NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DAHRYL LAMONT REYNOLDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Under 18 U.S.C. § 3583(d), a district court must impose mandatory conditions of supervised release and may impose additional conditions so long as they are (1) "reasonably related" to the sentencing goals of deterrence, incapacitation, and rehabilitation and (2) "involve[] no greater deprivation of liberty than is reasonably necessary" for those goals. The U.S. Sentencing Commission recommends several "standard" conditions that are routinely imposed on all federal defendants who are placed on supervised release. U.S.S.G. § 5D1.3(c). The standard conditions include a ban on communicating or interacting with anyone the defendant knows is currently "engaged in criminal activity." *Id.* at (c)(8). But they also include a ban on associating with anyone the defendant knows "has been convicted of a felony"—no matter what the felony or how long ago it was committed—unless permission is granted by the probation officer. *Id.* This ban covers between 20 and 25 million people in the United States with past felony convictions who work, parent, caregive, hold public office, vote, serve on juries, and contribute to our society every day. And for many defendants, like petitioner Dahryl Reynolds, the ban includes family members, friends, neighbors, mentors, and casual acquaintances they interact with every day. Violating the ban can lead to reincarceration.

The question presented is: Whether the standard condition banning association with all past felons is "reasonably related" to the goals of deterrence, incapacitation, and rehabilitation, and "involves no greater deprivation of liberty than is reasonably necessary" for those goals as required by § 3583(d).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

United States v. Reynolds, No. 4:18-cr-00158-JD-1, U.S. District Court for the Northern District of California. Judgment entered December 1, 2021.

United States v. Reynolds, No. 21-10368, U.S. Court of Appeals for the Ninth Circuit. Judgment entered January 5, 2024.

United States v. Reynolds, No. 4:18-cr-00158-JD-1, U.S. District Court for the Northern District of California. Judgment entered March 25, 2024.

United States v. Reynolds, No. 24-2132, U.S. Court of Appeals for the Ninth Circuit. Judgment entered May 6, 2025.

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INTRODUCTION

The felon association ban has been rotely applied to all defendants on federal supervised release since the U.S. Sentencing Commission adopted it as a standard condition in 1987. Surprisingly little attention has been paid to it, even though it includes 20 to 25 million past felons[1] based solely on the fact of their conviction, no matter how long ago it was and no matter what the offense. Given its routine application, judges, prosecutors, and defenders have become inured to this ban. When circuit courts have addressed the ban, they have upheld it with cursory statements. No court has explained how the sweeping ban on associating with all past state and federal felons is "reasonably related" to the goals of deterrence, incapacitation, and rehabilitation, and "involves no greater deprivation of liberty than is reasonably necessary" for those goals, as required by Congress in § 3583(d).

The failure of the circuit courts to provide any rigorous examination of the standard condition over the past four decades calls for this Court's intervention. This case is an ideal vehicle to address the issue because the reasonableness of the ban was the only issue presented below, it was briefed extensively, and the divided opinion of the Ninth Circuit presents conflicting perspectives as to whether the felon association ban satisfies § 3583(d). Further, the ban will significantly impact Mr.

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[1] The U.S. felon population is not officially tracked, but a comprehensive study found that it surpassed 19 million people in 2010—a significant expansion from13 million in 2000 and 8.5 million in 1990. Sarah Shannon, *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*, Demography, Vol. 54, pp. 1796, 1806 (2017), https://www.jstor.org/stable/45047318. Using this growth rate, the current felon population is around 25 million, which is about three times the population when the felon ban was adopted in 1987.

Reynolds when he is released from prison in 2026 because many people in the East Bay community where he will be serving his five-year term of supervised release have felony convictions, including close family members, who have decades-old convictions.

OPINIONS BELOW

The Ninth Circuit's opinion is unreported and appears at App. 1–11. The district court's oral imposition of the felon association ban is not published in the Federal Supplement and appears at App. 12–27.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Ninth Circuit entered judgment on May 6, 2025. App. 1. No petition for rehearing was filed. This petition was filed within 90 days of judgment and is timely under Sup. Ct. R. 13.3.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3583(d) states in relevant part:

> (d) Conditions of supervised release. . . . 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) [18 USCS § 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) [18 USCS § 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 other condition it considers to be appropriate . . . .

