No. 24-6836

In the
Supreme Court of the United States

Christian Genao,

Petitioner,
-v-

United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

Reply Brief for Petitioner

Allegra Glashausser
Counsel of Record
Federal Defenders of New York, Inc.
Appeals Bureau
52 Duane Street, 10th Floor
New York, New York 10007
(212) 417-8739
Allegra_Glashausser@fd.org

Counsel for Petitioner

Table of Contents

Table of Authorities

Cases

United States Sentencing Guidelines

Introduction

The Second Circuit has long held that "standard" conditions of supervised release that are "basic administrative requirement[s]" need not be orally pronounced at sentencing. *United States v. Truscello*, 168 F.3d 61, 63 (2d Cir. 1999). Since *Truscello* was decided, the Second Circuit has only expanded that rule to exclude other categories of conditions from those that the district court has to announce at sentencing. In Mr. Genao's case, the Second Circuit held that another "special" condition of supervised release, under U.S.S.G. § 5D1.3(d)(4)(B), also does not need to be orally pronounced. Pet. App. p. 1. As explained in Mr. Genao's petition for certiorari, the Second Circuit's approach conflicts with seven other circuits, all of which require the oral pronouncement of all non-mandatory conditions. Pet. Br. 5-10. Numerous other circuits have acknowledged the split. *E.g.*, *United States v. Matthews*, 54 F.4th 1, 6 (D.C. Cir. 2022); *United States v. Rogers*, 961 F.3d 291, 297 (4th Cir. 2020).

In its brief in opposition, the government doesn't meaningfully dispute that there is a circuit split with respect to whether non-mandatory conditions of release must be pronounced orally at sentencing. Because Second Circuit law conflicts with other "United States court[s] of appeals on the same important matter," Sup. Ct. R. 10(a) – and this issue impacts the liberty interests of innumerable people who are on supervised release – this Court should grant certiorari and resolve this entrenched circuit split.

A. There is a circuit split about whether non-mandatory conditions of supervised release must be orally pronounced.

As Mr. Genao's petition explained, the Fourth, Fifth, Seventh, Tenth, Eleventh, and D.C. Circuits all follow a straightforward approach to the imposition of supervision release conditions, requiring that all non-mandatory conditions of supervised release be orally pronounced at sentencing. *United States v. Montoya*, 82 F.4th 640, 645 (9th Cir. 2023) (en banc); *United States v. Geddes*, 71 F.4th 1206, 1215 (10th Cir. 2023); *United States v. Rodriguez*, 75 F.4th 1231, 1247-48 (11th Cir. 2023); *United States v. Matthews*, 54 F.4th 1 (D.C. Cir. 2022); *United States v. Rogers*, 961 F.3d 291, 297 (4th Cir. 2020); *United States v. Diggles*, 957 F.3d 551, 558 (5th Cir. 2020); *United States v. Anstice*, 930 F.3d 907, 910 (7th Cir. 2019).

The First and Second Circuits don't follow this majority approach. The First Circuit doesn't require "standard" conditions to be orally pronounced. *United States v. Sepulveda-Contreras*, 466 F.3d 166, 169 (1st Cir. 2006). And the Second Circuit is even more of an outlier, not only allowing "standard" conditions to be imposed without any mention of them at sentencing, but also allowing certain "special" conditions to be imposed without any oral pronouncement. *United States v. Sims*, 92 F.4th 115, 119, n.1 (2d Cir. 2024) ("recommended" "special" conditions are "presumed suitable in all cases"); *United States v. Asuncion-Pimental*, 290 F.3d 91, 94 (2d Cir. 2002) (if the "special condition" is a "clarification of [a] mandatory condition," then it need not be orally pronounced); *United States v. Thomas*, 299 F.3d 150, 154 (2d Cir. 2002) (if the "special condition" is a "basic administrative requirement," that is "routinely-imposed," it need not be orally pronounced).

In *Rogers*, the Fourth Circuit recognized this conflict between the Second Circuit and the majority position, explaining:

> We recognize that [ ] other circuits have taken different approaches…in the Second Circuit, discretionary conditions need not be announced, provided that they: are "standard" Guidelines conditions; are "special" Guidelines conditions applicable in the circumstances of the case; or fall into a partly but not entirely overlapping category of conditions that qualify as "basic administrative requirements" of supervised release.

Rogers, 961 F.3d at 298.

In its brief in opposition, the government doesn't dispute that the First and Second Circuits have both held that a judge can impose standard conditions by simply including them in the judgment. It also doesn't dispute that the Second Circuit's rule is an outlier in excluding certain special conditions from the oral pronouncement requirement.

