

22-1115-cr

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

– against –

BRIAN MAIORANA,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**BRIEF OF *AMICI CURIAE* EXECUTIVES TRANSFORMING
PROBATION AND PAROLE, AMERICAN CIVIL LIBERTIES UNION,
AND NEW YORK CIVIL LIBERTIES UNION IN
SUPPORT OF DEFENDANT-APPELLANT BRIAN MAIORANA AND
REVERSAL OF THE DISTRICT COURT**

ALLISON FRANKEL
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2500

DANIEL R. LAMBRIGHT
MOLLY K. BIKLEN
New York Civil Liberties Union
Foundation
125 Broad Street, 19th Floor
New York, NY 10004
212-607-3300

Dated: May 16, 2025
New York, New York

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae hereby certify that they have no parent corporations and that no publicly held corporations own 10% or more of their stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES.....	iii
INTRODUCTION	1
INTEREST OF AMICI	2
ARGUMENT	4
I. The “Standard” Conditions Are Not Essential to The Functioning of Supervised Release.	4
II. Blanket Imposition of The “Standard” Conditions Is Counterproductive To Successful Reentry.....	7
A. Geographic Restrictions Impede Employment (Condition #3).	8
B. Reporting Every Address Change Is Impracticable for People Experiencing Homelessness (Condition #5).	9
C. Full-Time Employment is Often Unrealistic (Condition #7).....	11
D. Association Bans Disrupt Social Networks (Condition #8).	13
E. Reporting Every Law-Enforcement Interaction Burdens Overly Policed People (Condition #9).	16
F. People With Disabilities Regularly Need Accommodations to Navigate “Standard” Conditions.....	18
III. Orally Pronouncing Non-Mandatory Conditions Allows All Parties to Ensure Conditions Are Lawful And Appropriate.	19
CONCLUSION	21

TABLE OF AUTHORITIES

Cases

<i>Floyd v. City of New York</i> , 959 F. Supp. 2d 540 (S.D.N.Y. 2013)	17
<i>United States v. Dupes</i> , 513 F.3d 338 (2d Cir. 2008)	21
<i>United States v. Johnson</i> , 529 U.S. 53 (2000)	5
<i>United States v. Truscello</i> , 168 F.3d 61 (2d Cir. 1999)	1, 4, 19

Statutes

18 U.S.C. § 3553(a)	4
18 U.S.C. § 3583(d)	5

Rules

Fed. R. Crim. Proc. 32.1(a)(6)	16
Fed. R. Crim. Proc. 32(d)(2)	20
U.S. Sent’g Guidelines Manual §5D1.3(b) (U.S. Sent’g Comm’n 2024)	4, 5
U.S. Sent’g Guidelines Manual §5D1.3(c)(3) (U.S. Sent’g Comm’n 2024)	8
U.S. Sent’g Guidelines Manual §5D1.3(c)(5) (U.S. Sent’g Comm’n 2024)	10
U.S. Sent’g Guidelines Manual §5D1.3(c)(7) (U.S. Sent’g Comm’n 2024)	11, 13
U.S. Sent’g Guidelines Manual §5D1.3(c)(8) (U.S. Sent’g Comm’n 2024)	13
U.S. Sent’g Guidelines Manual §5D1.3(c)(9) (U.S. Sent’g Comm’n 2024)	16
United States Sentencing Commission, <i>Amendments to the Sentencing Guidelines</i> (Apr. 30, 2025)	5

Other Authorities

Abraham Corona & Gabrielle Corona, <i>Commercial Trucking and the Road from Prison to Poverty Wages</i> , The Appeal (Jun. 12, 2024)	9
--	---

ACLU, <i>Reducing Barriers: A Guide to Obtaining Reasonable Accommodations for People with Disabilities on Supervision</i> (2024)	<i>passim</i>
Alexis Karteron, <i>Family Separation Conditions</i> 122 Colum. L. Rev. 649 (2022)	14, 15
Cecelia Klingele, <i>Rethinking the Use of Community Supervision</i> , 103 J. Crim. L. & Criminology 1015 (2013).....	6
Chidi Umez et al., The Nat. Reentry Res. Ctr., <i>Mentoring as a Component of Reentry: Practical Considerations from the Field</i> (2017).....	14
Christopher Campbell, <i>It's Not Technically a Crime: Investigating the Relationship Between Technical Violations and New Crime</i> , Crim. Just. Pol'y Rev. 1 (2014).....	6
Columbia University Justice Lab, <i>Too big to succeed: The impact of the growth of community corrections and what should be done about it</i> (Jan. 29, 2018).....	7
Dallas Augustine & Margot Kushel, <i>Community Supervision, Housing Insecurity, & Homelessness</i> , 701 Ann. Am. Acad. Pol. Soc. Sci. 152 (2022).....	7
Douglas B. Marlowe, Policy Research Associates, <i>The Most Carefully Studied, Yet Least Understood, Terms in the Criminal Justice Lexicon: Risk, Need, and Responsivity</i> (July 17, 2018)	6
Emily Widra, Prison Policy Initiative, <i>One Size Fits None: How 'Standard Conditions' of Probation Set People Up to Fail</i> (Oct. 2024)	5, 6, 9, 11
Executives Transforming Probation & Parole, <i>Statement on the Future of Probation & Parole in the United States</i>	6
Human Rights Watch & ACLU, <i>Revoked: How Probation and Parole Feed Mass Incarceration in the United States</i> (2020)	<i>passim</i>

