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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>AARON SANDUSKY, *et al.*<br><br>Defendants. | Case No. 12-548-PA<br><br>**DEFENDANT'S REPLY IN SUPPORT OF MOTION TO TERMINATE SUPERVISED RELEASE**<br><br>Date: July 18, 2022<br>Time: 3:00 p.m.<br>Place: The Courtroom of the Honorable Percy Anderson |

## INTRODUCTION

The government's Opposition to Defendant's Motion for Early Termination of Supervised Release (Dkt. 396) ("Opposition") is based on a fundamental misunderstanding of the purpose of supervised release. The Supreme Court made clear in *United States v. Johnson*, 529 U.S 53, 59 (2000) that the purpose of supervision is not to punish individuals, but to assist them in their transition to community life. Despite this, the government's arguments in its Opposition are all centered on punishment, rather than rehabilitation, as it repeatedly relies on Sandusky's underlying offense, rather than his ability to transition into community life, to argue against releasing him from federal supervision. While the government's arguments are proper at sentencing (and Sandusky was sentenced very harshly), they should not dictate the outcome of the instant motion, which, if granted, will foster the rehabilitative purpose of supervised release and save the public from the unnecessary

expenditure of scarce public resources. It is for these reasons that the *Judicial Conference Guide to Judiciary Policy* states a presumption in favor of early termination of supervised release after 18 months of supervision where, as here, "[t]he person is free from any court-reported violations over a 12-month period" and other factors are met. *Id.* at § 360.20(c) (Post-Conviction Supervision). Indeed, the United States Sentencing Commission "encourage[s]" courts "to exercise this authority in appropriate cases." U.S.S.G. § 5D1.2, cmt n.5. Based on these authorities and those described below, Sandusky requests this Court to grant the instant motion.

## ARGUMENT

### I. 18 U.S.C. § 3583 Provides for Early Termination of Supervised Release After One Year, Even if the Defendant was Sentenced to a Mandatory-Minimum Supervised Release Term

On January 7, 2013, this Court sentenced Sandusky to ten years imprisonment, to be followed by a mandatory five-year term of supervised release, as it was required to do by 18 U.S.C. § 841. In doing this, this Court satisfied the punitive and deterrent purposes of section 841 at sentencing. Now, by sharp contrast, we are more than ten years past sentencing and Sandusky is asking for early termination of supervised release under 18 U.S.C. § 3583, which is to be adjudged by consideration of the rehabilitative purpose of 18 U.S.C. § 3583, so the mandatory minimum terms of supervised release under 18 U.S.C. § 841 no longer apply.

Numerous courts -- in fact all courts to have considered the issue, aside from the single minute order cited by the government[1] – have concluded that 18 U.S.C. § 3583 authorizes a court to terminate supervised release "at any time after the expiration of one year of supervised release," if "is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice," even if the defendant was initially sentenced to a mandatory minimum term of supervised release. *See Pope v. Perdue*, 889 F.3d 410, 414 (7th Cir. 2018); *United States v. Spinelle*, 41 F.3d 1056, 1060 (6th Cir. 1994); *United States v. Rodriguez*, No. CR 11-96-DMG (C.D. Cal. July 16, 2021) (Dkt. 40); *United States v. Palacios*, No. 5:11-CR-00080-VAP-1 (C.D. Cal. March 11, 2020) (Dkt. 127); *United States v. Trotter*, No. 15-CR-382, 2018 WL 3421313, at *14 (E.D.N.Y. July 13,

