CRIMINAL LAW—USE OF EQUITABLE TOLLING TO ENFORCE VIOLATIONS OF SUPERVISED RELEASE AFTER ORIGINAL TERM HAS EXPIRED—*UNITED STATES V. BUCHANAN*, 638 F.3D 448 (4TH CIR. 2011)

The equitable tolling principle allows a court to suspend the "clock" of a statutorily mandated time limitation in the interests of equity.[1] The doctrine has been used by the court to ensure that an individual does not escape justice simply because of a lapse in time.[2] In *United States v. Buchanan*,[3] the United States Court of Appeals for the Fourth Circuit examined whether the period of supervised release is tolled when an

[1] *See* Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946) (describing the principle of equitable tolling). The Supreme Court further notes that "[t]his equitable doctrine is read into every federal statute of limitation." *Id.*

[2] *See* Cada v. Baxter Healthcare Corp., 920 F.2d 446, 451 (7th Cir. 1990) (discussing equitable tolling and describing rationale for applicability). "It permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim." *Id.*

[3] 638 F.3d 448 (4th Cir. 2011).

individual absconds from mandated federal supervision and becomes a fugitive.[4] The Fourth Circuit held that the period of supervised release is tolled while the individual is a fugitive and the individual can then be held accountable beyond the original term of his supervised release for violations of the provisions of the supervised release while he is a fugitive.[5]

William Buchanan pled guilty to conspiracy to distribute 50 grams or more of crack cocaine and was sentenced to 120 months in prison in 1991.[6] Buchanan was then

[4] *Id.* at 450-51 (noting issue before the court).

[5] *Id.* at 458 (stating holding of the case).

[6] *Buchanan*, 638 F.3d at 449. The sentence was subsequently reduced to 30 months imprisonment based on a substantial assistance motion. *Id.* At the time of the conviction, William Buchanan was known as Kenneth Parker. *See* United States v. Buchanan, 632 F. Supp. 2d 554, 555 n.1 (E.D. Va. 2009).

released in March of 1993 and his term of supervised release began.[7] However, in May of 1994, Buchanan was indicted and arrested in Ohio on state drug trafficking charges.[8] When arrested in Ohio, he used the name William Buchanan with the same date of birth and social security number as "Kenneth Parker."[9] In February of 1995, Buchanan failed to appear in court to face the state drug trafficking charges and a warrant was issued for his arrest.[10]

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[7] *See Buchanan*, 638 F.3d at 449. The five year supervised release term was scheduled to last until March of 1998. *Id.*

[8] *Id.*

[9] *See* United States v. Buchanan, 632 F. Supp. 2d 554, 555 (discussing Buchanan's use of different names when arrested). The federal probation officer in charge of his supervision did not learn of the state drug charge until nearly a year after the initial indictment. *Id.*

[10] *See Buchanan*, 638 F.3d at 449. The last contact Buchanan had with his federal probation officer was in January of 1995. *Id.*

In April of 1995, Buchanan's probation officer filed a "Petition on Probation and Supervised Release" alleging multiple violations of the terms of his supervised release.[11] Buchanan then remained a fugitive until December of 2008 when he was arrested in Georgia.[12] Upon learning that Buchanan was in custody and of the extensive history of his alleged criminal activities while a fugitive, an addendum was filed to the "Petition for Probation and Supervised Release" alleging the newly discovered violations of the terms of his supervised release.[13] Buchanan conceded that the first petition filed in 1995 was

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[11] *Id.* The violations included the state drug trafficking charge in Ohio, failure to report to his probation officer and failure to notify his probation officer of a change in his residence or employment. *Id.*

[12] *Buchanan*, 638 F.3d at 449.

