No. 98-1696

In the Supreme Court of the United States

OCTOBER TERM, 1998

UNITED STATES OF AMERICA, PETITIONER

v.

ROY LEE JOHNSON

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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QUESTION PRESENTED

Whether a federal criminal defendant's term of supervised release commences on the date of his actual release from prison or on the earlier date on which he should have been released in accordance with a retroactively applied change in the law.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-8a) is reported at 154 F.3d 569. The opinion of the district court (App., *infra*, 9a-17a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 1998. A petition for rehearing was denied on January 21, 1999. App., *infra*, 18a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of Title 18 of the United States Code are reproduced at App., *infra*, 19a-26a.

STATEMENT

1. In 1990, after a jury trial in the United States District Court for the Eastern District of Michigan, respondent was convicted on five counts: two counts of possession of narcotics with intent to distribute them, in violation of 21 U.S.C. 841(a); two counts of use of a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c); and one count of possession of a firearm after having previously been convicted of a felony, in violation of 18 U.S.C. 922(g). He was sentenced to a total of 171 months' imprisonment, consisting of three concurrent 51-month terms on the Section 841(a) and Section 922(g) counts, to be followed by two consecutive 60-month terms on the Section 924(c) counts. The court imposed a mandatory three-year term of supervised release on the Section 841(a) counts. See 21 U.S.C. 841(b)(1)(C). The court of appeals, while otherwise affirming respondent's convictions and sentence, held that the district court erred in imposing consecutive terms of imprisonment on the two Section 924(c) counts. On remand, the district court vacated one of respondent's Section 924(c) convictions, thereby reducing his total term of imprisonment to 111 months. App., *infra*, 1a-2a, 10a-11a.

After this Court's decision in *Bailey* v. *United States*, 516 U.S. 137 (1995), respondent filed a motion, pursuant to 28 U.S.C. 2255, to vacate his remaining conviction under 18 U.S.C. 924(c). He contended that the conviction was predicated on a construction of Section 924(c) that was rejected by this Court in *Bailey*. The United States did not oppose the motion. The district court

vacated the Section 924(c) conviction and, because respondent had served more than the 51 months' imprisonment to which he had been sentenced on his remaining convictions, ordered his immediate release from prison. App., *infra*, 2a, 12a.

Respondent then moved to vacate the remainder of his three-year term of supervised release on the Section 841(a) counts. He argued that his term of supervised release should be reduced to account for the two and one-half years that he spent in prison as a result of the Sixth Circuit's erroneous interpretation of Section 924(c). The district court denied the motion. App., *infra*, 15a-17a. The court relied on both the text and the purpose of the statutory provisions governing supervised release. The court explained that 18 U.S.C. 3624(e) provides that a person's "term of supervised release commences on the day the person is released from imprisonment" and "does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State or local crime." App., *infra*, 15a (quoting 18 U.S.C. 3624(e)). The court also recognized that "supervised release and imprisonment fulfill distinct purposes," because supervised release, unlike imprisonment, is designed "to aid the defendant's transition from incarceration to life in the community." *Ibid.*

2. A divided panel of the Sixth Circuit reversed. The panel held that respondent's term of supervised release began on "the date he was entitled to be released" from prison under a sentence that excluded the subsequently vacated Section 924(c) conviction, "rather than the day he walked out the prison door." App., *infra*, 4a.

The panel acknowledged that the text of 18 U.S.C. 3624(e), if "[r]ead in isolation," would support the dis-

trict court's position that a person's term of supervised release does not begin until he is actually released from prison. App., *infra*, 4a. But the panel believed that such a reading would be inconsistent with 18 U.S.C. 3624(a), another section of the same statute, which states that "[a] prisoner shall be released by the Bureau of Prisons on the date of the expiration of [his] term of imprisonment." The panel viewed Section 3624(a) as "embod[ying] Congress's intent that a prisoner not be held in prison following the expiration of a valid prison term." App., *infra*, 4a. "In light of th[at] policy," the panel held that respondent, whose Section 924(c) conviction was invalid, should not be considered to have been "imprisoned in connection with a conviction for a Federal . . . crime," within the meaning of Section 3624(e), during his final two and one-half years in prison. *Ibid.* (quoting 18 U.S.C. 3624(e)).

The panel rejected the argument that incarceration and supervised release serve distinct purposes and, accordingly, that prison time cannot be credited against time on supervised release. The panel acknowledged that supervised release is primarily designed to serve rehabilitative purposes, but placed emphasis on the conclusion that supervised release "is also punitive in nature." App., *infra*, 5a.

The panel expressly noted the circuit conflict on the question. App., *infra*, 3a. It "decline[d] to follow the position * * * adopted by the First and Eighth Circuits," in *United States* v. *Joseph*, 109 F.3d 34 (1st Cir. 1997), and *United States* v. *Douglas*, 88 F.3d 533 (8th Cir. 1996) (per curiam), and instead chose to follow the Ninth Circuit's decision in *United States* v. *Blake*, 88 F.3d 824 (1996). App., *infra*, 4a.

