

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

JASON J. MONT,)
)
) Petitioner,)
)
) v.) No. 17-8995
)
) UNITED STATES,)
)
) Respondent.)
)

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P R O C E E D I N G S

(11:04 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next this morning in Case 17-8995, Mont versus United States.

Ms. Malone.

ORAL ARGUMENT OF VANESSA F. MALONE

ON BEHALF OF THE PETITIONER

MS. MALONE: Mr. Chief Justice, and may it please the Court:

When Congress uses plain, ordinary words in a statute, the words should be read accordingly. The language of Section 3624(e)'s tolling provision is both plain and unambiguous.

The use of the phrase "is imprisoned" in connection with a conviction for a crime has meaning derived from the language of the statute, its enabling legislation, and other statutory provisions and cases which make clear its meaning.

The manner in which Section 3624(e) is interpreted by the Sixth Circuit alters the plain meaning of the statute. By interchanging "imprisonment" with "official detention," the

1 purpose and meaning of the provision reaches
2 beyond the intent of Congress.

3 CHIEF JUSTICE ROBERTS: Well, of
4 course, you got the ben -- you got the benefit
5 of that period in the actual sentence of
6 conviction. I mean, that was credited to his
7 sentence, right?

8 MS. MALONE: Yes, Your Honor. The
9 period of conviction that he is presently
10 serving in the Ohio is he did -- he did get a
11 benefit from that pretrial and official
12 detention, yes.

13 JUSTICE GINSBURG: It was treated as
14 if it were part of the sentence?

15 MS. MALONE: In Ohio, what happens
16 when a defendant is sentenced is that the state
17 judge is required to apportion pretrial or
18 official detention towards the credit of the
19 sentence. It is not imprisonment. It is a
20 credit that goes towards the days that a person
21 has to spend in imprisonment.

22 In this case, Mr. Mont received 300
23 days for one of his cases and 305 days for his
24 other case, notwithstanding the fact that he
25 was not held in detention on the second case.

1 JUSTICE ALITO: If you -- if --

2 JUSTICE SOTOMAYOR: I thought the
3 purposes of pretrial detention were for
4 security issues, were protecting the community
5 from the danger the defendant may pose,
6 correct?

7 MS. MALONE: That's correct.

8 JUSTICE SOTOMAYOR: And so I'm
9 assuming your argument is that that period of
10 safety is not a period for conviction; the
11 credit is just a credit; it's not the purpose
12 for the detention?

13 MS. MALONE: Yes, Your Honor, that is
14 exactly the point because, when a person is in
15 official detention, they are being held because
16 they are seen as either a flight risk or a risk
17 to the danger of the community.

18 When a person is imprisoned, on the
19 other hand, the purpose of imprisonment, as it
20 is embodied in Section 33 -- 3553, it says that
21 the four reasons for imprisonment is
22 punishment, retribution, rehabilitation, and
23 incapacitation.

24 JUSTICE ALITO: Well, suppose that --

25 MS. MALONE: Those are the reasons --

1 JUSTICE ALITO: I'm sorry. No,
2 finish.

3 MS. MALONE: I'm sorry. Those are the
4 reasons why imprisonment is markedly different
5 than official detention.

6 JUSTICE ALITO: If we look at --
7 suppose somebody is sentenced to five years in
8 prison and has been in -- in detention for one
9 year, and the judge says I'm sentencing you to
10 five years in prison, but I'm giving you credit
11 for the year in which you were detained prior
12 to trial.

13 Isn't that person imprisoned during
14 that -- that first year?

15 MS. MALONE: No, Your Honor. The
16 person is officially detained during the first
17 year. They were given credit towards the
18 five-year sentence, so that now that they will
19 only have to serve four of the five years, but
20 those four years will be the imprisonment term
21 that they will actually serve.

22 JUSTICE ALITO: Well, suppose the
23 statute said that, upon conviction of this
24 offense, the defendant shall be sentenced to
25 five years imprisonment. No discretion for the

1 judge. But the person has been in detention
2 for a year.

3 Does that mean that the judge cannot
4 credit that person for the one year spent in --
5 in official detention because that person
6 wasn't imprisoned at that time?

7 MS. MALONE: No. The person can be
8 credited towards the imprisonment. The -- the
9 -- the sentence announced by the district court
10 judge would be the sentence that was mandatory
11 sentence under your scenario. It would be a
12 five-year sentence.

13 Once the person reaches the custody of
14 their jailer, either the BOP or if it's a local
15 or state jail, then that entity will grant the
16 credits, just as in 3585 directs the Bureau of
17 Prisons to grant custody credits. Those
18 credits --

19 CHIEF JUSTICE ROBERTS: What are --
20 what are the cred -- and what would you say the
21 granting of that period was in connection with?

22 MS. MALONE: The granting --

23 CHIEF JUSTICE ROBERTS: I mean, that's
24 the language of the statute. I understand your
25 "is imprisoned" argument, but it's in

1 connection with a conviction. So he's given
2 credit for that period in connection with the
3 conviction, right?

4 MS. MALONE: He is given credit for
5 the period, but the -- the credit is to the
6 term of imprisonment, not to his official
7 detention.

8 CHIEF JUSTICE ROBERTS: But it's the
9 term of imprisonment in connection with the
10 conviction? It's got to be in connection with
11 the conviction, or it wouldn't be -- nothing to
12 credit it to.

13 MS. MALONE: That is correct. And the
14 reason why it is not credited as -- the reason
15 why it is credited as official detention and
16 given credit after a sentence is exactly that.

17 That is after a sentence is imposed.
18 Pretrial or official detention does not punish.
19 Pretrial and official detention was never
20 intended. And this Court has stated in U.S.
21 versus Salerno that pretrial detention is
22 regulatory; it is not penal.

23 So, even if a person is granted
24 official detention time and granted custody
25 credits, those custody credits are not the same

1 ism, they're not the same being as a term of
2 imprisonment. They're handled separately.

3 JUSTICE GINSBURG: The person is in
4 prison. He's not at liberty. And he is given
5 credit for that time against the sentence of
6 conviction. I really don't follow what you
7 seem to be saying, that it is not imprisonment,
8 even though the -- the court sentence treats it
9 as it is imprisonment for the conviction?

10 MS. MALONE: This is -- this is what I
11 am trying to say, Justice Ginsburg. When a
12 person is sentenced to -- we'll take Mr. Chief
13 Justice's argument -- a five-year sentence, if
14 the person has spent one year in official
15 detention prior to his custody, prior to his
16 sentencing, then that year that they spent may
17 be given as credit towards the sentence.

18 It is not the same thing as the
19 sentence -- the remaining -- the remainder of
20 the sentence that the defendant has to serve.
21 So --

22 JUSTICE SOTOMAYOR: He was imprisoned
23 for detention purposes, safety, not for his
24 conviction?

25 MS. MALONE: That is correct.

1 JUSTICE SOTOMAYOR: So you're back to
2 "is imprisoned"?

3 MS. MALONE: That's correct, Your
4 Honor.

5 JUSTICE SOTOMAYOR: And the -- my
6 colleagues are saying there are two textual
7 clues here. One is the present tense of the
8 statute, which favors you, because "is
9 imprisoned" for what purpose? It's not for the
10 purpose of the conviction. He is being held
11 for safety, safety concerns or flight concerns,
12 whatever, not because of a conviction yet.