[13] *Id.* These violations included:

> (1) in September 1996, Buchanan was arrested in Alabama for marijuana trafficking; (2) in March 2005, he was arrested in Missouri for (inter alia) possession of a

properly before the court but challenged the addendum to the petition as beyond the term of supervised release originally set to expire in March of 1998.[14] The Eastern District of Virginia held that the supervised release term was tolled while Buchanan was a fugitive

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> controlled substance and unlawful use of a weapon; (3) in January 2008, he was arrested in Georgia for driving under the influence; and (4) in December 2008, he was arrested in Georgia for entering an auto or other motor vehicle with the intent to commit a theft or felony, and financial transaction card fraud.

Id. at 449-50; *see also* United States v. Buchanan, 632 F. Supp. 2d 554, 556-57 (E.D. Va. 2009) (describing aliases and different identification used by Buchanan to avoid arrest). It was discovered upon his apprehension in Georgia that Buchanan, although arrested on a number of occasions while a fugitive, avoided identification as a fugitive by providing false names, birth dates, driver's licenses, and social security numbers. *Id.*

[14] *See Buchanan,* 638 F.3d at 450.

based on the lack of clear statutory guidance in the statute governing supervised release and the congressional intent in creating the supervised release program.[15] The district court found Buchanan guilty of three of the supervised release violations, two of which occurred after the original term of supervised release was set to expire.[16] The Fourth Circuit upheld this decision and decided that a term of supervised release is tolled while an individual is beyond the supervision of government authorities and is liable for all violations of the supervised release while a fugitive.[17]

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[15] *See Buchanan*, 632 F. Supp. 2d at 558-59 (analyzing statute and lack of clear guidance on issue). The district court reasoned that the intent of Congress in creating supervised release was for the rehabilitation and reintegration of convicted criminals into society. *Id.* at 559. The goals envisioned by the statute could only be achieved through monitoring and supervision by government officials of the convicted criminals. *Id.*

[16] *Id.* The court then imposed sentences of 48 months, 36 months and 27 months to run concurrently. *Id.*

[17] *See Buchanan*, 638 F.3d at 458 (stating holding of case).

18 U.S.C. § 3583 regulates the supervised release system imposed on certain individuals convicted of federal crimes.[18] The statute provides specific statutory limits for the term of supervised release and provides for an express tolling provision in one specific instance: incarceration over a certain period of time.[19] The courts however have

[18] *See* 18 U.S.C. § 3583 (2006) (describing terms of release and supervision for federal prisoners); *see also* S. REP. NO. 98-225, at 3306-07 (1983) (describing Congressional intent and design of supervised release program).

[19] 18 U.S.C. § 3624 (e) (2006) (stating that period of supervised release does not run during incarceration lasting over thirty days). The statute also allows the court to enforce violations of the statute, which occurred before the expiration of the term even if the court files the violation after the term ends. 18 U.S.C. § 3583 (i) (2006). Congress amended the statute by adding this section after the courts had utilized equitable tolling in this situation to ensure that the intent of the statute was carried out even if there was a lapse in time. *See* United States v. Janvier, 599 F.3d 264, 266 (2d Cir. 2010) (discussing judicial history leading up to the adoption of amendment). After a number of judicial

utilized the long-established theory of equitable tolling in certain cases to enforce the congressional intent of a statute.[20] The federal courts look at the circumstances surrounding a case to decide whether to use this equity principle in the interest of justice.[21] The Fourth Circuit while addressing post incarceration supervision originally

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decisions authorizing the courts to revoke supervised release after the term had concluded, Congress enacted an amendment to make this explicit and establish the exact standards. *Id.* (*citing* Violent Crime Control and Law Enforcement Act of 1994 PL 103-322 (1994)).

