No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROCKY JOE WILLIAMS,
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

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QUESTION PRESENTED FOR REVIEW

Do courts of appeals enjoy the jurisdiction to hear appeals of conditions of supervised release that are contingent on the discretionary decision of a Probation Officer or other professional, or are such appeals "unripe" for the purposes of Article III?

PARTIES

Rocky Joe Williams is the petitioner; he was the defendant-appellant below. The United States of America is the respondent; it was the plaintiff-appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Rocky Joe Williams respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The district court entered its original judgment of conviction and sentence on October 31, 2014. A copy of the district court's original judgment is attached as Appendix B. Petitioner appealed from that judgment, and the Fifth Circuit dismissed petitioner's appeal for lack of jurisdiction in an unpublished Order. A copy of the Order is attached as Appendix A.

JURISDICTIONAL STATEMENT

This petition has been filed within 90 days of the Fifth Circuit's judgment. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. §3583 provides in pertinent part:

> **(d) Conditions of Supervised Release.**— The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561 (b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563 (a)(4). [1] The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583 (g) when considering any action against a defendant who fails a drug test. 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);
>
> **(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); and
>
> **(3)** is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994 (a);

any condition set forth as a discretionary condition of probation in section 3563 (b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583 (e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

18 U.S.C. §3742 provides in pertinent part:

> **(a) Appeal by a defendant.**– A defendant may file a notice of appeal in the district for review of an otherwise final sentence if the sentence –
>
> **(1)** was imposed in violation of law....

28 U.S.C. §1291 provides:

> **Final decisions of district courts**
>
> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

STATEMENT OF THE CASE

A. Facts and Proceedings Underlying the Conviction

This is a criminal case arising out of the Northern District of Texas. The district court had jurisdiction pursuant to 18 U.S.C. § 3231.

Petitioner pleaded guilty to one count of transportation of child pornography, and the remaining counts of the indictment were dismissed. The district court determined a total offense level of 31 and a criminal history category of I, yielding a guideline range of 108-135 months of imprisonment. It imposed a sentence of 120 months' imprisonment, followed by a 10-year term of supervised release.

The charges in this case arose from a cyber tip from Google alerting authorities that a person using a particular email address had posted several images of child pornography to the Picasa web albums site. Investigation revealed that the email address belonged to Petitioner. Federal officers executed a search warrant at Petitioner's' home and questioned him. Petitioner admitted that he used his cellular telephone to access the internet and view, download, and upload adult and child

pornography.

Petitioner did not trade child pornography with others and had never molested a child. He allowed the officers to search his cell phone, email accounts, and property. Officers determined that Petitioner possessed seven images of child pornography and six videos.

Petitioner was charged by indictment with one count of receipt of transporting child pornography; two counts of receipt of child pornography; and one count of possession of child pornography. Pursuant to a plea agreement with the government, he pleaded guilty to count one (transporting), and the remaining counts were dismissed.

The district court determined a total offense level of 31 and a criminal history category of I, yielding a guideline range of 108-135 months of imprisonment. It imposed a sentence of 120 months' imprisonment, followed by a 10-year term of supervised release. The court ordered standard and special conditions of supervised release. Some of the special conditions of supervision were related to sexual conduct, including sex offender treatment, internet restrictions, and a no-contact provision. One of the sex offender-related special conditions of supervision provides:

> The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged.

> These services may include psycho-physiological testing (i.e. clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community.[1]

The district court entered its judgment on October 31, 2014, and petitioner timely appealed.

B. The Appeal

On appeal from the judgment, petitioner's sole challenge was that the district court erred by imposing the special condition of supervised release requiring him to submit to plethysmograph testing. Petitioner acknowledged that the Fifth Circuit had held that such a challenge is not ripe for review on direct appeal from the judgment imposing the condition, but he challenged that holding to preserve the matter for further review. The government moved to dismiss the appeal for lack of jurisdiction, citing the Fifth Circuit's decision in *United States v. Ellis*, 720 F.3d 220, 227 (5th Cir. 2013), and petitioner's acknowledgment that the issue was foreclosed by *Ellis*. The Fifth Circuit granted the motion to dismiss the appeal in an unpublished order dated March 30, 2015. (See Appendix A)

This petition follows. It seeks review of the Fifth Circuit's order holding that it lacks subject matter jurisdiction over a direct appeal challenging a condition of supervised release in the judgment from which the appeal is taken.

