Primer

Supervised Release

Prepared by the
Office of the General Counsel

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I. INTRODUCTION

This primer provides a general overview of the statutes, guidelines, and case law related to supervised release, including the types of conditions imposed and the framework governing termination and revocation of supervised release.[1] Although the primer identifies some of the key cases and concepts, it is not a comprehensive compilation of authority nor intended to be a substitute for independent research and analysis of primary sources.

II. OVERVIEW OF SUPERVISED RELEASE

Supervised release is a form of post-imprisonment supervision provided for by statute at 18 U.S.C. § 3583 (Inclusion of a term of supervised release after imprisonment).[2] Pursuant to section 3583, if a sentencing court orders a term of incarceration, the court also may impose a term of supervised release to follow.[3] Congress established supervised release as part of the Sentencing Reform Act ("SRA") that created the federal sentencing guidelines system.[4] Although similar to parole, which was eliminated by the SRA, a term of supervised release "does not replace a portion of the sentence of imprisonment, but rather is an order of supervision in addition to any term of imprisonment imposed by the court."[5] A term of supervised release "fulfills rehabilitative ends, distinct from the goals served by incarceration."[6]

In conjunction with section 3583, the *Guidelines Manual* addresses supervised release in Part D of Chapter Five. Specifically, §5D1.1 (Imposition of Supervised Release) addresses when to impose a term of supervised release, §5D1.2 (Term of Supervised Release) addresses the length of supervision, and §5D1.3 (Conditions of Supervised Release) addresses conditions of supervised release. The Commission recently

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1 Portions of this primer are adapted from the Commission's publication, *Federal Offenders Sentenced to Supervised Release*, which includes legislative history of the supervised release statutes and data on the application of supervised release. U.S. SENT'G COMM'N, FEDERAL OFFENDERS SENTENCED TO SUPERVISED RELEASE (2010) [hereinafter SUPERVISED RELEASE REPORT], https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100722_Supervised_Release.pdf.

2 18 U.S.C. § 3583. From 2013 through 2017, the number of individuals under supervision has been relatively stable, ranging from 130,224 to 136,156 throughout that time period. COURTNEY R. SEMISCH, KRISTEN SHARPE & ALYSSA PURDY, U.S. SENT'G COMM'N, FEDERAL PROBATION AND SUPERVISED RELEASE VIOLATIONS 3 (2020) [hereinafter FEDERAL PROBATION AND SUPERVISED RELEASE VIOLATIONS REPORT], https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200728_Violations.pdf.

3 18 U.S.C. § 3583; U.S. SENT'G COMM'N, GUIDELINES MANUAL Ch.7, Pt.A, Subpt.2(b) (Nov. 2024) [hereinafter USSG].

4 Sentencing Reform Act of 1984, Pub. L. No. 98–473, 98 Stat. 1837, 1999.

5 USSG Ch.7, Pt.A, Subpt.2(b); *see also* § 212(a)(2), 98 Stat. at 1999.

6 *See* United States v. Johnson, 529 U.S. 53, 59 (2000); *see also* S. REP. NO. 98-225 at 124 (1983) ("primary goal" of supervised release includes "provid[ing] rehabilitation to a defendant who has spent a fairly short period of time in prison for punishment or other purposes but still needs supervision").

promulgated a multi-part amendment to Part D of Chapter Five, including adding a new policy statement at §5D1.4 (Modification, Early Termination, and Extension of Supervised Release (Policy Statement)), which addresses the court's authority to revisit the term and conditions of supervised release after original imposition. The amendment also divides Chapter Seven into two new parts—Part B addresses violations of probation and Part C addresses violations of supervised release.[7] This primer discusses Chapter Five, Part D as it will appear once the amendment is effective.

The court also has authority to address noncompliance with, or violations of, the conditions of supervised release. If a defendant violates any condition of supervised release, the court may decide whether to continue, revoke, or terminate the term, and whether to modify the conditions of supervision or impose a term of incarceration for the violation.[8] As amended, Chapter Seven, new Part C of the *Guidelines Manual* addresses violations of the conditions of supervised release.[9] Specifically, §§7C1.1 to 7C1.5 cover the classification and reporting of violations and possible responses to a violation, including revocation and imprisonment. This primer discusses Chapter Seven as it will appear once the amendment is effective.

III. SUPERVISED RELEASE: CHAPTER FIVE

A. IMPOSITION OF SUPERVISED RELEASE (§5D1.1)

A court must impose a term of supervised release if it is required by the statute of conviction. For example, supervised release is mandated for certain offenses involving

[7] *See* USSG Ch.5, Pt.D; Amendment 4 of the amendments submitted by the Commission to Congress on April 30, 2025, 90 FR 19798 (May 9, 2025). Absent congressional action to the contrary, the amendment will become effective November 1, 2025. This primer discusses both Chapters Five and Seven as they will appear once the amendment is effective. A reader-friendly version of the amendment is available on the Commission's website at U.S. Sent'g Comm'n, *Amendments to the Sentencing Guidelines* (Apr. 30, 2025), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202505_RF.pdf [hereinafter 2025 USSG].

[8] 18 U.S.C. § 3583(e).

[9] *See* 2025 USSG, *supra* note 7, at Ch.7, Pt.C. Under 28 U.S.C. § 994(a)(3), Congress directed the Commission to promulgate "guidelines or general policy statements regarding the appropriate use of . . . the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18." 28 U.S.C. § 994(a)(3). The relevant policy statements appear at Chapter Seven of the *Guidelines Manual*. 2025 USSG, *supra* note 7, at Ch.7, Pt.C. When the Commission first promulgated its Chapter Seven policy statements, it "elected to develop a single set of policy statements for revocation of both probation and supervised release." USSG Ch.7, Pt.A.

domestic violence,[10] kidnapping of a minor,[11] drug trafficking,[12] terrorism,[13] and sex offenses.[14] The sentencing court has discretionary authority to impose a term of supervised release to be served following incarceration even if a term of supervised release is not required by statute.[15]

Under the guidelines, when not required by statute, "the court should order a term of supervised release to follow imprisonment when warranted by an individualized assessment of the need for supervision."[16] In conducting the individualized assessment, the court is instructed to consider the most of the 18 U.S.C. § 3553(a) factors that it considers "in determining whether to include a term of supervised release,"[17] such as the "nature and circumstances of the offense and the history and characteristics of the defendant,"

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[10] 18 U.S.C. § 3583(a) (for a domestic violence crime as defined by 18 U.S.C. § 3561(b)). In 2014, the Commission amended the commentary to §5D1.1 (Imposition of a Term of Supervised Release), providing that supervised release is highly recommended in cases involving domestic violence or stalking offenses that are not subject to the mandatory imposition of supervised release. USSG App. C, amend. 781 (effective Nov. 1, 2014).

[11] 18 U.S.C. § 3583(k) (any offense under 18 U.S.C. § 1201 involving a minor victim).

[12] 21 U.S.C. §§ 841, 846, 960, 963.

[13] 18 U.S.C. § 3583(j) (any federal crime of terrorism listed in 18 U.S.C. § 2332b(g)(5)(B)).

[14] *Id.* § 3583(k) (the authorized term of supervised release for offenses under 18 U.S.C. § 1201 involving minors and for many sex offenses, including violations of 18 U.S.C. §§ 1591, 2241–2245, 2250–2252A, and 2421–2423, is any term of years not less than five, or life). In a plurality decision, the Supreme Court in *United States v. Haymond*, 588 U.S. 634 (2019), held that the portion of 18 U.S.C. § 3583(k) that requires a mandatory minimum sentence based on a violation found by preponderance of evidence violates the Due Process Clause and the Sixth Amendment right to jury trial. *Id.* at 652. Courts have declined to extend the holding in *Haymond* to other provisions in section 3583. *See, e.g.*, United States v. Carpenter, 104 F.4th 655, 660–61 (7th Cir. 2024) (hearing on violation of a condition of release under 18 U.S.C. § 3583(e)(3) was not a "criminal prosecution" to which Sixth Amendment right to jury trial applies), *cert. denied*, 145 S. Ct. 1188 (2025); United States v. Robinson, 63 F.4th 530, 540 (6th Cir. 2023) (*Haymond*'s holding is inapplicable to a revocation sentence imposed under § 3583(g) and collecting cases consistent with interpretation); United States v. Henderson, 998 F.3d 1071, 1076–77 (9th Cir. 2021) (*Haymond*'s holding is inapplicable to a revocation sentence imposed under § 3583(e)); United States v. Bruley, 15 F.4th 1279, 1284 (10th Cir. 2021) (same); United States v. Garner, 969 F.3d 550, 553 (5th Cir. 2020) (*Haymond* does not extend to the mandatory revocation provision in 18 U.S.C. § 3583(g)); *see also* United States v. Childs, 17 F.4th 790, 792 (8th Cir. 2021) ("*Haymond* clarified that its holding was 'limited to § 3583(k).' " (citation omitted)).

The Tenth Circuit explained that *Haymond* does not apply in the event that the defendant is convicted of a new offense that is also the basis for a supervised release revocation, because "Justice Breyer's as-applied *Haymond* analysis does not apply unless each of the three critical factors identified in his concurrence are present," including "the imposition of a mandatory sentence based on a trial court's finding of the existence of a triggering crime under the preponderance standard." United States v. Shakespeare, 32 F.4th 1228, 1237 (10th Cir. 2022).

[15] 18 U.S.C. § 3583(a).

[16] 2025 USSG, *supra* note 7, at §5D1.1(b).

[17] *See* 2025 USSG, *supra* note 7, at §5D1.1, comment. (n.1) (defining the "individualized assessment" by reference to 18 U.S.C. § 3583(c), which in turn directs the court to consider 18 U.S.C. § 3553(a)(1), (a)(2)(B)–(D), (a)(4)–(7)); *cf.* United States v. Barcenas-Rumualdo, 53 F.4th 859, 868–69 (5th Cir. 2022) ("The timing of an appeal is not a factor that courts are tasked with considering in imposing supervised release.").

deterrence, public safety, rehabilitation, the kinds of sentence and sentencing range established by the Commission, and "the need to provide restitution to any victims of the offense."[18] However, the court need not consider whether the supervised release term is necessary "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," or the kinds of sentences available.[19] In addition to considering the statutory factors included in the individualized assessment, the guidelines also recommend that the court consider the defendant's criminal history,[20] any substance abuse issues, [21] and whether the offense involved domestic violence.[22]

Courts ordinarily should not impose a term of supervised release where it is not required by statute and the defendant is a "deportable alien" who is likely to be ordered removed after imprisonment.[23] However, courts should impose a term of supervised release in such cases when it would provide "an added measure of deterrence and protection based on the facts and circumstances of a particular case."[24]

Section 5D1.1 also instructs that "[t]he court should state in open court the reasons for imposing or not imposing a term of supervised release."[25] Just as with the imposition of a term of imprisonment, the court must make individualized findings concerning whether to impose a term of supervised release.[26]

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18 18 U.S.C. § 3553(a)(1), (a)(2)(B)–(D), (a)(4)–(7).

