No. 20-

IN THE

SUPREME COURT OF THE UNITED STATES

ANTRANETTE CANADY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1) Is a standard condition of supervised release which requires a person to "permit a probation officer to visit [her] at any time at home or elsewhere" too broad to comply with the directive under § 3583(d)(2) that a condition "involve no greater deprivation of liberty than is reasonably necessary" to further the statutory purposes of supervised release?

PARTIES

Petitioner: Antranette Canady

Respondent: United States of America

RELATED PROCEEDINGS

There are no related proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Antranette Canady respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit is captioned as *United States of America v. Antranette Canady,* 811 Fed. Appx. 891 (5th Cir. 2020). See Appendix A.

JURISDICTIONAL STATEMENT

The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). This petition has been filed within 90 days of the court of appeals opinion and is therefore timely. *See* Sup. Ct. R. 13.1.

STATUTE AND GUIDELINE INVOLVED

Section 3583(d) of Title 18, United States Code, in relevant part, authorizes a court to set "any condition" of supervised release, "to the extent that such condition—

> (1) is reasonably related to the factors set forth in section 3553(a)(1)(2)(B), (a)(2)(C) and, 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) and (a)(2)(C) and (a)(2)(D)[18 U.S.C. § 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D);
>
> (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. § 944(a)."

In Guideline § 5G1.3(c)(6), the Sentencing Commission recommends as a standard condition of supervised release a condition that:

> (6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.

STATEMENT OF THE CASE

Petitioner Antranette Canady was sentenced to an aggregate sentence of 151 months imprisonment for bank robbery. (ROA. 36-38, 74-75, 87.) The district court ordered a three-year term of supervised release to follow her term of imprisonment. (ROA. 49, 87.)

Petitioner is subject to a number of conditions in connection with her future term of supervised release. Among them, the district court set a condition which requires Petitioner to:

> permit a probation officer to visit the defendant *at any time at home or elsewhere* and permit confiscation of any contraband observed in plain view by the probation officer.

(ROA. 49) (emphasis added).

At sentencing, Petitioner objected to this condition as unreasonably broad. (ROA. 88-89.) The court overruled the objection and kept the condition in place, citing Petitioner's criminal history. (ROA. 88-89.)

Petitioner appealed. The Fifth Circuit upheld the reasonableness of the condition in an unpublished opinion. *See United States v. Canady*, 811 Fed. Appx. 891 (5th Cir. 2020) In reaching its decision, the panel cited the Fifth Circuit's recent published opinion in *United States v. Payton*, 959 F.3d 654 (5th Cir. 2020). *See Canady*, 811 Fed. Appx. at 891.

In *Payton*, the Fifth Circuit recognized the split of authority as to the reasonableness of the condition's scope. *See Payton*, 959 F.3d at 657 (noting the

Seventh Circuit had vacated a nearly identical condition while both Ninth and Tenth Circuits had upheld it) (citing cases). The panel expressly observed that the Sentencing Commission had already "rejected the Seventh Circuit's criticism" of a similarly-worded recommended standard condition found in the Guidelines. *Id.* at 657, 658. After a comprehensive review of sentencing practices on supervised release, the appellate court elaborated, the Sentencing Commission had decided to "leave intact" the "at any time . . .at home or elsewhere" language in its recommended standard condition. *Id.* at 657 (citing U.S. Sentencing Guidelines Manual, supp. to app. C, at 168; 162 [U.S. Sentencing Commission 2016]); *see* USSG § 5D1.3(6). The panel also noted that the Guidelines' recommended standard condition is already printed on the criminal judgment form issued by the Administrative Office of the U.S. Courts. *Id.* at 658.

The Fifth Circuit concluded that the district court "implicitly found adequate supervision required this standard-visitation condition." *Id.*

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The federal circuits disagree on the reasonableness of a condition which requires a person on supervised release to submit to probation officer visits "at any time at home or elsewhere."

Circuits are divided on a standard condition of supervised release which requires a supervisee to submit to visits from a probation officer "at any time at home or elsewhere." The Seventh Circuit holds this condition is unreasonably broad. *See United States v. Henry*, 813 F.3d 681, 683 (7th Cir. 2016); *United States v. Poulin*, 809 F.3d 924, 934 (7th Cir. 2016); *United States v. Kappes*, 782 F.3d 828, 850-51 (7th Cir. 2015); *United States v. Thompson*, 777 F.3d 368, 380 (7th Cir. 2015). By contrast, the Fifth, Ninth, and Tenth Circuits have upheld the condition notwithstanding its broad scope. *See Payton*, 959 F.3d at 658; *United States v. Munoz*, 812 F.3d 809, 821-22 (10th Cir. 2016); *United States v. Clark*e, 428 Fed. Appx. 712, 713 (9th Cir. 2011).

