

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

DAVIS LAMAR BROOKS  
Petitioner-Defendant

v.

UNITED STATES OF AMERICA  
Respondent

On Petition for Writ of Certiorari from the  
United States Court of Appeals for the Fifth Circuit.  
Fifth Circuit Case No. 21-60633

---

**PETITION FOR WRIT OF CERTIORARI**

---

**Omodare B. Jupiter** (MS Bar #102054)  
Federal Public Defender  
N. and S. Districts of Mississippi  
200 South Lamar Street, Suite 200-N  
Jackson, Mississippi 39201  
Telephone: 601/948-4284  
Facsimile: 601/948-5510

**Thomas Creagher Turner, Jr.** (MS Bar #99695)  
Assistant Federal Public Defender

Attorney for Defendant-Petitioner

## **QUESTION PRESENTED FOR REVIEW**

- 1) Whether the Fifth Circuit erred by affirming the district court's denial of Mr. Brooks' Motion for Unconditional Release.
- 2) Whether the Fifth Circuit erred by affirming the district court's order for Region 8 Mental Health Services to administer Haldol injections to Mr. Brooks in the specific dosage amount of 100 milligrams.

## **PARTIES TO THE PROCEEDING**

All parties to this proceeding are named in the caption of the case.

## TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR REVIEW.....	ii
PARTIES TO THE PROCEEDING .....	iii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES .....	vi
I. OPINIONS BELOW.....	1
II. JURISDICTIONAL STATEMENT .....	4
III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	5
IV. STATEMENT OF THE CASE.....	6
A. Basis for federal jurisdiction in the court of first instance.....	6
B. Statement of material facts .....	6
1. Case background and current Conditional Release Order .....	6
2. Mr. Brooks' current mental status as indicated by his medical records from Region 8 Mental Health Services.....	8
3. Testimony at the district court hearings.....	15
a. The May 26, 2021, hearing.....	15
b. The July 30, 2021, hearing.....	16
i) Natalie Moody's testimony.....	16
ii) Thelma Taylor's testimony.....	20
iii) Continuation of the hearing.....	20

c. The August 9, 2021, hearing .....	20
d. The August 11, 2021, hearing .....	23
<b>V. ARGUMENT .....</b>	<b>25</b>
A. Introduction .....	25
B. Review on certiorari should be granted in this case.....	25
C. Burden of proof and standard of proof .....	27
D. The district court erred by denying Mr. Brooks' Motion for Unconditional Release.....	28
1. Controlling law.....	28
2. The district court erred by denying Mr. Brooks' Motion for Unconditional Release because he proved, by a preponderance of the evidence, that he is not dangerous to others, or to the property of others .....	29
E. The district court erred by ordering Region 8 Mental Health Services to administer Haldol injections to Mr. Brooks in the specific dosage amount of 100 milligrams.....	34
<b>VI. CONCLUSION.....</b>	<b>36</b>
<b>CERTIFICATE OF SERVICE.....</b>	<b>37</b>
(Appendices 1, 2 and 3)	

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases:</u>	
<i>Jones v. United States,</i> 463 U.S. 354 (1983) .....	28, 29
<i>United States v. Mitchell,</i> 709 F.3d 436 (5th Cir. 3013).....	28
<u>Statutes:</u>	
18 U.S.C. §922 .....	1
18 U.S.C. § 924 .....	1
18 U.S.C. § 3231 .....	6
18 U.S.C. § 4243 .....	5, 16, 26, 27, 28
18 U.S.C. § 4247 .....	16
28 U.S.C. § 1254 .....	1
<u>Rules:</u>	
Rule 10, Supreme Court Rules.....	25
Rule 13.1, Supreme Court Rules.....	4
Rule 29.5, Supreme Court Rules.....	37
<u>Provisions of the United States Constitution:</u>	
U.S. Const. amend. V .....	5, 28

## I. OPINIONS BELOW

A Federal Grand Jury for the Southern District of Mississippi indicted Mr. Brooks for two counts of felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The Grand Jury returned the Indictment on April 20, 2011.

After the district court committed Mr. Brooks to a Bureau of Prisons (hereinafter “BOP”) hospital to evaluate his mental competence, the court conducted a bench trial on March 4, 2013. It found him not guilty by reason of insanity at the time of the alleged crime. On March 11, 2013, the court entered an Order which again committed Mr. Brooks to a BOP hospital to treat his schizophrenia diagnosis.

On December 31, 2013, the district court entered the first Order of Conditional Release, which allowed Mr. Brooks to return to society subject to several conditions. After that, the court entered the following four additional Orders which progressively decreased the conditions of release:

- Order of Conditional Release, filed on July 31, 2014;
- Modification of the Order of Conditional Release, filed on September 9, 2015;
- Agreed Order Modifying Conditional Release Order, filed on September 7, 2017; and

- Order Modifying Conditional Release, filed on August 13, 2021. This is the Conditional Release Order at issue on appeal. The Order is attached hereto as Appendix 1.

