

No. _____

In the
Supreme Court of the United States

Oscar Carter,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Quincy Ferrill
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
819 Taylor Street, Room 9A10
Fort Worth, Texas 76102
(817) 978-2753
Quincy_Ferrill@fd.org

QUESTION PRESENTED

- I. **Whether Section 3583(e) can be used to circumvent an appellate court's directive to strike unpronounced conditions of supervised release from the judgment?**

PARTIES TO THE PROCEEDING

Petitioner is Oscar Carter, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Oscar Carter seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the court of appeals is reported at *United States v. Carter*, 2026 WL 524479 (5th Cir. Feb. 25, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence entered in *United States v. Carter*, No. 4:23-CR-00299-O (June 6, 2025), is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on February 25, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Question I

18 U.S.C. § 3583(e) states:

(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.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

In the case below, the district court entered a judgment sentencing him to a term of 13 months imprisonment and ten years of supervised release.

ROA.59-62. In his first appeal, Mr. Carter argued that the district court erred by including unpronounced discretionary conditions in the written revocation judgment. The parties filed a joint motion to modify the judgment to remove certain supervised-release conditions and affirm as modified.

The Fifth Circuit granted the parties' joint motion to remand this case to the District Court to strike the unpronounced discretionary supervised release conditions from the revocation judgment. *United States v. Carter*, 24-10262. On October 22, 2024, the district court issued an amended judgment pursuant to the opinion in USCA 24-10262. ROA.103-105. This amended judgment did not include the previously unpronounced conditions that were ordered to be stricken. ROA.103-105.

On February 4, 2025, Probation filed a request for summons and modification of the conditions or term of supervision without consent of the person under supervision. ROA.119-122. Specifically, Probation asked that the district court add to the judgment the 13 standard conditions that had been previously stricken, along with numerous special conditions. ROA.119-122. Probation opined that the standard conditions were necessary for the probation officer to adequately supervise Mr. Carter. ROA.119.

On March 7, 2025, the parties appeared before the district court for Mr. Carter's modification hearing. ROA.9-10. At the hearing, Mr. Carter did not object to the requested proposed standard conditions but did lodge objections to some of the proposed additional conditions. ROA.130. The parties filed a joint agreement regarding proposals of conditions. ROA.129-132. The defense then filed objections and requests for clarifications to the proposed modifications of supervised release. ROA.133-141. The court issued an order overruling defendant's objections and imposing the conditions. ROA.159-160.

Based upon concerns that Mr. Carter was not given the opportunity to be heard at the first hearing, there was an additional evidentiary hearing held on June 6, 2025, during which Mr. Carter was given the opportunity to address the court and did so. ROA161-163; ROA.11. An additional amended judgment was entered, which included the conditions that were previously unpronounced and ordered stricken, along with the additional requested special conditions. ROA.167-171.

II. Appellate Proceedings

Petitioner appealed, arguing this issue in the Fifth Circuit.

The court of appeals affirmed. *See* Pet.App.A.

REASONS FOR GRANTING THE PETITION

I. District courts are circumventing the pronouncement requirement by way of 18 U.S.C. § 3583(e).

Here, the district court claimed that it had fulfilled the Fifth Circuit's mandate by striking the unpronounced conditions from the judgment. But it cannot later use Section 3583(e) to add the same conditions that were stricken, undoing what the Court of Appeals had ordered it to do.

Conditions of supervised release are part of a defendant's sentence, and "must be pronounced unless their imposition is required by 18 U.S.C. § 3583(d)." *United States v. Baez-Adriano*, 74 F.4th 292, 298 (5th Cir. 2023) (citing *United States v. Diggles*, 957 F.3d 551, 556-59 (5th Cir. 2020)). Here, the Fifth Circuit determined that the district court failed to comply with this requirement and ordered that the unpronounced conditions be "stricken" from the judgment. *United States v. Carter*, No. 24-10262.

In *Diggles*, the Fifth Circuit explained that "[o]ur caselaw does not generally give the district court that second chance when it fails to pronounce a condition, even though conditions have salutary effects for defendants, victims, and the public." 957 F.3d at 563 (citing *United States v. Mireles*, 471 F.3d 551, 558 (5th Cir. 2006) (explaining that a condition must be struck from the judgment when it is not pronounced); *United States v. Flores*, 664 F. App'x 395, 398 (5th Cir. 2016) (per curiam) (unpublished) (summarizing precedent about when a discrepancy is a "conflict" that requires excising the condition from the judgment as opposed to an "ambiguity" that may allow the condition

to remain)). The practice of “[the Fifth] Circuit, before and after *Diggles*, has been to remand pronouncement-error cases to the district court with instructions to amend the written judgment to reflect only the conditions orally pronounced at sentencing and those conditions which need not be pronounced.” *United States v. Chavez*, No. 20-550550, 2022 WL 767033 at *5 (5th Cir. Mar. 14, 2022) (unpublished) (citing *United States v. Fields*, 977 F.3d 358, 367 (5th Cir. 2020) (special condition that was not pronounced “must be stricken.”); *United States v. Rivas-Estrada*, 906 F.3d 346, 351 (5th Cir. 2018) (remanding to the district court to amend its written judgment by removing unpronounced special conditions)).

