No. _____

IN THE

Supreme Court of the United States

JORGE DE LOS SANTOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

For a low-level sex offender (like a mere possessor of child pornography with no prior criminal history), is a supervised-release condition prohibiting him from living in most urban and suburban areas substantively unreasonable, that is, does it fail to both reasonably relate to the goals of supervised release (deterrence, public protection, and rehabilitation) and involve no greater deprivation of liberty than is reasonably necessary to serve those goals?

Related Proceedings

United States District Court (C.D. Cal.):

United States v. De Los Santos, Case No. CR-18-00477-PA (March 5, 2019).

United States Court of Appeals (9th Cir.):

United States v. De Los Santos, Case No. 19-50086 (October 27, 2020).

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Petition for a Writ of Certiorari

Petitioner Jorge De Los Santos respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The decision of the United States Court of Appeals for the Ninth Circuit (App. 2a-6a) is unpublished but is available at 827 Fed. Appx. 757. The district court did not issue any relevant written decision.

Jurisdiction

The court of appeals entered its judgment on October 27, 2020. App. 2a. It denied a petition for panel rehearing / rehearing en banc on January 7, 2021. App. 8a. On March 19, 2020, this Court extended the time within which to file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

An appendix to this petition includes 18 U.S.C. § 3553(a), 18 U.S.C. § 3583(d), and U.S.S.G. § 5D1.3(b). App. 9a-15a.

Introduction

Restrictions on where sex offenders may live are common throughout the county. In this case, for example, the United States District Court for the Central District of California imposed upon a mere possessor of child pornography a supervised-release condition that prohibits him from residing "within 2,000 feet of school yards, parks, public swimming pools, playgrounds, youth centers, video arcade facilities, or other places primarily used by persons under the age of 18." App. 3a. That condition effectively precludes living in most urban and suburban areas. Although the Ninth Circuit conceded that the 2,000-foot restriction may severely restrict housing options and make rehabilitation more difficult, it upheld the condition as substantively reasonable. App. 4a-5a. But a condition is substantively reasonable only if it is *both* reasonably related to the goals of supervised release (deterrence, public protection, and rehabilitation) *and* involves no greater deprivation of liberty than is reasonably necessary to serve those goals. *See* 18 U.S.C. § 3583(d) (referring to 18 U.S.C. § 3553(a)); U.S.S.G. § 5D1.3(b). Accordingly, the Ninth Circuit's decision conflicts with a unanimous California Supreme Court opinion holding that blanket enforcement of a nearly-identical restriction on all sex offenders was unconstitutional because it imposes harsh and severe disabilities on their liberty and privacy rights while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate them. *See In re Taylor*, 60 Cal.4th 1019 (2015). This conflict is part of a broader split among lower courts (state and

federal) concerning whether severe residency restrictions on sex offenders are rationally related to public safety. Because this case provides a good vehicle to address that important issue, the Court should grant the writ and resolve the conflict.

Statement of the Case

A. Legal Background.

1. When imposing a term of imprisonment, a federal district court may, and in some cases must, impose a term of supervised release. 18 U.S.C. § 3583(a)-(b), (k). While on supervised release, a defendant must comply with conditions imposed by the district court at sentencing. Congress and the Sentencing Commission have required certain conditions and suggested others. 18 U.S.C. § 3583(d); U.S.S.G. § 5D1.3(a), (c)-(e). A district court retains discretion to impose other conditions, but that discretion is constrained. Any such condition must:

(1) be *reasonably related* to:

(A) the nature and circumstances of the offense and the history and characteristics of the defendant;

(B) the need to afford adequate deterrence to criminal conduct;

(C) the need to protect the public from further crimes of the defendant; and

(D) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

(2) *involve no greater deprivation of liberty than is reasonably necessary* for the purposes set forth above in (1)(B), (1)(C), and (1)(D); and

(3) be consistent with any pertinent policy statements issued by the Sentencing Commission.

See 18 U.S.C. § 3583(d) (referring to 18 U.S.C. § 3553(a)); U.S.S.G. § 5D1.3(b). A condition that does not meet this standard is substantively unreasonable. *See United States v. Pacheco-Donelson*, 893 F.3d 757, 761 (10th Cir. 2018); *United States v. Evans*, 883 F.3d 1154, 1160-61 (9th Cir. 2018); *United States v. Henry*, 819 F.3d 856, 875 (6th Cir. 2016). This case concerns whether, for a defendant convicted only of possessing child pornography, a condition that prohibits residing within 2,000 feet of certain places primarily used by minors is substantively unreasonable, that is, whether it is reasonably related to the goals of supervised release (deterrence, public protection, and rehabilitation) and involves no greater deprivation of liberty than is reasonably necessary to serve those goals.

