

No. \_\_\_\_\_

---

---

IN THE SUPREME COURT OF THE UNITED STATES

---

FRANCISCO VILLA,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

KRISTI A. HUGHES  
Law Office of Kristi A. Hughes  
P.O. Box 141  
Cardiff, California 92007  
Telephone: (858) 215-3520  
Counsel for Mr. Villa

## QUESTION PRESENTED

1. Whether and to what extent supervised release conditions may intrude on the Constitutional right to personal contact with one's children, by prohibiting a supervisee from living with or visiting his children in Mexico?

## TABLE OF CONTENTS

Question Presented .....	1
Table of Authorities .....	iii
Opinions Below.....	1
Jurisdiction.....	2
Constitutional and Statutory Provisions .....	2
Statement of the Case .....	3
I.    Petitioner is arrested for drug smuggling and—as part of his supervised release—is prevented from traveling to Mexico, where his children will live with his ex-wife. ....	3
II.   The Ninth Circuit affirms the supervised release condition, even though it bars Petitioner from seeing his children in Mexico. ....	4
Reasons for Granting the Petition .....	5
I.    A supervised release condition preventing a supervisee from visiting or living in Mexico, where the supervisee’s children live, violates due process as well as this Court’s precedents establishing a fundamental Constitutional right to associate with one’s family. ....	5
II.   This case presents an ideal vehicle to resolve the issue since the issue is preserved and would affect the outcome in Petitioner’s case. ....	7
Conclusion .....	8

## TABLE OF AUTHORITIES

### Cases

<i>Lehr v. Robertson</i> , 463 U.S. 248 (1983) .....	5
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972).....	5
<i>United States v. Villa</i> , 816 F. App'x 133 (9th Cir. Aug. 11, 2020) (unpublished) 1, 4, 5	
<i>United States v. Wolf Child</i> , 699 F.3d 1082 (9th Cir. 2012) .....	4

### Statutes

18 U.S.C. § 3553.....	2
18 U.S.C. § 3583(d)(2) .....	2, 4, 6, 7
21 U.S.C. § 952.....	2
21 U.S.C. § 960.....	2
28 U.S.C. § 1254(1) .....	2
28 U.S.C. § 1291.....	2

### Constitutional Provisions

U.S. CONST. amend. V.....	2
---------------------------	---

IN THE SUPREME COURT OF THE UNITED STATES

---

FRANCISCO VILLA,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

Petitioner, Francisco Villa, respectfully prays for a writ of certiorari to issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

On August 11, 2020, the Ninth Circuit affirmed Petitioner's sentence, finding that his 90-month sentence was substantively reasonable, and that the supervised release condition that prevented him from living in or traveling to Mexico did not violate his fundamental liberty interests. *See* App. A; *United States v. Villa*, 816 F. App'x 133 (9th Cir. Aug. 11, 2020) (unpublished).

## **JURISDICTION**

Petitioner was convicted of violating of 21 U.S.C. §§ 952 and 960 in the United States District Court for the Southern District of California. The United States Court of Appeals for the Ninth Circuit reviewed his sentence under 28 U.S.C. § 1291, and affirmed on August 11, 2020. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

The Due Process Clause provides that “no person shall be ... deprived of life, liberty, or property, without due process of law.”

U.S. CONST. amend. V.

18 U.S.C. § 3583(d) provides that a district court may order as a condition of supervised release any condition it considers appropriate and that is reasonably related to the factors in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);, with the specific limitation that the condition “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 U.S.C. § 3583(d)(2).

## STATEMENT OF THE CASE

- I. **Petitioner is arrested for drug smuggling and—as part of his supervised release—is prevented from traveling to Mexico, where his children will live with his ex-wife.**

Petitioner pleaded guilty to three counts of importing a controlled substance into the United States, after Border Patrol agents discovered drugs hidden in the spare tire of his car as he tried to cross the United States-Mexico border.

He explained that he had only smuggled the drugs because of threats from his ex-wife and her brothers, who were hitmen for a Mexican drug cartel. Petitioner's wife was a violent drunk, and he had earlier obtained full custody of his sons. His ex-wife was furious at this and she and her brothers started threatening Petitioner. The brothers told Petitioner they would kill him if he didn't let his wife have custody, told him they were going to plant evidence on him so he got arrested at the border, and come to his house and threatened to shoot him. Eventually, they demanded that Petitioner smuggle drugs for them. He refused, but after the brothers shot at his car, he gave in.

Before his arrest, Petitioner had custody of his two sons, and had been focused on taking care of them—going to work, providing them with a stable life, and keeping them safe when their mother had a violent, drunken episode. After his arrest, his mother was granted temporary custody of his sons and was raising them in the United States. Petitioner's ex-wife, who lived in Mexico, was petitioning for full custody.

At sentencing, the district court imposed a 90-month custodial sentence. It also imposed four years of supervised release, with the special condition that Petitioner not “enter or reside in the Republic of Mexico without permission of the court or probation office.”

