

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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JORGE DE LOS SANTOS,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**APPENDICIES TO PETITION FOR A WRIT OF CERTIORARI**

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## **Appendix A**

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

OCT 27 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 19-50086

Plaintiff-Appellee,

D.C. No. CR 18-477-PA

v.

MEMORANDUM\*

JORGE DE LOS SANTOS,

Defendant-Appellant.

Appeal from the United States District Court  
for the Central District of California  
Percy Anderson, District Judge, Presiding

Argued and Submitted August 10, 2020  
Pasadena, California

Before: CALLAHAN and BUMATAY, Circuit Judges, and WATSON, \*\* District Judge.

Defendant, Jorge De Los Santos, pleaded guilty to possession of child pornography in 2018. As part of Defendant's plea agreement he agreed to not oppose certain conditions of supervised release, including one condition at issue in

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

this case—i.e. “Defendant 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.” Shortly before sentencing, the district court provided the parties with notice of the conditions of supervised release it intended to impose. Instead of prohibiting Defendant from living within “direct view” of places frequented by minors, the district court’s proposed conditions prohibited Defendant from living within 2,000 feet of those locations.

At sentencing, Defendant objected to this condition, but he did not offer any support for his objection beyond referring to the plea agreement’s “direct view” restriction. The Government did not take a position on the 2,000-foot restriction. The district court provided numerous reasons for the 2,000-foot restriction, including that Defendant possessed many more images and videos than necessary to receive the highest enhancement under the Guidelines, with some of these images depicting infants and/or sadistic or masochistic conduct; admitted having an interest in pornography involving children between the ages of 10 and 15; and had a long history of viewing child pornography.<sup>1</sup>

The district court imposed a below-Guidelines custodial sentence of 46

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<sup>1</sup> While the district court did not cite this as a reason for the enhanced condition, Defendant’s presentence report noted that he was attracted to children he saw in public places.

months' imprisonment along with a lifetime term of supervised release that included the 2,000-foot residency restriction.

Defendant appeals only the 2,000-foot residency restriction. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we affirm.

1. We review the district court's imposition of the 2,000-foot residency restriction for an abuse of discretion. *See United States v. Wolf Child*, 699 F.3d 1082, 1089 (9th Cir. 2012). “Because ‘a district court has at its disposal all of the evidence, its own impressions of a defendant, and wide latitude, . . . we give considerable deference to [its] determination of the appropriate supervised release conditions.’” *Id.* (quoting *United States v. Weber*, 451 F.3d 552, 557 (9th Cir. 2006)).

2. The district court considered the factors listed at 18 U.S.C. § 3553(a), as it was required to do. *See* 18 U.S.C. § 3583(d). It explained how the 2,000-foot residency restriction was “reasonably related to the goals of deterrence, protection of the public, and/or defendant rehabilitation,” “involve[d] no greater deprivation of liberty than [was] reasonably necessary to achieve those goals,” and was “consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. § 994(a).” *See United States v. Napulou*, 593 F.3d 1041, 1044 (9th Cir. 2010).

3. Defendant has not shown that it was substantively unreasonable for the

district court to impose a 2,000-foot residency restriction. The district court explained that it was concerned about potential living situations where Defendant would not be in direct view of a place frequented by minors but, nevertheless, would have children frequently walking past Defendant's home—for example, if he lived around the corner from a school. Given Defendant's admission that he was sexually attracted to minors, including minors he saw in public, the district court's concern was not "illogical, implausible, or without support in inferences that may be drawn from the record." *See United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). Even if the regular presence of children is unlikely to lead Defendant to physically harm a child (something we need not decide), it is logical to infer that it could cause Defendant to relapse into viewing child pornography.

4. On appeal, Defendant argues that the 2,000-foot restriction may severely restrict his housing options and make rehabilitation more difficult. This argument finds some support in *In re Taylor*, 60 Cal. 4th 1019 (2015), *United States v. Rudd*, 662 F.3d 1257 (9th Cir. 2011), and *United States v. Collins*, 684 F.3d 873 (9th Cir. 2012). However, Defendant did not present evidence supporting this argument at sentencing or even mention this potential concern when he objected to the modified condition. Therefore, the district court did not abuse its discretion by not taking this into account when fashioning its sentence.

**AFFIRMED.**

## **Appendix B**

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JAN 7 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JORGE DE LOS SANTOS, AKA Jorge  
Luis De Los Santos Contreras,

Defendant-Appellant.

No. 19-50086

D.C. No. 2:18-cr-00477-PA-1  
Central District of California,  
Los Angeles

ORDER

Before: CALLAHAN and BUMATAY, Circuit Judges, and M. WATSON,\*  
District Judge.

The panel unanimously voted to deny the petition for panel rehearing: Judges Callahan and Bumatay have voted to deny the petition for rehearing en banc, and Judge Watson has so recommended. Fed. R. App. P. 40. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for panel rehearing or rehearing en banc, (Dkt. No. 42), is therefore **DENIED**.

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\* The Honorable Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation.

## **Appendix C**

18 U.S.C. § 3553(a) provides:

*Factors to be considered in imposing a sentence.* – The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider –

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed –
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for –
  - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines –
    - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such

amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement –

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3583(d) provides:

*Conditions of supervised release.* – The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The

court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. 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 set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by

the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

U.S.S.G. § 5D1.3(b) provides:

*Discretionary Conditions[.]* The court may impose other conditions of supervised release to the extent that such conditions (1) are reasonably related to (A) the nature and circumstances of the offense and the history and characteristics of the defendant; (B) the need for the sentence imposed 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; and (2) involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth above and are consistent with any pertinent policy statements issued by the Sentencing Commission.