13 And on the other side is imprisonment
14 in connection -- in connection with a
15 conviction. And the Chief and Justice Ginsburg
16 are saying that language favors the other
17 side's reading because, once you're given the
18 credit, that credit shows a connection with the
19 conviction. That's the argument.

20 Now the question for me is, what
21 breaks the tie? Why, if there's a tie between
22 those two textual clues, I should elect your
23 reading and not their reading?

24 MS. MALONE: If there is a tie, then
25 my reading of the statute --

1 JUSTICE SOTOMAYOR: I didn't say there
2 was. I'm assuming it. But -- but --

3 MS. MALONE: Assuming there's a tie,
4 my reading of the statute is that you cannot
5 separate imprisonment with conviction, and the
6 connecting phrase, "in connection with," is a
7 -- is a -- is a broad phrase, but the limiting
8 terms are imprisoned, and it says "is
9 imprisoned," which is important, because that
10 connotes present tense.

11 That connotes something that's
12 happening right at the moment that you're
13 looking to see -- if you take a snapshot of the
14 time that you're determining whether or not
15 supervised release is tolled, then that
16 snapshot is the -- is the imprisonment that is
17 contemplated by the statute.

18 JUSTICE ALITO: Now that's true, and
19 that's -- it raises a very interesting
20 question. Why is that the point at which we
21 look at this?

22 Congress enacts a statute, all right?
23 The statute is going to apply in the future.
24 It wants to describe something that it
25 anticipates will occur in the future.

1 Isn't it natural for it to use the
2 present tense? So let's say some -- an
3 employer adopts a rule that says, going
4 forward, if employees work on the weekend, they
5 will get -- an employee who works, present
6 tense, on the weekend gets overtime.

7 What do we read into that -- that --
8 it's how you describe something that is going
9 to occur on a recurring basis in the future.
10 So it's natural to use present tense.

11 Why does it -- why do we infer from
12 that that you're going to examine this person's
13 status in jail in real time and ask, okay,
14 today, what is he -- what is he doing? Is --
15 tomorrow, what is he doing? Do you see what
16 I'm saying?

17 MS. MALONE: Yes, Your Honor, I do
18 understand what you're saying. And -- and
19 perhaps it would be easier to look at how
20 official detention is -- is -- is established
21 and the reasons for granting credits.

22 And the reason for granting a credit
23 for official detention in -- in the scenario
24 used by the Sixth Circuit was that I can look
25 back to see where he was at that specific time,

1 but only if the district court or a state court
2 judge has apportioned that official detention
3 as credit for the sentence.

4 So what the Sixth Circuit did was
5 require a looking back. They did not use the
6 present tense of -- of the -- of the -- of the
7 statute. They looked back and said: Whether
8 or not -- and they had to wait until the person
9 was sentenced.

10 JUSTICE KAVANAUGH: But the government
11 --

12 MS. MALONE: So there's a lot --

13 JUSTICE KAVANAUGH: I'm sorry to
14 interrupt.

15 MS. MALONE: There's a lot of
16 uncertainty involved, because, in any given
17 moment -- and this is why it's important to
18 take that snapshot approach -- because, at any
19 given moment, a person may, indeed, not be
20 detained.

21 There's no guarantee that a person
22 remains in -- in official detention. State
23 courts regularly release defendants, re --
24 rearrest them, and reimprison them.

25 And there's no way a district court

1 looking to violate someone on supervised
2 release can know whether or not that official
3 detention at that snapshot, at that point of
4 time, is going to be attributed to them.

5 JUSTICE SOTOMAYOR: They do have --

6 JUSTICE KAVANAUGH: But the
7 government --

8 JUSTICE SOTOMAYOR: -- a remedy,
9 though, that district court judge. They can
10 issue a warrant, correct?

11 MS. MALONE: That's correct, Your
12 Honor. And, indeed, that is the safeguard that
13 Congress built into the statute, the supervised
14 release statute, 3583.

15 JUSTICE SOTOMAYOR: That is something
16 that favors you, the fact that, under the
17 government's reading, if someone is later
18 released or the charges are dismissed, there is
19 no tolling.

20 So that if the charges are dismissed
21 at the end of this detention and no credit is
22 given, then there's no tolling. And the judge
23 who sat on his or her rights of issuing a
24 warrant loses out, correct?

25 MS. MALONE: That is correct.

1 JUSTICE SOTOMAYOR: That doesn't make
2 much sense. If this statute was intended to
3 read the way that Justice Alito suggested, as a
4 look-back statute, that wouldn't make much
5 sense.

6 MS. MALONE: Well, that is the point,
7 Your Honor.

8 CHIEF JUSTICE ROBERTS: Well, but it
9 would still -- that's because there's no
10 conviction that it can be in connection to,
11 right?

12 MS. MALONE: That is correct. Because
13 a conviction --

14 CHIEF JUSTICE ROBERTS: No, that --
15 that doesn't help you?

16 MS. MALONE: No -- but, yes, actually,
17 under our -- under our reading of the word
18 "conviction" under 3624(e), it does help,
19 because a conviction has to include a -- a
20 final judgment.

21 JUSTICE BREYER: Why? I mean, it
22 doesn't say judgment of conviction.

23 MS. MALONE: It just --

24 JUSTICE BREYER: And quite often,
25 after the prisoner or offender issues a guilty

1 plea, he says I'm guilty, and a jury may find
2 him guilty, and sentencing may not take place
3 for months, and, when it finally does, then the
4 judgment will enter.

5 Now why isn't his being in jail, once
6 he's pleaded guilty or once the jury has
7 convicted him, why is that not in connection
8 with a conviction?

9 MS. MALONE: It is not a connection --
10 in connection with a conviction as the term is
11 used in 3624(e) because 3624(e) deals with
12 convictions that have final sentences.

13 JUSTICE KAVANAUGH: The government --
14 the government says that we should look at the
15 difference between the phrase "in connection
16 with" and the word "after," which Congress
17 could have used, that we should draw some
18 textual significance from that, and that that
19 fits in with the larger purpose that Congress
20 likely had in mind of not allowing double
21 counting of time you've spent physically in
22 prison, as Justice Ginsburg says, as counting
23 as supervised release.

24 So why shouldn't we draw some
25 significance from the use -- what's not used,

1 which is the word "after"?

2 MS. MALONE: Justice Kavanaugh, the
3 reason why you would not use the word "after"
4 is because, when you have a conviction, and a
5 conviction meaning a final judgment, then, if
6 you use the word "after," you still have a --
7 you still have a period where the person was
8 held in official detention prior to the --
9 prior to the entry of the judgment.