2. In two cases, the Ninth Circuit suggested that a 2,000-foot residency restriction is substantively unreasonable in most cases but did not reach the issue because it reversed for procedural errors. *See United States v. Collins*, 684 F.3d 873, 889-93 (9th Cir. 2012) (defendant convicted of possessing child pornography);

United States v. Rudd, 662 F.3d 1257, 1260-65 (9th Cir. 2011) (defendant convicted of sexual contact with child victims multiple times).

3. Subsequently, the California Supreme Court unanimously held that blanket enforcement of a statute with a similar residency restriction is unconstitutional because it infringes sex offenders' liberty interests in violation of the Fourteenth Amendment. *See In re Taylor*, 60 Cal.4th 1019, 1022-43 (2015). That court found that the residency restriction could not survive even the most deferential standard of review because "it bears no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has infringed the affected parolees' basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive." *Id.* at 1038; *see also id.* at 1023, 1038-42. It did not hold that such a condition could never be justified, but one could only be "based on, and supported by, the particularized circumstances of [an] individual parolee." *Id.* at 1023, 1042.

B. Factual Background and Proceedings Below.

On the day he was sentenced for possession of child pornography in the Central District of California, Jorge De Los Santos was 32 years old and had no prior arrests or convictions, and the government itself acknowledged that, "[o]ther than the offense conduct, defendant appears to have lived a productive and crime-free

life[.]" ER 106.[1] Nevertheless, when he begins serving his *life* term of supervised release, a condition will prohibit him from residing "*within 2,000 feet* of school yards, parks, public swimming pools, playgrounds, youth centers, video arcade facilities, or other places primarily used by persons under the age of 18." ER 139 (emphasis added). The district court imposed this condition despite the parties' *joint request* for one limited to excluding residences within "direct view" of such locations instead. App. 2a-3a; ER 34.

1. Sometime prior to February 2013, De Los Santos started using a peer-to-peer file-sharing program to download and make available child pornography via the internet. ER 39; PSR 4. When his home was searched two months later, De Los Santos (then 26 years old) admitted to agents that he began downloading child-pornography when he was 18. PSR 6. But he denied ever inappropriately touching a child. PSR 6. De Los Santos also told the agents about the childhood sexual abuse he suffered himself. PSR 6. More than five years later, in July 2018, a grand jury charged De Los Santos with two counts of receiving child pornography in

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[1] The following abbreviations refer to documents filed in the Ninth Circuit: "ER" refers to the appellant's excerpts of record (docket no. 9). "PSR" refers to the presentence report and other sentencing documents filed under seal (docket no. 10). "AOB" refers to the appellant's opening brief (docket no. 8). "ARB" refers to appellant's reply brief (docket no. 29). "LET" refers to appellant's Fed. R. App. P. 28(j) letter (docket no. 35). "PFR" refers to the appellant's petition for rehearing (docket no. 42).

December 2012 and one count of possessing child pornography in April 2013. ER 25-29. The record does not reflect why the government waited so long to initiate these charges, but there was no evidence that he engaged in any criminal activity after the search. ER 111. De Los Santos quickly accepted responsibility by pleading guilty. App. 2a; ER 30-85. While on pre-sentencing release, De Los Santos began counseling for the first time, which gave him valuable insight into his offense behavior. ER 112; PSR 10, 21, 25. At sentencing, he demonstrated a genuine understanding of his crime and expressed sincere remorse for it. ER 15-16, 130-32. He also had the strong support of his family and employer. ER 120-28, 134-35; PSR 9-11; *see also* AOB 3-6.

2. After calculating the Sentencing Guidelines advisory range as 78-97 months, the district court imposed a sentence of 46 months in prison followed by a *life* term of supervised release under numerous conditions, including the 2,000-foot residency restriction. App. 3a-4a; ER 16, 20-21, 137-40; PSR 30-33. De Los Santos objected and asked the district court to impose the jointly-requested direct-view version of the condition instead. App. 2a-3a; ER 3-4, 34; PSR 32. The district court refused, justifying the condition with reasons applicable to the vast majority of possession-of-child-pornography offenders—sexual attraction to children leading to an interest in looking at child pornography over a significant period of time, resulting in the possession of a large number of images, with at least one "sadistic" image and at

least one image depicting a very young child. App. 3a; ER 4-9; *see also* AOB 7, 31-36; ARB 15-25.

