No.____

IN THE

SUPREME COURT OF THE UNITED STATES

RENZO ALEGRE
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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MAY 1, 2023

QUESTION PRESENTED FOR REVIEW

This case involves an important question of constitutional law which has never been decided by this Court, and over which there is a conflict between the Eighth and Eleventh Circuits, on one side, and the Second and Third Circuits, on the other, *to wit*:

> Does the constitutional holding of *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017) — which recognized a First Amendment right to access the Internet for sex offenders who had completed their sentences — apply to offenders on supervised release?

PARTIES TO THE PROCEEDING

There are no parties to the proceeding other than those named in the caption of the case.

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PETITION FOR A WRIT OF CERTIORARI

Renzo Alegre respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-10260, in that court on December 30, 2022, *United States v. Alegre*, 2022 WL 18005680 (11th Cir. Dec. 30, 2022), which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Alegre*, 2022 WL 18005680 (11th Cir. Dec. 30, 2022), is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

The district court had jurisdiction over this case under 18 U.S.C. § 3231 because the petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and .

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals was entered on December 30, 2022. This petition is timely filed pursuant to Sup. Ct. R. 13.1 and the Court's March 9, 2023 Order, extending the deadline for filing until May 1, 2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. I:

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

Title 18 U.S.C. § 3583(d) (in relevant part):

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....

STATEMENT OF THE CASE

Statement of Facts and Course of Proceedings

On September 16, 2020, Renzo Alegre, a 19-year old student at Broward College, was arrested on a criminal complaint for possessing child pornography in violation of 18 U.S.C. § 2252(a)(4)(B).

He was released on a personal surety bond co-singed by parents which included mandatory Adam Walsh Conditions, and additional special conditions for defendants charged with sex offenses, including that he participate in treatment and not possess an internet capable device and/or computer, and that he not maintain any email account. However, the magistrate judge was concerned that Mr. Alegre not be "derail[ed]" from his education, and that he be allowed to continue to take courses remotely. Accordingly, he added another condition specifically allowing Mr. Alegre "limited access or remote learning" *via* a single designated computer equipped with remote.com computer monitoring software. That software would restrict the sites he could enter, allow him access to school and nothing else, and allow Probation to monitor his computer usage by copying it as he was using it.

On January 28, while he remained on bond, Mr. Alegre was indicted by a grand jury for possessing child pornography in violation of § 2252(a)(4)(B) and (b)(2). And on October 14, 2021, he pled guilty to that single count in his indictment.

Mr. Alegre signed a factual proffer in connection with his plea, agreeing, *inter alia*, that: On July 3, 2020, law enforcement used BitTorrent, an enhanced version of a publically available peer-to-peer file sharing program, to access and download

several videos and image files from an IP Address at his residence. In September 16, 2020, law enforcement executed a search warrant at the residence, and did a forensic analysis of the ibuypower desktop computer in Mr. Alegre's bedroom and his cellphone. Together, the computer and cellphone contained approximately 300 videos containing child pornography. Mr. Alegre waived his *Miranda* rights, and advised that he had been using the desktop computer to receive and download child pornography for the past year. The last time he watched a video containing child porn was the evening before the search warrant. A full forensic analysis of the two devices revealed at least 600 or more images of child pornography, including depictions of prepubescent minors and sadistic or masochistic conduct. The images had been shipped or transported in interstate or foreign commerce.

The Probation Officer calculated Mr. Alegre's recommended Guideline range under U.S.S.G. § 2G2.2, which covers *inter alia*, trafficking in, receiving, shipping, soliciting, and possessing child pornography with intent to traffic, as well as mere possession. Unlike receipt and distribution offenses which have a higher starting base offense level of 22, Mr. Alegre's mere possession offense had a starting base offense level of 18 under § 2G2.2(a)(1). However, with several routinely-applied enhancements, and a 3-level reduction for acceptance of responsibility, his recommended total offense level was 30. With zero criminal history points (Mr. Alegre had no prior convictions or even arrests) and a Criminal History Category of I, his recommended Guideline range at a level 30 was 97-121 months imprisonment.