Jake Horowitz & Connie Utada, PEW Charitable Trust, <i>Community Supervision Marked by Racial and Gender Disparities</i> (Dec. 6, 2018)	7
James Binnall, <i>Divided We Fall: Parole Supervision Conditions Prohibiting “Inter-Offender” Associations</i> , 22 U. Pa. J. L. & Soc. Change 25 (2019)	13, 14
Jamiles Lartey, <i>How Criminal Records Hold Back Millions of People</i> , The Marshall Project (Apr. 1, 2023)	11
Jennifer Doleac, The Brookings Institute, <i>Study after study shows ex-prisoners would be better off without intense supervision</i> (July 2, 2018).....	6
Kendra Bradner & Vincent Schiraldi, Columbia University Justice Lab, <i>Racial Inequities in New York Parole Supervision</i> (2020)	14, 15
Leah Wang & Wanda Bertram, Prison Policy Initiative, <i>New data on formerly incarcerated people’s employment reveal labor market injustices</i> (Feb. 8, 2022).....	8, 11, 13
Leah Wang, Prison Policy Initiative, <i>Guilty by association: When parole and probation rules disrupt support systems</i> (Nov. 8, 2023)	13, 14, 15
Mylan Denerstein, Twentieth Report of the Independent Monitor, <i>Racial Disparities in NYPD Stop, Question, and Frisk Practices: An Analysis of 2013 to 2022 Stop Reports</i> (Apr. 11, 2024)	17
Nancy G. La Vigne et al., Urb. Inst., <i>One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas</i> (2009)	14
NYCLU, <i>NYPD Vehicle Stops Data</i> (Apr. 18, 2025)	17
Olugbenga Ajilore, Center for American Progress, <i>On the Persistence of the Black-White Unemployment Gap</i> (Feb. 24, 2020)	11
PEW Charitable Trusts, <i>For People Under Probation, Conditions Meant to Support Behavior Change Can Burden More Than Benefit</i> (Mar. 14, 2023).....	5

PEW Charitable Trusts, <i>Policy Reforms Can Strengthen Community Supervision</i> (2020).....	6
Ryan Shanahan & Sandra Villalobos Agudelo, <i>The Family and Recidivism, American Jails</i> (2012).....	14
Simon McCormack & Jesse Barber, New York Civil Liberties Union, <i>A Racial Disparity Across New York that is Truly Jarring</i> (Nov. 29, 2022)	15
Thomas J. Mowen et al., <i>Family Matters: Moving Beyond “If” Family Support Matters to “Why” Family Support Matters During Reentry from Prison</i> , 56 J. Rsch. Crime & Delinq. 483 (2018)	14
U.S. Dep’t of Justice, <i>Dep’t of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release</i> (2023)	8
United States Interagency Council on Homelessness, <i>Homelessness in America: Focus on Chronic Homelessness Among People with Disabilities</i> (2018)	11
University of California San Francisco Benioff Homelessness and Housing Initiative, <i>Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness</i> (2023)	10
Wendy Sawyer, Prison Policy Initiative, <i>Two years after the end of Roe v. Wade, most women on probation and parole have to ask permission to travel for abortion care</i> (June 18, 2024).....	9

INTRODUCTION

The goal of supervised release is to advance rehabilitation following completion of people’s federal prison terms. But, too often, district court judges reflexively impose a slate of discretionary “standard” conditions that are not tailored to individual defendants’ circumstances and can counterproductively impede reentry. These rules require people to, for instance, work full-time while attending frequent supervision appointments and mandated programming, often far from home and during standard work hours; report every new address even when experiencing homelessness; and stay away from anyone with a felony conviction, even in heavily policed communities where people’s family, friends, and community members are under correctional control. Such onerous requirements, when unnecessary, can have devastating consequences for people under supervision, often driving them back into prison and leaving society worse off.¹

Contrary to this Circuit’s ruling in *United States v. Truscello*, these “standard” conditions are not essential to the functioning of supervised release. 168 F.3d 61 (2d Cir. 1999). Rather, social science research in the decades since *Truscello* shows that imposing wide-ranging conditions that are untethered from the defendant’s

¹ The parties have consented to EXiT, the ACLU, and the NYCLU’s participation as amici curiae. Under Federal Rule of Appellate Procedure 29(a)(4)(e), the undersigned counsel certifies that no counsel for a party authored this brief in whole or in part and that no person other than amicus curiae made a monetary contribution intended to fund the preparation or submission of this brief.

individual circumstances sets people up to fail. Navigating supervision is especially onerous for people with disabilities, those experiencing homelessness, and Black people and others in heavily policed communities.