18 U.S.C. § 3553(a), as incorporated above, states in relevant part:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed—
>
> > . . .
> >
> > (B) to afford adequate deterrence to criminal conduct;
> >
> > (C) to protect the public from further crimes of the defendant; and
> >
> > (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[.]

The three factors listed in § 3553(a)(2)(B)–(D) are referred to as "deterrence, incapacitation, and rehabilitation." *Esteras v. United States*, 606 U.S. _, 145 S. Ct. 2031, 222 L. Ed. 2d 438, 450 (2025).

STATEMENT OF THE CASE

1. Facts of the Case. On November 24, 2017, Mr. Reynolds celebrated his 46th birthday with his roommates and friends at a San Francisco night club. Court of Appeal Excerpts of Record, Dkt. 11 (CA.ER) 68–70. One of the roommates, Bobby Anderson, drove Mr. Reynolds home at the end of the night but ran out of gas as they pulled up to their apartment. CA.ER 73. Mr. Anderson went to get a spare can of gas. CA.ER 77–81. Left alone in his front yard, Mr. Reynolds fired a few shots from a gun up into the air, "like fireworks," for his birthday. CA.ER 83–85. Mr. Anderson, who had returned, saw him doing it and told him to "knock it off." CA.ER 85.

The police, who had received notification of the gunfire from ShotSpotter and 911 calls, arrived on the scene and walked up to the van. Presentence Report (PSR) 5. They spoke with Mr. Anderson and learned that he was currently on probation for

a felon-in-possession-of-a-gun charge under state law. CA.ER 105. Officers conducted a pat down search of Mr. Reynolds to search for weapons and found a gun magazine with live ammunition. CA.ER 96–97. Officers then searched Mr. Reynolds's bedroom in his nearby apartment and found bags of methamphetamine and marijuana, a gun, and more ammunition. CA.ER 107. Officers arrested both men: Mr. Anderson for possession of a controlled substance and a probation violation and Mr. Reynolds for unlawful possession of ammunition and controlled substances. CA.ER 100.

2. Original District Court Proceedings. The government ultimately charged Mr. Reynolds with possession with intent to distribute methamphetamine (21 U.S.C. § 841(a)(1)); felon in possession of a gun and ammunition (18 U.S.C. § 922(g)(1)); and possession of a gun in connection with a drug trafficking crime (18 U.S.C. § 924(c)(1)). CA.ER 118–19. Mr. Reynolds was held in state and federal custody continuously following his arrest but was granted pretrial release from April 2020 to March 2021 due to his vulnerability to Covid and his good behavior. PSR 2, 4, 14, 21.

After trial, Mr. Reynolds was found guilty of the first two counts, possession of methamphetamine for sale and felon in possession of a gun, but he was acquitted of possessing the gun in connection with the drug offense. CA.ER 59–61. The jury found that Mr. Reynolds possessed over 50 grams of methamphetamine for sale, which triggered a 10-year mandatory sentence. 21 U.S.C. § 841(b)(1)(A)(viii), CA.ER 25.

The probation presentence report recommended the mandatory minimum prison term of 120 months, followed by five years of supervised release. PSR 32. Several conditions of supervised release were included in the recommendation: Mr.

Reynolds must report to the probation office within 72 hours of release from prison; must not commit another crime while on release; must refrain from the unlawful use of controlled substances and submit to certain drug tests; must "comply with the standard conditions that have been adopted by this court"; and must comply with nine other conditions that were detailed and justified. PSR 32–35.

The presentence report did not mention the felon association ban, which was subsumed in the "standard conditions that have been adopted by this court." PSR 32–35. The government's sentencing memorandum did not request or even mention the felon association ban. *See* District Court (DC) Dkt. 224. The defense sentencing memorandum included letters of support attesting that Mr. Reynolds's siblings would support him in his rehabilitation. *See* DC.Dkt. 225, Exh. C & D. The letters included one from Eric Hooper, who is Mr. Reynolds's brother, and one from Debra Jean, who is Eric's wife and Mr. Reynolds's sister-in-law. *Id*. Eric discussed the many challenges that he, Mr. Reynolds, and their sister Anita had faced; their ongoing support for each other; his own path to sobriety; and his commitment to helping Mr. Reynolds upon release. *Id*. Debra discussed that she met Eric through a substance abuse rehabilitation program; that they stayed sober together; and that Mr. Reynolds would benefit from similar structure and goal setting. *Id*. Eric, Debra, and Anita are core to Mr. Reynolds's small circle of support. PSR 21. They all have prior convictions that are decades old at this point. *See* App. 22–24; DC.Dkt. 265, p. 2.

