

No. _____

In the
Supreme Court of the United States

LESLIE HOOD,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was the district court's imposition of supervision conditions requiring Mr. Hood to obtain some form of work/employment violated the Eighth Amendment given Mr. Hood's ill health and advanced age?
2. Did the Court of Appeals' interpretation of the supervision conditions under review cause them to violate U.S. Constitution Article III's prohibition against the impermissible delegation of authority to the probation office?

PARTIES TO THE PROCEEDINGS

The parties are petitioner, Leslie Hood, and respondent, United States of America. All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Leslie Hood, respectfully prays that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals, entered in the instant proceeding on February 22, 2024, Ninth Circuit Court of Appeal No. 22-10207.

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit issued an unpublished memorandum decision in this matter. App. 1a. See *United States v. Hood*, No. 22-10207, 2024 WL 722524 (9th Cir. Feb. 22, 2024) (unpublished). The district court order from which Mr. Hood appealed is also unpublished. App. 6a. See *United States v. Hood*, U.S. District Court, Central District of California, No. 17-CR-00040 (Aug. 14, 2019).

STATEMENT OF JURISDICTION

The date on which the Ninth Circuit Court of Appeals filed its Memorandum in the instant matter was February 22, 2024. 2b. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. United States Constitution, Amendment VIII: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
2. United States Constitution Article III, § 1 Section: “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .”

STATEMENT OF THE CASE AND FACTS

A. Mr. Hood Personal History

Mr. Hood was born in 1963. Thus, he is now 60 years old and will be nearly 65 years old in 2027 when his imposed sentence of incarceration is scheduled to end. PSRs 5.

Mr. Hood's parents divorced when he was quite young and his father was not a part of Mr. Hood's life as he was growing up. 1-PSRs-5. His mother had to work several jobs at a time to support Mr. Hood and his siblings. It was in this context that Mr. Hood began using alcohol and other drugs at a very young age. 1-PSRs-36, 38. He primarily used crack cocaine and methamphetamine. 1-PSRs-38, 53. This drug use led to Mr. Hood being subject to abuse. 1-PSRs-37.

Mr. Hood continued his drug use throughout his adult life, despite efforts to break his addictions though drug treatment programs. 1-PSRs-36-38. It was this drug use that fueled his criminal activity. 1-ER-27, 187;1-PSRs-37. Following his incarceration in the instant matter, Mr. Hood discontinued drug use. 1-PSRs-37.

Despite his difficulties with drug use, Mr. Hood married and is

the father of several children. 1-PSRs-36-37. He has at various times maintained employment as a home support services provider and as a mechanic. 1-PSRs- 38.

Mr. Hood has a number of debilitating physical illnesses that include gastroesophageal reflux disease, ulcerative colitis and inflammatory bowel disease. 1-PSRs- 37. He also suffers from prostate issues and back pain. 1-PSRs-37. At one point during the pendency of this matter, Mr. Hood was hospitalized for some time. 1-ER-131-132; 1-PSRs-37. Also during his years of incarceration pending a conviction in the instant matter, Mr. Hood came down with COVID-19 on five occasions. 1-PSRs-37. He suffers from lingering effects of COVID-19 including fatigue, headaches, and bone aches. 1-PSRs-37.

B. The Alleged Facts Giving Rise to the Instant Conviction

On June 16, 2016, law enforcement agents watched Mr. Hood enter a FedEx store in Clovis California carrying three parcels which he dropped off for shipment. 1-ER-141-142. Officers seized these parcels and then later, pursuant to a warrant, searched them, finding methamphetamines. 1-ER-77. The quantity of methamphetamines was between 150 grams and 500 grams of actual methamphetamines. 1-ER-73, 77 .

C. Mr. Hood's Indictments, Detention, Arraignment and self-representation

On February 23, 2017, an indictment was filed in the Eastern District of California against Mr. Hood and two co-defendants, Richard Jack Ormond and Sharron Aycock. 1-ER-393. In that Indictment, Mr. Hood and his co-defendants were charged with one count of 21 U.S.C. §§846, 841(a)(1) (Conspiracy to Distribute and to Possess with Intent to Distribute Methamphetamine); one count of

21 U.S.C. §841 (Possession with Intent to Distribute Methamphetamine); and one count of 21 U.S.C. §843(b) (Use of a Communication Facility to Facilitate a Drug Trafficking Offense). 1-ER-393-395. In September 2020, a grand jury issued a superseding indictment, narrowing the charges against Hood to a single count of 21 U.S.C. §841 (Possession with Intent to Distribute Methamphetamine). 1-ER-169. The Superseding Indictment also contained a Criminal Forfeiture allegation under 21 U.S.C. § 853(a). 1-ER-169-170.

