No. 07-1295

In the Supreme Court of the United States

TERRANCE LAMONT LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

According to 18 U.S.C. 3583(e)(3) (2000 & Supp. V 2005), when a district court finds that a defendant violated a condition of supervised release, it "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)[,] * * * 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." Section 3553(a)(2)(A), which is not listed among the sections that the district court must consider, refers to the need for a sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense."

The question is whether the district court erred, upon the revocation of petitioner's supervised release, when it included the considerations stated in 18 U.S.C. 3553(a)(2)(A) among the multiple reasons for the sentence it imposed.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 498 F.3d 393.

JURISDICTION

The judgment of the court of appeals was entered on August 13, 2007. A petition for rehearing was denied on December 21, 2007 (Pet. App. 17a-18a). On March 14, 2008, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including April 18, 2008, and the petition was filed on April 11, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a hearing, the United States District Court for the Middle District of Tennessee revoked petitioner's

term of supervised release and sentenced him to six months of home detention followed by 24 months of supervised release. The court of appeals affirmed. Pet. App. 1a-16a.

1. When a district court determines that a defendant has "violated a condition of supervised release," it "may, after considering the factors set forth in [18 U.S.C.] 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)[,] * * * revoke [the] 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." 18 U.S.C. 3583(e)(3) (2000 & Supp. V 2005). The factors enumerated in Section 3583(e) are:

> the nature and circumstances of the offense and the history and characteristics of the defendant,

18 U.S.C. 3553(a)(1);

> the need for the sentence imposed * * * to afford adequate deterrence to criminal conduct,

18 U.S.C. 3553(a)(2)(B);

> the need for the sentence imposed * * * to protect the public from further crimes of the defendant,

18 U.S.C. 3553(a)(2)(C);

> the need for the sentence imposed * * * to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner,

18 U.S.C. 3553(a)(2)(D);

> the kinds of sentence and the sentencing range established for[,] * * * in the case of a violation of

> probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to [28 U.S.C. 994(a)(3), which includes guidelines and policy statements about the revocation of supervised release],

18 U.S.C. 3553(a)(4)(B) (Supp. V 2005);

> any pertinent policy statement * * * issued by the Sentencing Commission pursuant to [28 U.S.C. 994(a)(2), which applies to any aspect of sentencing that would further the purposes of 18 U.S.C. 3553(a)(2)],

18 U.S.C. 3553(a)(5)(A) (Supp. V 2005);

> the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,

18 U.S.C. 3553(a)(6); and

> the need to provide restitution to any victim of the offense,

18 U.S.C. 3553(a)(7). Section 3583(e) omits required consideration of the factors identified in 18 U.S.C. 3553(a)(2)(A), which addresses "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." 18 U.S.C. 3553(a)(2)(A).

2. On September 5, 1995, after a guilty plea, petitioner was convicted of possession of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). Pet. App. 2a. On November 30, 1995, he was sentenced to 137 months of imprisonment to be followed by five years of supervised release. *Ibid*. On June 4, 1999, the sen-

tencing court reduced petitioner's term of incarceration to 92 months of imprisonment.[1] *Ibid*. Petitioner began serving his five-year term of supervised release on October 26, 2001. *Ibid*.

3. On February 16, 2006, the United States Probation Office filed a petition to revoke petitioner's supervised release, on the basis of multiple violations of the conditions of release. Pet. App. 2a-3a. After a hearing, the district court found that petitioner had violated the conditions of his supervised release by (1) failing to "notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer"; (2) failing to "submit a truthful and complete written report within the first five days of each month" on multiple occasions; (3) failing to "answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer" by refusing to provide the "address where he reside[d] for the majority of the week even after admitting that he did not stay at his reported residence more than 'a couple nights per week'"; and (4) failed to "permit the probation officer to visit him at home or elsewhere." *Id*. at 3a, 19a-20a.