3. On appeal, De Los Santos argued that the 2,000-foot residence restriction is substantively unreasonable, relying on the above-cited Ninth Circuit opinions in *Collins* and *Rudd* and the California Supreme Court's opinion in *Taylor*. AOB 11-37; ARB 1-29. Because *Taylor* involved the circumstances in San Diego County whereas De Los Santos lived in Los Angeles County, De Los Santos provided the Ninth Circuit with maps from the website it had previously cited to find that, given the 2,000-foot exclusion zones, "only a few isolated areas remain in the Greater Los Angeles area for defendants to live when subject to the restriction." *Collins*, 684 F.3d at 890 n.7; LET, Ex. A. In that prior case, the Ninth Circuit had described the residency condition as "highly restrictive" because it "effectively prevent[s]" a defendant "from living in any urban area[,]" thereby imposing "significant—even extreme—restrictions on his liberty." *Id.* at 890.

De Los Santos also provided the Ninth Circuit with a California Department of Corrections and Rehabilitation (CDCR) task force report discussed in *Taylor*, 60 Cal.4th at 1033. LET, Ex. B. Despite its law-enforcement-affiliated participants (including CDCR staff, police officers, district attorneys, and victim advocates), the task force found "no evidence that residence restrictions for sex offenders make the community any safer." LET, Ex. B at 1, 4. On the contrary, it concluded that "[b]lanket residence restrictions have not improved public safety and have

compromised the effective monitoring and supervision of sex offender parolees." LET, Ex. B at 4, 17. The Ninth Circuit had previously cited the same report to find that "[t]here remain significant questions regarding the substantive reasonableness of residency restrictions, including whether they too stringently restrict where a defendant can reside, or whether they play a role in increasing the likelihood of recidivism." *Rudd*, 662 F.3d at 1265.

4. Contrary to this authority, the Ninth Circuit held in De Los Santos's case that the 2,000-foot residence restriction was not substantively unreasonable. App. 4a-5a. It concluded that, "[e]ven if the regular presence of children is unlikely to lead Defendant to physically harm a child" (something it declined to decide), his sexual attraction to minors, a trait undoubted shared by every possessor of child pornography, is enough to logically infer that "children frequently walking past Defendant's home—for example, if he lived around the corner from a school"—"could cause Defendant to relapse into viewing child pornography." App. 5a. The Ninth Circuit ignored that De Los Santos will see children anyway because they exist in the world in abundance (in public places and on television), and there is no reasonable basis to conclude that seeing a child occasionally walk past his house would trigger any meaningful desire to view child-pornography that those other exposures would not. PFR 15-16 n.28. The Ninth Circuit also disregarded the many other supervised-release conditions that will prevent De Los Santos from viewing such materials anyway. ER 137-40.

The Ninth Circuit also failed to acknowledge that, to the extent there is such a risk, it would be so marginal that it would not outweigh the extremely-significant deprivation of De Los Santos's liberty resulting from a 2,000-foot residency restriction. PFR 16 n.28. On the contrary, it conceded "that the 2,000-foot restriction may severely restrict his housing options and make rehabilitation more difficult" but faulted De Los Santos for not presenting evidence supporting this argument at sentencing, App. 5a, even though circuit precedent put the burden on the government to show that a particular condition of supervised release involves no greater deprivation of liberty than is reasonably necessary to serve the goals of supervised release. AOB 14; ARB 5; PFR 17-20. Moreover, even though *Taylor*, *Collins*, and *Rudd* established the undisputed fact that the 2,000-foot condition eliminates most housing options and undermines rehabilitation, the Ninth Circuit disregarded that authority in its substantive-reasonableness analysis simply because that particular argument was not made below. App. 5a.[2] The Ninth

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[2] Doing so was improper under *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374 (1995). There, the plaintiff argued below that Amtrack was a private entity yet still subject to constitutional requirements because it was closely connected with federal entities. *Id.* at 378-79. When the case got to this Court, however, the plaintiff argued for the first time that Amtrack was itself a federal entity. *Id.* at 379. The Court said that was okay. It noted the "traditional rule" that "'once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments

Circuit subsequently denied De Los Santos's petition for panel rehearing / rehearing en banc. App. 8a.