On March 8, 2017, Mr. Hood was arrested and his arraignment hearing held. 1-ER-360-361, 363-365. Mr. Hood was appointed counsel and pleaded not guilty to all counts. 1-ER-377, 382-383.

At the March 10, 2017 detention hearing, the government requested and the district court ordered that Mr. Hood remain detained pending trial. 1-ER-260, 358-359, 363-365, 383. At arraignment, Mr. Hood requested that he be appointed another attorney because he did not feel that his appointed counsel was fighting for him. 1-ER-367-369. The district court denied this

request. 1-ER-268-369. At the November 13, 2017 hearing, Mr. Hood again expressed displeasure with his trial counsel and expressed a desire to represent himself. 1-ER-343, 346, 352.

On December 20, 2017, the district court held a Farretta Hearing. 1-ER-304, 306, 314. After much discussion, Mr. Hood withdrew his request. 1-ER-333. He renewed that request, however, at the March 12, 2018 status conference and a Faretta hearing was held on March 15, 2018. 1-ER-300, 31-318. The district court granted the motion, allowing Mr. Hood to represent himself . Mr. Hood's counsel was relieved and then appointed as standby counsel. 1-ER-275, 294.

At the October 1, 2018 status conference, Mr. Hood acceded to the district court's suggestion that counsel be reappointed for him. 1-ER-252-254. In so acceding, Mr. Hood requested that he be appointed counsel other than his previously appointed counsel. 1-ER-253-254. The district court then relieved standby counsel and appointed a new attorney for Mr. Hood. 1-ER-258. At the May 28, 2019 status conference, Mr. Hood requested that he once again be

allowed to represent himself. 1-ER-246. On the following day, the court heard the request where Mr. Hood explained that he had felt pressure by the court at the earlier hearing into giving up his Faretta rights. 1-ER-211, 223. Mr. Hood further explained that he needed to represent himself because there were a number of motions that he wanted to file that would not be filed by counsel. 1-ER-211. Mr. Hood expressed that he also wanted a speedy trial. 1-ER-215. The district court granted Mr. Hood's request that he represent himself. 1-ER-223. Standby counsel was then appointed. 1-ER-202-204, 225.

D. Change of Plea and Plea Agreement

Mr. Hood's trial was ultimately scheduled to begin on January 4, 2022. 1-ER-47, 49, 71. On that date, Mr. Hood requested that his standby counsel be substituted in as his counsel and that she be allowed to try the case on his behalf. 1-ER-49. The district court denied that request. 1-ER-49-50. Mr. Hood then indicated on the record that he would like to change his plea to guilty based on the oral plea agreement that he had entered into with the government.

1-ER-48. Given the plea agreement, Mr. Hood requested that his standby counsel be appointed his counsel for purposes of entry of the plea and sentencing. The district court granted that request and appointed counsel. 1-ER-52.

The government summarized the plea agreement on the record as follows:

The defendant will be entering a plea of guilty to the sole count of the superseding indictment. The defendant will be waiving all appellate and collateral attack rights, and that will be a full waiver except as to nonwaivable grounds.

In exchange, the government will agree to recommend either a midpoint guideline sentence or a mandatory minimum sentence, whichever is higher -- it will recommend no greater than that, I should say.

The parties have discussed their estimated guideline calculations, but they acknowledge that the Court -- probation and the Court may find differently. And the defendant cannot, for that reason, change his plea.

Finally, the parties agree that the offense in question involved approximately one half pound of methamphetamines, but the mix -- the weight of actual methamphetamines was between 150 grams and 300 grams -- I'm sorry,

at least 150 grams but less than 500 grams of actual methamphetamine.

1-ER-51.

Mr. Hood and his newly-appointed counsel agreed that those were the terms of the plea agreement. 1-ER-51-52. The plea agreement did not require Mr. Hood to admit to the forfeiture allegation. 1-ER-67.

The district court then conducted a plea colloquy and accepted Mr. Hood's guilty plea to the single count of the superseding indictment. 1-ER-53-67, 69-70. The factual basis for Mr. Hood's guilty plea was as follows:

On or about June 16th, 2016, the defendant dropped off for shipment three packages at a Fed Ex office location in Clovis, California.