On the basis of petitioner's criminal history and the nature of his violations of supervised release, the applicable policy statement of the United States Sentencing Commission recommended, upon revocation of supervised release, a term of imprisonment between 5 and 11 months, Sentencing Guidelines § 7B1.4(a), though it also recommended that the district court use its discretion to determine that any term of detention of six months or

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[1] The reduction was made on the government's motion under Fed. R. Crim. P. 35(b), in light of petitioner's substantial assistance in the investigation or prosecution of another case.

less can be served in a halfway house or home detention rather than prison, *id.* § 7B1.3(c)(1).

Having found that petitioner committed multiple violations of the conditions of his supervised release, the district court revoked petitioner's supervised release and sentenced him to six months of home detention to be followed by 24 months of supervised release. Pet. App. 3a, 22a, 24a, 27a. During the period of home detention, petitioner was specifically permitted to leave home for his employment and for other activities pre-approved by his probation officer, including activities with his children. *Id.* at 15a, 31a. In its written statement of reasons for imposing the revocation sentence, the district court explained in part:

> The reasons for the sentence imposed are as follows: to reflect the seriousness of the offense; to promote respect for the law; to provide just punishment; to provide an adequate deterrence to [petitioner] and others from criminal conduct; and to protect the public from future crimes of [petitioner] and of others who may participate in similar offenses.

Id. at 11a.

4. The court of appeals affirmed the revocation sentence. Pet. App. 1a-16a. It first rejected petitioner's argument that the district court had abused its discretion in determining that petitioner violated the terms of his supervised release. *Id.* at 3a-8a. (Petitioner does not reassert that argument in this Court. Pet. 6 n.3.) The court of appeals then considered and rejected petitioner's argument that the district court had committed a procedural error when imposing a revocation sentence by considering a Section 3553(a) factor that is not included in the list in Section 3583(e). Pet. App. 8a-15a.

The court of appeals 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)." Pet. App. 13a. Focusing on the statutory language, the court explained that Section 3583(e) "provides merely that the [district] court 'may, after considering the [specified] factors . . . revoke a term of supervised release.' It does not state that a court may revoke supervised release after '*only* considering' the enumerated factors." *Id.* at 13a-14a. The court recognized conflicting views among the courts of appeals, but concluded that its approach, shared by the Second Circuit, was the sounder statutory interpretation. *Id.* at 13a.

The court of appeals also observed that "the three considerations in § 3553(a)(2)(A) * * * are essentially redundant with matters courts are already permitted to take into consideration when imposing sentences for violation of supervised release." Pet. App. 14a. It noted that the district court is specifically authorized to consider the Section 3553(a)(1) factor of the "nature and circumstances of the offense." *Ibid.* Quoting this Court's observation that a "violation of the terms of supervised release tends to confirm the judgment that help was necessary" to aid the prisoner's adjustment into the community, *Johnson* v. *United States*, 529 U.S. 694, 709 (2000), the court of appeals concluded that such "help" includes assisting the supervisee to "learn to obey the conditions of his supervised release—in other words, that he learn to respect the law." Pet. App. 14a. The court of appeals also noted that the Sentencing Commission's introduction to its policy statements on the revocation of supervised release explain that "the sentence imposed upon revocation . . . [is] intended to sanction

the violator for failing to abide by the conditions of the court-ordered supervision." *Id.* at 15a (citation omitted); see also Sentencing Guidelines Ch. 7, Pt. A(3)(b). From that statement, the court inferred that, "although violations of supervised release generally do not entail conduct as serious as crimes punishable under the § 3553(a) regime, revocation sentences are similarly intended to 'sanction,' or, analogously, to 'provide just punishment for the offense' of violating supervised release." Pet. App. 15a. In sum, the court of appeals reasoned that, "[g]iven that the three considerations in § 3553(a)(2)(A) are consistent with considerations already permissible for revocation sentences, the fact that § 3583(e) does not require that courts consider § 3553(a)(2)(A) does not mean that courts are forbidden to consider that factor, and the fact that a sentencing court does consider § 3553(a)(2)(A) is not error." *Ibid.*

The court of appeals concluded that "[t]he sentence in this case was thus neither unreasonable nor plainly unreasonable." Pet. App. 15a.[2] The court observed that the duration of the revocation sentence was toward the bottom of range in the Guidelines policy statement and that the district court permitted petitioner to serve his term of confinement by home detention. *Ibid.*

