No._____

IN THE SUPREME COURT OF THE UNITED STATES

JOYCE ISAGBA,
Petitioner / Appellant,

v.

UNITED STATES OF AMERICA,
Respondent / Appellees.

On Petition for a Writ of Certiorari to the
Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Under Rule 404(b), Federal Rules of Evidence, is a single uncharged act occurring 5-7 year prior to the charged conduct in question, without any intervening act, relevant and admissible to prove the crime charged?

II. Under the Fifth Amendment, is a district court required to orally pronounce at sentencing all discretionary "standard conditions" of supervised release and to make an individualized assessment as to whether those conditions are reasonably related to the sentencing factors and involve no greater deprivation of liberty than is reasonably necessary under the circumstances?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the Eleventh Circuit Court of Appeals include the United States of America and Petitioner Joyce Isagba. There are no parties to the proceedings other than those named in the petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, JOYCE ISAGBA, respectfully petitions this Court for a writ of certiorari to review the *Opinion* rendered by the Eleventh Circuit Court of Appeals on APRIL 24, 2024. See Appendix A.

OPINIONS BELOW

The *Opinion* rendered by the Eleventh Circuit Court of Appeal is attached as Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment guarantees the right to not be deprived of liberty without due process of law.

Rule 404(b), Federal Rules of Evidence, prohibits evidence of any other crime, wrong, or act to prove character or conformity, but allows such evidence to establish motive, opportunity, intent, preparation, plan, knowledge, absence of mistake, or lack of accident.

JURISDICTION

The order of the Eleventh Circuit Court of Appeal was rendered on April 24, 2024. (App.A) This petition is filed within 90 days of that date. Rule 13.1. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) (2024).

STATEMENT OF THE CASE

This appeal arises from the Judgment and sentence imposed by the district court which adjudicated guilty Appellant, JOYCE ISAGBA, and sentenced her to a total of five (5) years of probation. (Dkt.302, citing Dkt.298)

Previously, the government charged Mrs. Isagba via superseding Indictment with six counts of mail fraud (Counts 1–6) and one count of conspiracy to defraud the government (Count 7). (Dkt.83) Mrs. Isagba pled not guilty. (Dkt.86)

JURY TRIAL

During opening statements, the government claimed that Mrs. Isagba and her ex-husband, David Isagba, conspired to defraud the Internal Revenue Service of $2.9 billion by failing fraudulent tax returns from June 2009 through September 2010.

2008 – Uncharged Prior Bad Act

The government presented evidence of an uncharged prior bad act that allegedly "formed the blueprint" for transactions that occurred five-to-seven years later. IRS Investigator Lee Castle testified to a Form 1041 filed in 2008—an income tax return for an estate or trust called Eneziakpezi signed by Ms. Isagba as the fiduciary. (Dkt.237 p.46) The form sought a tax refund in the amount of $459,023.00. (Dkt.237 p.49) However, Castle testified that the trust never made any payments to the IRS. (Dkt.237 p.50) Nonetheless, the IRS somehow issued a refund check in the amount of $462,557.62 on August 20, 2009. (Dkt.237 p.50)

On cross-examination, the investigator testified that the 2008 tax return was the only document in evidence with Mrs. Isagba's name on it. (Dkt.237 p.85–86; Exhibit 1)

Another agent testified that the refund check was deposited into the account of "The Irrevocable Trust of Eneziakpezi, Joyce Isagba, trustee" on September 1, 2009. (Dkt.237 p.94–96) The agent testified that David Isagba was not listed as a signatory on the bank account. (Dkt.237 p.99)

Later, Mrs. Isagba testified that her ex-husband had both her password and login information to access the account. (Dkt.238 p.61) She also testified that he did all the family's banking. (Dkt.238 p.99) She denied transferring out of the account the funds testified to by Investigator Castle. (Dkt.238 p.61) Mrs. Isagba testified that her ex-husband made those payments and transfers. (Dkt.238 p.61) The government was unable to refute this testimony.

Further, the IRS agent testified that all eight checks forming the basis of the charges were issued to both Joyce Isagba and David Isagba:

> Q: All right. So on the left side, under "Treasury Department," there's a series of nine entries. What are these entries?
>
> A: These eight entries are the Treasury checks that were sent based on the claims entered into evidence that were mailed to David and Joyce Isagba.