Each of the three packages contained methamphetamines. The defendant knew that they contained methamphetamines. The defendant dropped them off for shipment intending that they be sent to another person.

The quantity of methamphetamines was between 150 grams and 500 grams of actual methamphetamines.

1-ER-69-70.

E. The Sentencing and Appeal

1. The presentence reports and sentencing memoranda

a. The presentence reports

The Office of Probation prepared a Presentence Report (PSR) which calculated Mr. Hood's sentencing guideline range based on the following determinations.

Base Offense Level (Guideline §2d1.1)	32
Adjusted Offense Level	32
Career Offender	37
Acceptance of Responsibility	-2
Acceptance of Responsibility	-1
Total Offense Level	34
Criminal History Score	13
Criminal History Category	VI

1-PSRs-6, 10-11, 27, 39, 43, 64, 81, 93.

Because of the Career Offender designation, Mr. Hood's

Criminal History Category became a level VI. This produced a guideline imprisonment range of 262 months to 327 months with five years of supervised release. 1-PSRs-6, 93. The statutory minimum for Mr. Hood's offense was ten years incarceration with a maximum term of imprisonment being life. 1-PSRs-39, 93.

In its PSR, Probation recommended at 262-month term of imprisonment and five years of supervised release. 1-PSRs-6, 44, 98. It also recommended a number of standard and special conditions of supervised release. 1-PSRs-98-99. Standard condition Number 7 stated:

You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or

expected change.

1-PSRs-47.

Probation's recommended special conditions number 8 stated:

You must be employed and/or complete community service for a combination of 30 hours per week or participate in a previously approved educational or vocational program by the probation officer. The probation officer will supervise the participation in the community service program by approving the program (agency, location, frequency of participation, etc.). You must provide written verification of completed community service hours to the probation officer.

1-PSRs-99.

Mr. Hood's PSR noted that his co-defendant, Richard Ormond, received a term of incarceration of 126 months. The other co-defendant, Sharron Aycock, received a 36-month term of probation. 1-PSRs-4, 42.

b. The government's sentencing position

In its sentencing memorandum, the government agreed with Probation's sentencing guidelines calculations. 1-ER-35. The government also agreed with Probation's recommendation that a

low-end sentence of 262 months was appropriate. 1-ER-35.

c. Mr. Hood's sentencing position

After having made a number of informal objections to the PSR, Mr. Hood made formal objections to the PSR. 1-ER-37, 41, 45. In that formal objection, Mr. Hood explained that the Criminal History Score as calculated by Probation over-represented his criminal history. 1-ER-38, 41-42. On this basis, Mr. Hood asserted that a sentence outside of the career offender enhancement was reasonable. 1-ER-40, 43. Without a career offender designation, Mr. Hood's guidelines sentencing range would be 140 to 175 months. 1-ER-40. Under these circumstances a sentence of 140 months was reasonable. 1-ER-40, 43.

2. The sentencing hearing

On August 8, 2022, the district court sentenced Mr. Hood to a 147-month term of imprisonment. 1-ER-3, 9, 29. Although the district court found that Probation had correctly calculated the guidelines sentencing range, it also found that a 262-term of incarceration was simply "an unreasonable sentence in this case." 1-ER-13, 18, 21, 28. This was particularly true given Mr. Hood's age

and the fact that his criminal history was overestimated. 1-ER-28.

Mr. Hood's sentence included five years of supervised release. 1-ER-4, 29. In imposing supervised release, the district court adopted the standard and special conditions recommended by the probation officer, including Standard Condition 7 and Special Condition 4. 1-ER-5-6, 28.

At the sentencing hearing, the district court reminded Mr. Hood that, ". . . as part of the oral plea agreement, Mr. Hood did waive his right to appeal as well as to collaterally attack any part of his plea and sentence." 1-ER-30-31. In response, Mr. Hood stated, "I do waive it. . . . I'm okay. I don't need to appeal." 1-ER-31.

3. The appeal

Mr. Hood filed a timely notice of appeal of the judgment on August 19, 2022. 1-ER-397. The Court of Appeals filed an unpublished memorandum affirming Mr. Hood's conviction on February 22, 2024. App 1a.

