

No. 24-6836

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IN THE SUPREME COURT OF THE UNITED STATES

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CHRISTIAN GENAO, PETITIONER

v.

UNITED STATES OF AMERICA

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

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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#### QUESTION PRESENTED

Whether petitioner is entitled to relief on the theory that the district court insufficiently described its imposition of the special conditions of supervised release in Sentencing Guidelines § 5D1.3(d) (4) .

RELATED PROCEEDINGS

United States Court of Appeals (2d Cir.):

United States v. Genao, No. 23-6710 (Oct. 4, 2024)

United States District Court (E.D.N.Y.):

United States v. Genao, No. 21-cr-579 (June 30, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-3) is not published in the Federal Reporter but is available at 2024 WL 4404042. The judgment of the district court is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 4, 2024. A petition for rehearing was denied on December 19, 2024. The petition for a writ of certiorari was filed on March 19, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of New York, petitioner was convicted on one count of importing cocaine, in violation of 21 U.S.C. 952(a), 960(a)(1) and (b)(2)(B). Pet. App. 51. He was sentenced to one year and one day of imprisonment, to be followed by two years of supervised release. Pet. App. 53. The court of appeals affirmed. Pet. App. 2.

1. On October 21, 2021, petitioner arrived at John F. Kennedy International Airport on a flight from the Dominican Republic. Presentence Investigation Report (PSR) ¶ 3. Petitioner was wearing a bulky, padded vest; further inspection by U.S. Customs and Border Patrol Agents revealed that inside the vest were six wrapped packages containing more than three kilograms of cocaine. Ibid. Petitioner admitted that he had knowingly transported the cocaine from the Dominican Republic to the United States in exchange for a promised payment of \$10,000. PSR ¶ 4.

A federal grand jury in the Eastern District of New York returned an indictment charging petitioner with one count of importing cocaine, in violation of 21 U.S.C. 952(a), 960(a)(1) and (b)(2)(B); and one count of possessing cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(ii)(II). Indictment 1-2.

2. Petitioner pleaded guilty to the importation count. Pet. App. 1. At the plea hearing, the district court provided

petitioner notice of the maximum penalties he faced. C.A. App. 22-24. Those penalties included a term of supervised release; as the district court explained, supervised release would involve “many restrictions that are placed on your liberty.” Id. at 23. The presentence report likewise reflected the possibility of supervised release, PSR ¶¶ 60-61, and also that in determining whether to impose a fine, the court would consider the costs of a “term of supervised release,” which “may include drug and alcohol treatment,” PSR ¶ 67.

Section 5D1.3 of the Sentencing Guidelines sets forth the recommended “conditions of supervised release.” Sentencing Guidelines § 5D1.3 (2021) (capitalization omitted). Under Section 5D1.3, “mandatory” conditions of supervised release are those required by statute for certain defendants. See Sentencing Guidelines § 5D1.3(a) (2021) (capitalization omitted). Here, for example, the mandatory conditions prohibit petitioner from “commit[ting] another federal, state or local offense” and from unlawfully using or possessing a controlled substance. Ibid.; see 18 U.S.C. 3583(d). The 13 “‘standard’ conditions,” several of which are “expansions” of mandatory conditions, are a set of conditions “recommended for supervised release.” Sentencing Guidelines § 5D1.3(c) (2021) (capitalization omitted). They include, for example, requirements relating to the defendant’s interactions with the Probation Office, see ibid., which is responsible for supervising him while he is on supervised release, see 18 U.S.C. 3603(4).

The Sentencing Guidelines also recommend that the district court impose "special" conditions of supervised release when specified circumstances exist. Sentencing Guidelines § 5D1.3(d). For instance, "[i]f the court has reason to believe that the defendant is in need of psychological or psychiatric treatment," the Guidelines recommend that the court impose "a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office." Id. § 5D1.3(d) (5) (2021).

Section 5D1.3(d) includes another special condition for "Substance Abuse." Sentencing Guidelines § 5D1.3(d) (2021) (capitalization altered). Under Section 5D1.3(d) (4), "[i]f the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol," the Guidelines recommend "(A) a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; and (B) a condition specifying that the defendant shall not use or possess alcohol." Id. § 5D1.3(d) (4).