Judge Gilman dissented. He argued that reducing a defendant's term of supervised release to account for

excess time served in prison "is contrary to both the plain language and the purpose of 18 U.S.C. § 3624(e)." App., *infra*, 6a. He viewed the text of Section 3624(e) as "clear and unconditional in its requirements" that a term of supervised release begin only when "the person is released from imprisonment" and "not run during any period in which the person is imprisoned." *Id.* at 6a-7a (quoting 18 U.S.C. 3624(e)). He also observed that the purpose of supervised release—"to facilitate the integration of the violator into the community, while providing the supervision designed to limit further criminal conduct"—is not served until the violator is actually in the community. *Id.* at 7a (internal quotation marks omitted). Finally, he pointed out that 18 U.S.C. 3583(e), which permits a district court to cut short a term of supervised release after one year if "warranted by the conduct of the defendant released and the interest of justice," provides a means for individuals such as respondent to be excused from a lengthy term of supervised release. App., *infra*, 8a.

The United States filed a petition for rehearing and suggested rehearing en banc. The court of appeals denied rehearing en banc, noting that "less than a majority of the judges ha[d] favored the suggestion." Judge Gilman would have granted panel rehearing. App., *infra*, 18a.

REASONS FOR GRANTING THE PETITION

The court of appeals held in this case that a federal criminal defendant's term of supervised release begins not on the date on which he is actually released from prison, but on the earlier date on which he should have been released under a retroactively applied change in the law. Any excess time that the defendant has spent in prison, as a result of a conviction or sentence that is

subsequently vacated, is thus credited against any time that he still must spend on supervised release. That decision deepens a conflict among the courts of appeals. The First, Fifth, and Eighth Circuits have all held that a defendant's term of supervised release cannot commence until he has, in fact, walked out the prison door. The Ninth Circuit, like the Sixth Circuit in this case, has reached a contrary conclusion. The position of the Sixth and Ninth Circuits is inconsistent, moreover, with the text and purpose of the statutes governing supervised release. Not only has Congress described a term of supervised release as commencing "after imprisonment," 18 U.S.C. 3583(a), not during imprisonment. But Congress has specifically provided that a "term of supervised release commences on the day the person is released from imprisonment" and "does not run during any period in which the person is imprisoned." 18 U.S.C. 3624(e). Congress did not carve out any exception to that straightforward rule for defendants, such as respondent here, whose term of imprisonment is reduced to less than time served. Nor is the purpose of supervised release—to facilitate the successful integration of newly released prisoners into the community—advanced if excess prison time can be credited against time on supervised release. An individual's need for monitoring and guidance as he reenters society is not diminished merely because he has spent more time in prison than is provided by his corrected sentence. Because the issue in this case is recurring and important, the court of appeals' erroneous holding warrants this Court's review.

1. There is a square conflict among the circuits about whether a district court, after reducing a defendant's term of imprisonment to less than time served because of a retroactively applied change in the law, must credit

the defendant's excess time in prison against the time that he still must spend on supervised release. The Sixth Circuit answered that question in the affirmative in this case. The court concluded that a defendant's term of supervised release must be deemed to have commenced "on the date he should have been released [from prison] according to his revised sentence," not on the date that he was actually released from prison after the revised sentence was imposed. App., *infra*, 1a. The court's decision is consistent with the Ninth Circuit's ruling in *United States* v. *Blake*, 88 F.3d 824, 825 (1996), which concluded that a defendant's term of supervised release begins on the date that he should have been released from prison under a retroactive application of a clarifying amendment to the Sentencing Guidelines, and not on the date of his actual release.

In contrast, the First, Fifth, and Eighth Circuits have held that "supervised release terms commence on the actual release date," not the date on which the defendant should have been released under a revised sentence. *United States* v. *Joseph*, 109 F.3d 34, 35 (1st Cir. 1997); accord *United States* v. *Jeanes*, 150 F.3d 483, 485 (5th Cir. 1998); *United States* v. *Douglas*, 88 F.3d 533, 534 (8th Cir. 1996) (per curiam).[1] Those courts have thus concluded that a defendant is not "entitled to reduction or termination of his supervised release term as compensation for the time served on [a] wrongful conviction and sentence." *Jeanes*, 150 F.3d at 485. *Joseph* and *Jeanes*, like the present case, involved defendants whose convictions under 18 U.S.C. 924(c) were vacated on the authority of *Bailey* v. *United*

[1] A panel of the Tenth Circuit applied the same rule in an unpublished disposition. *United States* v. *Jaramillo*, No. 98-2005, 1998 WL 536387 (Aug. 18, 1998).

States, 516 U.S. 137 (1995). *Douglas*, like *Blake*, involved a defendant whose sentence was reduced as a result of a retroactively applied amendment to the Sentencing Guidelines.[2]

The court of appeals acknowledged the circuit conflict on the question presented by this case, observing that "[t]he First and Eighth Circuits have adopted a contrary approach" than has the Ninth Circuit. App., *infra*, 3a (citing *Joseph*, *Douglas*, and *Blake*). It then expressly "decline[d] to follow the position * * * adopted by the First and Eighth Circuits." *Id.* at 4a. The conflict has also been recognized by other courts. See *Joseph*, 109 F.3d at 37-38 (citing *Douglas* and *Blake*); *United States* v. *Reider*, 103 F.3d 99, 103 (10th Cir. 1996) (noting "contrary approach[es]" of *Douglas* and *Blake*); *United States* v. *Penn*, 17 F. Supp. 2d 440, 442 (D. Md. 1998) (noting "disagree[ment]" between *Joseph* and *Blake*).