REASONS FOR GRANTING THE WRIT

I. THE VIOLATION OF MR. HOOD'S EIGHTH AMENDMENT RIGHTS IS A COMPELLING REASON TO GRANT THE INSTANT PETITION.

Although review on a writ of certiorari is not a matter of right, but of judicial discretion, a petition for a writ of certiorari will be granted for compelling reasons. U.S. Sup. Ct. R. 10. As explained below, Mr. Hood's Standard Supervision Conditions 7 and Special Condition 8 violated his Eighth Amendment rights against cruel and unusual punishment and the Court of Appeals construction of those conditions violated Article III, Section 1 of the U.S. Constitution.

A. The Imposition of Supervision Conditions

Requiring Mr. Hood to Undertake Employment or Other Work Was a Violation of the Eighth Amendment, Given His Age and Ill Health.

In sentencing Mr. Hood to a term of supervised release, the district court implemented two conditions of supervised release requiring that he engage in full-time work or some equivalent activity. 1-ER-5-6. Given Mr. Hood's age and his various medical conditions, the imposition of these conditions of release constitute cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution.

The relevant conditions imposed state:

STANDARD CONDITIONS OF SUPERVISION

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work

(such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

1-ER-5.

SPECIAL CONDITIONS OF SUPERVISION

4. You must be employed and/or complete community service for a combination of 30 hours per week or participate in a previously approved educational or vocational program by the probation officer. The probation officer will supervise the participation in the community service program by approving the program (agency, location, frequency of participation, etc.). You must provide written verification of completed community service hours to the probation officer.

1-ER-6.

Supervision conditions, like other forms of punishment, are subject to the Eighth Amendment's prohibition against the infliction of cruel and unusual punishments. U.S. Const. Amend. VIII. See also, e.g., *United States v. Gementera*, 379 F.3d 596, 608 (9th Cir.2004) The Eighth Amendment prohibits the infliction of cruel and

unusual punishments on those convicted of crimes, which includes punishments that involve the unnecessary and wanton infliction of pain. *Whitley v. Albers*, 475 U.S. 312, 319 (1986); *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir.1994) citing *Gregg v. Georgia*, 428 U.S. 153 (1976). See also *Hope v. Pelzer*, 536 U.S. 730, 738 (2002) where the handcuffing of an inmate to a hitching post was found to violate the Eighth Amendment because it took place after any safety concerns had long since abated. The basic concept underlying the Eighth Amendment, however, is nothing less than the dignity of man. *Gementera*, 379 F.3d at 608 citing *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (finding de-nationalization of military deserters cruel and unusual). See also *Hutto v. Finney*, 437 U.S. 678, 685 (1978) stating that the Eighth Amendment prohibits penalties that transgress today's broad and idealistic concepts of dignity, humanity, and decency. Consistent with human dignity, the state must exercise its power to punish within the limits of civilized standards. *Id.*

Mr. Hood is scheduled to be released on August 15, 2027. On

that date, Mr. Hood will be 64 years old. PSRs 5. This is an age at which many individuals are looking to retire. Often this retirement is prompted by physical infirmities that make it too difficult for the individual to work. This will certainly be the case for Mr. Hood given his pronounced health problems.

Mr. Hood has a number of debilitating physical illnesses that include gastroesophageal reflux disease, ulcerative colitis and inflammatory bowel disease. 1-PSRs- 37. He also suffers from prostate issues and back pain. 1-PSRs-37. At one point while incarcerated pending a conviction in this matter, Mr. Hood was hospitalized for some time. 1-ER-131-132; 1-PSRs-37. During his years of incarceration pending a conviction in the instant case, Mr. Hood came down with COVID-19 on five occasions. 1-PSRs-37. He suffers from lingering effects of COVID-19 including fatigue, headaches, and bone aches. 1-PSRs-37. Mr. Hood simply does not have the physical ability to work, nor is there any indication that he will have a physical ability to work when he is released from prison

in four years. To the contrary, his years in prison are likely to have caused his physical health to deteriorate further,

Standard Condition 7 and Special Condition 4 mandate that Mr. Hood work as a student, volunteer or employee for at least 30 hours a week. Nothing in these conditions allow Mr. Hood to refrain from working based on his physical inability to do so. In other words, these conditions will require him to work 30 hours a work despite the pain and pronounced physical discomfort it will cause him because of his age and multiple health issues. This requirement is an unnecessary and a wanton infliction of pain. It is also an uncivilized blow to Mr. Hood's dignity. Thus, Standard Condition 7 and Special Condition 4 violate Mr. Hood's Eighth Amendment right to be free of cruel and unusual punishment.

