No. _____

In the

Supreme Court of the United States

_____

Chase Matheny

Petitioner,

v.

United States of America,

Respondent.

_____

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

I. Whether this Court should grant review to consider whether a condition of supervision requiring the Petitioner to permit a probation officer to visit him at any time at home or elsewhere is unreasonable under the Fourth Amendment, constitutionally overbroad and vague, statutorily unreasonable, and a greater deprivation of liberty than is reasonably necessary?

PARTIES TO THE PROCEEDING

Petitioner is Chase Matheny, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Chase Matheny seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is located within the Federal Appendix at *United States v. Chase Matheny*, 772 Fed. Appx. 198 (5th Cir. June 26, 2019) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgement and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on June 26, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This Petition involves 18 U.S.C. §§ 3583(d)(1) and (2) which provide the following:

> The Court may order, as a further condition of supervised release, to the extent that such condition –
>
> > (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
> >
> > (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D),

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides in part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .

LIST OF PROCEEDINGS BELOW

1. *United States Chase Matheny*, 4:18-CR-0072-Y-1 , United States District Court for the Northern District of Texas. Judgement and sentence entered on September 9, 2018. (Appendix B).

2. *United States v. Chase Matheny*, CA No. 18-11229, Court of Appeals for the Fifth Circuit. Judgment affirmed on June 26, 2019. (Appendix A)

STATEMENT OF THE CASE

On March 21, 2018, Mr. Matheny was charged by indictment with possession of stolen mail, in violation of 18 U.S.C. § 1708. (ROA.7).[1] The indictment alleged that:

> On or about October 20, 2017, in the Fort Worth Division of the Northern District of Texas, defendant Chase Matheny, did unlawfully have in his possession mail matter, specifically several letters sent and belonging to victim D.H., which had been stolen, taken, embezzled and abstracted from the United States mail and an authorized depository for mail matter, knowing said mail matter to have been stolen.

(ROA.7).

Appellant Matheny pleaded guilty to this indictment without a plea agreement (ROA.72). For sentencing, neither party objected to the Presentence Report (PSR) or the Addendum. (ROA.83). The guideline range was 12 to 18 months. (ROA.84). The district court sentenced Mr. Matheny to 30 months, with a two-year term of supervised release. (ROA.94). The district court imposed a condition of supervised release which required Mr. Matheny to "allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view." (ROA.52).

On Direct appeal Matheny raised the issue that one of the conditions of supervised release violates the Fourth Amendment. The Court of Appeals for the Fifth Circuit affirmed the conviction. (See Appendix A).

[1] For the convenience of the Court and the parties, Petitioner has included citations to the page number in the record on appeal below.

REASONS FOR GRANTING THIS PETITION

I. This Court should grant review to consider whether a condition of supervision requiring the Petitioner to permit a probation officer to visit him at any time at home or elsewhere is unreasonable under the Fourth Amendment, constitutionally overbroad and vague, statutorily unreasonable, and a greater deprivation of liberty than is reasonably necessary.

The Fourth Amendment guarantees the "right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. Warrantless searches are unreasonable and violate the Fourth Amendment. See, e.g., *Payton v. New York*, 445 U.S. 573, 576 (1980).

A person on conditional release, such as parole, probation, or supervised release, does have a limited expectation of privacy, but that expectation of privacy is not eliminated. This Court requires at least reasonable suspicion to conduct a search of a probationer's house. *United States v. Knights*, 534 U.S. 112, 121 (2001). In any event, the "Fourth Amendment's touchstone is reasonableness. . . ." *Id*., at 112.

Congress also requires that the conditions of release be reasonable. Other than the mandatory conditions set forth in 18 U.S.C. § 3583(d), any additional condition must be "reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D)" and must involve "no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D). . . ." 18 U.S.C.A. §§ 3583(d)(1) & (2).

Moreover, a district court must explain the reasons for imposing the conditions of release in a particular case. *See, United States v. Salazar*, 743 F.3d 445, 451 (5th Cir. 2014).