19 *Id.* §§ 3583(c), 3553(a)(2)(A), (a)(3); USSG §5D1.1, comment (n.1); *see also* SUPERVISED RELEASE REPORT, *supra* note 1, at 9 ("The legislative history indicates that section 3553(a)(2)(A) was not included for consideration under 18 U.S.C. § 3583(c) because the primary purpose of supervised release is to facilitate the integration of offenders back into the community rather than to punish them." (citing S. REP. NO. 98-225, at 124 (1983))).

20 2025 USSG, *supra* note 7, at §5D1.1, comment. (n.2).

21 2025 USSG, *supra* note 7, at §5D1.1, comment. (n.3).

22 2025 USSG, *supra* note 7, at §5D1.1, comment. (n.4).

23 USSG §5D1.1(c).

24 2025 USSG, *supra* note 7, at §5D1.1, comment. (n.6); *see also, e.g.*, United States v. Figueroa-Beltran, 995 F.3d 724, 735–36 (9th Cir. 2021) (affirming imposition of supervised release for a deportable alien); United States v. Hernandez-Loera, 914 F.3d 621, 622 (8th Cir. 2019) (per curiam) ("[A]s some of our sister circuits have held, the term 'ordinarily' in section 5D1.1(c) is 'hortatory, not mandatory.' "(citation omitted)).

25 2025 USSG, *supra* note 7, at §5D1.1(d) (citing 18 U.S.C. § 3553(c)) ("The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence . . . .").

26 *See id.*; *see also, e.g.*, United States v. Solano-Rosales, 781 F.3d 345, 351–55 (6th Cir. 2015) ("We have made clear that the requirement of an adequate explanation applies to the district court's determination to impose supervised release to the same extent that it applies to a determination regarding the length of a custodial term.").

B. Length of the Term (§5D1.2)

To determine the length of the term, the court must conduct an individualized assessment, considering the same factors it considers in determining whether to impose a term of supervised release.[27] The term may not be less than any statutorily required minimum term and may not exceed the statutory maximum term, which, unless otherwise provided by statute, is as follows:[28]

Offense of Conviction	*Maximum Supervised Release Term*
Class A felony (up to life, or death) Class B felony (25 years or more)	5 years
Class C felony (10–25 years) Class D felony (5–10 years)	3 years
Class E felony (1–5 years) Class A misdemeanor (6 months–1 year)	1 year

Different statutory terms apply to many offenses involving terrorism, child victims, sex offenses, and drug offenses.[29] Where a case involves multiple counts of conviction, the court should impose separate terms of supervised release for each count, but run them concurrently with any other federal, state, or local term of probation or supervised release.[30]

C. Conditions of Supervised Release (§5D1.3)

If the court imposes a term of supervised release, it also determines appropriate conditions of supervision based on the offense, the defendant's history, and other factors. The determination of conditions is based on both the statutory requirements and the

[27] *See* 2025 USSG, *supra* note 7, at §5D1.2(a) & comment. (n.1). Application Note 1 further instructs the court to "ensure that the term imposed is sufficient, but not greater than necessary, to address the purposes of [sentencing]." 2025 USSG, *supra* note 7, at §5D1.2, comment. (n.1).

[28] *See* 18 U.S.C. §§ 3583(b), 3559; *see also* United States. v. Hertler, 776 F.3d 680, 682–83 (9th Cir. 2015) (discussing the maximum terms of supervised release that a court may impose); United States v. Charles, 129 F.4th 1334, 1338 (11th Cir. 2025) (statutory maximum term of supervised release "is not waivable" as a stipulated condition for imposition of a lesser term of imprisonment because "[s]tatutory maximums are not 'rights' " that belong to the defendant but rather "*limits* imposed by *Congress* on the punishment a court may impose").

[29] *See* 18 U.S.C. § 3583(j) (providing for up to a term of life for any federal crime of terrorism listed in 18 U.S.C. § 2332b(g)(5)(B)); *id.* § 3583(k) (providing for a term up to life for offenses under 18 U.S.C. § 1201 involving minors and for many sex offenses, including violations of 18 U.S.C. §§ 1591, 2241–2245, 2250–2252A, and 2421–2423); 21 U.S.C. §§ 841 (providing minimum terms for certain drug offenses), *id.* § 846 (same); *id.* § 960 (same); *id.* § 963 (same); *see also* 2025 USSG, *supra* note 7, at §5D1.2 comment. (nn.2&3).

[30] 18 U.S.C. § 3624(e).

supervised release guidelines. The conditions that are statutorily required are identified as mandatory conditions at §5D1.3(a). Section 5D1.3(b) lists discretionary conditions and instructs the court to "conduct an individualized assessment to determine what, if any, other conditions of supervised release are warranted."[31] Mandatory conditions do not need to be orally pronounced at sentencing; however, discretionary conditions must be orally pronounced.[32] A district court can "satisfy its obligation to orally pronounce discretionary conditions through incorporation by expressly incorporating a written list of proposed conditions."[33] If an inconsistency exists between an oral sentence and the later written judgment, the sentence pronounced from the bench controls.[34] Defendants can waive the oral pronouncement.[35]

Appendix A, attached to this primer, summarizes the various mandatory, standard, and special conditions that are set forth in the statutes and guidelines. Following each condition summary, Appendix A provides a citation to the relevant guideline provision as well as any statutory references.[36]

Imposition of the conditions of supervised release is a core judicial function that cannot be delegated to the probation officer because of the potential restriction on a

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[31] 2025 USSG, *supra* note 7, at §5D1.3(b); *see also, e.g.* United States v. Poole, 133 F.4th 205, 211–12 (2d Cir. 2025) (upholding imposition of a warrantless search condition because the court conducted "precisely the type of 'individualized assessment' " precedent requires); United States v. Bell, 915 F.3d 574, 577–78 (8th Cir. 2019) (court abused its discretion in imposing special conditions based on its general experience with prior defendants and without conducting individualized inquiry).

[32] *See* United States v. Montoya, 82 F.4th 640, 644–45 (9th Cir. 2023) (en banc) ("[A] district court must orally pronounce all discretionary conditions of supervised release, including those referred to as 'standard' in §5D1.3(c) . . . in order to protect a defendant's due process right to be present at sentencing."); United States v. Geddes, 71 F.4th 1206, 1215–17 (10th Cir. 2023) (same and collecting cases; by contrast, mandatory conditions need not be pronounced because the defendant has notice of conditions required by statute and any objection thereto "would be futile"); United States v. Matthews, 54 F.4th 1, 5–6 (D.C. Cir. 2022) ("standard" discretionary conditions must be orally pronounced at sentencing).

[33] *See, e.g.*, United States v. Bullis, 122 F.4th 107, 118–19 (4th Cir. 2024) (citation and quotations omitted) (remanding because oral pronouncement was ambiguous as to whether the court had expressly incorporated the district's Standard Conditions of Supervision when it "referenced generally 'standard conditions in this district' "); United States v. Diggles, 957 F.3d 551, 560 (5th Cir. 2020) (adoption of written conditions or standard order is sufficient).

[34] *See, e.g.*, *Geddes*, 71 F.4th at 1214 ("If a written judgment and orally pronounced sentence conflict, '[i]t is a firmly established and settled principle of federal criminal law that an orally pronounced sentence controls.' " (citation omitted)).

[35] *See, e.g.*, United States v. Strobel, 987 F.3d 743, 748 (7th Cir. 2021).

[36] Some conditions are expressly provided by 18 U.S.C. § 3583. In addition, section 3583 states that the court has discretion to order any of the discretionary conditions of probation set out in 18 U.S.C. § 3563(b) (Conditions of probation). *See* 18 U.S.C. § 3583(d)(3). Accordingly, Appendix A references both the supervised release and probation statutes.

defendant's liberty interests.[37] However, the probation officer is responsible for implementing the imposed conditions, and, in doing so, can exercise discretion in undertaking managerial details.[38] In determining whether a conditions has improperly delegated authority to the probation officer, courts distinguish "between those delegations that 'merely task the probation officer with performing ministerial acts or support services related to the punishment imposed, and those that allow the officer to decide the nature or extent of the defendant's punishment.' "[39] For example, courts have often held that a condition that grants discretion to the probation officer to elect between inpatient and outpatient substance abuse treatment is an impermissible delegation.[40]

[37] *See, e.g.*, United States v. Kent, 209 F.3d 1073, 1078 (8th Cir. 2000) ("[T]he imposition of a sentence, including any terms for probation or supervised release, is a core judicial function." (quoting United States v. Johnson, 48 F.3d 806, 808 (4th Cir. 1995))).

[38] *See*, *e.g.*, United States v. Ellis, 112 F.4th 240, 253–54 (4th Cir. 2024) (condition requiring probation officer's approval before using a device capable of accessing the internet was not an unconstitutional delegation of a core judicial function because the court ordered the "broad principle guiding the condition" and retained the "ultimate authority over revoking release," only allowing the probation officer to "fill in many of the details necessary for applying the condition"); United States v. Elbaz, 52 F.4th 593, 613 (4th Cir. 2022) ("It is permissible to give 'probation officers a significant measure of discretion' which can 'vest some interpretive role in the officer . . . . There simply need[s] to be some general parameters set on that discretion . . . .' " (quoting United States v. Hamilton, 986 F.3d 413, 420 (4th Cir. 2021))); United States v. Birkedahl, 973 F.3d 49, 53–54 (2d Cir. 2020) (affirming condition to attend sex offender treatment because determination was court-imposed and probation was limited to "administrative aspects of the treatment such as the 'selection of a provider and the schedule' " (citation omitted)). *But see* United States v. Lee, 950 F.3d 439, 447 (7th Cir. 2020) (finding imposition of condition limiting ability to interact with known felons without prior permission of probation officer impermissible delegation of decision-making authority to probation officer).

[39] United States v. Schrode, 839 F.3d 545, 555 (7th Cir. 2016) ("To determine [whether a delegation is proper, courts] distinguish[ ] between those delegations that 'merely task the probation officer with performing ministerial acts or support services related to the punishment imposed, and those that allow the officer to decide the nature or extent of the defendant's punishment.' " (citations omitted)); *see also* United States v. Nishida, 53 F.4th 1144, 1151–54 (9th Cir. 2022) (while not an impermissible delegation to allow probation officer to determine duration of mental health treatment during supervised release, it was an impermissible delegation to allow probation officer to determine the nature and extent of the treatment).

