No. 23-7483

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,

Respondent.

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

BRIEF FOR THE PETITIONERS

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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 terminating, modifying, or revoking supervised release. 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?

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OPINIONS AND ORDERS BELOW

In *United States v. Esteras*, the original order of the court of appeals (JA 117a-120a) is not published. The amended order of the court of appeals (JA 121a-135a) is reported at 88 F.4th 1163 (6th Cir. 2023). The order of the court of appeals denying Esteras's first petition for rehearing en banc (JA 136a-149a) is reported at 88 F.4th 1170 (6th Cir. 2023). The order of the court of appeals denying Esteras's second petition for rehearing en banc (JA 150a-154a) is reported at 95 F.4th 454 (6th Cir. 2024). The order of the district court (JA 110a-116a) is not published.

In *United States v. Jaimez*, the opinion of the court of appeals (JA 229a-236a) is reported at 95 F.4th 1004 (6th Cir. 2024). The order of the district court (JA 227a-228a) is not published.

In *United States v. Leaks*, the order of the court of appeals (JA 249a-251a) is not published in the Federal Reporter but is available at 2024 WL 2196795. The order of the district court (JA 247a-248a) is not published.

JURISDICTION

In *United States v. Esteras*, the court of appeals initially entered judgment on August 16, 2023. The court denied a timely petition for rehearing and entered an amended order and judgment on December 20, 2023. The court denied a second timely petition for rehearing on March 7, 2024.

In *United States v. Jaimez*, the court of appeals entered judgment on March 12, 2024.

In *United States v. Leaks*, the court of appeals entered judgment on March 6, 2024.

Esteras, Jaimez, and Leaks filed a single petition for a writ of certiorari under Supreme Court Rule 12(4) on May 15, 2024, which was granted on October 21, 2024. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 3583(e) of Title 18, United States 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 postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

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

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.

STATEMENT

Unlike every other sentencing option, Congress intended supervised release to fulfill only nonretributive goals. Congress thus omitted 18 U.S.C. § 3553(a)(2)(A)'s retribution factors from the list for courts to consider when imposing, terminating, modifying, or revoking supervised release, thereby precluding courts from considering those factors.

The Sentencing Reform Act ("SRA") lists sentencing factors in 18 U.S.C. § 3553(a), and other provisions instruct courts what to do with those factors when considering the four sentencing options—probation, fine, prison, and

supervised release. Supervised release is different from the others. For the first three options, the applicable statutes include Section 3553(a)(2)(A) among the list of factors for courts to consider when imposing the sentence. For supervised release, the statute omits Section 3553(a)(2)(A). *See* 18 U.S.C. § 3583(c). Similarly, when modifying or revoking probation, the applicable statute includes Section 3553(a)(2)(A) among the list of factors for courts to consider. When modifying or revoking supervised release, the statute omits Section 3553(a)(2)(A). *See* 18 U.S.C. § 3583(e). That difference in language indicates a difference in meaning: courts may not consider the Section 3553(a)(2)(A) factors when imposing supervised release (as both this Court and the Government said in *Tapia v. United States*) and may not consider them when modifying or revoking supervised release.

That difference in language is also no accident. Unlike the other three sentencing options, supervised release does not stand alone. It is a discretionary supplement that follows a prison term. A prison term itself fulfills all the sentencing factors, including the need for retributive punishment under Section 3553(a)(2)(A). The purpose of supervised release, as expressed through the statute's text, is to protect the public while providing rehabilitative support as a defendant transitions out of prison and back into society. The sentencing court imposes conditions to further those forward-looking goals. When a person violates the supervised-release conditions, a court may further those goals by, for example, incarcerating the defendant to protect the public or to compel compliance with the conditions imposed. Backward-looking retributive punishment is a matter for a separate prosecution, if appropriate, and not for a revocation proceeding.

In the decisions below, the court of appeals nevertheless held that Section 3583(e) allows courts to consider Section 3553(a)(2)(A)'s retribution factors when revoking supervised release. That conclusion nullifies the textual differences between Section 3583(e) and its neighboring statutes, and it ignores Congress's distinct purposes for supervised release. To give effect to the text and to reflect Congress's intent as expressed in the SRA, this Court should reverse the judgment of the court of appeals and hold that Section 3583(e) precludes courts from considering the Section 3553(a)(2)(A) factors when modifying or revoking supervised release.

I. Legal Background

Through the Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987, Congress eliminated indeterminate sentencing and parole, replacing that system with determinate sentences (subject to limited exceptions). Recognizing that some offenders would need rehabilitation or other assistance transitioning back into society, Congress created supervised release, a new discretionary supplement to follow a prison sentence. *See* 18 U.S.C. § 3583. Unlike parole, supervised release does not replace a portion of the defendant's prison sentence, but rather supports rehabilitation after a prison sentence is complete. *Id.*; *United States v. Johnson*, 529 U.S. 53, 59 (2000).

