NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

Michael Bordman - Petitioner,

vs.

United States of America - Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether the restitution award in child pornography sentencings must disaggregate the harm caused by the initial abuse from the harm caused by the possession and continued dissemination of the images when the defendant was not involved in the initial abuse?

(2) Whether special conditions of supervised release that ban viewing or possessing pornographic and erotic materials are unconstitutionally vague and overbroad?

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The petitioner, Michael Bordman, through counsel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in case No. 17-2395, entered on July 17, 2018. Mr. Bordman's petition for rehearing en banc and petition for rehearing by the panel were denied on August 23, 2018.

OPINION BELOW

On July 17, 2018, a panel of the Court of Appeals entered its ruling affirming the judgment of the United States District Court for the Northern District of Iowa. The decision is published and available at 895 F.3d 1048.

JURISDICTION

The Court of Appeals entered its judgment on July 17, 2018, and denied Mr. Bordman's petition for rehearing en banc and petition for rehearing by the panel on August 23, 2018. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 2559(a)

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and nature of order.—

(1) Directions.--The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for--

(A) medical services relating to physical, psychiatric, or psychological care;
(B) physical and occupational therapy or rehabilitation;
(C) necessary transportation, temporary housing, and child care expenses;
(D) lost income;
(E) attorneys' fees, as well as other costs incurred; and
(F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.—

(A) The issuance of a restitution order under this section is mandatory.
(B) A court may not decline to issue an order under this section because of--
(i) the economic circumstances of the defendant; or
(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Definition.--For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

18 U.S.C. § 3583(d)

(d) **Conditions of supervised release** . . . 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 it considers to be appropriate.

U.S. CONST. AMEND. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor

> shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. I.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

On December 22, 2016, Mr. Bordman was indicted in the Northern District of Iowa on a count of sexual exploitation of a child, in violation of 18 U.S.C. §§ 2251(a) & (3), one count of distribution of child pornography, in violation of 18 U.S.C. §§ 2252(a)(2) & (b)(1), one count of receipt of child pornography, in violation of 18 U.S.C. §§ 2252(a)(2) & (b)(1), and one count of possession of child pornography, in violation of 18 U.S.C. §§ 2252A(a)(5)(B) & (b)(2). (DCD 2). [1] Pursuant to a plea agreement, Mr. Bordman pled guilty to counts 1 and 4. (DCD 32).

In preparation for sentencing, a presentence investigation report (PSR) was created. The PSR recommended two similar conditions of supervised release:

> The defendant must not operate or use photographic equipment, a computer, or any electronic storage device to view or produce any form of pornography or erotica. (PSR ¶ 80).

> The defendant must not own or possess any pornographic materials. The defendant must not use any form of pornography or erotica nor

[1] In this petition, the following abbreviations will be used:
"DCD" - district court clerk's record, followed by docket entry and page number, where noted;
"PSR" - presentence report, followed by the page number of the originating document and paragraph number, where noted; and
"Sent. Tr." – Sentencing hearing transcript, followed by page number.

> enter any establishment where pornography or erotica can be obtained or viewed. (PSR ¶ 81).

Mr. Bordman objected to the two above special conditions of supervised release, arguing the conditions were vague and overbroad. (DCD 37).

The government requested $3,000 in restitution on behalf of one of the victims, "Pia." (DCD 51). Pia's total losses were $95,295.71. (DCD 51 p. 13). The government proposed dividing the total loss amount by thirty-three. Thirty-three represented the number of defendants—including Bordman—who, by the time of Mr. Bordman's sentencing, had been ordered to pay restitution. (DCD 51 p. 13; Sent. Tr. p, 10). This came out to $2,887.75, and the government rounded up to $3,000. (Sent. Tr. p. 10). The government acknowledged that this calculation did not require consideration of all of the factors in *Paroline v. United States,* 572 U.S. 434 (2014). (DCD 51 p. 13). The government also conceded its approach "does not distinguish between the losses Pia sustained as a result of the initial physical abuse and the losses that stem from the ongoing traffic in her images as a whole." (DCD 51, p. 13). The government also acknowledged it had no evidence that Mr. Bordman distributed the videos of Pia, and that Mr. Bordman was not involved in the initial production of the videos. (DCD 51 p. 14). Mr. Bordman objected to the amount requested. (DCD 52). He argued the government's formula did not comply with *Paroline*. (DCD 52).

