No._____

In the

Supreme Court of the United States

EDGARDO ESTERAS,
TIMOTHY MICHAEL JAIMEZ FKA TIMOTHY M. WATTERS, AND
TORIANO A. LEAKS, JR.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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May 13, 2024

QUESTION PRESENTED

The supervised-release statute, 18 U.S.C. § 3583(e), lists factors from 18 U.S.C. § 3553(a) for a court to consider when sentencing a person for violating a supervised-release condition. In that list, Congress omitted the factors set forth in section 3553(a)(2)(A)—the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. The question presented is:

Even though Congress excluded section 3553(a)(2)(A) from section 3583(e)'s list of factors to consider when revoking supervised release, may a district court rely on the section 3553(a)(2)(A) factors when revoking supervised release?

Five circuit courts of appeals, including the panel orders below, have concluded that district courts may rely on the section 3553(a)(2)(A) factors. Four circuit courts of appeals, plus the dissents from orders denying rehearing en banc below, have concluded that they may not.

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INTRODUCTION

This case presents an established and acknowledged circuit split that affects all persons facing supervised-release-revocation proceedings: what factors the court may consider. The statute, 18 U.S.C. § 3583(e), instructs courts to 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)." 18 U.S.C. § 3583(e). Congress omitted section 3553(a)(2)(A) from that list: the need "to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A).[1]

Despite the omission, five circuit courts of appeals, including the panel decisions below, have concluded that courts may rely on the section 3553(a)(2)(A) factors when revoking supervised release. Four circuit courts of appeals, plus the dissents from the orders denying rehearing en banc below, have concluded that they may not.

The question presented is important, and these cases are excellent vehicles for resolving it. Edgardo Esteras, Timothy Jaimez, and Toriano Leaks are among the thousands of people each year who have their supervised release revoked. In each of their cases, the district court when imposing its sentence expressly relied on one or more of the section 3553(a)(2)(A) factors. In each of their cases, the Sixth Circuit affirmed, holding that courts may rely on the need to punish and the other section 3553(a)(2)(A) factors when revoking supervised release.

1 Congress also left out section 3553(a)(3), "the kinds of sentences available." 18 U.S.C. § 3553(a)(3). Section 3583(e) itself lists the kinds of sentences and other supervised-release modifications available in revocation proceedings, making section 3553(a)(3) unnecessary. *See* 18 U.S.C. § 3583(e).

The decisions below are wrong. The statute's text, this Court's precedent, the legislative history, and background constitutional principles all indicate that a district court may not rely on the section 3553(a)(2)(A) factors when revoking supervised release. By excluding section 3553(a)(2)(A) from section 3583(e)'s list of factors, Congress drew a careful line instructing courts to rely on punishment and factors related to punishment only when sentencing defendants for their initial offenses, consistent with constitutional protections for those facing criminal punishment. The decisions below erased that line.

Edgardo Esteras, Timothy Michael Jaimez (fka Timothy M. Watters), and Toriano A. Leaks, Jr., therefore respectfully petition for a writ of certiorari to review the judgments of the U.S. Court of Appeals for the Sixth Circuit. Under Supreme Court Rule 12(4), they join in a single petition because "two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions." SUP. CT. R. 12.

OPINIONS AND ORDERS BELOW

In *United States v. Esteras*, Case No. 23-3422, the U.S. Court of Appeals for the Sixth Circuit's initial order is unpublished. *See* App. at 1a-3a. After Esteras filed a petition for rehearing en banc, the panel issued an amended order, which is published at 88 F.4th 1163 (6th Cir. 2023). *See* App. at 4a-13a. The court also denied rehearing en banc in an order with two dissenting opinions, which is published at 88 F.4th 1170 (6th Cir. 2023). *See* App. at 19a-29a. The court's order denying Esteras'

second petition for rehearing en banc, with two dissenting opinions, is published at 95 F.4th 454 (6th Cir. 2024). *See* App. at 30a-34a. The order of the U.S. District Court for the Northern District of Ohio revoking Esteras' supervised release and the hearing transcript are unpublished. *See* App. at 14a-18a; App. at 35a-52a.