ARGUMENT

Petitioner argues (Pet. 8-18) that there is a conflict among the courts of appeals about whether a district court, upon revocation of supervised release, may consider the factors identified in Section 3553(a)(2)(A) in

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[2] Because it found that petitioner's sentence was neither unreasonable nor plainly unreasonable, the court of appeals declined to decide the standard for reviewing a revocation sentence in light of *United States* v. *Booker*, 543 U.S. 220 (2005). See Pet. App. 8a-10a.

addition to the other criteria that are expressly enumerated in Section 3583(e). Despite the existence of a still-evolving circuit conflict, review by this Court is not warranted. The court of appeals correctly construed the statute not to prohibit district courts from considering unlisted factors in determining whether to revoke supervised release and reincarcerate a defendant. Moreover, there is no indication that the circuit split will have any significant effect on revocation decisions, and no reason to believe that petitioner, in particular, would have been treated more leniently if the district court had not considered the Section 3553(a)(2)(A) factors. Even if this Court were to grant the petition for a writ of certiorari, the case would very likely become moot upon the expiration of petitioner's revocation sentence, absent imposition of a highly expedited schedule for briefing and argument, followed by an unusually rapid issuance of a decision before November 2008.

1. The court of appeals correctly determined that Section 3583(e) should not be construed as limiting the factors that a district court may consider when determining whether to revoke supervised release and reincarcerate a defendant.

a. Section 3583(e) is permissive in nature. By its plain terms, it provides that the district court

> *may*, after considering [certain] factors set forth in [Section 3553(a)]—
>
> (1) terminate a term of supervised release * * * ;
>
> (2) extend a term of supervised release * * * , and may modify, reduce, or enlarge the conditions of supervised release * * * ;
>
> (3) revoke a term of supervised release, and require the defendant to serve in prison all or

> part of the term of supervised release * * * if the court * * * finds by a preponderance of the evidence that the defendant violated a condition of supervised release * * * ; or
>
> (4) order the defendant to remain at his place of residence during nonworking hours.

18 U.S.C. 3583(e) (2000 & Supp. V 2005) (emphasis added). The list of enumerated factors includes eight of the ten factors in Section 3553(a) but does not mention Section 3553(a)(2)(A) or (a)(3). As petitioner concedes (Pet. 23), however, "Congress did not expressly state that the listed considerations are the 'only' factors that can be considered or that the excluded factors cannot be considered."

In the context of Section 3583(e)—which addresses an aspect of criminal sentencing and which enumerates criteria for the district court to consider in deciding whether to increase *or* decrease either the length or the conditions of a term of supervised release—it is reasonable to conclude that Congress did not intend to cabin district courts' discretion by implicitly putting some factors entirely beyond their reach. Although petitioner invokes (Pet. 19-20, 23) certain traditional canons of statutory construction to argue otherwise, those canons are not implicated in this context. The court of appeals' reading—which *requires* a district court to consider the factors that are enumerated in Section 3583(e) but *does not require* consideration of other factors—is perfectly consistent with the idea that Congress "act[ed] intentionally and purposely" in deciding to incorporate only parts of Section 3553(a) in Section 3583(e). *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (citation omitted). Similarly, expressly requiring the court to consider some factors can certainly imply that other factors are

not required to be considered, as the *expressio unius* canon would counsel (Pet. 23), without necessarily *prohibiting* the consideration of such other factors.

The court of appeals' reading is consistent with petitioner's claim that the list of factors was intended to "focus attention on the specific purposes of the sentencing process." Pet. 20 (quoting S. Rep. No. 225, 98th Cong., 1st Sess. 119 (1983)). Requiring the consideration of some factors focuses attention even if there is no simultaneous prohibition on the consideration of other factors. And the court of appeals' reading is consistent with the general policy, expressed in the statute itself, that judges have broad discretion to consider matters they find relevant to sentencing. See 18 U.S.C. 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.").