10 And the statute has been interpreted
11 in 3624 as requiring a conviction that also
12 includes a judgment.

13 JUSTICE BREYER: Where -- where is
14 that? It doesn't say it in the language. So
15 --

16 MS. MALONE: It does not say that.

17 JUSTICE BREYER: -- so where -- where
18 do you get that from?

19 MS. MALONE: I have -- I get the word
20 "conviction" means a final judgment and --

21 JUSTICE BREYER: I know that's what
22 you think. But I'm -- I'm simply asking what
23 support do you have for that, because it
24 doesn't say it?

25 MS. MALONE: No, it doesn't say it.

1 However, using Section 3624(e) and, indeed,
2 most of the sections under Chapter 229 of -- of
3 Title -- of Title 18, that title is -- is -- is
4 placed there to govern imprisonment.

5 It governs sentences. It governs any
6 action that takes place after a person has been
7 adjudicated guilty and has been imposed a
8 sentence.

9 There is no occasion in Section 3624
10 where you could have a conviction that did not
11 include a judgment because, at that point, you
12 have to have an imprisonment because that's
13 what the -- that portion of the statute is what
14 it uses.

15 In addition --

16 JUSTICE SOTOMAYOR: Was this argument
17 raised below, this part of the argument?

18 MS. MALONE: This part of the argument
19 was raised below, but it was not addressed by
20 the -- by the Sixth Circuit.

21 The statutory -- getting back to the
22 conviction -- in Lott versus United States, and
23 this is in 1961, and Lott defined "conviction"
24 as requiring a judgment. And -- and Lott
25 stated that a plea does not constitute a

1 conviction.

2 And there's never been any
3 contradiction -- contradiction to Lott, and,
4 indeed, Section 4 -- the old parole statutes in
5 Section 4241 define "conviction" specifically
6 as mean -- it -- it defined "conviction" as a
7 final judgment and a verdict -- or a finding of
8 guilt or plea but does not include final
9 judgment that's been expunged.

10 JUSTICE SOTOMAYOR: What do you do
11 with a situation that happens commonly in
12 district court, and, in fact, there are some
13 statutes, I believe -- I could be wrong -- that
14 require mandatory detention after a guilty plea
15 or a jury finding?

16 So someone can be out and the jury --
17 there are some judges who do this routinely.
18 The minute that you're convicted, they
19 basically do a new bail hearing and put most
20 people in. Would that, under your theory of
21 the case, still not be imprisonment relating to
22 the conviction?

23 MS. MALONE: Your Honor, under 3143 of
24 the Bail Reform Act, that particular section
25 deals with official detention after a plea or

1 -- or a judgment of conviction with respect to
2 a jury verdict. And it still -- you are still
3 eligible for bond. You are still eligible to
4 be released. And the concerns of pretrial
5 detention or official detention are the same.
6 It's flight risk.

7 Granted, that the -- the -- the
8 standard of proof increases under 30 -- 3143.
9 You would then have to prove by clear and
10 convincing evidence that you were not a flight
11 risk.

12 JUSTICE BREYER: That's also true
13 after a judgment of conviction enters. You
14 might be released on bond pending appeal.

15 MS. MALONE: That is true, Your Honor,
16 but that is a much more difficult hurdle for a
17 defendant to -- to overcome, because you
18 basically have to prove that your case would be
19 overturned.

20 That's the standard. Although it's
21 not -- I'm not articulating it correctly --
22 that's what the practical standard is. You
23 have to prove that you're going to be -- you
24 know, you're going to be found innocent of --
25 of the claim.

1 Official detention -- the -- the
2 practical problems with applying official
3 detention as imprisonment are that when a --
4 when a state court judge imprisons somebody for
5 a -- an alleged offense, and another defendant
6 who's also on supervised release is charged
7 with another offense, one of them is held in
8 official detention and the other person is not
9 held in official detention.

10 The question becomes, does the person
11 who is not held in official detention still
12 have the ability to be supervised by their
13 probation officer? The answer is yes.

14 But the answer is also yes that the
15 person in detention can also be supervised by
16 their probation officer. Therefore, the
17 purposes of supervised release go on even if a
18 person is held in official pretrial detention.

19 Granted, all of the panoply of -- of
20 benefits from being a supervised releasee,
21 which probation provides, cannot be met in
22 prison, but a -- a defendant who is in official
23 detention and who is also a supervised release
24 person has to report their arrest, they have to
25 report their commitment, they have to report

1 any type of -- of contact they've had with law
2 enforcement.

3 And many times that has to happen
4 while they are in official detention. And,
5 indeed, many of the local courts and local
6 jails have the ability to have programming,
7 counseling, and other services that are
8 available to people in official detention.

9 Now the government would have you
10 believe that there's no -- and, in fact, the --
11 the Sixth Circuit would have you believe that
12 there is no supervision occurring while a
13 person is in official detention. And that's
14 simply not the case.

15 And the majority of times, the
16 probation officer is in contact with the local
17 authorities, the local jails, and they can
18 contact their -- their supervised releasee and
19 determine and, indeed, they're required to
20 report back to their court to -- to let the
21 court know what the person is doing while
22 they're on supervised release.

23 CHIEF JUSTICE ROBERTS: Well, it is a
24 little different. I mean, the supervision is a
25 lot easier if the person's in jail, right?

1 MS. MALONE: That's correct.

2 CHIEF JUSTICE ROBERTS: So, I mean, I
3 understand your point, but it does -- it does
4 seem to me that the -- the imprisonment changes
5 the obligations significantly under supervised
6 release and -- and alters the degree of
7 supervision.

8 MS. MALONE: The -- it does alter --

9 CHIEF JUSTICE ROBERTS: I guess -- I
10 guess, just to --

11 MS. MALONE: -- the degree, but --

12 CHIEF JUSTICE ROBERTS: -- to
13 interrupt, I guess I would say I would think of
14 the period that you're detained as being a lot
15 more like the period you'd be imprisoned than
16 the period when you're out free and being
17 supervised.

18 MS. MALONE: As it -- as -- with
19 respect to the being held in custody, you are
20 correct. It is similar to being imprisoned in
21 a -- in a prison facility after sentencing.

22 However, the ability for that person
23 to receive a bond alters the dynamic with the
24 probation officer. And, indeed, when a person
25 is charged with an offense in state court and

1 they're also on supervised release, they are
2 usually represented by counsel.

3 JUSTICE ALITO: But what do you think
4 --

5 MS. MALONE: So --

6 JUSTICE ALITO: -- is the -- the
7 purpose of supervised release? A person can be
8 -- who is in prison serving a sentence can
9 receive vocational training or any other sort
10 of training, but I thought that the purpose of
11 -- of supervised release or parole was to see
12 how that person would do in the outside world.

13 I don't want to take up your rebuttal
14 time, but --

15 MS. MALONE: Yes. I -- and if I can
16 answer.

17 What the difference is, though, is
18 that when a person is in -- in prison serving a
19 sentence, they are eligible for a whole host of
20 -- of -- of training and -- and review, but
21 that official detention period is not as
22 significantly different as it is for the person
23 who is out on bond who is also facing a
24 supervised release violation because they're
25 represented by counsel and they are not allowed

1 to talk about the events and the -- the reason
2 why they're -- they are under indictment or
3 have been charged with a crime.