[40] *See, e.g.*, United States v. Martinez, 987 F.3d 432, 435–36 (5th Cir. 2021) (holding that "the decision to place a defendant in inpatient [rather than outpatient] treatment cannot be characterized as one of the managerial details that may be entrusted to probation officers" and collecting cases for same); *see also* United States v. Williams, 130 F.4th 177, 187 (4th Cir.) (because condition providing that the probation officer, "in consultation with the treatment provider, will supervise [the defendant's] participation in the program (provider, location, modality, duration, intensity, etc.)" did not permit probation officer to decide whether in-patient treatment was required, it did not unconstitutionally delegate a core judicial function), *petition for cert. filed*, No. 24-7014 (U.S. Apr. 16, 2025). *But see* United States v. Medel-Guadalupe, 987 F.3d 424, 430–31 (5th Cir. 2021) (per curiam) (finding "inpatient or outpatient" a detail of the condition when sentence imposed was ten years and court "cannot predict what the need for substance abuse treatment during supervised release will be").

D. Mandatory Conditions of Supervised Release

1. Applicable to All Defendants

Mandatory conditions of supervised release, which must be imposed in every case, are set forth in 18 U.S.C. § 3583(d) and §5D1.3(a). These mandatory conditions include, among others, that a defendant:

- not commit another federal, state, or local offense;
- not unlawfully possess or use a controlled substance;
- make restitution to the victim of the offense;
- submit to the collection of a DNA sample when authorized;
- in some cases, submit to drug testing; and
- pay any fines and assessments imposed.[41]

2. Applicable to Individuals Convicted of Sex Offenses and Domestic Violence Offenses

Certain mandatory conditions of release apply only to defendants convicted of specific sex offenses or domestic violence offenses. The sex offense condition provides that, if the offender is required to register under the Sex Offender Registration and Notification Act ("SORNA"),[42] the court shall order, as a condition of supervised release, that the defendant comply with the requirements of that Act.[43] The domestic violence condition requires the defendant to attend a rehabilitation program.[44]

3. Drug Testing Condition

Section 3583(d) mandates that the court order the defendant to "submit to a drug test within 15 days of release on supervised release and at least [two] periodic drug tests thereafter (as determined by the court).[45] The court, not the probation officer, must determine the maximum number of drug tests to which the defendant is subject following

[41] 18 U.S.C. § 3583(d); 18 U.S.C. § 3624(e) (fines); USSG §5D1.3(a); *see also infra* Appendix A (Mandatory Conditions).

[42] Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, Title I, 120 Stat. 587; 18 U.S.C. §§ 3563(a)(8), 3583(d); *see also* 18 U.S.C. § 2250 (Failure to register).

[43] 18 U.S.C. § 3583(d); USSG §5D1.3(a)(7). The legal determination of whether a conviction requires registration under SORNA may not be delegated to the probation office. *See* United States v. D'Ambrosio, 105 F.4th 533, 537–38 (3d Cir. 2024)

[44] 18 U.S.C. § 3583(d); USSG §5D1.3(a)(3).

[45] 18 U.S.C. § 3583(d); *see also* USSG §5D1.3(a)(4).

the initial test.[46] The drug testing requirement also can be ameliorated or suspended by the court.[47]

E. Discretionary Conditions of Supervised Release

A district court has statutory authority to impose additional conditions of supervised release at its discretion if the condition:

(1) is "reasonably related" to the statutory sentencing factors in 18 U.S.C. § 3553(a)(1) and (a)(2)(B)–(D);[48]

(2) "involves no greater deprivation of liberty than is reasonably necessary" to serve the purposes of deterrence, protection of the public, and training and treatment;[49] and

(3) is consistent with any policy statements issued by the Commission.[50]

Certain discretionary conditions are drawn from 18 U.S.C. § 3563(b) and set forth in §5D1.3(b).[51] The guidelines further divide discretionary conditions into "standard" and

[46] *See* United States v. Miller, 978 F.3d 746, 758–60 (10th Cir. 2020) (statutory language "as determined by the court" indicates courts cannot permit the probation officer to determine maximum number of drug tests and collecting cases).

[47] 18 U.S.C. § 3583(d) (citing 18 U.S.C. § 3563). Section 3563(a)(5) provides that the mandatory drug testing condition "may be ameliorated or suspended . . . if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse." *Id.* § 3563(a)(5); *see also* USSG §5D1.3(a)(4).

[48] 18 U.S.C. § 3583(d)(1); *see also* United States v. Sims, 92 F.4th 115, 126–29 (2d Cir. 2024) (remanding to determine whether a special condition for non-association was reasonably related when the reasonableness is not self-evident from the record). If a discretionary condition is based on past conduct that is not temporally remote, it need not be related to the offense of conviction underlying the supervised release term to be deemed reasonable. *See*, *e.g.*, United States v. Floss, 42 F.4th 854, 864 (8th Cir. 2022) ("Special conditions need not be reasonably related to the instant conviction if they are reasonably related to other sentencing factors identified in § 3583(d)[.]"); United States v. Johnson, 756 F.3d 532, 540–41 (7th Cir. 2014) (reviewing other circuit opinions and concluding sex offender treatment is reasonably related even if offense of conviction is not a sex offense, if recent sex offenses were present in the defendant's history).

[49] 18 U.S.C. § 3583(d)(2); *see also* United States v. Henderson, 64 F.4th 111, 122 (3d Cir. 2023) ("[A] condition with no basis in the record, or with only the most tenuous basis, will inevitably violate § 3583(d)(2)'s command that such conditions 'involve[] no greater deprivation of liberty than is reasonably necessary.' " (citation omitted)).

[50] 18 U.S.C. § 3583(d)(3); *see also* 28 U.S.C. § 994(a). Because section 3583(d) mandates that conditions "not directly conflict with the policy statements" but not that conditions to be "expressly covered" by the policy statement, courts often evaluate conditions under section 3583(d)(1)—requiring conditions to be reasonably related to certain section 3553(a) factors—instead. United States v. Bear, 769 F.3d 1221, 1231 (10th Cir. 2014).

[51] *See* 18 U.S.C. § 3583(d) (to the extent the condition meets the three conditions outlined above, courts may impose "any condition set forth as a discretionary condition of probation in [18 U.S.C. §] 3563(b) and any other condition it considers to be appropriate"); *see also* USSG §5D1.3(b).

"special" conditions of supervised release. Section 5D1.3(b) instructs that in determining discretionary conditions of supervised release, the court should conduct an individualized assessment,[52] which takes into account the same section 3553(a) factors considered when determining whether to impose a term of supervised release.[53] In addition to the conditions listed in 18 U.S.C. § 3563(b) (Conditions of probation) and §5D1.3(b)–(d) (covering standard and special conditions of supervised release), a sentencing court may create and impose "any other condition it considers to be appropriate."[54]

Supervised release conditions must be properly tailored under section 3583(d) to avoid a violation of the Due Process Clause.[55] A parent's right to enjoy the companionship of his children is one such fundamental substantive due process liberty interest,[56] as is a romantic relationship with a life partner.[57] Due process further requires that a condition of supervised release be sufficiently clear to give the defendant a reasonable opportunity to know what is prohibited and what conduct will result in being returned to prison.[58]

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[52] *See* 2025 USSG, *supra* note 7, at §5D1.3(b)(1); 18 U.S.C. § 3583(c); *see also* United States v. Poole, 133 F.4th 205, 212 (2d Cir. 2025) (upholding a condition requiring the defendant to submit to suspicionless searches where the district court conducted "precisely the type of 'individualized assessment' [the Circuit's] precedent require[d]"); United States v. Matthews, 54 F.4th 1, 6 (D.C. Cir. 2022) (courts must consider whether standard conditions are warranted in each individual case); United States v. Vigil, 989 F.3d 406, 411 (5th Cir. 2021) (per curiam) (special conditions must be tailored to each individual defendant); United States v. Miller, 978 F.3d 746, 763 (10th Cir. 2020) (court must make individualized assessment before imposing special conditions and provide some explanation of its reasoning); United States v. Betts, 886 F.3d 198, 202 (2d Cir. 2018) (court's failure to state reason for imposing special condition on record is error).

[53] *See* 2025 USSG, *supra* note 7, at §5D1.3, comment. (n.1); 18 U.S.C. § 3583(c). Section 3583(c) instructs courts to consider all section 3553 factors except subsection 3553(a)(2)(A). *Id.*; *see supra* notes 17–19 and accompanying text.

[54] 18 U.S.C. § 3583(d)(3). Courts may order the condition set forth in 18 U.S.C. § 3563(b)(10) (requiring defendant to remain in custody on nights and weekends) only for a violation of a condition of supervised release in accordance with 18 U.S.C. § 3583(e)(2) (extending, modifying, reducing or enlarging conditions pursuant to FED. R. CRIM. P. 32.1 relating to provision applicable to initial setting of terms and conditions), and only if facilities are available. 18 U.S.C. § 3583(d)(3).

[55] *See* Johnson v. United States, 576 U.S. 591, 595 (2015) ("[T]he Government violates [the due process] guarantee by taking away someone's . . . liberty . . . under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.").

[56] *See* United States v. Lee, 950 F.3d 439, 448–50 (7th Cir. 2020).

[57] United States v. Wolf Child, 699 F.3d 1082, 1087–88 (9th Cir. 2012) ("[T]he fundamental right to familial association, implicated by the parts of the special condition prohibiting [defendant] from residing with or being in the company of his own daughters and socializing with his fiancée, is a 'particularly significant liberty interest.' ").

[58] *See* United States v. Carlineo, 998 F.3d 533, 536 (2d Cir. 2021) (due process requires conditions that are "sufficiently clear to inform [the defendant] of what conduct is prohibited so that he may act accordingly"); United States v. Bolin, 976 F.3d 202, 214 (2d Cir. 2020) (a condition violates due process if terms are so vague that " 'men of common intelligence must necessarily guess at its meaning and differ as to its application' . . . . [Terms must be] 'sufficiently clear to inform [the defendant] of what conduct will result in his being returned to prison.' ") (citations omitted)).

Many districts have set forth standard conditions of supervision in general orders, usually available on the court's website, and the Judgment in a Criminal Case Form (AO 245B) lists suggested conditions that mirror those contained in §5D1.3.[59]

1. Standard Conditions

The 13 "standard" conditions set forth in §5D1.3(b)(2) are expansions of conditions provided by statute, which "the court may modify, expand, or omit in appropriate cases."[60] These standard conditions include requiring the defendant to report to the probation office as directed, to maintain or seek employment (unless excused by the probation officer), and to report any contact with law enforcement to the probation officer.[61]

2. Special Conditions

Section 5D1.3(b)(3) provides a non-exhaustive list of "special" conditions that may be appropriate in particular cases, including in described circumstances. The special conditions may be appropriate if the defendant committed a particular type of offense (*e.g.*, a sex offense) or if the court finds that certain facts about the defendant's personal characteristics warrant a special condition, (*e.g.*, a need to support dependents or to obtain substance abuse or mental health treatment).[62] The guidelines also note that conditions such as residence in a halfway house, home detention, curfews, and intermittent confinement may be appropriate in some cases.[63]

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[59] The AO 245B form has not yet been amended to reflect the changes to §5D1.3 discussed in this primer.

