In the

United States Court of Appeals

For the Seventh Circuit

No. 18-2447

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DAVID TJADER,

Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 3:17CR00100-001 — **William M. Conley**, *Judge*.

ARGUED APRIL 24, 2019 — DECIDED JUNE 12, 2019

Before KANNE, HAMILTON, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. In this appeal, David Tjader challenges several conditions of his supervised release on grounds he did not raise in the district court. Because he waived these challenges, we affirm.

Tjader purchased child pornography online from sellers in the Philippines. He asked one seller about recordings of girls

under 14 years old being tortured, raped, or killed. His conduct involved over 250 different pornographic images and videos of prepubescent girls. Tjader pleaded guilty to one count of receiving child pornography. *See* 18 U.S.C. § 2252(a)(2),(b)(1).

A United States probation officer prepared a presentence investigation report and a supervision plan. Tjader received a copy of this plan and confirmed with the district court that, before sentencing, he reviewed and understood it. As part of the plan, the probation officer proposed the following supervised-release terms—terms that Tjader now challenges on appeal:

- Condition 1: Defendant shall not leave the judicial district in which defendant is being supervised without the permission of the Court or probation officer.
- Condition 2: Defendant … shall … follow the [probation] officer's instructions … .
- Condition 11: As directed by the probation officer, defendant shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics … .
- Condition 12: Provide the supervising U.S. probation officer any and all requested financial information, including copies of state and federal tax returns.
- Condition 16: As approved by the supervising U.S. Probation Officer, undergo psychosexual evaluations, which may involve use of polygraph examinations. Defendant shall participate in an outpatient sex offender counseling program if recommended by the evaluator, … .
- Condition 17: Not meet or spend time with any person under the age of 18 or have verbal, written, telephonic

> or electronic communication with any such person … . This provision does not include persons under the age of 18, such as waiters, cashiers, ticket vendors, etc., with whom defendant must deal in order to obtain ordinary and usual commercial services.
>
> - Condition 18: Not work in any occupation, business or profession, or participate in any volunteer activity where he has access to children under the age of 18 without the prior approval of the supervising U.S. probation officer.

Tjader initially objected to only two of these conditions relevant to this appeal. First, he argued that Condition 12 (requiring that he provide financial information upon request) was an "excessive intrusion" and "not rationally designed to supervise him" because his crime was not financial in nature. Second, he argued that Condition 16 (requiring psychosexual evaluation and potentially counseling) was impermissible to the extent that it authorized Abel Screening and plethysmograph examinations (tests that measure sexual interest) and polygraph tests because those tests, he said, must be shown to be reliable under *Daubert* before they could be used. (Tjader objected to other conditions as well, but he does not challenge them on appeal.)

The court addressed Tjader's objections in detail, overruled them, and adopted the proposed conditions. The court then asked Tjader whether it should read and justify the remaining conditions or adopt the supervision plan's recitation of them and their explanations. Tjader responded that he "waive[d] the reading of any justification of the additional conditions that [he] did not object to." He also acknowledged that he reviewed the conditions with counsel and that he understood them and their justifications. The court sentenced

Tjader to seven years in prison and ten years of supervised release, and it ordered him to pay restitution.

On appeal, Tjader again challenges Condition 12 (the financial-monitoring condition) and Condition 16 (the evaluation and treatment condition), but he does so on new grounds. For Condition 12, rather than argue as he did in the district court that it is unduly burdensome, he now asserts that the district court gave inadequate reasons for imposing it. For Condition 16, he now primarily argues that the court impermissibly delegated its authority to non-judicial actors. He also contests other conditions for the first time.

We review preserved arguments for abuse of discretion and forfeited ones for plain error. *See United States v. Bickart*, 825 F.3d 832, 839 (7th Cir. 2016). Waived arguments—those that are intentionally relinquished—we cannot review at all. *See United States v. Bloch*, 825 F.3d 862, 873 (7th Cir. 2016).