(Dkt.238 p.16; see also Dkt.289 p.26–27)

2013 Return (Filed November 11, 2014) – Count One:

Castle testified to an IRS income tax return for trusts and estates for MOEO with David Isagba as the fiduciary. (Dkt.237 p.60–61) The form sought a return in the amount of $459,113.00, claiming that the trust had previously paid the amount to the IRS. (Dkt.237 p.61) However, the trust made no payments to the IRS. (Dkt.237 p.61) Nonetheless, the IRS mailed a refund in the amount of $459,113.52 to the trust. (Dkt.237 p.61) The check was issued jointly to David Isagba and Joyce Isagba. (Dkt.238 p.16)

Mrs. Isagba's name or signature did not appear on anything associated with the 2013 MOEO tax return. (Dkt.237 p.85–86)

2013 Return (Received May 16, 2016) – Count Two:

Castle testified to an IRS income tax return for trusts and estates for Tetragrammaton with no fiduciary listed. (Dkt.237 p.63) However, the address provided was the same address as in other returns. (Dkt.237 p.63) The form sought a return in the amount of $98,300.00, claiming the trust had previously paid these amounts to the IRS. (Dkt.237 p.65) However, the trust made no payments to the

IRS. (Dkt.237 p.65) Nonetheless, the IRS mailed a refund in the amount of $98,999.49 to the trust. (Dkt.237 p.65)

Mrs. Isagba's name or signature did not appear on anything associated with the 2013 Tetragrammaton tax return. (Dkt.237 p.85–86)

The check was issued jointly to David Isagba and Joyce Isagba. (Dkt.238 p.16)

2014 Return (Filed October 25, 2016) – Count Three:

Castle testified to an IRS income tax return for a trust called Yetzirah seeking a return in the amount of $572,112.00. (Dkt.237 p.68) Although the entity never paid any money to the IRS, the IRS nonetheless issued a refund in the amount of $572,112.00. (Dkt.237 p.68)

Mrs. Isagba's name or signature did not appear on anything associated with the 2013 Tetragrammaton tax return. (Dkt.237 p.85–86)

The check was issued jointly to David Isagba and Joyce Isagba. (Dkt.238 p.16)

Motion for Judgment of Acquittal

At the close of the government's case in chief, and at the close of all evidence, defense counsel moved for a judgment of acquittal, arguing there was insufficient evidence that Mrs. Isagba had any involvement with any of the charged conduct, including the conspiracy charge in Count Seven. (Dkt.235)

In response, the government admitted that the only evidence it could present of Mrs. Isagba's involvement in the mail fraud conspiracy was the uncharged conduct

occurring in 2009. Indeed, the government admitted that Mrs. Isagba's name or signature did not appear on any document or other piece of evidence connected with Counts One, Two, and Three. (Dkt.248 p.3) The only evidence presented to the jury that attempted to tie Mrs. Isagba to the 2014 and 2016 mail fraud charges was a tax return filed five years prior in 2009:

> Initially, the United States showed that Joyce Isagba personally benefitted from the fraudulent scheme by introducing a 2008 Form 1041 "U.S. Income Tax Return for Estates and Trusts." Gov't. Ex. 1. This form was for the trust "ENEZIAKPEZI" and listed "Joyce Isagba TTEE" as the fiduciary. *Id.* at 1. The return demanded a total refund of $459,023, which was ultimately issued by the IRS in reliance on the fraudulently submitted return. Gov't Ex. 2. As was shown at trial, the funds received were deposited by Joyce into a SunTrust bank account in the name of the Eneziakpezi trust and with Joyce Isagba as the sole signatory authority. Gov't. Ex. 24 at 3-4. Almost immediately after the funds were deposited into Joyce Isagba's account, they were used to purchase tens of thousands of dollars' worth of merchandise at various retailers, such as JC Penney and Macy's. *Id.*, Doc. 237 at 103-104. The same funds were also used to pay off more than ten thousand dollars worth of credit card debt. Doc. 237 at 104. Finally, the funds (which were deposited into an account for which Joyce Isagba had sole legal authority) were used to purchase a private residence only a single day after they were deposited; Joyce was personally present at the real estate transaction (confirmed by a scanned copy of her driver's license) and signed the purchase agreement approximately 9-10 times. Doc. 237 at 108-113.
> …the fraudulent returns submitted in Joyce's name, and in response to which she received and immediately spent nearly half a million dollars, **formed the blueprint for a decade of fraud to come…**

(Dkt.248 p.4–5. Emphasis added.) All these acts allegedly committed by Mrs. Isagba, as argued by the government in its response to the motion for judgment of acquittal, occurred in 2009—five to seven years before the conduct charged in Counts One, Two, Three, and Seven. (Dkt.237 p.112) The government admitted at sentencing that it

had no evidence, other than the house, that Mrs. Isagba spent any of the proceeds received from the tax returns. (See Dkt.289 p.11–13).