[60] 2025 USSG, *supra* note 7, at § 5D1.2(b)(2); *see also, e.g.*, United States v. Matthews, 54 F.4th 1, 6 (D.C. Cir 2022) ("[T]he standard conditions form the administrative backbone of supervised release, and so they are 'almost uniformly imposed.' " (quoting United States v. Truscello, 168 F.3d 61, 63 (2d Cir. 1999))).

With respect to the standard condition at §5D1.3(b)(2)(D) that the defendant truthfully answer questions asked by the probation officer, a legitimate invocation of the Fifth Amendment privilege in response to the question shall not be considered a violation of the condition. *See* 2025 USSG, *supra* note 7, at §5D1.3, comment. (n.2); *see also* United States v. Linville, 60 F.4th 890, 898 (4th Cir. 2023) (defendant cannot demonstrate he reasonably believed he was faced with "classic penalty situation," where invoking Fifth Amendment rights against self-incrimination are self-executing, when answering probation officer's questions (quoting McKathan v. United States, 969 F.3d 1213, 1230 (11th Cir. 2020))).

[61] *See* 2025 USSG, *supra* note 7, at §5D1.3(b)(2)(A) (report to probation office), (b)(2)(G) (maintain employment), (b)(2)(I) (report law enforcement contact to probation officer); *see also infra* Appendix A ("Standard" Conditions).

[62] *See* 2025 USSG, *supra* note 7, at §5D1.3(b)(3)(A) (support of defendants), (b)(3)(D) (substance abuse), (b)(3)(E) (mental health program participation), (b)(3)(G) (sex offenses); *see also infra* Appendix A ("Special" Conditions). The term "sex offense" is defined by reference to specific statutes. *See* 2025 USSG, *supra* note 7, at §5D1.3, comment. (n.3).

For sex offenders required to register under SORNA, 18 U.S.C. § 3583(d) also authorizes the court to order a condition that the defendant submit to a search, with or without a warrant, of his person, any property, including a residence and a vehicle, papers, computers (including any electronic communications or data storage devices). 18 U.S.C. § 3583(d).

[63] 2025 USSG, *supra* note 7, at §5D1.3(b)(3)(K), (L), (O), (P).

F. Modification, Early Termination, and Extension of Supervised Release (§5D1.4)

A court is authorized by statute to modify the conditions of supervised release, terminate a term of supervised release, or extend the term of supervised release.[64] Section 5D1.4 addresses a court's statutory authority to modify conditions or to terminate or extend the term of supervised release.[65] It instructs court to conduct an individualized assessment before modifying, terminating, or extending supervised release. When making this individualized assessment, "the factors to be considered are the "same factors used in determining whether to impose a term of supervised release."[66]

A court maintains broad discretion throughout the term of supervised release to modify the term or conditions. While a hearing is typically required,[67] supervised release may be modified without a hearing (i) through a voluntary consent to the modification and waiver of hearing, or (ii) if "the relief sought is favorable to the [defendant] and does not extend the term of . . . supervised release" and the attorney for the government is given notice and a reasonable opportunity to object but does not do so.[68]

The commentary to §5D1.4 encourages the court, in coordination with the government, to ensure that any victim of the offense is notified and provided with an opportunity to be heard when determining whether to terminate the remaining term of supervised release or modify any conditions of supervised release that would be relevant to the victim.[69]

1. Modification of Supervised Release

Section 5D1.4(a) provides that "the court may modify, reduce, or enlarge the conditions of supervised release whenever warranted by an individualized assessment of the appropriateness of existing conditions."[70] It encourages the court to "conduct such an assessment in consultation with the probation officer after the defendant's release from imprisonment."[71]

64 18 U.S.C. § 3583(e).

65 2025 USSG, *supra* note 7, at §5D1.4.

66 2025 USSG, *supra* note 7, at §5D1.4, comment. (n.1(A)).

67 Fed. R. Crim. P. 32.1(c)(1).

68 Fed. R. Crim. P. 32.1(c)(2).

69 2025 USSG, *supra* note 7, at §5D1.4, comment. (n.2).

70 2025 USSG, *supra* note 7, at §5D1.4(a).

71 *Id.*

2. Early Termination of Supervised Release

By statute, a court may terminate supervised release "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," after considering the specified 18 U.S.C. § 3553(a) factors.[72] Courts disagree on whether they must explain such consideration on the record in deciding whether to grant a defendant's motion for early termination of supervised release under section 3583(e)(1).[73]

Consistent with the requirements of section 3583(e)(1), §5D1.4(b) provides that "the court may terminate the remaining term of supervision" when "warranted by the conduct of the defendant and in the interest of justice" after "an individualized assessment of the need for ongoing supervision" and "following consultation with the government and the probation officer."[74] The commentary provides a list of the types of factors the court might consider when determining whether to terminate supervised release.[75] The Sixth Circuit has held that a finding of "exceptionally good behavior" is not required for a district court to grant early termination.[76]

Some courts have held that supervised release may be terminated early even if the statute of conviction originally required a particular term of supervised release.[77]

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[72] 18 U.S.C. § 3583(e)(1); s*ee also* United States v. Johnson, 529 U.S. 53, 60 (2000) (defendant may seek relief under § 3583(e)(1) after completing one year on supervised release); United States v. Mathis-Gardner, 783 F.3d 1286, 1288 (D.C. Cir. 2015) (court must consider specified § 3553(a) factors before denying motion for early termination and collecting cases consistent with interpretation); United States v. Emmett, 749 F.3d 817, 819 (9th Cir. 2014) (courts have broad discretion in determining whether to terminate supervised release term early); United States v. Hook, 471 F.3d 766, 771 (7th Cir. 2006) (same).

[73] *Compare* United States v. Johnson, 877 F.3d 993, 1000 (11th Cir. 2017) (per curiam) (vacating a district court's summary order denying, without explanation, defendant's motion for early termination), *and Emmett*, 749 F.3d at 820–21 (court has duty to explain sentencing decisions, including decisions on early termination), *with* United States v. Mosby, 719 F.3d 925, 931 (8th Cir. 2013) (no explanation required), United States v. Norris, 62 F.4th 441, 450 n.4 (8th Cir. 2023) (citing *Mosby*, 719 F.3d at 800, 931, and acknowledging the circuit is an "outlier," but "[i]t is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel"), *and* United States v. Lowe, 632 F.3d 996, 998 (7th Cir. 2011) (court need not make explicit finding on each factor but record must reveal court gave consideration to § 3553(a) factors).

[74] 2025 USSG, *supra* note 7, at §5D1.4(b).

[75] 2025 USSG, *supra* note 7, at §5D1.4, comment. (n.1(B)(i)–(vi)).

[76] *See* United States v. Hale, 127 F.4th 638, 641 (6th Cir. 2025) ("Section 3583(e)(1) requires the district court to determine whether early termination 'is warranted by the conduct of the defendant released and the interest of justice,' in addition to certain [18 U.S.C.] § 3553(a) factors. The text does not make 'exceptionally good' conduct an absolute prerequisite to relief.").

[77] *See, e.g.*, United States v. Lester, 92 F.4th 740, 742–43 (8th Cir. 2024) (The district court retains discretion under 18 U.S.C. § 3583(e)(1) to terminate supervised release early for defendants convicted under 21 U.S.C. § 841(b)(1)(A), despite a 2002 statutory amendment that requires a court to initially impose five years of supervised release "[n]otwithstanding section 3583 of Title 18."); *see also* United States v. Carpenter, 803 F.3d 1224, 1241 n.4 (11th Cir. 2015) (noting at the time it was imposed that the five-year minimum term

3. Extending a Term of Supervised Release

By statute the court may "extend a term of supervised release if less than the maximum authorized term was previously imposed."[78] Consistent with section 3583(e)(2), §5D1.4(c) provides that the court may extend the term of supervised release if "the extension is warranted by an individualized assessment of the need for further supervision."[79] The commentary provides that "[i]n some cases, extending a term may be more appropriate than taking other measures, such as revoking the term of supervised release."[80]

IV. SERVICE OF SUPERVISED RELEASE

A person placed on supervised release is supervised during that term by a probation officer.[81] A term of supervised release commences following the defendant's release from imprisonment, including any transitional community-based confinement or home confinement,[82] and including any civil commitment.[83] Supervision begins when the defendant is actually released, and not when release should have occurred, even if the defendant was mistakenly held in prison beyond a lawful term of imprisonment.[84] Unless the sentence is less than 30 days, incarceration during a term of supervised release does

may be shortened or terminated after one year); United States v. Vargas, 564 F.3d 618, 622–23 n.3 (2d Cir. 2009) (assuming without deciding that term of supervised release may be ended after one year).

78 18 U.S.C. § 3583(e)(2).

79 2025 USSG, *supra* note 7, at §5D1.4(c).

80 2025 USSG, *supra* note 7, at §5D1.4, comment. (n.3).

81 18 U.S.C. § 3601.

82 *Id.* § 3624(e) ("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 . . . . The term of supervised release commences on the day the person is released from imprisonment . . . ."); *see also* United States v. Freeman, 99 F.4th 125, 128 (2d Cir. 2024) (supervised release term "commence[s] only when an individual is no longer imprisoned by any authority and is available for supervision by the federal Probation Office"); United States v. Earl, 729 F.3d 1064, 1068 (9th Cir. 2013) ("We therefore interpret the term 'released' in the context of the statute to require not only release from imprisonment, but also release from the BOP's legal custody at the expiration of the prisoner's prescribed sentence.").

83 United States v. Mosby, 719 F.3d 925, 929–30 (8th Cir. 2013) (civil commitment under 18 U.S.C. § 4248 (Civil commitment of a sexually dangerous person) is federal custody and is therefore "imprisonment" for purposes of § 3624(e)).

84 United States v. Johnson, 529 U.S. 53, 57–60 (2000) (where some convictions were overturned on appeal, and therefore defendant was imprisoned longer than authorized, terms of supervised release on remaining convictions did not begin until release, because "[s]upervised release fulfills rehabilitative ends, distinct from those served by incarceration," and so it would not make sense to "treat[] . . . time in prison as interchangeable with [a] term of supervised release").

not count towards the supervised release term.[85] The Supreme Court has held that pretrial detention for charges that later lead to a conviction tolls a term of supervised release.[86]

Section 3605 of title 18 provides that "[a] court, after imposing a sentence, may transfer jurisdiction over a . . . person on supervised release to the district court for any other district to which the person is required to proceed as a condition of . . . release, or is permitted to proceed, with the concurrence of such court."[87] Once such a transfer takes place, the "court to which jurisdiction is transferred under this section is authorized to exercise all powers over the . . . releasee that are permitted by" the statutes governing the administration, modification, termination, and possible revocation of supervised release.[88]

Alternatively, a probation office may provide "courtesy supervision" on behalf of a probation office in a different district,[89] in which formal jurisdiction over the releasee and any decisions concerning the term of supervised release remains with the original sentencing court, and the supervising district performs the limited supervisory duties set forth in 18 U.S.C § 3603 (Duties of probation officers).[90]

V. RESPONSES TO NONCOMPLIANCE AND REVOCATION OF SUPERVISED RELEASE: CHAPTER SEVEN, PART C

If a defendant violates one of the conditions of supervised release, the court may modify the conditions, terminate the supervised release before the original expiration date,

[85] 18 U.S.C. § 3624(e) ("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."). In addition, a term of supervised release does not begin during a period of home confinement served as part of a federal sentence. *See Earl*, 729 F.3d at 1068 ("[R]egardless of where the BOP decided to place [the defendant], his term of supervised release could not begin until his prescribed term of imprisonment expired.").