4 So for -- and I'd like to reserve the
5 remainder of my time. Thank you.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Ms. Ellickson.

9 ORAL ARGUMENT OF JENNY ELLICKSON

10 ON BEHALF OF THE RESPONDENT

11 MS. ELLICKSON: Mr. Chief Justice, and
12 may it please the Court:

13 Petitioner was not serving his federal
14 term of supervised release during the 10 months
15 when he was sitting in state jail between his
16 arrest and sentencing for new crimes.

17 That conclusion follows from the plain
18 text of Section 3624(e), which broadly tolls
19 supervised release during periods of
20 imprisonment in connection with a conviction.

21 JUSTICE KAGAN: Ms. Ellickson,
22 whatever this is, I don't think it's really
23 clear. I mean, you have "in connection with."
24 Justice Sotomayor says this, "in connection
25 with" is a very broad phrase. But I guess, on

1 the other hand, how is it grammatically
2 possible to say that a person is, "is" meaning
3 "is," suggesting "currently is," imprisoned in
4 connection with a conviction if the conviction
5 hasn't occurred yet?

6 MS. ELLICKSON: The -- the standard
7 for legislative drafting is to phrase statutes
8 in the present tense. And Congress
9 reasonably --

10 JUSTICE SOTOMAYOR: The Dictionary Act
11 says that the presumption is it's the present
12 tense, but Congress can not do that.

13 MS. ELLICKSON: Yes.

14 JUSTICE SOTOMAYOR: So go ahead and
15 finish.

16 MS. ELLICKSON: Yes, now that's
17 correct, but we know that Congress has, in at
18 least one other statute that it passed at the
19 same time in the Sentencing Reform Act, used
20 the present tense to describe a period that --
21 of tolling that -- where the tolling would be
22 subject to a later determination.

23 And Congress thought that present
24 tense was an appropriate way to -- to frame the
25 statute there. It took the same approach in

1 the statute as well.

2 And the -- the phrase "in connection
3 with" indicates that Congress was not intending
4 for the imprisonment to necessarily follow the
5 conviction or result from the conviction.

6 JUSTICE KAGAN: I mean, "in connection
7 with," as I say, I totally accept your point
8 that it's very broad, but the question is
9 whether it can effectively change the tense of
10 the statute just because it's so broad. And --
11 and -- and that seems a strange way to read
12 language to me.

13 MS. ELLICKSON: It's not changing the
14 tense of the statute. The question is really,
15 at what moment of time does the inquiry have to
16 occur? When do you have to decide whether the
17 imprisonment was in connection with a
18 conviction?

19 And my friend on the other side takes
20 the position that you have to know immediately.
21 But the statute doesn't require that. The
22 statute --

23 JUSTICE KAGAN: But doesn't it?
24 Because if -- let's, you know, go back a little
25 bit in the statute. It says that the term

1 doesn't run when the person is imprisoned in
2 connection with a conviction. Right?

3 So when doesn't the term run? The
4 term doesn't run when the person is imprisoned
5 in connection with a conviction, meaning that
6 the conviction has to have occurred and the
7 person has to have been imprisoned in
8 connection with it. No?

9 MS. ELLICKSON: I disagree, Your
10 Honor, because the -- the phrase "do not run"
11 is used to describe the period that will be
12 considered the tolled period. But the fact
13 that it's phrased in the -- in the present
14 tense does not mean that the inquiry has to
15 happen at the same time.

16 JUSTICE BREYER: The inquiry doesn't,
17 but why don't you read the sentence as you
18 think it really means it? Just read the
19 sentence as you think it means it.

20 MS. ELLICKSON: What the sentence
21 means is if there --

22 JUSTICE BREYER: No, no, don't tell me
23 what it means. Read it so that the language
24 embodies what you think. Well, I mean, no
25 matter how I read it, okay, in which the person

1 is imprisoned in connection with a conviction.
2 He wasn't. He was imprisoned in connection
3 with suspicion, probable cause, whatever the
4 standard is that he has committed a crime.
5 That's not a conviction.

6 So what I want you to do is read it,
7 past, present, or future, in a way that
8 embodies what you think.

9 MS. ELLICKSON: Your Honor, I would
10 read the statute to say that at the moment that
11 an inquiry into the tolling status of a period
12 of imprisonment becomes necessary, at that
13 moment, you determine whether there is --

14 JUSTICE SOTOMAYOR: Wouldn't you draft
15 the statute clearly, more clearly, and in a
16 different way if that's what Congress intended?

17 MS. ELLICKSON: There are --

18 JUSTICE SOTOMAYOR: As Justice
19 Ginsburg -- as Justice -- my, now I've done it
20 -- as Justice Kagan has just said to you --

21 (Laughter.)

22 JUSTICE SOTOMAYOR: -- there is
23 ambiguity, doesn't that ambiguity suggest that
24 there is a clearer way to write this if that's
25 what Congress intended?

1 MS. ELLICKSON: There may have been
2 other language that Congress --

3 JUSTICE SOTOMAYOR: They could,
4 instead of imprisonment, they could have said
5 for any period of detention.

6 MS. ELLICKSON: There --

7 CHIEF JUSTICE ROBERTS: But they could
8 have -- I mean, what they could have said -- I
9 think closer to what Justice Breyer was looking
10 for -- any period in which the person is
11 considered to have been imprisoned in
12 connection with a conviction.

13 MS. ELLICKSON: That's a --

14 CHIEF JUSTICE ROBERTS: And I -- I --
15 I mean, the difficulty is that they're engaging
16 in -- in something of a legal fiction because
17 there's a conviction and the judge says, well,
18 you're getting five years and we're going to
19 start counting 10 months ago.

20 I mean, the -- the -- the process of
21 imposing the sentence sort of changes the
22 nature of how the period has been counted. Now
23 I don't know which way that counts, but there
24 -- it seems to me there is a way to read it
25 that's pretty close to the way it reads.

1 MS. ELLICKSON: Yes, I think there are
2 -- there are different ways the statute could
3 have been phrased.

4 JUSTICE BREYER: My problem is I think
5 it's unambiguous. And -- and this is the only
6 way I can think of how to write it, would have
7 been in connection with a crime in respect to
8 which he was later convicted. That'll do it.

9 I mean, that's -- that's -- but you
10 wouldn't say -- you see -- you see, that's why
11 I'm looking. The Chief has come pretty close.

12 MS. ELLICKSON: Well, it's possible --

13 JUSTICE BREYER: But I --

14 MS. ELLICKSON: -- although that --
15 the formulation that Your Honor just proposed
16 actually suggests that the tolling would apply
17 only to imprisonment that preceded the
18 conviction.

19 And Congress evidently wanted to make
20 sure to have a more capacious understanding of
21 the type of imprisonment that would qualify.
22 And that makes sense in the context of the
23 supervised release scheme because supervised
24 release, and time imprisonment, imprisoned,
25 they're ultimately incompatible states.