Mr. Brooks filed the subject Motion for Unconditional Release in district court on August 24, 2020. Through the Motion, he asked to be finally released from all conditions of release, and to return to society a free person after over seven and one-half years of court supervision via the five Conditional Release Orders cited above. After no fewer than four motion hearings, the district court entered the final Order Modifying Conditional Release on August 13, 2021.<sup>1</sup> Even though it did not specifically so state, the Order Modifying Conditional Release effectively denied Mr. Brooks' Motion for Unconditional Release. That is true because the Motion for Unconditional Release asked the court to remove all conditions of release, and the Order Modifying Conditional release left some conditions in effect.

Mr. Brooks filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on August 12, 2021. The following day, August 13, he filed a motion in the Fifth Circuit titled Motion to Partially Stay the District Court's Ruling. Through the Motion, he argued that the district court was overstepping its

---

<sup>1</sup> The court conducted motion hearings on May 26, 2021, July 30, 2021, August 9, 2021, and August 11, 2021. The last hearing on August 11, 2021, was almost one year after Mr. Brooks filed his Motion for Unconditional Release on August 24, 2020.

bounds when it required him to receive 100 milligram injections of Haldol to treat his schizophrenia. That argument is premised on a conclusion that the district court was improperly acting as a medical professional when it ordered Haldol injections in a specific dosage. In other words, argued Mr. Brooks, the Haldol dosage should be left to medical professionals to decide, and not the district court. The Fifth Circuit denied the Motion on August 19, 2021.

On May 9, 2022, the Fifth Circuit entered an Order affirming the district court's rulings. It entered a Judgment on the same day. The Opinion and Judgment are attached hereto as composite Appendix 2. The Opinion is published, appearing in the Federal Reporter at 33 F.4th 734. The published rendition of the Opinion is attached hereto as Appendix 3.

## **II. JURISDICTIONAL STATEMENT**

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on May 9, 2022. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

### **III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The issue in this case involves the Due Process Clause of the Fifth Amendment, which states, “[n]o person shall be...deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V.

The specific issue in Mr. Brooks’ case pertains to final discharge from conditional release, which is governed by 18 U.S.C. § 4243(f). A defendant must be finally discharged from conditional release when he “would no longer create a substantial risk of bodily injury to another person or serious damage to property of another[.]” *Id.*

## **IV. STATEMENT OF THE CASE**

### **A. Basis for federal jurisdiction in the court of first instance.**

This case arises out of an Order of Conditional Release, filed December 13, 2013. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Brooks arose from the laws of the United States of America.

### **B. Statement of material facts.**

#### **1. Case background and current Conditional Release Order.**

As described above, the district court conducted a bench trial on March 4, 2013, at which it found Mr. Brooks not guilty, by reason of insanity, of the two counts charged in the Indictment. The two counts alleged in the Indictment were both for the nonviolent crime of felon in possession of a firearm. The Indictment states that Mr. Brooks possessed a firearm almost 13 years ago on November 14, 2009 (count 2) and about 11 and one-half years ago on January 10, 2011 (count 1).

After the not guilty by reason of insanity verdict, the court committed Mr. Brooks to a BOP medical facility for a period. The Commitment Order is dated March 11, 2013.

On December 31, 2013, the court entered the first Conditional Release Order, which allowed Mr. Brooks to return home but imposed several conditions

of release. After entering the initial Conditional Release Order, the court entered four additional Conditional Release Orders, each of which superseded the immediately preceding Order. The filing dates and record on appeal page references for each of the five Conditional Release Orders are described above beside the bullet points on pages 1 through 2 of this Petition.

The current Conditional Release Order, which is the Order at issue on appeal, contains the following conditions:

- 1) The defendant shall remain under the care of Region 8 Mental Health Services in Rankin County, MS. The defendant shall receive monthly injections of Haloperidol (brand name: Haldol) at 100 mg dosage unit/injection. The attending physician at Region 8 Mental Health Services, may adjust the dosage unit only for medical reasons and not at the request of the defendant. If the dosage unit is altered the attending physician must submit, in writing to the U.S. Probation Service, the basis for the dosage unit adjustment.
- 2) The attending [p]hysician at Region 8 Mental Health Services, must submit a written examination and prognoses of the defendant, every six (6) months to the U.S. Probation [Service]. The reports will then be forwarded to the Court, the Federal Public Defender's Office and the U.S. Attorney's Office.
- 3) The defendant shall submit his current address and notify the United States Probation Service of any change of address.
- 4) All prior conditions are hereby removed.

In summary, Mr. Brooks is required to receive 100 milligram injections of Haldol and to submit any address change to the probation officer.