In the SRA and subsequent amendments, Congress adopted sentencing factors for courts to consider and specified how those factors apply differently to different sentencing options. *See* 18 U.S.C. §§ 3553(a) (factors); 3562(a) (probation); 3572(a) (fines); 3582(a) (prison);

3583(c) (supervised release). 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—is included in the list of factors for courts to consider when imposing probation, a fine, or prison. *See* 18 U.S.C. §§ 3562(a) (probation); 3572(a) (fine); 3582(a) (prison). It is omitted from the list of factors to consider when imposing supervised release. *See* 18 U.S.C. § 3583(c). Likewise, Section 3553(a)(2)(A) is included in the list of factors for courts to consider when modifying or revoking probation. *See* 18 U.S.C. §§ 3565(a). It is omitted from the list of factors to consider when modifying or revoking supervised release. *See* 18 U.S.C. § 3583(e).

II. Proceedings Below

Edgardo Esteras, Timothy Jaimez (fka Timothy Watters), and Toriano Leaks, Jr., each were charged with and convicted of a federal crime. 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, and the courts revoked supervised release and imposed new terms of incarceration. During their revocation proceedings, the courts expressly relied on one or more of the factors set forth in Section 3553(a)(2)(A). The court of appeals affirmed their sentences.

a. *Edgardo Esteras's 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." JA 94a. The court revoked Esteras's 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. JA 98a, 116a.

Esteras objected that "the Court indicated that it considered factors—the factor in Section 3553(a)(2)(A) as part of its sentence." JA 105a. The district 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. *Id.* In a later written order, the court stated that it "considered the factors and conditions for sentencing listed in 18 U.S.C. § 3553(a) and 3583(d), respectively." JA 115a. 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. JA 116a.

Esteras appealed. In an unpublished order, the Sixth Circuit affirmed Esteras's sentence. Bound by that 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).'" JA 119a (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. JA 121a-135a; JA 136a-137a. The panel majority reaffirmed the holding in *Lewis* that district courts may consider the Section 3553(a)(2)(A) factors when revoking supervised release. JA 128a. Two judges published dissents from the order denying rehearing en banc. JA 137a-149a. Esteras again petitioned for rehearing

en banc, which the court again denied over two published dissents. JA 150a-154a.

b. *Timothy Jaimez's 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. JA 230a. The district court revoked his supervised release and sentenced him to 60 months in prison, the statutory maximum, plus six years of supervised release. JA 215a, 228a.

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." JA 232a. But the panel majority, relying on *Lewis* and *Esteras*, rejected Jaimez's 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.*

c. *Toriano Leaks's 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. JA 239a-241a. The district court revoked his supervised release and sentenced him to 12 months in prison, to be served consecutive to his state sentences. JA 244a, 248a. 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." JA 244a (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 provide just punishment. Relying on *Lewis* and *Esteras*, the Sixth Circuit affirmed. JA 251a.

SUMMARY OF ARGUMENT

By omitting Section 3553(a)(2)(A) from the list of factors to consider when modifying or revoking supervised release, Congress instructed courts not to consider Section 3553(a)(2)(A)'s retribution factors. That is the only conclusion that gives effect to the statutory text, including the text in neighboring statutes that do not omit Section 3553(a)(2)(A). And it reflects Congress's goals in creating supervised release, as reflected in the text, the history of the Sentencing Reform Act, and subsequent amendments: creating a forward-looking framework for courts to protect the public while assisting offenders as they transition back into society.

a. The analysis can begin and end with the text. Congress omitted Section 3553(a)(2)(A) from the list of factors for courts to consider when imposing supervised release and when modifying or revoking supervised release. That omission was intentional, and courts may not add omitted text to a statute. Additionally, at the same time Congress omitted Section 3553(a)(2)(A)'s retribution factors from the supervised-release statute, it included those factors in the lists for courts to consider when imposing prison, probation, or a fine, and it included

them in the list for courts to consider when modifying or revoking probation. Under the negative-implication canon (*expressio unius est exclusio alterius*), Congress thus further instructed courts not to consider the Section 3553(a)(2)(A) factors when imposing, modifying, or revoking supervised release.

Compare the statutes governing probation revocation and supervised-release revocation. Under the former, courts are to consider "the factors set forth in section 3553(a) to the extent that they are applicable." 18 U.S.C. § 3565(a). Under the latter, courts are 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)," omitting Section 3553(a)(2)(A). 18 U.S.C. § 3583(e). Under the interpretation adopted by the court of appeals, that omission makes no difference, and courts can consider any Section 3553(a) factors in either context. But giving effect to the different language in the two provisions, the text establishes that courts may not consider Section 3553(a)(2)(A)'s retribution factors when modifying or revoking supervised release.

b. That conclusion also reflects the history of the SRA and subsequent amendments. Through the SRA, Congress abolished indeterminant sentencing and the practice of using prison to attempt to rehabilitate offenders before releasing them on parole. It created supervised release as a new discretionary supplement to a fixed prison term, used to encourage rehabilitation and assist newly released inmates as they transition back into society. Reflecting Congress's rehabilitative goals, the original statute did not even provide a mechanism for revoking supervised release aside from a new prosecution for criminal contempt or a separate offense. And, as

it does to this day, the statute instructed courts not to consider retribution when modifying supervised release by omitting Section 3553(a)(2)(A) from the list of factors for courts to consider.

