

No. \_\_\_\_\_

---

---

In the  
Supreme Court of the United States  
\_\_\_\_\_

**Christopher Michael Fairley,**

*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  
\_\_\_\_\_

Kevin Joel Page  
*Assistant Federal Public Defender*

Federal Public Defender's Office  
Northern District of Texas  
525 S. Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
Joel\_page@fd.org

## **QUESTION PRESENTED**

Whether parties to a criminal proceeding sufficiently preserve error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection, or whether courts of appeals are instead free to impose additional preservation requirements?

## **PARTIES TO THE PROCEEDING**

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

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
PARTIES TO THE PROCEEDING .....	ii
INDEX TO APPENDICES .....	iv
TABLE OF AUTHORITIES .....	v
PETITION FOR A WRIT OF CERTIORARI .....	1
OPINIONS BELOW .....	1
JURISDICTION.....	1
STATUTORY, GUIDELINE, AND CONSTITUTIONAL PROVISIONS.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THIS PETITION.....	4
A United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.....	4
CONCLUSION.....	7

## **INDEX TO APPENDICES**

Appendix A Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the  
Northern District of Texas

## TABLE OF AUTHORITIES

	Page(s)
<b>Federal Cases</b>	
<i>Holguin-Hernandez v. United States</i> , 140 S.Ct. 762 (2020) .....	4, 5, 6
<i>United States v. Stafford</i> , 983 F.2d 25 (5th Cir. 1993) .....	3, 5
<b>Federal Statutes</b>	
18 U.S.C. § 1546.....	2
18 U.S.C. § 1546(a) .....	2
18 U.S.C. § 3553(a) .....	4
18 U.S.C. § 3583(d)(2) .....	5
28 U.S.C. § 1254(1) .....	1
<b>Rules</b>	
Fed. R. Crim. P. 51.....	1
Fed. R. Crim. P. 51(b) .....	4, 5
Fed. R. Evid. 103.....	1
Sup. Ct. R. 10(c) .....	6
<b>Other Authorities</b>	
Appellee’s Brief in <i>United States v. Fairley</i> , No. 21-10752, 2021 WL 5981958 (5th Cir. Filed December 13, 2021).....	3, 5
Initial Brief in <i>United States v. Fairley</i> , No. 21-10752, 2021 WL 5513429 (5th Cir. Filed November 15, 2021) .....	3, 5

## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Christopher Michael Fairley seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

### **OPINIONS BELOW**

The unpublished opinion of the court of appeals is reported at *United States v. Fairley*, No. 21-10752 2022 WL 989401 (5th Cir. April 1, 2022)(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 April 1, 2022. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

### **RELEVANT FEDERAL RULE**

Federal Rule of Criminal Procedure 51 reads:

- (a) Exceptions Unnecessary. Exceptions to rulings or orders of the court are unnecessary.
- (b) Preserving a Claim of Error. A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

## STATEMENT OF THE CASE

### A. Facts and Proceedings in District Court

On June 8, 2020, a police officer pulled Petitioner Christopher Michael Fairley over and searched his car. (ROA.146-147). This search yielded debit cards, a passport card, and a Maine Driver's License in the name of another person. (ROA.146-147). Petitioner represented the license as his own, before eventually admitting that he possessed the identification documents to avoid pending warrants. (ROA.146-147).

He pleaded guilty to one count of violating 18 U.S.C. §1546, which makes it a crime, *inter alia*, to possess a “document prescribed by statute or regulation for entry into ...the United States.” 18 U.S.C. §1546(a). The Presentence Report calculated a Guideline range of 21-27 months imprisonment, (ROA.163), and set forth a collection of proposed supervised release conditions, (ROA.165-167). The proposed conditions included a requirement that “[t]he defendant ... provide to the probation officer any requested financial information.” (ROA.166). The Guideline range stemmed from a final offense level of 10 and a criminal history category of V, owing in part to two theft convictions. (ROA.149-152).

The defense objected to the proposed conditions of release, and particularly to the financial disclosure requirement. (ROA.168-169). Trial counsel argued that the disclosure requirement was a greater infringement than necessary to achieve the necessary goals. (ROA.169).

Although the court ultimately overruled this objection, (ROA.112), it said that it “struggled with” the proper outcome, (ROA.112), that the issue presented a “close

call,” (ROA.112), and that the court and was “on a knife’s edge” about it, (ROA.125). The court explained that it believed the restriction was necessary to ensure the defendant did not evade a prohibition on creating false ID’s, and was justified by the defendant’s criminal background. (ROA.112). It said:

If it were just the first one, fake IDs to hide, I probably wouldn't allow [the challenged restriction], under the Diggles<sup>1</sup> case. I don't think it would be reasonably necessary. But given the theft overlay that has occurred in the criminal background, I do think [the challenged restriction] complies with Diggles.

(ROA.112).