Tjader waived all of his appellate arguments against the supervisory conditions. When a defendant has received advanced notice of conditions of supervised release and is invited to object to them in the district court, a "failure to object … can amount to waiver." *United States v. Gabriel*, 831 F.3d 811, 814 (7th Cir. 2016); *see also United States v. Raney*, 842 F.3d 1041, 1044 (7th Cir. 2016). Tjader had advanced notice of the conditions because they were in the supervision plan, which he received before sentencing. *See United States v. Gumila*, 879 F.3d 831, 838 (7th Cir. 2018); *United States v. Lewis*, 823 F.3d 1075, 1082 (7th Cir. 2016). The district court also confirmed that Tjader had time to review them and that he understood them. *See Gumila*, 879 F.3d at 838; *Bloch*, 825 F.3d at 873. And before sentencing, when the district court invited Tjader to present his objections to the conditions, Tjader raised some

objections (not raised on appeal), but not others. We may infer from his choice to raise these other objections that his decision not to raise the ones he now advances on appeal was strategic and intentional. *See Gumila*, 879 F.3d at 838; *United States v. Ranjel*, 872 F.3d 815, 821–22 (7th Cir. 2017). Tjader's decision to waive an explanation of the remaining conditions—noting that he understood those conditions and their justifications—confirmed his intent. *See Lewis*, 823 F.3d at 1083. This conduct resulted in a waiver of Tjader's appellate challenges.[1]

Accordingly, we AFFIRM the district court's judgment.

[1] Tjader argues, and the government agrees, that the mandate to notify "third parties" of "the risks" that his "history" and "characteristics" pose is vague. Tjader's waiver of this point is dispositive. *See Raney*, 842 F.3d at 1044. We do, however, note that Tjader may later seek modification of this condition. *See* 18 U.S.C. § 3583(e); *United States v. Williams*, 840 F.3d 865 (7th Cir. 2016) (per curiam). As the district court informed Tjader at sentencing, he can ask the court to modify his conditions after he is released to the extent such modifications are appropriate.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

June 12, 2019

Before: MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-2447	UNITED STATES OF AMERICA, Plaintiff - Appellee v. DAVID TJADER, Defendant - Appellant
Originating Case Information:	
District Court No: 3:17-cr-00100-1 Western District of Wisconsin District Judge William M. Conley	

The judgment of the District Court is **AFFIRMED**, in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment**(form ID: **132**)

No. 18-2447

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DAVID TJADER,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Wisconsin, Madison Division
Case No. 3:17-CR-00100-001
William M. Conley, Judge

PETITION FOR PANEL REHEARING OR REHEARING *EN BANC*

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Attorneys for Defendant-Appellant,
DAVID TJADER

ORAL ARGUMENT REQUESTED

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 18-2447
Short Caption: United States v. Tjader

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement stating the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐**PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

David Tjader

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Thomas W. Patton and Daniel J. Hillis of the Federal Public Defender's Office for the Central District of Illinois; and William Jones.

(3) If the party or amicus is a corporation: N/A

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

==========

Attorney's Signature: s/ Daniel J. Hillis Date: June 14, 2019

Attorney's Printed Name: Daniel J. Hillis

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☒ **No** ☐

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FEDERAL RULE OF APPELLATE PROCEDURE 35(b)(1) STATEMENT REGARDING REASONS FOR REHEARING OR REHEARING *EN BANC*

This Court recently decided *United States v. Tjader*, --- F.3d ----, 2019 WL 2441073 (7th Cir. June 12, 2019). It should grant either panel rehearing or *en banc* for the following reasons.

To start, the opinion incorrectly determined Mr. Tjader waived his appellate challenges. Supreme Court precedent and Seventh Circuit authority recognize that the government waives waiver by not asserting a waiver claim. *See Garza v. Idaho*, 139 S.Ct. 738, 745 (2019); *United States v. Tichenor*, 683 F.3d 358, 363 (7th Cir. 2012).

