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Legal Sidebar

Supreme Court: Retribution Tied to the Original Offense Cannot Factor into Supervised Release Revocation Decisions

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What are the legitimate reasons a government may subject an individual to criminal punishment? Western penological theory and American legal history generally identify four principled bases for criminal punishment: retribution, deterrence, incapacitation, and rehabilitation. The Sentencing Reform Act (SRA) requires federal courts to impose an initial sentence that reflects these purposes of punishment.

The SRA also authorizes federal courts to sentence defendants to "supervised release," encompassing a set of conditions the defendant must comply with upon release from prison for a period of time (or, for some offenses, for up to life). A defendant's compliance with these conditions is "supervised," or monitored, by a federal probation officer. If a defendant violates a condition, the court may revoke the supervised release and may, among other things, send the defendant back to prison.

The SRA lists deterrence, incapacitation, and rehabilitation among the factors that a judge must consider in making these revocation determinations. The SRA does not, however, expressly include retribution as one such factor.

The federal appeals courts disagreed as to whether, and to what extent, retribution may justify the revocation of supervised release in light of this statutory omission. On one side of the divide, the U.S. Courts of Appeals (referenced only by number or jurisdictional distinction) for the First, Second, Third, Sixth, and Seventh Circuits held that federal courts may consider retribution in making revocation decisions. On the other side, the Fourth, Fifth, and Ninth Circuits concluded that courts either may not consider retribution in these decisions at all or may consider it only to a limited degree.

On June 20, 2025, the Supreme Court, in *Esteras v. United States*, resolved the split. By a 7-2 vote, the Court held that a judge may not consider retribution associated with the underlying offense when making a supervised-release revocation determination.

This Sidebar summarizes the four purposes of punishment, including retribution; offers an overview of supervised release; and summarizes the *Esteras* majority, concurring, and dissenting opinions. The Sidebar concludes with considerations for Congress.

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The Purposes of Punishment

"[T]he goals of penal sanctions that have been recognized as legitimate," according to the Supreme Court, are "retribution, deterrence, incapacitation, and rehabilitation." In general, *retribution* is the principle that individuals should be punished because they deserve punishment. This theory of punishment is most associated with philosopher Immanuel Kant, who wrote that punishment "must in all cases be imposed only because the individual on whom it is inflicted *has committed a [c]rime*."

Retributive theory has multiple strands. The "hard" form of retribution provides that an individual who violates the law invites and deserves social vengeance or retaliation. This understanding of retribution is restated colloquially in the phrase "an eye for an eye." Thomas Jefferson similarly characterized retribution as providing that "whoever . . . shall maim another, or shall disfigure him . . . shall be maimed or disfigured in like sort."

Other forms of retribution are not necessarily expressions of, or channels for, social anger, but rather are dispassionate responses to the actions of the lawbreaker. Under this view, retribution is seen as a reflection of the social contract in that an individual who voluntarily violates the law is owed punishment. In this sense, retribution furthers several goals, including respecting the moral choices of the individual, restoring the equilibrium upset by the wrongdoer's attempt to gain an advantage over others through unlawful means, and ensuring that shared laws are enforced and not ignored.

Critical distinctions exist between the retributive and the utilitarian models of punishment (the latter of which encompasses deterrence, incapacitation, and rehabilitation). The retributivist model is concerned about the nature of the past criminal conduct, focusing on the culpability of the defendant and the severity of the harms inflicted. This past criminal conduct is sufficient for the retributivist to believe that punishment is warranted.

By contrast, the utilitarian is interested in what can be gained prospectively by the imposition of punishment. The commission of a crime is therefore insufficient to impose punishment; there must also be a future social benefit, for punishment to be justified. That is, in reaching punishment decisions, the retributivist approach generally is backward-looking and the utilitarian forward-looking.

The three utilitarian models of punishment—deterrence, incapacitation, and rehabilitation—have a common thread in that each justifies punishment if there is a social good or benefit to such punishment.

First, deterrence theory, wrote philosopher Jeremy Bentham, works "towards the prevention of like acts." That is, deterrence aims to make sure that the cost from punishment is greater than the advantages of crime, such that the self-interested actor will decide against committing the crime. Put differently, deterrence ensures that crime is not "worth it." There are two types of deterrence: specific deterrence, where the punishment is designed to disincentivize a particular defendant from committing "like acts," and general deterrence, where the punishment is aimed at disincentivizing the public from committing "like acts."

Second, incapacitation removes the individual from society, physically eliminating the risk that the individual may commit additional crimes against others.

Third, rehabilitation seeks to reform the individual such that they will be better able, upon release, to stay within the bounds of the law.