1 And it made sense that Congress would
2 want to limit the number of situations where a
3 person would be deemed to be serving a term of
4 supervised release while they were in custody.

5 CHIEF JUSTICE ROBERTS: Well, your
6 friend on the other side suggests that's not
7 true. Suggests that when you're in detention
8 that a lot of the features of supervised
9 release can still continue.

10 MS. ELLICKSON: My understanding is
11 that that's not -- that's not correct, that the
12 probation office generally treats pretrial
13 detention as triggering tolling, that they are
14 not capable of supervising defendants in --
15 including in jail in pretrial detention in the
16 way that they can on the outside.

17 And there are a number of things that
18 probation officers do when defendants are out
19 in the community that are simply not possible
20 in jail.

21 Ordering drug testing, for example,
22 asking the defendant to participate in certain
23 types of community treatment --

24 CHIEF JUSTICE ROBERTS: Why is drug
25 testing? I -- I assume they do drug testing in

1 prison on a pretty regular basis.

2 MS. ELLICKSON: They -- they may --
3 the jailing facility may well do that. But,
4 when a defendant is in jail, he is under the
5 supervision of the jailing facility. He is
6 subject to --

7 JUSTICE GINSBURG: Which may be
8 different than the -- than the supervised
9 release. It could be in -- in one jurisdiction
10 and the person is being held in detention
11 someplace else.

12 So does that -- does the probation
13 officer have access to the other jurisdiction's
14 jail?

15 MS. ELLICKSON: It's -- it's -- it's a
16 very awkward situation, Your Honor. In this
17 case, we had a defendant who was in state jail,
18 but he was also potentially, under Petitioner's
19 theory, serving his term of federal supervised
20 release at the same time.

21 So the question is, is the proba --
22 the federal probation officer really able to
23 supervise the defendant in the way that he
24 believes is necessary to execute the term of
25 supervised release when, in fact, the defendant

1 is under the jurisdiction of the state?

2 JUSTICE KAGAN: Even under -- am I
3 right about this -- that even under your view
4 of the statute, you will run into that problem
5 in certain situations?

6 You'll run into it when the
7 confinement is for fewer than 30 days, and
8 you'll run into it when the defendant ends up
9 being acquitted. Isn't that right?

10 MS. ELLICKSON: Yes, that's correct.

11 JUSTICE KAGAN: So why is this so
12 different?

13 MS. ELLICKSON: Well, this is -- the
14 difference here is this is going to be a much
15 larger swath of defendants. And the two
16 exceptions that Congress decided to put into
17 the tolling provision make some sense.

18 The first for short periods of
19 detention reflect a recognition that, if a
20 defendant is imprisoned for a short period of
21 time, that may not disrupt his experience of
22 supervised release.

23 He may be able to continue
24 transitioning into the community. It may not
25 interfere with the probation officer's ability

1 to supervise him.

2 And then, if the defendant is
3 imprisoned, but it is not in connection with a
4 conviction, Congress determined, perhaps as an
5 exercise of legislative grace, to give that
6 defendant some credit for that time served in
7 jail which the defendant would otherwise
8 receive no sentencing credit for.

9 JUSTICE SOTOMAYOR: But why? The
10 probation office determination or the judge's
11 determination is by a preponderance of the
12 evidence.

13 An acquittal really doesn't tell you
14 whether or not that defendant had successfully
15 integrated into the community or not because
16 the judge could always hold a hearing and by a
17 preponderance of the evidence find that he or
18 she hadn't, and still keep them longer, maybe
19 until the earlier case is decided.

20 But the point is that it seems to me
21 that that acquittal -- I don't understand the
22 legislative grace or how you get it out of the
23 language of this statute.

24 MS. ELLICKSON: It is true that a
25 defendant who is acquitted or has charges

1 dismissed may have also failed on supervised
2 release, but Congress determined that it wasn't
3 necessary to have automatic tolling in that
4 circumstance.

5 Perhaps Congress was concerned that
6 there was a possibility that the defendant was
7 jailed by mistake, or perhaps Congress wanted
8 to --

9 JUSTICE SOTOMAYOR: But if he wasn't
10 --

11 MS. ELLICKSON: If --

12 JUSTICE SOTOMAYOR: -- and he was --
13 he would have been just as detained, why
14 shouldn't the time under your reading be
15 extended?

16 MS. ELLICKSON: Well, the difference
17 for that defendant is that we know that
18 defendant will get no credit against another
19 sentence for his time in jail, whereas a
20 defendant who is ultimately convicted will,
21 almost invariably, get credit for that
22 presentencing detention.

23 JUSTICE KAVANAUGH: But doesn't the --

24 JUSTICE GINSBURG: Can you just back
25 up and explain how we get into this mess and

1 why we need tolling?

2 How does supervised release work?

3 That is, in -- in -- in this case, the
4 defendant failed two drug tests while he was on
5 supervised release. Nothing was done.

6 He submitted another substance.

7 Nothing was done about that.

8 He was first charged with a marijuana
9 offense in state court. Nothing was done about
10 that.

11 At what point does the judge blow the
12 whistle on the supervised release?

13 MS. ELLICKSON: That's a matter for
14 the -- the sentencing judge has to determine at
15 what point it becomes -- the defendant's
16 noncompliance with supervised release rises to
17 the level where it might warrant revocation
18 proceedings.

19 In this case, the judge determined to
20 defer that decision until after the state
21 prosecutions concluded, at least until the
22 defendant was sentenced on those prosecutions,
23 which is not uncommon.

24 Often judges, federal judges, when
25 faced with a defendant who has been accused of

1 a new crime, wants to see how -- how that
2 unfolds in the other jurisdiction before
3 rushing to judgment, perhaps, on what the --
4 whether the defendant is or is not guilty of
5 the offense.

6 It would certainly be appropriate for
7 the -- the judge, the federal judge, to make a
8 determination before that if they chose to, but
9 many of the judges want to wait and see what
10 happens.

11 JUSTICE GINSBURG: And that's totally
12 up to the individual judge? There are no
13 guidelines for when the released person has
14 done something that warrants putting him back
15 in prison?

16 MS. ELLICKSON: There are guidelines.
17 And I think when -- in -- in a case like this
18 one where the defendant has violated criminal
19 laws on supervised release, that's a serious
20 violation that as a general matter should
21 warrant revocation.

22 But the question is the timing of the
23 revocation and whether the revocation has to
24 come immediately or whether the district court
25 can potentially defer that adjudication to

1 allow the parallel -- the new criminal
2 proceedings to unfold.

3 In this case --

4 JUSTICE KAVANAUGH: Under a
5 legislative grace argument, I think we have a
6 choice between reading "in connection with"
7 capaciously or reading it kind of, I think you
8 would characterize, hypertextually. On -- the
9 legislative grace argument, though, really
10 undercuts the purpose that you say the
11 capacious reading would serve. In other words,
12 if Congress were really after the time that you
13 spend in prison, then they wouldn't have
14 created the -- they would have made all of that
15 not count. Do you understand?