3. At sentencing, the district court imposed a term of one year and one day of imprisonment, to be followed by two years of supervised release "with special conditions." Pet. App. at 18. In explaining its reasons for the sentence, the court discussed the seriousness of petitioner's offense, his criminal history, and

his uneven compliance with drug treatment while on pretrial release. Id. at 16-18; see PSR ¶ 2 (noting several positive tests for marijuana while on bail). In light of that substance abuse, the court specified that it would require as a special condition attendance at "any outpatient drug treatment recommended by the Probation Department." Pet. App. 19. It also imposed a special condition that would require submission to searches by the Probation Office. Id. at 18-19. Petitioner objected to "the search condition," and the court overruled his objection in part. Id. at 21-27.

Petitioner's written judgment included the mandatory and standard conditions of supervised release, as well as the two special conditions that the district court had orally pronounced at sentencing. Pet. App. 54-56. As to petitioner's participation in outpatient drug treatment, the written special condition provided that:

Defendant shall participate in an outpatient drug treatment program approved by the U.S. Probation Department. \* \* \* The defendant shall not consume any alcohol or other intoxicants during and after treatment, unless granted a prescription by a licensed physician and proof of same is provided to the Probation Department. The Defendant shall submit to testing during and after treatment to ensure abstinence from drugs and alcohol.

Id. at 56. Participation in drug treatment and abstention from alcohol are both aspects of the recommendation in Section 5D1.3(d)(4).



After the written judgment issued, petitioner moved the district court to amend the judgment, including by eliminating restrictions on petitioner's alcohol consumption. D. Ct. Doc. 33 (June 23, 2023). Following a hearing on the motion, the court denied that request. Pet. App. 30-38; Second Addendum to PSR. The court explained that including "alcohol prohibition" as part of the special condition was "essential for the purposes of effective drug treatment." Pet. App. 32; see also id. at 33-38. And it disagreed with petitioner's characterization of the alcohol restriction as a "substantive change[] to the sentencing" after the sentencing hearing, explaining that the alcohol prohibition was "necessary" "in order to effectuate the condition that [the court] did impose" at petitioner's sentencing hearing -- i.e., the condition that petitioner participate in drug treatment. Id. at 38.

4. Petitioner appealed, arguing that the requirement that he abstain from alcohol as part of his drug-treatment condition had not been orally pronounced at his sentencing and that it was not reasonably related to the sentencing factors specified 18 U.S.C. 3553(a). The court of appeals affirmed in an unpublished summary order. Pet. App. 1-2. The court reasoned that where a case presents factors that would trigger particular recommended special conditions under Section 5D1.3(d), those conditions should be treated like standard conditions of supervised release, and need not be specifically described. Id. at 1. And here, because

a prohibition on the consumption of alcohol is a recommended special condition “[i]f the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol,” and petitioner himself had admitted to controlled-substance abuse, the court of appeals found that the district court was not required to include the alcohol restriction in the oral pronouncement at the sentencing hearing. Id. at 2 (brackets in original). The court of appeals accordingly did not address an alternative ground for affirmance -- namely, that any requirement to orally pronounce that condition would have been satisfied by the court doing so at a later hearing. Ibid.\*

#### ARGUMENT

Petitioner contends (Pet. 7-15) that the district court was required to orally articulate during the sentencing hearing that it would prohibit him from consuming alcohol as a prerequisite for including that requirement in its written judgment. That contention lacks merit, and, in any event, the question presented does not warrant this Court’s review. Petitioner does not clearly identify any court of appeals that would reach a different result in these circumstances and fails to show that the question presented carries meaningful practical significance. This Court has recently denied petitions presenting related issues, see Brown v. United States, No. 24-6621 (June 30, 2025); Acevedo v. United

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\* Petitioner was released from prison on July 15, 2024. Absent early termination under 18 U.S.C. 3583(e)(1), his supervised release is expected to end on July 15, 2026.

States, 142 S. Ct. 2741 (2022) (No. 21-7116), and it should follow the same course here.