Subsequent amendments have reaffirmed Congress's nonretributive goals for supervised release. When Congress amended the supervised-release statute to add a revocation mechanism, it maintained the list that excluded Section 3553(a)(2)(A)'s retribution factors. And Congress has three times amended the statute since then to add other forward-looking factors for courts to consider when imposing, terminating, modifying, or revoking supervised release. It has added Section 3553(a)(2)(C) (the need to protect the public) and (a)(7) (the need to provide restitution), but not Section 3553(a)(2)(A).

c. The interpretation adopted by the court of appeals poses constitutional problems. As this Court has said, construing revocation and subsequent imprisonment as punishment for violating supervised-release conditions would raise serious constitutional questions regarding, for example, the jury-trial right and double-jeopardy protection. But the decisions below allow courts to do exactly that.

d. Applying the text as written is not "unworkable," as the court of appeals said. Excluding the Section 3553(a)(2)(A) factors allows courts to consider all relevant information when modifying or revoking supervised release, filtered through only the purposes of sentencing that Congress has determined apply in that context: deterrence, incapacitation, and rehabilitation, but not retribution. Courts must consider only those purposes

when imposing supervised release, adopting conditions that it deems appropriate for protecting the public while assisting the defendant as he or she transitions back into society. And courts must consider only those purposes when modifying or revoking supervising release, using additional time in custody, if necessary, as a tool to protect the public or compel the defendant into complying with the conditions imposed. If the defendant's conduct is criminal and warrants retributive punishment, a new prosecution is the mechanism, not a revocation sentence. Nothing about this framework is unworkable.

ARGUMENT

I. The plain text of Section 3583 and neighboring statutes dictates that Congress precluded courts from considering Section 3553(a)(2)(A)'s retribution factors when imposing, modifying, or revoking supervised release.

The statutory text alone resolves the question presented. Congress omitted Section 3553(a)(2)(A) from Section 3583's lists of factors for courts to consider when imposing, terminating, modifying, or revoking supervised release. Because courts may not add omitted text to a statute, that omission precludes courts from considering the Section 3553(a)(2)(A) factors. Moreover, while omitting Section 3553(a)(2)(A) from the supervised-release statute, Congress included Section 3553(a)(2)(A) when listing factors for courts to consider in other contexts. Applying the negative-implication canon, and giving effect to the different text in different provisions of the SRA, the omission in Section 3583(e) thus bars consideration of Section 3553(a)(2)(A)'s retribution factors.

a. Congress omitted Section 3553(a)(2)(A) from the list of factors for courts to consider when imposing supervised release and when terminating, modifying, or revoking supervised release. That omission was intentional, and courts may not add omitted text to the statute. The plain text of Section 3583 thus precludes courts from considering Section 3553(a)(2)(A)'s retribution factors.

"It is a fundamental principle of statutory interpretation that 'absent provision[s] cannot be supplied by the courts.'" *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 94 (2012)). Adding omitted provisions "'is not a construction of the statute, but, in effect, an enlargement of it by the court.'" *Nichols v. United States*, 578 U.S. 104, 110 (2016) (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926)). "'To supply omissions transcends the judicial function.'" *Id.* (quoting *Iselin*, 270 U.S. at 251).

In 18 U.S.C. § 3553(a), Congress set forth factors for courts to consider when deciding what sentence to impose. *See* 18 U.S.C. § 3553(a). Subsection (a)(2) requires courts to consider:

> (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)(2). The subsection (a)(2) factors correspond to "retribution, deterrence, incapacitation, and rehabilitation," which are "the four purposes of sentencing generally." *Tapia v. United States*, 564 U.S. 319, 325 (2011).

Section 3583(c) lists factors from Section 3553(a) for courts to consider when imposing supervised release: "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(c). Congress omitted Section 3553(a)(2)(A) from the list.[1]

Through that omission, Congress instructed courts to consider the listed factors, and not Section 3553(a)(2)(A)'s retribution factors, when imposing supervised release. This Court has said as much. *See Tapia*, 564 U.S. at 326 ("These provisions make clear that a particular purpose may apply differently, or not at all, depending on the kind of sentence under consideration. For example, a court may *not* take account of retribution (the first purpose listed in § 3553(a)(2)) when imposing a term of supervised release.

