

**CASE NO. \_\_\_\_\_**  
**SUPREME COURT OF THE UNITED STATES**

**MATTHEW RYAN MURDOCH**

**PETITIONER**

**V.**

**UNITED STATES OF AMERICA**

**RESPONDENT**

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**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF  
THE UNITED STATES**

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## **QUESTIONS PRESENTED FOR REVIEW**

- I.** Whether a lifetime prohibition on going to “locations where any form of pornography, sexually stimulating performances, or sexually oriented material, items, or services are available” violates due process and involves a greater deprivation of liberty than permitted by statute and this Court’s prior precedents?

## **LIST OF ALL PARTIES TO THE PROCEEDINGS**

Petitioner/Appellant/Defendant – Matthew Ryan Murdoch

Respondent/Appellee/Plaintiff – United States of America

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Matthew Ryan Murdoch, by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Matthew Ryan Murdoch*, No. 18-5125, filed on January 7, 2019 and attached to this Petition as Appendix B.

## OPINIONS BELOW

Mr. Murdoch's appeal to the Sixth Circuit was taken from the Judgment relating to his conviction for Receipt of Child Pornography, a violation of 18 U.S.C. § 2252(a)(2). *See* Appendix A. In the Judgment, the district court imposed a lifetime term of supervised release including a special condition prohibiting Mr. Murdoch from going "to locations where any form of pornography, sexually stimulating performances, or sexually oriented material, items, or services are available." *Id.* at Page 5, Paragraph 12. At sentencing, Mr. Murdoch argued that the condition was unjustifiably broad, and the district court agreed that the United States Probation Office (USPO) should have the authority to grant him permission to visit such locations. However, Mr. Murdoch's Judgment contains the original prohibition without qualification. *Id.*

On January 7, 2019, the Sixth Circuit issued an order affirming and indicating that it did not believe the special condition was overbroad because "the [district] court did not read the condition 'so expansively'" when discussing it at sentencing. *See* Appendix B, Page 5 (citing *United States v. Smith*, 564 Fed.Appx. 200, 207 (6<sup>th</sup> Cir.2014)). The Court noted that the district court had "assured Murdoch that his probation officer would have the discretion to allow him to visit certain locations" despite the condition's plain language failing to permit such discretion. *Id.* This petition for a writ of certiorari now follows.



## **JURISDICTION**

The Sixth Circuit Order affirming Mr. Murdoch's judgment was filed on January 7, 2019. *See* Appendix B. Mr. Murdoch invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**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 offense 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."

**18 U.S.C. § 3583(d):** "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)... any other condition it considers appropriate."

## STATEMENT OF THE CASE

On September 18, 2017, Matthew Ryan Murdoch entered a guilty plea to one count of using a means of interstate commerce to knowingly receive visual depictions of a minor engaging in sexually explicit conduct in violation of 18 U.S.C. § 2252(a)(2). [R. 26: Motion Entry for Rearraignment, Page ID # 71]. The United States Probation Office (USPO) prepared Mr. Murdoch's Pre-Sentence Investigation Report (PSR) and included a proposed special condition of supervision that read as follows:

You must not possess, view, listen to, or go to locations where any form of pornography, sexually stimulating performances, or sexually oriented material, items, or services are available.

[R. 43: Sealed PSR, Page 20]. Mr. Murdoch objected, arguing that the condition was unjustifiably broad because it would "prohibit [him] from visiting gas stations, pharmacies, and grocery stores offering pornographic magazines or other materials for sale." [R. 32: Sealed PSR Objections and Sentencing Memorandum, Page 10]. Likewise, Mr. Murdoch noted that he "would be in danger of violating the condition if he visited a library or other location where Internet access is available regardless of whether he actually attempted to utilize such services." *Id.* at Page 11. Instead, Mr. Murdoch proposed a more narrowly tailored condition that would prohibit him from going to such locations "without the approval of the probation officer." *Id.*

At sentencing, the district court imposed a lifetime period of supervised release including the special condition as initially proposed by USPO. [R. 45: Transcript, Sentencing, Page ID # 204-05, Lines 24-25, 1-2]. Defense counsel noted his prior objection to the “blanket restriction of going anyplace where pornography would be available.” *Id.* at Page ID # 208. Counsel expressed particular concern about the condition given the district court’s imposition of a lifetime term of supervision. *Id.* at Page ID # 208, Lines 2-6. The court replied that it did not understand why Mr. Murdoch would need to visit such places. *Id.* at Lines 10-11. Counsel responded that “pornography is available in a lot of different places, gas stations, grocery stores[.]” *Id.* at Lines 12-17. The court then agreed that USPO should have the authority to “say, well, yeah, you can go...to the Kroger or you can go to SuperAmerica or you can go wherever there might be a Playboy, but don’t buy any.” *Id.* at Page ID # 209, Lines 2-5. Despite these comments by the court, Mr. Murdoch’s Judgment contains the original proposed special condition without qualification. *See* Appendix A, Page 5, Paragraph 13.

On appeal, Mr. Murdoch maintained that the district court’s imposition of the special condition as written was an abuse of discretion because the court’s discussion confirmed that it intended USPO to have the authority to grant Mr. Murdoch permission to visit locations where pornography is available. *See* [App. R. 35: Appellant Brief, Pages 23-27]. Citing this Court’s decision in *Packingham*

*v. North Carolina*, 137 S.Ct. 1730 (2017), Mr. Murdoch also argued that the condition violated statutory requirements and existing case law requiring that supervised release conditions “involve[] no greater deprivation of liberty than is reasonably necessary” to serve the goals of deterrence, protecting the public, and rehabilitating the defendant.” 18 U.S.C. § 3583(d)(1-2).

