

No. _____

In the

Supreme Court of the United States

Tina Carol Ortega,

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

1. Did the district court plainly err when it delegated to a probation officer the authority to determine the duration of a residential treatment program?

PARTIES TO THE PROCEEDING

Petitioner is Tina Carol Ortega, who was the Defendant-Petitioner in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below. No party is a corporation.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the United States District Court for the Northern District of Texas and the United States Court of Appeals for the Fifth Circuit:

- *United States v. Ortega*, No. 20-10491, 2021 U.S. App LEXIS 36566, at *1 (5th Cir. Dec. 10, 2021)
- *United States v. Ortega*, No. 4:16-cr-00095-A-2 (N.D. Tex. May 14, 2020)

No other proceedings in state or federal trial or appellate courts, or in this Court, are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tina Carol Ortega 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 reported at *United States v. Ortega*, No. 20-10491, 2021 U.S. App LEXIS 36566, at *1 (5th Cir. Dec. 10, 2021). The district court did not issue a written opinion.

JURISDICTION

The Fifth Circuit entered judgment on December 10, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RULES AND GUIDELINES PROVISIONS

This petition involves the Due Process Clause and the right to a trial by jury.

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STATEMENT OF THE CASE

This Petition stems from a judgment revoking supervised release and imposing a revocation sentence. Petitioner admitted that she violated the conditions of supervised release as alleged in the Government's motion, and the court revoked the supervision term. (ROA.166-67). The policy statement range was 21 to 24 months. (ROA.291). The court imposed a sentence of 24 months imprisonment, with an additional 12-month term of supervised release. (ROA.99).

As part of the revocation sentence, the district court imposed a new special condition of supervised release:

The defendant shall reside in the re-entry center and successfully participate in the residential re-entry center program for a period of at least 4 months, to be released at the direction of the probation officer. While there, the defendant will initially participate in its community corrections component, but may become eligible the last one-third of the term for confinement for placement in its prerelease component upon approval of the program review team and provided the defendant meets all the center's requirements.

(ROA.101). Petitioner appealed, challenging the district court's delegation, to the probation officer, of the amount of time spent in in-patient treatment. On appeal, the Fifth Circuit affirmed.

REASON FOR GRANTING THIS PETITION

The district court impermissibly delegated authority to the probation officer by allowing the probation officer to determine the duration of a residential treatment program.

“[A] district court cannot delegate to a probation officer the ‘core judicial function’ of imposing a sentence, ‘including the terms and conditions of supervised release.’” *United States v. Barber*, 865 F.3d 837, 839 (5th Cir. 2017) (quoting *United States v. Franklin*, 838 F.3d 564, 568 (5th Cir. 2016)).

The current state of the Fifth Circuit’s law on delegation of aspects of treatment programs relates back to two cases decided on the same day: *United States v. Martinez*, 987 F.3d 432 (5th Cir. 2021) and *United States v. Medel-Guadalupe*, 987 F.3d 424 (5th Cir. 2021). At first blush, they appear in conflict. In *Martinez*, this Court held that the district court erred by delegating to a probation officer whether a treatment program is outpatient or inpatient. *Martinez*, 987 F.3d at 435-36. In *Medel-Guadalupe*, this Court held that “inpatient or outpatient” as well as “modality, intensity, duration” are all details “which can be properly delegated.” *Medel-Guadalupe*, 987 F.3d at 430.

A few months later, in *United States v. Huerta*, the Fifth Circuit addressed *Martinez* and *Medel-Guadalupe* and explained that the different outcomes were justified based on the length of the revocation sentences:

Citing each other, *Martinez* concluded that the delegation was impermissible following a relatively short 10-month sentence and *Medel-Guadalupe* concluded that the delegation was permissible following a relatively long 10-

year sentence where it was clear that the district court continued to maintain a final say over the decision. *Martinez*, 987 F.3d at 436 (citing *Medel-Guadalupe*, 987 F.3d at 431); *Medel-Guadalupe*, 987 F.3d at 431 (citing *Martinez*, 987 F.3d at 436). *Martinez* emphasized the significant liberty interests at stake during confinement for inpatient treatment. 987 F.3d at 436. *Medel-Guadalupe* emphasized the long term of imprisonment and the district court's "final say over the decision" upon release "nearly a decade from now." 987 F.3d at 431.

Huerta, 994 F.3d at 716 (emphasis in original). The Fifth Circuit, in *Huerta*, derived two global principles from *Martinez* and *Medel-Guadalupe*: (1) the district has the final say on whether to impose a condition; and (2) although a probation officer does have authority over the "modality, intensity, and duration" of a treatment condition, probation's authority "ends when the condition involves a significant deprivation of liberty." *Id.* at 716-17. Finally, *Huerta* explains that "a significant deprivation of liberty" occurs when a probation officer has the authority to "lock up" a defendant in treatment following a "relatively short" term of imprisonment. *See id.* at 717.

Here, under the principle of *Martinez*, viewed through the lens of *Huerta*, which focuses on the level of authority given to probation in relation to the length of the term of imprisonment, the district court erred when it delegated to probation when Ms. Ortega will be released from residential treatment. *Martinez*, 987 F.3d at 436 ("Here, because of Martinez's short ten-month sentence, the district court should not have delegated the decision to further restrict a defendant's liberty during the course of treatment while on supervised release."); *Huerta*, 994 F.3d at 717 ("Although a probation officer's authority extends to the 'modality, intensity, and

duration’ of a treatment condition, it ends when the condition involves a ‘significant deprivation of liberty.’”).

Because the condition here is residential, Ms. Ortega will be effectively “locked up” for at least four months following completing her relatively short, 24-month term of imprisonment. (ROA.101). How much longer she will be locked up will be entirely up to probation, whether it is only four months or up to twelve months (the term of supervised release). (ROA.101). That gives probation enormous authority to deprive Ms. Ortega’s liberty, in violation of the principles of *Martinez* and *Huerta*. This case is also distinguishable from *Medel-Guadalupe*, because that case depended so heavily on the long term of imprisonment, ten years, which is absent here. *See Huerta*, 994 F.3d at 717 (“*Medel-Guadalupe* emphasized the long term of imprisonment and the district court’s ‘final say over the decision’ upon release ‘nearly a decade from now.’”).

CONCLUSION

Petitioner respectfully prays that this Court grant this Petition and vacate the unlawful condition of supervised release.

Respectfully submitted,

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