[86] Mont v. United States, 587 U.S. 514, 521(2019) ("[P]retrial detention later credited as time served for a new conviction is 'imprison[ment] in connection with a conviction' and thus tolls the supervised release term under § 3624(e).").

[87] 18 U.S.C. § 3605.

[88] *Id.*; *see also* United States v. El Herman, 971 F.3d 784, 785–86 (8th Cir. 2020) (transferee court has jurisdiction to consider a motion to reduce sentence under the First Step Act); United States v. Adams, 723 F.3d 687, 689 (6th Cir. 2013) ("[S]ection 3605 expand[s] the power of the transferee court over the supervised offender as it was intended to permit the transferee court 'to exercise all the powers over the . . . releasee that are permitted' by the statutes dealing with supervised releasees." (quotations and citation omitted)).

[89] *See* United States v. Johnson, 861 F.3d 474, 479 n.18 (3d Cir. 2017) (citing the *Guide to Judiciary Policy*, which "set[s] forth statutory bases for short-term courtesy supervision and longer-term 'transfer of supervision' without transfer of jurisdiction").

[90] 18 U.S.C § 3603.

or revoke supervised release and impose a term of imprisonment.[91] Chapter Seven of the *Guidelines Manual* contains policy statements that classify violations by the seriousness of the violation conduct and that recommend: (i) when probation officers should report violations to the court; (ii) responses to violations, including when courts should revoke supervised release; and (iii) the terms of imprisonment for classes of violations.[92] A court must consider the same factors from 18 U.S.C. § 3553(a) that it initially considered in imposing the term of supervised release.[93]

A. Revocation of Supervised Release

1. Statutory Provisions

A revocation of supervised release may be discretionary, 18 U.S.C. § 3583(e), or mandatory, 18 U.S.C. § 3583(g). A court is required to revoke supervised release and impose a term of imprisonment when a defendant:

(1) possesses a controlled substance under some circumstances (discussed below);

(2) unlawfully possesses a firearm;

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

(4) has four or more positive drug tests over the course of one year.[94]

The statute provides a limited exception to the requirement that a court incarcerate a defendant who has failed a drug test if the court finds that a defendant would benefit or has benefited from "appropriate substance abuse treatment programs."[95] This exception is not expressly provided if a court finds that a defendant possessed illegal drugs.[96]

If there is an allegation that the defendant did not comply with other conditions of supervised release, the court employs a three-step process to determine the appropriate response: (1) determine whether the defendant has violated a condition of supervised

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91 18 U.S.C. § 3583(e); *see also* Federal Probation and Supervised Release Violations Report, *supra* note 2, at 8–9.

92 *See* 2025 USSG, *supra* note 7, at Ch.7, Pt.C.

93 18 U.S.C. § 3583(e).

94 18 U.S.C. § 3583(g).

95 18 U.S.C. § 3583(d) (providing for an exception from § 3583(d) "in accordance with" the guidelines).

96 *See id.*; *see also, e.g.*, United States v. Brooker, 858 F.3d 983, 986 (5th Cir. 2017) (noting that the court had "several times declined to apply the treatment exception where the established violations of a defendant's conditions of supervised release included more than failing a drug test," but declining to adopt a bright-light rule limiting judge's discretion to consider substance abuse treatment over imprisonment and collecting similar cases).

release; (2) determine whether revocation of supervised release is appropriate; and (3) determine the appropriate penalty.[97]

In determining whether to revoke a term of supervised release, section 3583(e) instructs courts to consider the same 18 U.S.C. § 3553 factors considered when determining whether to impose supervised release.[98] The Supreme Court recently held that courts may consider *only* the sentencing factors enumerated at section 3583(d) and therefore may not consider the factors listed under section 3553(a)(2)(A).[99]

If a revocation hearing is held, the defendant has certain rights.[100] Specifically, the defendant is entitled to:

- written notice of the alleged violation;
- disclosure of the evidence against him or her,[101]
- an opportunity to appear, present evidence, and question adverse witnesses;[102]
- counsel; and
- the opportunity to make a statement and present any mitigating information.[103]

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97 *See, e.g.*, United States v. Thornhill, 759 F.3d 299, 308 (3d Cir. 2014).

98 18 U.S.C. § 3583(e) (*i.e.*, *id.* § 3553(a)(1), (a)(2)(B)–(D), (a)(4)–(7)).

99 Esteras v. United States, 145 S. Ct. 2031, 2037 (2025) ("Congress's decision to enumerate most of the sentencing factors while omitting § 3553(a)(2)(A) raises a strong inference that courts may not consider that factor when deciding whether to revoke a term of supervised release. This inference is consistent with both the statutory structure and the role that supervised release plays in the sentencing process."). Prior to the Supreme Court's decision in *Esteras*, some circuits had held that the district court may consider the unenumerated factors in section 3553(a)(2)(A) as long as the primary focus was the enumerated factors. *Compare* United States v. Llanos, 62 F.4th 312, 316 (7th Cir. 2023) (citing United States v. Dawson, 980 F.3d 1156, 1163 (7th Cir. 2020)), *with* United States v. Booker, 63 F.4th 1254, 1260–61 (10th Cir. 2023) (court may not consider need for retribution under § 3553(a)(2)(A) in revocation of term of supervised release).

100 *See* FED. R. CRIM. P. 32.1(b)(2).

101 *Id.* Revocation proceedings are noncriminal. *See* Minnesota v. Murphy, 465 U.S. 420, 435 n.7 (1984) ("Although a revocation proceeding must comport with the requirements of due process, it is not a criminal proceeding."). As a result, courts have held that the Fifth Amendment right against self-incrimination does not apply, thereby allowing statements made by the defendant during, for example, mandatory sex-offender treatment or discussions with probation officers, to be used against him or her. *See, e.g.*, United States v. Hulen, 879 F.3d 1015, 1020–21 (9th Cir. 2018); United States v. Wilson, Nos. 21-1099, 21-1150, 2022 WL 1184043, *7 (10th Cir. Apr. 21, 2022).

102 FED. R. CRIM. P. 32.1(b)(2); *see also* United States v. Barksdale, 98 F.4th 86, 89–90 (3d Cir. 2024) (prohibiting defendant from testifying at revocation hearing was a violation of due process that was not harmless beyond a reasonable doubt and warranted remand).

103 FED. R. CRIM. P. 32.1(b)(2).

2. Policy Statements

Section 7C1.1 sets forth three grades of violations of supervised release—Grades A, B, and C.[104] Violations are grouped into these three broad grades based on the severity of the conduct underlying the violation, ranging from the commission of certain serious felonies and other felonious conduct to misdemeanors and technical violations.[105] Circuit courts have disagreed about whether the categorical approach applies to determine whether conduct qualifies as a Grade A Violation. Under §7B1.1(a)(1), Grade A violations—the most serious grade—are defined, among other things, as "*conduct constituting* (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, or (ii) is a controlled substance offense."[106] The commentary defines "crime of violence" and "controlled substance offense" by reference to the definitions in §4B1.2.[107] Circuit courts disagree about whether the "crime of violence" and "controlled substance offense" determination should be evaluated using the categorical approach, given the reference to §4B1.2 (which courts analyze using the categorical approach), or instead using a conduct-based approach, given the presence of the phrase "conduct constituting."[108]

Recommended ranges of imprisonment are set forth in a Revocation Table[109] based on the grade of the violation and the defendant's criminal history category, as determined at the defendant's initial sentencing hearing for the underlying criminal case.[110] Section 7C1.2 recommends when the probation officer should report the violation to the court, and §7C1.3 recommends when the court should revoke the term of supervised release.[111]

The following table summarizes these recommendations.[112]

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104 2025 USSG, *supra* note 7, at §7C1.1(a).

105 2025 USSG, *supra* note 7, at §7C1.1, comment. (n.1) ("The grade of violation does not depend upon the conduct that is the subject of criminal charges or of which the defendant is convicted in a criminal proceeding. Rather, the grade of the violation is to be based on the defendant's actual conduct.").

106 *Id.* (emphasis added).

107 USSG §7B1.1, comment. (n.2, 3).

108 For a discussion of the circuit split on this issue, see U.S. SENT'G COMM'N, PRIMER ON THE CATEGORICAL APPROACH 25–26 (2025).

109 2025 USSG, *supra* note 7, at §7C1.5. From fiscal year 2013 through fiscal year 2017, more than half (59.8%) of those who violated supervised release were sentenced within the applicable range in accordance with the Revocation Table, and just over one-quarter (29.1%) were sentenced below the range, *See* FEDERAL PROBATION AND SUPERVISED RELEASE VIOLATIONS REPORT, *supra* note 2, at 36.

110 *See* 2025 USSG, *supra* note 7, at §7C1.5; *see also* United States v. Ramos, 979 F.3d 994, 999 (2d Cir. 2020) ("In imposing a sentence for violation of supervised release, the sentencing judge may freely impose a term lower or higher than the recommended Guidelines range, but must start with a legally correct interpretation of the Guidelines." (quoting United States v. McNeil, 415 F.3d 273, 277 (2d Cir. 2005))).

111 2025 USSG, *supra* note 7, at §§7C1.2, 7C1.3.

112 Where there is more than one violation, or if the violation includes conduct constituting more than one offense, the grade of violation is determined based on the most serious graded violation. USSG §7B1.1(b);

Grade	Conduct	Reporting	Revocation
A	Constitutes a federal, state, or local offense punishable by more than one year of imprisonment that either: • is a crime of violence; • controlled substance offense; or • involves possession of a firearm or destructive device; **or** constitutes any other federal, state, or local offense punishable by *more than 20 years* of imprisonment	Probation officer shall promptly report to the court	Generally appropriate
B	Constitutes any other federal, state, or local offense punishable by *more than one year* of imprisonment	Probation officer shall promptly report to the court	Often appropriate
C	Constitutes a federal, state, or local offense punishable by *one year or less* of imprisonment; **or** is a violation of any other condition of supervised release	Probation officer shall promptly report to the court *unless* • minor, not part of a pattern, and • no risk to an individual or the public	May be appropriate

see also United States v. Greer, 59 F.4th 158, 161–62 (5th Cir. 2023) (procedural error to impose two consecutive sentences upon revocation for violation of two conditions of supervised release; § 3583(e)(3) provides for one term of imprisonment for revocation of one term of supervised release, as reflected in the policy statement at §7B1.1(b)).