2. The court of appeals erred in holding that a defendant's term of supervised release commences either on the date that he is actually released from prison or on the date that he should have been released

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[2] The Sentencing Guidelines have since been amended so as to prevent the result reached in *Blake*. Under the amended Guidelines provision, while a court may reduce a term of imprisonment because of a retroactive reduction in the applicable Guidelines range, "in no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served." Sentencing Guidelines § 1B1.10(b). Accordingly, a retroactive amendment of the Guidelines cannot result in the conclusion that a prisoner should have been released at an earlier date than time served. The Ninth Circuit's reasoning in *Blake*, however, would still apply to defendants whose terms of imprisonment are held invalid, after the date on which they should have been released, for other reasons, *e.g.*, the retroactive invalidation of a conviction because of a change in the law defining the offense.

under his revised sentence, whichever is earlier. As the dissenting judge explained, such a holding "is contrary to both the plain language and the purpose" of the statutory provisions governing supervised release. App., *infra*, 6a.

a. The statutory term "supervised release," even standing alone, undermines the court of appeals' position. The word "release" is an antonym of the words "detention" and "imprisonment." See William D. Lutz, *The Cambridge Thesaurus of American English* 387 (1994) (release/detention); *The Penguin Dictionary of English Synonyms and Antonyms* 344 (1992) (release/imprisonment); see also *Webster's Dictionary of Synonyms* 690 (1942) ("release" is an antonym of "[d]etain (*as a prisoner*)"). In accordance with common English usage, then, a defendant cannot be both imprisoned and released at the same time. Cf. *Reno* v. *Koray*, 515 U.S. 50, 57 (1995) (contrasting "release" and "detention" under the Bail Reform Act of 1984, 18 U.S.C. 3141 *et seq.*).

Congress intended that a term of supervised release was to begin after, not during, a term of imprisonment. The statute authorizing district courts to impose supervised release as part of a defendant's sentence, 18 U.S.C. 3583, is titled "Inclusion of a term of supervised release *after imprisonment*" (emphasis added). The initial sentence of that statute states that "[t]he court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release *after imprisonment*." 18 U.S.C. 3583(a) (emphasis added). The Senate Report on the provision that became Section 3583 is in accord. See S. Rep. No. 225, 98th Cong., 1st Sess. 123 (1983) ("This section permits the court, in imposing a term of

imprisonment for a felony or a misdemeanor, to include as part of the sentence a requirement that the defendant serve a term of supervised release *after he has served the term of imprisonment*.") (emphasis added); see also *Gozlon-Peretz* v. *United States*, 498 U.S. 395, 407 (1991) ("[s]upervised release is a unique method of post-confinement supervision invented by the Congress").

Congress's intent that a defendant's term of supervised release begin only after his actual release from prison is confirmed by 18 U.S.C. 3624(e), the statutory provision titled "SUPERVISION AFTER RELEASE."[3] Section 3624(e) states that a person's "term of supervised release commences on the day [he] is released from imprisonment" and "does not run during any period in which [he] is imprisoned in connection with a conviction for a Federal, State, or local crime." That language is clear, straightforward, and unambiguous. It cannot sensibly be construed to mean that a term of supervised release begins *either* on the date of release *or* on some earlier date on which a person should have been released under a retroactively applied change in the law. See *Joseph*, 109 F.3d at 38 (recognizing that "the language in § 3624(e) must be given its plain and literal meaning," *i.e.*, that "a person's term of supervised release does not begin until the person has been released from prison") (quoting *Quinones* v. *United States*, 936 F. Supp. 153, 155 (S.D.N.Y. 1996)).

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[3] Section 3582, which is part of the chapter of the Criminal Code titled "SENTENCES," is primarily concerned with the district courts' role at the time of sentencing with respect to supervised release. Section 3624(e), which is part of the chapter of the Criminal Code titled "POSTSENTENCE ADMINISTRATION," is concerned with the implementation of a sentencing term imposing supervised release.

The court of appeals conceded in this case that Section 3624(e), "[r]ead in isolation, * * * undercut[s] [respondent's] argument that he should receive credit for the extra time he spent in prison" against his term of supervised release. App., *infra*, 4a. The court reasoned, however, that Section 3624(e) must be read together with Section 3624(a), which states that "[a] prisoner shall be released by the Bureau of Prisons on the date of the expiration of [his] term of imprisonment." But Section 3624(a) does not speak to the issue here. It surely does not suggest that a defendant's term of imprisonment should be deemed to "expir[e]" on any date other than that dictated by the sentence imposed by the district court. A contrary construction of Section 3624(a) would suggest that the Bureau of Prisons itself must determine whether a defendant's term of imprisonment has "expir[ed]" as of some earlier date based on a change in the law. That is the sort of determination that Congress, in 28 U.S.C. 2255, has assigned exclusively to the sentencing court.

b. The conclusion that a term of supervised release commences only when a defendant is actually released from prison—and not on an earlier date when, in retrospect, he should have been released—comports with Congress's principal purpose in authorizing district courts to include a term of supervised released in a defendant's sentence. Congress explained 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. 225, *supra*, at 124. Congress added that supervised release was not

designed to serve "the sentencing purposes of incapacitation and punishment." *Ibid.*; see also Sentencing Guidelines § 5D1.1, Application Note 1 (recognizing that the purposes of supervised release include "to protect the public welfare" and "to assist the reintegration of the defendant into the community").