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[1] The district court's oral pronouncement of the sentence stated only that petitioner "shall participate in sex offender treatment service programs as directed by the United States Probation Office." It did not include the specific reference to psycho-physiological testing including the plethysmograph. That specification appeared for the first time in the written judgment, and was challenged in petitioner's appeal from the judgment.

REASONS FOR GRANTING THE WRIT

I. The courts of appeals are divided on a basic jurisdictional question governing the appeals of supervised release conditions. Moreover, the position of the court below and two of its sister circuits is plainly contrary to this Court's opinion in *United States v. Jose*, 519 U.S. 54 (1996).

District courts may impose only those conditions of supervised release that "involve[] 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)" of Title 18. 18 U.S.C. §3583(d)(2). Section 3742(a) permits appeals of sentences imposed in violation of law. 18 U.S.C. §3742(a)(1). Section 1291 endows the courts of appeals with jurisdiction to hear appeals "from all final decisions of the district courts of the United States . . . ." 28 U.S.C. §1291. Petitioner appealed from his sentence, challenging a special condition of supervised release that authorized use of plethysmograph testing. The court of appeals ruled that it lacked subject matter jurisdiction (because the issue is not ripe for review) and dismissed the appeal. (*See* Order, Appendix A) Because there is a circuit split on the ripeness question, this Court should grant a writ of certiorari to review the decision of the Fifth Circuit.

The five courts that have considered the ripeness of challenges to "penile plethysmograph" testing as a condition of supervised release have reached different conclusions about their jurisdiction to hear such appeals.[2] The Fifth, Sixth, and

[2] Another court–the United States Court of Appeals for the Second Circuit–also has considered a challenge to penile plethysmograph testing and held that it did not comport with due process, *see United States v. McLaurin*, 731 F.3d 258 (2d Cir. 2013), but ripeness was not an issue in the case before the Second Circuit because the

Seventh Circuits have each held that challenges to this condition are barred at the time of the defendant's initial sentencing under the ripeness doctrine. *See United States v. Ellis*, 720 F.3d 220, 227 (5th Cir. 2013); *United States v. Lee*, 502 F.3d 447, 450-51 (6th Cir. 2007); *United States v. Rhodes*, 552 F.3d 624, 628-29 (7th Cir. 2009). They reason that the defendant suffers no concrete injury until a Probation Officer actually compels him to undergo the technique, and that he should instead wait until this time to petition the district court for relief. *See Ellis*, 720 F.3d at 227; *Lee*, 502 F.3d at 450-51; *Rhodes*, 552 F.3d at 628-29. The Ninth Circuit, by contrast, has repeatedly rejected the notion that appeals of final judgments can be treated as unripe, including a case involving the plethysmograph. *See United States v. Weber*, 451 F.3d 552, 556-557 (9th Cir. 2006); *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 771-72 (9th Cir. 2006); *United States v. Williams*, 356 F.3d 1045, 1049-51 (9th Cir. 2004). It reasons that "[a] term of supervised release, even if contingent, is part and parcel of the defendant's sentence and can be challenged on direct appeal." *Weber*, 451 F.3d at 556. The First Circuit recently considered the issue, and also held that the challenge is ripe where "the judgment imposing the sentence . . . expressly spells out the condition that the defendant challenges." *United States v. Medina*, 779 F.3d 55, 66-67 (1st Cir. 2015).

The circuit split was acknowledged by the Fifth Circuit in *United States v.*

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defendant had completed his short imprisonment term and was on supervised release at the time the appeal was decided. Brief for the United States at 19 n.7, *United States v. McLaurin*, 731 F.3d 258 (2d Cir. 2013) (No. 12-3514-CR) (available at 2013 WL 1549477).