Notably, a conviction for a new offense is not necessary for a finding of a violation, and proof of culpable conduct by a preponderance of the evidence is sufficient for revocation.[113]

Although part of §7B1.3 is written in mandatory terms ("the court shall revoke") for Grade A and B violations, as previously noted, Chapter Seven of the *Guidelines Manual* contains only non-binding policy statements. The only mandatory grounds for revocation are those set forth in 18 U.S.C. § 3583(g), as discussed above. In all other cases, the court may opt not to revoke supervised release and incarcerate the defendant, but instead continue him or her on supervision (under the same or modified terms), extend the term of supervision, or sentence the defendant to a term of home detention in lieu of incarceration.[114] Before doing so, however, the court must first consider the pertinent provisions in Chapter Seven of the guidelines.[115]

B. Sentencing Following Revocation

1. Statutory Maximum

The statutory maximum term of imprisonment that may be imposed upon revocation is governed by 18 U.S.C. § 3583(e)(3). The term imposed upon revocation may be "all or part of the term of supervised release authorized by statute for the offense [of conviction] . . . without credit for time previously served on postrelease supervision" and may not be longer than a specified number of years, depending on the class of the original offense (five years for class A felonies, three years for class B felonies, two years for class C or D felonies, and one year in any other case).[116] The supervised release statute that was in

[113] *See, e.g.*, United States v. Frederickson, 988 F.3d 76, 85–86 (1st Cir. 2021) (revocation hearing governed by a lower standard of proof to show by a preponderance of the evidence that crime was committed on supervised release; collecting cases).

[114] 18 U.S.C. § 3583(e)(1)–(4).

[115] *Id.* §§ 3553(a), 3583(e).

[116] *Id.* § 3583(e)(3); *see also, e.g.*, United States v. King, 91 F.4th 756, 761–63 (4th Cir. 2024) (Federal Rule of Criminal Procedure 11 requires the district court to advise defendants who plead guilty about the exposure, upon violation of supervised release, to additional incarceration beyond the statutory maximum term of imprisonment); United States v. Morin, 95 F.4th 592, 594–95 (8th Cir. 2024) (Section 3583(e)(3) does not require the court "to consider or aggregate" prior revocation terms of imprisonment and credit them towards the maximum sentence length authorized by statute. Instead, the "all or part" clause of § 3583(e) imposes a per-revocation limit capped by the statutorily authorized maximum.); United States v. Hall, 64 F.4th 1200, 1206 (11th Cir. 2023) (court lacks authority to sentence defendant to statutory maximum term of imprisonment and home confinement for violation of supervised release under § 3583(e)); United States v. Sears, 32 F.4th 569, 574 (6th Cir. 2022) ("[T]here is no adjustment for prison time of previous revocations of supervised release . . . . against the statutory maximum outlined in § 3583(e)(3)."); United States v. Salazar, 987 F.3d 1248, 1261 (10th Cir. 2021) (aggregate sentence exceeding statutory maximum for original offense did not constitute illegal sentence because each ten-month revocation sentence fell within two-year maximum established in § 3583(e)(3)). In cases where a defendant has violated a second or subsequent term of supervised release, the statutory maximum prison sentence is based on the class of the original offense of conviction. *See, e.g.*, United States v. Collins, 859 F.3d 1207, 1214 (10th Cir. 2017) ("Congress meant for the term 'offense' in [§ 3583(e)(3)] to refer, in all instances, to the *crime* that caused a defendant to be placed on

effect at the time of the original offense controls.[117]

2. Term of Imprisonment Upon Revocation (§§7C1.4 and 7C1.5)

The Revocation Table at §7C1.5 provides ranges of imprisonment for each grade of violation that increase in severity with a defendant's criminal history category as determined at the time of the original sentencing.[118] A defendant's criminal history category at the time of the original offense controls—even if greater or lesser at the revocation hearing—for purposes of the Revocation Table.[119] The Revocation Table is separate from the Sentencing Table in Chapter Five, Part A of the *Guidelines Manual*, which applies at original sentencing hearings.[120]

Grade of Violation		Criminal History Category					
		I	II	III	IV	V	VI
A	Class A felony	24–30	27–33	30–37	37–46	46–57	51–63
		12–18	15–21	18–24	24–30	30–37	33–41
B		4–10	6–12	8–14	12–18	18–24	21–27
C		3–9	4–10	5–11	6–12	7–13	8–14

The Revocation Table provides higher ranges for Grade A violations if the original *offense of conviction* was a Class A felony.

Section 7C1.4 instructs the court to "conduct an individualized assessment to determine the appropriate length of the term of imprisonment, given the recommended range."[121]

supervised release in the first place—that is, the defendant's *original* crime of conviction."); United States v. Ford, 798 F.3d 655, 663 (7th Cir. 2015) ("The phrase 'the offense that resulted in the term of supervised release' refers to the offense for which the defendant was initially placed on supervised release."). In addition, courts may take recidivism enhancements into account in determining the maximum potential term of imprisonment for an offense constituting a violation of supervised release. *See* United States v. Ramos, 979 F.3d 994, 1000 (2d Cir. 2020) (collecting cases).

117 United States v. Lamirand, 669 F.3d 1091, 1093 n.3 (10th Cir. 2012) (applying version of § 3583(e)(3) that applied at the time of the defendant's offense); United States v. Smith, 354 F.3d 171, 174 (2d Cir. 2003) ("[S]upervised release sanctions are part of the punishment for the original offense, and . . . sanctions of the original offense remain applicable, despite subsequent amendment." (citing Johnson v. United States, 529 U.S. 694, 701 (2000))).

118 2025 USSG, *supra* note 7, at §7C1.5 & §7C1.5, comment. (n.1).

119 2025 USSG, *supra* note 7, §7C1.5, comment. (n.1).

120 *See* USSG Ch.5, Pt.A.

121 2025 USSG, *supra* note 7, at §7C1.4(a).

3. Concurrent and Consecutive Sentences

Under 18 U.S.C. § 3584 (Multiple sentences of imprisonment), district courts have discretion to impose either consecutive or concurrent sentences of imprisonment.[122] This statute also applies to prison terms for violations of supervised release.[123] Likewise, in the case of a violation based on the commission of a new federal offense, resulting in both a new sentence and a revocation sentence stemming from an existing term of supervised release, a court may decide whether a sentence of imprisonment for the new offense should run concurrently with or consecutively to the revocation sentence (unless the new offense carries a mandatory consecutive prison sentence).[124] Such discretion exists notwithstanding provisions in the guidelines that recommend a consecutive sentence in such cases.[125]

Section 7C1.4 provides that a "term of imprisonment imposed upon the revocation of supervised release generally should be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation."[126]

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[122] 18 U.S.C. § 3584.

[123] *See, e.g.*, United States v. Campbell, 937 F.3d 1254, 1258 (9th Cir. 2019) (it was not plain error to impose five consecutive five-month prison terms following revocation of concurrent supervised release terms); United States v. Badgett, 957 F.3d 536, 538, 541 (5th Cir. 2020) (revocation sentence substantively reasonable where district court imposed consecutive sentences following revocation of six concurrent terms of supervised release). *But see* United States v. Turner, 21 F.4th 862, 863–68 (D.C. Cir. 2022) (disagreeing with the Ninth Circuit's approach in *Campbell*, holding that the guideline range determined under the Revocation Table is the total recommended punishment, regardless of whether a defendant's supervised release is revoked while serving a single term of supervised release or multiple concurrent terms of supervised release.).

[124] 18 U.S.C. § 3584(a); *see also* United States v. Richards, 52 F.4th 879, 886–87 (9th Cir. 2022) (two consecutive sentences imposed upon violation of supervised release did not violate Double Jeopardy Clause when they were not imposed for the same underlying conduct but were instead grounded on two separate counts in the underlying indictment); United States v. Taylor, 628 F.3d 420, 423 (7th Cir. 2010) ("[A] sentencing court has discretion to make a sentence consecutive or concurrent. This includes situations where the sentence is imposed in connection with a revocation of supervised release."); United States v. Rodriguez-Quintanilla, 442 F.3d 1254, 1256 (10th Cir. 2006) (imposition of sentence upon revocation of supervised release to run consecutively to sentence for new offense was in accordance with § 3584(a) and §7B1.3(f)).

[125] *See Rodriguez-Quintanilla*, 442 F.3d at 1256 ("In such a case, the defendant bears the burden to demonstrate that the District Court should exercise its discretion to impose concurrent sentences in spite of that statement."); *see also* USSG §5G1.3, comment. (n.4(C)) ("[I]n cases in which the defendant was on . . . supervised release at the time of the instant offense and has had such . . . supervised release revoked[,] . . . the Commission recommends that the sentence for the instant offense be imposed consecutively to the sentence imposed for the revocation."); USSG §7B1.3(f) ("Any term of imprisonment imposed upon the revocation of . . . supervised release shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of probation or supervised release.").

[126] 2025 USSG, *supra* note 7, at §7C1.4(b).

VI. APPELLATE ISSUES

As with a sentence of imprisonment, a term of supervised release may be reviewed on appeal for procedural and substantive reasonableness in light of the court's stated reasons.[127] The standard of review will vary depending on the nature of the challenge and the procedural posture of the appeal.[128]

A. APPEAL OF CHALLENGED CONDITIONS

Claims that a district court imposed an invalid condition of supervised release raised for the first time on appeal are ordinarily reviewed for "plain error."[129] Fully preserved challenges to conditions of supervised release are ordinarily reviewed on appeal for abuse of discretion,[130] although the issue of "[w]hether a supervised release condition illegally exceeds the [district court's statutory authority] or violates the Constitution is reviewed de novo."[131] Circuit courts have disagreed about the propriety of certain conditions.[132]

Appellate courts have addressed discretionary conditions imposed by sentencing courts, including the conditions listed in the guidelines as well as conditions created by the courts.[133] Circuit courts have criticized and struck down discretionary conditions imposed

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127 *See, e.g.*, *Badgett*, 957 F.3d at 541 (reviewing revocation sentence); United States v. Henry, 819 F.3d 856, 874–76 (6th Cir. 2016) (reviewing condition of release).

128 *See Campbell*, 937 F.3d at 1256 (applying *Booker* reasonableness standard of review for sentence imposed on revocation, *de novo* review for guideline interpretation, and clear error review for factual findings; "Generally, we review the district court's application of the Guidelines for abuse of discretion. However, when a defendant does not raise an objection to his sentence before the district court, we apply plain error review." (citations omitted)); *see also* United States v. Moore, 22 F. 4th 1258, 1264 (11th Cir. 2022) (applying plain error review when defendant did not preserve objection to imposition of sentence); United States v. Speed, 811 F.3d 854, 857–59 (7th Cir. 2016) (discussing waiver and the applicable standards of review).