In *United States v. Timothy Michael Jaimez*, Case No. 23-3189, the U.S. Court of Appeals for the Sixth Circuit's opinion is published at 95 F.4th 1004 (6th Cir. 2024). *See* App. at 53a-58a. The order of the U.S. District Court for the Northern District of Ohio revoking Jaimez' supervised release and the hearing transcript are unpublished. *See* App. at 59a; App. at 60a-73a.

In *United States v. Toriano Leaks, Jr.*, Case No. 23-3547, the U.S. Court of Appeals for the Sixth Circuit's order is unpublished. *See* App. at 74a-75a. The order of the U.S. District Court for the Northern District of Ohio revoking Leaks' supervised release and the hearing transcript are unpublished. *See* App. at 76a; App. at 77a-86a.

JURISDICTION

In *United States v. Edgardo Esteras*, Case No. 23-3422, the court of appeals initially entered judgment on August 16, 2023. Esteras timely filed a petition for rehearing en banc, which the court denied on December 20, 2023, with an amended order and judgment. Esteras timely filed a second petition for rehearing en banc, which the court denied on March 7, 2024.

In *United States v. Timothy Michael Jaimez fka Timothy M. Watters*, Case No. 23-3189, the court of appeals entered judgment on March 12, 2024.

In *United States v. Toriano Leaks, Jr.*, Case No. 23-3547, the court of appeals entered judgment on March 6, 2024.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 3583(e) of Title 18, U.S. Code, provides:

> 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 post-release 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.

18 U.S.C. § 3583(e).

Section 3553(a) of Title 18, U.S. Code, provides:

FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

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

(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;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

STATEMENT OF THE CASE

Edgardo Esteras, Timothy Jaimez (fka Timothy Watters), and Toriano Leaks, Jr., each present the same question for this Court's review, *see* SUP. CT. R. 12(4): whether a district court may rely on the section 3553(a)(2)(A) factors when revoking supervised release, even though Congress excluded section 3553(a)(2)(A) from section 3583(e)'s list of factors to consider. This question has split the federal circuit courts of appeals, affects all federal defendants who may have their supervised release revoked, and is ripe for this Court's review.

Esteras, Jaimez, and Leaks each were charged with and convicted of a federal crime, over which the district court had jurisdiction under 18 U.S.C. § 3231. After completing a custodial sentence, each began serving a term of supervised release. The district courts later found that each of them violated conditions of supervised release, revoked supervised release, and imposed new terms of incarceration. During each of their revocation proceedings, the court expressly relied on one or more of the factors set forth in section 3553(a)(2)(A). The U.S. Court of Appeals for the Sixth Circuit affirmed each of their sentences, and the court denied Esteras' petition for rehearing en banc over two published dissents.

1. *Edgardo Esteras' Revocation Proceedings*. After a contested hearing, the district court found that Esteras violated his supervised-release conditions by possessing a firearm. When making its factual findings, the court referred to "the punishment I will issue today." App. at 37a. Then, before imposing sentence, the court indicated its "worry" that "what's been done before" had not been "sufficient enough"

to "encourage [Esteras] to be respectful of the law." App. at 39a. The court revoked Esteras' supervised release and varied upward from the 6-to-12-month advisory guidelines range, sentencing him to 24 months in prison and three years of supervised release. App at 17a, 41a.

Esteras objected that "the Court indicated that it considered factors -- the factor in Section 3553(a)(2)(A) as part of its sentence." App. at 47a. The court confirmed that "part of my contemplation certainly is the need for the sentence imposed, to promote respect for the law"—one of the section 3553(a)(2)(A) factors. App. at 48a.

The district court later memorialized its findings and its sentence in a written order. Regarding the sentence, the court stated that it "considered the factors and conditions for sentencing listed in 18 U.S.C. § 3553(a) and 3583(d), respectively." App. at 17a. The court specifically noted that it varied upwards and imposed a 24-month prison term to, among other reasons, "promote respect for the law"—one of the section 3553(a)(2)(A) factors. App. at 17a-18a.

Esteras appealed. In an unpublished order, the Sixth Circuit affirmed Esteras' sentence. Bound by the court's prior decision in *United States v. Lewis*, 498 F.3d 393 (6th Cir. 2007), the panel held that "'it does not constitute reversible error to consider § 3553(a)(2)(A) when imposing a sentence for violation of supervised release, even though this factor is not enumerated in § 3583(e).'" App. at 2a (quoting *Lewis*, 498 F.3d at 399-400).