Christian, 344 F. App'x 53, 56-57 (5th Cir. 2009)(unpublished). The Fifth Circuit explicitly joined the Sixth and Seventh Circuits in holding that challenges to psycho-physiological testing requirements are "unripe" on direct appeal due to the lack of any "certainty whatsoever the [plethysmograph] procedure will be ordered." *Id.* The court stated that the defendant's challenge should be raised via a different avenue: "Christian can petition the district court to modify this condition if he is ordered to submit to the procedure." *Id.* at 57. The Fifth Circuit reaffirmed that conclusion in its published decision in *Ellis*. *Ellis*, 720 F.3d at 227 (holding the defendant's challenge to the plethysmograph condition was "not ripe for review because Ellis may never be subjected to such . . . testing," and that Ellis "may petition the district court for a modification of his conditions" if he were later required to submit to the testing)

The Sixth Circuit reached the same conclusion. In *United States v. Lee*, the district court had imposed conditions of supervised release requiring the defendant to participate in a sex offender treatment program that may include the use of a plethysmograph. *See Lee*, 502 F.3d at 447. The Sixth Circuit found the condition not "ripe for appellate review" for two reasons. *See id.* at 449-50. First, it noted the possibility that the Probation department would not ultimately compel him to submit to the device at the end of his sentence. *See id.* at 450. Second, and ironically, the court noted that the device's dubious scientific pedigree, together with its exposure to due process challenges, might render it obsolete by the time his term of supervised release began. *See id.* at 450. It thus found that any challenge to the plethysmograph condition

represented a "contingent future event[] that may not occur as anticipated, or indeed may not occur at all." *Id*. at 451 (citing *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)(further citations omitted)).

The Seventh Circuit addressed this issue in *United States v. Rhodes*, in which the defendant was subjected to a similar condition of supervision, to follow a lengthy term of imprisonment. *See Rhodes*, 552 F.3d at 628. He challenged the term requiring him to submit to the plethysmograph, but the Seventh Circuit agreed with the Sixth and found the challenge unripe. *See id.* at 628-29. The Seventh Circuit found it significant that the defendant's sex offender treatment program could not possibly commence for several years, when the defendant was released from prison. *See id.* The court also stressed the degree of discretion available to treatment professionals, and accordingly found the appellate issue "full of contingency and abstraction founded in an evolving scientific field." *Id*. at 628. Thus, it expressly declined to join the Ninth Circuit's opinion in *Weber*. *See id.*

In *United States v. Weber*, the Ninth Circuit considered the ripeness question *sua sponte* and held that there was "no jurisdictional barrier to our consideration of the merits." *Weber*, 451 F.3d at 556-57. The district court had imposed a condition that "require[d] Weber to participate in a sexual offender treatment program and submit to various tests, including plethysmograph testing, as a part of that program." *Id.* at 556. Weber had completed his imprisonment term and was serving his term of supervised release, but there was nothing in the record indicating that Weber "[had]

yet been ordered to undergo plethysmograph testing and it [was] not certain that he [would] ever be ordered to do so." *Id.* The Ninth Circuit found no ripeness bar to the appeal, however, because "[a] defendant need not refuse to abide by a condition of supervised release to challenge its legality on direct appeal from the imposition of sentence." *Id.* "A term of supervised release, even if contingent, is part and parcel of the defendant's sentence and can be challenged on direct appeal." *Id.* at 557.

This position is settled law in the Ninth Circuit; the *Weber* court grounded its decision in two of its own binding precedents: *United States v. Williams*, 356 F.3d 1045 (9th Cir. 2004), and *United States v. Rodriguez-Rodriguez*, 441 F.3d 767 (9th Cir. 2006). *See Weber*, 451 F.3d at 556. *Williams* involved the appeal of a condition requiring the defendant to take psychotropic medication. *See Williams*, 356 F.3d at 1050. The court found the condition appropriate for appellate review even though the defendant could produce no evidence that he had refused medication. *See id.* Similarly, in *Rodriguez-Rodriguez*, the defendant challenged a condition of supervised release requiring the defendant to report to a Probation Officer after any subsequent return to the United States. *See Rodriguez-Rodriguez*, 441 F.3d at 769. The court entertained this challenge even though the condition was contingent upon the defendant's illegal return to the United States. *See id.* at 771-72. The *Weber* court was thus articulating the considered position of multiple panels when it reasoned that even a contingent condition of supervised release "is part and parcel of the defendant's sentence and can be challenged on direct appeal." *Weber*, 451 F.3d at 557.