In 1984, Congress enacted the SRA, which established the U.S. Sentencing Commission and charged this new agency with promulgating the first-ever federal sentencing guidelines. The SRA also codified the purposes of punishment for violations of federal criminal law—in 18 U.S.C. § 3553(a)(2)(A) (corresponding with retribution); 18 U.S.C. § 3553(a)(2)(B) (corresponding with deterrence); 18 U.S.C. § 3553(a)(2)(C) (corresponding with incapacitation); and 18 U.S.C. § 3553(a)(2)(D) (corresponding with

rehabilitation)—and instructed federal judges to impose an initial sentence that would be "sufficient, but not greater than necessary," to reflect these purposes.

Differences Between Retributive and Utilitarian Models

The models of justification for punishment described above can lead to different sentencing outcomes. Kant illustrated one distinction when he wrote that if an individual on death row were the last member of a dissolving society, the individual should still be executed, in accordance with the retributive theory, because the punishment remains his moral desert regardless of the presence of, or benefits to, other people.

The differences between retributive and utilitarian models are also evident in judicial and administrative settings. For example, the Seventh Circuit observed that, from a retributivist standpoint, a defendant's diminished capacity would justify a lighter sentence, because an individual with diminished capacity may have minimal ability to appreciate their conduct and thus may have minimal culpability. By contrast, diminished capacity may warrant a longer sentence under a utilitarian perspective, the court explained, because an individual with diminished capacity may have minimal ability to conform their conduct to the law and thus may require longer incapacitation.

When the Sentencing Commission developed the initial federal sentencing guidelines, the agency addressed the "philosophical dilemma" of attempting to reconcile the retributive and utilitarian models by adopting an empirical approach based on past sentencing practices. The Commission reasoned that judges issuing those sentences necessarily considered the purposes of punishment, and thus past sentences embodied the principled justifications for sentencing.

Supervised Release in the Federal System

The SRA authorizes, and in some instances requires, federal courts to impose supervised release on an individual convicted of a federal crime. In general, supervised release comprises a set of conditions that a federal defendant must comply with upon release from prison.

Supervised release is distinct from probation and parole. While all three may involve the imposition of behavioral conditions, probation may be imposed with *no* attendant term of imprisonment, parole may be imposed to replace *some* (i.e., the unexpired part) of a term of imprisonment, and supervised release begins only after a defendant *fully* serves a term of imprisonment (minus any good time credits). Of the three, only supervised release and probation remain options for sentencing judges; the SRA prospectively abolished parole for federal crimes to promote certainty, or "truth," in sentencing.

Supervised release is required for defendants who are convicted of specific crimes, such as certain drug or sex offenses. Where supervised release is not mandated by statute, a court has discretion as to whether to impose a term of supervised release. In practice, in 2024 supervised release was ordered in 82.5% of federal sentences, and 109,174 individuals were under supervised release.

The SRA identifies conditions of supervised release that are mandatory and discretionary. Mandatory conditions include requirements that the defendant must not commit another offense; must submit to drug testing, unless excepted; and must comply with federal sex offender registration conditions, if applicable. A court also may impose "standard" or "special" discretionary conditions, such as reporting to the probation officer; not leaving the jurisdiction without approval; allowing home visits by the probation officer; obtaining full-time employment; not possessing firearms; and receiving substance use or mental health treatment.

The length of a term of supervised release depends on the crime of conviction and generally may span one, three, or five years, with the possibility of early termination after one year. For certain serious offenses, however, supervised release may be imposed for longer periods, including life.

Compliance with conditions is monitored by a federal probation officer. Depending on the circumstances, a federal court may terminate, extend, or revoke the term of supervised release. If a supervisee violates a condition, 18 U.S.C. § 3583(e)(3) provides for revocation, stating that a "court may, after considering the factors set forth in [18 U.S.C.] section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D) . . . revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release" (with some limits). Section 3553(a)(1) factors include the "nature and circumstances of the offense," and the factors in Section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D) correspond to the utilitarian considerations of deterrence, incapacitation, and rehabilitation.

Absent from the enumerated considerations is 18 U.S.C. § 3553(a)(2)(A)—the need for a sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"—the purpose of punishment corresponding with retribution.

Esteras v. United States

The U.S. Courts of Appeals split as to whether retribution may be considered in supervised-release revocation decisions. The First, Second, Third, Sixth, and Seventh Circuits held that, despite the omission of Section 3553(a)(2)(A) as a required consideration listed in Section 3583(e)(3), judges retain discretion to take all four purposes of punishment, including retribution, into account as part of the revocation process.

In contrast, the Fourth, Fifth, and Ninth Circuits held that the Section 3553(a) factor corresponding with retribution is either forbidden in supervised-release revocation decisions or is entitled to less weight in such decisions.

In *Esteras v. United States*, the Supreme Court resolved this judicial disagreement. The case involved a defendant who pled guilty to conspiring to distribute heroin and was sentenced to twelve months in prison, followed by a six-year term of supervised release. Three years into his period of supervised release, the defendant was arrested and charged with "domestic violence, aggravated menacing, and criminal damaging" for allegedly threatening to kill the mother of his children and firing three bullets into her vehicle. The charges were dismissed at the victim's request.