Instead of addressing this circuit split or explaining why it disagrees that this split should be resolved by this Court, the government attempts to shift the Court's focus to issues not raised by Mr. Genao's petition. First, the government discusses case law related to conflicts between oral pronouncements at sentencing and written judgments, saying that this type of question is fact-specific. *See* BIO 8-10 (noting that the courts of appeals agree on that matter). But Mr. Genao's petition has not presented any argument related to a conflict between the oral pronouncement and the written judgment. That is because the Second Circuit declined to reach that issue in Mr. Genao's case and instead issued a broader ruling, holding that the alcohol condition in § 5D1.3(d) did not need to be orally

pronounced. Pet. App. p. 2. Thus, no question about variations between written and oral conditions is before this Court.

Second, still not disputing the clear split between the circuits requiring that all non-mandatory conditions of supervised release be articulated orally at sentencing and those that do not, the government attempts to modify the question presented to one about the specific methods by which a district court can satisfy the majority-circuit rule. BIO 10-12. In support, the government explains that courts "agree that a district court need not 'orally pronounce all discretionary conditions word-for-word,'" but, instead, may refer to conditions the parties had received in advance and "adopt [those conditions] by reference." BIO 10-11, citing *United States v. Hayden*, 102 F.4th 368, 374 (6th Cir. 2024); *United States v. Cisson*, 33 F.4th 185, 194 (4th Cir. 2022); 54 F.4th at 6 n.2; *Diggles*, 957 F.3d at 562; *Geddes*, 71 F.4th at 1215, and *Rogers*, 961 F.3d 291.

The method of oral pronouncement is irrelevant to the circuit split that Mr. Genao's question presented would resolve because there was no incorporation by reference here. The Second Circuit – in contrast to the standard articulated by the Fourth, Fifth, Sixth, Tenth, and D.C. Circuits – does not require that the parties receive the proposed standard conditions in advance or that the court reference the standard conditions it is imposing at sentencing. Instead, the Second Circuit has no requirement that the district court pronounce many of the non-mandatory conditions *at all*, by oral reference or otherwise. Indeed, the government admits that incorporation "by reference" is not at issue in Mr. Genao's case. BIO 12 (explaining

that in Mr. Genao's case there was no prior "written order" that was "adopt[ed] by reference").[1]

The government's case citations to circuits that require oral reference to "standard" conditions – which the Second Circuit does not require – only serve to further demonstrate the deep circuit split. In *Matthews*, for example, the D.C. Circuit explained that, even with respect to the standard conditions, the "district court must consider whether they are warranted in the circumstances of each case, must allow the defendant an opportunity to contest them, and must orally pronounce them at sentencing." *Matthews*, 54 F.4th at 6. *Accord Diggles*, 957 F.3d 551 and *Geddes*, 71 F.4th 1206. The Second and First Circuits simply do not have this requirement. Indeed, the D.C. Circuit in *Matthews* explicitly noted that it "respectfully disagree[d]" with the Second Circuit's rule. *Matthews,* 54 F.4th at 6.

Moreover, only the Second Circuit allows a district court to impose some "special" conditions without an oral pronouncement. Nothing in the government's brief disputes this and none of the government's citations suggest anything to the contrary. Instead, *Hayden*, *Rogers*, and *Cisson* are about "standard" conditions. *Hayden*, 102 F.4th at 374–75 (noting that the district court orally pronounced the "special conditions in full during Hayden's sentencing hearing."); *United States v.*

[1] Indeed, in Mr. Genao's case, the parties did not receive any notice of the proposed conditions in advance as they were not in the PSR or elsewhere. The government's comment that Mr. Genao's PSR noted in a section outlining the "[c]osts of prosecution" that the costs of supervised release "may include drug and alcohol treatment, electronic monitoring, and/or contract confinement costs" is irrelevant to the issue before this Court. PSR ¶ 67. This exact same language about the possible costs of supervised release is included in every PSR in the district and is unrelated to the proposed conditions of supervised release. Mr. Genao's PSR simply did not include any proposed conditions of supervised release.

Cisson, 33 F.4th 185, 194 (4th Cir. 2022) (district court stated "that it would impose the 'standard' conditions of supervised release"); *Rogers*, 961 F.3d at 299 ("If we are to remain faithful to the statutory language, under which the imposition of *any* discretionary condition must be justified under the § 3583(d) factors, then we may not simply import discretionary conditions – no matter how sensible and routine – into oral sentences as a matter of course"). Thus, although the government complains that Mr. Genao has advocated for a "rigid rule requiring a district court to recite at sentencing the full parameters of the special conditions it imposes," BIO 10, it has cited no Circuit – other than the Second Circuit – that allows "special" conditions of supervised release to be imposed without being orally pronounced. In other words, the government's "rigid rule" is already the rule in the majority of circuits.