[20] *See* Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946) (noting breadth of potential application of equitable tolling). *But see* Wallace v. Kato, 549 U.S. 384, 396 (2007) (noting equitable tolling should only be used in rare occasions). "Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs." *Id.*

[21] *See* Cada v. Baxter Healthcare Corp., 920 F.2d 446, 451 (7th Cir. 1990) (describing need for court's discretion in applying doctrine); *see also* United States v. Delamora, 451

F.3d 977, 979 (2006) (holding that when defendant absconded and used an alias the state did not have opportunity to enforce law). His actions had not given the state the opportunity to file for a violation of the term of his supervised release so tolling was in the interest of justice. *Id.; see also* Young v. United States, 535 U.S. 43, 50 (2002) ("The Court has permitted equitable tolling in situations 'where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period . . . .'"). In *Young*, the Court reasoned that the claimant had taken steps available to them to enforce the claim within the statutory period and should be afforded an opportunity to amend the complaint when new claims come to light. *Id.* The Court then looked at the statutory construction of the federal bankruptcy statute at issue. *Id.* at 52. The Court rejected the contention that an express tolling provision in one section of the statute gave the impression that Congress intentionally did not include tolling provisions in other sections of the statute. *Id.* The Court looked at the differences between the sections and found that these suggested that the express tolling provision was not a clear indicator that Congress had considered tolling for all sections. *Id. See generally* Barreto-Barreto v.

considered equitable tolling with regards to probation violations.[22] The court has further utilized equitable tolling in the context of an escapee from prison who claims his time as

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United States, 551 F.3d 95, 101 (1st Cir. 2008) ("[T]he petitioners carry the burden of demonstrating that extraordinary circumstances beyond their control 'prevented timely filing,' or that they were 'materially misled into missing the deadline.'") *quoting* Trenkler v. United States, 268 F.3d 16, 25 (1st Cir. 2001).

[22] *See* United States v. Workman, 617 F.2d 48, 51 (4th Cir. 1980) (allowing tolling if individual commits voluntary act which results in lack of supervision). In *Workman*, the individual had his probation revoked for two alleged violations which were then overturned on appeal. *Id.* at 49-50. The district court ruled that the probation period was tolled while the case was on appeal from the district court to the Fourth Circuit because "the defendant was not under probation at that time, he was not supervised by any officer of this Court and was not incarcerated." *Id.* at 50. The Fourth Circuit ruled that since this period of a lack of supervision was caused through no fault of the individual's, the court had no authority to toll the period of probation. *Id.* at 51; *see also* Anderson v.

a fugitive should be credited to his sentence so as not to reward illegal conduct.[23] Two federal circuits had previously addressed the issue of equitable tolling in the supervised release context and have come to different conclusions.[24]

The Ninth Circuit Court of Appeals was the first federal circuit to consider the issue of fugitive tolling in the supervised release context.[25] The court found that the term

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Corall, 263 U.S. 193, 196 (1923) ("Mere lapse of time without imprisonment or other restraint contemplated by the law does not constitute service of sentence.").

[23] United States v. Luck, 664 F.2d 311, 312 (D.C. Cir. 1981) *citing* Anderson v. Corall, 263 U.S. 193, 196 (1923) ("It is well established that when the service of a sentence is interrupted by conduct of the defendant the time spent out of custody on his sentence is not counted as time served thereon.").

[24] *Compare* United States v. Murguia-Oliveros, 421 F.3d 951, 953 (9th Cir. 2005) (holding that term of supervised release can be tolled when individual absconds from justice), *with* United States v. Hernandez-Ferrer, 599 F.3d 63, 68 (1st Cir. 2010) (holding statutory canon of *expressio unius est exclusio alterius* does not permit court to toll term).

of supervised release should be tolled while an individual is a fugitive to ensure that the individual does not benefit from his flight and to ensure the goals of Congress in enacting

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[25] *See* United States v. Murguia-Oliveros, 421 F.3d 951, 953 (9th Cir. 2005) (tolling the period of supervised release based on fugitive status). In *Murguia-Oliveros*, the individual was convicted of illegal immigration into the United States and was subsequently deported with a three year term of supervised release. *Id.* at 952. He subsequently violated a condition of his supervised release by reentering the United States and was rearrested on an unrelated charge. *Id.* The court revoked his term of supervised release when he was rearrested, nearly two months after the original term was set to expire. *Id.* The Ninth Circuit held that his term of supervised release was tolled while he was a fugitive because the court should not reward an individual who flees from justice by continuing to run the term without any federal supervision. *Id.* at 954. The court stated a long held principle that "we should not reward those who violate the terms of their supervised release and avoid arrest until after the original term expires." *Id.* (*citing* United States v. Crane, 979 F.2d 687, 691 (9th Cir. 1992)).

