

No. 22-

IN THE
**SUPREME COURT
OF THE UNITED STATES**

EVANS SAMUEL SANTOS DIAZ,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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June 29, 2023

QUESTION PRESENTED

1. The First Amendment guarantees individuals a right to associate. Petitioner and his fiancée want to associate. The Court of Appeals affirmed a district court condition of supervised release that prevented any association between them for a two-year-period based on its own factual findings. Is such condition narrow and tailored enough to pass constitutional scrutiny?

PARTIES TO THE PROCEEDINGS

Petitioner, the defendant-appellant below, is Evans Samuel Santos Diaz.

The Respondent, the appellee below, is the United States of America.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Evans Samuel Santos Diaz, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Third Circuit is reported at 66 F.4th 435 and reproduced at Petition Appendix (“Pet. App.”) 2a-38a.

JURISDICTION

The court of appeals entered judgment on April 26, 2023, Pet. App. 2a. This Court has jurisdiction over this timely filed petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

The First Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. amend. I.

STATUTORY PROVISION

The Supervised Release statute provides, in relevant part:

(d) Conditions of supervised release.--The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance.

* * *

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)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be

imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available.

18 U.S.C. § 3583(d).

STATEMENT OF THE CASE

This request for a writ of certiorari follows a revocation of supervised release in which the district court, among other things, imposed a “no-contact” condition between Petitioner, Evans Samuel Santos Diaz, and his fiancée. The Court of Appeals for the Third Circuit affirmed, finding that there were facts in the record different from those relied on by the district court to support the condition.

1. The facts attending the underlying offense

In 2015, Drug Enforcement Administration agents began to investigate drug trafficking involving cocaine and heroin in Scranton, Pennsylvania. *See* (Presentence Investigation Report at ¶ 7) (“PSR”). Agents intercepted telephone calls and, in so doing, determined that Mr. Santos Diaz packaged and sold drugs for Jeffrey Guzman. *See* (PSR at ¶ 10). Ultimately, a grand jury returned a superseding indictment, charging Mr. Santos Diaz with conspiring to distribute and possess with the intent to distribute cocaine and heroin. *See* (PSR at ¶¶ 1-4).

Mr. Santos Diaz proceeded to a jury trial, and they found him guilty. In January 2018, the district court sentenced him to a 33-month term of imprisonment, followed by a three-year term of supervised release. *See* App. 5a.

2. The supervised release violations

In September 2020, the Bureau of Prisons (“BOP”) released Mr. Santos Diaz, and he started his supervised release term. *See* CA at 20.¹ While on supervision, Mr. Santos Diaz worked as a laborer, completed a counseling program, and participated in a drug and alcohol program. *See* CA at 27-28. But he had two instances of marijuana use—one in June 2021 and then a second two months later. CA at 23.

In September, however, Scranton police responded to a report of domestic abuse between Mr. Santos Diaz and his fiancée, Amanda Fernandez. *See* Pet. App. 5a. The officers observed and photographed bruises on Ms. Fernandez’s arms and face. *See* Pet. App. 7a. Ms. Fernandez also advised the officers that she had pictures confirming past abuse, and that he had posted a video on Facebook of her crying after an incident. *Id.* The officers arrested Mr. Santos Diaz, charging him with strangulation, simple assault, and harassment. Correspondingly, the probation office petitioned the district court for a warrant based on the above supervision violations. Pet. App. 5a.

3. The probable cause and detention hearings

On September 27, 2021, the magistrate judge held a probable cause and detention hearing. Pet App. 5a. Mr. Santos Diaz waived the probable cause hearing. But requested that the court proceed with a detention hearing.

¹ “CA” refers to the appendix filed in the court of appeals.

The defense presented testimony from Ms. Fernandez. She said that she was no longer in a relationship with Mr. Santos Diaz. Pet. App. 7a. And she said that, if the court imposed a no-contact order, she would report Mr. Santos Diaz, even though she did not have reason to fear him. *Id.* On cross-examination, she discounted the seriousness of the domestic incident, reiterating that she was not afraid of him. *Id.* Ms. Fernandez told the court that she had contact with Mr. Santos Diaz following his arrest, but she described it as a telephone call in which he apologized. Pet. App. 8a. She also stated that there was only one telephone call and that she did not feel pressured. *Id.* The magistrate judge released Mr. Santos Diaz, but imposed a condition that he have no contact with Ms. Fernandez. Pet. App. 8a.

The day after the detention hearing, the government moved for reconsideration. In support, the government asserted that its review of the recorded prison telephone calls revealed that Mr. Santos Diaz and other inmates had called Ms. Fernandez to have her withdraw the state charges. Pet. App. 8a. The government also alleged that Mr. Santos Diaz had called Ms. Fernandez the evening of the detention hearing, thus violating the no-contact order. *Id.* And based on the recordings, the government stated that Ms. Fernandez had committed perjury.

The magistrate judge held a hearing. At the outset, the government summarized the telephone calls between Mr. Santos Diaz and Ms. Fernandez before the hearing on the 27th. CA at 50-51. In those conversations, Mr. Santos Diaz

asked Ms. Fernandez to forego pursuing the charges and to call the judge and arresting officer. Pet. App. 9a. He also asked her to get rid of the evidence on her cellular telephone. *Id.* In one call, notably, Ms. Fernandez advised him that she would not have answered his calls if she did not want to be with him. CA at 50. And the government played a telephone call between Mr. Santos Diaz and Ms. Fernandez, occurring after the detention hearing. Pet. App. 8a-9a.

