

No._____

IN THE SUPREME COURT OF THE UNITED STATES

**CURTIS BROWN,
Petitioner / Appellant,**

v.

**UNITED STATES OF AMERICA,
Respondent / Appellees.**

On Petition for a Writ of Certiorari to the
Eleventh Circuit Court of Appeals
23-12339
(D.C. 3:22-cr-46)

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. 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 Curtis Brown. There are no parties to the proceedings other than those named in the petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, CURTIS BROWN, respectfully petitions this Court for a writ of certiorari to review the *Opinion* rendered by the Eleventh Circuit Court of Appeals on December 4, 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 not to be deprived of liberty without due process of law.

JURISDICTION

The *Opinion* of the Eleventh Circuit Court of Appeal was rendered on December 4, 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) (2025).

STATEMENT OF THE CASE

This petition arises from the *Opinion* of the Eleventh Circuit Court of Appeals, which held that a district court need not orally pronounce all discretionary conditions of supervised release and that a district court is not required to make an individualized assessment as to whether the discretionary “Standard Conditions” of supervision are necessary to achieve the sentencing objectives specific to the defendant before the court.

Petitioner, CURTIS BROWN, pled guilty to one count of threatening to murder a United States judge and one count of mailing threatening communications to a United States judge (18 U.S.C. § 115 and 18 U.S.C. § 876(c)). (*Opinion* p.1)

At sentencing, the district court sentenced Mr. Brown to 15-months imprisonment on each count to run concurrently, followed by three years of supervised release. (Dkt.74 p.20)

Additionally, the district court did not orally pronounce any of the thirteen discretionary “Standard Conditions of Supervised Release”. (Dkt.65 p.4) These conditions contained such detailed requirements about when Mr. Brown must report to his probation officer upon release, where he can live upon release, how he must work, with whom he may communicate, under what circumstances he can or cannot cooperate with law enforcement, etc. (Dkt.65 p.4)

On direct appeal, Mr. Brown argued that the district court procedurally erred and deprived Mr. Brown of his Fifth Amendment right to Due Process of Law by failing to orally pronounce all discretionary conditions of supervised release. He argued that 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.

The Eleventh Circuit disagreed, holding that no error occurred, as the district court complied with the oral pronouncement requirement when it referenced “the mandatory and standard conditions adopted by the court in the Middle District of Florida.” See Opinion p.8.

As for conducting an individualized assessment, the Eleventh Circuit held, “we have never held that the district court must articulate how each individual condition of supervised release is related to the § 3553(a) sentencing factors.” See Opinion p.10. But in a footnote, the Eleventh Circuit acknowledges its position conflicts with that of the Fourth Circuit in United States v. Rogers, 961 F.3d 291, 298 (4th Cir. 2020).

This petition for a writ of certiorari now follows.

REASONS FOR GRANTING THE WRIT

- I. 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?

In short, this issue represents a well-developed circuit split where the Fourth, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits¹ have all held that district courts must both orally pronounce all discretionary conditions of supervised release while also making individualized assessments 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.

The Sixth and Eleventh Circuits² have held the opposite.

This petition arises from the *Opinion* of the Eleventh Circuit Court of Appeals which held that a district court need not orally pronounce all discretionary conditions of supervised release and that a district court is not required to make an individualized assessment as to whether the “Standard Conditions” of supervision are necessary to achieve the sentencing objectives specific to the defendant before the court.

¹ United States v. Rogers, 961 F.3d 291, 296-297 (4th 2020); United States v. Diggles, 957 F.3d 551, 558-559 (5th Cir. 2020); United States v. Anstice, 930 F.3d 907, 910 (7th Cir. 2019); United States v. Matthews, 54 F.4th 1,6 (D.C. Cir. 2022); United States v. Geddes, 71 F.4th 1206, 1215 (10th Cir. 2023); United States v. Montoya, 82 F.4th 640 (9th Cir. 2023).

² United States v. Hayden, 119 F.4th 832 (6th Cir. 2024); United States v. Curtis Brown, *Opinion* Appendix A.

Thus, this well-developed circuit split on an important issue of constitutional law is ripe for resolution by this Court.

Facts

Petitioner, CURTIS BROWN, pled guilty to one count of threatening to murder a United States judge and one count of mailing threatening communications to a United States judge (18 U.S.C. § 115 and 18 U.S.C. § 876(c)). (*Opinion* p.1)

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On direct appeal, Mr. Brown argued that the district court procedurally erred and deprived Mr. Brown of his Fifth Amendment right to Due Process of Law by failing to orally pronounce all discretionary conditions of supervised release. He argued that 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.

The Eleventh Circuit disagreed, holding that no error occurred, as the district court complied with the oral pronouncement requirement when it referenced “the mandatory and standard conditions adopted by the court in the Middle District of Florida.” See Opinion p.8.

As for conducting an individualized assessment, the Eleventh Circuit held, “we have never held that the district court must articulate how each individual condition of supervised release is related to the § 3553(a) sentencing factors.” See Opinion p.10. But in a footnote, the Eleventh Circuit acknowledges its position conflicts with that of the Fourth Circuit in United States v. Rogers, 961 F.3d 291, 298 (4th Cir. 2020).

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. 2023) (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. 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 Mr. Brown of his 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 Mr. Brown without announcing these discretionary “standard conditions” was tantamount to

sentencing him *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 Mr. Brown to live at a place approved by his probation officer and requiring him 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 Mr. Brown 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, the district court procedurally erred and deprived Mr. Brown 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, Mr. Brown asks this Court to determine whether the Fifth Amendment requires a district court to orally pronounce all *discretionary* “standard conditions” of probation and make an individualized assessment as to whether those conditions are reasonably related to achieving sentencing objectives. Accordingly, Mr. Brown asks this Court to grant a writ of certiorari and address this important issue of federal sentencing law under the Fifth Amendment.

CONCLUSION

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

A handwritten signature in blue ink that reads "Valarie Linnen".

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