At sentencing, the district court imposed the mandatory minimum term and indicated that the court "would even be inclined to go below 120 months if it was up

to me but it is not." CA.ER 44. The court then imposed a five-year term of supervised release with several conditions. CA.ER 44–47. Among others, the court imposed "all the standard conditions of supervised release that have been adopted in this district," but never mentioned the felon association ban. CA.ER 45–47. A list of the "standard" conditions was never made available to Mr. Reynolds.

The written judgment, entered a month after sentencing, included the felon association ban as part of the "standard" conditions. CA.ER 55. The full condition has two parts and states:

> You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.

CA.ER 55.

3. First Ninth Circuit Appeal. In his first appeal, Mr. Reynolds challenged the felon association ban on substantive and procedural grounds. *United States v. Reynolds*, No. 21-10368, 2024 U.S. App. Lexis 301, *1 & n.1 (9th Cir. Jan. 5, 2024). The Court vacated the felon association ban, as well as the other "standard" conditions that the district court failed to orally pronounce and remanded for the district court to reconsider those conditions. *Id.* at *3 & n.1. The Court clarified that, on remand, Mr. Reynolds could raise any substantive objections to the conditions. *Id.*

4. Proceedings on Remand. In advance of the resentencing hearing, Mr. Reynolds filed a brief opposing reimposition of the standard felon association ban as vastly broader than necessary for the government's purpose of preventing recidivist influences, and, thus, not reasonably related to the goals of supervised release and a

greater deprivation of liberty than is reasonably necessary for those goals. DC.Dkt. 264, pp. 6–13.

In response, the government, who bore the burden of establishing that the condition meets the statutory reasonableness tests, *United States v. Weber*, 451 F.3d 552, 558–59 (9th Cir. 2006), argued that the ban is justified because Mr. Reynolds has a "high risk of recidivism"; he needs "close supervision"; and his association with Mr. Anderson, who was on felony probation at the time of the incident, "did not positively influence Reynolds's behavior and would detract from rehabilitative goals." DC.Dkt. 266, p. 8. The government cited several circuit court decisions that have upheld the ban with little or no analysis. DC.Dkt. 266, pp. 10–11. The only evidence that the government cited for the proposition that all past felons, as a class, pose a risk of recidivism are studies showing that within their first three to five years after release (while they are typically on supervised release), past felons are rearrested and reincarcerated at significant rates. DC.Dkt. 266, pp. 11–12.

Mr. Reynolds filed a reply reiterating that the government failed to demonstrate that the all-past-felon ban was justified. In particular, there were "much narrower and more focused restrictions [that] would amply address the perceived risks" from some small subset of past felons. DC.Dkt. 268, pp.1, 4–5. Further, the government's concern for close supervision of Mr. Reynolds was already addressed by the more than 30 other conditions imposed by the court. DC.Dkt. 268, pp. 1–2. The government made no attempt to explain how the felon association ban added a missing component. *Id*.

At the resentencing hearing, the district court agreed with the government and reimposed the felon association ban, without addressing the defense concerns about the overbreadth of the ban. App. 14–24. The court focused instead on Mr. Reynolds's extensive criminal history and the fact that, at the time of the offense, Mr. Reynolds was living with Mr. Anderson, another felon on supervised release. App. 16–17. According to the court, "It is just plain as day," that Mr. Reynolds "should not be hanging out with people who are felons" because "[i]t's not helping him rehabilitate." App. 17. However, the court did not point to any felon aside from Mr. Anderson with whom Mr. Reynolds had associated and who was considered a risk to rehabilitation.

5. Second Ninth Circuit appeal. On appeal, Mr. Reynolds challenged the felon association ban both facially and as applied to him. App. 3. The majority decision upheld the ban over a dissent. App. 5–6. Addressing Mr. Reynolds's as-applied challenge only, the majority concluded that the felon association ban was reasonable given "(1) Reynolds's lengthy criminal history 'distinguished by the frequent and violent use of firearms and guns and also very closely associated with trafficking illegal narcotics'; (2) that Reynolds was living and interacting with a known felon and was on supervised release with a felon association ban condition when he committed the underlying crimes; and (3) Reynolds had history of associating with felons during his 'lifelong' criminal history." App. 3. The first two points were uncontested, although there was no evidence in the record to support the third point. In any event, the majority neglected to explain how any of these three points, taken individually or collectively, rendered the ban on associating with *all* past felons "reasonably related"

to deterrence, incapacitation, and rehabilitation and "no greater deprivation of liberty than is reasonably necessary" for those goals. 18 U.S.C. § 3583(d); App. 2–5.