After hearing argument on the appropriate restitution amount, the district court granted the government's request for $3,000. (Sent. Tr. p. 24). The extent of the district court's ruling is as follows:

> The Court is ready to rule by a preponderance of the evidence, after considering the arguments made by counsel, and they have briefed the cases that we have. And it's difficult to call, but I believe, and I do find, that restitution in the amount of $3,000 to Pia is appropriate, and that will be an award that I make at time of imposition of sentence.

(Sent. Tr. p. 24). The Court also overruled Mr. Bordman's objections to the special conditions of supervised release. (Sent. Tr. p. 31).

Mr. Bordman appealed and maintained his challenges to the restitution award and to the special conditions of supervised release. As to the restitution award, Mr. Bordman argued that the restitution amount was determined under the 1/n method, which the majority of courts have rejected. Further, he noted that the prosecutor failed to disaggregate the harm caused by the initial abuse from the harm caused by Mr. Bordman's possession. As to the special conditions, Mr. Bordman maintained that they were vague and overbroad.

The Eighth Circuit Court of Appeals affirmed. *United States v. Bordman,* 895 F.3d 1048 (8th Cir. 2018). First, the Court held that it "need not determine in this case if a district court may solely rely on the 1/n formula and forego the other *Paroline* factors because the district court relied on additional factors." *Id.* at 1057-58. To support that the district court relied on other factors, the circuit pointed to the government's general discussion of the remaining *Paroline* factors. *Id.* The

circuit also held that the district court is not required to disaggregate the harm caused by the initial abuse from the harm caused by Mr. Bordman's later possession, rejecting the holdings of the Ninth and Tenth Circuits. *Id.* at 1058-59.

Finally, the court rejected Mr. Bordman's challenges to his supervised release conditions, finding the overbreadth and vagueness challenges were foreclosed by circuit precedent. *Id.* at 1059-62.

REASONS FOR GRANTING THE WRIT

This Court should grant this petition for writ of certiorari, because it presents two frequently recurring child pornography sentencing issues that have split state and federal courts.

First, the Court should grant the petition to address the question it left for another day in *Paroline* – whether disaggregation of losses sustained as a result of the initial physical abuse is required. 572 U.S. 434, 449 (2014) ("Complications may arise in disaggregating losses sustained as a result of the initial physical abuse, but those questions may be set aside for present purposes."). A circuit split currently exists on this issue. The Ninth and Tenth Circuits have both held that disaggregation is required. *United States v. Galan,* 804 F.3d 1287, 1289-91 (9th Cir. 2015); *United States v. Dunn,* 777 F.3d 1171, 1181-82 (10th Cir. 2015); *see also United States v. Miner*, 617 F. App'x 102, 103 (2d Cir. 2015) (finding that the district court adequately disaggregated the victim's losses); *United States v. Rogers,* 758 F.3d 37, 39 (1st Cir. 2014) (finding the district court complied with *Paroline*, in part because it disaggregated the victim's losses). Below, the Eighth Circuit rejected the holdings of the Ninth and Tenth Circuits and held that disaggregation is not required. This Court should resolve this circuit split and address the issue left unresolved in *Paroline*.