Amici Executives Transforming Probation and Parole (“EXiT”), as current and former chief executives in probation and parole offices across the United States, have extensive first-hand experience administering supervision systems, including in New York City. We know that a “one size fits all” approach to supervision fits no one. Our experience, alongside empirical research, has led EXiT to issue a policy platform calling for supervision to be substantially downsized and more focused on people’s individual needs. A key component of that platform is tailoring conditions to the defendant’s individual offense circumstances, needs, and goals. This approach protects public safety and supports people’s success on supervision.

This Court should overturn *Truscello* and hold that judges must orally pronounce each non-mandatory supervised release condition at sentencing. Such a rule would help to ensure that judges individually assess the appropriateness of each condition; that defendants have notice of their obligations; and that defendants can timely raise objections to their conditions and seek needed modifications.

INTEREST OF AMICI

EXiT is a coalition of over 250 former and current community supervision executives, individuals directly impacted by the system and their families,

prosecutors, defense attorneys, and survivors of crime who are committed to transforming probation and parole by making it smaller, less punitive, and more hopeful and restorative. EXiT has members and signatories across the country who continue to advocate for equitable access to parole and probation, including by ensuring that supervision conditions are individually tailored to people’s needs and goals.

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in our nation’s Constitution and civil rights laws. The ACLU regularly litigates cases regarding the rights of people on post-conviction supervision, including *Mathis v. United States Parole Commission*, 749 F.Supp.3d 8 (D.D.C. 2024) and *El v. 38th Judicial District*, No. 376 MD 2021 (Pa. Cmwlth. Ct. Oct. 26, 2021). The ACLU has also published reports regarding barriers to success on supervision, including *Revoked: How Probation and Parole Feed Mass Incarceration in the United States* (2020), <https://www.aclu.org/publications/aclu-and-hrw-report-revoked-how-probation-and-parole-feed-mass-incarceration-united-states> and *Reducing Barriers: A Guide to Obtaining Reasonable Accommodations For People With Disabilities on Supervision* (2024), <https://www.aclu.org/publications/reducing-barriers-a-guide-to-obtaining-reasonable-accommodations-for-people-with-disabilities-on-supervision>.

The New York Civil Liberties Union (“NYCLU”) is the New York State affiliate of the ACLU that regularly engages in litigation and advocacy dedicated to upholding the rights of people that live in New York, including the rights of people in the criminal legal system. The NYCLU also regularly ligates cases concerning conditions of release for formerly incarcerated individuals including *Jones v. Stanford*, No. 201-cv-1332, 2020 WL 8414989 (E.D.N.Y. Sept. 9, 2020) and *M.G. v. Towns*, No. 24-cv-04051 (S.D.N.Y. May 28, 2024).

ARGUMENT

I. The “Standard” Conditions Are Not Essential to the Functioning of Supervised Release.

The Circuit’s ruling in *Truscello* that courts do not need to orally pronounce the “standard” supervision conditions at sentencing rested on the notion that such conditions are “basic administrative requirement[s] essential to the functioning of the supervised release system.” 168 F.3d at 63. But more than two decades later, that is not so as a matter of law or fact.

As a matter of law, the “standard” conditions are not appropriate in every case. While nominally called “standard,” these conditions are discretionary. U.S. Sent’g Guidelines Manual §5D1.3(b) (U.S. Sent’g Comm’n 2024). A court may *only* impose a “standard” condition if, given the defendant’s individual circumstances, the requirement (1) is “reasonably related” to the relevant 18 U.S.C. § 3553(a)

sentencing factors; (2) “involves no greater deprivation of liberty than is reasonably necessary”; and (3) is “consistent” with any pertinent Sentencing Commission policy statements. *Id.*; 18 U.S.C. § 3583(d). Further, in April 2025, the Sentencing Commission amended the Sentencing Guidelines to, among other things, clarify that courts “should conduct an *individualized assessment*” to determine if each “standard” condition is warranted, and “modify, expand, *or omit*” any of the “standard” conditions as appropriate.² Since imposition of the “standard” conditions is not lawful in every case, these conditions necessarily cannot be “essential” to the supervised release system.

