

A P P E N D I X A

UNITED STATES DISTRICT COURT

Southern District of Texas

Holding Session in Houston

ENTERED

April 06, 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA
V.
SAMIER PATRICK CLARK

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 4:17CR00311-001

USM NUMBER: 26956-479

☐ See Additional Aliases.Wilvin Jamar Carter

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 1, 2, and 3 on November 1, 2017.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2252(A)(a)(2)(B) and 2252A(b)(1)	Distribution of child pornography	11/10/2016	1
18 U.S.C. § 2252(A)(a)(2)(B) and 2252A(b)(1)	Receipt of child pornography	11/10/2016	2
18 U.S.C. § 2252(A)(5)(B) and 2252A(b)(2)	Possession of child pornography	11/10/2016	3

☐ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the .

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 4, 2018

Date of Imposition of Judgment



Signature of Judge

DAVID HITTNER

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

Signal: April 6, 2018

HEM | MRO

DEFENDANT: SAMIER PATRICK CLARK

CASE NUMBER: 4:17CR00311-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 151 months.

This term consists of ONE HUNDRED FIFTY-ONE (151) MONTHS as to each of Counts 1 and 2, and ONE HUNDRED TWENTY (120) MONTHS as to Count 3, all to run concurrently, for a total of ONE HUNDRED FIFTY-ONE (151) MONTHS.

☐ See Additional Imprisonment Terms.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to a facility as close to Dallas, Texas, as possible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: SAMIER PATRICK CLARK
CASE NUMBER: 4:17CR00311-001

SUPERVISED RELEASE

Upon release from imprisonment you will be on supervised release for a term of: 10 years.
This term consists of TEN (10) YEARS as to each of Counts 1-3, to run concurrently, for a total of TEN (10) YEARS.

☐ See Additional Supervised Release Terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: SAMIER PATRICK CLARK
CASE NUMBER: 4:17CR00311-001

SPECIAL CONDITIONS OF SUPERVISION

You shall participate in a mental health treatment program and/or sex offender treatment program provided by a Registered Sex Offender Treatment Provider, as approved by the United States Probation Officer, which may include but not be limited to group and/or individual counseling sessions, Abel Screen, polygraph testing and/or psycho-physiological testing to assist in treatment and case monitoring administered by the sex offender contractor or their designee. Further, you shall participate as instructed and shall abide by all policies and procedures of the sex offender program, until such time as you are released from the program as approved by the United States Probation Officer. You will incur costs associated with such sex offender treatment program and testing, based on ability to pay as determined by the United States Probation Officer. You shall waive your right of confidentiality in any records for mental health treatment imposed as a consequence of this judgment to allow the supervising United States Probation Officer to review your course of treatment and progress with the treatment provider. The Court authorizes the release of the presentence report and available mental health evaluations to the mental health provider. The Court authorizes the release of the presentence report and available mental health evaluations to the mental health provider, as approved by the probation officer.

You shall not subscribe to any computer online service, nor shall you access any Internet service during the length of your supervision, unless approved in advance in writing by the United States Probation Officer. You may not possess Internet capable software on any hard drive, disk, floppy disk, compact disk, DVD, diskette, magnetic tape, or any other electronic storage media, unless specifically approved in advance in writing by the United States Probation Officer.

You must participate in an inpatient or outpatient substance-abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the costs of the program, if financially able.

You must submit to substance-abuse testing to determine if you have used a prohibited substance, and you must pay the costs of the testing if financially able. You may not attempt to obstruct or tamper with the testing methods.

DEFENDANT: SAMIER PATRICK CLARK
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00		

A \$100 special assessment is ordered as to each of Counts 1-3, for a total of \$300.

☐ See Additional Terms for Criminal Monetary Penalties.

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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☐ See Additional Restitution Payees.

TOTALS	\$0.00	\$0.00	
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$300.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or
- D ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
 Attn: Finance
 P.O. Box 61010
 Houston, TX 77208

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	<u>Total Amount</u>	Joint and Several <u>Amount</u>	Corresponding Payee, <u>if appropriate</u>
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- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

A P P E N D I X B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20244

D.C. Docket No. 4:17-CR-311-1

United States Court of Appeals
Fifth Circuit

FILED

August 7, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

SAMIER PATRICK CLARK,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Texas

Before CLEMENT, HAYNES, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed as modified.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-20244

United States Court of Appeals
Fifth Circuit

FILED

August 7, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

SAMIER PATRICK CLARK,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CR-311-1

Before CLEMENT, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

This appeal arises from a district court judgment requiring Samier Patrick Clark to “not subscribe to any computer online service, nor . . . access any Internet service during [his] supervision, unless approved in advance in writing by the United States Probation Officer” as a special condition of supervised release. The sole issue on appeal is whether the district court committed reversible plain error by imposing this requirement. Because there is no error in this requirement absent its most draconian interpretation, we

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

AFFIRM the sentence as MODIFIED with instructions that enforcement of the condition be subject to our interpretation contained herein.