The dissent concluded that the felon association ban was overbroad and, thus, unreasonable under § 3583(d). App. 7. In particular, the dissent noted that "'a person with a past record may be entirely law abiding today'" and, thus, all past felons do not pose a risk. App. 7 (quoting *United States v. Napalou*, 593 F.3d 1041, 1045 (9th Cir. 2010)). Further, the ban on associating "with such a large class of people" for a five-year period is "a significant deprivation of liberty" and "would include people close to Reynolds, like his immediate family, and could easily include friends, neighbors, a boss or coworker, or a sponsor in a support group." App. 8. "Practically speaking, Reynolds would have to 'obtain prior written approval from his probation officer before, for instance, . . . meeting a close family member or friend for coffee, or going to an AA meeting or [another] function with others seeking to improve their own lives.'" App. 8 (citation omitted).

The dissent also described how the district court could have crafted a more narrowly tailored condition to address its concerns and to comply with the reasonableness requirements in § 3583(d). App. 9. For example, the district court could have imposed an alternative condition "limiting Reynolds from associating, communicating, or interacting with" any of the following groups: "individuals with felony convictions less than five years or ten years old, individuals with certain felony drug or firearm convictions, individuals with more than one felony conviction (i.e., those who have a history of recidivism), [or] individuals with felony convictions who

are also on supervised release or probation . . . .” App. 9. “Given the numerous less restrictive alternatives to the felon association ban,” and “the comprehensive scope of the other conditions of supervised release,” the ban is a “greater deprivation of liberty than is reasonably necessary.” App. 10.

REASONS FOR GRANTING THE WRIT

First, this case presents an important and recurring issue of national significance because the felon association ban is listed as a standard condition by the U.S. Sentencing Commission and is routinely imposed on all federal defendants who receive a prison term, which is followed by a term of supervised release. U.S.S.G. § 5D1.3(c)(8). Despite its prevalence, the circuit courts that have addressed the ban have upheld it in cursory fashion, without seriously examining the fit between the perceived risk from some subset of non-law-abiding prior felons and the massive overbreadth of including all prior felons. *See United States v. Bryant*, 976 F.3d 165, 182–84 (2nd Cir. 2020); *United States v. Albanese*, 554 F.2d 543, 546 (2d Cir. 1977); *Birzon v. King*, 469 F.2d 1241, 1243 (2d Cir. 1972); *United States v. Balderas*, 358 F. App’x 575, 581 (5th Cir. 2009); *United States v. Speed*, 811 F.3d 854, 860 (7th Cir. 2016); *United States v. Douglas*, 806 F.3d 979, 986–87 (7th Cir. 2015); *United States v. Quoc Chi Tran*, 724 F. App’x 541, 545 (9th Cir. 2018); *United States v. Milay*, 711 F. App’x 815, 817 (9th Cir. 2017); *United States v. Munoz*, 812 F.3d 809, 820 (10th Cir. 2016). The circuit courts have shown no sign that they will critically examine whether the felon association ban meets the statutory reasonableness requirements, *id.*, and thus this Court’s intervention is required.

Second, the Ninth Circuit's majority decision upholding the ban is wrong, for the reasons explained in the dissent. The ban on associating with *all* people with *any* felony conviction at *any* time in the past is a significant deprivation of liberty. There are narrower ways to address the concern that some subset of the past felon population might pose a risk of recidivism to an individual on supervised release.

Third, this case is an ideal vehicle to address the ban because it was squarely and fully briefed in the district court and Court of Appeal. Further, the ban has an especially significant impact on defendants of color like Mr. Reynolds, who is Black. One third of all Black adult males have a felony conviction.[2] Not surprisingly then, several members of Mr. Reynolds's family, friendship group, and local community are included in the ban. As a result, the ban exacts a higher social and emotional toll on defendants like Mr. Reynolds and poses a greater infringement on their liberty interest in associating with family and friends.