During sentencing, the district court questioned the government as follows:

> COURT: But I want to know what conduct – what actually did Joyce do to effect any of those frauds?
>
> GOVERNMENT: To the extent that we have evidence that she participated in the same extent as the transaction that we were just talking about, there is none.
> …
> I don't have any evidence to suggest that she directly participated, prepared, or submitted those returns or spent the money herself.

(Dkt.289 p.19–20) The government further admitted that it was unable to authenticate that the signature on any of the tax returns or checks written from the bank accounts was that of Mrs. Isagba. (Dkt.289 p.23)

The district court denied the motion for judgment of acquittal. (Dkt.258)

VERDICT

The jury acquitted Mrs. Isagba on Counts Four, Five, and Six. The jury found her guilty as charged on Counts One, Two, Three, and Seven. (Dkt.233)

SENTENCING

At sentencing, the district court determined the Offense Level as 23 with a Criminal History Category I, resulting in an advisory sentencing range of 46-to-57 months imprisonment. (Dkt.311 p.9) Ultimately, the district court sentenced Mrs. Isagba to five years of probation. (Dkt.311 p.42) Further, the court ordered her to pay $1,592,782.11 in restitution to the United States Treasury at a rate of $250 per month. (Dkt.311 p.43)

However, the court only orally pronounced the following conditions of probation:

> Ms. Isagba, while on probation, you should comply with the mandatory and standard conditions adopted by the Court in the Middle District of Florida. In addition, you shall comply with the following special conditions: You shall be prohibited from incurring any new credit charges, obtaining additional lines of credit, or obligating yourself for any major purchases without approval of the probation officer. You shall provide the probation officer access to any requested financial information.

(Dkt.311 p.42) Meanwhile, the written judgment contained thirteen additional "Standard Conditions of Supervision" that were not orally pronounced at sentencing. (Dkt.298 p.2)

Direct Appeal – Eleventh Circuit

In the direct appeal of judgment and sentence, Mrs. Isagba appealed the following issues:

- The admission of evidence of an uncharged prior bad act that occurred 5-7 years before the conduct in question (1) without filing pretrial notice and (2) when the uncharged act was too remote in time and circumstances to be relevant to the crimes charged.
- The district court's failure to orally pronounce all discretionary "standard conditions" of supervised release and failure to make an individualized assessment as to whether those conditions were reasonably related to the sentence factors and involved no greater deprivation of liberty than necessary under the circumstances.

As for the Rule 404(b) evidence, the Eleventh Circuit found that the district court did not err in admitting the evidence as it "was necessary to complete the story of her crimes and was inextricably intertwined with the evidence regarding the charged offenses." App.A p.3.

As for the discretionary "standard conditions" of supervised release, the Eleventh Circuit acknowledged that there was no standing order on the district court's website giving Mrs. Isagba prior notice of the conditions, the court nonetheless held that the "district court did not plainly err by failing to pronounce each of the discretionary, standard conditions of supervised release because the district court expressly incorporated the standard conditions adopted by the Middle District of Florida." App.A p.8.

This petition for a writ of certiorari now follows.

REASONS FOR GRANTING THE WRIT

I. Under Rule 404(b) of the Federal Rules of Evidence, is a single uncharged act occurring 5–7 years prior to the charged conduct in question, without any intervening act, relevant and admissible to prove the crime charged?

Question Presented

The question presented in this petition is whether, under Rule 404(b) of the Federal Rules of Evidence, is a single uncharged act occurring 5–7 years prior to the charged conduct in question, without any intervening act, relevant and admissible to prove the crime charged.