Congress thus contemplated that supervised release would serve purposes distinct from incarceration. It would aid a defendant in making his "transition into the community" after his release from prison—for example, by assisting him in obtaining vocational training, medical treatment, or substance abuse counseling. See Sentencing Guidelines § 5D1.3 (enumerating mandatory and discretionary conditions of supervised release). It would at the same time provide a measure of security to the community into which the defendant is released by enabling the United States Probation Office to monitor him during the transition period. Those purposes cannot effectively be served until the defendant is present in the community. The mere fact that a defendant has spent more time in prison, serving a sentence that is subsequently invalidated, offers no assurance that his transition into the community will be any less problematic. To the contrary, as the Senate Report recognized, a defendant who is returning to the community "after the service of a long prison term" may be particularly in need of supervision. S. Rep. No. 225, *supra*, at 124. The court of appeals thus erred in treating prison time as interchangeable with time on supervised release. See *Joseph*, 109 F.3d at 38-39 ("[S]upervised release is intended to facilitate the integration of the violator into the community, while providing the supervision designed to limit further criminal conduct. * * * Incarceration, to the contrary, does nothing to assist a defendant's transition back into

society and is not a reasonable substitute for a portion of the supervised release term.") (internal quotation marks omitted).

c. A defendant is not without a means of seeking relief from an unduly harsh term of supervised release. Congress has provided that a district court may "terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release * * * if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." 18 U.S.C. 3583(e)(1). As the Fifth Circuit has suggested, in assessing whether a defendant's supervised release should be terminated early in "the interest of justice," a district court "may take into account the fact that a defendant served time under a wrongful conviction and sentence." *Jeanes*, 150 F.3d at 485; accord *Joseph*, 109 F.3d at 39.[4]

3. This case presents an important and recurring issue of federal law. Whenever this Court concludes that the substantive scope of a federal criminal statute does not reach as far as some or all courts of appeals

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[4] As noted above, the Sentencing Commission has similarly provided that, in cases where a defendant has served more time in prison than would be required under an amendment to the Sentencing Guidelines, the district court cannot reduce the defendant's sentence to less than time served. Sentencing Guidelines § 1B1.10(b). The court may, however, take the defendant's excess prison time into account as part of the totality of circumstances bearing on whether to grant a motion for early termination of supervised release under Section 3583(e)(1), although "the fact that a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guideline range shall not, without more, provide a basis for early termination of supervised release." Sentencing Guidelines § 1B1.10, Application Note 5.

had thought, as occurred in *Bailey*, many defendants incarcerated for violations of the statute may successfully move to have their convictions vacated. Cf. *Bousley* v. *United States*, 523 U.S. 614 (1998). And those motions may often result in a reduction in such a defendant's total term of imprisonment to less than the time that he has already served. In virtually any case in which the defendant also was convicted under another statute that was not affected by the Court's decision, the defendant still is potentially subject to a term of supervised release after his discharge from prison. See Sentencing Guidelines § 5D1.1 (providing that "[t]he court *shall* order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed, or when required by statute," and "*may* order a term of supervised release to follow imprisonment in any other case") (emphases added).

The question whether such a defendant may be required to serve his full term of supervised release, or is entitled to a reduction or termination of that term as compensation for the excess time that he spent in prison, is significant for the government, recently released defendants, and the communities into which they are released. It affects the extent to which the United States Probation Office may exercise supervision over many recently released defendants—supervision that Congress and the Sentencing Commission have deemed vital to such defendants' transition into society. See S. Rep. No. 225, *supra*, at 124; Sentencing Guidelines § 5D1.1. The question has divided the circuits that have recently considered it in cases involving convictions vacated as a result of *Bailey*. It will continue to do so until resolved by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APRIL 1999

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 97-1151

ROY LEE JOHNSON, PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA, RESPONDENT-APPELLEE

Argued: August 4, 1998
Decided: August 26, 1998

OPINION

Before: MERRIT, KENNEDY, and GILMAN, Circuit Judges.

MERRITT, Circuit Judge.

This appeal from the District Court's partial denial of petitioner Roy Lee Johnson's motion to modify his sentence under 28 U.S.C. § 2255 raises a single issue: When a criminal defendant's sentence of imprisonment is reduced below the time he has already served, does his term of supervised release commence on the date of his actual release or on the date he should have been released according to his revised sentence?