Second, this Court should grant the petition to determine whether special conditions of supervised release that ban viewing and possessing "pornography" and

"erotica" are unconstitutionally vague and overbroad. In sentencings, "[p]rohibitions on the possession of pornographic materials are not unusual special conditions." *United States v. Simons,* 614 F.3d 475, 483 (8th Cir. 2010); *see also United States v. Siegel,* 753 F.3d 705, 709 (7th Cir. 2014) ("[A] condition commonly imposed on a sex offender is forbidding him [or her] access to pornography."). However, federal and state appellate courts are split on whether these conditions are constitutionally permissible. *Compare United States v. Guagliardo,* 278 F.3d 868, 872 (9th Cir. 2002); *United States v. Loy,* 237 F.3d 251, 263–65 (3d Cir. 2001); *McVey v. State,* 863 N.E.2d 434, 477 (Ind. Ct. App. 2007) (finding condition of probation that barred the possession of "pornographic or sexually explicit materials" to be unconstitutionally vague); *State v. Bahl,* 193 P.3d 678, 688 (Wash. 2008) (holding that condition that barred possessing or accessing "pornographic materials" to be unconstitutionally vague); with *Bordman*, 895 F.3d at 1059-61; *United States v. Phipps,* 319 F.3d 177, 193 (5th Cir. 2003) (rejecting argument that special condition that barred defendant from possessing "sexually oriented or sexually stimulating materials" was unconstitutionally vague). This Court should grant this cert petition to resolve these splits.

I. *PAROLINE* REQUIRES DISTRICT COURTS TO DISAGGREGATE THE HARM CAUSED BY THE POSSESSION OR DISTRIBUTION OF CHILD PORNOGRAPHY FROM THE HARM CAUSED BY THE INITIAL ABUSE IF THE DEFENDANT WAS NOT INVOLVED IN THE INITIAL ABUSE.

In *Paroline*, this Court determined the "proper causation inquiry for purposes of determining the entitlement to and amount of restitution . . . ." 572 U.S. at 443. The Court found that in child pornography cases, restitution is proper "only to the extent the defendant's offense proximately caused the victim's losses." *Id.* at 448.

> In this special context, where it can be shown both that a defendant possessed a victim's images and that a victim has outstanding losses caused by the continuing traffic in those images but where it is impossible to trace a particular amount of those losses to the individual defendant by recourse to a more traditional causal inquiry, a court applying § 2259 should order restitution in an amount that comports with the defendant's relative role in the causal process that underlies the victim's general losses.

Id. at 459. However, this Court declined to address whether disaggregation of the losses sustained as a result of the initial physical abuse was required. *Id*. at 449.

Before the decision in Mr. Bordman's case, all of the other Circuits to decide this unresolved issue post-*Paroline* have held, or at least hinted, that disaggregation is required. *See United States v. Galan,* 804 F.3d 1287, 1290-91 (9th Cir. 2015); *United States v. Dunn*, 777 F.3d 1171, 1181-82 (10th Cir. 2015); *see also United States v. Miner*, 617 F. App'x 102, 103 (2d Cir. 2015) (finding that the district court adequately disaggregated the victim's losses); *United States v. Rogers*, 758 F.3d 37, 39 (1st Cir. 2014) (finding the district court complied with *Paroline*, in part because it disaggregated the victim's losses). These courts recognize that requiring disaggregation is consistent with *Paroline*. As the Tenth Circuit stated:

> [T]he clear rationale of *Paroline* is that a defendant should be held accountable for the measures of losses that *he individually* has caused. We think it inconsistent with "the bedrock principle that restitution

> should reflect the consequences of the defendant's own conduct" to hold [the defendant] accountable for those harms initially caused by [the victim's] abuser.

Dunn, 777 F.3d at 1181 (reversing restitution award because the expert report did not disaggregate the harms cause by the initial abuser from the harm caused by the possessor defendant). The Ninth Circuit also noted the need for separation between the two harms:

> If an original abuser had stayed in his own clandestine and sick little world, a terrible trauma would have been inflicted upon the victim, and the abuser would have to atone for all the consequences of that wrongdoing. When distribution of images is added, an original abuser (or another person) would commit and put in motion a whole different set of abuses. Those who later participate in distribution or possession, especially at a more remote time, are part of a distribution crime, but not of the physical-abuse crime.