Proceedings Below

Following trial, a jury convicted Appellant, JOYCE ISAGBA, of three counts of mail fraud (18 U.S.C. § 1341) and one count of conspiracy to defraud the Internal Revenue Service (18 U.S.C. § 286). The jury acquitted Mrs. Isagba of three other counts of mail fraud. (Dkt.233)

The Government attempted to prove at trial that Mrs. Isagba conspired with her ex-husband to file false income tax returns for three trusts on three occasions[1]: November 18, 2014 (MOEO Trust II), May 16, 2016 (TETRAGRAMMATON[2]), and October 25, 2016 (YETZIRAH). (Dkt.83 p.5) Mrs. Isagba was not the trustee or fiduciary on any of the three trusts, her name did not appear anywhere on the tax return forms, she was not on any of the bank accounts associated with the three

[1] Count One involved a tax return for year ending 2013 but submitted in November–December 2014. Count Two involved a tax return for the year ending 2013 and submitted in May 2016. Count Three involved a tax return for the year ending 2014 but submitted in October 2016. (Dkt.235 p.2)

[2] The jury found Mrs. Isagba not guilty on the two other counts involving TETRAGRAMMATON in Counts Four and Five.

trusts, and the government was unable to show that she benefited from the funds received in those tax returns. The evidence established that all these trusts, tax return forms, and bank accounts were associated with her ex-husband.

Without filing any pretrial notice of its intent to do so, the government relied upon a single act of uncharged conduct allegedly occurring in 2009 to establish Mrs. Isagba's role in the mail fraud and conspiracy in 2014–2016.

To the extent that Mrs. Isagba's name and signature appeared on the uncharged tax return, checks, and deposit tickets regarding the 2009 return, the government admitted that it was unable to authenticate her signature on those documents. (Dkt.289 p.23)

Indeed, the government admitted that Mrs. Isagba's name or signature did not appear on any document or other piece of evidence connected with Counts One, Two, and Three. (Dkt.248 p.3) Further, the government's own witness, an IRS investigator, admitted that Mrs. Isagba's name did not appear on any piece of evidence after January 28, 2010—almost 5 years before the conduct charged in Count One:

> Q. What we're saying is, as the tax returns, when was the last time her name was identified on any of the documents?
>
> A. The last return that was filed that had her name on it was the 2008 Eneziakpezi returns.
>
> Q. Right.
>
> A. I'd have to refer to –

Q. I think that date you testified to, the last one, was January 22nd of 2010 was when it was received. Am I correct?

A. Correct.

Q. Right.

A. The one with -- the last one with her name was January 28th, 2010.

Q. Okay. January 28th. I'm sorry.

A. 28th, yes.

Q. All right. So there were three returns that this one trust did that had her name on it as trustee?

A. Correct.

(Dkt.238 p.42–43)

By the government's own admission, the only evidence presented to the jury that attempted to tie Mrs. Isagba to the 2014 and 2016 mail fraud charges was a tax return filed five years prior in 2009 with an unauthenticated signature:

> Initially, the United States showed that Joyce Isagba personally benefitted from the fraudulent scheme by introducing a 2008 Form 1041 "U.S. Income Tax Return for Estates and Trusts." Gov't. Ex. 1. This form was for the trust "ENEZIAKPEZI" and listed "Joyce Isagba TTEE" as the fiduciary. *Id.* at 1. The return demanded a total refund of $459,023, which was ultimately issued by the IRS in reliance on the fraudulently submitted return. Gov't Ex. 2. As was shown at trial, the funds received were deposited by Joyce into a SunTrust bank account in the name of the Eneziakpezi trust and with Joyce Isagba as the sole signatory authority. Gov't. Ex. 24 at 3-4. Almost immediately after the funds were deposited into Joyce Isagba's account, they were used to purchase tens of thousands of dollars' worth of merchandise at various retailers, such as JC Penney and Macy's. *Id.*, Doc. 237 at 103-104. The same funds were also used to pay off more than ten thousand dollars worth of credit card debt. Doc. 237 at 104. Finally, the funds (which were deposited into an account for which Joyce Isagba had sole legal authority) were used to purchase a private residence only a single day after they were

> deposited; Joyce was personally present at the real estate transaction (confirmed by a scanned copy of her driver's license) and signed the purchase agreement approximately 9-10 times. Doc. 237 at 108-113.
>
> …the fraudulent returns submitted in Joyce's name, and in response to which she received and immediately spent nearly half a million dollars, **formed the blueprint for a decade of fraud to come…**

(Dkt.248 p.4–5. Emphasis added.) All these acts allegedly committed by Mrs. Isagba, as argued by the government in its response to the motion for judgment of acquittal, occurred in 2009—five to seven years before the conduct charged in Counts One, Two, Three, and Seven. (Dkt.237 p.112)

Opinion Below

On direct appeal, the Eleventh Circuit held that the evidence was admissible:

> Although Isagba was charged and convicted of filing fraudulent tax returns beginning in 2014, evidence of the 2009 fraudulent tax return was not extrinsic under Rule 404(b) because it was necessary to complete the story of her crimes and was inextricably intertwined with the evidence regarding the charged offenses.