Reasons for Granting the Writ

"Congress intended supervised release to assist individuals in their transition to community life. Supervised release fulfills rehabilitative ends, distinct from those served by incarceration." *United States v. Johnson*, 529 U.S. 53, 59 (2000). Therefore, a supervised-release condition is substantively unreasonable unless it satisfies the applicable statutory standard, which requires the condition to *both* reasonably relate to the goals of supervised release (deterrence, public protection, and rehabilitation) *and* involve no greater deprivation of liberty than is reasonably necessary to serve those goals. *See* 18 U.S.C. § 3583(d) (referring to 18 U.S.C. § 3553(a)); U.S.S.G. § 5D1.3(b); *see also supra* Statement of the Case, Part A.1. The Ninth Circuit upheld as substantively reasonable a lifetime supervised-release condition prohibiting a low-level sex offender (a mere possessor of child pornography with no prior criminal history) from living in most urban and suburban areas. That

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they made below.'" *Id.* (quoting *Yee v. Escondido*, 503 U.S. 519, 534 (1992)). It therefore concluded that the contention about Amtrak being a federal entity was not a new claim but only a new argument to support the plaintiff's consistent claim that Amtrak violated his constitutional rights. *Id.* By the same token, De Los Santos has consistently claimed that the 2,000-foot residency restriction was unwarranted, so he was free to make any argument to support that claim on appeal.

decision conflicts with the California Supreme Court's holding that an almost-identical residency condition is not rationally related to goal of protecting children from sexual predators. This alone is reason enough to grant review. *See* Sup. Ct. R. 10(a). But this conflict is emblematic of an intractable split among lower courts about whether severe residency restrictions on sex offenders are rationally related to public safety. This case presents a good vehicle for the Court to address this important issue and resolve the conflict.

1. The Ninth Circuit held that a lifetime supervised-release condition prohibiting a low-level sex offender (a mere possessor of child pornography with no prior criminal history) from living in most urban and suburban areas is substantively reasonable.

Jorge De Los Santos is a run-of-the-mill possession-of-child-pornography offender with no prior criminal history, or any other evidence that he has ever even attempted to act inappropriately with a child. *See supra* Statement of the Case, Part B. In a plea agreement, he and the government stipulated to a supervised-release condition providing that he "shall not reside *within direct view* of school yards, parks, public swimming pools, playgrounds, youth centers, video arcade facilities, or other places primarily used by persons under the age of 18." App. 2a-3a; ER 34 (emphasis added). Over De Los Santos's objection, the district court replaced the words "within direct view" with "within 2,000 feet." App. 3a; ER 4-9, 139. Because that change vastly expanded the zones of prohibited residences, it

"can hardly be described as a 'minor variation.'" *United States v. Rudd*, 662 F.3d 1257, 1262 (9th Cir. 2011). Indeed, a 2,000-foot restriction "effectively prevents" De Los Santos "from living in any urban area" because "only a few isolated areas remain in the Greater Los Angeles area for defendants to live when subject to the restriction." *United States v. Collins*, 684 F.3d 873, 890 & n.7 (9th Cir. 2012); *cf. Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 561-62 (2001) (noting that Massachusetts regulation prohibiting outdoor advertising within 1,000 feet of schools or playgrounds would "constitute nearly a complete ban" in "some geographical areas" like, for example, "prevent[ing] advertising in 87% to 91% of Boston, Worchester, and Springfield[.]"). Even offenders who somehow find a temporary abode live in "a state of constant eviction" because an additional 2,000-foot exclusion zone could pop up if any new place "primarily used by" minors arrives in the area. *Rudd*, 662 F.3d at 1264-65 (quotation marks omitted).