Galan, 804 F.3d at 1290.

The Eighth Circuit rejected the reasoning of its sister circuits. *Bordman*, 895 F.3d at 1059. The reasoning was that disaggregation is a difficult task. *Id.* The Eighth Circuit's decision here created a circuit split. More importantly, it was erroneously decided and, for the reasons discussed by the Ninth and Tenth Circuits, is inconsistent with *Paroline*. Mr. Bordman's case presents a proper vehicle to resolve this circuit split, as the government conceded its approach "does not distinguish between the losses Pia sustained as a result of the initial physical abuse and the losses that stem from the ongoing traffic in her images as a whole." (DCD 51, p. 13). Further, the district court did not even treat it as a factor, as the award

was not adjusted to account for Mr. Bordman's limited role as a possessor. This Court should grant the petition and find that disaggregation is required.

II. THE SPECIAL CONDITIONS OF SUPERVISED RELEASE ON "PORNOGRAPHIC MATERIALS" AND "PORNOGRAPHY OR EROTICA" ARE UNCONSTITUTIONALLY VAGUE AND OVERBROAD.

A district court has authority to order discretionary conditions of supervised release that are "reasonably related" to any of the several familiar goals of criminal sentencing, if supported by the evidence. 18 U.S.C. §§ 3583(d)(1), 3553(a)(1), and 3553(a)(2)(B-D); *see also* USSG § 5D1.3. However, the law imposes a tailoring requirement: the discretionary conditions must work "no greater deprivation of liberty than is reasonably necessary" to deter criminal conduct, protect the public, and provide the defendant with needed care, treatment and training. 18 U.S.C. §§ 3583(d)(2) and 3553(a)(2)(B-D).

In child pornography or sex offense cases, district courts often impose special conditions of supervised release that prohibit or restrict the possession or viewing of pornography. In Mr. Bordman's case, the district court did just that, imposing two similar special conditions of supervised release:

> Special Condition 2: The defendant must not operate or use photographic equipment, a computer, or any electronic storage device to view or produce any form of pornography or erotica.
>
> Special Condition 3: The defendant must not own or possess any pornographic materials. The defendant must not use any form of pornography or erotica nor enter any establishment where pornography or erotica can be obtained or viewed.

(DCD 54, p. 4).

Appellate courts have struggled with conditions of supervised release, or conditions of probation or parole, that prohibit the possession or viewing of pornography. Courts acknowledge that these conditions infringe on defendant's First Amendment rights. *United States v. Kelly,* 625 F.3d 516, 521 (8th Cir. 2010); *United States v. Adkins,* 743 F.3d 176, 193-94 (7th Cir. 2014). Further, courts also generally acknowledge that "pornography" is difficult to define. The Eighth Circuit has stated:

> [W]e have previously noted concerns with the uncertainty of what constitutes "pornography" because the term lacks a precise legal definition. *See* [*United States v. Simons*, 614 F.3d 475, 484 n.4 (8th Cir. 2010); [*United States v. Ristine,* 335 F.3d 692, 695 (8th Cir. 2003). Other courts have expressed similar concerns. See, e.g., [*Farrell v. Burke,* 449 F.3d 470, 484–91 (2d Cir. 2006)]; *United States v. Guagliardo*, 278 F.3d 868, 872 (9th Cir.2002); *United States v. Loy*, 237 F.3d 251, 263–65 (3d Cir.2001). *But see United States v. Phipps*, 319 F.3d 177, 192–93 (5th Cir.2003) (upholding a condition against a vagueness challenge that prohibited the defendants from possessing "sexually oriented or sexually stimulating materials").