I

Clark pleaded guilty without a plea agreement to one count of distribution of child pornography, in violation of 18 U.S.C. § 2252(a)(2)(B) and (b)(1); one count of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2)(B) and (b)(1); and one count of possession of child pornography, in violation of 18 U.S.C. §2252(a)(5)(B) and (b)(2). Clark's presentence report noted that his offense involved the use of computer and Internet services for possession, transmission, receipt, or distribution of contraband images. All told, Clark's computer contained 143 images and 68 videos of child pornography.

The district court sentenced Clark to 151 months of imprisonment and ten years of supervised release. The court also imposed several conditions of supervised release. Relevant to this appeal, the court stated in part that "[y]ou shall not subscribe to any computer online service, nor shall you access any Internet service during the length of your supervision, unless approved in advance in writing by the United States Probation Officer." Clark did not object to this condition before the district court.

On appeal, Clark contends that the district court committed reversible error by imposing this condition because the condition is unreasonably restrictive. Specifically, Clark claims that the condition requires him to seek the approval of a probation officer "every single time he must access the Internet for an innocent purpose." He asserts this "imposes a greater deprivation of liberty than is necessary to protect children . . . and deter him from committing sex crimes against children."

II

Because Clark did not object to the district court's imposition of the computer and Internet use condition, we review for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

III

A peculiarity in this case is that the government and Clark are substantially in agreement: Clark should not be required to secure permission for each instance of computer use or Internet access, and we should grant some kind of relief to ensure that Clark's probation officer approves categories of innocuous computer usage (e.g., to pay bills or take online classes). The parties only disagree over what form relief should take: Clark would prefer a limited remand, while the government would have us affirm with an instruction that the condition not be interpreted to require approval for each instance of computer use and Internet access.

We recently used the Government's proposed approach in *United States v. Sealed Juvenile*, 781 F.3d 747 (5th Cir. 2015), and *United States v. Melton*, 753 F. App'x 283 (5th Cir. 2018) (per curiam), under similar facts—though subject to a different standard of review. We have also used the same approach in the plain-error context to resolve doubt over how to interpret a different kind of special condition. *See United States v. Guerra*, 856 F.3d 368, 370 (5th Cir. 2017) (“Lest there be any doubt, we AFFIRM the sentence as MODIFIED.”). Here too, we prefer the government's approach: The condition is unreasonable “to the extent [it] require[s] the [defendant] to request permission . . . every time he needs to access the Internet.” *Sealed Juvenile*, 781 F.3d at 756.

IV

Plain-error review mandates “considerable deference to the district court.” *United States v. Peltier*, 505 F.3d 389, 391 (5th Cir. 2007). The relevant question is “whether the severity of the error's harm demands reversal,” and

review must not be treated as a tool to decide “whether the district court’s action . . . deserves rebuke.” *United States v. Escalante-Reyes*, 689 F.3d 415, 423 (5th Cir. 2012) (en banc) (citation and internal quotation marks omitted). As the Supreme Court has explained, “plain-error review is not a grading system for trial judges.” *Henderson v. United States*, 568 U.S. 266, 278 (2013). As such, “appellate-court authority to remedy [an] error” under this test “is strictly circumscribed.” *Puckett*, 556 U.S. at 134. Clark’s burden is “difficult, as it should be.” *Id.* at 135 (quotation omitted).

To show reversible plain error, Clark bears the burden of establishing each prong of a four-prong test. He must show “(1) an error (2) that is clear or obvious, (3) that affects substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Nava*, 762 F.3d 451, 452 (5th Cir. 2014) (citations omitted).

District courts have broad discretion to impose special conditions of supervised release. *United States v. Fernandez*, 776 F.3d 344, 346 (5th Cir. 2015) (per curiam). However, their discretion is cabined by 18 U.S.C. § 3583(d), which requires conditions of supervised release to be “reasonably related” to one or more of four factors enumerated in 18 U.S.C. § 3553(a):

- (1) the nature and characteristics of the offense and the history and characteristics of the defendant, (2) the deterrence of criminal conduct, (3) the protection of the public from further crimes of the defendant, and (4) the provision of needed educational or vocational training, medical care, or other correctional treatment to the defendant.

United States v. Weatherton, 567 F.3d 149, 153 (5th Cir. 2009) (citing 18 U.S.C. §§ 3583(d)(1), 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D)). Most importantly for this case, § 3583(d) also instructs that a special condition impose “no greater

deprivation of liberty than is reasonably necessary for the purposes” of the last three factors. 18 U.S.C. § 3583(d)(2).¹

We have recently reiterated that we will ordinarily “not find plain error when we have not previously addressed an issue.” *United States v. Cabello*, 916 F.3d 543, 544 (5th Cir. 2019) (per curiam) (quoting *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009)) (internal quotation marks omitted). But we *have* addressed this very issue. In *Sealed Juvenile* we held that “to the extent [special conditions of supervised release] require [the defendant] to request permission every time he needs to use a computer, or every time he needs to access the Internet, we find them to be unreasonably restrictive.” 781 F.3d at 756. We agreed with the defendant in *Sealed Juvenile* that such a condition constituted a much greater deprivation of liberty than reasonably necessary under § 3583(d)(2): “We must recognize that access to computers and the Internet is essential to functioning in today’s society. The Internet is the means by which information is gleaned, and a critical aid to one’s education and social development.” *Id.*

In *Melton* we reiterated our conclusion from *Sealed Juvenile*, stating that “an otherwise permissible condition limiting Internet access can be unreasonably restrictive if given the more austere” interpretation requiring “a separate pre-use approval by [a] probation officer every single time [the defendant] accesses the Internet.” 753 F. App’x at 289.

