No. 98-1696

In the Supreme Court of the United States

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

REPLY BRIEF FOR THE PETITIONER

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The United States seeks the Court's review to resolve a circuit conflict over whether a term of supervised release begins on the date of a federal prisoner's actual release from prison or on the earlier date on which he should have been released in accordance with a retroactively applied interpretation of the law. The Sixth Circuit, consistent with the Ninth Circuit, concluded that the date of a prisoner's release from prison under federal law is the date on which "he was entitled to be released rather than the day he walked out the prison door." Pet. App. 5a. The effect is to credit any excess time that the prisoner served in prison against the time that he is to serve on supervised release. The First, Fifth, and Eighth Circuits have reached the contrary conclusion. See Pet. 6-8 (citing cases).

Respondent does not dispute that the question presented in the petition is an important and recurring one

that has divided the courts of appeals. Nor does respondent identify any reason why this is not an appropriate case in which to resolve that question definitively. Respondent argues only that the decision below is correct on the merits. Even if true, that would be no reason to withhold review of a question of such significance to the federal criminal justice system. In any event, respondent's defense of the decision below is unavailing.

1. Respondent acknowledges (Br. in Opp. 3) that Congress has expressly provided that "supervised release begins on the defendant's release from prison." See 18 U.S.C. 3624(e) ("The term of supervised release commences on the day the person is released from imprisonment * * * . 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.").[1] Respondent nonetheless argues (Br. in Opp. 4) that this clear, straightforward, and unequivocal statutory text is "ambiguous," and thus that the rule of lenity should apply, because Congress "fail[ed] to consider this scenario [*i.e.*, a vacated sentence]" when enacting supervised release. As this Court has recognized, however, "[t]he fact that [a criminal statute] has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." *National Org. for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 262 (1994) (quoting *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S.

[1] Respondent mistakenly cites 18 U.S.C. 3583(e) for the quoted statement. Section 3583(e), as discussed subsequently in the text, provides a district court with authority, among other things, to terminate a term of supervised release after one year.

479, 499 (1985)); see also *Beecham* v. *United States*, 511 U.S. 368, 374 (1994) (In deciding whether a statute is so ambiguous as to warrant the application of the rule of lenity, "our task is not the hopeless one of ascertaining what the legislators who passed the law would have decided had they reconvened to consider petitioners' particular cases. Rather, it is to determine whether the language the legislators actually enacted has a plain, unambiguous meaning.").

2. Respondent further contends (Br. in Opp. 5) that the supervised release provisions should not be given "[a] literal reading," but instead should be construed to mean that a defendant's term of supervised release may be deemed to have begun before his release from prison, because that is "[t]he only way to give some effect" to Congress's "inten[t] that the Bureau of Prisons not hold a defendant longer than his lawful sentence." The statute from which respondent discerns Congress's intent, 18 U.S.C. 3624(a), provides, in pertinent part, that "[a] prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment." It does not address the situation of a defendant, such as respondent, who was, in fact, "released by the Bureau of Prisons on the date of the expiration of [his] term of imprisonment," albeit on a later date than if the retroactively applied understanding of the law prevailed at the time of his original sentencing. Equally important, and contrary to respondent's assertion, Congress has already provided a remedy for defendants who serve excess time in prison: under 18 U.S.C. 3583(e)(1), after a defendant has served one year of supervised release, the district court may terminate the remainder of his supervised release term if "satisfied that such action is warranted by the conduct of the defendant released and the interest of

justice." A defendant's service of excess time in prison is a factor that a court may be consider in determining whether early termination of supervised release is "in the interest of justice." See Sentencing Guidelines § 1B1.10, Application Note 5. It is thus unnecessary to strain the text of 18 U.S.C. 3624(e), or any other statutory provision, to create a remedy for defendants such as respondent.

3. Finally, respondent argues (Br. in Opp. 5) that crediting a defendant's excess prison time against his supervised release time is "equitable" because, "although supervised release and imprisonment do have some divergent goals, they both still carry punishment as an overriding factor." But this Court does not create exceptions not warranted by the plain text of a statute, or by other tools of statutory construction, simply to achieve a result that is arguably more "equitable." See, *e.g.*, *Brogan* v. *United States*, 522 U.S. 398 (1998). As noted in the petition (at 11-13), moreover, Congress expressly stated that supervised release was *not* designed to serve "the sentencing purposes of incapacitation and punishment." S. Rep. No. 225, 98th Cong., 1st Sess. 124 (1983). Rather, Congress explained that "the primary goal of such a term [of supervised release] 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." *Ibid.* Congress thus intended that incarceration and supervised release be distinct, rather than interchangeable, components of a defendant's sentence.

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For the reasons stated above and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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