The condition in this case was unreasonable. As stated by one court:

> There are two problems with the condition. The first is "or elsewhere." There is no problem with the probation officer and the defendant agreeing to meet outside the defendant's home, but it is unclear why the probation officer should be allowed to pick a location that may be inconvenient for the defendant. Replacing "elsewhere" with "at some other mutually convenient location designated by the probation officer" would solve this problem. Another solution is found in United States v. Armour, 804 F.3d 859, 864, 870 (7th Cir.2015)—"You shall permit a probation officer to visit you at home or any other reasonable location between the hours of 6:00 AM and 11:00 PM, unless investigating a violation or in case of emergency" (emphasis added). Omitting such a qualification (as the judge did in this case) leaves open at least the theoretical possibility that the probation officer could require the defendant to meet him in an inappropriate location, such as a funeral, or in a remote one, say a place many miles away.

United States v. Henry, 813 F.3d 681, 683-84 (7th Cir. 2016).

Moreover, the Seventh Circuit has criticized district courts for imposing these types of conditions without explaining the need for such a condition in a particular case. *See United States v. Kappes*, 782 F.3d 828, 850-51 (7th Cir. 2015); and *United States v. Thompson*, 777 F.3d 368, 373 (7th Cir. 2015).

Although this issue was not raised in the district court, it was raised on direct appeal. The Fifth Circuit Court of Appeals disposed of the issue by simply vitine a previous published opinion in which the court had held that error is not plain when the issue had not previously been decided. *Citing United States v. Cabello*, 916 F.3d 543, 544 (5th Cir. 2019). *See* (Appendix A).

While it is true that the Fifth Circuit has in some cases held that when it has "not previously addressed an issue, we ordinarily do not find plain error." *United States v. Serrano*, 640 F. App'x 328, 330 (5th Cir. 2016) citing *United States v. Evans*,

587 F.3d 667, 671 (5th Cir.2009) (emphasis added), it is simply not true that a court of appeals cannot find plain error in a case of first impression. *See, United States v. Silva-De Hoyos*, 702 F.3d 843, 849 (5th Cir. 2012); *United States v. Leonard*, 157 F.3d 343, 344–46 (5th Cir.1998); *United States v. Aderholt*, 87 F.3d 740, 744 (1996); *United States v. Aguilar*, 668 F. App'x 625, 626 (5th Cir. 2016) ("the fact that a case is one of first impression does not preclude a finding of plain error . . . .").

In fact, the court in *Kappes* found the error of including this condition without an explanation to be plain error requiring reversal. *Kappes*, 782 F.3d 828, 844. In the present case, there was error, it was plain and it did affect Petitioner's substantial rights. Petitioner is now subject to unreasonable requirements that she allow the probation officer to visit him in his home at any time, and anywhere else at any time, regardless of any suspicion. As the court in *Kappes* necessarily found, this error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

Again, the Court of Appeals for the Seventh Circuit specifically found that it was plain error to impose the very condition that is at issue in this case. *See United States v. Kappes*, 782 F.3d at 844. Moreover, the Fifth Circuit's position in this regard – that error cannot be plain unless there has been a previous determination that there was error -- is contrary to this Court's precedent. *See Henderson v. United States*, 568 U.S. 1121, 1130 (2013) (For the purposes of determining whether error is plain, "it is enough that an error be plain at the time of appellate consideration.").

Moreover, the fact that a district court must explain the reasons for imposing the conditions of release in a particular case is not new, novel, or of first impression.

See, Salazar, id. Nor is there anything new or novel in the Fourth Amendment's guarantees of the "right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," U.S. Const., amend. IV, and the continued application of this right to a person on supervised release. See, *Knights*, id.

Accordingly, this Court should grant review to determine whether the condition of supervised release at issue violates the Fourth Amendment and to resolve a circuit split on the issue.

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 24th day of September, 2019.

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