No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ERIC VAUGHN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari *to the United States Court of Appeals for the Sixth Circuit*

(CA6 No. 24-5090)

Petition for *Writ of Certiorari*

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QUESTION PRESENTED

This Petition asks this Court to resolve a split among the federal circuit courts on a question of federal criminal sentencing procedure.

If a criminal defendant receives a term of supervised release, the district court will specify the conditions that the defendant must follow. *See* 18 U.S.C. § 3583. As part of supervised release, a defendant must receive "a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance." 18 U.S.C. § 3583(d). A plurality of the Circuits hold that statute requires that the district court judge determine the number and/or frequency of any drug tests that the defendant will face while on supervised release, regardless of whether the testing is imposed as a special condition or mandatory condition of supervised release. The Sixth Circuit below, however, believed that the district court could delegate the issue to the probation officer when testing is ordered as a special condition of supervised release.

To resolve the split, this Petition asks the Court to decide the following question:

1. Did the district court below err in imposing as a special condition of supervised release a requirement that "[t]he defendant… participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer."

LIST OF PARTIES

All parties appear in the caption of this Petition's cover page.

PRIOR PROCEEDINGS

U.S. District Court for the Eastern District of Tennessee

United States v. Vaughn, No. 1:22-cr-00133-TRM-SKL (E.D. Tenn.). Judgment was entered on January 29, 2024.

U.S. Court of Appeals for the Sixth Circuit:

United States v. Vaughn, No. 24-5090 (6th Cir). Judgment was entered on October 29, 2024, and was reported at 119 F4th 1084. Rehearing was denied on December 12, 2024.

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APPENDIX CONTENTS

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Statutes

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Eric Vaughn respectfully petitions for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS AND ORDERS BELOW

The Sixth Circuit Court of Appeals selected its opinion for publication. It can be found as *United States v. Vaughn*, 119 F.4th 1084 (6th Cir. 2024). A copy is included in Appendix A.

The order denying rehearing was not published and is included in Appendix B.

The district court did not issue a written opinion. Relevant portions of the sentencing transcript are included in Appendix C.

JURISDICTION

The district court had jurisdiction over the underlying criminal action pursuant to 18 U.S.C. § 3231. It entered final judgment on January 30, 2024.

The U.S. Court of Appeals for the Sixth Circuit had jurisdiction to consider the district court's final judgment. 28 U.S.C. §§ 1291, 1294.

This Court has jurisdiction to review the Sixth Circuit's judgment. 28 U.S.C. § 1254(1). Judgment was entered on October 29, 2024, and rehearing was denied on December 12, 2024.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3583:

> **(a) In general.** The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that

the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) Authorized terms of supervised release. Except as otherwise provided, the authorized terms of supervised release are—

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release. The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

(d) Conditions of supervised release. The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to

section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

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

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United

States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(e) Modification of conditions or revocation. The court may, after considering the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

> **(f) Written statement of conditions.** The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

> **(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.** If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing imposed as a condition of supervised release; or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

> the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

> **(h) Supervised release following revocation.** When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed revocation. The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) Supervised release terms for terrorism predicates. Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B) is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 1594(c), 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

*****

STATEMENT OF THE CASE

I. Proceedings in the District Court

Mr. Vaughn pled guilty to being a felon in possession of a firearm. He was sentenced to a term of 53 months of imprisonment, the required special assessment, and three years of supervised release.

Over a delegation objection as to the failure to specify the frequency of drug testing, the district court imposed the following special condition of supervised release:

> 1) The defendant shall participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

II. Proceedings in the Sixth Circuit

On appeal, Mr. Vaughn challenged the drug-testing special condition on improper delegation grounds. Via a published opinion, the Sixth Circuit determined that district courts need not set a maximum or frequency for drug testing imposed as part of a special condition of supervised release.