B. The Court of Appeals' Reliance on the "Safety Valves" Contained in the Relevant Supervision Conditions Is an Insufficient Basis on Which to Find There Is No Violation of Mr. Hood's Eighth Amendment Rights.

In its Memorandum, the Ninth Circuit Court of Appeals found, *inter alia*, that the challenged conditions of supervised release did not violate Mr. Hood's rights under the Eighth Amendment stating,

Any argument that the work requirement could be "cruel" in Hood's case is foreclosed by the safety valve in each condition. The work requirement explicitly states that Hood must be gainfully employed "unless the probation officer excuses [him] from doing so." And the community service requirement also allows the completion of "educational or vocational program[s]" in lieu of employment or community service.

App. 5a.

With respect to both Standard Condition 7 and Special Condition 8, the so-called "safety valves" relied on by the Court of Appeals, impermissibly delegate to the probation officer the

authority to determine the nature and extent of Mr. Hood's punishment. Thus, they cannot be used to impose the constitutionally violative supervision conditions. *United States v. Nishida*, 53 F.4th 1144, 1152 (9th Cir. 2022).

Article III of the United States Constitution confers the authority to impose punishment on the judiciary, and the judiciary may not delegate that authority to a nonjudicial officer. *United States v. Bear*, 769 F.3d 1221, 1230 (10th Cir. 2014); *United States v. Cabral*, 926 F.3d 687, 697 (10th Cir. 2019) A district court may delegate to a probation officer decision-making authority over certain minor details of supervised release. But, a district court may not delegate to the Probation Department decision-making authority which would make a defendant's liberty itself contingent on a probation officer's exercise of discretion. In other words, the extensive supervision mission of federal probation officers includes executing the sentence, but not imposing it. *United States v. Matta*, 777 F.3d 116, 122 (2d Cir. 2015); *United States v. Reyes*, 283 F.3d

446, 456 (2d Cir.2002); *States v. Peterson*, 248 F.3d 79, 85 (2d Cir.2001).

Standard Condition 7 and Special Condition 4, as construed by the Court of Appeals in the memorandum in the instant matter, would give the probation officer far broader discretion than is permissible. With respect to Standard Condition Number 7, the supervision condition would not merely give the probation officer authority over the details of the administration of the supervision condition, but rather, the probation officer would decide whether Mr. Hood engages in employment at all. See *United States v. Kunz*, 68 F.4th 748, 767 (2d Cir. 2023) *United States v. Barber*, 865 F.3d 839, 840 (5th Cir. 2017); *United States v. Shiraz*, 784 F. App'x 141, 143-144 (4th Cir. 2019). With respect to Special Condition Number 4, the probation officer can again determine not only whether Mr. Hood works at all, but also whether and the extent to which he must engage in other endeavors similar to work. This decision by the Court of Appeals relies on impermissible delegations of authority,

and thus the “safety valves” cannot prevent the relevant supervision conditions from violating the Eighth Amendment’s prohibition against cruel and unusual punishment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: April 24, 2024

Respectfully submitted,

/s/ *Andrea R. St. Julian*

Andrea R. St. Julian
Attorney for Defendant-Appellant,
LESLIE HOOD

APPENDICES

NOT FOR PUBLICATION**FILED****UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT****FEB 22 2024**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-10207

Plaintiff-Appellee,

D.C. No.
1:17-cr-00040-DAD-BAM-2

v.

LESLIE HOOD,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted January 8, 2024**
San Francisco, California

Before: SILER,*** TASHIMA, and BRESS, Circuit Judges.

Shortly before beginning voir dire in his criminal trial for possession with intent to distribute methamphetamine, Defendant Leslie Hood, proceeding pro se,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

*** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

reached an oral plea agreement with the government. As part of that agreement, he agreed to “waiv[e] all appellate and collateral attack rights.” The court sentenced him to 147 months of imprisonment and a five-year period of supervised release, with the supervised release conditions that he be gainfully employed and engage in community service or employment at least thirty hours per week. He now challenges the work-related conditions of his supervised release, arguing that his appellate waiver did not foreclose a challenge to those conditions, and that they violate the Eighth Amendment. Finding no constitutional violation, we affirm his sentence.