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1. Congress also omitted Section 3553(a)(3), "the kinds of sentences available," from the list of factors in Section 3583(c). When a court is considering whether to impose supervised release following a prison term, supervised release is the only sentence available. *See* 18 U.S.C. § 3583(a).

See § 3583(c)." (emphasis in original)); *see also Concepcion v. United States*, 597 U.S. 481, 495 (2022) (same). So has the Government. *See* Reply Brief for the United States, *Tapia v. United States*, 564 U.S. 319 (2011) (No. 10-5400), 2011 U.S. S. Ct. Briefs LEXIS 451, *20 ("Section 3583(c) explicitly lists each Section 3553(a) factor that courts must consider and omits the factors whose consideration Congress intended to preclude. See 18 U.S.C. 3583(c).").

Similarly, Section 3583(e) lists factors from Section 3553(a) for courts to consider when terminating, modifying, or revoking supervised release. The list is the same as Section 3583(c): "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 as well.[2]

Just as omitting Section 3553(a)(2)(A) from the list of factors in Section 3583(c) means that courts may not consider those factors when imposing supervised release, *Tapia*, 564 U.S. at 326, so does the same omission in Section 3583(e) mean that courts may not consider those factors when terminating, modifying, or revoking supervised release. "The statute says what it says—or perhaps better put here, does not say what it does not say." *Cyan, Inc. v. Beaver County Employees Ret. Fund*, 583 U.S. 416, 426 (2018). "When sentencing a defendant under § 3583(e), a district court may not consider § 3553(a)(2)(A) because Congress deliberately omitted that factor from

2. Congress again omitted Section 3553(a)(3), "the kinds of sentences available," from the list of factors in Section 3583(e). Section 3583(e) itself sets forth the options available to the court. *See* 18 U.S.C. § 3583(e).

the permissible factors enumerated in the statute." *United States v. Miller*, 634 F.3d 841, 844 (5th Cir. 2011); *see also United States v. Booker*, 63 F.4th 1254, 1261 (10th Cir. 2023) (same); *United States v. Crudup*, 461 F.3d 433, 439 (4th Cir. 2006) (same); *United States v. Miqbel*, 444 F.3d 1173, 1182 (9th Cir. 2006) (same).

b. The differences between Section 3583 and neighboring provisions confirm this conclusion. When Congress listed factors for courts to consider when sentencing a defendant, it included Section 3553(a)(2)(A)'s retribution factors when imposing prison, probation, or a fine, but not when imposing supervised release. Likewise, Congress included Section 3553(a)(2)(A) in the list of factors to consider when modifying or revoking probation, but not when modifying or revoking supervised release. Under the principle of *expressio unius est exclusio alterius*, the negative-implication canon, Congress thus instructed courts not to consider the Section 3553(a)(2)(A) factors when imposing supervised release under Section 3583(c) or when modifying or revoking supervised release under Section 3583(e). Applying this principle is the only way to give effect to the different language Congress used in the different sections of the SRA.

"When Congress includes particular language in one section of a statute but omits it from a neighbor, [this Court] normally understand[s] that difference in language to convey a difference in meaning (*expressio unius est exclusio alterius*)." *Bittner v. United States*, 598 U.S. 85, 94 (2023). The Court has referred to this principle as "an ancient maxim," *Nat'l R.R. Passenger Corp. v. Nat'l Ass'n of R.R. Passengers*, 414 U.S. 453, 458 (1974), and a "traditional rule of statutory construction," *Bittner*, 598

U.S. at 94. It has special force where, as here, "Congress includes particular language in one section of a statute but omits it in another section of the same Act." *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted); *see also Gozlon-Peretz v. United States*, 498 U.S. 395, 404-05 (1991) (same).

Congress drafted and enacted the Sentencing Reform Act of 1984, and has amended it since, against this background. The SRA directs judges to sentence all defendants to prison, probation, or a fine, and allows judges to impose a fine in addition to prison or probation. *See* 18 U.S.C. §§ 3551(b) & (c). The Act permits judges to impose supervised release to follow a prison sentence. *See* 18 U.S.C. § 3583(a). And it specifies which factors apply to the different sentencing options, instructing courts to consider:

- for prison, "the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation," 18 U.S.C. § 3582(a);

- for fines, eight listed factors "in addition to the factors set forth in section 3553(a)," 18 U.S.C. § 3572(a);

- for probation, "the factors set forth in section 3553(a) to the extent that they are applicable," 18 U.S.C. § 3562(a); and

- for supervised release, "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(c).

Congress omitted Section 3553(a)(2)(A) from the list of factors only in Section 3583(c).

By including Section 3553(a)(2)(A)'s retribution factors in neighboring statutes but not in Section 3583(c), Congress instructed courts not to consider those factors when imposing supervised release. That conclusion flows from a straightforward application of the negative-implication canon. Congress included "particular language"—Section 3553(a)(2)(A)—in not just "one section of a statute" but several sections of the SRA, while "omit[ting] it from a neighbor"—Section 3583(c). *Bittner*, 598 U.S. at 94. That "difference in language . . . convey[s] a difference in meaning (*expressio unius est exclusio alterius*)." *Id.*; *cf. Concepcion*, 597 U.S. at 495 (noting that, in Section 3583(c), Congress "expressly precluded" district courts from considering the Section 3553(a)(2)(A) factors).