b. As the court of appeals explained (Pet. App. 14a-15a), petitioner's reading of the statute draws an artificial and untenable line between Section 3553(a)(2)(A) and the factors that are enumerated in Section 3583(e). Petitioner acknowledges that a district court issuing a sentence upon revocation of supervised release may consider, among other factors, "the nature and circumstances of the offense," "the history and characteristics of the defendant," the need to "afford adequate deterrence," the need to "protect the public from further crimes of the defendant," and the "policy statements" of the Sentencing Commission about the revocation of supervised release. 18 U.S.C. 3553(a)(1), (a)(2)(B), (a)(2)(C); 18 U.S.C. 3553(a)(4)(B) (Supp. V 2005). In this context, those policy statements expressly acknowledge

the need to "sanction * * * the defendant's breach of trust [in violating the terms of supervised release]," and the need to "tak[e] into account, to a limited degree, the seriousness of the underlying violation." Sentencing Guidelines Ch. 7, Pt. A(3)(b).

Effective consideration of those factors will often intrinsically justify consideration of the need "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment." 18 U.S.C. 3553(a)(2)(A). As the Second Circuit has explained, it is hard to "see how" a district court "could possibly ignore the seriousness of the offense" while evaluating many of the other permissible factors, including "'adequate deterrence,'" protecting "the public from 'further crimes of the defendant,'" and "'the nature and circumstances of the offense.'" *United States* v. *Williams*, 443 F.3d 35, 48 (2006) (quoting 18 U.S.C. 3553(a)(1), (a)(2)(B), and (a)(2)(C)). Similar analysis applies to the other prongs of Section 3553(a)(2)(A). Aspects of the need "to promote respect for the law, and to provide just punishment" pursuant to Section 3553(a)(2)(A) are often intertwined with and thus encompassed by the consideration of "the nature and circumstances of the offense," "the history and characteristics of the defendant," and the need to "sanction * * * the defendant's breach of trust." 18 U.S.C. 3553(a)(1); 18 U.S.C. 3553(a)(4)(B) (Supp. V 2005); Sentencing Guidelines Ch. 7, Pt. A(3)(b).

2. As the facts of this case illustrate, the difference between the court of appeals' permissive approach and petitioner's prohibitive approach is not likely to make a practical difference in most revocation sentences—aside from dictating the labels that district courts must use when exercising their sentencing discretion. Under petitioner's view, district courts would simply need to avoid

attributing to the wrong subparts of Section 3553(a) their *permissible* consideration of "the nature and circumstances of the offense," the "the history and characteristics of the defendant," and the need to "sanction" the defendant.

There is little likelihood that petitioner's own revocation sentence was adversely affected by the district court's consideration of the Section 3553(a)(2)(A) factors. The district court was concerned about petitioner's record of defying the very concept that the probation officer was entitled to supervise him while he was on supervised release. Thus, the district court was entitled to sanction petitioner for his refusal to, among other things, tell the probation officer "where he admittedly spends the majority of his time." Pet. App. 20a. In doing so, the court tried to convince petitioner to abandon his "argumentative, defiant stance" and realize that "[e]verybody[] that's under supervision has to undergo the same kind of scrutiny." *Id.* at 32a. Such concerns do not reflect a primary focus on "just punishment" as opposed to rehabilitation and the need to sanction petitioner for his prior breach of trust.

The sentence that resulted bears out the reasonableness of the district court's approach. Petitioner received a revocation sentence of six months of home detention, followed by 24 months of supervised release. The sentencing range recommended by the Guidelines policy statement—which the district court was indisputably *required* to take into account—went from 5 months of home detention to 11 months of incarceration in prison. Sentencing Guidelines §§ 7B1.3(c)(1), 7B1.4(a). Despite petitioner's concern that the district court was unduly punitive, the district court selected the most lenient form of incarceration (home detention) and a time period

very near the low end of the range. Petitioner articulates no reason why his sentence, in light of the range recommended by the policy statement, should have been even lower than it was.

