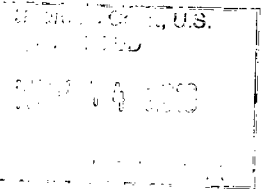


No. 19-6719

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Mauro Castaneda Palacios — PETITIONER
(Your Name)

vs.
United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mauro C. Palacios # 2271249

(Your Name)

Wayne Scott Unit

6499 Retrieve Road

(Address)

Angleton, TX 77515

(City, State, Zip Code)

none

(Phone Number)

QUESTION(S) PRESENTED

I.

Whether the U.S. Fifth Circuit supports the conflicting 18 U.S.C. § 3606 disabling statute?

II.

Whether, the U.S. Fifth Circuit supports some unconstitutional and vague special conditions under Federal Supervised Release?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- United States v. Palacio, No 1:03-CR-302 (01)-SS, U.S. District Court for the western District of Texas. order Revoking supervised Release And Re-sentencing of Defendant entered Oct. 2, 2017.
- Palacio v. United States, No 1:18-cv-841, U.S. District Court for the western District of Texas. Judgment entered Feb. 6, 2019.
- United States v. Palacio, No 19-50224, U.S. Court of Appeals for the Fifth Circuit. Judgment entered Aug. 13, 2019.
- United States v. Palacio, No 19-50224, U.S. Court of Appeals for the Fifth Circuit. Per curiam order entered Sep. 25, 2019.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 13, 2019.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amendment I (1791). Congress shall make no law respecting... abridging the freedom to speech...

U.S. Const. Amendment IV (1791). The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amendment V (1791). No person shall...; nor shall any person be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

18 U.S.C. § 3583.

(d) conditions of Supervised Release

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)(D); and

(3) is consistent with the pertinent policy statements issued by the Sentencing Commission pursuant to

28 U.S.C. § 994(a);

18 U.S.C. § 3606

Arrest and Return of a Probationer

- ① If there is probable cause to believe that a probationer or a person in supervised Release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having Jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and make the arrest without a warrant.
- ② The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or the United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

28 U.S.C. § 2253 (c) Appeal

(c)(1) unless a circuit Justice or Judge issues a Certificate of appealability, an appeal may not be taken to the Court of appeals from—

- (3) The final order in a proceeding under section 2255.
- (2) A certificate of appealability may issue under

paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

On September 29, 2017 the district court revoked petitioner's term of supervised release included in the judgment and sentence imposed on January 28, 2005 and re-sentenced him to twenty four (24) months in Federal Penitentiary with a Ten (10) year term of supervised release and to include new conditions.

Petitioner filed a timely motion pursuant to 28 U.S.C. § 2255, in his motion in ground one, he challenged his original sentence, regarding ground two, he challenged the arrest warrant based on the fact that the affidavit was not supported by oath or affirmation as prescribed by the Fourth Amendment. For grounds three and four, he challenged some of the re-imposed supervised release and the new unknown conditions from the district court as unconstitutional, vague and over-broad.

The government responded to petitioner's ground one as successive, for ground two the government responded that ~~because~~ petitioner was a releasee enjoying less U.S. Const. IV Amendment privileges, because 18 U.S.C. § 3609 authorized a warrantless arrest or an arrest warrant with a non-oath or non-affirmed affidavit. For grounds three and four the government responded that the conditions of supervised release are reasonable based on the

§ 3553 factors mentioned in 18 U.S.C. § 3583. For ground one petitioner requested to withdraw, for ground two he responded that even as a releasee he is protected and enjoy the U.S. Const. IV Amendment privileges and that the U.S. Court of Appeals for the Ninth Circuit based on Supreme Court of the United States case law rejects warrantless arrests or

arrest warrants with a non-oath or non-affirmed affidavit, for grounds three and four Petitioner responded that some of the conditions of supervised release are not reasonable, because they are unconstitutional, vague and overbroad as concluded by the U.S. Court of Appeals for the Seventh and District of Columbia Circuits.

The district court agreed with the government contentions and denied in part and dismissed in part Petitioner's 2255 motion on February 6, 2019.

Petitioner timely appealed to the U.S. Court of Appeals for the Fifth Circuit and filed a certificate of appealability and supplement challenging 18 U.S.C. § 3606 statute and some of the conditions of supervised release as unconstitutional.

The U.S. Court of Appeals for the Fifth Circuit denied the motion for certificate of appealability, granted the supplement. The court of appeals simply stated that petitioner failed the requisite showing the issues debatable.

REASONS FOR GRANTING THE PETITION

II.