The SRA also specifies which factors apply when courts consider whether to modify or revoke probation or supervised release:

- for probation, "after considering the factors set forth in section 3553(a) to the extent that they are applicable," 18 U.S.C. § 3565(a); and

- for supervised release, "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).

Congress omitted Section 3553(a)(2)(A) from the list of factors only in Section 3583(e).

By including Section 3553(a)(2)(A)'s retribution factors in a neighboring statute but not in Section 3583(e), Congress instructed courts not to consider those factors when modifying or revoking supervised release. That conclusion again flows from a straightforward application of the negative-implication canon.

That is the only interpretation that gives effect to the textual differences between the statutes governing probation and governing supervised release. When imposing and when modifying or revoking probation, the applicable statute instructs courts to consider "the factors set forth in section 3553(a) to the extent that they are applicable." 18 U.S.C. §§ 3562(a), 3565(a). When imposing and when modifying or revoking supervised release, though, the statute 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)," omitting Section 3553(a)(2)(A). 18 U.S.C. §§ 3583(c), (e). If courts could nevertheless consider the (a)(2)(A) factors in supervised-release-revocation proceedings, as the court of appeals concluded, the probation and supervised-release statutes would mean the same thing: consider any Section 3553(a) factors to the extent that they apply.

This Court should "refrain from concluding here that the differing language in the two [provisions] has the same meaning in each." *Russello*, 464 U.S. at 23. Applying the negative-implication canon and giving effect to the language in each provision of the SRA, the text dictates that courts may not consider Section 3553(a)

(2)(A)'s retribution factors when modifying or revoking supervised release.

II. The history of the Sentencing Reform Act and subsequent amendments further demonstrates that Congress intended to preclude courts from considering Section 3553(a)(2)(A)'s retribution factors when modifying or revoking supervised release.

Although the text alone demonstrates that Section 3583(e) bars courts from considering the Section 3553(a)(2)(A) factors when modifying or revoking supervised release, the history of the SRA and later amendments to Section 3583 confirms this understanding. Congress created supervised release to promote rehabilitation after a prison term. Subsequent amendments reaffirmed Congress's forward-looking goals, tasking courts with managing a person's transition back into society after serving their punishment. The revocation provision serves those same goals, giving the sentencing court a tool to compel compliance with the conditions it has determined necessary to rehabilitate the offender and protect the public, but not to impose backward-looking retributive punishment.

a. For most of the 20th century, federal criminal convictions yielded indeterminate sentences. *Mistretta v. United States*, 488 U.S. 361, 363 (1989). Judges imposed prison terms, but parole officials could order a person's release after serving one-third of the stated term. *Tapia*, 564 U.S. at 323. "Both indeterminate sentencing and parole were based on concepts of the offender's possible, indeed probable, rehabilitation, a view that it was realistic

to attempt to rehabilitate the inmate and thereby to minimize the risk that he would resume criminal activity upon his return to society." *Mistretta*, 488 U.S. at 364.

Over time, Congress abandoned that view. "Rehabilitation as a sound penological theory came to be questioned and, in any event, was regarded by some as an unattainable goal for most cases." *Id.* at 365. "Lawmakers and others increasingly doubted that prison programs could 'rehabilitate individuals on a routine basis'—or that parole officers could 'determine accurately whether or when a particular prisoner had been rehabilitated.'" *Tapia*, 564 U.S. at 324 (quoting S. Rep. No. 98-225, at 40 (1983)).

Congress responded by enacting the Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987. The SRA "overhauled federal sentencing procedures to make prison terms more determinate and abolish the practice of parole." *United States v. Haymond*, 588 U.S. 634, 651 (2019) (plurality op.). It requires sentencing judges to impose prison, probation, or a fine for every person convicted of a federal offense. *See* 18 U.S.C. § 3551. And, consistent with Congress's changed view on rehabilitation, the SRA instructs judges imposing prison terms to "recogniz[e] that imprisonment is not an appropriate means of promoting correction and rehabilitation." 18 U.S.C. § 3582(a). This provision bars courts "from imposing or lengthening a prison term in order to promote a criminal defendant's rehabilitation." *Tapia*, 564 U.S. at 321.