Nor are the “standard” conditions always appropriate as a matter of fact. The stated purpose of supervised release is to “ease the defendant’s transition into the community” after prison and to “provide rehabilitation.” *United States v. Johnson*, 529 U.S. 53, 59 (2000). Social science developed in the 26 years since *Truscello* demonstrates that—even where well-intentioned—imposing a high number of standard conditions counterproductively *impedes* successful reentry.³ That is

² United States Sentencing Commission, *Amendments to the Sentencing Guidelines* 47-49 (Apr. 30, 2025) (emphasis added), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202505_RF.pdf. The Amendment’s effective date is November 1, 2025.

³ Emily Widra, Prison Policy Initiative, *One Size Fits None: How ‘Standard Conditions’ of Probation Set People Up to Fail* (Oct. 2024), https://www.prisonpolicy.org/reports/probation_conditions.html; PEW Charitable Trusts, *For People Under Probation, Conditions Meant to Support Behavior Change*

because more conditions create more tripwires back to incarceration for minor technical violations, further destabilizing people’s lives.⁴ Meanwhile, contrary to “[a] long-held assumption in corrections,” studies show that technical violations “are *not* proxies of new crime.”⁵

This research has prompted Amici EXiT and other leading supervision experts to advocate for downsizing supervision conditions.⁶ Accordingly, supervision conditions should be tailored to the individual’s offense behavior, needs, and goals.⁷

Can Burden More Than Benefit (Mar. 14, 2023), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/03/for-people-under-probation-conditions-meant-to-support-behavior-change-can-burden-more-than-benefit>; PEW Charitable Trusts, *Policy Reforms Can Strengthen Community Supervision* 32 (2020), https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf.

⁴ See PEW, *Policy Reforms Can Strengthen Community Supervision* at 32; Widra, *One Size Fits None*; Jennifer Doleac, The Brookings Institute, *Study after study shows ex-prisoners would be better off without intense supervision* (July 2, 2018), <https://www.brookings.edu/blog/up-front/2018/07/02/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/>; Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. Crim. L. & Criminology 1015, 1038 (2013).

⁵ Christopher Campbell, *It’s Not Technically a Crime: Investigating the Relationship Between Technical Violations and New Crime*, Crim. Just. Pol’y Rev. 1, 19 (2014), <https://journals.sagepub.com/doi/10.1177/0887403414553098>.

⁶ See Executives Transforming Probation & Parole, *Statement on the Future of Probation & Parole in the United States*, <https://www.exitprobationparole.org/statement> (last visited May 13, 2025).

⁷ *Id.*; Douglas B. Marlowe, Policy Research Associates, *The Most Carefully Studied, Yet Least Understood, Terms in the Criminal Justice Lexicon: Risk, Need, and Responsivity* (July 17, 2018), <https://www.prainc.com/risk-need-responsivity/>.

And authorities should impose no more conditions than necessary to achieve the objectives of supervision in each case.⁸ This evidence-based, common-sense approach protects public safety while reducing barriers to successful reentry.

II. Blanket Imposition of the “Standard” Conditions Is Counterproductive to Successful Reentry.

Blanket imposition of the “standard” conditions is counterproductive to supervised release’s goal of advancing reentry. At first blush, many of these rules may appear reasonable. But in practice, they are often unnecessary, confusing, and burdensome. All too often, supervised release conditions set people up to fail—especially the high numbers of people who have disabilities,⁹ lack stable housing,¹⁰ or are Black and living in heavily policed communities.¹¹ In 2022, approximately 30

⁸ Columbia University Justice Lab, *Too big to succeed: The impact of the growth of community corrections and what should be done about it* 9 (Jan. 29, 2018), https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf.

⁹ ACLU, *Reducing Barriers: A Guide to Obtaining Reasonable Accommodations for People with Disabilities on Supervision* 6 (2024), <https://www.aclu.org/publications/reducing-barriers-a-guide-to-obtaining-reasonable-accommodations-for-people-with-disabilities-on-supervision>.

¹⁰ See Dallas Augustine & Margot Kushel, *Community Supervision, Housing Insecurity, & Homelessness*, 701 Ann. Am. Acad. Pol. Soc. Sci. 152 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9762769/>.

¹¹ See Jake Horowitz & Connie Utada, PEW Charitable Trust, *Community Supervision Marked by Racial and Gender Disparities* (Dec. 6, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/12/06/community-supervision-marked-by-racial-and-gender-disparities>.

percent of federal supervision cases ended in revocation—68 percent of them for “technical” rule violations.¹² Below, Amici highlight just some of the myriad ways that blanket imposition of “standard” conditions impedes reentry and feeds mass incarceration.