**2. Mr. Brooks' current mental status as indicated by his medical records from Region 8 Mental Health Services.**

As argued in detail below, whether Mr. Brooks should be finally released from the constraints of the Conditional Release Order hinges on whether he is a danger to others or the property of others. His medical records from Region 8 Mental Health Services (hereinafter “Region 8”) provide good insight on this issue. Following is a summary of relevant information from the medical records:

- A Periodic Psychiatric Evaluation signed **June 16, 2017**, states: “He denies any suicidal or homicidal ideations. He seems to be doing well.” “He denies depression, anxiety, mood swings, anger outburst. He denies auditory visual hallucinations. He denies paranoid or delusional thinking.” “He seems to be stable at present.” The box for “Cooperative” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The box for “Appropriate” is checked regarding his “Affect/Mood.” The box for “Good” is checked regarding his “Judgment/Insight.” Region 8 administered a 75 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **October 17, 2017**, states: “He denies any suicidal or homicidal ideations.” “He denies depression, anxiety, mood swings, anger outburst. He denies auditory visual hallucinations. He denies paranoid or delusional thinking.” “He seems to be stable at present.” The box for “Cooperative” is checked regarding Mr.

Brooks' "Attitude/Behavior." The box for "Appropriate" is checked regarding his "Affect/Mood." The box for "Good" is checked regarding his "Judgment/Insight."

- A Periodic Psychiatric Evaluation signed **December 11, 2017**, states: "Denies ...visual hallucinations. He denies delusional or paranoid thinking. Denies suicidal or homicidal ideations. He seems to be doing well at present. He is calm and cooperative and engages in the interview." The box for "Cooperative" is checked regarding Mr. Brooks' Attitude/Behavior." The box for "Appropriate" is checked regarding his "Affect/Mood." The box for "Good" is checked regarding his "Judgment/Insight." Region 8 administered a 50 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **March 5, 2018**, states: "Denies ...visual hallucinations. He denies delusional or paranoid thinking. Denies suicidal or homicidal ideations. He seems to be doing well at present. He is calm and cooperative and engages in the interview." The box for "Cooperative" is checked regarding Mr. Brooks' "Attitude/Behavior." The box for "WNL"<sup>2</sup> is checked regarding his "Affect/Mood." The box for "Good" is checked regarding his "Judgment/Insight." Region 8

---

<sup>2</sup> "WNL" means within normal limits.

administered a 50 milligram Haldol injection on this date, and directed Mr. Brooks to take 10 milligram oral Haldol tablets daily.

- A Periodic Psychiatric Evaluation signed **June 18, 2018**, states: “He denies delusional or paranoid thinking. Denies auditory visual hallucinations. Denies suicidal or homicidal ideations. He is living with his sister. He reports they get along well.” The box for “WNL” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The box for “Appropriate” is checked regarding his “Affect/Mood.” The box for “Good” is checked regarding his “Judgment/Insight.” Region 8 directed Mr. Brooks to take 10 milligram oral Haldol tablets daily.
- A Periodic Psychiatric Evaluation signed **July 16, 2018**, states: “Denies auditory visual hallucinations. He denies suicidal or homicidal ideations. He is calm and seems stable at present.” The box for “Cooperative” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The box for “Appropriate” is checked regarding his “Affect/Mood.” The box for “Good” is checked regarding his “Judgment/Insight.” Region 8 administered a 50 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **September 17, 2018**, states: “He denies depression, anxiety, or mood swings. He denies auditory visual hallucinations. No suicidal or homicidal ideation [r]eported.” The box for

“Cooperative” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The boxes for “WNL” and “Appropriate” are checked regarding his “Affect/Mood.” The box for “Good” is checked regarding his “Judgment/Insight.” Region 8 administered a 50 milligram Haldol injection on this date.

- A Periodic Psychiatric Evaluation signed **February 25, 2019**, states: “Client seems stable at present.” The box for “Cooperative” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The box for “Appropriate” is checked regarding his “Affect/Mood.” The box for “Good” is checked regarding his “Judgment/Insight.” Region 8 administered a 100 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **April 10, 2019**, states: “He denies any depression, anxiety, or mood swings. He denies any anger outbursts. He denies any A/V hallucinations. He is calm and cooperative.” Region 8 administered a 100 milligram Haldol injection on this date.
- A Nurse’s Injection 235 Note signed **May 9, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse’s Injection 235 Note signed **June 3, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.

- A Nurse's Injection 235 Note signed **July 3, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **August 7, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **September 4, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **October 14, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **November 22, 2019**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **January 16, 2020**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **February 13, 2020**, states: “He denies any depression, anxiety, or mood swings. He denies any A/V hallucinations.” The box for “WNL” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The box for “WNL” is checked regarding his “Affect/Mood.” The box for “Good” is checked regarding his

“Judgment/Insight.” Region 8 administered a 25 milligram Haldol injection on this date.<sup>3</sup>

- A Nurse’s Injection 235 Note signed **March 12, 2020**, states that Region 8 administered a 50 milligram Haldol injection on this date.
- A Nurse’s Injection 235 Note signed **April 9, 2020**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **May 8, 2020**, states: “He denies any depression, anxiety, or mood swings. He denies any A/V hallucinations.” Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse’s Injection 235 Note signed **June 30, 2020**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **August 3, 2020**, states: “He denies any depression, anxiety, or mood swings. He denies any A/V hallucinations.” Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse’s Injection 235 Note signed **September 14, 2020**, states that Region 8 administered a 25 milligram Haldol injection on this date.

---

<sup>3</sup> Note that the Nurse’s Injection 235 Note states that Region 8 administered a 50 milligram Haldol injection on this date.