1. a. Federal Rule of Criminal Procedure 43(a)(3) entitles a defendant to be present at “sentencing.” Fed. R. Crim. P. 43(a)(3). Accordingly, the courts of appeals have concluded that, “where there is a direct conflict between an unambiguous oral pronouncement of sentence and the written judgment[,]  
\* \* \* the oral pronouncement must control.” United States v. Truscello, 168 F.3d 61, 62 (2d Cir.) (citation and emphasis omitted), cert. denied, 528 U.S. 933 (1999); accord United States v. Jones, 696 F.3d 932, 938 (9th Cir. 2012); United States v. Alburay, 415 F.3d 782, 788 (7th Cir. 2005).

But “no material conflict exists” when a defendant has “notice that he is subject to the terms included in the written judgment.” United States v. Ortiz-Torres, 449 F.3d 61, 74 (1st Cir.), cert. denied, 549 U.S. 941 and 549 U.S. 967 (2006), and 549 U.S. 1313 (2007). And a written judgment may permissibly “clarif[y]” or “supplement the oral ruling,” United States v. Buck, 661 F.3d 364, 374 (8th Cir. 2011) (citation omitted), cert. denied, 566 U.S. 1017 (2012); see United States v. Diggles, 957 F.3d 551, 560 (5th Cir.) (en banc) (asking whether defendant had “notice of the sentence and an opportunity to object”), cert. denied, 141 S. Ct. 825 (2020).

Here, there is no meaningful conflict between the district court’s oral pronouncement and its written judgment. At

sentencing, the court imposed a term of supervised release, subject to the "special condition[]" that petitioner participate in outpatient drug treatment as recommended by the U.S. Probation Office. Pet. App. 18-19. The written judgment was consistent with that pronouncement, as it included a single special condition that petitioner "participate in an outpatient drug treatment program approved by the U.S. Probation Department." Id. at 63. The written judgment clarified that, as part of that special condition, petitioner could not "consume any alcohol or other intoxicants," and must submit to testing. Ibid.

That condition encapsulates the recommendation in Section 5D1.3(d)(4), which recommends both "(A) a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; and (B) a condition specifying that the defendant shall not use or possess alcohol," when "the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol." Sentencing Guidelines § 5D1.3(d)(4) (2021). As the court of appeals observed, Pet. App. 2, the recommendation of Section 5D1.3(d)(4) to require drug treatment and an alcohol restriction is triggered by a single factor that need not itself specifically involve alcohol. And the district court accordingly explained, in rejecting petitioner's claim that the written judgment "substantive[ly]" differed from

the oral pronouncement, the alcohol restriction is a “necessary” component of effective drug treatment. Id. at 38.

b. Petitioner advocates (Pet. 8-9) for a rigid rule requiring a district court to recite at sentencing the full parameters of the special conditions it imposes. But he identifies no precedent of this Court supporting that rule. And although he asserts that several courts of appeals “require that all non-mandatory conditions of supervised release be orally pronounced at sentencing,” Pet. 8 (emphasis omitted), the courts of appeals agree that a district court need not “orally pronounce all discretionary conditions word-for-word.” United States v. Matthews, 54 F.4th 1, 6 n.2 (D.C. Cir. 2022); see Diggles, 957 F.3d at 562 (explaining that “word-for-word recitation of each condition” would needlessly “prolong[] sentencings”); United States v. Geddes, 71 F.4th 1206, 1215 (10th Cir. 2023) (explaining that district courts are not required “to recite verbatim each condition”).

Petitioner’s argument essentially boils down to the largely case-specific claim that oral announcement of a drug treatment condition consistent with Section 5D1.3(d)(4) was insufficient to convey the paired restriction on alcohol. That particularized claim does not warrant this Court’s review, and petitioner has not clearly identified any court of appeals that would have endorsed it. Petitioner relies (Pet. 9), for example, on United States v. Rogers, 961 F.3d 291, 299 (4th Cir. 2020), but in that case the Fourth Circuit accepted, and the defendant did not dispute, “that

a district court may satisfy its obligation to orally pronounce discretionary conditions through incorporation.” Id. at 299. “The problem” in Rogers, as the Fourth Circuit saw it, was that the district court “made no reference to any conditions” when it announced it was imposing supervised release. Id. at 300 (emphasis added). Since Rogers, the Fourth Circuit has held that a district court’s announcement that “it would impose the ‘mandatory and standard conditions’ of supervised release” sufficed to adequately pronounce those conditions, as the only “‘standard’ conditions to which the court could have been referring” were “the Guidelines ‘standard’ conditions.” United States v. Cisson, 33 F.4th 185, 194 (2022) (emphasis omitted).