A. Geographic Restrictions Impede Employment (Condition #3).

“Standard” Condition 3 mandates that “[t]he defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.” U.S. Sent’g Guidelines Manual §5D1.3(c)(3). Needlessly imposing this geographic restriction disrupts people’s lives and livelihoods. In addition to this condition, supervision demands that people maintain employment. As discussed *infra* Section II(C), getting a job is exceedingly difficult with a criminal record. It is even harder when one cannot commit to traveling—a requirement for many jobs traditionally open to the formerly incarcerated, such as truck driving and construction.¹³ While people can seek

¹² U.S. Dep’t of Justice, *Dep’t of Justice Report on Resources and Demographic Data for Individuals on Federal Probation or Supervised Release* 15-16 (2023), <https://www.justice.gov/d9/2023-05/Sec.%2015%28h%29%20-%20DOJ%20Report%20on%20Resources%20and%20Demographic%20Data%20for%20Individuals%20on%20Federal%20Probation.pdf>.

¹³ See Leah Wang & Wanda Bertram, Prison Policy Initiative, *New data on formerly incarcerated people’s employment reveal labor market injustices* (Feb. 8, 2022), <https://www.prisonpolicy.org/blog/2022/02/08/employment/#:~:text=According%20to%20the%20BJS%20report,income%20levels%20for%20these%20individuals;>

advance permission to leave their judicial district, neither the person on supervision—nor their prospective employer—know whether such approval will be granted, creating uncertainty that can make getting an offer of employment insurmountable.¹⁴

Notably, this condition is not limited to state lines (which would still pose serious burdens): it prohibits leaving the *federal judicial district* without advance permission. That means someone under supervision in Brooklyn who works as a plumber cannot fix a client's toilet in Manhattan without advance permission. That is simply unworkable for many employers.

The restriction can have serious consequences for other aspects of people's lives too. Geographic limits impede family reintegration where people have loved ones who live close by but technically in other jurisdictions, such as children in the Bronx or New Jersey. Such rules can also prevent people from traveling to other states for necessary health care, including abortion care.¹⁵

B. Reporting Every Address Change Is Impracticable for People Experiencing Homelessness (Condition #5).

Abraham Corona & Gabrielle Corona, *Commercial Trucking and the Road from Prison to Poverty Wages*, The Appeal (Jun. 12, 2024), <https://theappeal.org/commercial-trucking-from-prison-to-poverty-wages/>.

¹⁴ See Widra, *One Size Fits None*.

¹⁵ Wendy Sawyer, Prison Policy Initiative, *Two years after the end of Roe v. Wade, most women on probation and parole have to ask permission to travel for abortion care* (June 18, 2024), <https://www.prisonpolicy.org/blog/2024/06/18/dobbs/>.

“Standard” Condition 5 mandates that people under supervision obtain approval for their housing and report any changes in their address or living arrangement “at least 10 days before the change.” U.S. Sent’g Guidelines Manual § 5D1.3(c)(5). As an initial matter, obtaining “a place approved by the probation officer” is not feasible for a person experiencing homelessness. *See id.* The condition can set people up to be in violation the moment they are released into homelessness.

Providing ten days’ notice of every address change, as well as any change to their living arrangements including “the people the defendant lives with,” is likewise unworkable. *See id.* Housing unstable people typically move frequently and often at a moment’s notice.¹⁶ And even if the person finds a stable place to stay, it may be in a crowded apartment where *other people* are transitioning in and out without advance notice.¹⁷ The condition does permit notification “within 72 hours of becoming aware” of unanticipated changes. U.S. Sent’g Guidelines Manual § 5D1.3(c)(5). But given the stress of scrounging to find a place to spend the night, people often forget to report their current housing information.¹⁸ Moreover, high

¹⁶ *See* University of California San Francisco Benioff Homelessness and Housing Initiative, *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness* 6, 51 (2023), https://homelessness.ucsf.edu/sites/default/files/2023-06/CASPEH_Report_62023.pdf.

¹⁷ *See id.* at 6.

¹⁸ *See* Human Rights Watch & ACLU, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States* 156-162 (2020),

numbers of unhoused people have disabilities, including cognitive disabilities, which creates additional barriers to tracking and fulfilling their reporting obligations.¹⁹ Thus, people can easily wind up incarcerated for failure to report their address—making it even harder to find stable housing upon release.²⁰

C. Full-Time Employment Is Often Unrealistic (Condition #7).

“Standard” Condition 7 requires that people under supervision maintain full-time employment. U.S. Sent’g Guidelines Manual §5D1.3(c)(7). This requirement is not feasible for many people. At a baseline, finding a job with a criminal record is an uphill battle.²¹ Given structural racism, employers are even less likely to hire Black and brown people.²²

<https://www.aclu.org/publications/aclu-and-hrw-report-revoked-how-probation-and-parole-feed-mass-incarceration-united-states>.

¹⁹ United States Interagency Council on Homelessness, *Homelessness in America: Focus on Chronic Homelessness Among People with Disabilities* (2018), <https://www.usich.gov/sites/default/files/document/Homelessness-in-America-Focus-on-chronic.pdf>; *see infra* Section II(F).