Because the Government in *Tjader* never asserted a waiver argument for the conditions at issue (it confessed error as to one), *Tjader* could not validly rely waiver to decide the case. Rather than using waiver to defeat supervised release challenges, the Court could deny relief under a plain error standard of review instead of misapplying waiver like *Tjader* does. Also, the opinion is unsupported by the authority it cites. *Tjader* cites *United States v. Bloch*, 825 F.3d 862, 873 (7th Cir. 2016), *United States v. Gabriel*, 831 F.3d 811, 814 (7th Cir. 2016), *United States v. Raney*, 842 F.3d 1041, 1044 (7th Cir. 2016), *United States v. Lewis*, 823 F.3d 1075, 1082 (7th Cir. 2016), *United States v. Gumila*, 879 F.3d 831, 838 (7th Cir. 2018), and *United States v. Ranjel*, 872 F.3d 815, 821–22 (7th Cir. 2017). In each of those cases, the government's briefs asserted a waiver argument. The Government did not

take that necessary step here.

Moreover, *Tjader* disregards binding Seventh Circuit precedent that predates all the waiver authority it cites. The contrary cases are numerous, they span many years, and hold that uncontested supervised release conditions are entitled to plain error review. *Tjader* considers none of them. Disregarding that pertinent contrary authority and deciding to instead find that a lack of objection results in waiver runs afoul of *stare decisis*. Also, the fractured nature of Seventh Circuit authority concerning plain error versus waiver means that opposing parties are increasingly able to take a stance on an issue that is simultaneously well-supported and contradicted by Circuit precedent.

It is proper to rehear *Tjader* so that the law can be correctly applied and a cogent body of law may emerge. As things stand, the caselaw is contradictory.

INTRODUCTION

Tjader recounted the following:

> Tjader purchased child pornography online from sellers in the Philippines. He asked one seller about recordings of girls under 14 years old being tortured, raped, or killed. His conduct involved over 250 different pornographic images and videos of prepubescent girls. Tjader pleaded guilty to one count of receiving child pornography. *See* 18 U.S.C. § 2252(a)(2),(b)(1).
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> A United States probation officer prepared a presentence investigation report and a supervision plan. Tjader received a copy of this plan and confirmed with the district court that, before sentencing, he reviewed and understood it. As part of the plan, the

probation officer proposed the following supervised-release terms—terms that Tjader now challenges on appeal:

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Tjader initially objected to only two of these conditions relevant to this appeal. First, he argued that Condition 12 (requiring that he provide financial information upon request) was an "excessive intrusion" and "not rationally designed to supervise him" because his crime was not financial in nature.

Second, he argued that Condition 16 (requiring psychosexual evaluation and potentially counseling) was impermissible to the extent that it authorized Abel Screening and plethysmograph examinations (tests that measure sexual interest) and polygraph

> tests because those tests, he said, must be shown to be reliable under *Daubert* before they could be used. (Tjader objected to other conditions as well, but he does not challenge them on appeal.)
>
> The court addressed Tjader's objections in detail, overruled them, and adopted the proposed conditions. The court then asked Tjader whether it should read and justify the remaining conditions or adopt the supervision plan's recitation of them and their explanations. Tjader responded that he "waive[d] the reading of any justification of the additional conditions that [he] did not object to." He also acknowledged that he reviewed the conditions with counsel and that he understood them and their justifications. The court sentenced Tjader to seven years in prison and ten years of supervised release, and it ordered him to pay restitution.

Id. at **1-4.