Despite acknowledging the undisputed fact "that the 2,000-foot restriction may severely restrict [De Los Santos's] housing options and make rehabilitation more difficult[,]" the Ninth Circuit upheld the 2,000-foot restriction as substantively reasonable. App. 4a-5a; *see also* Statement of the Case, Part B.4. In doing so, it significantly changed course from two prior opinions in which it had strongly suggested that the condition is not substantively reasonable for such offenders. *See Collins*, 684 F.3d at 889-93 ("There is good reason to suspect that the imposition of the sweeping residency restriction ... for life is substantively unreasonable for

Collins's conviction of possession of child pornography."); *Rudd*, 662 F.3d at 1260-65 ("There remain significant questions regarding the substantive reasonableness of residency restrictions, including whether they too stringently restrict where a defendant can reside, or whether they play a role in increasing the likelihood of recidivism[.]"). More important, as discussed in the following sections, the Ninth Circuit's holding directly conflicts with a decision of the California Supreme Court, and that is just part of a broader disagreement among the lower courts concerning sex-offender residency restrictions.

2. The Ninth Circuit's decision conflicts with the California Supreme Court's holding that a nearly-identical residency restriction is not rationally related to the goal of protecting children from sexual predators.

The State of California has a statute making it unlawful for any person required to register as a sex offender under state law "to reside within 2000 feet of any public or private school, or park where children regularly gather." Cal. Pen. Code § 3003.5(b). The federal supervised-release condition at issue here "is significantly broader and more restrictive than" the state statute because, in addition to requiring a defendant "to reside at least 2,000 feet from parks and schools," the federal condition "adds to that list 'swimming pools, playgrounds, youth centers, video arcade facilities, or any other places primarily used by persons under the age of 18[.]'" *Collins*, 684 F.3d at 891 n.11. It is therefore significant that, in *In re*

Taylor, the California Supreme Court unanimously held that blanket enforcement of the state residency restriction is unconstitutional. 60 Cal.4th 1019 (2015).

Because *Taylor* concerned habeas litigation brought by sex-offender parolees in San Diego County, the California Supreme Court examined the housing available to such people in that area. 60 Cal.4th at 1029-30. The 2,000-foot zones made "huge swaths of urban and suburban San Diego, including virtually all of the downtown area, completely consumed by the residency restrictions." *Id*. at 1029 (quotation marks omitted), 1040. And because sex-offender parolees are more likely to rent apartments or residential-hotel rooms, rather than live in single-family homes, less than 3% of such housing complied with the residency restriction. *Id*. at 1029, 1034, 1039-40. But as a practical matter, not even all of that housing was available to such parolees given various factors like vacancy rates, high rent, criminal background checks, and access to public transportation. *Id*. at 1029-30, 1034, 1040.

Not surprisingly, homelessness among sex-offender parolees skyrocketed after the enactment of the residency-restriction statute, with many having to sleep in alleys and riverbeds. *Taylor*, 60 Cal.4th at 1023, 1031-34, 1040-41. This posed significant problems for law enforcement because homeless parolees are more difficult to supervise than those with established residences. *Id*. at 1023, 1032-33, 1040. Homelessness also presented significant barriers to the therapeutic treatment and rehabilitation of those sex offenders. *Id*. at 1023, 1033-34, 1041. Furthermore, the restriction impacted the ability of some parolees to live and

associate with family members whose homes were not in a compliant location. *Id.* at 1040. The resulting impediments to the parolees' mental and physical health and stability placed "the public at greater risk." *Id.* at 1033, 1041.

Addressing the parolees' claim that the residency restriction infringed their liberty interests in violation of the Fourteenth Amendment, the California Supreme Court suggested that a strict-scrutiny standard might apply given the significant interests involved. *Taylor*, 60 Cal.4th at 1036-38. But it did not need to resolve that question because the statute's blanket residency restriction could not survive even the more deferential rational-basis standard:

> [Section 3003.5(b)] has imposed harsh and severe restrictions and disabilities on the affected parolees' liberty and privacy rights, however limited, while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate these persons. Accordingly, *it bears no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators, and has infringed the affected parolees' basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive*.

Id. at 1038 (emphasis added); *see also id.* at 1023, 1038-42.

The California Supreme Court did not hold that the state residency restriction could never be justified, but one could only be "based on, and supported by, the particularized circumstances of [an] individual parolee." *Id.* at 1023, 1042. In other

words, the condition is appropriate only for the most serious sex offenders. Thus, the Ninth Circuit's decision that a 2,000-foot residency restriction is substantively reasonable for a run-of-the-mill possession-of-child-pornography offender like De Los Santos conflicts with *Taylor*.

3. The conflict between the Ninth Circuit and the California Supreme Court is emblematic of an intractable split among lower courts about whether severe residency restrictions on sex offenders are rationally related to public safety.