Appendix A p.3.

Law

Rule 404(b) prohibits the admission of evidence of a crime or other bad acts to prove a defendant's character, but permits admission of such evidence for other purposes, such as showing intent or pattern. Fed. R. Evid. 404(b).

The Eleventh Circuit previously held that prior bad acts occurring five years prior to the crime charged are inadmissible as too remote in time and circumstance to be "an integral and natural part of an account of the crime, or . . . necessary to

complete the story of the crime for the jury." United States v. Larios-Trujillo, 403 Fed. Appx. 442, 445 (11th Cir. 2010).

Argument

Whether a single uncharged act occurring 5–7 years prior to the charged conduct in question is relevant and admissible under Rule 404(b) is an important question of federal law that has not been, but should be, addressed by this Court.

Mrs. Isagba's substantial rights were affected by this admission of this evidence. The most obvious problem with the 2009 tax return evidence is that it occurred four years and eleven months prior to the charged conduct, rendering it too far remote in time to be relevant to the crimes charged. It should be noted that in the intervening 4 years and 11 months that the government was unable to present any evidence tying Mrs. Isagba to her ex-husband's criminal activities: her name and signature did not appear on any tax returns, she had no access to the bank accounts associated with Counts One, Two, and Three, and the government was unable to prove her connection to the charged conduct in any other way besides the 2009 tax return. Indeed, the government admitted that it was unable to authenticate Mrs. Isagba's signature on any of the documents associated with the 2008 tax return, refund check, or deposit slip. (Dkt.289 p.23)

Simply put, **a pattern of criminal activity is not created by doing an action once.** See Dkt.289 p.38. And the prior bad acts occurring five years prior to the crime charged was too remote in time and circumstance to be an integral and natural part of an account of the crime, or necessary to complete the story of the crime for the jury.

Allowing the government to present evidence of an uncharged, unauthenticated prior act from five years prior severely casts doubt on the fairness, integrity, and public reputation of Mrs. Isagba's jury trial proceedings.

Whether a prior uncharged act that occurred 5-7 years before the conduct in question – with no intervening bad act – is relevant and admissible under Rule 404(b) is an important question of federal law which has not been, and should be, settled by this Court. Mrs. Isagaba asks this Court to grant a writ of certiorari and decide this important question of federal law.

II. **Under the Fifth Amendment, is a district court required to orally pronounce at sentencing all discretionary "standard conditions" of supervised release and to make an individualized assessment as to whether those conditions are reasonably related to the sentencing factors and involve no greater deprivation of liberty than is reasonably necessary under the circumstances?**

At sentencing, the district court determined the Offense Level at 23 with a Criminal History Category I, resulting in an advisory sentencing range of 46-to-57-months imprisonment. (Dkt.311 p.9) Ultimately, the district court sentenced Mrs. Isagba to five years of probation. (Dkt.311 p.42) Further, the court ordered her to pay $1,592,782.11 in restitution to the United States Treasury at a rate of $250 per month. (Dkt.311 p.43)

However, the court only orally pronounced the following conditions of probation:

> Ms. Isagba, while on probation, you should comply with the mandatory and standard conditions adopted by the Court in the Middle District of Florida. In addition, you shall comply with the following special conditions: You shall be prohibited from incurring any new credit charges, obtaining additional lines of credit, or obligating yourself for any major purchases without approval of the probation officer. You shall provide the probation officer access to any requested financial information.

(Dkt.311 p.42) Meanwhile, the written judgment contained thirteen additional "Standard Conditions of Supervision" which were not orally pronounced at sentencing. (Dkt.298 p.2)

Direct Appeal – Opinion Below

On direct appeal, Mrs. Isagaba argued that the district court deprived her of Due Process of law under the Fifth Amendment when it failed to orally pronounce all

of the discretionary "standard conditions" of probation and by failing to make an individualized assessment as to whether those conditions were reasonably related to the sentencing factors and involved no greater deprivation of liberty than is reasonably necessary under the circumstances. She pointed out that there was no standing order on the district court's website and the conditions were not outlined in the PSR. In other words, there was no other source that put Mrs. Isagba on notice of the "standard conditions" that she would be subject to while serving probation.