3. Petitioner overstates the extent of the conflict within the courts of appeals by claiming that the "two-to-two split acknowledged by the Sixth Circuit" is "considered and entrenched." Pet. 14. Although the court of appeals assumed that it was siding with the Second Circuit against the Fourth and Ninth Circuits (Pet. App. 13a), neither the Fourth nor the Ninth Circuit is as restrictive as petitioner implies.[3]

Petitioner himself acknowledges that the Ninth Circuit has "clarified" that at least one of the just-punishment factors may in fact be considered "in the course of evaluating the criminal history of the defendant"—as long as that factor is not the "'sole[]'" or "'primar[y]'" basis for the revocation sentence. Pet. 9 n.5 (quoting *United States* v. *Simtob*, 485 F.3d 1058, 1062-1063 (9th Cir. 2007) (emphasis omitted)). Petitioner provides no explanation why that result is consistent with his assumption (Pet. 24-25) that there can be no redundancy among the various subparts of the Section 3553(a) factors.

Yet, even assuming that there is a meaningful difference in practice between the Ninth Circuit and the decision below, the Fourth Circuit has not clearly taken the Ninth Circuit's side. Although *United States* v. *Crudup*, 461 F.3d 433 (4th Cir. 2006), cert. denied, 127 S. Ct. 1813 (2007), stated that a district court considering a revocation sentence is "not authorized to consider" the factors

[3] As petitioner recognizes (Pet. 11-13), other circuits appear to have applied a permissive interpretation of Section 3583(e) in cases where the question was not squarely presented.

in Section 3553(a)(2)(A), 461 F.3d at 439, that statement was dicta insofar as the district court in that case had not invoked Section 3553(a)(2)(A) in justifying its sentence and the defendant had not argued that any impermissible factors were considered. See *id.* at 435, 440. Subsequent cases from the Fourth Circuit are more consistent with the permissive view of the Second and Sixth Circuits. Thus, in *United States* v. *Moulden*, 478 F.3d 652 (2007), the Fourth Circuit characterized Section 3583(e) as standing for the proposition that a district court "*must* * * * consider the applicable § 3553(a) factors," but said nothing about what it is *prohibited* from considering. *Id.* at 656 (emphasis added).[4] In fact, *Moulden* elsewhere noted that a revocation sentence "should aim *to* '*sanction* the violator for failing to abide by the conditions of the court-ordered supervision,' and *to punish* the inherent 'breach of trust' indicated by the defendant's behavior." *Id.* at 655 (emphases added) (quoting Sentencing Guidelines Ch. 7, Pt. A(3)(b)). Although it comes from the Fourth Circuit, such open recognition of the district court's ability to "sanction" and "punish" is not consistent with petitioner's principal ar-

[4] Petitioner describes *Moulden* as "noting that a court revoking supervised release may consider 'just some of' the factors listed in 18 U.S.C. § 3553(a)." Pet. 10. The line petitioner quotes comes from a paraphrase of the defendant's unsuccessful argument in that case, rather than the court's own description of the law. Nevertheless, even that quotation speaks only to what the district court "must" consider, as opposed to anything that it may be *prohibited* from considering. See 478 F.3d at 656 ("Moulden urges that, because a court imposing a sentence upon revoking a defendant's probation must consider all § 3553(a) factors—rather than just some of those factors, as is the case when revoking supervised release—a probation revocation sentence is indistinguishable from the usual guidelines sentence for purposes of our review.") (citations omitted).

gument (Pet. 20-24) that revocation cannot serve "punitive" purposes.

Furthermore, since the petition was filed, the Third Circuit has indicated (albeit in an unpublished opinion) its agreement with the Second and Sixth Circuits. See *United States* v. *Kay*, No. 07-4708, 2008 WL 2569341 (June 30, 2008). In *Kay*, the court held that the district court did not commit clear error if it "considered the seriousness of [the defendant's] crimes in" refusing to terminate supervised release under Section 3583(e), because, "as the United States Courts of Appeals for the Second and Sixth Circuits have already held, the consideration of whether the sentence reflects the seriousness of an offender's crime is not limited to § 3553(a)(2)(A), but is expressed redundantly in the *other factors courts are required to consider* under § 3583(e)." *Id.* at *3 (emphasis added).

Given these developments in the evolving case law, and the seemingly convergent results, petitioner's claim that the conflict in the circuits is fully "considered," "de[e]p[]," "entrenched," and unlikely to develop further in light of future cases is considerably overstated. Pet. 14-15.