REASONS FOR GRANTING THE PETITION

After a term of imprisonment, federal defendants can face a period of supervised release. *See* 18 U.S.C. § 3583.

Certain conditions of supervised release are mandatory. One such condition is the following: "[T]he defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least

2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance." 18 U.S.C. § 3583(d).

Beyond the mandatory conditions, a district court is empowered to impose other special conditions of supervised release that the district court "considers to be appropriate." *Id.*

The Circuits are divided on the issue of whether and, if so, when, the district courts can delegate decisions about the frequency of drug testing to the U.S. Probation Office. This Court should take up the important issue presented here. This Petition presents a good vehicle to decide this issue.

I. The Circuits Are Divided.

A. In the Sixth Circuit, a District Court Can Delegate Drug Testing Done Under a Special Condition of Supervised Release.

Even though, by statute, periodic drug testing on supervised release must be "as determined by the court," 18 U.S.C. § 3583(d), the Sixth Circuit held below that that requirement is limited to conditions of mandatory supervised release, not special ones: "Special Condition 1's 'as directed by the probation officer' language does not violate § 3583(d)(2)'s 'as determined by the court' language because it is a special condition." *Vaughn*, 119 F.4th at 1089.

B. A Plurality of Circuits Hold that Probation Officers Cannot Have Unlimited Discretion to Order Drug Testing, even if Done Via a Special Condition of Supervised Release.

Other Circuits have not drawn the mandatory-versus-special-condition distinction that the Sixth Circuit has.

For example in *United States v. Padilla*, 415 F.3d 211 (1st Cir. 2005) (*en banc*) the First Circuit had before it the following special condition of supervised release quite similar to the one that Sixth Circuit below approved:

> 6. THE DEFENDANT SHALL PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM, INCLUDING TESTING, AS DIRECTED BY THE U.S. PROBATION OFFICER, AND THE DEFENDANT SHALL SUBMIT TO DRUG TESTING AS DIRECTED BY THE U.S. PROBATION OFFICER. THE DEFENDANT SHALL CONTRIBUTE TO THE COSTS OF SUCH TREATMENT BASED ON ABILITY TO PAY OR AVAILABILITY OF THIRD PARTY PAYMENT.

United States v. Padilla, No. 1:02-cr-10266 [RE 73-2] (D. Mass. June 10, 2003), *available at: https://ecf.mad.uscourts.gov/doc1/0951533328*. The First Circuit, *en banc*, reaffirmed its prior caselaw that such a condition was an unlawful delegation: "The error is not that the district court left the probation officer room to determine the number of drug tests; rather, it is that the court failed to limit the delegated discretion by capping that number." *Padilla*, 415 F.3d at 220.[1]

[1] The First Circuit *en banc* did, however, retreat from its prior caselaw that had held that a failure to raise the objection below would always be corrected on plain-error review. Instead, the Circuit decided to no longer exercise its discretion to reach such forfeited errors in the future. *See id.* at 221.

As the First Circuit explained elsewhere, the "as determined by the court" language in 18 U.S.C. § 3583(d) was added via the Violent Crime Control and Law Enforcement Act of 1994, 108 Stat. 1796, Pub. L. 103-322 (Sep. 13, 1994) to deliberately modify prior law that had given probation officers the ability to require drug testing. *United States v. Melendez-Santana*, 353 F.3d 93, 104-05 (1st Cir. 2003) (citations omitted), *overruled by Padilla*, 415 F.3d 211. That foundational case in the First Circuit also involved "a special drug treatment condition." *Id.* at 99.