Esteras petitioned for rehearing en banc. In response, the panel issued an amended order, and the court denied rehearing en banc. The panel majority reaffirmed the holding in *Lewis* that district courts may consider the section 3553(a)(2)(A) factors when revoking supervised release. App. at 8a. Judge White joined in the result on the basis that *Lewis* controlled. App. at 4a.

Two judges published dissents from the order denying rehearing en banc. Judge Moore concluded that *Lewis* "relies on atextual reasoning directly contrary to Congress's purposes" and "is an outlier among the circuits." App. at 22a. Judge Griffin, joined by Judge Bloomekatz, noted that punishment was "ostensibly prohibited by the statutory text," App. at 28a, and concluded that en banc review was warranted "given the widespread impact of *Lewis* and the vigorous debate concerning its viability," *id.*

Esteras again petitioned for rehearing en banc. Judge Moore again dissented, this time joined by Judge Stranch, reiterating that "*United States v. Lewis*, 498 F.3d 393 (6th Cir. 2007), and the amended panel order in this case contravene the statutory text, disregard Supreme Court precedent, and place the Sixth Circuit at the extreme of a circuit split, allowing our district courts expressly to punish defendants for violations of supervised release." App. at 32a. Judge Griffin also again dissented, joined by Judges Stranch and Bloomekatz. App. at 33a.

2. *Timothy Jaimez' Revocation Proceedings*. Jaimez admitted to violating his supervised-release conditions by committing a new offense (a state misdemeanor

for attempted trafficking marijuana), associating with convicted felons, and possessing drug paraphernalia. App. at 54a. The district court revoked his supervised release and sentenced him to 60 months in prison, the statutory maximum, plus six years of supervised release. App. at 59a, 61a. The government conceded that, in sentencing Jaimez, "[t]he district court expressly considered the seriousness of the violation conduct and the need to promote respect for the law." Gov't Supp. Br. on Appeal at 12.

Jaimez appealed. The Sixth Circuit affirmed. The court noted that the district court "expressly consider[ed]" the section 3553(a)(2)(A) factors: "the seriousness of his offense, the promotion of respect for the law, and the provision of just punishment." App. at 55a. But the panel majority, relying on *Lewis* and *Esteras*, rejected Jaimez' argument that the court erred by doing so: "we've made clear that district courts may nonetheless consider these factors when imposing revocation sentences." *Id.* On this point, Judge Griffin adhered to his dissent from the order denying the petition to rehear *Esteras* en banc. *Id.* n.1.

3. *Toriano Leaks' Revocation Proceedings*. Leaks admitted to violating his supervised-release conditions by failing to report to the probation office as directed, failing to attend mental-health treatment, failing to work toward his GED, and committing new state offenses, for which the state court sentenced him to a total of four to six years in prison. App. at 80a-81a. The district court revoked his supervised release and sentenced him to 12 months in prison, to be served consecutive to his state sentences. App. at 76a, 85a. Explaining its decision to order that the sentences run

consecutively, the court stated: "Concurrent time does not punish Mr. Leaks for violating supervision and -- and. . . that is not justice." App. at 85a (ellipses in transcript).

Leaks appealed, arguing that the district court erred by basing its sentence on a section 3553(a)(2)(A) factor: the need to punish him for his violations. Relying on *Lewis* and *Esteras*, the Sixth Circuit affirmed. App. at 75a.

REASONS FOR GRANTING THE PETITION

I. The panel decisions and dissents from orders denying rehearing en banc further entrench a deep and pervasive circuit split regarding how to interpret 18 U.S.C. § 3583(e).

The panel decisions and dissents from orders denying rehearing en banc below reflect opposing sides of a well-established circuit split over how to interpret 18 U.S.C. § 3583(e). Relying on and reaffirming the Sixth Circuit's prior published decision in *United States v. Lewis*, 498 F.3d 393 (6th Cir. 2007), the panel decisions held that a court may consider the section 3553(a)(2)(A) factors when revoking supervised release. Four other federal courts—the First Circuit, Second Circuit, Third Circuit, and Seventh Circuit—have also held that a court may consider those factors. *See United States v. Vargas-Dávila*, 649 F.3d 129, 132 (1st Cir. 2011); *United States v. Williams*, 443 F.3d 35, 47 (2d Cir. 2006); *United States v. Young*, 634 F.3d 233, 239 (3d Cir. 2011); *United States v. Clay*, 752 F.3d 1106, 1108 (7th Cir. 2014).