I. This Case Presents an Important and Recurring Issue of National Significance That Warrants the Court's Review

A. District courts apply the standard felon association ban in all cases involving supervised release, without support

The felon association ban is one of a handful of supervised release conditions that district courts perfunctorily impose on all defendants in accordance with the U.S. Sentencing Commission's list of standard conditions. U.S.S.G. § 5D1.3(c)(8). Several of the other standard conditions facilitate cooperation with the probation department. For instance, defendants must report to the probation office within 72 hours of release

[2] Shannon, *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*, at 1806.

unless instructed otherwise ((d)(1)); follow the probation officer's instructions and answer questions from the officer truthfully ((d)(4) & (5)); and alert the probation officer if they are questioned by law enforcement or might act as a confidential informant ((d)(10) & (11)). Other conditions ensure the probation officer's ability to locate and monitor the defendants. For example, defendants must remain in the judicial district in which they are supervised unless given permission to leave ((d)(3)); live at a place approved of by probation and report any change in living arrangements ((d)(6)); and allow the probation officer to visit them at any time in their home or elsewhere ((d)(7)).

The felon association ban is intended to keep defendants on supervised release away from "antisocial" relationships, according to a recent report of the Office of Probation and Pretrial Services. *See* Office of U.S. Courts, Dep't of Program Services, Probation and Pretrial Services Office, *Overview of Probation and Supervised Release Conditions* (July 2024), Ch. 2, § VIII: Communicating/Interacting with Persons Engaged in Criminal Activity and Felons, pp. 32–33, *at* https://www.uscourts.gov/sites/default/files/overview_of_probation_and_supervised_release_conditions_0.pdf. It accompanies the ban on associating with people currently "engaged in criminal activity." *Id.* at p. 32. But the Probation Office report does not explain why past criminals are lumped together with current criminals. The report provides no support—no citation to studies, research, or data—for the assumption that past felons are prone to undertake new criminal activity.

The government offered a much more limited, although more substantiated, rationale for the felon association ban in this case. It argued that *recently released* felons (within the first three to five years) pose a heightened risk of criminality, and, thus, it is reasonable to keep defendants who are on supervised release away from other persons recently released from prison (who may also be on supervised release). Court of Appeal (CA) Dkt. 24, pp. 32–33. But the government ignored that the ban forbids association with *all* felons, not just recently released felons. *Id.*

As to the government's cited statistics, even among recently released felons, *most* of them *do not* recidivate. *See* Shawn Bushway et al., *Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks*, Rand Corp., vii, 52–53 (2022), *at* https://www.rand.org/pubs/research_reports/RRA1360-1.html (finding that "the majority of people who have been convicted do not get reconvicted" and "do not recidivate"). Moreover, the statistics of rearrest and reincarceration rates cited by the government overstate the risk because they largely reflect technical violations of release conditions, not new criminal offenses. Andrea Fenster, *Technical Difficulties: D.C. Data Shows How Minor Supervision Violations Contribute to Excessive Jailing*, Prison Policy Initiative (Oct. 2020), *at* https://www.prisonpolicy.org/blog/2020/10/28/dc_technical_violations/. Further, the "likelihood of reconviction declines rapidly over time." Bushway, *Providing Another Chance*, pp. vi, 53. The further back in time the conviction, the less value it has in predicting future conduct. *Id.*; *United States v. T.M.*, 330 F.3d 1235, 1240 (9th Cir. 2003) (20-year-old conviction does not support a finding of current risk).

In any event, even if recently released felons pose a significant enough risk to support some type of association ban, that justification is much more limited than the sweeping felon ban at issue here. This standard ban covers all past felons, even if the felon has been off supervised release for more than 50 years without further offenses; even if the felon's offense is no longer a felony (like several minor drug offenses); and even if the felon is a family member, mentor, boss, clergy member, or elected official.