Having eliminated parole, Congress created supervised release as "a unique method of post-confinement

supervision." *Gozlon-Peretz*, 498 U.S. at 407. Unlike parole, a supervised-release term is a separate part of the sentence, imposed at the judge's discretion, to follow a determinate prison term. *See* 18 U.S.C. § 3583(c); S. Rep. No. 98-225, at 123 (1983); Fiona Doherty, *Indeterminate Sentencing Returns: The Invention of Supervised Release*, 88 N.Y.U.L. Rev. 958, 998 (2013). And unlike parole, "supervised 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." *Haymond*, 588 U.S. at 652 (plurality op.) (emphasis in original); *see also Johnson*, 529 U.S. at 59 ("Congress intended supervised release to assist individuals in their transition to community life. Supervised release fulfills rehabilitative ends, distinct from those served by incarceration."); S. Rep. No. 98-225, at 124 ("[T]he 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.").

The SRA's text reflects Congress's different goals for the different sentencing provisions. To punish the offender, Congress instructed courts to impose prison, probation, or a fine for every offense. *See* 18 U.S.C. § 3551. And when imposing any of these sanctions, Congress instructed courts to consider all the Section 3553(a)(2) factors, including the retribution factors in Section 3553(a)(2)(A): 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. *See* 18 U.S.C. § 3582(a) (prison); 18 U.S.C. § 3562(a) (probation); 18 U.S.C. § 3572(a) (fine).

Reflecting the rehabilitative goals of supervised release, though, the SRA instructed courts imposing supervised release not to consider the retribution or incapacitation factors in Section 3553(a)(2)(A) or (C), by intentionally omitting those provisions from Section 3583(c)'s list of factors for courts to consider.[3] *See* Sentencing Reform Act of 1984, § 3583(c), 98 Stat. at 1999; S. Rep. No. 98-225, at 124 ("The Committee has concluded that the sentencing purposes of incapacitation and punishment would not be served by a term of supervised release."). And Congress used the same list, reflecting the same goals, when instructing courts what to consider when addressing a violation of supervised release. *See* Sentencing Reform Act of 1984, § 3583(e), 98 Stat. at 2000; *see also* S. Rep. No. 98-225, at 124 (noting that Section 3583(e) directs the court to "consider[ ] the same factors considered in the original imposition of a term of supervised release").

Comparing supervised release with probation is again instructive. Because judges may select probation as the complete sentence for an offense, *see* 18 U.S.C. § 3551, Congress instructed courts to consider all the applicable Section 3553(a) factors when imposing it, *see* Sentencing Reform Act of 1984, § 3562(a), 98 Stat. at 1992. But because supervised release follows a prison sentence that the sentencing court has concluded satisfies the Section 3553(a) factors, and because supervised release is a discretionary supplement that fulfills more limited goals, Congress instructed courts not to consider the Section

3. Congress has since amended Section 3583(c) to add Section 3553(a)(2)(C), the need to protect the public, as a permissible factor. *See infra* Section II.d.

3553(a)(2)(A) or (C) factors. *See* Sentencing Reform Act of 1984, § 3583(c), 98 Stat. at 1999; *see also* S. Rep. No. 98-225, at 125 ("The term of supervised release is very similar to a term of probation, except that it follows a term of imprisonment and may not be imposed for purposes of punishment or incapacitation since those purposes will have been served to the extent necessary by the term of imprisonment.").

The same distinction between probation and supervised release applies to modification and revocation. Historically, a probation sentence was based on "suspend[ing] . . . a defendant's prescribed prison term and afford[ing] him a conditional liberty as an 'act of grace,' subject to revocation." *Haymond*, 588 U.S. at 643 (plurality op.). The SRA retained from prior practice that probation "remains conditional and subject to revocation until its expiration or termination." Sentencing Reform Act of 1984, § 3564(e), 98 Stat. at 1994. Thus, for a probation violation, the SRA instructed courts to consider all the applicable Section 3553(a) factors and allowed courts to either modify the term or revoke probation and conduct a plenary resentencing. *See* Sentencing Reform Act of 1984, § 3565(a), 98 Stat. at 1995. For supervised release, in contrast, the SRA restricted what factors courts may consider—including precluding consideration of Section 3553(a)(2)(A)'s retribution factors—and limited courts' options for addressing a violation. *See* Sentencing Reform Act of 1984, § 3583(e), 98 Stat. at 2000. Those textual differences convey different meanings that reflect Congress's different goals.

This Court has recognized the differences between probation and supervised release in the SRA. *United*

States v. Granderson, 511 U.S. 39, 50 (1994) ("Supervised release, in contrast to probation, is not a punishment in lieu of incarceration."). It has also refused to construe "differently worded probation and supervised release revocation provisions . . . *in pari materia*." *Id.* at 51. It should refuse to do so here as well.

b. Consistent with the rehabilitative goals of supervised release, the SRA originally did not include revocation as an option for a court to address a violation. As first enacted, Section 3583(e) stated that a court "may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6)," terminate supervised release, modify the conditions, or "treat a violation of a condition of a term of supervised release as contempt of court pursuant to section 401(3) of this title." Sentencing Reform Act of 1984, § 3583(e), 98 Stat. at 2000. If a violation constituted a new criminal offense, the defendant could also be prosecuted for that offense. *See* S. Rep. No. 98-225, at 125. Once charged with contempt or another offense, the defendant was entitled to full criminal due-process protections, including the right to a jury trial if facing imprisonment for more than six months. *See Int'l Union, Mine Works of Am. v. Bagwell*, 512 U.S. 821, 826-27 (1994). If convicted, the defendant would face a new sentencing hearing where the court could consider all the relevant sentencing factors, including the retribution factors under Section 3553(a)(2)(A). *See* 18 U.S.C. § 3551. But the SRA did not provide a truncated proceeding by which a court could impose time in custody for violating supervised-release conditions. *See* Doherty, *supra*, at 999-1000.