In 1990 a jury convicted Johnson of five separate offenses: (1) possession with intent to distribute cocaine

in violation of 21 U.S.C. § 841(a); (2) use of firearms during and relating to the cocaine trafficking offense in violation of 18 U.S.C. § 924(c); (3) possession with intent to distribute Dilaudid in violation of § 841(a); (4) use of a firearm during and relating to the Dilaudid trafficking offense in violation of § 924(c); and (5) possession of a firearm after having previously been convicted of a felony in violation of 18 U.S.C. § 922(g). Johnson's sentence of 171 months imprisonment included two consecutive five-year terms for the § 924(c) offenses. The court also imposed a three-year term of supervised release on the drug charges. A panel of this Court affirmed the conviction in all respects, but on rehearing, we held that the District Court erred in sentencing Johnson to consecutive terms of imprisonment for the two § 924(c) violations. *United States v. Johnson*, 25 F.3d 1335, 1337-38 (6th Cir. 1994) (en banc). In August 1994, District Judge Horace Gilmore resentenced Johnson to concurrent five-year terms for the § 924(c) convictions. Johnson filed a motion under 28 U.S.C. § 2255 in March 1996, and Judge Gilmore vacated the two § 924(c) convictions in light of the Supreme Court's new decision in *Bailey v. United States*, 516 U.S. 137, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995). Because Johnson had already served more time in prison than called for under the revised sentence, Judge Gilmore ordered his immediate release. He refused, however, to credit the extra time Johnson served in prison toward his three-year term of supervised release.

On appeal, Johnson argues that his term of supervised release should be deemed to have commenced on the date on which he was entitled to be released in light of *Bailey*. The relevant statute provides that a person's "term of supervised release commences on the day the

person is released from imprisonment," and that a "term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime." 18 U.S.C. § 3624(e). Another portion of the statute states that a "prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment." 18 U.S.C. § 3624(a). Relying on the language of § 3624(a), Johnson contends that we should consider "the day he [was] released from imprisonment" for purposes of § 3624(e) to be the date he was entitled to be released under *Bailey*'s interpretation of § 924(c) and the resulting revised sentence.

Our Court has not yet addressed the question raised by Johnson's appeal, but several other courts have considered the issue. In *United States v. Blake*, 88 F.3d 824 (9th Cir. 1996), the Ninth Circuit held that the defendants' terms of supervised release commenced on the day they should have been released from prison pursuant to the retroactive application of a clarifying amendment to the Sentencing Guidelines, and not on the date of their actual release. Based on the language of § 3624(a) and on the "obvious purpose of leniency in applying the revised sentencing guidelines retroactively," the *Blake* Court read the statute as "setting the date of release, and consequently the commencement of a supervised release term, at the time a prisoner's term expires." *Id.* at 825. The First and Eighth Circuits have adopted a contrary approach. Relying on the language of § 3624(e) and on the different purposes of imprisonment and supervised release, they have held that supervised release commences on the date the offender is actually released from prison. *See United States v. Joseph*, 109 F.3d 34 (1st Cir. 1997);

United States v. Douglas, 88 F.3d 533 (8th Cir. 1996) (per curiam).

In this case, we decline to follow the position advocated by the government and adopted by the First and Eighth Circuits in *Joseph* and *Douglas*. Read in isolation, the text of § 3624(e) appears to undercut Johnson's argument that he should receive credit for the extra time he spent in prison. However, the language of § 3624(e) must be considered in the context of the entire provision rather than in isolation. *United States v. Brown*, 536 F.2d 117,121 (6th Cir. 1976)("[I]t is fundamental that a section of a statute should not be read in isolation from the context of the whole statute.") (internal quotation marks and brackets omitted); *see also Third National Bank v. Impac Ltd., Inc.*, 432 U.S. 312, 320-21 (1977), 97 S. Ct. 2307, 58 L. Ed. 2d 368. Reading § 3624(e) out of context would be particularly inappropriate in this case because it is clear that Congress did not consider the effect of the retroactive invalidation of sentences when it drafted the statute. Section 3624(a), which requires that a prisoner "be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment," embodies Congress's intent that a prisoner not be held in prison following the expiration of a valid prison term. Johnson was not released from prison until two and a half years after the valid portion of his prison term expired. In light of the policy underlying subsection (a), we hold that Johnson was not "imprisoned in connection with a conviction for a Federal . . . crime" during these two and a half years because the conviction for which he was being held was invalid. Likewise, we conclude that the date of his "release" for purposes of the § 3624(a) was the

date he was entitled to be released rather than the day he walked out the prison door.

The government maintains that while imprisonment serves primarily to punish and incapacitate the offender, "supervised release is intended to facilitate 'the integration of the violator into the community, while providing the supervision designed to limit further criminal conduct.'" *Joseph*, 109 F.3d at 38-39 (quoting U.S.S.G. Ch. 7, Pt. A4, p.s.). In light of these distinct purposes, it contends that there is no basis for crediting the extra time Johnson spent in prison toward his supervised release term. We agree that rehabilitation is a primary purpose of supervised release, but supervised release is also punitive in nature. *See* S. Rep. No. 98-225, 98th Cong., 2d Sess., *reprinted in* 1984 U.S.C.C.A.N. 3182, 3306-08 (discussing purposes of supervised release); *United States v. Gilchrist*, 130 F.3d 1131, 1134 (3d Cir. 1997) ("Supervised release is punishment; it is a deprivation of some portion of one's liberty imposed as a punitive measure for a bad act."), *cert. denied*, __ U.S. __, 118 S. Ct. 1307, 140 L.Ed. 2d 472 (1998). Indeed, we doubt that Johnson would have brought this appeal otherwise.