The *Tjader* opinion then determined:

> Tjader waived all of his appellate arguments against the supervisory conditions. When a defendant has received advanced notice of conditions of supervised release and is invited to object to them in the district court, a "failure to object … can amount to waiver." *United States v. Gabriel*, 831 F.3d 811, 814 (7th Cir. 2016); *see also United States v. Raney*, 842 F.3d 1041, 1044 (7th Cir. 2016). Tjader had advanced notice of the conditions because they were in the supervision plan, which he received before sentencing. *See United States v. Gumila*, 879 F.3d 831, 838 (7th Cir. 2018); *United States v. Lewis*, 823 F.3d 1075, 1082 (7th Cir. 2016). The district court also confirmed that Tjader had time to review them and that he understood them. *See Gumila*, 879 F.3d at 838; *Bloch*, 825 F.3d at 873. And before sentencing, when the district court invited Tjader to present his objections to the conditions, Tjader raised some objections (not raised on appeal), but not others. We may infer from his choice to raise these other objections that his decision not to raise the ones he now advances on appeal was strategic and intentional. *See Gumila*, 879 F.3d at 838; *United States v. Ranjel*, 872 F.3d 815, 821–22 (7th Cir. 2017). Tjader's decision to waive an explanation of the remaining conditions—noting that he understood those conditions and their justifications—confirmed his intent. *See Lewis*, 823 F.3d at

> 1083. This conduct resulted in a waiver of Tjader's appellate challenges.

Id. at **1-5.

REASONS FOR GRANTING REHEARING OR REHEARING *EN BANC*

A rehearing is proper if this Court overlooked or misapprehended a point of law or fact. *See* Fed.R.App.P. 40(a)(2). A petition for rehearing "should alert the panel to specific factual or legal matters that the party raised, but that the panel may have failed to address or may have misunderstood." *Easley v. Reuss*, 532 F.3d 592, 593 (7th Cir. 2008).

ARGUMENT

1. **The *Tjader* opinion disregards Supreme Court and Seventh Circuit waiver precedent**

Tjader said that Mr. Tjader waived his challenges. *Id.* at *5. However, it could not validly reach that conclusion.

In *Garza* the Supreme Court said "even a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver". 139 S.Ct. at 745. By not arguing waiver in the brief it filed in this case, the Government waived waiver. *Id.* It's that simple.

The Seventh Circuit's own jurisprudence similarly supports that conclusion. In *Tichenor*, the Court held that the government waived waiver where it urged court to view an issue as forfeited. 638 F.3d at 363. Here, the

Government argued that Mr. Tjader forfeited his challenges and was only entitled to plain error review. (App.R.15 at pp. 17-32). So, *Tichenor* is Circuit precedent that shows there was no waiver and that Mr. Tjader's claims had to be reviewed (at least) for plain error. 683 F.3d at 363.

Additionally, *Tjader* is unsupported by the authority it cites. *Tjader* cites *United States v. Bloch*, 825 F.3d 862, 873 (7th Cir. 2016), *United States v. Gabriel*, 831 F.3d 811, 814 (7th Cir. 2016), *United States v. Raney*, 842 F.3d 1041, 1044 (7th Cir. 2016), *United States v. Lewis*, 823 F.3d 1075, 1082 (7th Cir. 2016), *United States v. Gumila*, 879 F.3d 831, 838 (7th Cir. 2018), and *United States v. Ranjel*, 872 F.3d 815, 821–22 (7th Cir. 2017). There, the government's briefs asserted waiver arguments. The Government never argued Mr. Tjader waived the conditions at issue here. (App.R.15 at pp. 17-32). Accordingly, though *Tjader* cites *Bloch*, *Gabriel*, *Raney*, *Lewis*, *Gumila* and *Ranjel*, the Government's failure to argue waiver means *Tjader* could not validly rely on those cases to find waiver here.