In *Chavez*, the Court acknowledged that although “remand without an opportunity to resentence constitutes a ‘stark remedy,’ [*Diggles*, 957 F.3d at 563 n. 11], we are bound by the rule of orderliness to adhere to this practice.” 2022 WL 767033 at *5 (citation omitted). It explained that, “[t]o depart from this remedy (i.e., to remand the case to the district court so that it may resentence Chavez and pronounce the previously unpronounced conditions), would require our court to take this matter en banc and alter its binding caselaw.” *Id.* (citing *Diggles*, 957 F.3d at 563 n. 11, *Fields*, 977 F.3d at 367). See also *United States v. Griffin*, No. 21-50294, 2022 WL 17175592 at *5 (5th Cir. Nov. 23, 2022) (unpublished) (Oldham, J., dissenting) (noting the tension between the procedural nature of the right to be present at sentencing, and that fact that “[o]ur precedent regularly orders substantive relief – namely, the directed-

victory remand – based solely on the *substantive* nature of the right.” (emphasis in original) (citation omitted).

Nevertheless, in *Chavez*, the Court also noted that “in certain circumstances the district court may later modify and enlarge the conditions of supervised release.” 2022 WL 767033 at *5 (citing 18 U.S.C. § 3583(e); Fed. R. Crim. P. 32.1(c)). “As long as the district court adheres to the procedural protections of these authorities, we see nothing that prevents the court from modifying Chavez’s conditions of supervised release to include the Western District’s standard conditions and the two special conditions that it previously did not pronounce.” *Id.*

To the extent that *Chavez* suggests that the district court may circumvent the pronouncement requirement by later modifying the conditions it failed to pronounce, to do so would contravene binding precedent as articulated in *Diggles* and earlier decisions requiring that those conditions be stricken. *See Diggles*, 957 F.3d at 563 (citing *Mireles*, 471 F.3d at 558). It also contradicts the rule of orderliness to adhere to the “practice” of ordering the unpronounced conditions stricken, rather than remanding with an opportunity to resentence. Allowing the court to later add the stricken conditions via Section 3583(e) would have the same effect and would circumvent the mandate striking the conditions of supervised release that were not pronounced.

Appellate courts are divided on the appropriate remedy for unpronounced conditions of supervised release. The Fourth Circuit, for

example, requires a full resentencing as the remedy. *United States v. Rogers*, 961 F.3d 291 (4th Cir. 2020), whereas the Fifth Circuit and others simply vacate unannounced conditions as the remedy and allow them to be reimposed at a later hearing. *Diggles*, 957 F.3d at 559; *Mireles*, 471 F.3d at 558; *United States v. Trevino*, 125 F.4th 198 (5th Cir. 2024). And in the Seventh Circuit's decision in *United States v. Anstice*, the court “vacate[d] the non-mandatory additional conditions provided in the written judgment, and remand[ed] to allow the district court to modify and reconsider Anstice's sentence with respect to the two non-mandatory conditions of supervised release.” 930 F.3d 907, 910 (7th Cir. 2019). Other circuits take a similar tack. *See, e.g., United States v. Handakas*, 329 F.3d 115, 119 (2d Cir. 2003) (“[R]emand[ing] for reconsideration of the condition of supervised release restricting the Defendant's employment.”); *United States v. Montoya*, 82 F.4th 640, 656 (9th Cir. 2023) (en banc) (“[R]emand[ing] to the district court for the limited purpose of reconsidering the supervised release conditions we have vacated herein.” (internal quotation marks omitted)). By allowing this procedure, circuit courts are effectively utilizing Section 3583(e) to circumvent the pronouncement requirement at sentencing.

Thus, this Court should intervene determine that the district courts cannot modifying conditions of release by adding back in the conditions ordered stricken by appellate courts.

CONCLUSION

Petitioner asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, or if it does so in another case to decide the above issue, should hold the instant Petition pending the outcome.

Respectfully submitted this 26th day of May, 2026.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Quincy Ferrill

Quincy Ferrill
Assistant Federal Public Defender
Federal Public Defender's Office
819 Taylor Street, Room 9A10
Fort Worth, Texas 76102
Telephone: (817) 978-2753
E-mail: Quincy_Ferrill@fd.org

Attorney for Petitioner