The government also contends that Johnson's claim is more appropriately directed to the District Court pursuant to 18 U.S.C. § 3583(e), which authorizes the sentencing court to "terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." *See United States v. Spinelle*, 41 F.3d 1056, 1060-61 (6th Cir. 1994) (statute requiring

district court to impose three-year term of supervised release did not deprive district court of separate authority under § 3583(e) to terminate supervised release after completion of one year). Under the circumstances, we decline to hold that § 3583(e) is the only avenue of relief available to Johnson. That provision would do him little good, since he might complete the remainder of his three-year term before the District Court considered such a motion.

For the reasons stated, we hold that Johnson's term of supervised release commenced at the end of the valid fifty-one month portion of his prison term. The judgment of the District Court denying Johnson's request for the termination of his term of supervised release is REVERSED.

GILMAN, Circuit Judge, dissenting.

The majority adopts the Ninth Circuit's approach in *United States v. Blake*, 88 F.3d 824 (9th Cir. 1996), holding that a prisoner's term of supervised release should be reduced to account for any excess time served in prison. Because I believe that such an approach is contrary to both the plain language and the purpose of 18 U.S.C. § 3624(e), I dissent. *See United States v. Joseph*, 109 F.3d 34, 38-39 (1st Cir. 1997), and *United States v. Douglas*, 88 F.3d 533, 534 (8th Cir. 1996); *see also* S. Rep. No. 98-225, 98th Cong., 2d Sess., *reprinted in* 1984 U.S.C.C.A.N. 3182, 3306-08 (discussing purposes of supervised release).

The statute clearly states that a person's "term of supervised release commences on the day the person is released from imprisonment," and that "[a] term of supervised release does not run during any period in

which the person is imprisoned in connection with a conviction." 18 U.S.C. § 3624(e). The majority states that this language must be read in light of the language in § 3624(a) that "[a] prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment." The majority concludes that this language alters subsection (e) to mean that a prisoner begins his term of supervised release on the date he *was* released from custody or *should have been released* from custody, whichever first occurs. This approach is inconsistent with the language of subsection (e), which is clear and unconditional in its requirements. The majority is thus attempting to fashion an equitable remedy for a perceived injustice.

Giving Johnson credit toward his term of supervised release for the excess time in prison, however, does not satisfy the purpose of the statute. Although Congress did not provide for the situation presented in this case, it is clear that the purpose of supervised release is to "facilitate 'the integration of the violator into the community, while providing the supervision designed to limit further criminal conduct.'" *Joseph*, 109 F.3d at 38-39 (quoting U.S.S.G. Ch. 7, Pt. A, cmt. 4, and refusing to "invent some form of automatic credit or reduction . . . to compensate for . . . increased incarceration."). In contrast, imprisonment serves primarily to punish and incapacitate offenders. *Id.* at 39. Nonetheless, the majority holds that we may properly adjust the supervised release term to account for the extra time Johnson served in prison because "supervised release is also punitive in nature."

The terms of supervised release may indeed be fairly restrictive. In my opinion, however, that fact should

not cause this court to simply trade-off between a term of imprisonment and a term of supervised release. The fallacy of such reasoning is that a prisoner is not being reintegrated into society while still incarcerated. In an effort to do equity, the majority may be causing more harm than good by announcing a rule of law that excuses a prisoner under the circumstances of this case from participating in a program of supervised reintegration into society.

While Johnson's case is compelling (he served two and one-half years in prison on a sentence that was later revoked), it should be noted that his sentence was not imposed erroneously at the time of sentencing. Rather, his sentence was revoked by a retroactively applied interpretation of the applicable statute by the Supreme Court in *Bailey v. United States*, 516 U.S. 137, 116 S. Ct. 501, 133 L. Ed. 2d 472 (1995). Under such circumstances, I believe that a more appropriate avenue for relief is an application to the district court under 18 U.S.C. § 3583(e). This statute authorizes the sentencing court to cancel a term of supervised release after it has been in effect for one year when "such action is warranted by the conduct of the defendant released and the interest of justice." *See United States v. Spinelle*, 41 F.3d 1056, 1060-61 (6th Cir. 1994) (holding that a statute requiring a three-year term of supervised release did not eviscerate the district court's discretion to adjust the term of supervised release pursuant to § 3583(e)).

Because I believe that the majority's approach is inconsistent with the purpose as well as the unconditional language of 18 U.S.C. § 3624(e), I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 96-71222
Related to Crim. No. 89-80093

ROY LEE JOHNSON, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

ORDER DENYING PETITIONER'S MOTION
TO VACATE, SET ASIDE OR CORRECT SENTENCE

Before the Court is petitioner ROY LEE JOHNSON's motion to vacate, set aside or correct his sentence and conviction, filed pursuant to 28 U.S.C. § 2255. Petitioner also filed a motion for bond pending post conviction relief on March 19, 1996; a motion for summary judgment on June 6, 1996; and a motion to vacate supervised release term on June 7, 1996. For the reasons discussed below, the motions are denied.

I.