²⁰ Human Rights Watch & ACLU, *Revoked* at 157; Widra, *One Size Fits None*.

²¹ Jamiles Lartey, *How Criminal Records Hold Back Millions of People*, The Marshall Project (Apr. 1, 2023), <https://www.themarshallproject.org/2023/04/01/criminal-record-job-housing-barriers-discrimination>; Wang & Bertram, *New data on formerly incarcerated people’s employment reveal labor market injustices*.

²² Olugbenga Ajilore, Center for American Progress, *On the Persistence of the Black-White Unemployment Gap* (Feb. 24, 2020), <https://www.americanprogress.org/article/persistence-black-white-unemployment-gap/>.

People with disabilities face additional barriers to securing employment. As just a few examples, people with chronic illnesses regularly need time away from work for medical appointments or due to feeling unwell; people with cognitive disabilities often have difficulty with concentration, multitasking, and time management; and people with mobility disabilities face barriers to physically accessing workspaces.²³ Accordingly—as discussed in Section II(F)—people with disabilities regularly need accommodations in order to make employment feasible.

Moreover, holding down full-time work is difficult given the myriad other obligations supervised people must manage. People are expected to balance work with frequent supervision appointments and mandated treatment and programming, all of which are typically held during standard work hours.²⁴ Furthermore, these appointments may be far from each other and from the person’s home, necessitating lengthy travel across multiple modes of public transportation.²⁵ And on top of this, many people must balance caregiving responsibilities for children or older relatives. Fulfilling all these competing obligations, under threat of incarceration for any slip-up, is daunting.

²³ ACLU, *Reducing Barriers* at 16.

²⁴ Human Rights Watch & ACLU, *Revoked*, at 48.

²⁵ *Id.* at 48-9.

Last, the requirement to report, in advance, any changes to where the person works or even “*anything*” about their work, including “the position or the job responsibilities” at least ten days in advance, U.S. Sent’g Guidelines Manual §5D1.3(c)(7), is needlessly burdensome for many people, particularly since studies show that formerly incarcerated people shift jobs regularly.²⁶

D. Association Bans Disrupt Social Networks (Condition #8).

“Standard” Condition 8 prohibits people from “knowingly communicat[ing] or “interact[ing]” with anyone convicted of a felony. U.S. Sent’g Guidelines Manual §5D1.3(c)(8). Theoretically this condition promotes law-abiding behavior—but in practice, it counterproductively disrupts support systems and sows confusion.

There is no evidence that association bans prevent recidivism; their utility is entirely “speculative.”²⁷ In fact, evidence shows that the opposite is true: people *benefit* from spending time with others who have lived experience reintegrating into their community after prison.²⁸ Indeed, well-regarded reentry organizations regularly use “peer support” models that employ formerly incarcerated people as

²⁶ Wang & Bertram, *New data on formerly incarcerated people’s employment reveal labor market injustices*.

²⁷ James Binnall, *Divided We Fall: Parole Supervision Conditions Prohibiting “Inter-Offender” Associations*, 22 U. Pa. J. L. & Soc. Change 25, 28-9 (2019).

²⁸ *Id.* at 48-57; Leah Wang, Prison Policy Initiative, *Guilty by association: When parole and probation rules disrupt support systems* (Nov. 8, 2023), https://www.prisonpolicy.org/blog/2023/11/08/association_restrictions/.

counselors to help people navigate reentry.²⁹ Further, family and community support are critical to successful rehabilitation—even where the loved ones have prior convictions.³⁰

The association ban thus has an outsized impact on Black people and others in heavily policed communities.³¹ Given structural racism in the criminal legal system, Black people are more likely to have criminal records. In 2017, one in twelve people in the United States had a felony conviction, but for Black men, that figure was one in three.³² In Manhattan, Black people are convicted of felonies and misdemeanors at a rate *21 times greater* than that of white people over the last two

²⁹ Binnall at 48-51; Wang, *Guilty by association*; Chidi Umez et al., The Nat. Reentry Res. Ctr., *Mentoring as a Component of Reentry: Practical Considerations from the Field* (2017), https://www.prisonpolicy.org/scans/csg/mentoring_reentry.pdf.

³⁰ Thomas J. Mowen et al., *Family Matters: Moving Beyond “If” Family Support Matters to “Why” Family Support Matters During Reentry from Prison*, 56 J. Rsch. Crime & Delinq. 483 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7205225/>; Ryan Shanahan & Sandra Villalobos Agudelo, *The Family and Recidivism*, American Jails (2012), <https://www.prisonpolicy.org/scans/vera/the-family-and-recidivism.pdf>; Nancy G. La Vigne et al., Urb. Inst., *One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas* 1, 8 (2009), <https://www.urban.org/sites/default/files/publication/30436/411911-One-Year-Out-The-Experiences-of-Male-Returning-Prisoners-in-Houston-Texas.PDF>.