The above-described conflict is part of a broader split among the lower courts concerning the rationality of severe sex-offender residency restrictions. Many courts have adopted positions similar to that of the California Supreme Court in *Taylor*.

For example, the Kentucky Supreme Court considered a state law prohibiting sex offenders from residing within 1,000 feet of a school or daycare facility, thereby preventing them "from residing in large areas of the community." *Commonwealth v. Baker*, 295 S.W.3d 437, 440, 444 (Ky. 2009). Like the California Supreme Court, the Kentucky Supreme Court recognized that this limitation had "significant collateral consequences"—it "could, for example, impact where an offender's children attend school, access to public transportation for employment purposes, access to employment opportunities, access to drug and alcohol rehabilitation programs and even access to medical care and residential nursing home facilities for

the aging offender." *Id*. at 445 (quotation marks omitted). An offender also "faces a constant threat of eviction" due to the possibility a new school or daycare facility might open nearby. *Id*. The Kentucky Supreme Court rejected the state's argument that the law was nevertheless rationally connected to public safety:

> [The law] prohibits registrants from residing (i.e. sleeping at night, when children are not present) within 1,000 feet of areas where children congregate, but it does not prohibit registrants from spending all day at a school, daycare center, or playground (when children are present). It allows registered sex offenders to sit across the street and watch children, and even to work near children. [The law] does not even restrict an offender from living with the victim, so long as they live and sleep outside of the prohibited area. All [the law] prohibits is residing in a home within the prohibited zone. It does not regulate contact with children. It is difficult to see how public safety is enhanced by a registrant not being allowed to sleep near a school at night, when children are not present, but being allowed to stay there during the day, when children are present. [The law] is connected to public safety. However, the statute's inherent flaws prevent that connection from being "rational."

Id. at 445-46.

The Pennsylvania Supreme Court dealt with a similar local ordinance making it unlawful for a sex offender to reside within 2,500 feet of schools, childcare facilities, parks, community centers, or recreational facilities, "essentially prohibiting any sex offender from living throughout most of Allegany County" (which includes Pittsburg). *Fross v. County of Allegany*, 610 Pa. 421, 429, 432 (2011). The court found that the ordinance subverted the statewide system for dealing with such offenders:

> The Ordinance banishes many sex offenders from their pre-adjudication neighborhoods and support systems. The Ordinance also consigns all offenders to isolated suburban areas of Allegheny County that presumably will provide less access to transportation, employment, counseling, and supervision. Moreover, it is not even apparent, from the record provided, whether there is appropriate residential housing available in the areas to which registrants would be banished; what we do know is that those areas, even if residential, are isolated from other aspects of most residential communities, such as parks and community and recreation centers. The Ordinance appears to attempt to ensure public safety, in certain parts of Allegheny County, by isolating all Megan's Law registrants in localized penal colonies of sorts, without any consideration of the General Assembly's policies of rehabilitation and reintegration.

Id. at 440; *see also G.H. v. Township of Galloway*, 401 N.J.Super. 392, 396, 416-19 (2008) (finding that similar ordinances hindered state law), *affirmed*, 199 N.J. 135 (2009).

And the Sixth Circuit considered a Michigan law prohibiting sex offenders from living, working, or loitering within 1,000 feet of a school. *Does #1-5 v. Snyder*, 834 F.3d 696, 698 (6th Cir. 2016). That court noted that empirical studies cast "significant doubt" on the premise that sex offenders pose a particularly high risk of recidivism. *Id*. at 704. And nothing in the record suggested that the residency restrictions had any beneficial effect on recidivism rates. *Id*. at 705. Thus, the significant difficulties those restrictions imposed on offenders were not counterbalanced by any positive effects. *Id*.

On the other hand, some other courts have accepted the argument that severe residency restrictions are rationally related to protecting children. *See*, *e.g.*, *Vasquez v. Foxx*, 895 F.3d 515, 524-25 (7th Cir. 2018); *Shaw v. Patton*, 823 F.3d 556, 573-75 (10th Cir. 2016); *Weems v. Little Rock Police Department*, 453 F.3d 1010, 1014-15 (8th Cir. 2006).