On the other side of the split, four federal courts—the Fourth Circuit, Fifth Circuit, Ninth Circuit, and Tenth Circuit—have held that a court may not consider the section 3553(a)(2)(A) factors. *See United States v. Crudup*, 461 F.3d 433, 439 (4th Cir. 2006) ("According to § 3583(e), in devising a revocation sentence the district court is not authorized to consider whether the revocation sentence 'reflect[s] the seriousness of the offense, . . . promote[s] respect for the law, and . . . provide[s] just punishment for the offense,' § 3553(a)(2)(A), or whether there are other 'kinds of sentences available,' § 3553(a)(3)."); *United States v. Miller*, 634 F.3d 841, 844 (5th Cir. 2011) (holding that a district court revoking supervised release "may not consider

§ 3553(a)(2)(A) because Congress deliberately omitted that factor from the permissible factors enumerated in the statute"); *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006) ("Given that § 3553(a)(2)(A) is a factor that Congress deliberately omitted from the list applicable to revocation sentencing, relying on that factor when imposing a revocation sentence would be improper."); *United States v. Booker*, 63 F.4th 1254, 1261 (10th Cir. 2023) ("[T]he omission of § 3553(a)(2)(A) from the sentencing factors enumerated in § 3583(e) means that a district court may not consider the need for a revocation sentence to (1) 'reflect the seriousness of the offense,' (2) 'promote respect for the law,' and (3) 'provide just punishment for the offense' when modifying or revoking a term of supervised release."). The dissents from orders denying rehearing en banc below adopted the same view. *See* App. at 22a; App. at 28a; App. at 32a; App. at 33a.

Courts and commentators alike have noted the circuit split. For example, the Congressional Research Service issued a report summarizing the state of the law before the Tenth Circuit weighed in:

> On one side of the divide, the U.S. Courts of Appeals for the First, Second, Third, Sixth, and Seventh Circuit have held that federal courts may consider retribution in making revocation decisions. On the other side, the Fourth, Fifth, and Ninth Circuit have concluded that courts either may not consider retribution in these decisions at all or may consider it only to a limited degree.

Dave S. Sidhu, Cong. Research Serv., LSB10929, *Can Retribution Justify the Revocation of Supervised Release? Courts Disagree* 1 (2023).[2] Likewise, prior to authoritative decisions from the Seventh and Tenth Circuits, the Eleventh Circuit observed

2 Available at: https://crsreports.congress.gov/product/pdf/LSB/LSB10929.

that "[t]he First, Second, Third, and Sixth Circuits have concluded that it is not error to consider §3553(a)(2)(A) when revoking supervised release, while the Fourth, Fifth, and Ninth Circuits concluded that it is error." *United States v. Vandergrift*, 754 F.3d 1303, 1308 (11th Cir. 2014) (collecting cases and declining to decide the issue on plain-error review). The amended order in *Esteras* acknowledged that its analysis followed that of only "most" other circuits, App. at 11a, and the dissents from orders denying rehearing en banc below similarly noted "a circuit split," App. at 26a, and "the varying circuit decisions on this issue," App. at 29a.

The *Esteras* amended order further asserted that its conclusion followed the outcomes of all other circuits, claiming that all circuits "still recognize that they [the section 3553(a) factors] may play supporting roles in a district court's analysis." App. at 11a. That is not accurate—the Tenth Circuit expressly rejected that interpretation of section 3583(e). *See Booker*, 63 F.4th at 1260 & n.1. And it highlights a further disagreement among the lower courts. Several circuits, on both sides of the underlying split, have held that "mere reference to § 3553(a)(2)(A) does not necessarily make a revocation sentence per se unreasonable, but that reversible error may occur when the § 3553(a)(2)(A) factor regarding retribution is the primary or predominating justification for a revocation sentence." *Id.* at 1260 n.1. The Tenth Circuit rejected that position and concluded that a court may not consider the section 3553(a)(2)(A) factors even when they are not the primary justification. *Id.* At the other extreme, the Sixth Circuit, in *Lewis* and in the panel decisions below, declined to adopt even the limitation that the section 3553(a)(2)(A) factors may not serve as the primary justification.