As described in the Supreme Court opinion, the federal district court subsequently revoked the defendant's supervised release and imposed twenty-four months reimprisonment to be followed by three years of supervised release. At the revocation hearing, "[t]he District Court remarked that the defendant was 'no stranger to law violations and no stranger to federal court' and that his previous drug sentences had been 'rather lenient.'" The district court, in its accompanying written order, indicated that, under Sixth Circuit precedent, it was authorized to consider retributive factors, such as "'promot[ing] respect for the law,'" in revocation decisions.

On appeal, the Sixth Circuit affirmed, reasoning that Section 3583(e) does not by its terms prohibit consideration of retributive factors and that retributive factors overlap with the expressly permitted factors. The court signaled that a judge could consider retribution both as to the original offense and the violation of supervised release. The defendant filed a petition for review before the Supreme Court, highlighting the circuit split; the Court granted review on October 21, 2024.

Majority Opinion

On June 20, 2025, the Supreme Court vacated the Sixth Circuit decision and remanded, ruling that, in revocation decisions, a judge may not consider retributive factors tied to the original crime of conviction. The Court identified several bases for its holding. First, the Court, referencing the general canon of construction that "'expressing one item of [an] associated group or series excludes another left unmentioned,'" explained that the omission of the retributive factors from Section 3583(e) supports a

negative implication that Congress did not intend for courts to consider unlisted factors in revocation decisions.

Second, the Court added that related sentencing provisions contain all factors, suggesting that the exclusion of retribution in Section 3583(e) was intentional. Third, the Court observed that the purpose of supervised release is to "'fulfill rehabilitative ends'" and to provide "'individuals with postconfinement assistance'" and, as such, the omission of retributive factors comports with the forward-looking goals of supervised release.

Fourth, the Court took note that its ruling was consistent with its prior decisions on the factors that may be considered at the initial imposition of supervised release. The Court limited its holding to the offense of conviction, interpreting "offense" under Section 3553(a)(2)(A) to "mean only the underlying criminal conviction"; the majority thereby expressed no view as to whether retribution can be considered in relation to violating the conditions of supervised release.

Concurring Opinions

Justices Sotomayor and Jackson each issued opinions concurring in part and concurring in the judgment. Justice Sotomayor agreed with the majority that retribution cannot be considered vis-à-vis the underlying crime of conviction, but she would have also held that the supervised-release statute "precludes courts from exacting retribution for the defendant's supervised-release violation." That is, Justice Sotomayor would have concluded that, "[a]s to either a supervised-release violation or the underlying offense, the backward-looking end of retribution is out of bounds." Justice Jackson similarly would have gone further than the majority to forbid "retribution with respect to whatever new offense triggered the call for revocation of supervised release."

Dissenting Opinion

Justice Alito penned a dissenting opinion joined by Justice Gorsuch. The dissent lodged four primary objections to the majority's decision.

First, the dissent claimed the omission of retribution from Section 3583(e) may give rise to the "customary" inference that the listed factors are mandatory or to the "aggressive" inference that the listed factors are exhaustive. The dissent indicated that which inference should be drawn depends on the context—for example, a longer list would cut in favor of an inference that Congress intended for the listed factors to exclude unenumerated factors.

Second, the dissent pointed to fact that the text of Section 3583(e) does not expressly forbid consideration of retribution, whereas Congress in other parts of the SRA used more direct language to limit the universe of factors or otherwise limit judicial discretion. "[T]he absence of any even remotely similar language in §3583(e) is telling," according to the dissent.

Third, the dissent contended that another omitted factor, regarding the kinds of sentences available under Section 3553(a)(3), is considered in the supervised-release setting and thereby prohibited consideration does not necessarily follow from statutory omission.

Fourth, Justice Alito posited that there is an "inextricable relationship" between retributive factors (e.g., the "'seriousness of the offense'") and the enumerated factors (e.g., the "'nature and circumstances of the offense'"). Thus, according to the dissent, the majority has given courts an "irreconcilable" and "impractical" direction to avoid considerations that overlap.

The dissent also referred to a central pillar of the SRA, specifically to promote judicial discretion in sentencing determinations. Affording judges the option to consider the unenumerated factors would align with this general principle, the dissent concluded.

Congressional Considerations

If Congress disagrees with the Supreme Court's interpretation of the SRA in *Esteras*, it could seek to amend Section 3583(e) to make clear that retribution tied to the underlying offense of conviction may be considered in supervised release revocation decisions either always or to some more limited degree. Congress also could address the question left unresolved by the Court, addressed by the Sixth Circuit and the concurring opinions, of whether and to what extent retributive considerations associated with the violation of supervised release may be weighed by a judge in revocation proceedings.

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