Notably, contrary to the government's implication, *Hayden* did not state that the Second Circuit had the same rule as the Fourth Circuit with respect to oral pronouncement of non-mandatory conditions. BIO 11 (stating that *Hayden* had "collected cases," including from the Second Circuit, about adopting discretionary conditions by reference). Instead, *Hayden* merely cited *Truscello*, 168 F.3d at 64, which presented the Second Circuit's outlier rule that conditions that are deemed to be "administrative requirement[s]" need not be "reference[d]." *Hayden*, 102 F.4th at 374.

Third, while not denying the existence of the circuit split articulated in Mr. Genao's petition, the government posits that Mr. Genao would not "necessarily have

prevailed on his sentencing claim in the Seventh Circuit." BIO 12, citing *Anstice*, 930 F.3d 907 and *United States v. Bonanno*, 146 F.3d 502, 512 (7th Cir. 1998). But this proposition ignores that the Second Circuit's holding in Mr. Genao's case conflicts with the rule in the Seventh Circuit. In Mr. Genao's case, the Second Circuit held that "it was permissible for the district court to impose the alcohol prohibition as a condition in its written judgment without pronouncing it orally at sentencing." Pet. App. p. 2. The "alcohol prohibition" is a "special" condition. U.S.S.G. § 5D1.3(d)(4)(B). In contrast, the Seventh Circuit has explained that the court must orally announce all non-mandatory conditions. *Anstice*, 930 F.3d at 909 (requiring oral pronouncement of all conditions that are not "truly mandatory"). *Bonanno*, which addresses the sufficiency of the court's oral pronouncement by reference to the standard conditions, says nothing to the contrary.

Indeed, the Second Circuit's holding in Mr. Genao's case not only conflicts with the rule in the Seventh Circuit, but also conflicts with the rules in the Ninth, Tenth, Eleventh, Fourth, Fifth, and D.C. Circuits, all of which require that special conditions be orally imposed. *Montoya*, 82 F.4th 640,; *Geddes*, 71 F.4th 1206; *Rodriguez*, 75 F.4th 1231; *Matthews*, 54 F.4th 1; *Rogers*, 961 F.3d 291; *Diggles*, 957 F.3d 551.

As explained in Mr. Genao's petition, there is a clear circuit split that needs this Court's resolution.

B. The government is wrong that the circuit split is "case-specific."

Mr. Genao's question presented is not a case-specific claim, as the government contends. BIO 10. The Second Circuit's decision in his case was the latest in a line of decisions expanding the types of supervised release conditions that did not need to be orally pronounced. *See Sims*, 92 F.4th at 119, n.1; *Asuncion-Pimental*, 290 F.3d at 94; *Thomas*, 299 F.3d at 154. With Mr. Genao's case, the Second Circuit's rule has only expanded further away from the rule in the majority of circuits. That circuit split is unrelated to any idiosyncratic facts specific to Mr. Genao's case. Instead, this case is a good vehicle for this Court to address this issue: it is fully preserved at the district court and appellate levels and was squarely decided by the Second Circuit.

C. The question presented is important, recurring, and deserves resolution.

The government also asserts that the question presented "lacks sufficient practical importance to warrant this Court's intervention." BIO 13. This is simply incorrect. Supervised release conditions are not just administrative requirements, but impact core due process rights and liberty interests. Even the standard conditions "substantially restrict" the "liberty" of a person on supervised release. *Gall v. United States*, 552 U.S. 38, 48 (2007). Standard conditions can govern nearly every aspect of the life of a person on supervised release, including restricting where they can live, work, and travel. U.S.S.G. §§ 5D1.3(c)(3), (5), (7). And the special conditions reach even more detailed aspects of a person's life, including, in Mr. Genao's case, whether he can drink a beer while watching the Super Bowl. These

conditions impact the hundreds of thousands of people who face violations of supervised release proceedings. Forgoing "oral pronouncement of discretionary conditions will leave defendants without their best chance to oppose supervised-release conditions that may cause them unique harms[.]" *Rogers*, 961 F.3d at 298. In contrast, requiring judges to announce the conditions makes it more likely that defendants and their counsel will meaningfully engage with whether a particular condition is appropriate. This is a matter of importance.