2013) ("All courts, as far as this court is aware, agree with this position that early termination power exists even when a mandatory minimum was required"); *United States v. Harris*, 258 F.Supp.3d 137, 143 (D.D.C. 2017); *United States v. Carter*, No. 03-CR-695 AHM, Slip Op. at 3-4 (C.D. Cal. Jan. 26, 2015); *United States v. Simmons*, No. 05 CR 1049, 2010 WL 4922192, at *4 n.1 (S.D.N.Y. Dec. 1, 2010); *United States v. Slay*, No. 1:03-CR-148 TS, 2010 WL 1006713, at *1 (D. Utah Mar. 16, 2010); *United States v. Stacklin*, 2009 WL 2486336, at *1 (E.D. Mo. Aug. 11, 2009); *United States v. Beagley*, 2008 WL 2323905, at *1 (D. Utah June 5, 2008); *United States v. McClister*, 2008 WL 153771, at *2 (D. Wash. Jan. 14, 2008); *United States v. Scott*, 362 F.Supp.2d 982, 984 (N.D. Ill 2005); *see also United States v. Way Long*, No. 2:21-cr-00026-RSL (W.D. Wash. May 31, 2022) (Dkt. 9) (granting defendant's motion for early termination of supervised release after he served 16 months of a five-year mandatory minimum term for marijuana trafficking offenses). All of these authorities, with the exception of *Spinelle*, post-date the 2002 amendment to 21 U.S.C. § 841 cited by the government and the same argument about mandatory minimum supervised release terms as the government is advancing here. And for good reason, since, as these courts found, the reasoning of *Spinelle* remains valid to this day. *See, e.g., United States v. Scott*, 362 F.Supp.2d 982, 984 n.5 (N.D. Ill. 2005) ("although the *Spinelle* case was decided before the 2002 amendment, the logic of that case clearly supports the notion that the 'imposition' of the sentence is both chronologically and conceptually distinct from the post-sentencing alteration of the service of supervised release").

In *Spinelle*, *supra*, the court held "that a district court has discretionary authority to terminate a term of supervised release after the completion of one year, pursuant to 18 U.S.C. § 3583(e)(1), even if the defendant was sentenced to a mandatory term of supervised release under 21 U.S.C. § 841(b)(1)(C) and 18 U.S.C. § 3583(a)." *Spinelle*, 41 F.3d at 1060-61. The court explained as follows:

> The government's statutory interpretation [that the mandatory minimum terms of supervised release set forth in section 841 deprive district courts of their authority to terminate supervised release early under section 3583] create[s] a conflict [between these statutes] because it attempts to combine in one sentencing phase what Congress has divided into two: sentencing and post-sentence modification.

[1] The other two cases cited by the government, *United States v. Lafayette*, 585 F.3d 435, 440 (D.C. Cir. 2009) and *United States v. Vargas*, 564 F.3d 618, 622 (2d Cir. 2009) do not support the government's argument, as discussed *infra* at 7-8.

> Both the United States and the district court agree that the [Controlled Substances Act], through 21 U.S.C. § 841(b)(1)(C) and the equivalent amendment to 18 U.S.C. § 3583(a), required the district court to sentence Spinelle to three years of supervised release in addition to his prison sentence. This, the district court did, satisfying the sentencing phase of the statutory language. [Citation]
>
> In the mind of Congress, as expressed in the plain meaning of the statutes, however, the sentencing phase is different than post-sentence modification. Prior to the Congressional amendment of 18 U.S.C. § 3583(a) in the [Controlled Substances Act], the district courts had the authority under 18 U.S.C. § 3583(a) to impose a term of supervised release on a defendant during sentencing at its discretion. Under 18 U.S.C. § 3583(e)(1), it also had the additional and separate discretionary authority to terminate a term of supervised release after one year of completion. When Congress subsequently amended 18 U.S.C. § 3583(a) to require that courts impose a term of supervised release on a defendant if such a term is required by statute, it only partially limited a court's discretionary authority to *impose* the sentence. Congress did not alter the court's separate authority to *terminate* a sentence of supervised release, under 18 U.S.C. § 3583(e)(1), if the conduct of the person and the interest of justice warranted it.
>
> Seen as two separate chronological phases, the statute mandating a specific sentence of supervised release and the statute authorizing the termination of a prior imposed sentence are quite consistent. They are not in conflict as "[n]either statute prohibits the other from working." [Citation] Therefore, in the absence of clear Congressional expression to the contrary, a court must give effect to both statutes. [Citation] In so doing, we find that even though the district court had to sentence Spinelle to a three-year term of supervised release, it still had the subsequent discretionary authority to terminate the term and discharge Spinelle after one year of completion.