And as for *Tjader* saying "it may infer" a strategic, intentional decision by a defendant to forgo challenges, that too is a problem. *Id.* at *5. Inferring a waiver from silence is inconsistent with other authority requiring a waiver of an appellate issue to be express and unambiguous. *See, e.g., United States v. Hendrickson*, 22 F.3d 170, 174 (7th Cir. 1994) (finding no waiver of the right to appeal because such a waiver "must be express and unambiguous"). A

defendant's silence does little to show the defendant understands he is waiving a challenge and agreeing to remain for decades under punitive conditions that can lead to reimprisonment. Rather than grasping at inferences, the Court should require district courts to obtain express and unambiguous waivers. *Id.*; *see also United States v. Schmidt*, 47 F.3d 188, 190 (7th Cir. 1995) (saying of a waiver in a plea agreement "a waiver will be upheld only if the record clearly demonstrates that the defendant knowingly and voluntarily" agreed to it).

It would take very little extra effort for a sentencing judge and it would ensure that the defendant has intentionally relinquished a known right. If the record explicitly shows a defendant intentionally relinquished a known right, a court should find waiver. *See United States v. Olano*, 507 U.S. 725, 733 (1993); *United States v. Jacques*, 345 F.3d 960, 962 (7th Cir. 2003). And if the record shows only that a defendant failed to timely assert a right, that's a forfeiture and plain error review is required. *Olano*, 507 U.S. at 733; *Jacques*, 345 F.3d at 962.

2. *Tjader* disregards binding Seventh Circuit precedent that predates all the waiver authority it cites and worsens an intra-Circuit split

For most of the last twenty years, the general rule of this Circuit has been that contested supervised release conditions are reviewed for abuse of discretion and uncontested conditions are reviewed for plain error. *See United States v. Guy*, 174 F.3d 859, 862 (7th Cir. 1999); *United States v. McKissic*, 428 F.3d 719, 721-22 (7th Cir. 2005); *United States v. Ross*, 475 F.3d 871, 873 (7th Cir. 2007); *United States*

v. Kappes, 782 F.3d 828, 844 (7th Cir. 2015). As recently as *Kappes*, the government argued that a defendant who receives notice of condition and doesn't object to it is entitled to plain error review on appeal. 782 F.3d at 844. Indeed, though a defendant in *Kappes* had notice of all the conditions via a PSR and objected to some conditions (but not others), the government argued for plain error rather than waiver. *Id. Kappes* did not infer waiver and found relief would be appropriate under plain error. *Id.*

Fast forward a few years to *Bloch*, *Gabriel*, *Raney*, *Lewis*, *Gumila*, *Ranjel*, and *Tjader* and one finds that a defendant who has notice of conditions and doesn't object to them has waived the ability to challenge the conditions on appeal. But these later decisions don't overrule *Guy*, *McKissic*, *Ross* or *Kappes*. As such, *Guy*, *McKissic*, *Ross* and *Kappes* remain good law. A defendant may properly rely on them notwithstanding *Bloch*, *Gabriel*, *Raney*, *Lewis*, *Gumila*, *Ranjel*, and *Tjader*. Moreover, a defendant can argue that the latter group of cases which do not afford defendants plain error review are wrong as a matter of *stare decisis*. *See Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468, 478-79 (1987) ("The rule of law depends in large part on adherence to the doctrine of *stare decisis*. Indeed, the doctrine is "a natural evolution from the very nature of our institutions." Lile, Some Views on the Rule of *Stare Decisis*, 4 Va.L.Rev. 95, 97 (1916). It follows that 'any departure from the doctrine of *stare decisis* demands

special justification.' *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S.Ct. 2305, 2311, 81 L.Ed.2d 164 (1984)"). After all, the *Guy* line of cases were not decided incorrectly or proven unworkable. And given that *Guy*, *et al.* support a defendant's effort to seek plain error review of conditions---even ones the defendant had notice of and didn't object to---the contrary decisions of *Tjader, et al.* don't eliminate supervised release challenges. Mr. Tjader supposes that after *Tjader*, defendant-appellants will just have to write briefs with a lot more citations that have "but see" and "contra". That can't be what the Circuit wants. A more cogent body of law is preferable.