**II. The Ninth Circuit affirms the supervised release condition, even though it bars Petitioner from seeing his children in Mexico.**

On appeal, Petitioner argued that the district court procedurally erred when imposing the supervised release condition that barred him from entering or living in Mexico without permission. He argued that 18 U.S.C. § 3583(d) mandate that supervision conditions involve no greater deprivation than is reasonably necessary, and that the Ninth Circuit requires special procedures before a district court may impose a condition that affects fundamental rights and liberties. Specifically, in *United States v. Wolf Child*, the Ninth Circuit explained that when conditions implicate a particularly significant liberty interest, the district court must support the condition with record evidence, and review the personal relationship affected by the condition to ensure that the condition is not a greater-than-necessary restriction of liberty. 699 F.3d 1082, 1090 (9th Cir. 2012). Because the district court did not follow these procedures when imposing the supervision condition, it failed to protect Petitioner’s fundamental liberty interests, so the condition deprived him of more liberty than was reasonably necessary.

The Ninth Circuit affirmed Petitioner’s sentence. *See* App. A. at 2-3. It “decline[d] ... to require the district court to reconsider the condition” under its



precedent, because it was not certain whether Petitioner's children would be with his ex-wife in Mexico when Petitioner was released. *Id.* at 2-3. Rather than remand, it noted that Petitioner could move to amend his condition in district court after he served his sentence. *Id.* at 3.

### REASONS FOR GRANTING THE PETITION

- I. **A supervised release condition preventing a supervisee from visiting or living in Mexico, where the supervisee's children live, violates due process as well as this Court's precedents establishing a fundamental Constitutional right to associate with one's family.**

This Court has held that the Constitution offers "substantial protection" to a father's interest in having personal contact with the children he has participated in raising. *See Lehr v. Robertson*, 463 U.S. 248, 261 (1983). It elaborated that "[t]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association." *Id.* (citation omitted). In other words, there is Constitutional protection for the personal contact and daily association one has with his own children.

To this end, the Court underscored the longstanding Constitutional protections for familial relationships in *Stanley v. Illinois*, 405 U.S. 645 (1972). It noted that it has "frequently emphasized the importance of the family," and that the right to "raise one's children" has been held "essential." *Id.* at 651. Most importantly here, the Court reiterated that the "integrity of the family unit" is protected by the Constitutional rights to equal protection and due process. *See id.*

These Constitutional rights must be kept in mind in the supervised release context, as 18 U.S.C. § 3583 requires that district courts impose supervision conditions that involve “no greater deprivation of liberty than is reasonably necessary” to achieve the purposes of supervised release. *See* 18 U.S.C. § 3583(d)(2). A supervised release condition cannot deprive a supervisee of constitutionally protected liberties without a court ever establishing that this deprivation is necessary. Doing so not only deprives a supervisee of his Constitutional rights without explanation or sufficient process, but also conflicts with the “reasonably necessary” requirement of section 3583(d)(2).

The condition at issue in this case—preventing Petitioner from entering or residing in Mexico without permission—is a greater deprivation than is necessary. It violates the Constitutional rights to have daily personal contact with one’s children and to protect the integrity of the family unit. Under Petitioner’s circumstances, his children will most likely be living in Mexico at the time of his release from custody and he will be unable to have personal contact with—or even visit—his children. He will be deprived of his “essential” right to raise his children—the children he successfully raised by himself while his ex-wife endangered them—as well as his due process and equal protection rights to protect the integrity of his family unit. Moreover, he will be deprived of these rights without the district court ever explaining on the record that it was (or why it was) necessary to infringe these rights in order to achieve the purposes of supervised release, which does not comply with section 3583.

Given this, the Court should grant the writ to clarify whether one's Constitutional rights to personal contact with one's children may be infringed while serving supervised release. And if those rights may be infringed by supervised release conditions, the extent to which they may be infringed, and the clarity of the explanation the district court must give before imposing the condition, in order to comply with section 3583(d)(2). This is an important issue, likely affecting large numbers of defendants in districts across the country. Given the large number of prosecutions in border districts, where it is not unusual for defendants to have family members that reside in both the United States and Mexico, this is likely a recurring issue. The Court should address the issue here to clarify whether supervised release conditions may infringe the important constitutional rights to associate with one's family, and under what circumstances.

**II. This case presents an ideal vehicle to resolve the issue since the issue is preserved and would affect the outcome in Petitioner's case.**

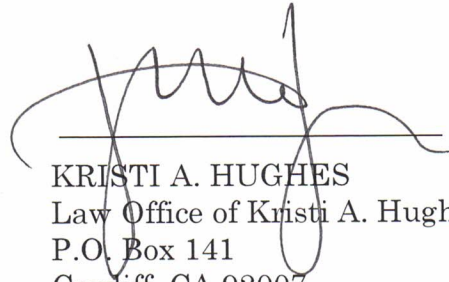
Petitioner's case presents an ideal vehicle to address whether, and to what extent, supervised release conditions may infringe a supervisee's right to have personal contact with the children he has raised. Though Petitioner did not object to the condition in district court, the Ninth Circuit addressed the issue on appeal after full briefing from both sides. Moreover, remanding for the district court to either strike the condition as overly restrictive or unnecessary, or imposed without sufficient justification of necessity, would make a difference in the outcome of the case since Petitioner would be able to reside in or travel to Mexico.

## CONCLUSION

This Court should grant the writ to reiterate the importance of the fundamental constitutional interest in personal contact with one's children, and clarify under which circumstances supervised release conditions may intrude on this right.

Date: January 8, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kristi A. Hughes', is written over a horizontal line.

KRISTI A. HUGHES  
Law Office of Kristi A. Hughes  
P.O. Box 141  
Cardiff, CA 92007  
Telephone: (858) 215-3520  
Attorney for Mr. Villa