The government also asserts that "even if petitioner were entitled to the appellate relief he seeks, the district court would presumably impose the condition on remand anyway," adding that the "reality" is that "when an appellate court vacates a supervised-release condition for lack of oral pronouncement, the district court has ample authority to impose the same condition on remand." BIO 14. This is not a reason to deny certiorari and is not factually accurate. Recently, this Court rejected the government's similar argument that the Court's interpretation of Section 3583(e) was a "substance-free reverse magic-words requirement" because the district court could correct any error merely by restating the correct standard. *Esteras v. United States*, 145 S. Ct. 2031, 2045 (2025). As the Court explained in *Esteras*, that the district court would have an opportunity to correct an error does not make the error non-substantive. *Id.*

Additionally, the government's assertion that the "reality" is that courts would reimpose stricken conditions on remand is unsupported speculation: some courts surely will, and some courts won't. A review of the district court dockets

following recent supervised release condition remands by the Second Circuit demonstrates that it is just not true that all district courts will reflexively reimpose the vacated conditions. *E.g., United States v. Leavens*, No. 23-7993-CR, 2025 WL 387810 (2d Cir. Feb. 4, 2025); *United States v. Leavens*, ECF No. 21-cr-331, Dkt. 30 (N.D.N.Y) (following remand, district court not only struck portion of condition that was the focus of the remand, but also reconsidered the conditions overall, striking additional portions of other conditions); *United States v. Meadows*, No. 22-3155, 2025 WL 786380 (2d Cir. Mar. 12, 2025); *United States v. Meadows*, ECF No. 22-cr-353, Dkt. 36 (S.D.N.Y) (following remand, striking portion of condition that was not imposed orally); *United States v. Salazar*, No. 22-1385-CR, 2023 WL 4363247 (2d Cir. July 6, 2023); *United States v. Salazar*, ECF No. 21-cr-215, Dkt. 61 (holding a hearing after remand and adopting parties' joint proposal for revised condition); *United States v. Salazar*, No. 24-1088, 2025 WL 1554124, at *2 (2d Cir. June 2, 2025), *United States v. Salazar*, ECF No. 21-cr-215, Dkt. 74 (taking no action after the circuit vacated a portion of a condition).

Additionally, contrary to the government's contention, BIO 13, it is not relevant that the district court held an unlawful proceeding in Mr. Genao's case well after his sentencing had concluded and the written judgment had been entered to impose the special condition. The Second Circuit expressly declined to reach the question whether this post-judgment proceeding was lawful, instead holding that the special condition did not need to be orally pronounced at all. Pet. App. p. 2.

Finally, the government states that this Court has recently denied petitions "presenting related issues" and should "follow the same course here." BIO 7-8, citing *United States v. Brown*, No. 24-6621 (June 30, 2025) and *Acevedo v. United States*, 142 S.Ct. 2741 (2002). But neither *Brown* nor *Acevedo* presented a question about the circuit split at issue here. *Brown* involved the scope of the Eleventh Circuit's requirement that the district court orally pronounce the mandatory and standard conditions. The question presented in *Brown* assumed an oral-pronouncement requirement, but asked further whether the oral pronouncement needed to include an individualized assessment as to whether the conditions were reasonably related to the sentencing factors. *Brown*, thus, proposed a more detailed inquiry into the majority position about the imposition of supervised release conditions.

And *Acevedo*'s question presented related to the oral pronouncement of standard conditions. The Ninth Circuit has since overturned *Acevedo*, holding en banc that "a district court must orally pronounce all discretionary conditions of supervised release, including those referred to as "standard" in § 5D1.3(c) of the United States Sentencing Guidelines Manual (Guidelines), in order to protect a defendant's due process right to be present at sentencing." *Montoya*, 82 F.4th at 644–45. That the Ninth Circuit took up this issue en banc only further shows that it is one that is of wide importance.

Conclusion

The courts of appeals are divided about whether non-mandatory supervised release conditions must be orally pronounced. This is leading to confusion for lower

courts trying to properly impose conditions of supervised release, for appellate courts trying to consistently apply an unclear rule, and for people on supervised release who have a right to know what rules they are subject to and have an opportunity to object to ones that should not apply.

For the foregoing reasons and those presented in the opening petition, the Court should grant a writ of certiorari.

Respectfully submitted,

By: /s/ Allegra Glashausser
Allegra Glashausser
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, New York 10007
Allegra_Glashausser@fd.org
Tel.: (212) 417-8739