Clark does not contend that the special condition is not reasonably related to the four statutory factors enumerated in §3553(a), nor could he. See *United States v. Paul*, 274 F.3d 155, 169 (5th Cir. 2001) (concluding that a computer ban was reasonably related to a non-production child-pornography

¹ Any condition must also be “consistent with any pertinent policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3583(d)(3).

offense, as well as to the interests in preventing recidivism and protecting the public). Instead, Clark urges us to consider whether the condition satisfies § 3583(d)'s requirement that a condition be narrowly tailored. To the extent that the condition would require Clark to request permission for each instance of computer use, we conclude that it would not.

Sealed Juvenile and *Melton* make clear that such a condition is not reasonably related to any of the four factors under § 3553(a). Here, if the district court had intended such an interpretation—which we think unlikely—the error is plain.

We further conclude that such an unreasonable condition, if ever imposed, would affect Clark's substantial rights. In *United States v. Duke*, we recognized “the ubiquity and importance of the Internet to the modern world.” 788 F.3d 392, 400 (5th Cir. 2015) (per curiam). We have also observed, along with a number of other circuits, that “computers and the internet have become significant and ordinary components of modern life as we know it.” *United States v. Brigham*, 569 F.3d 220, 234 (5th Cir. 2009); *see also United States v. Albertson*, 645 F.3d 191, 200 (3d Cir. 2011) (“[I]n a time where the daily necessities of life and work demand not only internet access but internet fluency, sentencing courts need to select the least restrictive alternative for achieving their sentencing purposes.”); *United States v. Love*, 593 F.3d 1, 11–12 (D.C. Cir. 2010) (“The internet prohibition will, no doubt, substantially affect [the defendant's] day-to-day activities. It will deprive him of the easiest way to pay his bills, check the weather, stay on top of world events, and keep in touch with friends.”); *United States v. Holm*, 326 F.3d 872, 878 (7th Cir. 2003) (noting that a ban on all Internet use “renders modern life—in which, for example, the government strongly encourages taxpayers to file their returns electronically, where more and more commerce is conducted on-line, and where vast amounts of government information are communicated via

website—exceptionally difficult”). And in *Sealed Juvenile*, we said that “access to computers and the Internet is *essential* to functioning in today’s society [and] critical aid to one’s education and social development.” 781 F.3d at 756 (emphasis added). Thus, we find that such an austere interpretation of the condition would affect Clark’s substantial rights.

Having determined that such as ascetic reading of the condition would, if manifested, satisfy the first three prongs of plain error, we must consider whether we should exercise our discretion to provide a remedy.

“[T]he fourth prong is meant to be applied on a case-specific and fact-intensive basis.” *United States v. Prieto*, 801 F.3d 547, 554 (5th Cir. 2015) (per curiam) (quoting *United States v. John*, 597 F.3d 263, 286 (5th Cir. 2010)). The Supreme Court has rejected a “*per se* approach to plain-error review.” *Puckett*, 556 U.S. at 142 (quoting *United States v. Young*, 470 U.S. 1, 17 n.14 (1985)). Since the government itself urges us to follow the approach found in *Sealed Juvenile* and *Melton*, we choose to utilize our discretion to affirm the district court with instructions that the enforcement of the computer and Internet use condition be subject to the interpretation desired by both parties to this appeal.²

V

We think it unlikely the district court intended the unreasonable, but “[l]est there be any doubt,” we AFFIRM as MODIFIED. *Guerra*, 856 F.3d. at

² While it is true that Clark may seek to modify this condition during his supervised release pursuant to 18 U.S.C. § 3583(e)(2), and in *United States v. Medonza-Velasquez*, 847 F.3d 209, 213 (5th Cir. 2017), we declined to exercise our discretion because the condition was modifiable, “the ability of a defendant to modify a special condition is only one factor considered as we determine whether to exercise our discretion.” *United States v. Alvarez*, 880 F.3d 236, 242 (5th Cir. 2018) (per curiam). As in *Alvarez*, we choose not to make the possibility of modification controlling because there is nothing in this case to counsel against rectifying any error and because, as discussed, the special condition at issue here implicates essential access to modern life. *Id.* at 241.

370. Any enforcement of the condition shall be subject to the interpretation, determinations, and instructions contained in this opinion.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 07, 2019

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 18-20244 USA v. Samier Clark
USDC No. 4:17-CR-311-1

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Deborah M. Graham

By:

Debbie T. Graham, Deputy Clerk

Enclosure(s)

Mr. John Richard Berry
Ms. Kayla R. Gassmann
Mr. Scott Andrew Martin
Ms. Marjorie A. Meyers
Ms. Carmen Castillo Mitchell