Notably, unlike receipt and distribution offenses, Alegre's possession offense carried no statutory minimum term.[1] But like these other offenses, his possession offense carried a statutory maximum of 20 years. § 2252(b)(2). Pursuant to 18 U.S.C. § 3583(k), the entire spectrum of child pornography offenses including not only those under § 2252, but also production offenses under § 2251, carry the same 5 year minimum and lifetime maximum of supervised release. And notably, pursuant to § 5D1.2(b)(2), the Guideline term of supervised release for all child pornography offenses follows the statute in this regard. Therefore, like defendants convicted of far more serious crimes, Mr. Alegre faced a minimum term of 5 years supervised release and a maximum term up to life under both the statute and the Guidelines.

In Part F of the PSI, the Probation Officer recommended multiple special conditions of supervision, including registration as a sex offender, the Adam Walsh search conditions (which included periodic, unannounced computer searches), participation in sex offender and mental health treatment, and a computer possession restriction precluding Alegre from possessing or using "any computer; except that [he] may, with the prior approval of the court, use a computer in connection with authorized employment."

Mr. Alegre moved for a variance on several grounds: the multiple enhancements applied in his case were for specific offense characteristics that applied in almost every possession case – indeed, in two separate reports over a 10-year period

[1] Both receipt and distribution carry a 5-year mandatory minimum. *See* 18 U.S.C. § 2252(a)(2), (b)(1).

the Sentencing Commission had confirmed that the factors resulting in a 13-level enhancement in his case existed in the vast majority of cases; the Commission had criticized the child pornography non-production Guideline (§ 2G2.2) for not keeping pace with technological advancements and containing four clearly-outdated enhancements, and recommended that they be eliminated because they failed to adequately distinguish between more and less severe non-production conduct; his personal characteristics were mitigating (in particular, his age, the fact that he had no prior contact with the criminal justice system; the fact that he had never used or experimented with drugs or alcohol; and that he had complied with all of the stringent special conditions of pre-trial release); he had had two psycho-sexual evaluations that recommended that could benefit from sex offender treatment since he was doing well in treatment already, and ruled out a paraphilic disorder; a forensic psychological evaluation found that he had a low likelihood of committing a new sexual offense; the Commission itself had found that the rate of sexual recidivism for non-production offenses to be extremely low; and courts in the Southern District of Florida had varied substantially in cases sentenced under § 2G2.2. Based on all of these factors, he sought a sentence of 5 years probation with a special condition of 1 year home detention.

In response, the government agreed that a variance was warranted, but it would not agree to a non-incarcerative sentence. It recommended a variance down to 48 months imprisonment followed by a "lengthy term of supervised release."

At the January 13, 2022 sentencing, even after hearing supportive testimony

from the forensic psychologist, the court rejected Alegre's request for a sentence of probation. Instead, it imposed a slight variance – down to the 48-month term recommended by the government – to be followed by supervised release for 20 years. The court did not explain its choice of this supervised release term. And it imposed all mandatory and special conditions of supervision recommended in the PSI, including mental health treatment, the Adam Walsh search condition, and a "computer possession restriction" requiring that Alegre "not possess or use any computer" with a single exception that he "may, with the prior approval of the Court, use a computer in connection with authorized employment." Taken together, the latter conditions mean that for the 20 years following his release from prison, Mr. Alegre may not use any computer that allows access to the Internet, unless such use is both for work purposes and with prior court approval.

No objection was lodged to these conditions of supervised release.