4. This case presents a good vehicle for the Court to address this important issue and resolve the conflict.

Sex-offender residency restrictions have proliferated over the past two decades. *See*, *e.g.*, *Taylor*, 60 Cal.4th at 1022 (noting that California adopted restriction in 2006); *Weems*, 453 F.3d at 1013 (noting that Arkansas adopted restriction in 2003).

The conflict described above appeared early and then persisted. And there is no reason to believe that the conflict will resolve itself anytime soon. Psychologists have appropriately referred to sex-offender residency restrictions as "crime control theater" that "derive their unquestioned public support from moral panics involving mythic narratives" despite questionable or nonexistent efficacy. *See* C. Mancini, *Crime Control Theater: Public (Mis)Perceptions of the Effectiveness of Sex Offender Residence Restrictions*, 22 Psychol. Pub. Pol'y & L. 362, 362-63, 372 (2016); *see also* 3 Am. Law. Zoning § 22:54 (5th ed. 2020) ("The literature and discussions in case law suggest that residency restrictions do not reduce recidivism, do not offer any real protection for potential victims, are generally not legally defensible, and thwart efforts to reform offenders and return them to society. This, however, is ignored by the emotional demands of community residents to enact these laws to 'protect vulnerable children' from convicted offenders."). And the very nature of the phenomenon is that "[s]upport for crime control theater policies persists despite explicit knowledge that they do not reduce crime[.]" *See* D. Campbell & A. Newheiser, *Must The Show Go On? The (In)Ability of Counterevidence to Change Attitudes Toward Crime Control Theater Policies*, 43 Law & Hum. Behav. 568, 568 (2019). Thus, courts are repeatedly asked to intervene and yet cannot agree on whether residency restrictions are rationally related to legitimate public-safety goals.

The Court should address this important issue and resolve the conflict. In *Packingham v. North Carolina*, for example, it reviewed a state law making it a felony for a registered sex offender to access certain websites, like Facebook and Twitter. 137 S. Ct. 1730, 1733 (2017). The Court acknowledged that sexual abuse of a child is a serious crime and that governments have a valid interest in preventing such abuse. *Id*. at 1736. But it still found that the state had not met its burden to establish that the "sweeping law" was "necessary or legitimate to serve that purpose." *Id*. at 1737. The Court should now direct its scrutiny to the similar problem of severe residency restrictions for sex offenders. This case presents an excellent vehicle for the Court to do so.

First, De Los Santos falls at the least-culpable end of the sex-offender spectrum—a mere possessor of child pornography with no criminal history whatsoever, let alone any impropriety with a child. Thus, imposing a 2,000-foot residency restriction on him can only be justified if (contrary to what the California Supreme Court held in *Taylor*) such a condition may be properly imposed on almost *all* sex offenders. By granting review, the Court can either endorse that position or refute it and provide guidance for determining when such a restriction might be appropriate for more culpable sex offenders.

Second, the condition at issue here is one of the most severe of its kind. Whereas some other restrictions use a shorter distance (like 1,000 feet) or a more limited list of locations (like just schools), the presented condition prohibits all residences

"within 2,000 feet of school yards, parks, public swimming pools, playgrounds, youth centers, video arcade facilities, or other places primarily used by persons under the age of 18." App. 2a-3a; ER 139. The Ninth Circuit noted in another case that the final phrase is so broad that it "could refer to anything from malls and hamburger or pizza joints to movie theaters, bowling alleys and skating rinks." *Rudd*, 662 F.3d at 1264 n.5. Thus, the 2,000 foot restriction—particularly where, as here, it is imposed for a life term—places a defendant's "supervised release in league with the most restrict terms, imposed on the most serious child molesters." *Collins*, 684 F.3d at 890.

Finally, because this petition presents the issue in the context of a direct appeal challenging a supervised-release condition, the applicable statutory standard squarely defines the relevant question—whether the residency restriction *both* reasonably relates to the goals of supervised release (deterrence, public protection, and rehabilitation) *and* involves no greater deprivation of liberty than is reasonably necessary to serve those goals. *See* 18 U.S.C. § 3583(d) (referring to 18 U.S.C. § 3553(a)); U.S.S.G. § 5D1.3(b); *see also supra* Statement of the Case, Part A.1. That two-prong inquiry will allow the Court to delve into any subsidiary questions relevant to when, if at all, such restrictions are appropriate for sex offenders.

Conclusion

For the foregoing reasons, the petitioner respectfully requests that this Court grant his petition for a writ of certiorari.

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Respectfully submitted,

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