129 *See* United States v. McCullock, 991 F.3d 313, 317 (1st Cir. 2021); *see also Speed*, 811 F.3d at 858–59 (discussing when plain error review should apply); United States v. Scott, 821 F.3d 562, 570 (5th Cir. 2016); *Henry*, 819 F.3d at 874.

130 *See McCullock*, 991 F.3d at 317 ("[W]e inspect fact findings for clear error, legal issues *de novo*, . . . and judgment calls with some deference."); *Speed*, 811 F.3d at 858 (noting general rule to review for abuse of discretion when conditions contested, while examining uncontested conditions for plain error); *Scott*, 821 F.3d at 570 ("Abuse-of-discretion review typically applies to conditions . . . but plain-error review applies if the defendant fails to object in the district court."); United States v. Bare, 806 F.3d 1011, 1016 (9th Cir. 2015) (court reviews conditions for abuse of discretion "giving considerable deference" to district court's determinations, recognizing it has "at its disposal all of the evidence, its own impressions of a defendant, and wide latitude" (citations and quotations omitted)).

131 United States v. Aquino, 794 F.3d 1033, 1036 (9th Cir. 2015) (citations and quotations omitted).

132 *See generally* United States v. Munoz, 812 F.3d 809, 815–17 (10th Cir. 2016) (noting disagreement among circuits regarding several conditions).

133 *See, e.g.*, United States v. Strobel, 987 F.3d 743, 748 (7th Cir. 2021) (condition must be appropriately tailored, adequately justified, and orally pronounced after proper notice (citing United States v. Kappes, 782 F.3d 828, 838–39 (7th Cir. 2015))); United States v. Payton, 959 F.3d 654, 657 (5th Cir. 2020) (addressing discretionary conditions in § 3563 and the similar conditions listed in §5D1.3); United States v. Evans,

because they were vague and overbroad,[134] not reasonably related to relevant statutory sentencing factors,[135] or constituted a greater deprivation of liberty than reasonably necessary.[136] In 2016, the Commission revised or clarified several of the conditions in

883 F.3d 1154, 1164 (9th Cir. 2018) ("[A] vague supervised release condition 'cannot be cured by allowing the probation officer an unfettered power of interpretation, as this would create one of the very problems against which the vagueness doctrine is meant to protect . . . .' " (citations omitted)).

[134] *See, e.g.*, United States v. Hall, 912 F.3d 1224, 1226–27 (9th Cir. 2019) (per curiam) (reversing, as violative of due process, condition limiting defendant's interaction with his son to "normal familial relations"); United States v. Washington, 893 F.3d 1076, 1081–82 (8th Cir. 2018) (reversing, as unconstitutionally vague, conditions prohibiting defendant from associating with current and prospective gang members or wearing clothing associated with a gang while in the presence of members); *cf.* United States v. Etienne, 102 F.4th 1139, 1145–47 (11th Cir. 2024) (condition prohibiting a defendant from contacting "Judges' Chambers or any facility" or "visiting" specified federal courthouses was not impermissibly vague or overbroad); United States v. Cohen, 63 F.4th 250, 257 (4th Cir. 2023) (restricting access to places whose "primary purpose" is to provide sexually explicit material alleviates vagueness challenge); United States v. Van Donk, 961 F.3d 314, 323–25 (4th Cir. 2020) (scienter requirement in imposed condition alleviates vagueness concerns). *But see* United States v. Sebert, 899 F.3d 639, 641 (8th Cir. 2018) (per curiam) (rejecting defendant's claim the term "erotica" is unconstitutionally vague based on prior precedent upholding conditions incorporating that term).

[135] *See, e.g.*, United States v. Sims, 92 F.4th 115, 123–26 (2d Cir. 2024) (remanding to determine whether a special condition for non-association is reasonably related to the applicable sentencing factors); United States v. Canfield, 893 F.3d 491, 495–98 (7th Cir. 2018) (reversing a number of conditions on various grounds, including condition barring defendant from viewing all adult pornography due to court's failure to provide sufficient explanation for imposing such condition); United States v. Betts, 886 F.3d 198, 202–03 (2d Cir. 2018) (vacating special condition prohibiting all alcohol use where "[n]either defendant's underlying crime nor any of the conduct contributing to his violations of supervised release involved the use of alcohol"). *But see McCullock*, 991 F.3d at 320–21 (finding case-specific reasons for barring defendant from viewing adult pornography and material depicting nude adults and/or sexual activity, based on defendant's history and characteristics); United States v. Vigil, 989 F.3d 406, 409–11 (5th Cir. 2021) (per curiam) (where defendant has history of substance abuse and drug-related arrests, court properly has discretion to require substance abuse treatment and prohibit use of alcohol as special conditions, even without specific evidence of alcohol abuse).

[136] *See, e.g.*, United States v. Sueiro, 59 F.4th 132, 143–44 (4th Cir. 2023) (vacating special conditions—including lifetime ban on use of a computer in employment or volunteer activity, viewing adult pornography, and using any video game system—as a significant deprivation of liberty and remanding for "particularized explanation to support them"); United States v. Eaglin, 913 F.3d 88, 98–101 (2d Cir. 2019) (rejecting ban on internet, citing to *Packingham v. North Carolina*, 582 U.S. 98 (2017), where ban not reasonably related to either nature of offense or defendant's history and characteristics; rejecting "blanket ban" on adult pornography as not "reasonably related to the sentencing factors and reasonably necessary to accomplish the goals of sentencing"); United States v. Ramos, 763 F.3d 45, 62–63 (1st Cir. 2014) (prohibition against access to internet without approval of probation officer for ten-year supervised release term not reasonably related to defendant's characteristics and history, and thus deprived him of more liberty than reasonably necessary to achieve goals of sentencing). *But see Etienne*, 102 F.4th at 1147 (condition prohibiting defendant from visiting specific federal courthouses did not unduly burden constitutional right to access the courts); United States v. Hamilton, 986 F.3d 413, 422–23 (4th Cir. 2021) (upholding lifetime internet ban without prior approval of probation officer as not overbroad, noting defendant used internet to meet victim and contact her after offense and noting availability of future condition modification if warranted under § 3583); United States v. Newell, 915 F.3d 587, 591 (8th Cir. 2019) (affirming, as no greater deprivation of liberty than reasonably necessary, imposition of condition restricting internet access without prior written permission of probation officer).

§5D1.3 that had been challenged on appeal as vaguely worded, constitutionally suspect, or, in the case of certain standard conditions, improperly imposed on particular defendants.[137]

B. Appeal of Revocation Decisions

District courts must adequately explain a defendant's sentence so that reviewing courts can evaluate the validity of the underlying rationale supporting the sentence.[138] Just as with a sentence of imprisonment imposed at a defendant's original sentencing hearing, a post-revocation sentence of imprisonment cannot be based solely on the defendant's need for rehabilitation.[139]

Whether a district court had jurisdiction to revoke supervised release is reviewed *de novo.*[140] The district court's factual findings that a defendant violated the conditions of release are reviewed for clear error, while legal conclusions are reviewed *de novo*.[141] If the government proved by a preponderance of the evidence that the defendant violated a valid

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[137] USSG App. C, amend. 803 (effective Nov. 1, 2016) ("The amendment responds to many of the concerns raised in [various appellate] challenges by revising, clarifying, and rearranging the conditions contained in §§5B1.3 and 5D1.3 in order to make them easier for defendants to understand and probation officers to enforce."). For example, in *Kappes*, 782 F.3d at 849, the court criticized one of the then-standard conditions, which stated that "the defendant shall support his or her dependents and meet other family responsibilities." The court stated this condition was inappropriate both because the defendant had no dependents, and because it had no definition of "family responsibilities." *Id.* The 2016 amendments eliminated this standard condition and replaced it with a special condition that applies only to defendants with dependents.

[138] *See* United States v. Lee, 897 F.3d 870, 874 (7th Cir. 2018); *see also* United States v. Wilcher, 91 F.4th 864, 873 (7th Cir. 2024) (remanding where district court relied solely on the seriousness of the underlying offense when crafting a supervised release term).

[139] *See* Tapia v. United States, 564 U.S. 319, 335 (2011) ("[A] court may not impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation."); United States v. Vazquez-Mendez, 915 F.3d 85, 87–88 (1st Cir. 2019) (SRA provides that courts may not impose or lengthen sentence to promote rehabilitation, and also applies to resentencing after revocation) (citing *Tapia*); United States v. Schonewolf, 905 F.3d 683, 689 (3d Cir. 2018) (*Tapia* applies to post-revocation sentences); United States v. Lifshitz, 714 F.3d 146, 150 (2d Cir. 2013) (per curiam) (collecting cases holding same). *But see* United States v. King, 57 F.4th 1334, 1343–44 (11th Cir. 2023) (merely discussing benefit defendant can receive from eligibility for BOP drug treatment program based on length of sentence imposed is not "considering rehabilitation" in violation of *Tapia*).

[140] *See, e.g.*, United States v. Greco, 938 F.3d 891, 894 (7th Cir. 2019); United States v. Grant, 727 F.3d 928, 931 (9th Cir. 2013); United States v. Johnson, 581 F.3d 1310, 1311 (11th Cir. 2009).

[141] *See, e.g.*, United States v. Miller, 992 F.3d 322, 324 (4th Cir. 2021) (reviewing legal conclusions *de novo* because court interprets guidelines as a matter of federal law); United States v. Lee, 795 F.3d 682, 685 (7th Cir. 2015) (court may revoke if it finds a violation by preponderance of the evidence; "Normally, we look only to ensure that a revocation decision was not an abuse of discretion; constitutional arguments, however, receive *de novo* review." (citations omitted)); United States v. Boyd, 792 F.3d 916, 919 (8th Cir. 2015) (court has discretion to revoke if government proves by preponderance of the evidence defendant violated condition; revocation decision reviewed for abuse of discretion, and factfinding reviewed for clear error (citations omitted)).

condition of supervised release, the district court's decision to revoke supervised release is reviewed for abuse of discretion.[142]

With respect to appellate review of the type and length of the sentence imposed upon revocation, "sentences for violations of supervised release are reviewed under the same standard as for sentencing generally: whether the sentence imposed is reasonable."[143] Reasonableness is reviewed "under a deferential abuse-of-discretion standard."[144] Where a defendant does not object at sentencing to a district court's failure to explain its reasoning, the procedural challenge is subject to plain error.[145]

C. Ripeness and Mootness Issues on Appeal

Appellate courts must regularly decide whether a defendant's challenge to a condition of supervised release is ripe when raised on direct appeal of the original sentence, or only becomes ripe on appeal of a judgment revoking supervised release or as part of a modification proceeding. The courts of appeal have issued inconsistent decisions on this point and the ripeness of any particular challenge may turn on the nature of the condition being challenged.[146] Finally, courts have held that a defendant's appeal of a district court's revocation of supervised release is moot if the defendant has been unconditionally released from all types of custody (including any recommenced term of supervised release) at the time the appellate court hears the appeal.[147]

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142 *See*, *e.g.*, *Lee*, 795 F.3d at 685; *Boyd*, 792 F.3d at 919; United States v. Hilger, 728 F.3d 947, 951 (9th Cir. 2013) (reviewing revocation decision for abuse of discretion; stating court may revoke and sentence a defendant to a term of imprisonment if court finds by a preponderance of the evidence defendant violated a condition (citations omitted)).