the legislation are accomplished.[26] The court found it compelling that the individual did not receive the rehabilitative supervision intended by Congress with the enactment of 18 U.S.C. § 3583.[27] The Ninth Circuit subsequently confirmed the holding of *Murguia-*

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[26] *See Murguia-Oliveros*, 421 F.3d at 954 (describing history of not rewarding flight from justice); *see also* Glus v. Brooklyn East Dist. Term., 359 U.S. 231, 232-33 (1959) (stating long-held principle that individual should not gain by unlawful conduct); United States v. Kosko, 870 F.2d 162, 163-64 (4th Cir. 1989) (citing long standing federal doctrine that individuals should not benefit from their own wrongful conduct); *see also* Samson v. California, 547 U.S. 843, 850 (2006) (explaining supervised release is its own form of restraint separate from imprisonment). "[F]ederal supervised release, . . . in contrast to probation, is meted out in addition to, not in lieu of, incarceration." *Id.* (*quoting* United States v. Reyes, 283 F.3d 446, 461 (2d Cir. 2002)).

[27] *See Murguia-Oliveros*, 421 F.3d at 954; *see also* United States v. Jackson, 426 F.3d 301, 305 (5th Cir. 2005) (shortening period of supervised release interferes with congressional goal of rehabilitation). In *Jackson*, the court recognized that the goal of

Oliveros in *United States v. Watson*, reaffirming that an individual should serve the full term of their supervised release while being both monitored by government officials and

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supervised release was rehabilitation and reentry into the community. *Id.* Congress, in replacing the probation system with supervised release, had established specific rules and regulations to guide the present system to achieve these goals. *Id.* The court recognized that supervision was an integral part of the process and without monitoring by a probation officer, "it was impossible for his probation officer to assist him in returning to the community." *Id. See generally* S. REP. NO. 98-225, at 3307 (1983) (describing intent of supervised release and goals of new program). Congress described some of the goals of the statute as "the need for the sentence to protect the public from further crimes of the defendant" but also as "the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment. *Id.*

being held accountable for violations of terms of release, to fulfill the congressional intent.[28]

The First Circuit however, has found that the equitable tolling provision is not available to courts under the statutory construction canon of *expressio unius est exclusio alterius*.[29] In *Hernandez-Ferrer*, the court reasoned that because 18 U.S.C. § 3624(e)

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[28] *See* United States v. Watson, 633 F.3d 929, 931-32 (9th Cir. 2011) (describing development of fugitive tolling provision in Ninth Circuit). In *Watson*, the individual violated the terms of his supervised release and became a fugitive. 633 F.3d at 932. The court held that the term of supervised release was tolled until the government was capable of resuming supervision. *Id.* In this case, the period of supervised release was tolled until Watson was rearrested. *Id.* The court confirmed the holdings in *Crane* and *Murguia-Oliveros* and restated that individual should not benefit by absconding from supervised release. *Id.* at 931.