In its order denying Mr. Murdoch’s appeal, the Sixth Circuit concluded that the plain language of the special condition was irrelevant because the district court “did not read the condition ‘so expansively’” at sentencing. Appendix B, Page 5. Again ignoring the broad prohibition contemplated by the condition, the Court said that “if problems occur” it had “faith in the district court’s ability to clarify its restriction[.]” *Id.*

## REASONS FOR GRANTING THE WRIT

- I. **Due process and this Court’s prior precedents do not permit the imposition of a lifetime prohibition on going to “locations where any form of pornography, sexually stimulating performances, or sexually oriented material, items, or services are available” as a condition of supervised release.**

This case is unique. The district court directly addressed the issue now before this Court—whether the special condition at issue was overly broad—and explicitly agreed with Mr. Murdoch that it was. The court even noted its intention for USPO to have the authority to permit Mr. Murdoch to visit gas stations, grocery stores, and other locations where pornography is available. [R. 45: Transcript, Sentencing, Page ID # 209, Lines 2-5]. Unfortunately, the language included in Mr. Murdoch’s Judgment does not reflect the court’s intent. *See* Appendix A, Page 5, Paragraph 13. Mr. Murdoch now asks this Court to do what the Sixth Circuit did not—correct this mistake.

This Court should grant Mr. Murdoch’s petition because the underlying rationale for the district court’s decision was correct—This special condition cannot be so broad that it prohibits Mr. Murdoch from visiting any location where pornography is available under any circumstance for life. Interpreted as written, there is no “wiggle room” as the district court intended. *Id.* at Page ID # 209, Line 2. Instead, Mr. Murdoch is prohibited from visiting a variety of locations central to everyday life simply because pornography is available by whatever means. As

written, Mr. Murdoch would be in violation of the condition if he went to another person's residence or any other place offering access to the Internet. Given his lifetime period of supervision and the rapid development of technology and Internet-based applications, this restriction is unconstitutionally overbroad.

This Court's decision in *Packingham* is instructive. Like Mr. Murdoch, the defendant had been convicted of an offense requiring sex offender registration. A North Carolina statute prohibited such persons from accessing social networking websites. *Packingham*, 137 S.Ct. at 1730. This Court held that the restriction violated the First Amendment because "the broad wording of the North Carolina statute at issue" seemingly barred "access not only to commonplace social media websites but also to websites as varied as Amazon.com, Washingtonpost.com, and Webmd.com." *Id.* at 1736. This Court noted that "the First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime," but the broad prohibition at issue was impermissible because it forbade the defendant from accessing "what for many are the principal sources for knowing current events, checking ads for unemployment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge." *Id.* This Court concluded that foreclosing access "altogether" improperly prevents an individual from legitimately exercising his constitutional right to free speech. *Id.*

The blanket prohibition at issue in this case forbids Mr. Murdoch from visiting a variety of locations that are a necessary part of everyday life. When he is released from custody in several years, Mr. Murdoch will be prohibited from going to the grocery store, walking into a gas station, checking a book out of the public library, or stopping at a location where a friend or family member has Internet access. Given how quickly the Internet has become an indispensable part of the activities of daily life, it may well be impossible for Mr. Murdoch to comply with the condition as written.

The Sixth Circuit's rationale for denying relief underscores why it is so important that this Court grant Mr. Murdoch's petition. The Sixth Circuit's suggestion that it trusts the district court to "clarify the restriction" as needed ignores the fact that Mr. Murdoch is not scheduled for release until 2029.

Appendix B, Page 5. By then, new judges and probation officers will be unfamiliar with Mr. Murdoch and entirely unaware of the court's original intent. Such uncertainty demands that the language of the condition reflect the court's explanation at sentencing.

Moreover, this blanket prohibition so infringes on Mr. Murdoch's "freedom of association and ability to reintegrate into society" that it violates his right to due process. *United States v. Scott*, 821 F.3d 562, 572 (5<sup>th</sup> Cir.2016). Given the nature of this condition and its meaning as written, the fact that Mr. Murdoch will remain

on supervision for life makes it imperative that this Court grant Mr. Murdoch's petition. *See, e.g., United States v. Inman*, 666 F.3d 1001, 1004 (6<sup>th</sup> Cir.2012) (citing *United States v. Ritter*, 118 F.3d 502, 504 (6<sup>th</sup> Cir.1997)); *United States v. Brogdon*, 503 F.3d 555, 564 (6<sup>th</sup> Cir.2007); *Scott*, 821 F.3d at 571 (citing *United States v. Duke*, 788 F.3d 392, 398-403 (5<sup>th</sup> Cir.2015)).

### **CONCLUSION**

For the foregoing reasons, Mr. Murdoch respectfully requests that this Court grant his petition for the issuance of a writ of certiorari for the purpose of vacating his sentence to remove the broad special condition of supervision discussed *supra*.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Jarrod J. Beck, counsel for Petitioner Matthew Ryan Murdoch, do hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, Washington, DC 20543. I also certify that a true copy of the Petition was served by mail with first-class postage prepaid upon Charles P. Wisdom and John Grant, Assistant United States Attorneys, 110 West Vine Street, Suite 300, Lexington, Kentucky.

This 6<sup>th</sup> day of April, 2019.

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