The Opinion Below

Mr. Alegre appealed his sentence to the United States Court of Appeals for the Eleventh Circuit. He argued, *inter alia*, that the length of his supervised release was both procedurally and substantively unreasonable, and that the computer restriction was actually unconstitutional under the First Amendment in light of *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017). On the latter point, he maintained that *Packingham*'s application was not limited to offenders who had completed their sentences. While acknowledging that even after *Packingham*, the Eleventh Circuit had rejected the argument that a computer restriction requiring prior court approval

for a lengthy supervised release term is plainly unconstitutional under the First Amendment. Indeed, in *United States v. Bobal*, 981 F.3d 917 (11th Cir. 2020), the Eleventh Circuit held *Packingham* applied only to sex offenders who had completed their sentences, and did not apply to offenders who will be precluded from computer usage without approval of the court during a lengthy term of supervised release. *Id.* at 973, 976, 978. Mr. Alegre noted that on that point, two other circuits—the Second in *United States v. Eaglin*, 913 F.3d 88, 95-96 (2d Cir. 2019) and the Third in *United States v. Holena*, 906 F.3d 288, 290-93 (3d Cir. 2018) —had disagreed, and found *Packingham*'s constitutional holding *does* apply to offenders on supervised release. He explained that due to the circuit conflict on this point, he was raising the issue to preserve it for further review.

Although the Eleventh Circuit rejected all of Mr. Alegre's arguments, with specific regard to his First Amendment challenge to the computer restriction for the entirety of his 20-year supervised release term, it found that claim failed under plain error review "as it is precluded by [the] decision in *Bobal*." *United States v. Alegre*, 2022 WL 18005680, at *6 (11th Cir. Dec. 30, 2022).

This petition follows.

REASONS FOR GRANTING THE PETITION

This Court Should Resolve The Circuit Conflict And Hold That Individuals On Supervised Release Have A First Amendment Right To Access The Internet.

I. *Packingham* recognized a First Amendment right to access the Internet.

"A fundamental principle of the First Amendment is that all persons have access to places where they can speak, listen, speak, and listen once more." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1734 (2017). Today that place is "cyberspace – the 'vast democratic forums of the Internet.'" *Id*. (citation omitted).

In *Packingham*, the Court struck down a North Carolina law that made it a crime for any registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members" as violative of the First Amendment. *Id.* at 1734. The Court assumed the restriction was content-neutral, and subjected it to intermediate scrutiny. *Id*. "In order to survive intermediate scrutiny, a law must be 'narrowly tailored to serve a significant governmental interest.'" *Id*. at 1736 (citation omitted). "In other words, the law must not 'burden substantially more speech than is necessary to further the government's legitimate interests.'" *Id.* (citation and internal quotation marks omitted). North Carolina's social networking ban failed this test.

> By prohibiting sex offenders from using those websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge. These websites can provide perhaps the most powerful mechanisms available

> to a private citizen to make his or her voice heard. They allow a person with an Internet connection to 'become a town crier with a voice that resonates farther than it could from any soapbox.'

Id. "In sum, to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." *Id.* at 1737.

The Court noted that the North Carolina law was "unprecedented in the scope of First Amendment speech it burdens," and found it "instructive that no case or holding of this Court has approved a statute as broad in its reach." *Id*. at 1337-38. Because the law restricted far more speech than was necessary to protect children, it failed to survive intermediate scrutiny review. *Id*. at 1738.

II. The circuits are split over whether *Packingham* applies to individuals on supervised release.

In *United States v. Bobal* (the case followed in the decision below), the Eleventh Circuit joined the Eighth, Fifth, and D.C. Circuits in holding that "that, even after *Packingham*, a district court does not commit plain error by imposing a restriction on computer usage as a special condition of supervised release." 981 F.3d 917, 977-78 (11th Cir. 2020) (citing *United States v. Perrin*, 926 F.3d 1044, 1049–50 (8th Cir. 2019); *United States v. Halverson*, 897 F.3d 645, 658 (5th Cir. 2018); and *United States v. Rock*, 863 F.3d 827, 831 (D.C. Cir. 2017)). While decisions in *Halverson* and *Rock* may fairly be read to turn on the standard of review, *see Halverson,* 897 F.3d at 658; *Rock*, 863 F.3d at 831, the courts in both *Perrin* and *Bobal* ruled on substantive grounds. In doing so, the Eighth and Eleventh Circuits created a direct split with published decisions of the Second and Third Circuits. *See United States v. Eaglin*, 913 F.3d 88 (2d Cir. 2019); *United States v. Holena*, 906 F.3d 288 (3d Cir. 2018).