[29] *See* United States v. Hernandez-Ferrer, 599 F.3d 63, 67-68 (1st Cir. 2010) (stating that statutory canon applies to 18 U.S.C. § 3624). In *Hernandez-Ferrer*, the individual was

sentenced to supervised release as part of a conviction for conspiracy to distribute narcotics. *Id.* at 64. While on supervised release, the individual was charged with a new narcotics offense and was eventually arrested by the police after nearly a year as a fugitive on January 11, 2006, one day after the term of supervised release expired. *Id.* Two months later, the government filed a supplemental motion for violation of the terms of supervised release on the new arrest. *Id.* The court reasoned that the violation had occurred outside of his term of supervised release based on a plain meaning reading of the statute. *Id.* at 66. Further, the court found it compelling that the statute contained a tolling provision with regards to terms of incarceration lasting longer than thirty days. *Id.* at 67. Citing a number of decisions surrounding *expressio unius est exclusio alterius*, the First Circuit held that the court could not read equitable tolling into the statute. *Id.* *Contra* Barnhart v. Peabody Coal Co., 537 U.S. 149, 168-69 (2003) (*quoting* State ex rel. Curtis v. DeCorps, 16 N.E.2d 459, 462 (1938)) ("[E]xpressio unius ''properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the

provides a statutory tolling provision for terms of incarceration lasting longer than thirty days, Congress did not intend to allow any other tolling of the term of supervised release.[30] The court further noted that the plain meaning reading of the statute limited the

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contrast enforces the affirmative inference . . . .'"'). *Expressio unius est exclusio alterius* is "[a] canon of construction holding that to express or include one thing implies the exclusion of another, or of the alternative." Black's Law Dictionary, at 271 (3rd Pocket ed. 2006).

[30] *See Hernandez-Ferrer*, 599 F.3d at 67 (citing statutory construction canon as not allowing equitable tolling provision). "The absence of an express tolling provision for fugitive status, coupled with the presence of an express tolling provision that encompasses other circumstances, is highly significant." *Id. Contra* Young v. United States, 535 U.S. 43, 52 (2002) (holding tolling provision did not exclude possibility for other equitable tolling in Bankruptcy context). "Congress is presumed to draft limitations periods in light of the principle that such periods are customarily subject to equitable tolling unless tolling would be inconsistent with statutory text." *Id.* at 44.

sanctions to the "supervised release term" taking that to mean the original time period imposed by the court.[31] The First Circuit further found it persuasive that the individual who absconds from justice can still be prosecuted for the initial violation of the terms of his supervised release in the very act of becoming a fugitive and further the court at sentencing may take into account the subsequent violations committed after the term had

[31] *See Hernandez-Ferrer* 599 F.3d at 66 (stating that plain meaning of statute is clear); *see also* United States v. Johnson, 529 U.S. 53, 59 (2000) (holding that just because statute allows one exception, Courts cannot read further exceptions into language). *Contra* Chicksaw Nation v. United States, 534 U.S. 84, 94 (2001) (stating that statutory construction canons are not mandatory for courts to follow); *see also* United States v. Johnson, 138 F.3d 115, 119 (4th Cir. 1998) (acknowledging statutory construction canons are guides and not obligatory); Glenda K. Harnad, Corpus Juris Secundum, *Statutes*, § 424 (stating construction maxim is not strict rule but in place to provide guidance).

expired, .[32] The court reasoned that tolling should only be utilized in limited circumstances and did not believe a tolling provision was necessary, in light of the other deterrents in place, to carry out the statute's goals.[33]

In *United States v. Buchanan*, the Fourth Circuit embraced the reasoning of the Ninth Circuit and held that the Congressional intent in enacting the statute would be satisfied by reading an equitable tolling provision into the statute.[34] The Fourth Circuit analogized the standard created for parole cases to the supervised release standard and found that case law favored equitable tolling in post incarceration cases where the

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[32] *See Hernandez-Ferrer*, 599 F.3d at 69 (stating court's belief that sufficient penalties existed to deter violations of supervised release).

[33] *Id.* at 69 (describing other means the courts have to punish individuals for flight from supervised release).