- A Nurse's Injection 235 Note signed **November 8, 2020**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **November 30, 2020**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **December 28, 2020**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **February 1, 2021**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **February 28, 2021**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **April 22, 2021**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Nurse's Injection 235 Note signed **May 12, 2021**, states that Region 8 administered a 25 milligram Haldol injection on this date.
- A Periodic Psychiatric Evaluation signed **July 8, 2021**, states: “He denies any depression, anxiety, or mood swings. He denies any A/V hallucinations.” “He is calm and cooperative.” The box for “WNL” is checked regarding Mr. Brooks’ “Attitude/Behavior.” The box for “WNL” is checked regarding his “Affect/Mood.” The box for “Good” is checked

regarding his “Judgment/Insight.” Region 8 administered a 25 milligram Haldol injection on this date.

To summarize, the Region 8 medical records indicate that Mr. Brooks is “doing well.” His attitude, his behavior, his affect, his mood, his judgment and his insight are all normal. He received Haldol injections on a reasonably regular basis. Finally and most important, there is no indication in any of the Region 8 records that Mr. Brooks is a danger to himself or anyone else.

### **3. Testimony at the district court hearings.**

In addition to Mr. Brooks’ medical records, we gain insight about his lack of propensity for dangerousness or violence from the four hearings on the subject Motion for Unconditional Release.

#### **a. The May 26, 2021, hearing.**

The May 26 hearing began with the prosecutor recognizing that Mr. Brooks has been on conditional release since 2013. She then stated, “the defendant has had no issues while out on release and is of the opinion and recommends that the defendant should be removed from any sort of conditions of his release[.]” She also stated, “he has successfully been obtaining his [Haldol] injection[.]”

The defense acknowledged that there were a few occasions when Mr. Brooks’ injection dates were a little more than four weeks apart. However, the defense noted that the COVID-19 pandemic was in full force at that time, and on

one occasion Mr. Brooks went to Region 8 and no one was available to administer the Haldol injection. And as stated above, under these circumstances even the prosecutor agreed that Mr. Brooks complied with the Haldol injection requirement.

Defense counsel went through Mr. Brooks' Region 8 medical records and pointed out they prove that his mental condition is stable. At the conclusion of the hearing, defense counsel stated he had nothing more to offer and he was ready for a ruling on the Motion for Unconditional Release. Nevertheless, the court continued the hearing and ordered the prosecution to subpoena the therapist from Region 8 and Mr. Brooks' sister to testify at the next hearing.

**b. The July 30, 2021, hearing.**

The prosecutor opened the July 30 hearing by stating, “[w]e are in agreement of removing [Mr. Brooks] from conditional release as he has not been a danger, he has not created a substantial risk of bodily injury to anyone else in the community, or to any other serious damage of property to another under the 4247(f) prong of Title 18.”<sup>4</sup>

**i) Natalie Moody's testimony.**

The first witness called was Natalie Moody, a nurse practitioner with Region 8. Ms. Moody has a bachelor's degree in nursing, a master's in nursing education

---

<sup>4</sup> Based on the content of the statutes, the undersigned believes the prosecutor was referring to 18 U.S.C. § 4243(f), and not § 4247(f).

and a masters in psychiatric nurse practitioner. She has ten years' experience with Region 8, and had worked with Mr. Brooks since 2017. She treated him for schizophrenia.

Ms. Moody explained that during her treatment of Mr. Brooks, his Haldol dosage amount decreased from 100 milligram injections to 50 milligram injections, then to 25 milligram injections. Mr. Brooks asked for the dosage to be reduced because the injections were making his arm sore for up to two weeks and they made him feel bad. Ms. Moody testified that having a sore arm after high dosage Haldol injections is a common side effect. She also testified that Haldol can increase a person's appetite and risk of weight gain, it can cause shaking, cause muscles to lockup and affect your gait and ability to walk normally.

Ms. Moody testified that in her medical opinion, lowering the Haldol dosage amount was called for. But without any medical evidence to the contrary, the court took issue with that. Specifically, the court stated, "I've already heard how he determined for himself what his dosage might be and not the medical professionals, because she just asked him what he wants to do." The court's unfounded allegation is belied by Mr. Brooks' mental condition after lowering the Haldol dosage amount. The prosecutor asked Ms. Moody: "Based on the lowering of the dosage amount, did you notice any difference in Mr. Brooks' behavior,

mood, temperament, or what he conversed with you or any other members at Region 8?” She responded: “I did not.”

The court had the prosecutor review Mr. Brooks’ criminal history *prior* to the subject felon in possession indictment in April 2011, over 11 years ago. In that context, Ms. Moody agreed that people can “change over time[.]” She agreed that “over the treatment period that you’ve had with Davis since 2017, he hasn’t done anything to display any kind of dangerous behavior to himself, others, or property of others[.]”