The question whether Hood has waived his appellate rights is reviewed de novo. *United States v. Dailey*, 941 F.3d 1183, 1188 (9th Cir. 2019). Ordinarily, allegations that a supervised release condition violates the Constitution are reviewed de novo, but when the issue is not raised before the trial court, as is the case here, review is merely for plain error. *See United States v. Nishida*, 53 F.4th 1144, 1150 (9th Cir. 2022). Although Hood appears to have validly waived his appellate rights in his plea agreement, we need not reach that issue because an appellate waiver is inapplicable if a sentence is illegal, as Hood is alleging here. *See, e.g., United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007), *as amended; see also Nishida*, 53 F.4th at 1149 (“When a defendant with an otherwise valid appeal waiver challenges the legality of [his] sentence, the claim as to waiver rises and falls with the claim on the merits.” (quoting *United States v. Dailey*, 941 F.3d 1183, 1188 (9th Cir. 2019))). The

parties also appear to agree that Hood’s waiver, even if valid, would not cover the merits of this appeal.

The Eighth Amendment prohibits the imposition of “cruel and unusual punishments.” U.S. Const. amend VIII. Two categories of punishments fall within the Amendment’s ambit: (1) those “considered cruel and unusual at the time that the Bill of Rights was adopted,” and (2) those that offend our “evolving standards of decency.” *United States v. Gementera*, 379 F.3d 596, 608 (9th Cir. 2004) (citations omitted). Analysis of whether a punishment offends modern decency standards looks broadly at “American society as a whole” and whether such punishments are unusual generally and in the context of “the reality of the modern prison.” *Id.* at 608–10. The Amendment’s core concern is “the dignity of man.” *Id.* at 608 (quotations omitted).

As part of his sentence, the district court ordered Hood to comply with the standard conditions of supervision and special conditions recommended by the Probation Office. Two of those conditions impose a work or community-service requirement. The first states that “[y]ou must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so.” The second requires that Hood “be employed and/or complete community service for a combination of 30 hours per week or participate in a previously approved educational or vocational program by the probation officer.”

Hood argues that “[r]equiring a 64 year-old man in ill health to work full time despite the pain and pronounced physical discomfort it will cause him is an unnecessary and wanton infliction of pain and it is an uncivilized blow to Mr. Hood’s dignity.” His health issues include “gastroesophageal reflux disease, ulcerative colitis and inflammatory bowel disease.” He was hospitalized once during the four years his case was pending before the district court and caught COVID-19 five different times. He still suffers fatigue, headaches, and bone aches, apparently as a “lingering effect[]” of COVID-19. He argues that he “simply does not have the physical ability to work.”

As the United States points out, the work condition is not unconstitutional because it is commonly imposed, serves a legitimate penological purpose, and does not violate basic standards of decency. The work requirements are specifically authorized by statute and their imposition is left to the discretion of the district court. *See* 18 U.S.C. § 3563(b); *United States v. Bahe*, 201 F.3d 1124, 1135 (9th Cir. 2000). And further, the Sentencing Guidelines explicitly recommend that district judges impose the standard conditions of supervision, including the employment condition at issue here, in every case. *See* U.S.S.G. § 5D1.3(c)(7). We do not consider conditions authorized by the people’s representatives in Congress and made a standard part of nearly every criminal judgment to be so “unusual” as to violate the Eighth Amendment. *See Gementera*, 379 F.3d at 608–10.

Any argument that the work requirement could be “cruel” in Hood’s case is foreclosed by the safety valve in each condition. The work requirement explicitly states that Hood must be gainfully employed “unless the probation officer excuses [him] from doing so.” And the community service requirement also allows the completion of “educational or vocational program[s]” in lieu of employment or community service. While Hood’s current health issues are real—though how much they keep him from working has not been independently evaluated—their effect on his future capacity to work is largely speculative. This speculation combined with the probation officer’s power to tailor the requirements to fit Hood’s physical capabilities undercuts his argument that the conditions of supervised release are unconstitutional as applied to him.

Plain error review allows the court to address an error raised for the first time on appeal if it finds that there was (1) an error, (2) that was plain, (3) that affected substantial rights, and (4) seriously affected the “fairness, integrity, or public reputation of judicial proceedings.” *United States v. Yijun Zhou*, 838 F.3d 1007, 1012 (9th Cir. 2016) (quoting *United States v. Myers*, 804 F.3d 1246, 1257 (9th Cir. 2015)). Because the conditions imposed are constitutional, there was no error, and the plain error analysis stops at its first step.