4. Finally, even if this Court were to issue a writ of certiorari to review this case, it would very likely become moot if the Court did not significantly expedite briefing and argument on the merits and issue its decision quickly, because the sentence that petitioner challenges is scheduled to expire by November 1, 2008.

"It has long been settled that a federal court has no authority 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" *Church of Scientology* v. *United States*,

506 U.S. 9, 12 (1992) (quoting *Mills* v. *Green*, 159 U.S. 651, 653 (1895)). Thus, "[t]o qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks and citation omitted). "[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party," *Church of Scientology*, 506 U.S. at 12 (citation omitted), or that deprives that party of a "legally cognizable interest in the outcome," *City of Erie* v. *Pap's A.M.*, 529 U.S. 277, 287 (2000) (citation omitted), the appeal must be dismissed for want of Article III jurisdiction.

The completion of a criminal defendant's sentence normally does not moot an appeal challenging his conviction. See *Sibron* v. *New York*, 392 U.S. 40, 57-58 (1968). But the analysis is different when a defendant challenges only his sentence. See *Spencer* v. *Kemna*, 523 U.S. 1, 7-8 (1998). In *Spencer*, this Court held that the petitioner's challenge to an order revoking his parole became moot when "[t]he reincarceration that he incurred as a result of that action" was completed and could not "be undone." *Id.* at 8. The Court explained that, unlike a conviction, the mere revocation of parole does not have sufficiently concrete "collateral consequences" to constitute injury-in-fact for purposes of Article III jurisdiction. *Id.* at 12-18; see also *Lane* v. *Williams*, 455 U.S. 624, 631 (1982) ("Since respondents elected only to attack their sentences, and since those sentences expired during the course of these proceedings, this case is moot.").

For the same reasons, a defendant's challenge to a sentence imposed upon revocation of supervised release

will become moot when that sentence is completed. See, *e.g.*, *United States* v. *Mazzillo*, 373 F.3d 181, 182 (1st Cir. 2004) ("An appeal from an order revoking supervised release is ordinarily moot if the sentence is completed before the appeal is decided."); *United States* v. *Meyers*, 200 F.3d 715, 722 (10th Cir. 2000) ("[W]hen a defendant appeals the revocation of his supervised release and resulting imprisonment and has completed that term of imprisonment, the potential impact of the revocation order and sentence on possible later sentencing proceedings does not constitute a sufficient collateral consequence to defeat mootness.").

In this case, petitioner does not challenge the revocation of his supervised release, but only the sentence that was imposed upon revocation. See Pet. 6 n.3. He has not argued that his revocation sentence imposes any concrete injury that will continue, and still be redressable, after his sentence ends. Accordingly, when that sentence is complete, it is likely that he will no longer have any legally cognizable interest in having that sentence invalidated, and his appeal will become moot.[5]

Petitioner's six-month term of home detention began on May 1, 2006. See Pet. App. 21a (listing May 1, 2006 as "Date of Imposition of Judgment"); *id.* at 22a (ordering that home detention "be served immediately"); see also Dist. Ct. Amended Notice of Appeal (appealing "the

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[5] Indeed, because petitioner does not challenge the basis for the decision to revoke his supervised release, his case would become moot upon completion of his sentence even under the reasoning of Justice Stevens's dissenting opinion in *Spencer*. See 523 U.S. at 22-23 (distinguishing a case in which the defendant "challenges the factual findings on which his parole revocation was based" from *Lane*, in which the defendants "simply sought to challenge their sentences; yet because they had been released by the time the case reached us, the case was moot").

sentence imposed by the District Court on May 1, 2006, revoking his supervised release entered on the docket on May 4, 2006"). Thus, petitioner's 24 months of supervised release—and the entirety of his sentence upon revocation—are scheduled to expire by November 1, 2008. As a result, even if the Court is inclined to grant certiorari on the question presented, in order to complete this case before it could be expected to become moot, the Court would need to expedite merits briefing and oral argument, and issue a decision on the merits with unusual dispatch.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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