16 MS. ELLICKSON: Yes. Certainly,
17 Congress could have made that policy call, but
18 the -- the number of defendants who are jailed
19 on charges and ultimately not convicted is
20 actually a -- a fairly small sliver compared to
21 the -- the --

22 JUSTICE KAVANAUGH: But the same
23 purpose would still be served in that
24 circumstance, correct?

25 MS. ELLICKSON: Yes, Your Honor. Yes.

1 The supervised release would serve the same
2 purpose. But it's -- this is the -- this is
3 the line that Congress decided to draw, and
4 it's clear from the statute that they thought a
5 conviction was necessary here and that they
6 wanted to leave out the other types of
7 imprisonments.

8 So this was -- it was a reasonable
9 policy call to make. It is -- it does
10 potentially mean that some defendants get a
11 little bit of a benefit in terms of their
12 supervised release outcome because they are
13 spending less time out in the community under
14 the supervision of the probation officer than
15 their sentence dictated. But Congress
16 determined that, as a matter of policy, they
17 wanted to draw that line.

18 JUSTICE KAVANAUGH: And why -- what do
19 you think the reasonable policy call is there?
20 Can you explain why they would do it that way?

21 MS. ELLICKSON: It may be because -- I
22 think the -- the -- the inference that I would
23 draw is that Congress may have believed that a
24 defendant who is jailed but not ultimately
25 convicted has not necessarily failed on

1 supervised release.

2 In that circumstance, the supervised
3 release scheme gives the federal judge tools to
4 determine whether it is nevertheless
5 appropriate to revoke the defendant for that
6 conduct.

7 JUSTICE KAVANAUGH: Even though, by
8 definition, the person would have been in jail
9 for a longer -- a potentially long period of
10 time?

11 MS. ELLICKSON: It is -- it is -- it
12 is certainly possible that -- that they -- the
13 district court who sentenced them may determine
14 that they require additional supervised release
15 and that whatever put them in jail was, in
16 fact, an indication that they were failing on
17 supervised release and that they needed to have
18 their supervised release revoked.

19 In that context, the -- the federal
20 judge would have the option of revoking
21 supervised release, imposing a new sentence of
22 imprisonment, and imposing more supervised
23 release.

24 JUSTICE KAVANAUGH: I can see why it
25 seems just unfair at a big picture level, but I

1 guess I'm not seeing the policy call other than
2 that.

3 MS. ELLICKSON: The question is just
4 what the default should be. And Congress
5 determined that for defendants who are
6 convicted, the default should be that they have
7 their supervised release terms tolled while
8 they're in jail.

9 For defendants who are not convicted,
10 Congress set a different default. The default
11 is no -- is no tolling, but, because of the
12 supervised release scheme, the federal judge
13 has additional tools that he or she can deploy
14 to potentially add on additional supervised
15 release if necessary.

16 JUSTICE ALITO: Suppose the -- the
17 defendant, while in the -- while in pretrial
18 detention, does something that would constitute
19 a violation of the conditions of supervised
20 release. Can that be the grounds for a
21 revocation?

22 MS. ELLICKSON: If the status of the
23 defendant's imprisonment was not at that time
24 clear, if it was not yet clear whether the
25 defendant was going to be imprisoned for more

1 than 30 days in connection with a conviction,
2 then the defendant would not, as a practical
3 matter, be on supervised release in -- while in
4 pretrial detention, because it's possible that
5 the supervised release term was not running.

6 If it becomes clear --

7 JUSTICE ALITO: I'm sorry. Just --
8 so, in this case, the way you interpret what
9 happened, if Mr. Mont had done that during the
10 term of pretrial detention, that would not be a
11 ground for revocation of -- of supervised --

12 MS. ELLICKSON: That's correct because
13 -- because, at that point, when -- when it --
14 when we have not yet determined whether the
15 term of supervised release is running, then the
16 defendant is -- can't be subject to the terms
17 of supervised release, and then later it might
18 turn out that the term of supervised release
19 was running because he was not convicted. In
20 that case, the defendant would get credit for
21 that time against his supervised release term,
22 but he would have not actually been under
23 supervision during that period.

24 JUSTICE SOTOMAYOR: So --

25 JUSTICE ALITO: And would the district

1 court during that time have jurisdiction to
2 consider -- to adjudicate an alleged violation
3 that occurred before incarceration?

4 MS. ELLICKSON: Yes. Yes.

5 JUSTICE ALITO: Where it would not be
6 deprived of jurisdiction during that period?

7 MS. ELLICKSON: No, that's correct.
8 And during any period in which the defendant's
9 -- the tolling status of a period of
10 imprisonment is unclear, the district court's
11 jurisdiction would not be unclear because the
12 district court, as long as the supervised
13 release term has not yet ended, would be able
14 to adjudicate a violation that occurred before.

15 JUSTICE SOTOMAYOR: So let's assume
16 the following hypothetical: Defendant is
17 arrested for drug charges. He's later
18 acquitted, but while in jail, he now commits a
19 drug offense.

20 Your claim would be the district court
21 can't find a violation in that situation
22 because the period has been suspended?

23 MS. ELLICKSON: Well, so -- so
24 under --

25 JUSTICE SOTOMAYOR: He can't issue a

1 warrant then?

2 MS. ELLICKSON: Yes. So during -- so
3 the defendant would have gotten supervised
4 release credit for that period in pretrial
5 detention because of his acquittal, but,
6 because it was not clear at that point whether
7 supervised release was running, the defendant
8 can't be deemed to have been required to --

9 JUSTICE SOTOMAYOR: That -- that's
10 what renders the "is imprisoned" language a
11 little bit suspect in this statute, because
12 you're sort of looking backwards all the time.

13 MS. ELLICKSON: There is --

14 JUSTICE SOTOMAYOR: Instead of looking
15 at present moment, the suspension period starts
16 30 days after detention, you're looking
17 forward. You're looking forward if you start
18 counting it from whenever the conviction or the
19 sentence happens.

20 By the way, on that issue, that wasn't
21 reached by the courts below. You did raise it
22 below?

23 MS. ELLICKSON: Your Honor, I think
24 that we -- that the rule in the court of
25 appeals below was that pretrial -- they -- they

1 had the rule that we're advocating here, which
2 is that pretrial detention forward --

3 JUSTICE SOTOMAYOR: All right, so they
4 didn't have to reach it?

5 MS. ELLICKSON: Yes.

6 JUSTICE SOTOMAYOR: And it wasn't
7 argued?

8 MS. ELLICKSON: Yes. No, we were --

9 JUSTICE SOTOMAYOR: Has any other
10 court argued that point -- or, I'm sorry, not
11 argued, addressed that issue and decided it?

12 MS. ELLICKSON: The Ninth --

13 JUSTICE SOTOMAYOR: There's at least
14 two, Ninth Circuit and --

15 MS. ELLICKSON: Yes.

16 JUSTICE SOTOMAYOR: -- and one other
17 circuit who are -- who are on Petitioner's
18 side. Have either of those two courts
19 addressed this issue?