The Eleventh Circuit disagreed. Although admitting that there was no standing order on the district court's website regarding these "standard conditions" which would have given Mrs. Isagaba notice about them, the Eleventh Circuit wrote:

> The district court did not plainly err by failing to pronounce each of the discretionary, standard conditions of supervised release because the district court expressly incorporated the standard conditions adopted by the Middle District of Florida.

Appendix A p.8.

Law

Defendants are entitled to "be present when sentence is announced by the court." Henley v. Heritage, 337 F.2d 847, 848 (5th Cir. 1964). The sentence is then reduced to a written judgment. See id. It follows that "[w]hen a sentence pronounced orally and unambiguously conflicts with the written order of judgment, the oral pronouncement governs." United States v. Bates, 213 F.3d 1336, 1340 (11th Cir. 2000). Where an orally pronounced sentence and the written judgment conflict, the case must be remanded with instructions for the district court to amend the judgment

to conform to the earlier pronouncement in the defendant's presence. United States v. Chavez, 204 F.3d 1305, 1316 (11th Cir. 2000).

With the exception of the statutorily mandated conditions of supervised release listed in 18 U.S.C. § 3583(g), the district court has wide discretion in imposing conditions of supervised release. Indeed, Section 3583(d) permits the district court to impose "further conditions of supervised release to the extent that such condition" is (1) reasonably related to the Section 3553(a) factors, (2) involves no greater deprivation of liberty than is reasonably necessary, and (3) is consistent with any pertinent policy statement issued by the Sentencing Commission.

Among the discretionary sentencing options that a district court has is the imposition of thirteen "standard" conditions of supervised release listed in the Sentencing Guidelines as a "Policy Statement." See U.S.S.G. § 5D1.3(c).

The Fourth, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits have held that these discretionary "standard conditions" of supervised release must be pronounced at sentencing. See United States v. Montoya, 82 F.4th 640 (9th Cir. September 13, 2023) (holding that a district court is required to orally pronounce all discretionary conditions of supervised release, including those referred to as standard in Section 5D1.2(c)), in order to protect a defendant's due process right to be present at sentencing); United States v. Geddes, 71 F.4th 1206, 1215 (10th Cir. June 23, 2023); United States v. Diggles, 957 F.3d 551, 558–559 (5th Cir.) (en banc) (pronouncement is part of defendant's Fifth Amendment due process right to be present at sentencing based on the right to mount a defense, thus pronouncement is required for

discretionary conditions), cert. denied, 141 S. Ct. 825 (2020); United States v. Rogers, 961 F.3d 291, 296–297 (4th Cir. 2020) ("When it comes to mandatory conditions . . . the circuit courts and the parties are in agreement: A district court need not orally pronounce mandatory conditions at sentencing . . . Discretionary conditions are different"); United States v. Anstice, 930 F.3d 907, 909 (7th Cir. 2019); United States v. Matthews, 54 F.4th 1 (D.C. Cir. 2022) (a defendant's Fifth Amendment Due Process rights requires a district court to orally pronounce all conditions of supervised release that are not statutorily classified as mandatory).

This obligation flows from "a defendant's right to be present at sentencing," as guaranteed by Rule 43 and the Fifth Amendment. Diggles, 957 F.3d at 560; see also Rogers, 961 F.3d at 296 ("This conclusion flows naturally from a fundamental precept. A defendant has the right to be present when he is sentenced.") (citing Fed. R. Crim. P. 43(a)(3)).

Pronouncement of discretionary "standard conditions" is required because "[i]ncluding a sentence in the written judgment that the judge never mentioned when the defendant was in the courtroom is tantamount to sentencing the defendant *in absentia*." Diggles, 957 F.3d at 557 (internal citation and quotation marks omitted). Discretionary conditions of supervised release, such as the "standard conditions" listed in the Guidelines may only be imposed "after an individualized assessment indicates that they are justified in light of the statutory factors." Rogers, 961 F.3d at 297. Accordingly, pronouncement of the conditions ensures that the defendant has an opportunity to speak as to the conditions and that they are appropriately imposed.

See id. ("We therefore cannot assume that any set of discretionary conditions—even those categorized as 'standard' by the Guidelines—will be applied to every defendant placed on supervised release, regardless of conduct or circumstances.").