The First Circuit similarly reasoned that the finality of the judgment controlled the inquiry. In *Medina*, the First Circuit recounted its earlier decision in *United States v. Davis*, 242 F.3d 49, 51 (1st Cir. 2001), in which it held that "a challenge to even a contingent supervised release condition was ripe, and 'not hypothetical,' where the judgment explicitly spelled out the condition and the defendant challenged 'the special condition itself, not its application or enforcement.'" *Medina*, 779 F.3d at 66-67 (quoting *Davis*, 242 F.3d at 51). Because "[t]he judgment imposing sentence, of which the challenged special condition is a part, is a final judgment," the challenge could proceed. *Id.* at 67 (quoting *Davis*, 242 F.3d at 51). Endorsing its reasoning in *Davis*, the First Circuit held that the defendant's challenge to a special condition of supervised release compelling submission to plethysmograph testing upon demand was ripe for review on direct appeal from the judgment imposing the condition. *Id.*

The view of the First and Ninth Circuits appropriately recognizes that "[f]inality, not ripeness, is the doctrine governing appeals from district court to court of appeals," *United States v. Jose*, 519 U.S. 54, 57 (1996), and thus it is the only position faithful to this Court's instruction in *United States v. Jose*. In short, *Jose* instructs federal courts that the ripeness of an issue is determined at the time of its appearance in the trial court; there is no separate ripeness inquiry for a case's appellate phase. The term of any judgment finally adjudicating the rights of the parties is immediately ripe for appellate review, irrespective of when it may affect the parties.

In *Jose*, the IRS sought to enforce two summonses for use in a civil proceeding.

See Jose, 519 U.S. at 54-55. The district court granted its petition but required the IRS to give five days' notice before transmitting any of the documents produced to its criminal division. *See id.* at 55. The IRS appealed the notice requirement but the Ninth Circuit dismissed the appeal "as not ripe." *Id.* The Ninth Circuit saw no evidence that the IRS yet intended to circulate the summoned documents to its criminal division, and accordingly found that "any detrimental impact the district court's order may have on the IRS's investigation is, at this time, purely speculative." *Id.* at 56. This Court reversed in a brief *per curiam* opinion, holding that either party could appeal the terms of a final judgment under 28 U.S.C. §1291, even if neither was likely to suffer immediate injury therefrom. *See id.* at 57. This view of appellate jurisdiction flows from the principle "that appellate jurisdiction over final decisions does not turn on which side prevailed in the District Court." *Id.* Under *Jose*, an appeal is as ripe as the district court case from which it grows.

Other considerations also support a conclusion that these challenges are ripe for review on direct appeal from the judgments imposing the conditions. Although the Fifth, Sixth, and Seventh Circuits each point to the possibility of a later petition for relief to the district court, it is not clear that the defendant would be entitled to challenge the lawfulness of his conditions of supervision at that later time. Section 3583(e) of Title 18 gives a court authority to modify supervised release conditions only after considering a set of enumerated factors. 18 U.S.C. § 3583(e); *United States v. Lussier*, 104 F.3d 32, 35 (2d Cir. 1997). A motion for modification will only succeed if it is supported by a factor referenced in 18 U.S.C. § 3583(e)(2) and specified in section

3553(a). *Lussier*, 104 F.3d at 35; *United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002). "Illegality" is not included in these enumerated factors. *Lussier*, 104 F.3d at 35; *Gross*, 307 F.3d at 1044. Thus, the illegality of a condition of supervised release is not a proper ground for modification. *See* 18 U.S.C. § 3583(e); *Lussier*, 104 F.3d at 35.

Further, Petitioner could be barred from challenging the legality of the penile plethysmograph in a motion to modify because it would "not involve changed circumstances . . . ." *Lussier*, 104 F.3d at 32, 36. Although section 3583(e) allows the district court to revoke, discharge or modify any terms or conditions of a defendant's supervised relief in order to account for new or unforseen circumstances (*id.*; *United States v. Roberts*, 229 F. App'x. 172, 177 (3d Cir. 2007)), the use of the plethysmograph against Petitioner will not be new or unforseen as the district court's judgment specifically authorizes use of the device in Petitioner's mandatory treatment program.

Additionally, it is not clear that the defendant would be entitled to the assistance of counsel to produce such a petition. The Criminal Justice Act requires the appointment of counsel when a defendant "faces modification . . . of a condition . . . of a term of supervised release." 18 U.S.C. §3006A(E). It is unclear whether the defendant who *seeks* a modification of his supervised release conditions would be considered one who *faces* a modification under the terms of the Act. The position of the Fifth, Sixth, and Seventh Circuits may very well deprive the defendant of the only opportunity he will ever have to challenge an unthinkably intrusive condition of supervised release while assisted by a lawyer.