20 MS. ELLICKSON: The Ninth Circuit, in
21 one of their opinions on this issue at least,
22 they determined that -- in that case, it was a
23 very short period of imprisonment that followed
24 the -- the entry of the defendant's guilty
25 plea. They determined that that was not in

1 connection with a conviction in that case.

2 So the --

3 JUSTICE SOTOMAYOR: In that case?

4 MS. ELLICKSON: Yes.

5 JUSTICE SOTOMAYOR: But they didn't
6 address the legal question in full?

7 MS. ELLICKSON: They -- they -- they
8 made a quick -- they had a quick discussion of
9 it, but --

10 JUSTICE SOTOMAYOR: All right. So why
11 should we be the first ones to address it?
12 Assuming we disagree with you on the main point
13 and agree with your adversary, why should we
14 reach a question that hasn't been addressed
15 fully by the courts below?

16 MS. ELLICKSON: If this Court is
17 addressing the question that the courts below
18 addressed, which is the status of -- whether
19 the -- the imprisonment here was in connection
20 with a conviction, under either understanding
21 of what "conviction" could -- could mean in the
22 statute, the defendant's imprisonment here
23 would qualify because, certainly, if the
24 conviction means the entry of the -- of the
25 guilty plea or the --

1 JUSTICE SOTOMAYOR: No, no, I'm saying
2 if we agree on the question -- with her on the
3 question granted, why should we reach your
4 alternative argument?

5 MS. ELLICKSON: Oh, sorry.

6 JUSTICE SOTOMAYOR: That -- that --
7 that once he entered a -- a conviction, the
8 detention changed from security to -- to
9 imprisonment for a conviction?

10 MS. ELLICKSON: Your Honor, this --
11 this is part of the question presented. The
12 question presented asked the Court to determine
13 the tolling status of the entire period of --
14 of Petitioner's state detention. The
15 Petitioner needs all of that period to have had
16 his supervised release running during the
17 entire period in order to get relief here.

18 JUSTICE GORSUCH: I guess I -- I'm --
19 I'm still struggling with that question. Is
20 there good reason, though, why we would be the
21 court of first view rather than a court of
22 review on the question of the effect of a
23 guilty plea? Why wouldn't we let that
24 percolate? You have yet to win a case below.
25 It's yet to have been decided by the -- this

1 court of appeals in this case. Wouldn't our
2 normal practice counsel waiting?

3 MS. ELLICKSON: That's one --
4 certainly, the Court could do that. We -- you
5 know, again, we believe the -- the line that
6 this Court should draw on the question
7 presented is an earlier line that would
8 encompass the pretrial detention.

9 JUSTICE GORSUCH: I got that.

10 MS. ELLICKSON: But once the -- once
11 the Court determines that that's not the
12 appropriate line, presumably, it will be
13 answering the question of -- of where the line
14 falls, and to answer that question, the Court
15 would have to determine whether the period
16 between a guilty plea or verdict --

17 JUSTICE GORSUCH: Or we could remand
18 it, right?

19 MS. ELLICKSON: The Court can
20 certainly do whatever the Court wants to do.

21 (Laughter.)

22 JUSTICE GORSUCH: And I was just -- I
23 was just giving you an opportunity to tell me
24 why we wouldn't do that. But, if you don't
25 want to, that's okay.

1 MS. ELLICKSON: No, no, I'm -- I'm --
2 I -- I would say that the Court -- I would -- I
3 would urge the Court to decide the question
4 because it is --

5 JUSTICE GORSUCH: Even if you lose
6 that one too?

7 MS. ELLICKSON: Well, maybe --
8 maybe --

9 JUSTICE GORSUCH: Maybe not then.

10 (Laughter.)

11 MS. ELLICKSON: But -- but I would
12 also like to just address the fact that
13 Petitioner's reading is in -- in conflict with
14 the text of the statute and with the statutory
15 scheme that Congress has set up here.

16 With respect to the text of the
17 statute, the phrase "in connection with a
18 conviction" is inherently broad and it
19 indicates that Congress intended for a broad
20 range of imprisonment to toll supervised
21 release, not just imprisonment after a
22 conviction, not just imprisonment as a result
23 of a conviction.

24 Congress has used that alternative
25 language in other statutes. It chose not to

1 use it here. And the -- that decision has to
2 be given meaning.

3 In addition, because a defendant who
4 is in jail will not be getting the full
5 experience of supervised release, it makes
6 sense that Congress would want to minimize the
7 number of defendants who are in the condition
8 of being deemed to be on supervised release
9 while they were in custody.

10 We also know that Congress in the
11 Sentencing Reform Act determined that
12 defendants should not be getting double credit
13 for time they serve in presentencing
14 confinement against another term of
15 imprisonment.

16 Giving the -- the interpretation of
17 the tolling statute that Petitioner is urging
18 here would give defendants double credit. It
19 would mean that all defendants in pretrial
20 detention were also deemed to be on supervised
21 release, which is a -- a much larger
22 interference with the supervised release scheme
23 than the narrow exceptions suggest, and does
24 mean that it would interfere as well with the
25 double crediting system.

1 We also have anomalous results that
2 would occur if a -- a term of supervised
3 release was tolled during only part of a
4 defendant's sentence for another crime.

5 In that context, you can imagine the
6 timing of a defendant's guilty plea would then
7 have an effect on his supervised release
8 outcome.

9 So, for example, if you had two
10 identically situated defendants who entered
11 jail on the same day and ultimately received
12 the same criminal sentence, they would have
13 different supervised release outcomes if one of
14 them pleaded guilty after two months of
15 detention and the other pleaded guilty after
16 six months.

17 You could also imagine a situation
18 where you have two identical defendants who go
19 to jail on identical offenses in different
20 jurisdictions. One jurisdiction happens to
21 process cases more quickly than the other.

22 The defendant who is in the -- in the
23 fast-moving jurisdiction will have a different
24 supervised release outcome than a defendant who
25 is in a jurisdiction where the case is

1 adjudicated more slowly.

2 JUSTICE SOTOMAYOR: Is there a reason

3 --

4 CHIEF JUSTICE ROBERTS: Well, that --

5 JUSTICE SOTOMAYOR: I'm -- I'm sorry.

6 CHIEF JUSTICE ROBERTS: I was going to

7 say that's just because, I mean, they're going

8 to have different periods of preconviction

9 detention as well.

10 MS. ELLICKSON: Yes, Your Honor, but

11 -- but they will -- they will have the same --

12 they have the same period of imprisonment on

13 their sentence. And to say that some but not

14 all of that period is in connection with a

15 conviction is -- is very strange indeed.

16 And it seems anomalous for defendants

17 to get potentially a supervised release benefit

18 or penalty --

19 CHIEF JUSTICE ROBERTS: Well, in some

20 sentencings, judges may say you get credit for

21 the time in pretrial detention and others would

22 say you don't. I mean, people in different

23 situations have different consequences, I

24 guess, including for supervised release. That

25 doesn't seem particularly compelling.