Ms. Moody initially testified that she would be “[c]omfortable with releasing Mr. Brooks from all conditions of release.” Then the court functionally cross examined her over 19 pages of the hearing transcript about her purported inadequate treatment of Mr. Brooks and whether she would be comfortable with Mr. Brooks living in her neighborhood.<sup>5</sup> After that, Ms. Moody changed her

---

<sup>5</sup> In an unrelated case, another district judge in Southern District of Mississippi characterized similar questioning by the district judge in this case as “cross examination.” See *United States v. Donald Ray Quinn*, Criminal No. 3:92cr121-DPJ-FKB, in the United States District Court for the Southern District of Mississippi. The other judge stated:

I do want to say for the record – I meant to say it early on – that I obviously read the order of recusal and, Ms. Stewart, your motion to try to get some context of what was going on.

I started to read the first transcript. And as *I sort of got into what sounded like a cross-examination*, I decided to stop reading it. And this may be overly cautious, but I didn’t want – *I didn’t want there to be any suggestion that any bias for recusal by the prior judge might taint my review of the case so I elected not to read that*, I guess it was a 95-page transcript. I read your motion, but I tried to separate my thought process from that of the original judge. I did want to put that on the record.

opinion and stated: “I think it would be reasonable for him to stay on some type of antipsychotic medication and be evaluated monthly and go from there.”

At a break during the July 30 hearing, Mr. Brooks stated to Ms. Moody, “[y]ou hurt me in there.” The prosecutor brought this up to the court after the break. When asked if Mr. Brooks was “hostile in any way” when he made the comment, Ms. Moody responded that he was not. She did not feel threatened in any way and she did not believe that Mr. Brooks was asking her to change her testimony.

As argued below, whether Mr. Brooks is a danger to himself or others is the pivotal issue regarding whether he should be finally released from all conditions of the Conditional Release Order. Neither the district court’s lengthy questioning nor anything that Mr. Brooks said or did changed Ms. Moody’s opinion that Mr. Brooks “hasn’t done anything to display any kind of dangerous behavior to himself, others, or the property of others[.]” She agreed if Mr. Brooks lived next to her, she would not “be in fear of danger[.]”

---

Hearing Transcript, pp. 21-22 (emphasis added). The hearing transcript is available for this Court’s review under docket entry number 31 in *Quinn*, Case No. 3:92cr121, in the Southern District of Mississippi.

**ii) Thelma Taylor's testimony.**

Thelma Taylor was the next witness called by the prosecutor. Mr. Brooks is her younger brother, who she sees or talks to almost every day. There are nine children in the family, and Mr. Brooks has a relationship with all of them.

Ms. Taylor has not seen Mr. Brooks act violently. She has not seen him hit or throw anything in anger or frustration. Specifically, Ms. Taylor agreed she has not experienced Mr. Brooks doing “anything to indicate that he would be violent toward himself or other people[.]” To her knowledge, Mr. Brooks has never done anything violent toward other family members.

As set forth in the previous subsection of this Brief, Ms. Moody testified that Haldol injections can cause arm soreness and trembling. Ms. Taylor’s testimony proves that the adverse side effects manifested in Mr. Brooks. Mr. Brooks told her that the injections made his arm hurt and that they made him shake. In fact, she witnessed his hand trembling.

**iii) Continuation of the hearing.**

The court continued the hearing so it could hear testimony from Probation Officer Chris Whitver.

**c. The August 9, 2021, hearing.**

Probation Officer Chris Whitver was the only witness called at the August 9 hearing. He was Mr. Brooks’ supervising probation officer for about one and one-

half years in 2018 and 2019. During that time, he learned that Region 8 switched Mr. Brooks' Haldol prescription from injectable units to oral pill units for a short time. When the switch occurred, the Probation Office was not notified.

After Mr. Whitver learned about the prescription switch, he found the pill bottle in Ms. Taylor's car, and determined that Mr. Brooks had not been taking them. Ms. Taylor told Mr. Whitver that she filled the Haldol prescription, and forgot to take it inside to Mr. Brooks. Mr. Brooks acknowledged that he had not taken the pills, but he was not angry, aggressive or violent about the issue. At that point Mr. Whitver contacted Region 8 and the Haldol prescription returned to injectable units.

The prosecutor asked Mr. Whitver about a Region 8 medical record stating that Mr. Brooks' "parole officer called up here 2 weeks ago reporting that [Mr. Brooks] had lost his job at Burger King. He had become delusional and psychotic." This report from Mr. Whitver to Region 8 was based on Mr. Brooks' purported comment that he was hearing voices in his head. Other than this one occasion, Mr. Whitver knew of no other instances when Mr. Brooks reported hearing voices in his head.

Regarding the Region 8 reference to Mr. Brooks being "psychotic," Mr. Whitver admitted that he, and not Mr. Brooks or anyone at Region 8, came up with that diagnosis. In fact, Ms. Moody testified that she had no indication that Mr.

Brooks suffered from psychosis. Unlike Nurse Practitioner Moody, the record is devoid of any evidence that Mr. Whitver has training or experience in psychology of mental health therapy.

Mr. Brooks was purportedly “upset” when he found out that Mr. Whitver told Region 8 that he was hearing voices. However, Mr. Whitver agreed that Mr. Brooks’ demeanor was not threatening; he was just upset that Region 8 increased his Haldol dosage.