*Id.* at 1060-61 (emphasis in original). Courts continue to follow this reasoning after the amendment to section 841 in 2002.

In *United States v. Scott*, 362 F.Supp.2d 982 (N.D. Ill. 2005), for instance, the court rejected precisely the same argument as the government is advancing here. Its extensive discussion of the issue is worth repeating:

> The government's opposition to defendant's motion is based on the following language of § 841(b)(1)(B): "Notwithstanding section 3583 of Title XVIII, any sentence imposed under this subparagraph shall . . . include a term of supervised release of at least 4 years in addition to such term of imprisonment. . . ." According to the government, by this language Congress intended to impose harsher sentences of both imprisonment and supervised release for the drug crimes specified in § 841, and further intended to eliminate any inconsistent provisions of "the entirety of § 3583" by

its use of the term "notwithstanding." Thus, according to the government, "imposing" a term of supervised release "of at least 4 years" requires an offender to *serve* at least 4 years without eligibility for the early termination allowed by § 3583(e).

Such a reading, however, strains the language and the congressional intent beyond reason. To be sure, § 841 imposes harsher sentences on persons convicted of drug crimes than of other criminal activity, imposing, for example, long mandatory minimum sentences of imprisonment. The *imposition* of these sentences required by § 841, however, cannot be read to require the full *service* of the sentences in the face of other statutes allowing relief from such service, such as § 3583(e). Once the sentencing judge has imposed the sentence required by § 841, as Judge Mills did in this case, he has fulfilled the mandate of that statute.

For example, although § 841 requires the imposition of a mandatory minimum of ten years imprisonment for certain drug offenses, 18 U.S.C. § 3624(b) allows a 15% credit for satisfactory behavior while incarcerated. This credit is no less an alteration of the mandatory sentence of imprisonment required by § 841 than is an early termination of supervised release after a period of at least a year under § 3583(e).

But, argues the government, the "[n]otwithstanding section 3583" language added in 2002 to § 841 requires that statute to be read in isolation of the "entirety" of § 3583. The court respectfully disagrees. First, as defendant points out, the 2002 language was added in response to challenges filed by a number of drug offenders who were sentenced to periods of supervised release greater than the maximum that would otherwise have been allowed by § 3583(b). Second, reading § 841(b)(1)(B) in its entirety makes clear the congressional intent to require the imposition of a longer minimum period of supervised release than otherwise allowed in § 3583(b) without interfering with the remainder of the statutory scheme governing supervised release prescribed by the other subsections of that statute including revocation, modification and early termination of supervised release. Thus, immediately following the "notwithstanding" sentence, the statute reads, "Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any persons sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein." When Congress intended to limit any post-incarceration discretion, therefore, it specifically did so. Its failure to include the long-standing traditional discretion to terminate supervised release early under specified circumstances was not mentioned in the 2002 amendment to § 841.

The only conclusion that the court can draw in the context of the legislative history and the purposes to be served by these various statutes, in light of the less-than-clear language at issue in § 841, is that Congress intended to exclude the maximum periods of supervised release otherwise set forth in § 3583(b), leaving untouched the possibility of early termination of supervised release allowed by § 3583(e). To read § 841 in isolation of § 3583 in its entirety would eliminate the possibility of revocation or modification of supervised release just as it would

> eliminate the possibility of early termination. Such an untenable result could never have been intended by Congress and will not be so construed by this court.

*Id.* at 983-84 (emphasis original) (footnotes omitted); *see also Rewis v. United States*, 401 U.S. 808, 812 (1971) (the rule of lenity provides that any ambiguity in criminal statutes should be resolved in favor of lenity).