The felon ban also sweeps broadly in terms of the conduct it covers. The word "association" includes any communication or interaction, other than incidental encounters or fleeting acquaintances. *Birzon*, 469 F.2d at 1243; *United States v. Lovelace*, 257 F. App'x 773, 775–76 (5th Cir. 2007). While this Court has clarified that "association" does not include "incidental contacts between ex-convicts in the course of work on a legitimate job for a common employer," *Arciniega v. Freeman*, 404 U.S. 4, 4 (1971), it does include "'a loose relationship as a partner, fellow worker, colleague, friend, companion, or ally,'" *Birzon*, 469 F.2d at 1243 n.3 (quoting Webster's Dictionary). By this definition, it would apply to people who get together for pickup basketball games in the neighborhood park; colleagues who get lunch together; fellow participants in an AA program who go bowling together; and endless other social interactions. The ban also includes written communications. *Lovelace*, 257 F. App'x at 776.

No reasoned justification has been given to support this sweeping ban on associating with millions of law-abiding citizens.

B. The circuit courts that have addressed the ban have upheld it in cursory fashion, necessitating this Court's intervention

The circuit courts that have addressed the felon association ban have given it little thought or analysis. This case is only the most recent example. Not one of the decisions upholding the ban has explained how, precisely, the ban meets the statutory reasonableness requirements in § 3583(d). Instead, some of the decisions have justified the ban on the basis that "a district court need not explain its reasoning when imposing standard conditions" recommended by the Sentencing Commission. *Bryant*, 976 F.3d at 183–84; *see also Milay*, 711 F. App'x at 817 (same). Other decisions have upheld the ban on the basis that "prohibiting contact with felons is not an unusual federal condition of supervised release," *Speed*, 811 F.3d at 860 (citing other circuit cases), as if longstanding or common use renders a condition per se reasonable. *See also Balderas*, 358 F. App'x at 581 (justifying the felon association ban on the basis that it "is a standard condition of supervised release").

Yet other decisions have stated that the ban is reasonably related to the goals of supervised release, without explaining how that is true. *Birzon*, 469 F.2d at 1243 (felon ban "is reasonably and necessarily related to the Government's legitimate interests in the parolee's activities"); *Quoc Chi Tran*, 724 F. App'x at 545 (felon ban is "reasonably related to rehabilitation and public safety"); *Munoz*, 812 F.3d at 820 (felon ban "is a sensible way to reduce the risk of recidivism, which is a legitimate purpose of supervised release"). "But saying it does not make it so." *United States v. Haymond*, 588 U.S. 634, 648 n.5 (2019).

One of the earliest decisions upholding a ban on associating with "persons with criminal records," *Albanese*, 554 F.2d at 545–47, rests on a mistaken reading of this Court's opinion in *United States v. Murray*, 275 U.S. 347, 357 (1928). The Court in *Murray* explained that Congress created probation, in part, as a tool for courts to shield "new violators" from "the contaminating influence of association with hardened or veteran criminals" that would occur in prison. *Id.* The Court did not suggest that everyone in prison is a "hardened or veteran criminal," only that such criminals would be encountered in prison. *Id.* Based on the reasoning in *Murray*, the Second Circuit concluded that "permitting a probationer 'association with hardened or veteran criminals' would defeat probation's underlying purpose." *Albanese*, 554 F.2d at 546.

Taking a leap of logic, the Second Circuit then concluded that permitting association with *anyone* with a "criminal record" would defeat probation's purpose. *Albanese*, 554 F.2d at 546. The court acknowledged in passing a distinction between "convicted criminals," who may have only one prior offense, and criminals who have "been convicted of several crimes," *id.*, which is more in line with the notion of "hardened or veteran criminals" referenced in *Murray*, 275 U.S. at 357. Nonetheless, the court upheld the broader restriction on all convicted criminals as reasonably related to "legitimate probation objectives," *Albanese*, 554 F.2d at 546, even though Congress's own concern was with career criminals, not all criminals. The standard felon association ban, like the "criminal record" ban in *Albanese*, prohibits association with all past offenders, not just the most serious of them, without justification.

These cursory decisions, which span several decades, demonstrate that the circuit courts have no interest in any sort of rigorous analysis of whether the felon association ban meets the reasonableness requirements set forth by Congress. By the plain language of § 3583(d), all non-mandatory conditions of supervised release must meet the statutory reasonableness requirements, and no court has explained how the ban satisfies those requirements.