This case has a complex procedural history. Petitioner was first charged in an information filed on March 12, 1990, by the United States Attorney. That information charged petitioner with one count of possession of a firearm by a felon, in violation of 19 U.S.C. § 922(g), and two counts of possession of narcotics, in

violation of 21 U.S.C. § 844. On April 19, 1990, petitioner pled guilty to this information pursuant to a Rule 11 plea agreement. However, on June 7, 1990, the Government filed a five-count superseding indictment. Count 1 charged him with possessing cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); Count 2 charged him with the use of firearms in relation to the drug trafficking crime set forth in Count 1, in violation of 18 U.S.C. § 924(c); Count 3 charged him with possession with intent to distribute Dilaudid, in violation of 21 U.S.C. § 841(a)(1); Count 4 charged him with a second violation of 18 U.S.C. § 924(c), using the same firearms in relation to the drug trafficking crime charged in Count 3; and Count 5 charged him as a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On June 13, 1990, the Government moved to withdraw from the Rule 11 plea agreement, and after a hearing on the motion on July 19, 1990, this Court granted the government's motion, vacated the plea agreement, and set the matter on for trial.

Trial began in September, 1990. However, on September 26, 1980, a mistrial was declared because the jury was split 11 to 1 in favor of conviction, and could not reach a unanimous verdict. A new trial began on November 19, 1990, and on November 27, 1990, petitioner was convicted on all five counts of the superseding indictment.

On January 25, 1991, petitioner was sentenced to 51 months on Counts 1, 3 and 5, and was also sentenced to two consecutive 5 year terms of imprisonment on the § 924(c) counts, for a total of 171 months incarceration. Represented by new counsel, petitioner appealed his

conviction to the Sixth Circuit, setting forth the following claims of error:

I. That the Government waived its right to withdraw from the plea agreement;

II. That he was denied ineffective [*sic*] assistance of counsel by the Court's failure to allow him substitute counsel at sentencing;

III. That he was denied ineffective [*sic*] assistance of counsel when counsel failed to file pre-trial and other motions;

IV. That his conviction under 18 U.S.C. § 922(g) was improper; and

V. That his convictions under 18 U.S.C. § 924(c) violated double jeopardy.

Initially, the Sixth Circuit affirmed the conviction in all respects. *See United States v. Johnson*, 986 F.2d 134 (6th Cir. 1993). However, an *en banc* panel of the Court reversed on the double jeopardy claim, holding that this Court erred in imposing consecutive sentences on the § 924(c) counts. *United States v. Johnson*, 25 F.3d 1335 (6th Cir. 1994). On August 30, 1994, this Court resentenced petitioner pursuant to the instructions of the Sixth Circuit, reimposing a sentence of 60 months on the § 924(c) charges.

On March 20, 1996, petitioner filed a motion to vacate his sentence and conviction pursuant to 28 U.S.C. § 2255, setting forth the following claims of error:

1. That his § 924(c) convictions should be vacated pursuant to *Bailey v. United States*, 116 S. Ct. 501 (1995);

2. That he received ineffective assistance of counsel at voir dire, creating a violation of *Batson v. Kentucky*, 476 U.S. 79 (1986);

3. That Counsel was ineffective for failing to move for suppression of the evidence;

4. That the Court violated his due process rights at sentencing by failing to ensure that he received effective assistance of counsel; and

5. That he is entitled to an evidentiary hearing on these matters.

In addition to this motion to vacate his sentence, petitioner also filed a motion for bond pending post-conviction relief.

After reviewing petitioner's § 2255 motion and motion for bond, the Court ordered the Government to respond, and set the bond motion on for hearing. At that hearing, the Court ordered that petitioner's § 924(c) conviction (Count 4) be vacated, based on the Government's representation that it did not contest petitioner's arguments under *Bailey*. Pursuant to that order, petitioner was released from custody and placed on a three-year term of supervised release pursuant to the sentence imposed on Counts 1, 3, and 5. The Government stated its intention to file a response opposing the remainder of petitioner's § 2255 motion, and the court stated that it would rule on the remainder of petitioner's motion at a later date.

II.

Having received a response from the government on the remainder of petitioner's § 2255 motion, the Court must now consider these claims.[1]

Petitioner's first claim alleges that his trial counsel was deficient and violated his due process rights by purposely exluding black members of the jury in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). In support of this claim, petitioner has submitted a declaration stating that his trial counsel informed him that he would exclude all black males from the jury because the Assistant United States Attorney prosecuting the case wanted it that way. Petitioner made this claim briefly at his initial sentencing, but the Court informed him that it was not an appropriate matter for sentencing and that he would have to raise it on a motion for new trial. Petitioner did not file any post-trial motions, and did not raise the issue on appeal.

It is well established that a § 2255 motion shall not serve as a substitute for a direct appeal, and that a claim under § 2255 is procedurally barred unless the petitioner can justify his failure to present it at the time of sentencing or direct appeal. *United States v. Timmreck*, 441 U.S. 780, 784 (1979). Issues not raised on direct appeal will not be entertained in a § 2255 proceeding unless the petitioner demonstrates cause for his previous omission and prejudice resulting therefrom. *United States v. Frady*, 456 U.S. 152, 166-68 (1982).

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[1] Although the government's June 12, 1996 response was untimely filed, the Court accepted it pursuant to Fed. R. Civ. P. 6(b).

