

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Cynthia Montoya

No. 21-50129, United States Court of Appeals for the Ninth Circuit (September 13, 2023)

SUMMARY

The Ninth Circuit en banc held that a district court must orally pronounce all discretionary conditions of supervised release—including those labeled "standard" under U.S.S.G. § 5D1.3(c)—to protect a defendant's due process right to be present at sentencing, overruling in part *United States v. Napier*, 463 F.3d 1040 (9th Cir. 2006). The pronouncement requirement is satisfied if the defendant receives advance notice of proposed discretionary conditions and the court orally incorporates them by reference at the hearing, providing an opportunity to object. The court vacated only the unpronounced standard conditions and remanded for the limited purpose of allowing the district court to cure the error by orally pronouncing any such conditions it chooses to impose and giving the defendant a chance to object.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Ikuta; Mary H. Murguia; Johnnie B. Rawlinson; Sandra S. Ikuta; Morgan Christen; Jacqueline H. Nguyen; Michelle T. Friedland; Ryan D. Nelson; Daniel P. Collins; Gabriel P. Sanchez; Holly A. Thomas; Roopali H. Desai
JURISDICTION	Federal
DECIDED	September 13, 2023
DOCKET	21-50129
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of California, Larry A. Burns, District Judge, Presiding.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Cynthia Leon Montoya v. United States of America

TOPICS

- criminal procedure
- sentencing
- due process
- standard of review
- preservation of error

PRACTICE AREAS

Criminal Law

Sentencing

QUESTIONS PRESENTED

1. Whether the district court's failure to orally pronounce the standard conditions of supervised release violated Montoya's due process right to be present at sentencing.
2. What procedure district courts must follow to satisfy the oral pronouncement requirement for discretionary conditions of supervised release.

HOLDINGS

1. A district court must orally pronounce all discretionary conditions of supervised release, including those referred to as 'standard' in U.S.S.G. § 5D1.3(c), to protect a defendant's due process right to be present at sentencing. The failure to do so violates due process.
2. The pronouncement requirement is satisfied if the defendant is informed of the proposed discretionary conditions before the sentencing hearing and the district court orally incorporates them by reference, giving the defendant an opportunity to object.
3. Montoya did not forfeit her challenge because she was not given an opportunity to object; the district court did not orally pronounce the standard conditions or incorporate them by reference, so she did not know they would be imposed until the written judgment.

KEY QUOTATIONS

"We hold 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, in order to protect a defendant's due process right to be present at sentencing." (4)

"We further hold that this pronouncement requirement is satisfied if the defendant is informed of the proposed discretionary conditions before the sentencing hearing and the district court orally incorporates by reference some or all of those conditions, which gives the defendant an opportunity to object." (17-20)

"A district court's failure to pronounce discretionary conditions of supervised release violates a defendant's due process right to be present at a critical stage of the criminal proceedings." (14)

FACTUAL BACKGROUND

Montoya was arrested for smuggling 4.4 kilograms of cocaine and her 15-year-old son had 5.02 kilograms of methamphetamine strapped to his body. She admitted to smuggling drugs for money and pleaded guilty to two counts of drug importation. The district court sentenced her to 100 months imprisonment and five years of supervised release. At the sentencing hearing, the court orally imposed four special conditions of supervised release but did not mention the standard conditions listed in U.S.S.G. § 5D1.3(c). The written judgment included both mandatory and standard conditions.

PROCEDURAL HISTORY

A three-judge panel rejected Montoya's argument that her due process rights were violated by the failure to orally pronounce standard conditions of supervised release. The en banc court granted rehearing to reconsider the rule in *United States v. Napier*, 463 F.3d 1040 (9th Cir. 2006).

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand for the limited purpose of allowing the district court to cure its error by orally pronouncing any of the standard conditions of supervised release that it chooses to impose and by giving Montoya a chance to object to them.

CASES CITED

- *United States v. Napier*, 463 F.3d 1040 (9th Cir. 2006)
- *United States v. Diggles*, 957 F.3d 551 (5th Cir. 2020) (en banc)
- *United States v. Anstice*, 930 F.3d 907 (7th Cir. 2019)
- *United States v. Rogers*, *United States v. Rogers*, 961 F.3d 291 (4th Cir. 2020)
- *United States v. Matthews*, 54 F.4th 1 (D.C. Cir. 2022)
- *Snyder v. Massachusetts*, 291 U.S. 97 (1934)
- *Kentucky v. Stincer*, 482 U.S. 730 (1987)
- *United States v. Gagnon*, 470 U.S. 522 (1985)
- *United States v. Aguirre*, 214 F.3d 1122 (9th Cir. 2000)
- *United States v. Munoz-Dela Rosa*, 495 F.2d 253 (9th Cir. 1974)
- *Gardner v. Florida*, 430 U.S. 349 (1977)
- *Betterman v. Montana*, 578 U.S. 437 (2016)
- *Hays v. Arave*, 977 F.2d 475 (9th Cir. 1992)
- *United States v. Paskow*, 11 F.3d 873 (9th Cir. 1993)
- *United States v. LaCoste*, 821 F.3d 1187 (9th Cir. 2016)
- *United States v. Napulou*, 593 F.3d 1041 (9th Cir. 2010)
- *United States v. Weber*, 451 F.3d 552 (9th Cir. 2006)
- *United States v. Reyes*, 18 F.4th 1130 (9th Cir. 2021)
- *United States v. Mancinas-Flores*, 588 F.3d 677 (9th Cir. 2009)
- *Mont v. United States*, 139 S. Ct. 1826 (2019)
- *Johnson v. United States*, 529 U.S. 694 (2000)
- *United States v. Geddes*, 71 F.4th 1206 (10th Cir. 2023)
- *United States v. Wise*, 391 F.3d 1027 (9th Cir. 2004)
- *United States v. Bloch*, 825 F.3d 862 (7th Cir. 2016)

- United States v. Soltero, 510 F.3d 858 (9th Cir. 2007)
- United States v. Cantrell, 433 F.3d 1269 (9th Cir. 2006)
- United States v. Booker, 543 U.S. 220 (2005)
- United States v. Mix, 457 F.3d 906 (9th Cir. 2006)
- United States v. Dominguez-Caicedo, 40 F.4th 938 (9th Cir. 2022)
- United States v. Herrera-Figueroa, 918 F.2d 1430 (9th Cir. 1990)
- United States v. Lopez, 258 F.3d 1053 (9th Cir. 2001)
- United States v. Cervantes, 859 F.3d 1175 (9th Cir. 2017)
- United States v. Gallant, 306 F.3d 1181 (1st Cir. 2002)
- United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc)
- United States v. Blinkinsop, 606 F.3d 1110 (9th Cir. 2010)
- United States v. Stephens, 424 F.3d 876 (9th Cir. 2005)
- United States v. Evans, 883 F.3d 1154 (9th Cir. 2018)
- United States v. G.L., 143 F.3d 1249 (9th Cir. 1998)
- United States v. Avila, 905 F.2d 295 (9th Cir. 1990)
- United States v. Gayou, 901 F.2d 746 (9th Cir. 1990)
- Edwards v. Vannoy, Edwards v. Vannoy, 141 S. Ct. 1547 (2021)
- Griffith v. Kentucky, 479 U.S. 314 (1987)