II. The Ninth Circuit's Majority Decision Upholding the Ban Is Wrong, For the Reasons Explained in the Dissent

As the dissent concluded, the felon association ban sweeps much more broadly than necessary to accomplish its goal of protecting defendants on supervised release from recidivist influences, especially given that less restrictive alternatives exist. App. 10. For example, the district court could consider prohibiting association with other individuals who are on supervised release or probation, App. 9, which is the only subset of the felon population that the government has identified as posing a substantiated risk of recidivism, CA.Dkt. 24, pp. 32–33. Or the district court could consider prohibiting association with other individuals who have committed similar offenses to those committed by the defendant. App. 9. Throughout this litigation, the government has failed to provide any support for the notion that someone who committed insider trading, for example, would pose a risk of recidivism to a defendant like Mr. Reynolds who committed drug offenses.

Moreover, the first clause of the ban already prohibits association with anyone the defendant "know[s] is engaged in criminal activity." U.S.S.G. § 5D1.3(c)(8); App. 10. Thus, any past felon who is not currently law-abiding would be covered by the

current criminal ban. As a result, the *only* extra work that the felon association ban does is to prohibit association with entirely law-abiding past felons.

At bottom, the reasonableness of the felon association ban depends on the validity of its underlying premise: that past felons, as a class, threaten others' rehabilitation. That premise is debunked by recidivism studies showing that the likelihood of reoffending declines rapidly after the first few years following release. Bushway, *Providing Another Chance*, at pp. vii, pp. 52–53.

While felons are treated as a uniform class for some purposes, it is typically with relation to the loss of civil rights that automatically follows a conviction; it is not based on a class-wide determination about current dangerousness. For example, statutes that strip felons of the right to vote, hold office, serve as a juror, or possess a firearm are historically viewed as a sanction for past conduct rather than an assessment of future risk. *See* Walter Matthews Grant et al., *The Collateral Consequences of a Criminal Conviction*, 23 Vand. L. Rev. 931, 941–52 (1970) (documenting how the loss of civil rights was a form of punishment and deterrence from ancient Greece to modern America).

In analogous contexts, courts have drawn distinctions between categorizations that accurately reflect present criminality and those that do not. For instance, courts have upheld bans on associating with criminal street gangs but struck down bans on associating with undefined gangs that are not necessarily criminal. *Compare United States v. Green*, 618 F.3d 120, 123 (2d Cir. 2010) (upholding ban on associating with criminal street gangs) *with United States v. Washington*, 893 F.3d 1076, 1081 (8th

Cir. 2018) (rejecting ban on associating with any member of a "gang"). And courts have distinguished that "law abiding" is different from "without conviction" because "'[a] person disobeying the law today and hence not being law-abiding may as yet have no criminal record, and a person with a past record may be entirely law-abiding today.'" *Napulou*, 593 F.3d at 1045 (quoting *Albanese*, 554 F.2d at 546).

Banning association with a group of people who are presently engaged in criminal activities is permissible because "it is beyond question that preventing a probationer from associating with those apparently involved in criminal activities is 'reasonably related' to the probationer's rehabilitation and the protection of the public." *United States v. Furukawa*, 596 F.2d 921, 922–23 (9th Cir. 1979) (per curiam) (upholding a condition requiring a defendant to "associate only with 'law-abiding' individuals"). But the same cannot be said of banning association with all past felons, which includes mostly law-abiding people who are forever designated as felons because of past criminal conduct, not present conduct.

Thus, the felon association ban is overbroad and fails to meet the reasonableness requirements in § 3583(d).

III. This Case Is an Ideal Vehicle to Address the Ban Because It Was Squarely and Fully Briefed and Will Significantly Affect the Petitioner's Five-Year Term of Supervised Release Starting in 2026

This case presents an ideal vehicle for the Court to settle whether the standard felon association ban imposed on all defendants who are placed on supervised release meets the reasonableness requirements that Congress set forth in § 3583(d). First, the issue was squarely and fully addressed below; in fact, it was the only issue at the

resentencing hearing and on appeal. The parties extensively briefed the issue in the district court and the Ninth Circuit, and the Ninth Circuit's split decision offers two competing views on the issue. App. 1–11; CA.Dkt. 10, 24, 34; DC.Dkt. 264, 266, 268. Second, the felon association ban matters to Mr. Reynolds because many of his family members, friends, and community members will be included in the ban by virtue of past offenses that do not reflect their current law-abiding conduct or their ability to help him rehabilitate and transition back into society.

CONCLUSION

The petition for a writ of certiorari should be granted for the Court to consider whether the standard felon association ban meets the reasonableness requirements set forth in § 3583(d).

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