³¹ See Wang, *Guilty by association*; Alexis Karteron, *Family Separation Conditions* 122 Colum. L. Rev. 649, 662-63 (2022).

³² Kendra Bradner & Vincent Schiraldi, Columbia University Justice Lab, *Racial Inequities in New York Parole Supervision* 5 (2020), <https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>.

decades.³³ Policing is also geographically concentrated, meaning people in certain neighborhoods—and especially Black people within those neighborhoods—are even more likely to be arrested and convicted of crimes.³⁴ In such contexts, the association ban can block people from obtaining stable housing, job assistance, and emotional support from family and friends.³⁵

Moreover, the association condition is vague—transforming everyday interactions into moments of confusion and fear. Simply walking down the block, picking up groceries, or attending church can result in unwitting prohibited associations, especially in heavily criminalized neighborhoods.³⁶ And it is not clear whether the rule prohibits mundane interactions such as exchanging pleasantries in a store or “liking” a social media post.³⁷

Existing carveouts are insufficient to protect against these harms. The condition technically only forbids “known” association. But supervision officers

³³ Simon McCormack & Jesse Barber, New York Civil Liberties Union, *A Racial Disparity Across New York that is Truly Jarring* (Nov. 29, 2022), <https://www.nyclu.org/commentary/racial-disparity-across-new-york-truly-jarring#:~:text=In%20Manhattan%20%E2%80%94%20one%20of%20the,any%20county%20in%20the%20state.>

³⁴ Karteron, *Family Separation Conditions* at 663.

³⁵ Bradner & Schiraldi, *Racial Inequities in New York Parole Supervision* at 5; Wang, *Guilty by association*.

³⁶ Human Rights Watch & ACLU, *Revoked* at 45-6.

³⁷ Wang, *Guilty by association*.

have significant discretion to arrest people for alleged violations.³⁸ Simply being accused of a violation can trigger lengthy periods of incarceration while awaiting a hearing where—with minimal due process protections—the accused must try to somehow show they did not know the person’s criminal history.³⁹ Further, while the condition permits association with advance permission, identifying any possible source of support, ascertaining whether they have a felony conviction, and then seeking advance approval—which may or may not be granted—before interacting with them is not workable.

**E. Reporting Every Law-Enforcement Interaction Burdens
Overly Policed People (Condition #9).**

“Standard” Condition 9 requires that people under supervision notify their supervision officer every time they are arrested or even *questioned* by law enforcement. U.S. Sent’g Guidelines Manual §5D1.3(c)(9). This requirement burdens Black people and others in over-policed communities. Police disproportionately stop, question, search, and arrest Black people.⁴⁰ In New York City, in particular, the New York City Police Department had a longstanding racially discriminatory practice of conducting millions of stops of Black and Latino people

³⁸ Human Rights Watch & ACLU, *Revoked* at 83.

³⁹ *Id.* at 83-102; *see* Fed. R. Crim. Proc. 32.1(a)(6).

⁴⁰ Human Rights Watch & ACLU, *Revoked* at 180-81 (collecting sources).

based on their race.⁴¹ Since a court found that practice unconstitutional and imposed a monitorship, the number of stops has decreased—but significant racial disparities persist.⁴² These disparities are echoed in NYPD traffic enforcement: from 2022 to 2024, Black drivers were ten times more likely to be searched than white drivers.⁴³ Further, as discussed in Section II(D), criminal law enforcement in the U.S. is geographically concentrated. As a result, Black people, and others in heavily policed neighborhoods, are at an outsized risk of being constantly questioned by law enforcement when going about their daily lives, even when they have done nothing wrong. Reporting every single time these interactions happen is a steep burden.

Further, this condition can counterintuitively *harm* public safety by discouraging supervised people from talking to the police. People may reasonably fear that, if they frequently report police contact, their supervision officer will (erroneously) believe they are involved in suspicious activity. As a result, people

⁴¹ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 559 (S.D.N.Y. 2013) (“In 52% of the 4.4 million stops [conducted by the NYPD from 2004-2012], the person stopped was black, in 31% the person was Hispanic, and in 10% the person was white.”).

⁴² Mylan Denerstein, Twentieth Report of the Independent Monitor, *Racial Disparities in NYPD Stop, Question, and Frisk Practices: An Analysis of 2013 to 2022 Stop Reports* at 1 (Apr. 11, 2024) (“[From 2013-2022] although the number of reported stops of Black and Hispanic individuals declined, the percentage of stops that were of Black and Hispanic individuals remains largely the same.”).

⁴³ NYCLU, *NYPD Vehicle Stops Data* (Apr. 18, 2025), <https://www.nyclu.org/data/nypd-vehicle-stops-data>.

may be reluctant to call the police—even to report that they are victims of domestic violence or that they have witnessed a crime.