The Seventh Circuit has also found error in a special condition of supervised release like the one affirmed below. In *United States v. Tejeda*, 476 F.3d 471, 473 (7th Cir. 2007), the Seventh Circuit reviewed a special condition of supervised release requiring the defendant "to 'participate in a program of testing and residential or outpatient treatment for drug and alcohol abuse, as approved by the supervising probation officer….' No limit was placed on the number of drug tests which the probation office could require." *Id.* at 473 (quoting special condition). The Seventh Circuit found that the condition "grants too much discretion to the probation agent." *Id.* at 473-74. To avoid error, the district court needed to set some sort of cap on the number of tests that the probation officer could independently order, a limit that could be reviewed on appeal for reasonableness. *See, e.g.*, *United States v. Feterick*, 872 F.3d 822, 823 (7th Cir. 2017) (affirming imposition of 104 mandatory annual drug tests but vacating special condition authorizing 104 discretionary drug tests annually as part of a drug treatment program).

Likewise, the Ninth Circuit held improper a "special condition[]" of supervised release similar to the one at issue below. *United States v. Stephens*, 424 F.3d 876, 879 (9th Cir. 2005). Specifically, the unlawful special condition there required the defendant to "'participate in a drug and alcohol abuse treatment and counseling program, including urinalysis testing, as directed by the Probation Officer.'" *Id.* at 882 (quoting special condition). Given 18 U.S.C. § 3583(d)'s plain text, "[w]hile allowing the probation officer to determine the timing of tests is a permissible administrative task, it is for the court to determine how many times a defendant may be placed in jeopardy of being tested." *Id.* at 883. That holding was, however, limited to drug testing done at the hands of the probation officer rather than a treatment provider. *See id.* at 882. *See also United States v. Maciel-Vasquez*, 458 F.3d 994, 996 (9th Cir. 2006) (explaining that it is error "to give the probation officer authority to require testing apart from any treatment program" without specifying any limits on the number of tests).

The Tenth Circuit found error in a "special condition" of supervised release that allowed the probation officer to determine the number of drug tests as violating § 3583(d)'s "clear statutory language." *United States v. Miller*, 978 F.3d 746, 756, 764 (10th Cir. 2020), at least with respect to any non-treatment testing.

In short, at least four Circuits reject the Sixth Circuit's position that a district court can allow unbridled discretion to the probation officer to order drug testing, when done via a condition of supervised release.

II. The Question Presented Merits this Court's Review.

The Question Presented is an important one. Drug testing imposes a substantial burden on criminal defendants. Like other offices, *see, e.g.*, https://www.nhp.uscourts.gov/sites/nhp/files/Code-A-Phone-Program-Instructions.pdf (last accessed March 6, 2025), the Probation Office in the Eastern District of Tennessee, uses a code-a-phone system for drug testing. https://www.tnep.uscourts.gov/content/drug-testing (last accessed March 6, 2025). Under it, defendants must call a telephone number daily during their supervision, Sundays through Thursdays, after 5 p.m., and find out whether they must report the "next day" for drug testing, during normal business hours. https://www.tnep.uscourts.gov/content/drug-testing (last accessed March 6, 2025). If the defendant is scheduled to work, the defendant will have to call out on short notice, jeopardizing the defendant's employment. Further, particularly for defendants who live outside of urban cores in the district, public transportation to the testing centers may be limited or nonexistent, meaning the testing regime is a sentence for the defendant's friends and family, too, who may have to help transport the defendant to a testing center on short notice.

Even assuming that that defendants can submit to every test that the probation officer requires, significant liberty issues remain at stake. Congress has *ex ante* cabined district courts' discretion about how to address failed drug tests. While district courts can excuse noncompliance with many conditions of supervised release, they have no such discretion for failed drug tests. District courts *must* revoke supervised

release upon a violation of certain conditions, including "[i]f the defendant… as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year…." 18 U.S.C. § 3583(g)(4).

III. This Petition Is a Good Vehicle.

No vehicle problems exist here. As framed by the Sixth Circuit, the issue is a pure question of law, which was preserved for appeal. The Sixth Circuit held that Mr. Vaughn's appeal below simply "fail[ed] because he [mistook] special conditions for mandatory ones." *Vaughn*, 119 F.4th at 1088.

