnson v. Pettiford, 442 F.3d 917, 917-918 (5th Cir. 2006) (per curiam); Mujahid v. Daniels, 413 F.3d 991, 994-995 (9th Cir. 2005), cert. denied, 547 U.S. 1149 (2006). Regardless, the need for this Court to resolve the mootness question at a minimum makes this case a poor vehicle for considering the question presented.

2. In any event, the court of appeals permissibly declined to grant plain-error relief in this case. To be entitled to such relief, a defendant must show "(1) 'error,' (2) that is 'plain,' and (3) that 'affect[s] substantial rights.'" Johnson v. United States, 520 U.S. 461, 467 (1997) (quoting United States v. Olano, 507 U.S. 725, 732 (1993)) (brackets in original). An error affects a defendant's substantial rights only if he shows "a reasonable probability that, but for the error, the outcome of the proceedings would have been different." Molina-Martinez v. United States, 578 U.S. 189, 194 (2016) (quotation marks omitted). And if those three prerequisites are satisfied, correction of the error is appropriate only when "the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." Ibid. (quotation markss omitted). "Meeting all four prongs is difficult, 'as it should be.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (quoting United States v. Dominguez Benitez, 542 U.S. 74, 83 n.9 (2004)). And "the burden of establishing entitlement to relief for plain error is on the defendant claiming it," Dominguez Benitez, 542 U.S. at 82--a burden that petitioner failed to carry here.

a. Petitioner has not shown that the district court committed plain error--let alone reached a result that it would not otherwise have reached--by failing to explicitly state the Guidelines range. As an initial matter, although a district court is required to "calculate the correct Guidelines range," and to

"begin [its] analysis with the Guidelines and remain cognizant of them throughout the sentencing process," Peugh v. United States, 569 U.S. 530, 541 (2013) (quotation marks omitted), the absence of an express statement memorializing the Guidelines range here simply reflects the absence of any dispute about it, see Tr. 17-18 (petitioner's counsel reiterating the ranges the Probation Office calculated). The court of appeals accordingly recognized that the district court "was aware" of the Guidelines range, Pet. App. A2, and the only meaningful dispute was whether to vary upward from the uncontested range to 24 months, see Tr. 17 (arguing against a "ten month[]" increase over the advisory range for the most serious violations). It is accordingly far from clear that any plain error occurred.

Regardless, the court of appeals found that "[o]n this record," petitioner had "not demonstrated a reasonable probability that he would have received a different sentence had the [district] court stated the Guidelines range." Pet. App. A2. As this Court has explained, where the "record" in a case shows that "the district court thought the sentence it chose was appropriate irrespective of the Guidelines range," the reviewing court may determine that "a reasonable probability of prejudice does not exist." Molina-Martinez, 578 U.S. at 200. That was the case here.

As the court of appeals observed, the district court was aware of the applicable advisory Guidelines ranges for the violations alleged and admitted, and equally aware that a 24-month sentence

was an increase over them. See Pet. App. A2; see also Tr. 15, 17 (providing examples of attorneys bringing the increase to the court's attention). In ordering its reimprisonment term, however, "the judge based the sentence he * * * selected on factors independent of the Guidelines." Molina-Martinez, 578 U.S. at 200. In particular, the district court pointed to the "aggravated" nature of petitioner's violations and conduct--including his two DUIs and failure to register as a sex offender; petitioner's belief "that [he could] control * * * the terms of [his] supervised release"; and petitioner's decision not to surrender after learning of the arrest warrant for his violations but instead choosing to remain "in the community as a fugitive." Tr. 20. And it considered the need, in light of petitioner's violations and offense of conviction, to "adequately address[] * * * the safety of the community." Tr. 20-21.

b. Petitioner's contention (Pet. 11-12) that the district court plainly erred on the theory that it did not adequately explain its sentence is likewise unsound. The decision on which petitioner relies--Gall v. United States, 552 U.S. 38 (2007)--stated that district courts should "adequately explain the[ir] chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." Id. at 50. But the court of appeals permissibly found that the district court did so here by explaining why this sentence was appropriate in light of petitioner's behavior while on supervised release, his prior

criminal conduct, and the need to protect the community. See Pet. App. A2; Tr. 19-21.

For the reasons discussed above, given the district court's awareness of the undisputed Guidelines range, see Pet. App. A2, that explanation does not reflect a failure to "consider the extent of the deviation" or to "ensure that the justification [was] sufficiently compelling to support the degree of the variance," Gall, 552 U.S. at 50. To the extent that petitioner is suggesting that an explanation is invariably deficient unless it includes a statement of the Guidelines range, that suggestion is refuted by this Court's precedent recognizing that plain-error relief may not be warranted even when the district court has referenced an incorrect Guidelines range. See Molina-Martinez, 578 U.S. at 200-201.

3. Petitioner does not assert that any other court of appeals would have reached a different result on the facts of this case.[2] And ultimately, petitioner's challenge boils down to a disagreement with the court of appeals' determination that the district court would have ordered the same term of imprisonment regardless of whether it expressly stated the applicable Guidelines range and that the district court sufficiently

[2] This Court has recently and repeatedly denied petitions for writs of certiorari on issues relating to a court of appeals' ability to affirm a sentence when a district court states that it would have imposed the same sentence irrespective of which guideline range applied. See, e.g., Br. in Opp. at 7 & n.*, Sullivan v. United States, 146 S. Ct. 614 (2025) (No. 25-5357).

explained its sentencing decision. That factbound contention does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). This Court "do[es] not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925). There is no sound reason to do so here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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