F. People With Disabilities Regularly Need Accommodations to Navigate “Standard” Conditions.

The “standard” conditions are especially onerous for the high numbers of people on supervision who have disabilities, including physical, mental health, intellectual, and developmental disabilities.⁴⁴ For example, many people with limited cognitive functioning cannot understand their supervision requirements, and struggle to keep track of their appointments.⁴⁵ People with mobility limitations are regularly required to attend meetings in locations that are physically inaccessible.⁴⁶ And those with mental health disabilities, such as post-traumatic stress disorder and conditions with paranoid features, often have trouble forming trusting relationships with supervision authorities—which makes it hard for them to accurately report required information like changes to their work or housing status.⁴⁷

As a result, people with disabilities regularly need reasonable accommodations—to which they are legally entitled under Section 504 of the Rehabilitation Act—in order to have an equal opportunity to complete their

⁴⁴ ACLU, *Reducing Barriers* at 6, 10-19.

⁴⁵ *Id.* at 12-13.

⁴⁶ *Id.* at 15.

⁴⁷ *Id.* at 14.

supervision requirements.⁴⁸ Accommodations are inherently individualized, but could include plain-language explanations of their supervision rules, appointment reminders, and flexibly scheduling meeting times and locations based on the disabled person’s needs.⁴⁹ It is therefore especially important that people with disabilities have notice of all non-mandatory supervision conditions and an opportunity to request needed accommodations to those rules.

* * *

Accordingly, contrary to *Truscello*, the “standard” conditions are not essential to the functioning of supervised release. Rather, like other discretionary conditions, they are only appropriate where, given the defendant’s individual circumstances, they are no more restrictive than necessary to promote successful reintegration.

III. Orally Pronouncing Non-Mandatory Conditions Allows All Parties to Ensure Conditions Are Lawful and Appropriate.

Given that the “standard” conditions are discretionary and must be individually tailored, requiring judges to orally pronounce those conditions helps to ensure that supervised release promotes, rather than inhibits, successful reentry. This is so for three key reasons.

⁴⁸ *Id.* at 8.

⁴⁹ *Id.* at 4, 10-19.

First, announcing each condition at the time of sentencing encourages judges to individually assess whether the condition is necessary and appropriate for the individual defendant, and whether they should make any modifications based on any pre-sentence investigation report or filings by the parties. *See* Fed. R. Crim. Proc. 32(d)(2) (stating that the presentence report must include “the defendant’s financial condition; and . . . any circumstances affecting the defendant’s behavior that may be helpful . . . in correctional treatment . . . when appropriate, the nature and extent of nonprison programs and resources available to the defendant”).

Second, announcing each condition ensures that defendants have adequate notice of all the rules they will be required—under penalty of imprisonment—to follow. For example, a person with a cognitive disability may request a “plain language” explanation of their supervision conditions that is appropriate to their reading comprehension level.⁵⁰

Third, announcing these conditions facilitates efficient and timely objections. The parties and the judge can promptly address any conditions that should be removed or modified while the defendant, defense counsel, government, and judge are already present—and before those conditions disrupt the individual’s rehabilitation. For instance, as discussed above, the “standard” conditions include a geographic limitation that can derail employment options for some people, such as

⁵⁰ *See* ACLU, *Reducing Barriers* at 12.

those with careers in long-haul trucking. Announcing that condition during sentencing allows defense counsel to request a modification before the defendant is faced with the Hobson's choice of losing their job or risking violating the condition. It also ensures that defendants can timely raise objections and thus maintain their ability to have those conditions reviewed under a sufficiently robust standard on appeal. *See United States v. Dupes*, 513 F.3d 338, 343 (2d Cir. 2008) ("A challenge to conditions of supervised release that presents an issue of law is generally reviewed de novo . . . but we review [the defendant's] claims for plain error because he failed to raise them before the district court at sentencing.").

CONCLUSION

Amici respectfully urge this Court to hold that judges must individually pronounce all non-mandatory conditions at sentencing.

Dated: May 16, 2025
New York, New York

Respectfully submitted,

/s/ Allison Frankel

Allison Frankel

American Civil Liberties Union
Foundation

125 Broad Street, 18th Floor

New York, NY 10004

212-549-2500

/s/ Daniel Lambright

Daniel R. Lambright

Molly R. Biklen

New York Civil Liberties Union
Foundation

125 Broad Street, 19th Floor

New York, NY 10004

212-607-3300

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) & 32(a)(7)(B)(i) and Local Rule 29.1 because the brief contains 4,332 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Procedure 32(a)(6) because it has been prepared using 14-point Times New Roman proportionally spaced typeface, double-spaced.

/s/ Allison Frankel
Allison Frankel

*Attorney for American Civil Liberties
Union Foundation*

Dated: May 16, 2025
 New York, New York