In this case, petitioner offers no justification for his failure to present his *Batson* claim on direct appeal, or in a post-trial motion, as suggested by the Court at sentencing. Although petitioner frames his *Batson* argument as an ineffective assistance of counsel claim, which are generally more properly brought in § 2255 motions than on direct appeal, petitioner was represented by different counsel on appeal than at trial, and certainly could have raised this *Batson* argument previously. Because petitioner could have raised this issue on direct appeal, and as provided no justification for this failure to do so, he is procedurally barred from raising the issue in this § 2255 motion.

Petitioner's next claims are that this counsel was ineffective in failing to file a pre-trial motion to suppress evidence and that his due process rights were violated because he did not have an adequate opportunity to object to the presentence report. Both of these claims of error were raised by petitioner on direct appeal and were rejected by the Sixth Circuit. Absent a change in circumstances, claims which were rejected on a direct criminal appeal are precluded from being reviewed again in collateral proceedings under 28 U.S.C. § 2255. *See United States* v. *Shabazz*, 657 F.2d 189 (8th Cir. 1981); *United States v. Orejuela*, 639 F.2d 1055 (3rd Cir. 1981); *Stephan v. United States*, 496 F.2d 527 (6th Cir. 1974), *cert. denied*, 423 U.S. 861 (1975). In this case, petitioner has shown no change of circumstances compelling this court to review these claims again. Moreover, any new variations on these arguments set forth in this motion should have been raised on appeal. Accordingly, petitioner is precluded from having these claims addressed in this § 2255 motion.

The final issue before the Court is petitioner's motion to vacate supervised release term filed by petitioner on June 7, 1996, *after* this Court vacated his § 924(c) conviction and released him from custody. In that motion, petitioner argues that the Court should end his supervised release because petitioner served extra time in custody under the Sixth Circuit's former, erroneous interpretation of § 924(c). For the following reasons, petitioner's motion is DENIED.

Under 18 U.S.C. § 3624, a person's

> term of supervised release commences on the day the person is released from imrpisonment. . . . A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State or local crime. . . .

18 U.S.C. § 3624(e) (1994). This Court notes that supervised release and imprisonment fulfill distinct purposes. The purpose of supervised release is to aid the defendant's transition from incarceration to life in the community. Moreover, unlike prison, supervised release is not intended to punish or incapacitate the defendant. S. Rep. No. 225, 98th Cong., 2d Sess. 123-35 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3306-08.

The statute further provides:

> [a] prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment.

§ 3624(e). Thus, § 3624(e) and (a) read in conjunction provide that supervised release does not begin until the

person has been released from prison and does not run while the person is in prison. *See United States v. Douglas*, 88 F.3d 533 (8th Cir. 1996). Therefore, any argument suggesting that petitioner's time served counts towards his supervised release term is rejected. *Quinones v. United States*, 936 F. Supp. 153 (S.D.N.Y. 1996) (petitioners' argument that term of supervised release began when sentence for heroin conviction expired as opposed to when time for conviction under § 924(c) expired rejected; however, six-year term of supervised release reduced to three-year statutory minimum).

The Court is cognizant that petitioner served time for conviction on a § 924(c) count which has since been vacated; however, Petitioner's prison term cannot be undone. Most importantly, the purpose of supervised release has not been satisfied, and petitioner's term constitutes the mandatory minimum. Given that three years is the mandatory minimum of a supervised release term and considering the purposes of supervised release which have yet to be fulfilled, petitioner's motion to vacate the term of supervised release is DENIED.

III.

Based on the foregoing analysis, petitioner's motions are resolved as follows:

(1) the § 2255 motion is DENIED;

(2) the motion for summary judgment is DENIED; and

(3) the motion to vacate supervised release is DENIED.

IT IS SO ORDERED.

/s/ HORACE W. GILMORE
HORACE W. GILMORE
United States District Judge

Dated: Jan. 22, 1997
Detroit, Michigan

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

97-1151

ROY LEE JOHNSON, PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA, RESPONDENT-APPELLEE

[Filed: Jan. 21, 1999]

ORDER

BEFORE: MERRITT, KENNEDY, and GILMAN, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and less than a majority of the judges having favored the suggestion, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied. Judge Gilman would grant rehearing for the reasons stated in his dissent.

ENTERED BY ORDER OF THE COURT

/s/ LEONARD GREEN
LEONARD GREEN
Clerk

APPENDIX D

STATUTORY PROVISIONS INVOLVED

Section 3583 of Title 18 of the United States Code provides as follows:

Inclusion of a term of supervised release after imprisonment

(a) In general.—The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) Authorized terms of supervised release.—Except as otherwise provided, the authorized terms of supervised release are—

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in

determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

(d) Conditions of supervised release.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994). The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condi-

tion stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

(e) 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), and (a)(6)—

(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 applica-

ble 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 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.

(f) Written statement of conditions.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or

(3) refuses to comply with drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) Supervised release following revocation.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed revocation.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the

defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

* * * * *

Section 3624 of Title 18 of the United States Code provides, in pertinent part, as follows:

Release of a prisoner

(a) Date of release.—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

* * * * *

(e) Supervision after release.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or super-

vised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.