The defendant in *Bobal*, like Mr. Alegre, argued that the computer restriction imposed in his case violated his First Amendment rights under *Packingham*. Indeed, the restriction of liberty goes far beyond the "unprecedented" restriction struck down by this Court in *Packingham*. While the law at issue in *Packingham* was limited to social networking websites, the restriction imposed in *Bobal* and herein effected a complete ban on Internet access, absent prior court approval. *See* 981 F.3d at 975.

In *Bobal*, the Eleventh Circuit found, however, that "*Packingham* is distinguishable because [the defendant's] computer restriction does not extend beyond his term of supervised release, it is tailored to his offense, and he can obtain the district court's approval to use a computer for permissible reasons." 981 F.3d at 973. The court wrote:

> Nothing in *Packingham* undermines the settled principle that a district court may "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens" during supervised release. *United States v. Knights*, 534 U.S. 112, 119, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001).

Bobal, 981 F.3d at 977-78.

The Eleventh Circuit in *Bobal* expressly rejected the Third Circuit's contrary ruling in *United States v. Holena*, 906 F.3d 288 (3d Cir. 2018), which had been decided "under an abuse-of-discretion standard." *Bobal*, 981 F.3d at 978. According to the Eleventh Circuit, *"Holena* read the opinions in *Packingham* too broadly." *Id.*

> Both the majority opinion and the concurring opinion in *Packingham* agreed that the North Carolina law infringed the First Amendment rights of registered sex offenders, who would be committing an entirely new felony if they accessed certain websites. But neither opinion addressed whether the First Amendment is violated by a special condition of supervised release for a sex offender who is serving a

> sentence for an offense involving electronic communications sent to a minor.

Bobal, 981 F.3d at 978. Based on that reasoning, the Eleventh Circuit affirmed Bobal's sentence, and rejected the application of *Packingham* to conditions of supervised release.

The Eighth Circuit similarly found *Packingham* inapplicable to the case of a defendant who had been sentenced to a 20-year term of supervised release, with the special condition that he "not possess or use a computer or have access to any online service without the prior approval of the U.S. Probation and Pretrial Services Office," in *Perrin*, 926 F.3d at 1048. "*Packingham*," the court held, was "of no help to Perrin for at least three reasons." *Id.* 1045. First, the defendant in *Perrin*, unlike the petitioner in *Packingham*, had used the internet to contact a minor. *Id.* at 1048. "Second, the statute at issue in *Packingham* prohibited registered sex offenders from accessing commercial social-networking sites, even after 'hav[ing] completed their sentences," whereas the defendant in *Perrin* was still under a criminal justice sanction. *Id.* at 1049. Third, the court found, implausibly, that the restriction in Mr. Perrin's case was less restrictive than the social media ban in *Packingham*, because the defendant had the option of seeking permission from his probation officer to access those websites. *See id.*[2]

As in *Bobal* and here, the First Amendment challenge in *Perrin* was brought

[2] As discussed *infra*, the Second Circuit correctly recognized that such a condition is, in fact, far more onerous than the restriction struck down in *Packingham*.

under plain error review. The Eighth Circuit nonetheless resolved the substantive question and held that "the special condition at issue does not involve a greater deprivation of liberty than is reasonably necessary." *Perrin*, 926 F.3d at 1050. "Accordingly, the district court did not err, much less plainly err, in imposing the special condition." *Id.*[3]

In contrast to these cases, as noted above, the Third Circuit has held that *Packingham's* constitutional holding does apply to individuals on supervised release. *Holena*, 906 F.3d 288. The defendant in *Holena* "was convicted of using the internet to try to entice a child into having sex. *Id.* at 290. In such a case, the Third Circuit recognized that "a sentencing judge may restrict a convicted defendant's use of computers and the internet." *Holena*, 906 F.3d at 290. "But to respect the defendant's constitutional liberties, the judge must tailor those restrictions to the danger posed by the defendant." *Id.*