[34] *See Buchanan*, 638 F.3d at 455 (outlining Ninth and First Circuits arguments and embracing equitable tolling); *see also supra* note 25 and accompanying text (outlining holding in *Murguia-Oliveros*).

government was intended to have a measure of supervision over the individual.[35] The Fourth Circuit did not agree with Buchanan's argument, adopted by the First Circuit, that the statutory construction canon and a plain reading of the statute did not allow equitable tolling to be used.[36] The court was not convinced that Congress had considered the possibility of fugitive flight when drafting the statute and therefore, Congress could not have intentionally prohibited the use of tolling by the courts in other scenarios to carry

[35] *See Buchanan*, 638 F.3d at 452; *see also supra* note 22 and accompanying text (discussing Fourth Circuit holding in probation case where court utilized equitable tolling). Probation and supervised release were both forms of government supervision designed to reintegrate people convicted of criminal offenses back into society. *Buchanan*, 638 F.3d at 452. The similarities of the two systems allowed the court to utilize the case law relating to probation violations as guidance. *Id.*

[36] *See Buchanan*, 638 F.3d at 455; *see also supra* note 31 and accompanying text (describing that statutory construction canons are not mandatory).

out the intent of the statute.[37] Based on the court's interpretation of the congressional intent in enacting the statute, the Fourth Circuit reasoned that the individual should not receive credit to his time of supervised release when he was not subject to the supervision of the government.[38]

The Fourth Circuit correctly concluded that equitable tolling should be utilized to ensure the Congressional intent in enacting the supervised release statute is accomplished.[39] By absconding from supervision, Buchanan frustrated the intent of

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[37] *See Buchanan*, 638 F.3d at 456 (*quoting* Barnhart v. Peabody Coal Co., 537 US 149 (2003)) ("[C]ourts should 'not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it . . . .'").

[38] *See Buchanan*, 638 F.3d at 454 ("[A] person on supervised release 'should not receive credit against his period of supervised release for time that, by virtue of his own wrongful act, he was not in fact observing the terms of his supervised release."').

[39] *See* United States v. Buchanan, 638 F.3d 448, 458 (4th Cir. 2011).

Congress in creating supervised release; rehabilitation and reintegration.[40] Based on longstanding federal principals, he should not be credited for his illegal action.[41] The present case is analogous to a number of past cases, such as *Jackson*, where the courts have found that if an individual is not being monitored, then the goals of supervised release are not being met.[42]

Further, statutory construction canons are not absolute mandates and the courts must look to the intent of Congress in enacting the statute.[43] Supervised release was

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[40] *Supra* note 15; *supra* notes 23, 27 and accompanying text (stating long held federal belief to not reward poor behavior).

[41] *See supra* note 26 and accompanying text; *see supra* note 28 (holding individuals should not benefit from their illegal conduct).

[42] *See supra* note 27 and accompanying text (stating that goals of supervised release are frustrated by lack of monitoring).

[43] *See* Chicksaw Nation v. United States, 534 U.S. 84, 94 (2001) (discussing flexibility in application of statutory construction canons); *see also supra* note 31 and accompanying

established to ensure that individuals released from federal prison were being monitored and properly reintegrated into society.[44] An individual should not avoid the restrictions, reintegration programs, and deterrent penalties of supervised release due to the commission of an unlawful act resulting in simply a sufficient lapse in time to end the term.[45] Congress has previously amended another piece of the statute, which was ineffective in carrying out the statute's goals when a new scenario arose whereby a

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text (discussing Supreme Court case law stating that canons are for guidance, not strict application).

[44] *See* S. REP. NO. 98-225, at 3307 (1983) (describing congressional intent of supervised release and goals of program).

[45] *See* United States v. Janvier, 599 F.3d 264, 266 (2d Cir. 2010) (recognizing that lapse of time alone should not allow individual to avoid justice). "The necessary proceedings take time; if courts lost the power to punish upon expiration of the release or probation term, proceedings on charges of violations filed late in the term would either be rushed, leading to unreliable outcomes, or delayed, leading to avoidance of just punishment." *Id.*

violation was committed during the term of release but the petition was not filed until a reasonable time after the expiration of the term.[46] The Congress should similarly resolve this issue by passing an amendment to the statute, which provides a fugitive tolling provision to ensure that individuals are held accountable for the violations of the terms of the supervised release when they are recaptured.[47] The Ninth and Fourth Circuits have properly addressed an issue, which Congress did not anticipate in enacting the statute through the principle of equitable tolling.[48] Congress should once again amend the

[46] *See supra* note 19 and accompanying text (describing evolution of case law and subsequent amendment to statute).