United States v. Thompson, 653 F.3d 688, 695 (8th Cir. 2011). Courts also acknowledge that bans on "pornography" can also have a wide sweep. *Loy*, 237 F.3d at 264. Because of these concerns, many courts have struck down conditions like Mr. Bordman's as unconstitutionally vague and/or overbroad. *Guagliardo*, 278 F.3d at 872; *Loy*, 237 F.3d at 263-65; *Diorec v. State,* 295 P.3d 409, 418 (Alaska Ct. App. 2013) (finding condition banning pornography is unconstitutionally vague); *State v. Bahl*, 193 P.3d 678, 686 (Wash. 2008). However, others, like the Eighth Circuit,

have upheld such conditions. *Phipps*, 319 F.3d at 193. This Court should grant the petition for writ of certiorari to resolve this split, and ultimately find that such prohibitions are unconstitutionally vague and overbroad.

A. The special conditions are vague.

A condition of supervised release cannot be unduly vague because it must provide adequate notice as to what conduct is prohibited. *Grayned v. City of Rockford,* 408 U.S. 104, 108-09 (1972); *Ristine,* 335 F.3d at 695. A governmental restriction is impermissibly vague "if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). A vague condition would allow probation officers to determine whether conduct is a violation "on an ad hoc and subjective basis . . . ." *Grayned,* 408 U.S. at 108-09. Further, when a governmental prohibition "is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts." *Smith v. Goguen,* 415 U.S. 566, 572 (1974). The two challenged conditions are vague because the terms "pornographic material," pornography, and erotica do not provide the required specificity.

Courts, including the Third and Ninth Circuits and several state appellate courts, have found special conditions of supervised release that ban possession or use of pornography unconstitutionally vague. *Guagliardo*, 278 F.3d at 872; *Loy*, 237 F.3d at 263-65; *Bahl*, 193 P.3d at 686. Pornography is subject to differing interpretations, and, as other courts recognize, these special conditions fail to

provide adequate notice as to what is prohibited. *Id*. Further, what materials are considered "pornographic" is based on a subjective determination, creating "a real danger that the prohibition on pornography may ultimately translate to a prohibition on whatever the officer personally finds titillating." *Loy*, 237 F.3d at 258; *see also Farrell,* 449 F.3d at 486-87 ("[D]etermining whether material deserves the label of pornography is a subjective, standardless process, heavily influenced by the individual, social and cultural experience of the person making the determination.").

The ban on "erotica" suffers the same defect. The dictionary defines "erotica" as "literary or artistic works having an erotic theme or quality." https://www.merriam-webster.com/dictionary /erotica. Something is "erotic" if it is "devoted to, or tending to arouse sexual love or desire." https://www.merriam-webster.com/dictionary/erotic. Like "pornography," "erotica" is vague and subject to a probation officer's own subjective ideas of what is "erotic."

Analyzing each special condition specifically, it is clear the conditions are vague. Special condition 2 prohibits using "photographic equipment, a computer, or any electronic storage device to view or produce any form of pornography or erotica." Because the terms "pornography" and "erotica" are vague, it is unclear what this could prohibit. For example, arguably Mr. Bordman is in violation if he reads "Fifty Shades of Grey" on a Kindle or eReader device. One probation officer could determine Mr. Bordman was "producing" erotica if he records a cover of a Marvin

Gaye song on a cell phone. Another might believe he is viewing erotica if he watches an advertisement for "male enhancement" products on his computer. *United States v. Lantz,* 443 F. App'x 135, 141 (6th Cir. 2011).

Special condition 3 prohibits possessing pornographic material, using any form of pornography or erotica, or entering an establishment where pornography or erotica can be obtained or viewed. Like with special condition 2, it is also unclear what this prohibits. Would a picture of Michelangelo's sculpture, David, be considered "pornographic material"? A probation officer has interpreted it to be so. *Guagliardo*, 278 F.3d at 872. Could Mr. Bordman not enter a record store that sells Marvin Gaye albums because this is "erotica"? Could he not go to Barnes and Noble because they have an erotica section? Further, the wording of the special condition is strange because it prohibits the "use" of pornography or erotica. It is unclear what is considered "use."