As stated above, the prosecutor initially opined that the Motion for Unconditional Release should be granted, and that all conditions of release should be terminated. She changed her opinion during the August 9 hearing. The prosecutor stated, “I believe that the best course of action at this point is to remain the defendant on some type of care from Region 8 for some mental health counseling[.]”

The prosecutor’s opinion was at odds with the opinion of Probation Officer Jay Simpson, who supervised Mr. Brooks over the years. He stated that Mr. Brooks “has never … relayed to me any thoughts of implants in his body or things of that nature.” More important, Mr. Simpson stated, “I’ve never known of any instances where he acted in any violence to another individual while I supervised him.” He further noted that Mr. Brooks has been under federal supervision for

about seven and one-half years, and he would have already been released from prison if the court had found him guilty of the subject felon in possession charges.

Based on the above facts, Mr. Simpson opined that Mr. Brooks should be released from all conditions of supervision, including any medications. After hearing that, the prosecutor offered her most telling comment on the pivotal issue before this Court. She stated, "*[w]e do not have anything to show that he is a danger, or has been a danger.*"

**d. The August 11, 2021, hearing.**

After three prior hearings on the Motion for Unconditional Release, the district court finally rendered a ruling at the fourth hearing on August 11. It denied the Motion for Unconditional Release. The court required Mr. Brooks to receive Haldol in the specific dosage of 100 milligrams per injection, unless Region 8 could provide a reason why the dosage should be lowered. It also ordered Mr. Brooks to inform the Probation office of his address and any future address changes. All other prior conditions of release were removed.

The court based its denial of the Motion for Unconditional Release on the following:

- Mr. Whitver's opinion that Mr. Brooks suffers from psychosis;
- Mr. Brooks' purported anger toward Mr. Whitver regarding his disclosure of purported delusional thinking to Region 8;

- Mr. Brooks' purported "confrontational" behavior toward Ms. Moody during their interaction at the July 30 hearing; and
- the district court's opinion that Mr. Brooks still suffers from psychosis and hallucinations.

Defense counsel objected to the court's ruling.

## **V. ARGUMENT**

### **A. Introduction.**

Mr. Brooks' primary argument on appeal is that the district court erred by denying his Motion for Unconditional Release. Under binding law, Mr. Brooks' conditional release status must be terminated, and this case must be ended, if he proves by a preponderance of the evidence that he is not a danger to others or to the property of others. The overwhelming weight of evidence presented to the district court in this case proves that Mr. Brooks is not a dangerous person. Therefore, the district court erred by denying his Motion for Unconditional Release.

In the alternative, Mr. Brooks presents a second argument. The current Conditional Release Order requires Region 8 to administer a specific drug – Haldol – in a specific dosage amount – 100 milligrams. In essence, the district improperly acted as a medical professional by requiring a specific drug in a specific dosage amount.

### **B. Review on certiorari should be granted in this case.**

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” The Court should exercise its discretion and grant certiorari for the following reasons.

This case involves the standards by which a defendant's conditional release status must be finally terminated. After a not guilty by reason of insanity verdict,

defendants are typically committed to a mental institution for a period, then released into society under conditions set by the court. Final termination of conditional release is governed by 18 U.S.C. § 4243(f). Under this code section, a court must finally end conditional release and allow the defendant to be free without any court-imposed conditions, once the defendant is no longer a danger to himself, others or the property of others.

As indicated by the facts presented above and the arguments presented below, courts overexercise their discretion in determining when a defendant is no longer a danger to society. Mr. Brooks has been on conditional release since December 2013, about eight and one-half years ago. Evidence before the district court proved that he is no longer a danger to society, yet the court refused to terminate Mr. Brooks' conditional release. This Court should grant certiorari to provide further guidance on the standard that courts across the country must apply when addressing termination of conditional release.

In the alternative, the Court should grant certiorari to address proper limitations when courts order conditions of release. In Mr. Brooks' case, the court functionally acted as a medical provider by requiring him to take Haldol injections in the specific amount of 100 milligrams. The types and amounts of medication must be left to the discretion of medical providers, not the courts. This provides an alternative reason to grant certiorari.

### **C. Burden of proof and standard of proof.**

Regarding the burden of proof in district court, Mr. Brooks bore the burden stated in 18 U.S.C. § 4243(d), as adopted by § 4243(f)<sup>6</sup>. Section 4243(d) states:

In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(Emphasis added).

In Mr. Brooks' case, his underlying offenses – felon in possession of a firearm – were not offenses “involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage[.]” Therefore, as the prosecutor agreed, a preponderance of the evidence burden of proof applied in district court. That means that if the evidence favoring unconditional release tipped the scales by no more than the weight of a grain of sand, then the district court erred by denying Mr. Brooks' Motion for Unconditional Release.

---

<sup>6</sup> Section 4243(f), titled “Discharge” adopts the burden of proof stated in § 4243(d) as the burden required to finally discharge a defendant from conditional release following a not guilty by reason of insanity verdict.