See App. at 8a, 55a, 75a; *Lewis*, 498 F.3d at 399-400; *see also* App. at 26a-27a (Moore, J., dissenting from order denying rehearing en banc).

The circuits disagree both about whether courts may consider the section 3553(a)(2)(A) factors when revoking supervised release and, if so, to what extent. The split is deep and pervasive, and the question is ripe for this Court's review.

II. The question presented raises an important and recurring issue fundamental to federal supervised-release-revocation law.

The question presented is fundamental to every revocation of supervised release: what factors the court may consider when deciding the appropriate sanction. And it affects thousands of federal cases each year. There were over 108,000 federal supervision violations from fiscal year 2013 through fiscal year 2017, over 86% of which resulted in a new prison term. *See* U.S. Sentencing Commission, *Federal Probation and Supervised Release Violations* 13, 34 (2020).[3] Of those who had their supervision revoked, the vast majority were serving terms of supervised release, not probation or other supervision. *See* U.S. Courts, Judicial Business 2023, Table E-2 (of 122,824 persons under post-conviction supervision as of September 30, 203, over 110,000 were serving terms of supervised release).[4] As noted by Judge Griffin in his dissents from the orders denying rehearing en banc, the circuit's varying holdings

3 Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200728_Violations.pdf.

4 Available at: https://www.uscourts.gov/statistics/table/e-2/judicial-business/_2023/09/30.

have "enormous consequences" and "widespread impact," warranting this Court's intervention. App. at 28a, 33a.

III. The decisions below are wrong.

The statutory text, this Court's precedent, legislative history, and background constitutional principles establish that courts may not consider the section 3553(a)(2)(A) factors when revoking supervised release.

Start with the text. The supervised-release statute, 18 U.S.C. § 3583, states that, when a person violates a condition of supervised release, the court may revoke supervised release and impose a prison term "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)." 18 U.S.C. § 3583(e)(3). Section 3553(a)(2)(A) is not one of the factors listed for a court to consider. As this Court has instructed, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). Thus, "given that § 3553(a)(2)(A) is a factor that Congress deliberately omitted from the list applicable to revocation sentencing, relying on that factor when imposing a revocation sentence would be improper." *Miqbel*, 444 F.3d at 1182.

Further, this Court has applied the same rule in another subsection of the same statute. Section 3583(e)'s list of factors for consideration is the same as the list in 18 U.S.C. § 3583(c)—the two subsections use identical text. Reviewing the latter subsection, this Court stated: "a court may *not* take account of retribution (the first

purpose listed in § 3553(a)(2)) when imposing a term of supervised release. See § 3583(c)." *Tapia v. United States*, 564 U.S. 319, 326 (2011) (emphasis in original). The Court reaffirmed that conclusion in *Concepcion v. United States*, 597 U.S. ---, 142 S. Ct. 2389, 2400 (2022) ("[I]n determining whether to include a term of supervised release, and the length of any such term, Congress has expressly precluded district courts from considering the need for retribution. See § 3583(c)[.]").

The legislative history confirms this interpretation. Congress enacted sections 3553 and 3583 as part of the Comprehensive Crime Control Act of 1984. *See* Comprehensive Crime Control Act of 1984, Pub. L. 98-473, 98 Stat. 1837. Congress excluded the factors listed in section 3553(a)(2)(A) from the factors for courts to consider both when deciding to impose a term of supervised release, *see* 18 U.S.C. § 3583(c), and when deciding to revoke supervised release and impose a prison sentence, *see* 18 U.S.C. § 3583(e). That decision was intentional. Addressing section 3583(c), the Senate Judiciary Committee stated:

> The Committee has concluded that the sentencing purposes of incapacitation and punishment would not be served by a term of supervised release-- that the primary goal of such a term 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.

S. Rep. No. 98-225, at 124 (1983). The Committee further noted that section 3583(e) permitted district courts to modify or revoke supervised release "after considering the same factors considered in the original imposition of a term of supervised release." *Id.* at 125.

Finally, the constitutional context. By prohibiting courts from considering the section 3553(a)(2)(A) factors when revoking supervised release, Congress drew a careful line that avoided the "serious constitutional questions" that would arise if it did not. *Johnson v. United States*, 529 U.S. 694, 700 (2000). By excluding section 3553(a)(2)(A) from the list in section 3583(e), Congress instructed courts not to consider the need for the sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). Failing to exclude those factors, and thereby allowing courts to consider the need to punish the offender, could run afoul of several constitutional requirements. *See Johnson*, 529 U.S. at 700 (holding that "construing revocation and reimprisonment as punishment for the violation of the conditions of supervised release" would raise "serious constitutional questions").