Finally, Mr. Tjader observes that perhaps judges are tired of supervised release challenges and feel that supervised release is too burdensome to sort out on appeal. To any who may feel that way, he offers that supervised release poses no greater burden to anyone than the defendants who may labor under it for a lifetime and be intermittently re-imprisoned for violations. *See* 18 U.S.C. § 3583(e)(3). Waiting until one's release from prison is a poor solution given that an 18 U.S.C. § 3583(e)(2) modification is a "hassle" and defendants do not necessarily have counsel for those proceedings. *See United States v. Johnson*, 756 F.3d 532, 539 (7th Cir. 2014). Judges can elect not to impose supervised release (unless a statute requires otherwise) and may impose no more conditions than the law mandates. Once a sentencing judge elects to go beyond mandatory

lengths and conditions, it is fair that a defendant be allowed to seek at least plain error review of conditions whose full import may not been contemplated in the district court.

REASONS FOR GRANTING REHEARING

By making a waiver argument for the Government and deciding the case on that basis, *Tjader* conflicts with Supreme Court and Seventh Circuit precedent concerning the Government's waiver of waiver. *See Garza*, 139 S.Ct. at 745; *Tichenor*, 638 F.3d at 363. Such an effort is contrary to binding precedent and run afoul of the notion that a court is a neutral umpire who calls balls and strikes. Furthermore, because the Government did not make a waiver argument, *Tjader* incorrectly relies on *Bloch*, *Gabriel*, *Raney*, *Lewis*, *Gumila* and *Ranjel* to reject Mr. Tjader's challenges.

The *Tjader* opinion's various misapplications of law, failure to address contrary authority, and intra-Circuit conflict as to whether uncontested conditions get plain error review or are waived are all reasons warranting a panel rehearing or *en banc*.

CONCLUSION

WHEREFORE this Court should grant Mr. Tjader's petition.

Respectfully submitted,

THOMAS W. PATTON
Federal Public Defender

s/ Daniel J. Hills
Daniel J. Hillis
Assistant Federal Public Defender

Attorneys for Defendant-Appellant,
DAVID TJADER

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(C)

The undersigned certifies that this brief complies with the volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(C) and Circuit Rule 32 in that it contains 2,601 words and 253 lines of text as shown by Microsoft Word 2010 used in preparing this brief.

s/ Daniel J. Hillis
DANIEL J. HILLIS

Dated: June 14, 2019

No. 18-2447

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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NOTICE OF FILING AND PROOF OF SERVICE

TO: Mr. Gino Agnello, Clerk, United States Court of Appeals, 219 South Dearborn Street, Chicago, Illinois 60604

Mr. David Tjader, Reg. No. 11070-090, FCI Elkton, Federal Correctional Institution, P.O. Box 10, Lisbon, Ohio 44432

Ms. Elizabeth Altman, U.S. Attorney's Office, 222 W. Washington Avenue Suite 700, Madison, Wisconsin 53703

Mr. Timothy O'Shea, U.S. Attorney's Office, 222 W. Washington Avenue Suite 700, Madison, Wisconsin 53703

PLEASE TAKE NOTICE that on June 14, 2019, the undersigned attorney electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the

CM/ECF system. I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing documents by First Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier within three calendar days, to the non-CM/ECF participants.

s/ Daniel J. Hillis
DANIEL J. HILLIS
Assistant Federal Public Defender
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Phone: (217) 492-5070

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

July 2, 2019

Before

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-2447

UNITED STATES OF AMERICA,
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Defendant-Appellant.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 3:17-cr-00100-1

William M. Conley,
Judge.

O R D E R

On consideration of the petition for panel rehearing or rehearing en banc, no judge in regular active service has requested a vote on the petition for rehearing en banc and the judges on the original panel have voted to deny rehearing. It is, therefore, **ORDERED** that the petition for panel rehearing or rehearing en banc is **DENIED**.