**D. The district court erred by denying Mr. Brooks' Motion for Unconditional Release.**

**1. Controlling law.**

Final discharge from conditional release is governed by 18 U.S.C. § 4243(f), titled “Discharge.” A defendant must be finally discharged from conditional release when he “would no longer create a substantial risk of bodily injury to another person or serious damage to property of another[.]” *Id.*

In *Jones v. United States*, 463 U.S. 354 (1983), the Supreme Court analyzed the purpose of civil commitment after a not guilty by reason of insanity verdict. While *Jones* specifically analyzed civil inpatient commitment, as opposed to conditional release that is at issue in Mr. Brooks’ case, “[t]he statute requires the same showing for the court to grant discharge, conditional or otherwise.” *United States v. Mitchell*, 709 F.3d 436, 442 n.11 (5th Cir. 3013) (emphasis added) (citing 18 U.S.C. § 4243(f)). So the holdings in *Jones* are applicable to the final termination of conditional release at issue in Mr. Brooks’ case.

The *Jones* Court held:

The Due Process Clause “requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual’s mental illness and protect him and society from his potential dangerousness.

*Jones*, 463 U.S. at 368 (internal citation omitted). The Court went on to hold that “[t]he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous.” *Id.* (emphasis added; citation omitted).

The “or” connector in the *Jones* holding means that Mr. Brooks is entitled to release if he either has recovered from his mental illness or is no longer dangerous. The district court proceedings focused on the second prong, whether Mr. Brooks is a danger to others or the property of others. Based on the overwhelming weight of evidence, he is not a “dangerous” person. Therefore, he is entitled to final release, and the case should be finally dismissed in its entirety.

**2. The district court erred by denying Mr. Brooks’ Motion for Unconditional Release because he proved, by a preponderance of the evidence, that he is not dangerous to others, or to the property of others.**

As described above, the law on the subject issue is quite simple. If Mr. Brooks is no longer a danger to others or the property of others, then he is entitled to final release. Practically all the evidence – including medical records, the testimony of medical expert Natalie Moody, the testimony of Probation Officer Chris Whitver, the in-court statements of Probation Officer Jay Simpson, the in-court statements of Assistant United States Attorney Erin Chalk, and the testimony of Thelma Taylor – proves that Mr. Brooks is no longer a danger to anyone or anything.

Mr. Brooks' medical records indicate that he has no "homicidal ideations," he is "stable," he is "cooperative," his "mood and affect" are "appropriate," he is "doing well" and his "judgment / insight" is "good." The records also indicate that Mr. Brooks received Haldol injections on a reasonably regular basis. The medical records cover from June 2017, through July 2021. Clearly, these medical records indicate that Mr. Brooks is not a dangerous person. *See supra*, pp. 8 through 15 of this Petition (describing the medical records in detail).

Next considered is the testimony of Nurse Practitioner Natalie Moody, who treated Mr. Brooks at Region 8 for over four years, since June 2017. She has a bachelor's degree in nursing, a master's in nursing education and a masters in psychiatric nurse practitioner. Ms. Moody is the only medical professional that testified at any of the hearings on the subject Motion for Unconditional Release.

Ms. Moody signed off on most of the medical records cited above. That is the first indication that she does not believe Mr. Brooks is dangerous.

Next, at the hearing Ms. Moody agreed that "over the treatment period that you've had with Davis since 2017, he hasn't done anything to display any kind of dangerous behavior to himself, others, or property of others[.]" Mr. Brooks has not been "hostile" or "threatening" to her.

In short, Ms. Moody, who was the only medical professional offering testimony on the subject Motion, believes that Mr. Brooks is not a dangerous

person. While her testimony probably provides the most valuable opinion presented at the hearings, it certainly was not the only opinion offered to the district court that Mr. Brooks is not dangerous. For example, Probation Officer Chris Whitver, who supervised Mr. Brooks for about one and one-half years, testified that even when Mr. Brooks was faced with unpleasant issues, he did not get angry or violent, and he was not threatening.

Next, we look to Probation Officer Jay Simpson's statement to the court during the August 9 hearing. He advised the court to release Mr. Brooks from all conditions of release, including required Haldol injections. He stated that Mr. Brooks "has never ... relayed to me any thoughts of implants in his body or things of that nature." Mr. Simpson also addressed the pivotal issue of whether Mr. Brooks is a dangerous person. He stated, "I've never known of any instances where he acted in any violence to another individual while I supervised him."

Mr. Brooks' sister, Thelma Taylor, offered testimony supporting a conclusion that Mr. Brooks poses no threat of danger to others. Ms. Taylor's testimony provides excellent insight about Mr. Brooks' current mental condition because she sees or talks to him almost every day.

Ms. Taylor has not seen Mr. Brooks display violent behavior. She has not seen him hit or throw anything in anger or frustration. To her knowledge, Mr. Brooks has never done anything violent toward other family members. Most

important, Ms. Taylor agreed she has not experienced Mr. Brooks doing “anything to indicate that he would be violent toward himself or other people[.]”