143 United v. Smith, 949 F.3d 60, 65–66 (2d Cir. 2020) (citations omitted).

144 *Id.*; *see also* United States v. Adams, 873 F.3d 512, 516 (6th Cir. 2017) (reviewing sentencing decision, including revocation, for reasonableness under abuse of discretion standard (citations omitted)). *But see* United States v. Foley, 946 F.3d 681, 685 (5th Cir. 2020) ("When a defendant preserves his objection for appeal, we review a sentence imposed on revocation of supervised release under a 'plainly unreasonable' standard. Under this standard, we first 'ensure that the district court committed no significant procedural error' . . . . We 'then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.' " (citations omitted)).

145 *See Smith*, 949 F.3d at 66.

146 *See, e.g.*, United States v. Bennett, 823 F.3d 1316, 1325–26 (10th Cir. 2016) (discussing ripeness issues in supervised release sentencing and disagreement among the circuits as to whether condition of supervised release requiring penile plethysmograph testing is ripe for review at time of sentencing or only after release); United States v. Medina, 779 F.3d 55, 66–67 (1st Cir. 2015) (same).

147 *See* United States v. Huff, 703 F.3d 609, 611–12 (3d Cir. 2013) (discussing application of mootness doctrine to released defendants); United States v. Hardy, 545 F.3d 280, 284 (4th Cir. 2008) ("[C]ourts considering challenges to revocations of supervised release have universally concluded that such challenges also become moot when the term of imprisonment for that revocation ends.").

APPENDIX A. SUMMARY OF CONDITIONS

This appendix summarizes the mandatory, "standard", and "special" conditions that are set forth in the supervised release guidelines and statutes.[148] Following each condition's summary is a citation to the relevant guideline provision as well as any statutory references.[149]

I. MANDATORY CONDITIONS

- The defendant shall not commit another federal, state, or local offense.
  See USSG §5D1.3(a)(1); 18 U.S.C. § 3583(d).

- The defendant shall not unlawfully possess a controlled substance.
  See USSG §5D1.3(a)(2); 18 U.S.C. § 3583(d).

- For a first-time domestic violence conviction, as defined in 18 U.S.C. § 3561(b), the defendant shall attend a public, private, or non-profit 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 available within a 50-mile radius of the legal residence of the defendant.
  See USSG §5D1.3(a)(3); 18 U.S.C. § 3583(d).

- The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant.
  See USSG §5D1.3(a)(4); 18 U.S.C. §§ 3583(d), 3563(a)(5).[150]

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[148] In 2025, the Commission promulgated an amendment to §5D1.3 to restructure and revise the discretionary conditions of supervised release to, among other things, clarify that "standard" conditions may be "modified, omitted, or expanded in appropriate cases." The amendment also removed the "additional conditions" subheading and incorporated those conditions into the list of special conditions. *See* Amendment 4 of the amendments submitted by the Commission to Congress on April 30, 2025, 90 FR 19798 (May 9, 2025). Absent congressional action to the contrary, the amendment will become effective November 1, 2025.

[149] Appendix A guidelines cite to the forthcoming 2025 *Guidelines Manual*, see *supra* note 148. A reader-friendly version of the amendment is available on the Commission's website at U.S. Sent'g Comm'n, *Amendments to the Sentencing Guidelines* (Apr. 30, 2025), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202505_RF.pdf. The statute referenced is primarily 18 U.S.C. § 3583, which sets out the conditions of supervised release. The summaries also reference specific sections of 18 U.S.C. § 3563, which sets out the conditions of probation, wherever the supervised release statute references conditions that are set forth in the probation statute.

[150] In addressing the court's ability to ameliorate or suspend the drug testing requirements for certain defendants, section 3583(d) incorrectly cites subsection (a)(4) of the probation statute, section 3563. The correct citation for this authority appears to be subsection (a)(5) of section 3563.

- If a fine imposed has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine. *See* USSG §5D1.3(a)(5); 18 U.S.C. § 3624(e).

- The defendant shall: (A) make restitution in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule. *See* USSG §5D1.3(a)(6).

- If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act. *See* USSG §5D1.3(a)(7); 18 U.S.C. § 3583(d).

- The defendant shall submit to the collection of a DNA sample at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702). *See* USSG §5D1.3(a)(8); 18 U.S.C. § 3583(d).

II. "STANDARD" CONDITIONS

- The defendant shall report to the probation officer in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment unless the probation officer instructs the defendant to report to a different probation office or within a different time frame. *See* USSG §5D1.3(b)(2)(A); 18 U.S.C. § 3563(b)(15) (as provided in 18 U.S.C. § 3583(d)).

- After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed. *See* USSG §5D1.3(b)(2)(B); 18 U.S.C. § 3563(b)(15) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or probation officer. *See* USSG §5D1.3(b)(2)(C); 18 U.S.C. § 3563(b)(14) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall answer truthfully the questions asked by the probation officer. *See* USSG §5D1.3(b)(2)(D); 18 U.S.C. § 3563(b)(17) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living

arrangements, the defendant shall notify the probation officer at least ten days before the change. If that is not possible, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change. *See* USSG §5D1.3(b)(2)(E); 18 U.S.C. § 3563(b)(13), (17) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall allow the probation officer to visit the defendant at any time at home or elsewhere and shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view. *See* USSG §5D1.3(b)(2)(F); 18 U.S.C. § 3563(b)(16) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall work full time (at least 30 hours per week) at a lawful type of employment unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work, the defendant shall notify the probation officer at least ten days before the change. If that is not possible, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change. *See* USSG §5D1.3(b)(2)(G); 18 U.S.C. § 3563(b)(4), (17) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer. *See* USSG §5D1.3(b)(2)(H); 18 U.S.C. § 3563(b)(6) (as provided in 18 U.S.C. § 3583(d)).

- If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours. *See* USSG §5D1.3(b)(2)(I); 18 U.S.C. § 3563(b)(18) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon. *See* USSG §5D1.3(b)(2)(J); 18 U.S.C. § 3563(b)(8) (as provided in 18 U.S.C. § 3583(d)).

- The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source without first getting the permission of the court. *See* USSG §5D1.3(b)(2)(K) (as provided in 18 U.S.C. § 3583(d)).

- If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm the defendant

has notified the person about the risk. *See* USSG §5D1.3(b)(2)(L) (as provided in 18 U.S.C. § 3583(d)).[151]

- The defendant shall follow the instructions of the probation officer related to the conditions of supervision. *See* USSG §5D1.3(b)(2)(M) (as provided in 18 U.S.C. § 3583(d)).

III. "SPECIAL" CONDITIONS

- If the defendant has one or more dependents—a condition specifying that the defendant shall support his or her dependents. *See* USSG §5D1.3(b)(3)(A)(i).

- If the defendant is ordered by the government to make child support payments or to make payments to support a person caring for a child—a condition specifying that the defendant shall make the payments and comply with the other terms of the order. *See* USSG §5D1.3(b)(3)(A)(ii).

- If an installment schedule of payment of restitution or a fine is imposed—a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule. *See* USSG §5D1.3(b)(3)(B).

- If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine—a condition requiring the defendant to provide the probation officer access to any requested financial information. *See* USSG §5D1.3(b)(3)(C).

- If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol—(i) a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; and (ii) a condition specifying that the defendant shall not use or possess alcohol. *See* USSG §5D1.3(b)(3)(D); 18 U.S.C. § 3563(b)(9).

- If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment—a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office. *See* USSG §5D1.3(b)(3)(E); 18 U.S.C. § 3563(b)(9).

[151] *See, e.g.*, United States v. Cambell, 77 F.4th 424, 431 (6th Cir. 2023) (the risk notification at §5D1.3(c)(12), as revised in 2016, is not permissibly vague. In so holding, the Sixth Circuit agreed with the First, Eighth, Ninth, and Tenth Circuits, and split with the Second Circuit).

- If (A) the defendant and the United States entered into a stipulation of deportation pursuant to section 238(c)(5) of the Immigration and Nationality Act (8 U.S.C. § 1228(c)(5)), or (B) in the absence of a stipulation of deportation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable—a condition ordering deportation by a United States district court or a United States magistrate judge. *See* USSG §5D1.3(b)(3)(F); 18 U.S.C. § 3583(d).

- If the instant offense of conviction is a sex offense—

  (i) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

  (ii) A condition limiting the use of a computer or an interactive computer service in cases in which the defendant used such items.

  (iii) A condition requiring the defendant to submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects, upon reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.

  (iv) A condition prohibiting the defendant from communicating, or otherwise interacting, with any victim of the offense, either directly or through someone else. *See* USSG §5D1.3(B)(3)(G); 18 U.S.C. § 3583(d).

- If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay. *See* USSG §5D1.3(B)(3)(H).

- If the court has reason to believe that a course of study or vocational training would be appropriate and would equip the defendant for suitable employment, a condition specifying that the defendant participate in a General Education Development (or similar) program, vocational training, or skills training, unless the probation officer excuses the defendant from doing so. *See* USSG §5D1.3(B)(3)(I).

- If there is an identifiable victim of the offense, a condition prohibiting the defendant from communicating, or otherwise interacting, with any of the victims, either directly or through someone else. *See* USSG §5D1.3(B)(3)(J).

- Residence in a community treatment center, halfway house, or similar facility

may be imposed as a condition of supervised release. *See* USSG §§5D1.3(b)(3)(K), 5F1.1 (Community Confinement); 18 U.S.C. § 3563(b)(11).

- Home detention may be imposed as a condition of supervised release but only as a substitute for imprisonment. *See* USSG §§5D1.3(b)(3)(L), 5F1.2 (Home Detention).

- Community service may be imposed as a condition of supervised release. *See* USSG §§5D1.3(b)(3)(M), 5F1.3 (Community Service); 18 U.S.C. § 3563(b)(12).

- Occupational restrictions may be imposed as a condition of supervised release. *See* USSG §§5D1.3(b)(3)(N), 5F1.5 (Occupational Restrictions); 18 U.S.C. § 3563(b)(5).

- A condition imposing a curfew may be imposed if the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to provide just punishment for the offense, to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order. *See* USSG §5D1.3(b)(3)(O); 18 U.S.C. § 3563(b)(19).

- Intermittent confinement (custody for intervals of time) may be ordered as a condition during the first year of supervision, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. § 3583(e)(2) and only when facilities are available. *See* USSG §§5D1.3(b)(3)(P), 5F1.8 (Intermittent Confinement); 18 U.S.C. § 3583(d).