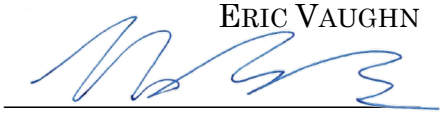
CONCLUSION

For the forgoing reasons, Mr. Vaughn requests that the Court grant the Petition and reverse the judgment below.

Dated: March 10, 2025

Respectfully submitted,

ERIC VAUGHN



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Appendix to
Petition for *Writ of Certiorari*

APPENDIX CONTENTS

APPENDIX A:

SIXTH CIRCUIT OPINION, *UNITED STATES V. VAUGHN*, NO. 24-5090 (6TH CIR. OCT. 29, 2024).

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 24a0245p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ERIC VAUGHN,

Defendant-Appellant.

No. 24-5090

Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.
No. 1:22-cr-00133-1—Travis Randall McDonough, District Judge.

Decided and Filed: October 29, 2024

Before: GRIFFIN, KETHLEDGE, and BUSH, Circuit Judges.

COUNSEL

ON BRIEF: Howard W. Anderson, III, TRULUCK THOMASON LLC, Greenville, South Carolina, for Appellant. Brian Samuelson, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee.

OPINION

JOHN K. BUSH, Circuit Judge. In this appeal, Eric Vaughn contests special conditions of his supervised release. He argues that the sentencing court improperly delegated its judicial function to the probation office by not providing enough condition specifics. We disagree and **AFFIRM** the district court's judgment.

I.

Police pulled Mr. Vaughn over for speeding. Vaughn exited his car and ran from the officers. Vaughn, who was a convicted felon, also scrapped a pistol mid-flight. The officers captured him and retrieved his gun. A grand jury indicted Vaughn for unlawful possession of a firearm as a felon. 18 U.S.C. § 922(g)(1). He pleaded guilty. The district court sentenced Vaughn to 53 months' imprisonment with a special assessment and three years of supervised release. The court also imposed multiple mandatory and special conditions of supervised release.

Vaughn's appeal centers around Special Conditions 1 and 2 of his supervised release. He argues the first special condition improperly delegates power from the district court by giving the probation officer the power to determine drug-testing frequency and whether he must receive alcohol treatment. Vaughn also contends that by giving the probation officer leeway to decide whether his mental-health treatment is inpatient or outpatient, Special Condition 2 improperly delegates judicial power. Vaughn is not the first to lodge such arguments in this court.

At sentencing, Vaughn objected to part of Special Condition 1, asking the court to "wordsmith[]" the condition by providing "some sort of schedule rather than leaving it up to Probation." Sentencing Tr., R. 50, PageID 298, 308. The district court overruled the objection but responded that if "Mr. Vaughn thinks he's being tested too often," the court "would be happy to consider giving the probation office some guidance on that when it comes up." *Id.* at 308. Vaughn did not object to Special Condition 2.

II.

Generally, when a defendant challenges the sentencing court's legal authority to impose a supervised-release condition on constitutional or statutory grounds, we review de novo. *See United States v. Carpenter*, 702 F.3d 882, 884 (6th Cir. 2012). But if a defendant does not object to such a condition in the district court, we review for plain error. *See* Fed. R. Crim. P. 52(b); *United States v. Campbell*, 77 F.4th 424, 432 (6th Cir. 2023). To satisfy the plain-error standard, Vaughn would need to show an (1) error (2) that was clear or obvious, (3) that affected his

"substantial rights," and (4) that affected the judicial proceeding's fairness, integrity, or public reputation. *Campbell*, 77 F.4th at 432.

III.