The court noted that 18 U.S.C. § 3583 "places 'real restrictions on the district court's freedom to impose conditions of supervised release.'" *Id.* (alteration and citation omitted). In language mirroring the intermediate scrutiny standard, § 3583(d)(2) requires that special conditions of supervised release not deprive a defendant of "more liberty 'than is reasonably necessary' to deter crime, protect the

[3] More recently, in *United States v. Hamilton*, 986 F.3d 413 (4th Cir. 2021), the Fourth Circuit rejected a defendant's challenge to a lifetime condition of supervised release, which prohibited him from "access[ing] the Internet except for reasons approved in advance by the probation officer." *Id.* at 421. The court found that the condition was permissible because the defendant had used the Internet as part of his offense. *See id.* at 421-422. The court did not address *Packingham*.

public, and rehabilitate the defendant." *Holena*, 906 F.3d at 291 (citing 18 U.S.C. § 3583(d)(2)). This "tailoring requirement reflects constitutional concerns." *Id.* at 294. "Conditions that restrict fundamental rights must be 'narrowly tailored and ... directly related to deterring [the defendant] and protecting the public.'" *Id.* (internal quotation marks and citations omitted). "And a condition is 'not 'narrowly tailored' if it restricts First Amendment freedoms without any resulting benefit to public safety.'" *Id.* (citation omitted).

The Third Circuit agreed that restricting Mr. Holena's access to the Internet was "necessary to protect the public." But the prohibition imposed in his case was "not tailored to the danger he poses." *Id.* Among other problems with Mr. Holena's supervised release conditions, the court found that the Internet ban "prevent[ed] Holena from accessing anything on the internet – even websites that are unrelated to his crime." *Id.* at 293.

> On this record, we see no justification for stopping Holena from accessing websites where he will probably never encounter a child, like Google Maps or Amazon. The same is true for websites where he cannot interact with others or view explicit materials, like Dictionary.com or this Court's website.

Id. The court thus remanded the case for a more narrow tailoring of Mr. Holena's release conditions, and instructed the district court to "take care not to restrict Holena's First Amendment rights more than reasonably necessary or appropriate to protect the public." *Id.*

The Second Circuit similarly recognized *Packingham*'s application to supervised release conditions in *United States v. Eaglin*, 913 F.3d 88 (2d Cir. 2019).

There, the court reversed a supervised release condition banning a defendant's access to the Internet and adult pornography, because the record was insufficient to justify the restriction. 913 F.3d at 95. Importantly, the Second Circuit rejected the government's position that "Eaglin has no constitutional right to access the Internet," finding it "outdated and in conflict with recent Supreme Court precedent." *Id.* ("The Supreme Court forcefully identified such a right in *Packingham v. North Carolina*, ... and it suggested as much in *Riley v. California*, ___ U.S. ___, 134 S. Ct. 2473, 2478, 189 L.Ed.2d 430 (2014).").

Moreover, the Second Circuit, unlike the courts in *Boba*l and *Perrin*, recognized that the special condition of supervised release imposed therein was "broader in its terms, if not in its application, than that struck down in *Packingham*." *Id.* at 96. "Whereas the *Packingham* statute banned access only to certain social networking sites where minors may be present, such as Facebook and Twitter, the condition imposed on Eaglin prohibits his access to *all* websites." *Id.* (emphasis in original). "Because the District Court adopted the condition on the government's recommendation for a complete Internet ban and required specific permission from the court for any desired instances of internet access," the Second Circuit "underst[oo]d the condition effectively to operate as a total Internet ban." *Eaglin*, 913 F.3d at 95 n.7.

The Second Circuit recognized that "[t]he restriction in *Packingham* created a permanent restriction in the form of a criminal statute applicable to all registered sex offenders," and noted that "[c]ertain severe restrictions may be unconstitutional when

cast as a broadly-applicable criminal prohibition, but permissible when imposed on an individual as a condition of supervised release." *Eaglin*, 913 F.3d at 95-96. In the court's view, however, "*Packingham* nevertheless establishes that, in modern society, citizens have a First Amendment right to access the Internet." *Id*. at 96. The court expressly held that "Eaglin has a First Amendment right to be able to email, blog, and discuss the issues of the day on the Internet while he is on supervised release." *Id*.