A condition of supervised release must be narrowly tailored so that it "involves no greater deprivation of liberty than reasonably necessary" to accomplish the statutory purposes of sentencing. 18 U.S.C. § 3583(d)(2). The Seventh Circuit found a condition which required that a supervisee submit to visits "at any time at home or elsewhere" lacked adequate temporal or geographic limitation. The court of appeals observed that the condition "would allow the probation officer to 'visit' the defendant at 3:00 a.m. every morning and look around for contraband." *Kappes*, 782 F.3d at 850-851 (quoting *Thompson,* 777 F.3d at 380(internal quotation in original). It further found that the word "elsewhere" set no reasonable geographic restrictions on

mandatory probation officer visits. "Elsewhere" gave the probation officer the ability to pick an "inappropriate" or "inconvenient" location, such as at "a funeral or in a remote [location], say a place many miles away." *Henry*, 813 F.3d at 683-84. It also permitted the probation officer to "follow the defendant everywhere, looking for contraband." *Kappes*, 782 F.3d at 851 (quoting *Thompson*, 777 F.3d at 380).

The Seventh Circuit has found the condition could be reasonably narrowed with only modest changes. For example, in *United States v. Armour*, 804 F.3d 859, 864, 870 (7th Cir. 2015), the Seventh Circuit upheld a condition which provided for visits "at home or any other *reasonable* location *between the hours of 6:00 a.m. and 11:00 p.m.*, unless investigating a violation or in case of emergency" (emphasis added). Amending "elsewhere" to "reasonable location" and providing set hours for potential visits adequately narrowed the condition.

However, other circuits and the Sentencing Commission do not believe any changes are necessary. *See Payton*, 959 F.3d at 658; *Munoz*, 812 F.3d at 821-22 (10th Cir. 2016); *United States v. Clark*e, 428 Fed. Appx. at 713. As the Fifth Circuit observed in its opinion below, the Commission "rejected the Seventh Circuit's criticism of the condition" after conducting its comprehensive review of sentencing relating to probation and supervised release. *Payton*,959 F.3d at 657-658. The Commission "left intact" the "any time," and "home or elsewhere" language of its recommended standard condition. *Payton*, 959 F.3d at 657-658 (citing U.S. Sentencing Guidelines Manual, supp. to app. C, at 168; 162 [U.S. Sentencing Commission 2016]).

The panel below found no abuse of discretion because the district court had cited Petitioner's criminal history as a basis for imposing the condition. *Canady*, 811 Fed. Appx. at 891 (citing *Payton*, 959 F.3d at 658). However this is a straw man, because the condition would have been upheld even had no case-specific factors been cited. While in *Payton* the Fifth Circuit suggested that the district court had "implicitly" made case-specific findings when applying the condition, the panel's own reasoning only underscores that the condition would have been upheld regardless of purported case-specific factors.

In upholding the condition, the court observed with seeming approval that the Sentencing Commission recommends a nearly identically-worded condition as a *standard* condition of supervised release. *Payton*, 959 F.3d at 657-658; *see* USSG § 5D1.3(6). It further noted that the Commission views the challenged condition as a default non-mandatory condition that should be imposed *regardless of the particular circumstances*. *Compare* USSG § 5D1.3(c) ("[t]he following 'standard' conditions are for supervised release"); *with* USSG § 5D1.3(d)("[t]he following 'special' conditions are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases"). Finally the *Payton* court observed that the preprinted judgment form used by district courts already contains the similarly-worded visitation condition recommended by the Guidelines. *Payton*, 959 F.3d at 658 (citing Admin. Office of the U.S. Courts, AO 245 B, Judgment In a Criminal Case).

Counsel is unaware of any criminal judgment in the Northern District of Texas

that does not include some version of the visitation condition at issue here. To Counsel's knowledge, the condition is imposed in every case in the district. Absent intervention of this Court, a visitation condition with no temporal or geographic parameters will continue to be a default condition routinely imposed on defendants in the Northern District of Texas and elsewhere. The Court should grant certiorari and resolve this disagreement among the circuits. *See* Sup. Ct. R. 10(a).

CONCLUSION

Petitioner respectfully requests that this Court grant his petition for a writ of certiorari.

DATE: October 2, 2020

Respectfully Submitted,

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