[47] *See supra* note 26 and accompanying text (outlining courts long standing maxim that individuals should not gain from wrongful conduct); *see also supra* note 19 (describing Congress amending statute to reflect courts position on issue).

[48] *See supra* note 25 and accompanying text (describing reasoning of Ninth Circuit in utilizing equitable tolling); *see also supra* note 37 (stating that Fourth Circuit did not believe Congress had anticipated fugitive status when drafting statute).

statute to ensure the goals of supervised release are not frustrated by the passage of time due to an individual's inappropriate actions.[49]

The Fourth Circuit should have further analogized the situation to the civil matters where equitable tolling is utilized.[50] In these cases, a party is allowed to amend their filing after the statutory period to correct a defective pleading if they attempted to file a proper motion but the actions of the other party prevented a proper filing.[51] The government filed the initial motion within the statutorily allowed period based on the

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[49] *See supra* note 19 and accompanying text (describing amendment to statute and judicial history leading up to change).

[50] *See supra* note 21 and accompanying text (describing history of equitable tolling in civil lawsuits). The courts have applied the principle of equitable tolling in civil cases when the opposing party has actively hidden their identity or offenses to utilize the statute of limitations for improper purposes. *See supra* note 21 and accompanying text.

[51] *See* United States v. Delamora, 451 F.3d 977, 979 (2006) (describing scenario where party used an alias and false identity to avoid detection).

information they had regarding Buchanan's supervised release violations.[52] Based on the standard set by the Supreme Court in *Young*, equitable tolling can be used "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period."[53] The government further attempted to file a proper motion but Buchanan's active concealment of his identity while a fugitive prevented this.[54] Thus

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[52] *See* United States v. Buchanan 638 F.3d 448, 449 (4th Cir. 2011) (describing initial petition filed by probation officer).

[53] *See* Young v. United States, 535 U.S. 43, 50 (2002); *see also supra* note 21 and accompanying text (stating claimant should be given opportunity to amend complaint once new causes come to light).

[54] *See supra* notes 9, 13 and accompanying text (describing aliases and false identities used by Buchanan when arrested while a fugitive). Buchanan avoided detection by federal authorities each time he was arrested by providing local arresting authorities with false personal information. *See* United States v. Buchanan, 632 F. Supp. 2d. 554, 556-57 (E.D. Va. 2009).

once the government discovered Buchanan's violations, they should have been afforded a reasonable opportunity to correct the filing and charge Buchanan with his subsequent violations of the term of supervised release.[55] The use of equitable tolling and its rationale in the civil context provides further support to the Fourth Circuit's use in a criminal case.[56]

In *United States v. Buchanan*, the Fourth Circuit joined the Ninth Circuit court in holding that a term of supervised release can be tolled while an individual is a fugitive. This decision enforces the congressional intent in enacting the statute by ensuring that an individual on supervised release serves their full term while being monitored and rehabilitated by a probation officer. The First Circuit erred by applying the statutory

[55] *See generally supra* note 19 and accompanying text (describing ability to amend filings once information discovered in civil context); *see also* United States v. Buchanan, 638 F.3d 448, 449 (4th Cir. 2011) (describing filing of addendum in 2009 once Buchanan was rearrested).

[56] *See generally Buchanan*, 638 F.3d at 454 (describing holding of case).

construction canon without a clear indication that Congress had considered the possibility of an individual becoming a fugitive during the term of supervised release and committing subsequent crimes. The Fourth Circuit correctly applied equitable tolling in the fugitive status context and Congress should once again amend the statute to address a new situation and carry out the statute's intended purpose.