The court held that, "as emphasized by *Packingham's* recognition of a First Amendment right to access certain social networking websites, the imposition of a total Internet ban as a condition of supervised release inflicts a severe deprivation of liberty." *Eaglin*, 913 F.3d at 97. The Second Circuit thus joined the Third in holding that, "[i]n only highly unusual circumstances will a total Internet ban imposed as a condition of supervised release be substantively reasonable and not amount to a 'greater deprivation of liberty than is reasonably necessary' to implement the statutory purposes of sentencing." *Id*. (citations and internal quotation marks omitted). *See also Holena*, 906 F.3d at 295 ("Under *Packingham*, blanket internet restrictions will rarely be tailored enough to pass constitutional muster.").

At least two state supreme courts have addressed the issue as well – and both have held that *Packingham* applies to offenders serving a criminal justice sentence. In *Mutter v. Ross*, the West Virginia Supreme Court vacated a parole condition that prohibited the defendant from possessing or having contact with any computer that had Internet access, and rejected the State's attempt to distinguish *Packingham* based on the defendant's status as a parolee. 811 S.E. 866, 871, 873 (W.V. 2018). That

court wrote: "*Packingham* is clear that a government restriction on internet access must be narrowly tailored so as to not burden more speech than is necessary to further the government's legitimate interests. On this well-established rule, *Packingham* made no exception for parolees." *Id.* The court concluded that "generally, under *Packingham* ..., a parole condition imposing a complete ban on a parolee's use of the internet impermissibly restricts lawful speech in violation of the First Amendment of the United States Constitution." *Id*.

The Illinois Supreme Court similarly held, in *People v. Morger*, 160 N.E.3d 53, 63 (Ill. 2019), that *Packingham* applied to conditions of probation. That court criticized those courts "limiting the reach of *Packingham*" by finding "that the principles of *Packingham* do not apply to those still serving their sentences—a group the *Packingham* Court had no reason to address." *Id*. at 68. "Applying the tenets of *Packingham,"* the court held that a mandatory probation condition, which banned access to all social media and applied to all sex offenders, was "overbroad and facially unconstitutional." 160 N.E.3d at 69.

III. The Court should hold that persons on supervised release retain the First Amendment right to access the Internet, which is "the principal source[] for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge," in the modern world.

As the Court recognized in *Packingham*, the importance of the Internet to individuals attempting to reintegrate into society cannot be overstated. "Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, in

particular if they seek to reform and to pursue lawful and rewarding lives." *Packingham*, 137 S. Ct. at 1737.

In addressing *Packingham*'s application to supervised release, courts on both sides of the divide have cited *United States v. Knights*, 534 U.S. 112 (2001), for the proposition that district courts may "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens" during supervised release. *See Alegre*, 981 F.3d at 977. *See also Rock*, 863 F.3d at 831; *Holena*, 905 F.3d at 294. But *Knights* – which turned on the "reasonableness" inquiry unique to the Fourth Amendment – does not carry the weight these courts ascribe to it.

In *Knights*, the Court upheld a condition of probation allowing for warrantless searches of the probationer's home. In the particular search that reached the Court, the officers acted on reasonable suspicion. The Court concluded that the search "was reasonable under our general Fourth Amendment approach of 'examining the totality of the circumstances,' ... with the probation search condition being a salient circumstance." *Knights*, 534 U.S. at 118 (internal citation omitted). One aspect of that "salient circumstance," was that the probationer was informed of the search condition and thus had a diminished expectation of privacy. *See id*. at 119-120. But *Knights* does not hold that persons on probation – let alone supervised release – have a diminished interest in their constitutional rights in general, or their First Amendment rights in particular. *Cf. United States v. Haymond*, 139 S. Ct. 2369, 2383 (2019) (referring to individuals on supervised release as "persons out in the world who retain the core attributes of liberty").