Likewise, in *United States v. Palacios*, No. 5:11-CR-00080-VAP-1 (C.D. Cal. March 11, 2020) (Dkt. 127), Judge Phillips of this Court discussed the present issue in detail and concluded that section 841 does not abrogate this Court's discretion to terminate a defendant's supervised release early:

> Contrary to the United States' argument that the 2002 amendment of Section 841(b)(1)(A) that added the "notwithstanding" clause rendered *Spinelle* bad law, since the 2002 amendment courts appear to have followed *Spinelle*'s reasoning consistently to conclude that, despite the apparent conflict between Section 841(b)(1)(A) and Section 3583, the district court retained discretion to terminate a mandatory minimum period of supervised release. [collecting cases]
>
> The Court adopts the reasoning of *McClister*, *Scott*, and *Spinelle* and applies it here. The reference in Section 841(b)(1)(A) to Section 3583 does not concern post-sentencing matters that could be read to remove the Court's discretion pursuant to Section 3583(e). *Compare* 21 U.S.C. § 841(b)(1)(A), *with* 18 U.S.C. § 3583. Specifically, Section 841(b)(1)(A) provides, *inter alia*, specific terms of supervised release to impose when a defendant is found guilty of certain drug-related crimes, as was Defendant in this case, whereas Section 3583 provides general sentencing provisions based on whether the crime was a Class A, B, C, D, or E felony. *Id.* The "notwithstanding" language in Section 841(b)(1)(A) is important because, otherwise, the sentencing requirements contained therein could conflict with those contained in Section 3583. There is no express reference in Section 841(b)(1)(A) to operating notwithstanding Section 3583(e), which provides the Court's express authority to modify or vacate a term of supervised release post-sentence. The legislative history of Section 841(b)(1)(A)'s 2002 amendment supports this interpretation. Accordingly, the Court concludes that Section 841(B)(1)(A) does not remove the Court's discretion, after the sentence was imposed to reduce or terminate Defendant's mandatory minimum period of supervised release. [Citations]

No. 5:11-CR-00080-VAP-1 (Dkt. 127), at 7-8; *accord United States v. Rodriguez*, No. CR 11-96-DMG (C.D. Cal. July 16, 2021) (Dkt. 40); *cf. United States v. McClister*, 2008 WL 153771, at *2 (D. Utah Jan. 14, 2008) (granting early termination of supervised release, notwithstanding statutory minimum sentence; "This Court agrees with and adopts the reasoning of the Sixth Circuit and the

Northern District of Illinois on this issue"); *see also Pope v. Perdue*, 889 F.3d 410, 414 (7th Cir. 2018) ("statutory requirements governing how a court must *impose* a sentence differ from those that control how it may *modify* one" "The court, therefore, could terminate Pope's term of supervised release after one year even though Pope initially received a term of supervised release below the statutory minimum") (emphasis in original); Office of the General Counsel, *Supervised Release (Primer)* 14 (2021) ("The Sixth Circuit has held that a court may terminate supervised release early even if the statute of conviction originally required a particular term of supervised release") (citing *Spinelle*) (found at https://www.ussc.gov/sites/default/files/pdf/training/primers/2021_Primer_Supervised_Release.pdf). Indeed, the Unites States Sentencing Commission encourages courts "to exercise this authority in appropriate cases." U.S.S.G. § 5D1.2, cmt n.5.

To overcome these numerous authorities, the government cites to a single minute order from a judge of this Court on a motion that was decided without oral argument[2] and flies in the face of the numerous authorities cited above. *See United States v. Martinez*, CR 04-758-SJO (C.D. Cal. Mar. 9. 2020) (Dkt. 856). It further contends that the District of Columbia and Second Circuits, as well as the court in *United States v. Hernandez-Flores*, 2012 WL 119609 (D.N.M. Jan. 3, 2012), have held that "this Court lacks as a matter of law to cut short defendant's mandatory five-year term of supervised release." Dkt. 396 at 5. These other cases, however, did not so hold.

In *Hernandez-Flores*, the court expressly stated that it "does not find it necessary to decide whether a district court may terminate a term of supervised release before the completion of a mandatory minimum term of supervised release" because it could adjudicate the motion for early termination on other grounds. 2012 WL 119609, at *5. It is well-established that a decision is not authority for an issue it did not consider. *See, e.g., Mercury Ins. Group v. Superior Court*, 19 Cal.4th 332, 348 (1998).