Federal law affords probation officers extensive authority to "use all suitable methods, not inconsistent with the conditions specified by the court," to help defendants like Vaughn improve their "conduct and condition." 18 U.S.C. § 3603(3); *see also Campbell*, 77 F.4th at 432. Although Article III precludes courts from delegating their "core judicial function" of "imposing punishment" upon convicted defendants, *Campbell*, 77 F.4th at 432, "the district court itself" need not "specify the details" of the punishment. *Carpenter*, 702 F.3d at 885–86; *see United States v. Logins*, 503 F. App'x 345, 350 (6th Cir. 2012). Instead, courts may leave implementation specifics to probation. For "substance abuse treatment and testing," the "district court need only decide whether treatment is required." *Carpenter*, 702 F.3d at 886. And treatment includes testing. *Id*.

A. Special Condition 1

1. Drug-Test Capping

Vaughn complains that Special Condition 1 does not cap his number of drug tests. That condition provides that Vaughn "shall participate in a program of testing and/or treatment for drug and/or alcohol abuse as directed by the probation officer until such time as the defendant is released from the program by the probation officer." Sentencing Tr., R.50, PageID 310. It touches upon Mandatory Condition 3, a condition that derives from 18 U.S.C. § 3583(d) and U.S.S.G. § 5D1.3(d)(4). Judgment, R. 47, PageID 266. That condition requires Vaughn to complete a drug test "within 15 days of [his] release from imprisonment and at least two periodic drug tests, thereafter, as determined by the court." *Id.*; *see also* § 3583(d). Vaughn objects to the court's failure to specify drug-testing frequency. To Vaughn, the district court's failure to cap tests or create a schedule contradicts Article III and Congress's statutory command. *See* § 3583(d). Because Vaughn raised the issue at sentencing, we review the district court's decision de novo.

The capping analysis boils down to Vaughn contesting a special condition. Congress distinguishes "between drug testing conducted as a mandatory condition of supervised release and drug testing performed in the course of a special condition of drug treatment." *Carpenter*, 702 F.3d at 886. When issuing mandatory conditions, district courts *must* impose non-treatment drug testing on the defendant as part of supervised release. § 3583(d). But when issuing special conditions, district courts *may* require drug testing as part of a substance-abuse program. *See Carpenter*, 702 F.3d at 886. They need not though. Because district courts have this discretion, testing caps apply only to mandatory conditions—not special conditions. *See id.*; *Logins*, 503 F. App'x at 353. When district courts decide to impose drug testing through a special condition, they fulfill their statutory and Article III duties so long as the court "decide[s] whether treatment is required." *Carpenter*, 702 F.3d at 886; *United States v. Lindsay*, No. 24-5089, 2024 WL 4225715, at *2 (6th Cir. Sept. 18, 2024). They can leave program implementation to probation officers.

Courts satisfy the special-condition requirement by employing the triggering "shall participate" language within the condition, requiring defendants to participate in substance-abuse testing and treatment. *Carpenter*, 702 F.3d at 885. Both *Carpenter* and *Logins* addressed special conditions without drug test caps that used language almost identical to Vaughn's condition." *Id.* at 884; *Logins*, 503 F. App'x at 353. Not only did we determine that § 3583(d)'s requirement that "drug treatment be specified 'by the court,' does not require the district court itself to specify the details," *Carpenter*, 702 F.3d at 885 (emphasis omitted), but we also ultimately held that not specifying the number of drug tests as "part of [a] drug treatment" meant the court "did not impermissibly delegate its authority to the probation office," *id.* at 886.

Vaughn's argument fails because he mistakes special conditions for mandatory ones. His own brief recognizes this mandatory-special distinction yet does not apply it properly. Opening Br. at 8–9 ("Only for the former [mandatory] case must the district court specify the maximum number of drug tests."). The cases he cites from other circuits involve impositions of mandatory drug-testing conditions, not special ones. *Id.*; *see Lindsay*, 2024 WL 4225715, at *2. Vaughn may not apply the rule for mandatory conditions to a special condition when there is no statutory default. In other words, Special Condition 1's "as directed by the probation officer" language

does not violate § 3583(d)(2)'s "as determined by the court" language because it is a special condition. Vaughn does not argue a defect with Mandatory 3. Nor can he. The district court satisfied its Article III duties by using the "shall participate" language. It merely left delegable implementation decisions to the probation officer. That is fine.