The original structure of the SRA thus confirms again that, when Congress omitted Section 3553(a)(2)(A) from

the list in Section 3583(e), it meant to instruct courts not to consider those factors. When considering whether to terminate or modify supervised release, retributive punishment was beside the point, and the court could consider only the listed factors. Only after a separate conviction for criminal contempt or a new offense would Section 3553(a)(2)(A) come back into play.

c. Before the SRA took effect, Congress amended Section 3583(e) to add a revocation option. Even then, it did not amend Section 3583(e)'s list of factors for courts to consider and thus reaffirmed that Section 3553(a)(2)(A)'s retribution factors remained impermissible.

The Anti-Drug Abuse Act of 1986 added new paragraph (4) to Section 3583(e), permitting a court to:

> revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.

Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1006(a)(3)(D), 100 Stat. 3207, 3207-7. Congress later deleted paragraph (3) and its reference to criminal contempt. *See* Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7108(b)(3), 100 Stat. 4181, 4419.

Neither amendment added Section 3553(a)(2)(A) to Section 3583(e)'s list of factors to consider.

Although the 1986 amendment provided a more direct procedure to imprison those who violated supervised-release conditions, it did not indicate that retribution was a permissible consideration. By continuing Section 3553(a)(2)(A) as an omitted factor in Section 3583(e)'s list, the 1986 amendment maintained the prior meaning of that omission and provided further evidence that Congress did not intend Section 3583(e) to include retributive punishment. The statute continued to "say[ ] what it says—or perhaps better put here . . . not say what it does not say." *Cyan, Inc.*, 583 U.S. at 426.

d. Since the SRA took effect in 1987, Congress has repeatedly amended Section 3583 to revise the factors for courts to consider when imposing, terminating, modifying, or revoking supervised release, but it has never added Section 3553(a)(2)(A)'s retribution factors. The Sentencing Act of 1987 added Section 3553(a)(2)(C), the need to protect the public, as a factor listed in Section 3583(c) for courts to consider when imposing supervised release. *See* Sentencing Act of 1987, Pub. L. No. 100-182, § 9, 101 Stat. 1266, 1267. The Anti-Drug Abuse Act of 1988 added the same provision to Section 3583(e)'s list of factors to consider when modifying or revoking supervised release. *See* Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, tit. VII, § 7108(b)(1), 100 Stat. at 4419. And in 2002, Congress added Section 3553(a)(7), the need to provide restitution, to both Section 3583(c) and (e). *See* 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, div. B, tit. III, § 3007, 116 Stat. 1758, 1806 (2002).

Congress thus has shown repeatedly that it adds factors to Section 3583(c) and (e) when it means to instruct courts to consider those factors. None of those amendments would be necessary if, as the court of appeals held, Sections 3583(c) and (e) already permitted courts to consider any Section 3553(a) factor.

III. The interpretation adopted by the court of appeals would raise serious constitutional questions.

Construing Section 3583(e) as the court of appeals did would threaten to violate the Constitution. If left to stand, the decisions below would allow district courts to impose retributive punishment for violating supervised-release conditions. As this Court has observed, "construing revocation and reimprisonment as punishment for the violation of the conditions of supervised release" would raise "serious constitutional questions." *Johnson v. United States*, 529 U.S. 694, 700 (2000). For one, "violative conduct need not be criminal and need only be found by a judge under a preponderance of the evidence standard, not by a jury beyond a reasonable doubt." *Id.*; *see also Haymond*, 588 U.S. at 650 (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."); 21 U.S.C. § 841 (authorizing a supervised release term of up to life for distributing any amount of a controlled substance in schedules I through IV). Also, "[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." *Johnson*, 529 U.S. at 700.

"Treating postrevocation sanctions as part of the penalty for the initial offense, however (as most courts have done), avoids these difficulties." *Id.* But the same difficulties arise if courts expressly impose retributive punishment for a violation, as happened here. *See* JA 244a. The statute as written raises no such problems. As the text dictates and as Congress intended, Section 3583(e) precludes courts from considering the retribution factors in Section 3553(a)(2)(A) when revoking supervised release.

IV. In the plain text of Section 3583(e), Congress provided a workable, forward-looking framework for courts to follow when modifying or revoking supervised release.