The District of Columbia Circuit case cited by the government, *United States v. Lafayette*, 585 F.3d 435, 440 (D.C. Cir. 2009), involved the question whether a district court may grant a sentence

[2] Due to the importance of the issues presented by the instant motion, Sandusky requests oral argument -- a request the government does not oppose and was stipulated to by the parties. (Dkt. 395)

*reduction* under 18 U.S.C. § *3582*; it not address the very different issue of the applicability of section *3583* to termination of supervised release early after the defendant has served one year of a mandatory minimum supervised release term. As explained *supra*, the issue of sentencing is distinct from the issue of early termination of supervised release under section 3583.

And in *United States v. Vargas*, 564 F.3d 618 (2d Cir. 2009), the Second Circuit was asked to decide whether the district court erroneously extended the defendant's term of supervised release, not whether it should be terminated early. The court assumed that "mandatory supervised release may be terminated after a defendant serves at least one year," but declined to rule on the issue. *Id.* at 623 n.3; *see* Dkt. 396 at 3; *cf. Mercury Ins. Group*, 19 Cal.4th at 348. Properly considered, the government is left with only the single minute order to support its position, which flies in the face of the numerous authorities cited *supra*. This Court should adopt the sound reasoning of these many cases.

## II. Early Termination of Sandusky's Term of Supervised Release Is in the Interest of Justice

As an initial matter, the *Judicial Conference Guide to Judiciary Policy* states a presumption in favor of early termination of supervised release after 18 months of supervision where, as here, "[t]he person is free from any court-reported violations over a 12-month period" and other factors have been met, which have been met here. *Id.* at § 360.20(c) (Post-Conviction Supervision);[3] *see United States v. Shaw*, -- F.Supp.3d --, 2020 WL 1062896, at *3 (D. Colo. March 5, 2020) (citing *Judicial Conference Guide to Judiciary Policy*)). Because neither the government nor the Probation Office

[3] These factors are as follows:

> (1) The person does not meet the criteria of a career drug offender or career criminal (as described in 28 U.S.C. § 994(h)) or has not committed a sex offense or engaged in terrorism;
> (2) The person presents no identified risk of harm to the public or victim;
> (3) The person is free from any court-reported violations over a 12-month period;
> (4) The person demonstrates the ability to lawfully self-manage beyond the period of supervision;
> (5) The person is in substantial compliance with all conditions of supervision; and
> (6) The person engaged in appropriate prosocial activities and receives sufficient prosocial support to remain lawful well beyond the period of supervision.

*Id.* § 360.20(c)(1)–(6).

recognize, much less provide any valid reasons to overcome this presumption, the *Judicial Conference Guide to Judiciary Policy* counsels strongly in favor of granting the instant motion.[4]

Furthermore, as was described in detail in Sandusky's Motion (Dkt. 392), his performance on supervised release has been exemplary, as he has maintained steady employment and family relationships, and his employer has lavished high praise upon him. Notwithstanding this, and despite the presumption of early termination of supervised release after 18 months, as set forth in the *Judicial Conference Guide to Judiciary Policy*, the government contends that early termination of supervised release for Sandusky is not appropriate because he has served less than half of his sixty-month supervised release term. Dkt. 396 at 6. Section 3583(e)(2), however, does not place any such temporal limitation on this Court's authority and, instead, expressly authorizes district courts to terminate an individual's supervised release "at any time after the expiration of one year . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice." Courts have, thus, held that an arbitrary temporal restriction on a court's discretion under section 3583 conflicts with section 3583 and is, therefore, invalid. *See, e.g, United States v. Lowe*, 632 F.3d 996, 998 (7th Cir. 2011) (despite its discretion in granting motion for early termination of supervised release, district court could not, consistent with statute, refuse to consider motions for early termination until 12 months before supervised release's end date, since statute permitted defendants to seek early termination any time after expiration of one year of supervised release); *cf. United States v. Way Long*, No. 2:21-cr-00026-RSL (W.D. Wash. May 31, 2022) (Dkt. 9) (granting defendant's motion for early termination of supervised release after he served 16 months of a five-year mandatory minimum term for marijuana trafficking offenses); *United States v. Gainer*, 936 F.Supp. 785, 786-87 (D. Kan. 1996) (granting motion for early termination of supervised release after defendant served 22 months of a five-year term of supervised release for marijuana offense). But even if the Court were to adopt the temporal limitation on its authority proposed by the government,