There is no doubt that a court may impose narrowly tailored restrictions on an offender's First Amendment rights, in order to prevent the commission of future crimes and safeguard the community. *See Packingham*, 137 S. Ct. at 1737 ("Though the issue is not before the Court, it can be assumed 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, like contacting a minor or using a website to gather information about a minor."). But no circumstances justify the 20-year ban on access to the Internet imposed in Mr. Alegre's case.

The far-reaching restriction "precludes access to a large number of websites that are most unlikely to facilitate the commission of a sex crime against a child," and cannot survive intermediate scrutiny. *See Packingham*, 137 S. Ct. at 1741 (Alito, J., concurring). It does not stop at restricting his access to social media and nationally prominent websites such as Amazon.com, WebMd.com and Washingtonpost.com. *See Packingham*, 137 S.Ct. at 1376. It is far more restrictive than even his pre-trial bond, as it will effectively prevent him from continuing his education. Notably, it will also prevent him from being a functional, healthy, and safe citizen. It will prevent him from accessing the website of his local municipality to learn essential information such as when the trash collector is coming, whether public health measures are in effect, or where to obtain needed benefits. Mr. Alegre will lack access to the most up-to-date weather alerts in the event of an oncoming hurricane or other weather emergency. He will be unable to look up a bus schedule, or learn about planned service outages. He will be unable to access his own medical or financial information, or

participate in remote medical care through a smartphone or on-line portal. He will be precluded from participating in online religious services. Mr. Alegre would not even be able to access the live broadcast of a legal argument in his own case. The computer restriction thus burdens substantially more speech than is necessary, and prevents Mr. Alegre from "engaging in the legitimate exercise of First Amendment rights" *Packingham*, 137 S. Ct. at 1737.

IV. This is an excellent vehicle through which to resolve the circuit split.

Though Mr. Alegre raised the issue for the first time on appeal, and the Eleventh Circuit held it was bound by its prior decision in *Bobal*, *Bobal* (also a plain error case) resolved the constitutional issue presented herein on the merits. It expressly disagreed with the Third Circuit's holding that *Packingham* applied to supervised release conditions. *Bobal*, 981 F.3d at 978 ("*Holena* read the opinions in *Packingham* too broadly."). And it concluded that *Packingham* is distinguishable, in part "because [the defendant's] computer restriction does not extend beyond his term of supervised release." 981 F.3d at 973. The Eleventh Circuit has just clearly and definitively held that *Packingham*'s constitutional rule does not apply to persons on supervised release. And it has adhered to *Bobal* not just in this case, but in many other cases as well due to its rigid prior panel precedent rule. *See, e.g.*, *United States v. Delaosa*, 2023 WL 164027, at *4 (11th Cir. Jan. 12, 2023); *United States v. Zimmerman*, 2022 WL 7232992, at *2 (11th Cir. Oct. 13, 2022).

Moreover, there are no collateral issues which would prevent a clear constitutional ruling in this case. Mr. Alegre did not argue, and does not maintain,

that the supervised release condition was not "reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D)," as required by 18 U.S.C. § 3583(d)(2). He maintains only that a 20-year prohibition of all access to the Internet, other than for work purposes and with prior court approval, burdens substantially more speech than is necessary to serve any legitimate interest, and violates his First Amendment rights.

And factually, this case is a compelling one as well. Mr. Alegre was only 19 years old at the time of this offense. He had no prior arrest, or even a traffic ticket. He easily complied with a far less restrictive bond pretrial, which allowed him to at least continue his education. The blanket computer restriction imposed as a condition of supervised release allows only one exception – for work – but Mr. Alegre will be restricted in many work opportunities if he is not allowed to complete his education.

The Eleventh Circuit misinterpreted this Court's precedents by failing to recognize that the constitutional holding in *Packingham* applies even to individuals who are on supervised release. Because there is a direct circuit split on this important matter of constitutional law, Mr. Alegre respectfully asks the Court to grant review

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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