Petitioner cites (Pet. 8-9) decisions that require a district court to orally pronounce at sentencing that it will impose the standard conditions or special conditions of supervised release. As the Sixth Circuit has explained, however, “[n]early every circuit” with criminal jurisdiction has recognized that a district court “provides defendants with sufficient due process” when it “adopt[s] \* \* \* by reference” discretionary conditions set forth in written orders. United States v. Hayden, 102 F.4th 368, 374 (2024) (collecting cases from the First, Second, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits).

Other decisions that petitioner cites (Pet. 8-9) are consistent with that understanding. See, e.g., Diggles, 957 F.3d at 560-561 (5th Cir.) (endorsing “[o]ral in-court adoption of a

written list of proposed conditions"); United States v. Montoya, 82 F.4th 640, 651-652 (9th Cir. 2023) (en banc) ("[W]here the defendant has been informed of the proposed conditions of supervised release in advance of sentencing," "the court can incorporate those conditions by reference at the hearing."); United States v. Geddes, 71 F.4th 1206, 1215-1216 (10th Cir. 2023) (explaining that district courts are not required "to recite verbatim each condition" but instead "may incorporate them by reference"). And while this case does not involve a written order, it does involve a special condition laid out in the Sentencing Guidelines, which in turn embodies the commonsense proposition that someone required to undergo controlled-substance treatment should not be consuming alcohol.

Petitioner accordingly errs in suggesting (Pet. 8) that he would necessarily have prevailed on his sentencing claim in the Seventh Circuit. The Seventh Circuit has recognized that a district court satisfies the oral-pronouncement requirement by announcing during sentencing that the defendant must "comply with 'all the standard conditions of supervised release adopted by this Court and the United States Sentencing Commission,'" even if the court "did not define the term 'standard conditions.'" United States v. Bonanno, 146 F.3d 502, 512 (1998). The Seventh Circuit's decision in United States v. Anstice, 930 F.3d 907 (2019), on which petitioner relies, does not establish otherwise. There, the Seventh Circuit vacated two nonmandatory conditions because the

district court entirely failed to mention them at sentencing. Id. at 910. But the decision did not consider a circumstance like the one here, where the written judgment simply confirmed the scope of the Guidelines-recommended substance-abuse-treatment requirement announced during the sentencing hearing.

c. The question presented also lacks sufficient practical importance to warrant this Court's intervention. Although petitioner now argues (Pet. 8-9) that he was deprived of "an opportunity to object" to the special condition imposed, he fails to explain how the decision below will prejudice defendants in any meaningful sense. A defendant is free to object to "standard" or "special" conditions announced or incorporated by reference at sentencing. A defendant may also be able to object to a previously unannounced or clarified written condition after judgment is entered, as petitioner did here. See D. Ct. Doc. 33. Indeed, in this case, the district court accepted petitioner's post-judgment objection to a separate special condition and amended the judgment accordingly. See D. Ct. Doc. 34 (June 23, 2023); p. 7 n.\*, supra. But after holding a hearing to consider petitioner's objections to the requirement that he abstain from alcohol, the court denied petitioner's request to modify that requirement. Pet. App. 37-38.

The practical significance of the question presented is further diminished by the reality that, as the Seventh Circuit highlighted in Anstice, when an appellate court vacates a



supervised-release condition for lack of oral pronouncement, "[t]he district court has ample authority to impose [the same] condition[] on remand." 930 F.3d at 910. In particular, Section 3583(e)(2) permits a district court to "modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release." 18 U.S.C. 3583(e)(2). In this case, the district court has made clear -- even after holding a hearing to consider petitioner's objection -- that it would require petitioner to abstain from alcohol, which it viewed as "essential for the purposes of effective drug treatment." Pet. App. 32. Accordingly, even if petitioner were entitled to the appellate relief he seeks, the district court would presumably impose the condition on remand anyway, in order to ensure that his drug treatment has the best possible chance of success.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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