[4] In conflict with this Judicial Policy, the Probation Office has indicated that it intends to oppose the instant motion because of Sandusky's single positive test for marijuana metabolites more than one year ago. It was precisely for this reason that Sandusky delayed the filing of the instant motion until 12-months had elapsed from his positive drug test after the undersigned counsel was informed of this police by Sandusky's prior Probation Officer. If the Probation Office does, in fact, oppose the instant

which it should not, it could satisfy the government's demand by making Defendant's termination effective on September 12, 2022, since Sandusky, who has already served approximately 28-months of his 60-month supervised release term, will have served half of his five-year mandatory term by this time. *Cf. United State v. McClister*, 2008 WL 153771, at *2 (D. Utah Jan. 14, 2008) (granting defendant's motion for early termination of supervised release; noting that "the government's objection [in regard to defendant having served less than half of his supervised release term] is easily resolved by making Defendant's termination effective" at the halfway mark).

Finally, the government argues that early termination of Sandusky's supervised release would create unwarranted sentencing disparities between him and his co-defendants, as this Court denied co-defendant Paul Brownridge's motion for early termination in 2016. *United States v. Brownridge*, Case No. 2:12-cr-00548-PA (Civil Minute Order, dated April 26, 2016) (Dkt. 386). This argument is misplaced, due to the government's failure, yet again, to appreciate the difference between sentencing and later termination of supervised release. *See supra* at 2-7. Sandusky's 120-month custodial sentence was fifteen times longer than the 8-month custodial sentence given to Brownridge, so this argument is not well-taken. Furthermore, it does not appear that the presumption of granting early termination of supervised release to qualified defendants who have served 18 months of their terms provided by *Judicial Conference Guide to Judiciary Policy* was raised by Brownridge.

In any event, it is far from certain that this Court would deny Brownridge's motion for early termination if were to be brought today. In denying Brownridge's motion, this Court largely relied on the Second Circuit's decision in *United Sates v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997), which held that a defendant seeking early termination of supervised release must demonstrate "exceptionally good behavior." After this Court denied Brownridge's motion on this basis, however, the Ninth Circuit expressly rejected such a high standard for early termination of supervised release in *United States v. Ponce*, 22 F.4th 1045 (9th Cir. 2022), explaining as follows:

> *Lussier* did not interpret § 3583(e) to necessarily require a showing of exceptional behavior for early termination of supervised release. Rather, the Second Circuit correctly described the district court's authority to modify the terms and conditions of supervised release under § 3583(e) and observed that changed circumstances such as

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motion, Sandusky respectfully requests this Court to query it about why it is deviating from the Judicial Policy.

> "exceptionally good behavior by the defendant" *may warrant* termination of supervised release. *See Lussier*, 104 F.3d at 36. The Second Circuit has since clarified that *Lussier's* holding was limited and that it "[did] not *require* new or changed circumstances relating to the defendant in order to modify conditions of release, but simply recognize[d] that changed circumstances *may* in some instances justify a modification." *See United States v. Parisi*, 821 F.3d 343, 347 (2d Cir. 2016) (second emphasis added); *see also United States v. Bainbridge*, 746 F.3d 943, 948–50 (9th Cir. 2014) (concluding that new or changed circumstances were not required to modify conditions of supervised release). We take this opportunity to make clear that our unpublished disposition in *Smith* misread *Lussier*, and the "exceptional behavior" rule as restated in *Evertson* is incorrect as a matter of law.