Because the special conditions provide Mr. Bordman with no notice as to what conduct is prohibited and would encourage arbitrary and discriminatory enforcement, the conditions must be stricken as vague.

B. The special conditions are overly broad.

A special condition of supervised release "is only constitutionally overbroad if its breadth is real and substantial in relation to its plainly legitimate sweep." *Thompson,* 653 F.3d at 695. The two conditions are overly broad for the same reason: the terms "pornographic material," pornography, and erotica are overly

broad. *Loy*, 237 F.3d at 263-65; *Jones v. State,* No. A-11360, 2017 WL 6209592, at *11 (Alaska Ct. App. Dec. 6, 2017) (noting that Alaska case law regularly finds conditions prohibiting the possession of pornography as vague or overbroad).

Much mainstream art, advertisement, music, prose, and film could arguably be considered "pornography." The Third Circuit has explained:

> Unlike instances of obscenity, we could easily set forth numerous examples of books and films containing sexually explicit material that we could not absolutely say are (or are not) pornographic. One such example, as discussed below, might be Playboy, which features nudity but not sexual conduct. It is also difficult to gauge on which side of the line the film adaptations of Vladimir Nabokov's Lolita would fall, or if Edouard Manet's Le Dejeuner sur L'Herbe is pornographic (or even some of the Calvin Klein advertisements), and we certainly cannot know whether the pornography condition is restricted only to visual materials, or whether it encompasses pure text and sound recordings. In *Farrell v. Burke*, No. 97 CIV. 5708(DAB), available in 1998 WL 751695 (S.D.N.Y. Oct.28, 1998), the district court described a situation in which a parole condition prohibiting "pornography" was interpreted by a parole officer to apply equally to Playboy and to photographs of Michelangelo's David. Similarly, the Court of Appeals for the Seventh Circuit, examining the scope of a statutory definition of pornography, observed that it could encompass everything "from hard-core films to W.B. Yeats's poem 'Leda and the Swan.' " *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323, 327 (7th Cir.1985).

Loy, 237 F.3d at 263-65. Further, as discussed above, "erotica" could include books, songs, or pictures that are not pornographic or even sexually stimulating in nature. Erotica could be love songs, a TV commercial, or popular non-fiction books. Banning such a wide variety of materials would not support the familiar goals of sentencing.

Hypothesizing how each special condition could be enforced illustrates that these conditions are overbroad. Arguably, special condition 2 could ban the

operation or use of any device that could display any kind of media. "Indeed, [Mr. Bordman] arguably could not possess even a television—which broadcasts sexual allusion in everything from afternoon soap operas through prime time 'drama'—or a radio—which subjects listeners to such things as annoyingly persistent advertisements for 'male enhancement' products." *Lantz*, 443 F. App'x at 141 (finding a similar restriction "so broad that it seems to have little to do with any of the sentencing factors").

Special condition 3 could ban the possession of love songs or a copy of the latest Sears catalog. It could be enforced to prohibit Mr. Bordman from entering any record store, book store, public library or even a grocery store. *Adkins, 743 F.3d at 194* (reasoning that under similar ban a defendant "might not be able to ride the bus, enter a grocery store, watch television, open a magazine or a newspaper, read a classic like Romeo and Juliet, or even go out in public (given the ubiquity of advertisements that use potentially sexually oriented or sexually stimulating images to pique consumer interests).")*.* If a gas station sells "Maxim" magazine, Mr. Bordman will not be able to go inside. The "primary" product of the store does not need to be pornography or erotica. Therefore, conditions that prohibit use and possession of pornography and erotica, like those imposed in Mr. Bordman's case, are overbroad.

CONCLUSION

For the foregoing reasons, Mr. Bordman respectfully requests that the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,

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