Recently, the D.C. Circuit addressed the need to orally pronounce the thirteen "standard" conditions of supervised release listed in the Sentencing Guidelines as a "Policy Statement" in Section 5D1.3(c):

> For one thing, no matter how commonsensical the standard conditions may seem, the governing statute classifies them as discretionary, as does the policy statement itself. See 18 U.S.C. § 3583(d); U.S.S.G. § 5D1.3(c). And courts may impose discretionary conditions only after making an individualized assessment of whether they are 'reasonably related' to normal sentencing factors, 18 U.S.C. § 3583(d)(1), and whether they involve 'no greater deprivation of liberty than is reasonably necessary' under the circumstances, id. § 3583(d)(2). Moreover, even the most pedestrian of the conditions contains a level of detail that cannot plausibly be characterized as implicit in supervised release itself—for example, the requirement to report to the probation office within 72 hours of release rather than, say, within 48 hours or 96 hours. U.S.S.G. § 5D1.3(c)(1). And some of the standard conditions are quite intrusive—for example, the requirements to live somewhere approved by the probation officer, id. § 5D1.3(c)(5), and to work full time unless excused by the probation officer, id. § 5D1.3(c)(7). For these reasons, the standard conditions cannot be treated as legally or practically compelled by the imposition of any term of supervised release. Instead, as three other circuits have held, the district court must consider whether they are warranted in the circumstances of each case, must allow the defendant an opportunity to contest them, and must orally pronounce them at sentencing.

Matthews, 54 F.4th at 5.

Argument

Whether a district court is required to orally pronounce all discretionary "standard conditions" of supervised release is an important issue under the Fifth Amendment which this Court has not previously addressed.

The district court's failure to orally pronounce these conditions of supervised release deprived Mrs. Isagba of her Fifth Amendment right to Due Process of Law: an opportunity to object to and contest those conditions, to mount a defense, and to make any argument as to whether the conditions were related to or necessary to achieve the sentencing objectives. See Rogers, 961 F.3d at 297. To sentence Mrs. Isagba without announcing these discretionary "standard conditions" was tantamount to sentencing her *in abstentia*. See Diggles, 957 F.3d at 557; Fed. R. Crim. P. 43; U.S. Const. amend. V.

The district court also erred by failing to make an individualized assessment as to whether those conditions were reasonably related to the sentencing factors and involved no greater deprivation of liberty than is reasonably necessary under the circumstances. See U.S. Const. amend V.; Fed. R. Crim. P. 43; 18 U.S.C. § 3583(d)(1)-(2).

By failing to make an individualized assessment, the district court failed to consider whether such intrusive conditions such as requiring Mrs. Isagba to live at a place approved by his probation officer and requiring her to work, amongst other conditions, were "reasonably related" to normal sentencing factors and whether they involve "no greater deprivation of liberty than is reasonably necessary" under the circumstances. See 18 U.S.C. § 3583(d)(1)-(2); Matthews, 54 F.4th at 5. The district court could not assume that any set of discretionary "standard conditions"—even those categorized as "standard" by the Guidelines in a "Policy Statement"—should be

applied to Mrs. Isagba and every defendant placed on supervised release, regardless of conduct or circumstances. See Rogers, 961 F.3d at 297.

By failing to orally pronounce these discretionary conditions[3], the district court procedurally erred and deprived Mrs. Isagba of Due Process of law: an opportunity to object to and contest those conditions, to mount a defense, and to make any argument as to whether the conditions were related to or necessary to achieve the sentencing objectives. See Matthews, 54 F.4th at 5; Diggles, 957 F.3d at 558–559; Rogers, 961 F.3d 291, 296–297; Montoya, 82 F.4th 640; Anstice, 930 F.3d at 910.

For these reasons, Mrs. Isagaba asks this Court to determine whether the Fifth Amendment requires a district court to orally pronounce all "standard conditions" of probation and make an individualized assessment as to whether those conditions are reasonably related to achieving sentencing objectives. Accordingly, Mrs. Isagba asks this Court to grant a writ of certiorari and address this important issue of federal sentencing under the Fifth Amendment.

[3] It is of note that there is no available standing order on the district court's website and the conditions were not outlined in the PSR. In other words, there was no other source that put Mrs. Isagba on notice of the "standard conditions" that she would be subject to while serving probation.

CONCLUSION

Petitioner requests that this Court grant a writ of certiorari and award her any and all further relief to which she is entitled.

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