For example, "[w]here the acts of violation are criminal in their own right, they may be the basis for separate prosecution, which would raise an issue of double jeopardy if the revocation of supervised release were also punishment for the same offense." *Id.* Similarly, because petitioners' supervised-release violations carried a maximum sentence of more than six months in prison, imposing punishment for those violations could run afoul of the right to a jury trial under the Sixth Amendment. *See Baldwin v. New York*, 399 U.S. 66, 69 (1970) (plurality op.); *Duncan v. Louisiana*, 391 U.S. 145, 162 (1968); *see also United States v. Haymond*, 588 U.S. ---, 139 S. Ct. 2369, 2381 (2019) (plurality op.) ("If the government were right, a jury's conviction on one crime would . . . permit perpetual supervised release and allow the

government to evade the need for another jury trial on any other offense the defendant might commit, no matter how grave the punishment.").

The *Esteras* amended order concluded that "this proposed bright-line rule"—Congress's bright-line rule, per the statute's text—was "unworkable" because the "purported forbidden considerations mentioned in § 3553(a)(2)(A) tend to be 'essentially redundant' with the permitted ones." App. at 8a. But that observation cuts against the panel majority's conclusion. If other factors address much of what section (a)(2)(A) covers, there is little reason to rely on the section (a)(2)(A) factors. And what (a)(2)(A) covers that is not covered by the other factors is crucial: factors related to punishment. *See* 18 U.S.C. § 3553(a)(2)(A) ("the need for the sentence imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense); *Miqbel*, 444 F.3d at 1182 (noting that the need to promote respect for the law and reflect the seriousness of the offense "is often intertwined with the concept of punishment, as it is in § 3553(a)(2)(A) itself"). Relying on factors related to punishment in a decision to imprison a person for a supervised-release violation would run afoul of the statute's intent, *see* S. Rep. No. 98-225, at 124 (1983), and potentially violate constitutional guarantees, *see Johnson*, 529 U.S. at 700; *Duncan*, 391 U.S. at 161-62. Courts can avoid those problems by relying solely on the factors that Congress instructed them to rely on, just as Congress intended.

Nor is following the statute as written unworkably difficult to implement. District courts must not rely on the excluded factors. It is unworkable only if a court

considers punishment to be the purpose for addressing a supervised-release violation. *See* App. at 25a-26a (Moore, J., dissenting from order denying rehearing en banc). Punishment is an inherently backward-looking analysis, examining what a person did and determining what sanction is appropriate in retribution. Supervised release is a forward-looking endeavor, tasking courts with managing a person's transition back into society after serving their punishment. *See Haymond*, 139 S. Ct. at 2382 (plurality op.) ("[S]upervised release wasn't introduced to replace a portion of the defendant's prison term, only to encourage rehabilitation *after* the completion of his prison term."); S. Rep. No. 98-225, at 124 (1983) (noting that the "primary goal" of supervised release "is to ease the defendant's transition into the community" and "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"). A court may revoke a person's supervised release only based on forward-looking goals—for example, to provide needed correctional treatment, 18 U.S.C. § 3553(a)(2)(D), to deter them or others from violating supervised release, 18 U.S.C. § 3553(a)(2)(B), or to protect the public from further offenses, 18 U.S.C. § 3553(a)(2)(C)—while the person is transitioning back into society. *See* 18 U.S.C. § 3553(e). Viewing revoking supervised release as a forward-looking endeavor, as Congress intended, does not present courts with an unworkable task.

IV. These cases are ideal vehicles for resolving the question presented.

These cases squarely present whether a court may rely on the section 3553(a)(2)(A) factors when revoking supervised release. In each case, the district

court expressly relied on one or more of the section 3553(a)(2)(A) factors, and the court of appeals reviewed the resulting sentence on the merits and addressed the question presented. *See* App. at 8a-13a, 55a, 75a. The factual and legal issues involved are well developed in the panel orders and dissents from the orders denying rehearing en banc. These cases are thus ideal vehicles for the Court to review and decide the question presented.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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