The court of appeals concluded that it would be "unworkable" for courts to avoid considering Section 3553(a)(2)(A)'s retribution factors both when imposing supervised release and when modifying or revoking supervised release. *See* JA 128a, 130a. That is mistaken.

Take Section 3583(c) first, which governs what factors courts may consider when imposing supervised release. Applying the text's plain meaning, courts may not consider the Section 3553(a)(2)(A) factors when imposing supervised release. The court of appeals suggested this would be possible only if the judge "adjourn[ed] the hearing after imposing a sentence," then "start[ed] over with a new unblemished inquiry into the right term of supervised release." JA 130a. It reasoned that "Congress could not have expected courts to wipe their minds of these concerns when they move from one type of sentence to the other." *Id.*

This Court has twice said otherwise. *See Concepcion*, 597 U.S. at 495; *Tapia*, 564 U.S. at 326. Nothing about that is unworkable. Judges are well able to apply different considerations for different purposes. *Cf. Williams v. Illinois*, 567 U.S. 50, 69 (2012) ("When the judge sits as the trier of fact, it is presumed that the judge will understand the limited reason for the disclosure of the underlying inadmissible information and will not rely on that information for any improper purpose."). And other courts of appeals have laid out workable guidelines for ensuring that sentencing courts differentiate between their reasons for prison and for supervised release. *See, e.g.*, *United States v. Wilcher*, 91 F.4th 864, 872 (7th Cir. 2024) ("To help navigate this area, we have encouraged district courts to separate out their discussions of prison time and supervised release when the reason for imposing one cannot apply to the other."); *United States v. Burden*, 860 F.3d 45, 57 (2d Cir. 2017) (noting that, when a court bases its prison sentence substantially on the Section 3553(a)(2)(A) factors, "it would be advisable for the district court to separately state its reasons for the term of supervised release imposed").

Concerning modifying or revoking supervised release under Section 3583(e), the court of appeals said that disregarding the Section 3553(a)(2)(A) factors would be unworkable in a different way—because "the purportedly forbidden considerations mentioned in § 3553(a)(2)(A) tend to be essentially redundant with the permitted ones." JA 128a (internal quotation marks omitted). But that reasoning proves the opposite, and it highlights the importance of applying the text as written, consistent with Congress's intent. If other factors address much of what Section 3553(a)(2)(A) covers, there is little reason to rely

on the (a)(2)(A) factors. And what (a)(2)(A) covers that is not covered by the other factors is crucial: factors related to retributive 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"); *Tapia*, 564 U.S. at 325 (noting that Section 3553(a)(2)(A) reflects retribution as a purpose of sentencing).

Excluding the Section 3553(a)(2)(A) factors thus allows courts to consider all relevant information, but filtered through only the purposes of sentencing that Congress has determined apply when modifying or revoking supervised release: deterrence, incapacitation, and rehabilitation, but not retribution. *See Tapia*, 564 U.S. at 325. For example, courts may consider "the nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), as it relates to any other permissible factor. But the seriousness of the offense, 18 U.S.C. § 3553(a)(2)(A), is not the same as the nature and circumstances, and Congress distinguished between the two by placing them in separate subsections in Section 3553(a). *See Kungys v. United States*, 485 U.S. 759, 778 (1988) (opinion of Scalia, J.) (noting the "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant"). The nature and circumstances of the offense may relate to any sentencing purpose; in Section 3553(a)(2)(A), seriousness relates to retributive punishment. *See Tapia*, 564 U.S. at 325; *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"). Congress excluded the latter, and any overlap between Section 3553(a)(2)(A) and the other factors makes it all the more important for courts to

avoid relying on the impermissible consideration inherent to (a)(2)(A): retributive punishment.

Nothing about Section 3583(c) or (e) as written is unworkable. District courts simply must rely only on the listed factors, fulfilling Congress's forward-looking goals for supervised release. Retributive 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 project, giving courts tools to manage a person's transition back into society by imposing conditions to rehabilitate the offender and protect the public. *See* 18 U.S.C. § 3583(c). Section 3583(e) gives courts an additional tool to compel compliance with those conditions, allowing modification or revocation based on those same goals—for example, to provide needed correctional treatment, 18 U.S.C. § 3553(a)(2)(D), or to protect the public from further offenses, 18 U.S.C. § 3553(a)(2)(C). *See* 18 U.S.C. § 3583(e). Viewing supervised release as a forward-looking project, as Congress intended, does not present courts with an unworkable task. It reflects Congress's statutory design, and courts "must implement the design Congress chose." *Lora v. United States*, 599 U.S. 453, 464 (2023).

This Court should give effect to the SRA's text and hold that 18 U.S.C. § 3583(e) precludes district courts from considering Section 3553(a)(2)(A)'s retribution factors when modifying or revoking supervised release.

CONCLUSION

The judgments of the court of appeals should be reversed.

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