A statute permitting a warrantless arrest based on probable cause or a warrant for arrest for supervised release violation with a non-oath or a non-affirmation affidavit would raise a serious constitutional problem. Because under U.S. const. Amendment IV (1791) ... no warrants shall issue, but upon probable cause, supported by oath or affirmation. Black's Law Dictionary defines that a valid warrant must be construed in a regular form and issued by a court, body, or official having both the authority to issue the warrant for the purpose stated and jurisdiction over the person named, all the requisite proceedings for its proper issuance having taking place. Page 1820 (10th Ed. 2014).

Petitioner divided 18 U.S.C. § 3606 statute in two parts, the first part shows the disabling statute, and is a law that limits or curbs certain rights. Black's Law Dictionary. Page 1634 (10th Ed. 2014). It talks about the probable cause, but doesn't explain from whom? Petitioner got a hint:

Probation officers or law enforcement. However, Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action. As emphasized in *Beck v. Ohio*, 379 U.S. 89 (1964); "if subjective good faith alone were the test, the protection of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects' only ~~if~~

in the discretion of the police. The probable cause test, then, is an objective one; for there to be probable cause, the facts must be such as would warrant a belief by a reasonable man. Wayne R. LaFare & Jerold H. Israel, Criminal Procedure § 3.3 @ 140 (2d ed. 1992).

Probable cause, (16c). Under Fourth Amendment, Probable Cause - which amounts to more than a bare suspicion but less than evidence that would justify a conviction - must be shown before an arrest warrant or search warrant may be issued. Black's Law Dictionary (10th. Ed. 2014).

A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score. United States v. Jin Fuy Moy, 241 U.S. 394, 401 (1946) (citing United States ex rel. Attorney General v. Delaware & Hudson Co., 213 U.S. 366, 408 (1909)); see also Ashwander v. TVA, 297 U.S. 288, 348 (1936).

The government and the district judge believe and downgrade a releasee to a parolee, however, Justice Sotomayor defined the issue in the Haymond case. Supervised release is a period of probation that is imposed in addition to a sentence of imprisonment rather than as a substitute for part or all of a sentence. Black's Law Dictionary. Page 1481 (10th Ed 2014).

Releasee enjoy more constitutional protections than a parolee and the Fifth Amendment; Due Process clause forbids the government to deprive any person... of... liberty... without due process

of law, Freedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that clause protects. See *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Also, the same statute has been debated in the U.S. Court of Appeals for the Ninth Circuit based on Supreme Court of the United States case law and mandate an oath or affirmation for an affidavit for a 18 U.S.C. § 3606 warrant for arrest.

The second part of 18 U.S.C. § 3606 is opposed the first part, because in detail explain that "may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release" (The Court).

So, it is a probability of a statute unconstitutionally vague? May be.

A statute that is unconstitutionally vague impermissibly delegate basic policy matters to administrators and Judges so such a degree as to lead to arbitrary and discriminatory application, Black's Law Dictionary. Page 1783 (10th Ed. 2014).

Courts "do not construe statutes in a manner that would lead to absurd results" nor do courts "impute to congress an intent to create a law that produces an unreasonable results." *Mellouli v. Lynch*, 135 S.Ct. 1980, 1989 (2015) (rejecting agency construction of statute that "makes scant sense" given the need to avoid "consequences congress could not have intended") (quoting *Moncrieffe v. Holder*, 569 U.S. 184, 200 (2013)). The issue affects the Citizens under Federal Supervised Release restrain.

II

Some special supervised release conditions under 18 U.S.C. § 3583 are vague and involve deprivation of freedom of speech, provoke unreasonable searches and seizures, self incriminate releasees and deprive liberty and property without due process of law.

The Due process clause protects individuals against two types of government action. So-called "substantive due process" prevents the government from engaging in conduct that "shocks the conscience," *Rochin v. California*, 342 U.S. 165, 172 (1952), or interferes with rights "implicit in the concept of ordered liberty,"

Palko v. Connecticut, 302 U.S. 319, 325-326 (1937).

When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it still be implemented in a fair manner.

Matthews v. Eldridge, 424 U.S. 319, 335 (1976).

This requirement has traditionally been referred to as "procedural" due process. Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action. *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982).

As stated by Petitioner some of the supervised release conditions are unconstitutional vague and overbroad.

The U.S. court of appeals for the seventh circuit and District of Columbia agree regarding the

tailoring the conditions, protecting the releasee due process. Supervised release is a decompression stage, not punishment or restraint as practiced by the United States Court of Appeals for the Fifth circuit.

Any amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect cost of incarceration. Id. (quoting *Glover v. United States*, 531 U.S. 198, 203 (2001)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Under penalty of Perjury
(28 U.S.C. § 1746)

Marcos C. Palacios

Date: November 8th, 2019