And let us not forget that Vaughn's sentencing court created a safeguard. If Vaughn considers probation's drug-testing schedule too burdensome, the district court "would be happy to consider giving the probation office some guidance on that when it comes up." Sentencing Tr., R. 50, PageID 308; *cf. United States v. Zobel*, 696 F.3d 558, 575 (6th Cir. 2012). This statement is further evidence that the district court possesses ultimate authority over Vaughn's drug testing.

2. Alcohol Treatment

Vaughn also argues that Special Condition 1 improperly delegates the court's alcohol-abuse-treatment decision to the probation officer. Again, the special condition requires that Vaughn "shall participate in a program of testing and/or treatment for drug and/or alcohol abuse." Judgment, R. 47, PageID 268. Vaughn takes issue with the "and/or" language. He says that language lets the probation officer "decide in the first instance whether treatment—for drugs, for alcohol, or for both—will be required." Opening Br. at 11; Reply Br. at 2. Because Vaughn did not raise this issue at sentencing, the district court was not on notice for any argued deficiencies relating to Special Condition 1. *Campbell*, 77 F.4th at 432; *see also Lindsay*, 2024 WL 4225715, at *3. Because a party "must object with [a] reasonable degree of specificity," the claim is unpreserved, and we review it for plain error. *United States v. Corp*, 668 F.3d 379, 387–88 (6th Cir. 2012). Vaughn must show that the district court made a clear error that affected his substantial rights and the fairness, integrity, or public reputation of the proceedings below. *Campbell*, 77 F.4th at 432.

Vaughn does not show the district court plainly erred. This circuit is no stranger to affirming special conditions that require defendants to participate in substance-abuse treatment programs. *See, e.g.*, *Carpenter*, 702 F.3d at 884. We have even held, albeit in an unpublished opinion, that a special condition identical to Vaughn's—"and/or" and all—was not an illegal

delegation of an alcohol-treatment decision. *Lindsay*, 2024 WL 4225715, at *1. Again, the district court need only order that Vaughn "shall participate" in a substance-abuse program, clearly deciding "whether such treatment is required." *Carpenter*, 702 F.3d at 885. It can leave details "to the discernment of the probation officer" and the "expertise" of "professionals." *Id.* Vaughn's argument fails because "drug and/or alcohol abuse" is synonymous with "substance abuse." *See Lindsay*, 2024 WL 4225715, at *2. Our precedent clearly shows that a court does not delegate its Article III judicial power when it requires defendants, through the "shall participate" language, to participate in some form of substance-abuse program. *Carpenter*, 702 F.3d at 885. The district court expressed that Vaughn "shall participate" in some form of a substance-abuse program. And Vaughn does not cite authority to support his treatment-specification claim nor show how a "generic substance-abuse program would impose any significant burdens on him because it covered alcohol-abuse treatment." *Lindsay*, 2024 WL 4225715, at *3; *see* Opening Br. at 12–14. So, his second claim fails.

B. Special Condition 2

Lastly, Vaughn argues that the district court impermissibly delegated its authority by failing to specify whether his mental-health treatment be inpatient or outpatient. Because he did not raise the claim below, we review it for plain error. *Campbell*, 77 F.4th at 432.