Finally, we look to the prosecutor’s own admission that Mr. Brooks is nonviolent. At the close of the August 9 hearing, she unequivocally admitted that “*[w]e do not have anything to show that he is a danger, or has been a danger.*”

At this point, we consider the district court’s justification for denying the Motion for Unconditional Release. The first justification was Probation Officer Whitver’s opinion that Mr. Brooks suffers from psychosis. There is no evidence in the record that Mr. Whitver has any education or experience in psychology or mental health counseling. The only medical professional that did testify, Nurse Practitioner Moody, stated that she did not see evidence that Mr. Brooks is psychotic.

Next, the court based its ruling on Mr. Brooks’ purported anger toward Mr. Whitver regarding his disclosure or delusional thinking to Region 8. This basis for denying the Motion is unfounded because Mr. Whitver testified that when he discussed the situation with Mr. Brooks, he was not angry, violent or threatening.

Next, the court based its ruling on Mr. Brooks’ purported continuing delusional thinking. The reference to delusional thinking is found in a medical record dated February 25, 2019, over two and one-half years ago. However, neither that record nor any other evidence before the district court indicates that

Mr. Brooks has done anything that could be construed as violent toward another person since before the subject felon in possession charges. This comports with Ms. Moody's testimony that delusional people are not necessarily violent. Further, Ms. Moody testified that Mr. Brooks did not appear to be delusional or psychotic to her.

Finally, the district court justified denying the Motion because of Mr. Brooks' "confrontational" behavior toward Ms. Moody during a break at the July 30 hearing. This justification is at odds with Ms. Moody's description of the interaction. When asked if Mr. Brooks was "hostile in any way" when they interacted, Ms. Moody responded that he was not. She did not feel threatened in any way and she did not believe that Mr. Brooks was asking her to change her testimony.

In summary, none of the district court's justifications for denying the Motion for Unconditional Release are supported by the evidence. Evidence indicating that Mr. Brooks is not dangerous to the others or the property of others comes from the following reliable sources:

- Natalie Moody, Mr. Brooks' mental health therapist at Region 8;
- the Region 8 medical records;
- Thelma Taylor, Mr. Brooks' sister who he sees or talks to him daily;

- Chris Whitver and Jay Simpson, two probation officers that supervised Mr. Brooks; and
- Assistant United States attorney Erin Chalk, who admitted that the prosecution has not evidence that Mr. Brooks is a dangerous person.

**E. The district court erred by ordering Region 8 Mental Health Services to administer Haldol injections to Mr. Brooks in the specific dosage amount of 100 milligrams.**

This section of the Brief seeks an alternative form of relief if the Court rules that Mr. Brooks' must remain on conditional release. The district court erred by functionally acting as a medical professional by requiring Mr. Brooks take monthly 100-milligram injections of Haldol to treat his schizophrenia diagnosis.

The current Conditional Release Order states in relevant part:

1) The defendant shall remain under the care of Region 8 Mental Health Services in Rankin County, MS. The defendant shall receive monthly injections of Haloperidol (brand name: Haldol) at 100 mg dosage unit/injection. The attending physician at Region 8 Mental Health Services, may adjust the dosage unit only for medical reasons and not at the request of the defendant. If the dosage unit is altered the attending physician must submit, in writing to the U.S. Probation Service, the basis for the dosage unit adjustment.

There is a dearth of caselaw addressing the issue of a court requiring a medical professional to administer a particular drug in a particular amount to a committed defendant. That is probably because it is quite odd for a court to do so.

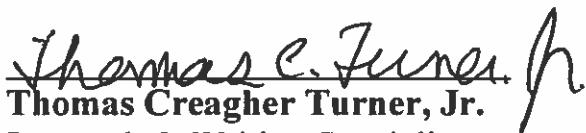
In Mr. Brooks' case, the district court operated under the premise that it, rather than a medical professional, is in a better position to mandate both the type

of medication and the dosage amount of the medication to treat Mr. Brooks' schizophrenia. In essence, the district court improperly acted as a medical professional by mandating Region 8 to administer a specific drug at a specific dosage amount. Therefore, this Court should grant certiorari to address this issue.

## VI. CONCLUSION

Based on the arguments presented above, Mr. Brooks asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted July 15, 2022, by:

  
Thomas Creagher Turner, Jr.  
Research & Writing Specialist  
Office of the Federal Public Defender  
Southern District of Mississippi  
200 South Lamar Street, Suite 200-N  
Jackson, Mississippi 39201  
Telephone: 601/948-4284  
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

DAVIS LAMAR BROOKS  
Petitioner-Defendant

v.

UNITED STATES OF AMERICA  
Respondent

On Petition for Writ of Certiorari from the  
United States Court of Appeals for the Fifth Circuit.  
Fifth Circuit Case No. 21-60633

**CERTIFICATE OF SERVICE**

I, Thomas C. Turner, appointed under the Criminal Justice Act, certify that today, July 15, 2022, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 7773 9669 6854, addressed to:

The Honorable Elizabeth B. Prelogar  
Solicitor General of the United States  
Room 5614, Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

Thomas C. Turner, Jr.  
**Thomas Creagher Turner, Jr.**  
research & Writing Specialist