1 The other things seemed more serious
2 than -- than that.

3 MS. ELLICKSON: Well, Your Honor, in
4 terms of the -- the crediting of supervised --
5 of -- of pretrial detention, I would -- I'd
6 like to note that it is actually, in the large
7 majority of jurisdictions, it is required and
8 automatic that your time in pretrial detention
9 be credited to your sentence.

10 That's the rule in the federal system,
11 in 45 states, and in the District of Columbia.
12 There are five states that have potential for
13 -- for credit as well. It's not automatic in
14 the same way.

15 JUSTICE SOTOMAYOR: Could you tell me
16 if there's a cost to filing a warrant by a
17 judge? I mean, other than the administrative
18 cost of ordering the warrant and it being
19 lodged, is there something else that the judge
20 would have to do or the system would have to do
21 to effect that warrant or to keep it active --

22 MS. ELLICKSON: Well --

23 JUSTICE SOTOMAYOR: -- that would be a
24 reason why a judge wouldn't just issue a
25 warrant when someone's arrested?

1 MS. ELLICKSON: In theory, a judge
2 could issue a warrant, but it's a little bit of
3 an odd answer to the problem presented by the
4 defendant who goes to jail during supervised
5 release.

6 And, in fact, it was -- the 3583(i)
7 warrant procedure was not added to the statute
8 until 1994, which is 10 years after Congress
9 designed --

10 JUSTICE BREYER: What -- what -- what
11 would you want to say, if anything? Imagine
12 you lose everything. The last desperate point
13 will decide it, and it says conviction.

14 Now your -- your co-counsel argues
15 "conviction" means the entry of a judgment of
16 conviction, not when you plead guilty and not
17 before a sentencing or if at trial.

18 What would you say in response to
19 that?

20 MS. ELLICKSON: The statutory language
21 indicates that "conviction" means the
22 adjudication of guilt by a plea or trial.

23 You can look to the first sentence of
24 3624(e), which is not the tolling provision,
25 but it is an -- an earlier part of the -- the

1 same -- the same statutory provision where it
2 refers to a sentence.

3 And the fact that 3624(e) elsewhere
4 uses the word "sentence" but decided to shift
5 to the word "conviction" in the context of the
6 tolling provision indicates that Congress
7 intended to refer to a different moment, a
8 different event in the criminal adjudicative
9 proceedings.

10 We also know in the Sentencing Reform
11 Act that Congress regularly used the word
12 "conviction" or "convicted" to refer to the
13 state of being adjudicated guilty before the
14 entry of a sentence. And it used often the
15 term "judgment of conviction" or "entry of
16 judgment" to refer to the later moment at which
17 the judgment of conviction was entered.

18 So the plain language of both 3624(e)
19 itself and the larger statute of which it was a
20 part indicate that conviction means the earlier
21 moment in time.

22 But even if a conviction referred to
23 the judgment of conviction that happens in
24 connection with the sentencing, a defendant is
25 still imprisoned in connection with a

1 conviction once he pleads guilty or is found
2 guilty by a jury and is later detained, because
3 that detention is at least in part to assure
4 his appearance at sentencing and to ensure that
5 he is there to receive the entry of the
6 judgment of conviction that is largely certain
7 at that point.

8 And it also -- at that point, his --
9 his imprisonment becomes punitive because he no
10 longer is subject to the presumption of
11 innocence.

12 So for all of those reasons, even, you
13 know, what -- whatever meaning this Court gives
14 to conviction, certainly, the period after his
15 guilty plea would be tolled, we -- we believe
16 that the entire period of his imprisonment
17 would -- should be tolled because all of the
18 time that he served on his state sentence, and
19 is still serving on his state sentence, is in
20 connection with those -- the state convictions
21 that landed him in jail in the first place.

22 So thank you. I would ask the Court
23 to affirm.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Ms. Malone, you have four minutes
2 remaining.

3 REBUTTAL ARGUMENT OF VANESSA F. MALONE
4 ON BEHALF OF THE PETITIONER

5 MS. MALONE: The government's reading
6 of the statute has created such ambiguity that
7 it is not workable.

8 The conditions under supervised --
9 that supervised release persons are held
10 continue while they are in official detention.

11 That is true for Mr. Mont's case. In
12 the Northern District of Ohio, the chief
13 probation officer has indicated that their
14 supervision continues because the continuation
15 of the probation officer's duties do not stop
16 the moment a person is arrested.

17 Those duties continue. And, also, the
18 probation officers are instructed to allow the
19 courts information of what happens while a
20 person is being held in pretrial detention in
21 state courts.

22 Oftentimes, probation officers have a
23 relationship with the local courts. They --
24 they're there and they understand that they
25 have a concurrent case, but there's --

1 JUSTICE SOTOMAYOR: What did they do
2 here?

3 MS. MALONE: Here?

4 JUSTICE SOTOMAYOR: Yeah. Did they
5 have any contact with the defendant? Did they
6 reach out to the state court? Do we know
7 whether they continued any of the functions of
8 supervised release?

9 MS. MALONE: In this case, Your Honor,
10 the probation officer initially had contact
11 with the state court when he was first indicted
12 for the marijuana case, and he also had contact
13 with the Mahoning County Jail when he was
14 arrested in June.

15 JUSTICE ALITO: What if somebody is
16 being held --

17 MS. MALONE: After that time, I don't
18 believe that there was any additional contact.

19 JUSTICE ALITO: I mean, what if
20 somebody is being held in a jail where the
21 sheriff says: This is my jail, and I supervise
22 the people here, and I don't want any federal
23 probation officers messing around in my jail?
24 Does it -- is that different?

25 MS. MALONE: That may be different,

1 but it does not disturb or affect the -- the
2 anticipation of the -- of the judge who is
3 handling a supervised release case in knowing
4 what's going on with their -- their releasee.

5 The judge would still like to know and
6 the probation officers would still inform him
7 and whether -- and at that point, the probation
8 officer would inform the judge that I can't
9 have any contact. And often, as I said
10 previously, contact is limited because a person
11 is represented, and they can't really
12 participate in a lot of back-and-forth
13 communications with somebody before they're
14 adjudicated.

15 And, in addition, Justice Alito, you
16 had a question about whether or not the
17 grounds -- you could revoke somebody based upon
18 the grounds that they violated supervised
19 release while they were detained. And, indeed,
20 they can for the same reasons.

21 If a person had drugs on them while
22 they were in local jail, that not only would be
23 a new offense under state law, but it would
24 also be a violation of a supervised release,
25 just as it would be if he was out in the

1 public, because the probation officers still
2 have the responsibility.

3 Now my friend here decided that --
4 stated that when a -- when a case is -- by the
5 time the person is sentenced, then they know
6 whether or not the official detention has been
7 apportioned to their prison sentence. But you
8 can't know that unless you have the
9 backward-looking analysis under the statute,
10 which just doesn't work.

11 Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel. The case is submitted.

14 (Whereupon, at 12:04 p.m., the case
15 was submitted.)

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