Plain error review dooms Vaughn's claim. *See Lindsay*, 2024 WL 4225715, at *3. A "circuit split precludes a finding of plain error," *United States v. Al-Maliki*, 787 F.3d 784, 794 (6th Cir. 2015) (citation omitted), and circuits are split on this inpatient-outpatient claim, *compare United States v. Aguilar-Cerda*, 27 F.4th 1093, 1095–96 (5th Cir. 2022) (finding no impermissible delegation), *and United States v. Cutler*, 259 F. App'x 883, 886–87 (7th Cir. 2008) (same), *with United States v. Matta*, 777 F.3d 116, 122–23 (2d Cir. 2015) (finding impermissible delegation). *See* Response Br. at 14 (collecting more cases). A "lack of binding case law" does the same, *Al-Maliki*, 787 F.3d at 794, and this circuit lacks binding case law holding that a district court cannot allow the probation officer to decide whether inpatient treatment will be required. But we do have *Lindsay*, which mirrors Vaughn's case identically—claims, briefs, counsel, and all—and that case already held the "standard of review dooms"

Vaughn's same claim. 2024 WL 4225715, at *3. We find *Lindsay* persuasive in holding that this inpatient-outpatient claim does not overcome the plain-error standard.

IV.

In sum, district courts do not improperly delegate their judicial authority by failing to cap substance-abuse testing within special conditions. And district courts do not plainly err when their special conditions do not specify whether mental-health treatment is outpatient or inpatient, or when they expressly state that the defendant "shall participate in a program of testing and/or treatment for drug and/or alcohol abuse." We therefore **AFFIRM**.

APPENDIX B:

EXCERPT OF SENTENCING TRANSCRIPT, *UNITED STATES V. VAUGHN*, NO. 1:22-CR-00133-TRM-SKL (E.D. TENN. JAN. 26, 2024).

Case No. 24-5090

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ERIC VAUGHN,

Defendant – Appellant.

BEFORE: GRIFFIN, KETHLEDGE, and BUSH, Circuit Judges

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk

Issued: December 12, 2024

APPENDIX C:

SIXTH CIRCUIT ORDER DENYING REHEARING, *UNITED STATES V. VAUGHN*, NO. 24-5090 (6TH CIR. DECEMBER 12, 2024).

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TENNESSEE

CHATTANOOGA DIVISION

UNITED STATES OF AMERICA,

v. 1:22-CR-133

ERIC VAUGHN,

Chattanooga, Tennessee
January 26, 2024

BEFORE: THE HONORABLE TRAVIS R. MCDONOUGH
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

SCOTT A. WINNE
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United States Department of Justice
Office of the United States Attorney
1110 Market Street, Suite 515
Chattanooga, Tennessee 37402

FOR THE DEFENDANT:

HOWARD W. ANDERSON III
Truluck Thomason, LLC
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Greenville, South Carolina 29601

SENTENCING HEARING

anyway, so I'm not going to say anything."

THE COURT: Mm-hmm.

THE DEFENDANT: But God put it on my heart just to say something today, because he told me that in order to change I have to do everything different. So that's all I wanted to say.

THE COURT: Okay. That's pretty good advice, Mr. Vaughn. You ought to listen. All right?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Anything else from either side?

MR. WINNE: No, Your Honor.

MR. ANDERSON: Yes, Judge, just before you pronounce judgment --

THE COURT: Yeah.

MR. ANDERSON: -- on the supervised release condition in 101(a) about the drug testing --

THE COURT: Mm-hmm. Bear with me. I just had a little error here.

(Brief pause.)

THE COURT: Okay. Go ahead.

MR. ANDERSON: Thank you, Judge.

I recently came across a case out of the Ninth Circuit that said, at least out there, that the court's supposed to set a schedule or ceiling on the number of drug

tests. The Sixth Circuit hasn't said anything about it. We talked about this yesterday with Judge Atchley. I know that Probation, you know, that they want to be in charge of deciding --

THE COURT: Mm-hmm.

MR. ANDERSON: -- how many drug tests, et cetera, for sort of maximum effectiveness. And what Judge Atchley said yesterday was, "Well, you know, the Sixth Circuit hasn't said anything, and this is the condition that we always use." And so he wasn't going to sort of change it. I just sort of -- I'll say it for Your Honor.

THE COURT: Yeah.