*Ponce*, 22 F.4th at 1047 (emphasis in original). Because it is uncertain how this Court would rule on Brownridge's motion if it were brought today, it does not necessarily follow that the granting of Sandusky's motion would create any disparity in the post-sentence treatment of Brownridge, which would not, in any event, create a *sentencing* disparity, as both co-defendants were sentenced to the same five-year mandatory minimum supervised release term. This is especially because Sandusky was sentenced to a custodial term that was fifteen times longer than the custodial term given to Brownridge.

On the other side of the balance, this Court should consider the impact of Sandusky's continued supervision on his profession and the public purse. Whereas the government summarily dismisses the continued restraint on Sandusky's ability to travel for his job as "nominal," Dkt. 396 at 7, even a small impediment to professional opportunity undermines the purpose to be served by supervised release, which is designed to assist individuals transition into community life. Opining on this issue in *United States v. Harris*, 689 F.Supp.2d 692 (S.D.N.Y. 2010), Judge Haight framed the question as follows and held that early termination of supervised release was warranted:

> There are two possible resolutions to this case. The Court can terminate Harris' supervised release, do away with crippling obstacles to his professional advancement, and make straight his path to rehabilitation and redemption. Or the Court can require Harris to serve his full term of supervised release, leave him blocked and at risk in his employment, and confer no benefit or any significance upon the victimized banks. Which resolution is "in the interest of justice?" The question is not close. Justice requires the termination of Harris' supervised release.

*Id.* at 696.

Turning to the unnecessary expenditure of scare public funds, the court held in *United States v. Chapman*, 827 F.Supp. 369 (E.D. Va. 1993), "[t]he public interest is best served by terminating the supervised release, which will allow the Probation Office to invest the public's limited resources on those who are in need of supervision. Clearly there is no benefit to be derived by maintaining a supervised release at public expense over someone who has proven himself to be beyond the need for supervision." *Id.* at 371.

Especially in light of the Probation Office's "low/moderate" risk assessment of Sandusky and the presumption of early termination of supervised release provided by the *Judicial Conference Guide to Judiciary Policy*, the interests of justice favor the granting of Sandusky's motion. *See United States v. Spinelle*, 41 F.3d 1056, 1061 (6th Cir. 1994) (affirming trial court order terminating supervised release where defendant served one-year of five-year term for manufacturing marijuana); *United States v. Walters*, 2021 WL 4991510, at *1 (D. Idaho Apr. 12, 2021) (terminating supervised release after defendant served 18 months of three-year term for distribution of marijuana and methamphetamine); *United States v. Shaw*, -- F.Supp.3d --, 2020 WL 1062896 (granting motion to terminate supervised release for armed robbery; noting "[t]his court has frequently granted motions for early termination") (collecting cases); *United States v. Gainer*, 936 F.Supp. 785, 786-87 (D. Kan. 1996) (granting motion for early termination of supervised release after defendant served 22 months of a five-year term of supervised release for marijuana offense); *United States v. Way Long*, No. 2:21-cr-00026-RSL (W.D. Wash. May 31, 2022) (Dkt. 9) (granting defendant's motion for early termination of supervised release after he served 16 months of a five-year mandatory minimum term for marijuana trafficking offenses). "[B]y present-day measures of sentences suitable to Defendant and his crime, the . . . Defendant has been punished sufficiently for the crime that he committed a decade ago." *Johnson*, 228 F.Supp.3d at 63-64; *cf. United States v. McIntosh*, 833 F.3d 1163, 1169-79 (9th Cir. 2016) (appropriations bill enacted by Congress in 2014 prevents Department of Justice from expending funds prosecuting individuals who act in compliance with the medical marijuana laws of the states).

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## CONCLUSION

For the foregoing reasons, Sandusky respectfully requests this Court to grant the instant motion.

DATED: July 1, 2022

Respectfully Submitted

/s/ Joseph D. Elford
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Counsel for Defendant

AARON SANDUSKY