The sentence is **AFFIRMED**.

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA

v.

LESLIE HOOD

AKA: Cornell Williams, Albert Lee Hood, Bruce Edward Hood,
 Lester Hood, Leslie Hood III, "Cowboy"

JUDGMENT IN A CRIMINAL CASECase Number: **1:17CR00040-002**

Defendant's Attorney: Barbara H. O'Neill, Appointed

THE DEFENDANT:

pleaded guilty to Count 1 of the Superseding Indictment.
 pleaded nolo contendere to count(s) ___, which was accepted by the court.
 was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1)	Possession with Intent to Distribute Methamphetamine (Class A Felony)	6/16/2016	1

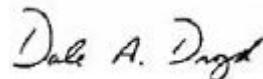
The defendant is sentenced as provided in pages 2 through ___ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) ___.
 Count(s) ___ dismissed on the motion of the United States.
 Indictment is to be dismissed by District Court on motion of the United States.
 Appeal rights given. Appeal rights waived.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution or fine, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/8/2022

Date of Imposition of Judgment



Signature of Judicial Officer

Dale A. Drozd, United States District Judge

Name & Title of Judicial Officer

8/15/2022

Date

DEFENDANT: **LESLIE HOOD**
CASE NUMBER: **1:17CR00040-002**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
147 months.

No TSR: Defendant shall cooperate in the collection of DNA.

The court makes the following recommendations to the Bureau of Prisons:
The court recommends that the defendant be incarcerated in Lompoc, a California facility, but only insofar as this accords with security classification and space availability. The court recommends the defendant participate in the 500-Hour Bureau of Prisons Substance Abuse Treatment Program.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district
 at ____ on ____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before ____ on ____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Officer.
If no such institution has been designated, to the United States Marshal for this district.

Other, Please Specify:

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

By Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
60 months.

MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
- You must cooperate in the collection of DNA as directed by the probation officer.
- You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense.
- You must participate in an approved program for domestic violence.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **LESLIE HOOD**CASE NUMBER: **1:17CR00040-002**

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in an outpatient substance abuse/alcohol abuse treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program.
2. You must submit to substance abuse/alcohol abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
3. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.
4. You must be employed and/or complete community service for a combination of 30 hours per week or participate in a previously approved educational or vocational program by the probation officer. The probation officer will supervise the participation in the community service program by approving the program (agency, location, frequency of participation, etc.). You must provide written verification of completed community service hours to the probation officer.
5. You must reside in a residential reentry center for a term of up to 180 days. You must follow the rules and regulations of the center. You must pay the cost of confinement as determined by the Bureau of Prisons.
6. You must submit your person, property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer or any law enforcement officer under the immediate and personal supervision of the probation officer, based upon reasonable suspicion of unlawful conduct or a violation of a condition of supervision, without a search warrant. Failure to submit to a search may be grounds for revocation. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
7. You must possess and use only those cellular phones and phone numbers (including Voice over Internet Protocol [VoIP] services) that have been disclosed to the probation officer upon commencement of supervision. Any changes or additions are to be disclosed to the probation officer prior to the first use.
8. You must participate in a co-payment plan for treatment, testing and/or medication and shall make payment directly to the vendor under contract with the United States Probation Office. Your co-payment will be determined utilizing a Sliding Fee Scale based upon your disposable income.

DEFENDANT: **LESLIE HOOD**CASE NUMBER: **1:17CR00040-002****CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

TOTALS

<u>Processing Fee</u>	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
	\$100.00	\$0.00	\$0.00	0.00	0.00

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$ ____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the fine restitution

The interest requirement for the fine restitution is modified as follows:

If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

Other:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **LESLIE HOOD**CASE NUMBER: **1:17CR00040-002**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A. Lump sum payment of \$ ____ due immediately, balance due
 - Not later than ____, or
 - in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release/probation will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

The defendant shall make payments toward any unpaid criminal monetary penalties in this case during supervision at the rate of at least 10% of your gross monthly income. Payments are to commence no later than 60 days from placement on supervision. This payment schedule does not prohibit the United States from collecting through all available means any unpaid criminal monetary penalties at any time, as prescribed by law.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States: The Preliminary Order of Forfeiture is hereby made final as to this defendant and shall be incorporated into the Judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.