## **B. Appellate Proceedings**

Petitioner appealed the condition of release that required him to provide financial information to Probation on request. He cited *United States v. Stafford*, 983 F.2d 25 (5th Cir. 1993), for the proposition that “a condition requiring unlimited financial disclosure is generally more intrusive than necessary in the absence of a fine, restitution, or other financial judgment.” Initial Brief in *United States v. Fairley*, No. 21-10752, 2021 WL 5513429, at \*3 (5th Cir. Filed November 15, 2021). The government argued that he had not preserved error because he did not cite *Stafford* or “in any way link the court's ability to impose the challenged condition with the imposition of a fine.” Appellee’s Brief in *United States v. Fairley*, No. 21-10752, 2021 WL 5981958, at \*8 (5<sup>th</sup> Cir. Filed December 13, 2021). The court of appeals agreed with the government and reviewed only for plain error, which it did not find. *See*

---

<sup>1</sup> *See United States v. Diggles*, 957 F.3d 551 (5<sup>th</sup> Cir. 2020)(en banc).

[Appx. A]; *United States v. Fairley*, 2022 WL 989401, at \*1 (April 1, 2022)(unpublished).

## REASONS FOR GRANTING THE PETITION

**A United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.**

Federal Rule of Criminal Procedure 51(b) states that “[a] party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection.” In *Holguin-Hernandez v. United States*, 140 S.Ct. 762 (2020), this Court adopted a literal interpretation of the Rule, foreclosing the addition of extraneous preservation requirements by the courts of appeals. *See Holguin-Hernandez*, 140 S.Ct. at 766. Thus, this Court rejected the Fifth Circuit’s (and only the Fifth Circuit’s) requirement that defendants object to the substantive reasonableness of a sentence in order to preserve such review. *See id.* Rather, it is sufficient that parties request a sentence different than the one imposed, grounding that request in the factors enumerated in 18 U.S.C. 3§553(a). *See id.* Such a request tells the court “of the action the party wishes the court to take,” and, in light of the background and context of sentencing, expresses the reason therefore, namely the factors enumerated at 18 U.S.C. §3553(a). *See id.*

The decision below does not obey this precedent. In this case, the defense urged the court to strike a requirement from the conditions of supervised release that he

“provide to the probation officer any requested financial information.” (ROA.169). As such, there is no reasonable question but that the defense told the court “of the action the party wishe[d] the court to take.” Further, the defense argued, in writing that other conditions – seek full time work, and report changes in employment, to Probation – already accomplished the goals of the challenged condition, such that “[t]o add an additional financial disclosure condition on top unnecessarily deprives Mr. Fairley of liberty with respect to his finances...” (ROA.169). This argument plainly invoked the standard enunciated in 18 U.S.C. §3583(d)(2), the requirement that a condition of release “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)...” So under the plain language of Rule 51(b) and this Court’s decision in *Holguin-Hernandez*, the defense preserved error.

On appeal, the defense cited *United States v. Stafford*, 983 F.2d 25 (5th Cir. 1993), for the proposition that “a condition requiring unlimited financial disclosure is generally more intrusive than necessary in the absence of a fine, restitution, or other financial judgment.” Initial Brief in *United States v. Fairley*, No. 21-10752, 2021 WL 5513429, at \*3 (5<sup>th</sup> Cir. Filed November 15, 2021). The government argued that this argument differed from the argument pressed in district court, because the defendant had not noted the absence of a fine or restitution, and hadn’t cited *Stafford*. See Appellee’s Brief in *United States v. Fairley*, No. 21-10752, 2021 WL 5981958, at \*8 (5<sup>th</sup> Cir. Filed December 13, 2021)(“...in the district court, Fairley did not (1) cite

Stafford, (2) argue for any such categorical rule, or (3) in any way link the court's ability to impose the challenged condition with the imposition of a fine.”).

The court of appeals agreed with the government that error was not preserved because the argument on appeal differed from the one below. *See* [Appx. A]; *United States v. Fairley*, 2022 WL 989401, at \*1 (April 1, 2022)(unpublished). In doing so, it added additional preservation requirements: it required citation to controlling precedent, rather than a mere invocation of the controlling statutory standard. And, to the extent that Petitioner contended on appeal that the condition would have been lawful had he been fined or order to make restitution, the court of appeals required that he say as much in district court. This additional requirement -- that parties state hypothetical conditions in which their requests would not be properly granted – is not to be found in the Rule, and foreclosed by *Holguin-Hernandez*.

Rule 10(c) of this Court identifies as proper candidates for certiorari, cases in which a court of appeals “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). In *Holguin-Hernandez*, this Court eliminated the idiosyncratic approach of the court below to preservation of substantive reasonableness claims, which had imposed an additional objection requirement not found in the Rule. It has failed to take this Court’s unanimous decision to heart, and continues to apply ad hoc, extra-textual requirements to preservation. The strong medicine of summary reversal is an appropriate antidote.

## **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 30th day of June, 2022.

**JASON D. HAWKINS**  
**Federal Public Defender**  
**Northern District of Texas**

/s/ Kevin Joel Page  
Kevin Joel Page  
Assistant Federal Public Defender  
Federal Public Defender's Office  
525 S. Griffin Street, Suite 629  
Dallas, Texas 75202  
Telephone: (214) 767-2746  
E-mail: joel\_page@fd.org

*Attorney for Petitioner*