Finally, this Court should not underestimate the psychological impact of

languishing under an intrusive condition of supervised release, or from the knowledge that one may have to defy it in order to secure relief. In practice, the plethysmograph works as follows:

> Prior to beginning the test, the subject is typically given instructions about what the procedure entails. He is then asked to place the device on his penis and is instructed to become fully aroused, either via self-stimulation or by the presentation of so-called "warm-up stimuli," in order to derive a baseline against which to compare later erectile measurements. After the individual returns to a state of detumescence, he is presented with various erotic and non-erotic stimuli. He is instructed to let himself become aroused in response to any of the materials that he finds sexually exciting. These stimuli come in one of three modalities -- slides, film/videoclips, and auditory vignettes -- though in some cases different types of stimuli are presented simultaneously. The materials depict individuals of different ages and genders -- in some cases even possessing different anatomical features -- and portray sexual scenarios involving varying degrees of coercion. The stimuli may be presented for periods of varying length -- from mere seconds to four minutes or longer.
>
> Changes in penile dimension are recorded after the presentation of each stimulus . . . .

Weber, 451 F.3d at 562 (quoting Jason Odeshoo, *Of Penology and Perversity: The Use of Penile Plethysmography on Convicted Child Sex Offenders*, 14 Temp. Pol. & Civ. Rts. L. Rev. 1, 8-9 (Fall. 2004)). As the Ninth Circuit noted in *Weber*, "plethysmography testing has become rather routine in adult sexual offender treatment programs, with one survey noting that approximately one-quarter of adult sex offender programs employ the procedure." *Weber*, 451 F.3d at 562. Indeed, petitioner's conditions of supervised release explicitly include the "plethysmograph" as part of the "psycho-physiological testing" to which the probation officer may direct him to submit. To say that a judgment compelling submission to this highly invasive procedure raises constitutional concerns is a gross understatement, as Judge Noonan argued in *Weber*:

> I would . . . hold the Orwellian procedure at issue to be always a violation of the personal dignity of which prisoners are not deprived. The procedure violates a prisoner's bodily integrity by affecting his genitals. The procedure violates a prisoner's mental integrity by intruding images into his brain. The procedure violates a prisoner's moral integrity by requiring him to masturbate.
>
> By committing a crime and being convicted of it, a person does not cease to be a person. A prisoner is not a mere tool of the state to be manipulated by it to achieve the purposes the law has determined appropriate in punishment. The prisoner retains his humanity and therefore has purposes transcending those of the state. A prisoner, for example, cannot be forced into prostitution to aid the state in securing evidence. A prisoner, for example, cannot be made to perjure himself in order to assist a prosecution. Similarly, a prisoner should not be compelled to stimulate himself sexually in order for the government to get a sense of his current proclivities. There is a line at which the government must stop. Penile plethysmography testing crosses it.

Weber, 451 F.3d at 570-71 (Noonan, J., concurring). The existence of a judgment compelling submission to this kind of testing by itself communicates to the defendant that his humanity and dignity are of no consequence to the government. These conditions cause emotional distress to those who must live subject to them for extended periods of time, awaiting an opportunity to have their challenge heard in court.

For these reasons, Petitioner respectfully asks this Court to grant a writ of certiorari to review the decision of the Fifth Circuit.

CONCLUSION

Petitioner respectfully submits that this Court should grant certiorari to review and reverse the order of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 24th day of June, 2015.

_____

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UNITED STATES OF AMERICA,

Respondent.

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

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, Rocky Joe Williams, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(7), asks leave to file the accompanying Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A(b) and (c), in the district court and on appeal to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 24th day of June, 2015.

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PROOF OF SERVICE

I, Christopher Curtis, do certify that on June 24, 2015, pursuant to Supreme Court Rule 29, I have served the attached Motion for Leave to Proceed in Forma Pauperis and Petition for a Writ of Certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served. I have filed these documents with the Supreme Court of the United States by delivering the documents on this date to a third-party commercial carrier (FedEx) for delivery within three calendar days. I have served them upon the Solicitor General and the petitioner via first-class mail. The names and addresses of those served are as follows:

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