For his part, Mr. Santos Diaz admitted to contacting Ms. Fernandez after the detention hearing. CA at 52. But he explained that he did so because a condition of release to house arrest required a landline, and he needed her help. *Id.* Mr. Santos Diaz emphasized that Ms. Fernandez had the ability to not accept his collect call and could have simply blocked him. *Id.* Yet she spoke to him because she “wanted to help[.]” *Id.*

The magistrate judge granted the government’s motion and detained Mr. Santos Diaz.

4. The revocation hearing

Before the revocation hearing, Mr. Santos Diaz had a preliminary hearing on the state charges arising from the domestic incident. The Commonwealth of Pennsylvania dismissed the charges and Mr. Santos Diaz pleaded guilty to disorderly conduct, a summary offense. Pet. App. 10a. Later, the probation office prepared a dispositional report. In it, probation calculated Mr. Santos Diaz’s guideline range as 5 to 11 months.

At the revocation hearing, Mr. Santos Diaz admitted to using marijuana and committing a summary offense of disorderly conduct. CA at 56.

The court reviewed the video footage and the recorded phone calls. Pet. App. 10a. Turning to the disposition, the court explained that its sentence is unrelated to the sentence imposed in state court. *Id.* And in the court's opinion, the guideline range was inadequate. *Id.* The court thus varied upward, imposing the statutory maximum—two years. *Id.* Additionally, the court imposed another two-year term of supervised release and prohibited any contact between Mr. Santos Diaz and Ms. Fernandez. *Id.* When Mr. Santos Diaz objected based on his engagement to her, the court emphasized that the prohibition applied both in prison and on supervision. *Id.*

Following the revocation, counsel moved to correct the sentence. Pet. App. 10a. The district court denied the motion, finding that it had inherent authority to prevent abuses, oppression, and injustice in the administration of justice. *Id.* And the court viewed Mr. Santos Diaz's conduct as tampering with a witness in future cases arising from the domestic incident. Pet. App. 11a; CA at 71.

5. The Third Circuit opinion

On appeal, the Third Circuit reversed the no-contact order during Mr. Santos Diaz's incarceration. Pet. App. 24a. But as to the no-contact condition of supervised release, the Court found that the facts relating to deterrence and protecting the public adequately supported it. Pet. App. 27a. And the Court viewed

the condition as narrowly tailored because it only prevents contact with Mr. Santos Diaz’s fiancée and for merely two years. Pet. App. 28a-29a.

REASONS FOR GRANTING THE PETITION

When a law burdens an individual’s First Amendment rights, it must be narrowly tailored to survive the required scrutiny. *See Packingham v. North Carolina*, 582 U.S. 98, 105-06 (2017). This is also true in the context of a supervised release condition that burdens a fundamental right. *See United States v. Crandon*, 173 F.3d 122, 128 (3d Cir. 1999). In other words, such conditions must directly relate to deterrence and protecting the public and be narrowly tailored. *See id.*

Here, however, the condition is neither narrowly tailored nor founded on protecting the public and deterrence. The condition prevents any contact—direct or indirect—between Mr. Santos-Diaz and his fiancée during the two years of supervised release. As a result, the condition effectively ends a relationship between consenting adults. In doing so, the precedential opinion from the Third Circuit creates a standard at odds with this Court’s First Amendment jurisprudence.

For example, among the rights protected by the First Amendment is the right of individuals to associate to further their beliefs. *See Healy v. James*, 408 U.S. 169, 181 (1972). And while the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech and assembly, and laws directly burdening the right to associate should be subject to the same scrutiny as laws directly burdening other First Amendment rights. *Cf. Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Although this

Court has recognized that parolees who are permitted to leave prison early may have greater restrictions on their rights than individual citizens, *see Morrissey v. Brewer*, 408 U.S. 471, 478 (1972), Mr. Santo Diaz is not a parolee. He is on supervised release, which functions differently than parole and does not include the inherent authority to return the individual to prison to serve out the remainder of his or her sentence. *Cf. id.* at 478-79.

In Mr. Santos Diaz's case the Third Circuit justified the no-contact order based, in part, on the view that he could associate with others, only proscribing contact with his fiancée. *See* Pet. App. at 29a. But that's not how the First Amendment works, and it's not an example of narrow tailoring. *E.g., Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (explaining that "[a] complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil"). In other words, the existence of some other association alternative is not narrow tailoring. *Accord Hill v. Colorado*, 530 U.S. 703, 755-56 (2000) (Scalia and Thomas, JJ., dissenting). And a two-year ban on all contact is not narrowly tailored. The courts could have, for instance, permitted monitored communication or only written communication. Moreover, in banning all contact between Mr. Santos Diaz and his fiancée, the Third Circuit neglected to consider the First Amendment interests of Ms. Fernandez.

Finally and as significant, the Third Circuit relied on its own factfinding to support the no-contact condition. *See* Pet. App. 27a. But as this Court has recognized, "the sentencing judge is in a superior position to find facts and judge their import

under Section 3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record.” *Gall v. United States*, 552 U.S. 38, 51 (2007) (internal quotation marks omitted). And “[t]he sentencing judge has access to, and greater familiarity with, the individual case and the individual defendant before him than . . . the appeals court.” *Rita v. United States*, 551 U.S. 338, 357–58 (2007).

The Third Circuit has thus decided an important question of federal law in a way that conflicts with the relevant decisions of this Court. *See* SUP. CT. R. 10(c).

CONCLUSION

For all of these reasons, this Honorable Court should grant the petition for a writ of certiorari.

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Respectfully submitted,

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