MR. ANDERSON: But I think, you know, at least in the Ninth Circuit, you're supposed to set a sort of frequency of drug testing of no more than, you know, two times a month or three times a month --

THE COURT: Mm-hmm.

MR. ANDERSON: -- or whatever. But, again, the Sixth Circuit has not weighed in on that. And just for the record, I will just say the Sixth Circuit should do like the Ninth Circuit. Thank you, Judge.

THE COURT: Thank you.

I don't -- I don't think it has taken many tests to trip Mr. Vaughn up in the past, has it? That's at --

MR. ANDERSON: Well, that I don't know.

THE COURT: -- least my recollection.

I think he flunked the first one last time, didn't he? Wasn't it, like, the day after he was released? I think. Am I -- am I remembering that right? Let me look.

MR. ANDERSON: Judge --

THE COURT: It's not a big deal either way. Don't --

MR. ANDERSON: Yeah.

THE COURT: Don't -- let me -- let me see here.

MR. ANDERSON: And I will say that the mandatory condition that Congress requires is that there's a drug test within 14 days of release. So I think it's three, one within 14 days of release, but --

THE COURT: Mm-hmm.

MR. ANDERSON: -- I mean, again, it's just -- it's like word-testing -- it's like wordsmithing. I agree that drug treatment is appropriate, I agree that drug testing is appropriate, given his history, but, again, the Ninth Circuit just says you're supposed to set some sort of schedule rather than leaving it up to Probation.

THE COURT: Well, now I can't find it, but I was -- I was thinking that he tested positive really quickly after being released last time. It doesn't matter either way to me. I don't -- let's put it this way: If Mr. Vaughn thinks he's being tested too often, I would be happy to consider giving the probation office some guidance on that when it comes up. Okay?

All right. Anything else?

MR. ANDERSON: No, Your Honor.

MR. WINNE: No, Your Honor.

THE COURT: All right. The Court has considered the nature and circumstances of the offense, the history and characteristics of the defendant, and the advisory guideline range, as well as the factors listed in Title 18 U.S.C. Section 3553(a).

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court on Count 1 of the indictment that the defendant Eric Vaughn is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 53 months. This sentence shall run concurrently with any anticipated sentences in the East Ridge, Tennessee, Municipal Court, Docket Numbers 160935 and 160937.

The Court will recommend that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons's institution residential drug abuse treatment program.

The Court will further recommend that the defendant receive a mental health evaluation and any necessary treatment while in the Bureau of Prisons.

The Court further recommends that the defendant participate in vocational training while in the custody of the Bureau of Prisons.

Upon release from imprisonment the defendant shall be placed on supervised release for a term of three years.

While on supervised release you shall not commit another federal, state, or local crime.

You must not unlawfully possess and refrain from use of a controlled substance.

You must comply with the standard conditions that have been adopted by this Court in Local Rule 83.10.

In particular, you must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon.

The defendant shall cooperate with the collection of DNA as directed.

In addition, the defendant shall comply with the following special conditions:

Number 1. The defendant shall participate in a program of testing and/or treatment for drug and/or alcohol abuse as directed by the probation officer until such time as the defendant is released from the program by the probation officer.

Number 2. The defendant shall participate in a program of mental health treatment as directed by the probation officer until such time as the defendant is released from the program by the probation officer.

Number 3. The defendant shall waive all rights to

confidentiality regarding mental health and substance abuse treatment, in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the treatment providers.

Number 4. The defendant shall submit his property, house, residence, vehicle, papers, computers as defined in 18 U.S.C. Section 1030(e)(1), other electronic communications or data storage devices or media, or office to a search conducted by a United States Probation Officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when a reasonable suspicion exists that the defendant has violated a condition of his supervision and the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

It is further ordered that the defendant pay to the United States a special assessment of $100 pursuant to Title 18 U.S.C. Section 3013, which shall be due immediately.

The Court finds the defendant does not have the ability to pay a fine. The Court will waive the fine in this case.