NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

CHRISTOPHER LEE PARKER
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 24-60211

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit erred by dismissing Mr. Parker's appeal based on the waiver of appeal provisions in his Plea Agreement.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

A Federal Grand Jury for the Southern District of Mississippi indicted Mr. Parker for one count of possessing child pornography in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2). The Grand Jury returned the Indictment on April 18, 2023.

Mr. Parker accepted full responsibility for his actions by pleading guilty to the single-count Indictment. The plea was under a Plea Agreement that contained a waiver of appeal provision.[1] The district court conducted the plea hearing on December 18, 2023, and the sentencing hearing followed on April 12, 2024.

The district court sentenced Mr. Parker to serve 136 months in prison, followed by a lifelong term of supervised release. It ordered him to pay restitution totaling $31,000, as well as a $2,000 assessment under the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018. The court also ordered Mr. Parker to abide by several standard and special conditions of supervised release during his lifelong term of supervision. The court entered a Judgment reflecting its sentence on April 17, 2024. The Judgment is attached hereto as Appendix 1.

Mr. Parker filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on April 24, 2024. On appeal, he challenged one of the special conditions of supervised release. The challenged condition prohibited

[1] The specifics of the waiver of appeal provision are set forth below.

Mr. Parker from "using any internet-capable device, including computers at businesses, private homes, libraries, schools, or other public locations, unless he is granted permission in advance by the supervising U.S. Probation Officer."

Rather than address Mr. Parker's argument about the lifelong bar against using any internet-capable device without prior approval, the prosecution opted to file a Motion to Dismiss Appeal. The Motion to Dismiss was based on the waiver of appeal provision in the subject Plea Agreement.[2] The prosecutor filed the Motion on June 28, 2024, and the Fifth Circuit granted the Motion via a two-sentence Order files on July 15, 2024. The court's Order did not address the merits of Mr. Parker's Response to the Motion to Dismiss Appeal. The Fifth Circuit's Order is attached hereto as Appendix 2.

[2] *See supra*, footnote 1.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed its Order dismissing Mr. Parker's appeal on July 15, 2024. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Order, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISIONS INVOLVED

"Congress shall make no law ... abridging the freedom of speech[.]" U.S. Const. amend. I, Free Speech Clause.

"No person shall be … deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V, Due Process Clause.

"No State shall … deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, Equal Protection Clause.[3]

[3] "This Court repeatedly has held that the Fifth Amendment imposes on the Federal Government the same standard required of state legislation by the Equal Protection Clause of the Fourteenth Amendment." *Schweiker v. Wilson*, 450 U.S. 221, 227 n.6, 101 S. Ct. 1074, 1079 n.6 (1981) (citations omitted).

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Parker for possession of child pornography in violation of 18 U.S.C. § 2252. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Parker arose from the laws of the United States of America.

B. Statement of material facts.

1. The challenged special condition of supervised release.

On appeal to the Fifth Circuit, Mr. Parker challenged one special condition of supervised release. The condition prohibited Mr. Parker from "using any internet-capable device, including computers at businesses, private homes, libraries, schools, or other public locations, unless he is granted permission in advance by the supervising U.S. Probation Officer." Specifically, the issue presented to the Fifth Circuit was:

> Should this Court order the district court to construe the "internet-capable device" condition to not require Mr. Parker to receive prior approval for every individual of any covered device or use of such a device to access the Internet? Or, in the alternative, should this Court vacate the condition and remand to the district court for resentencing?

2. The Plea Agreement and the waiver of appeal provision.

As stated above, Mr. Parker accepted full responsibility for his actions by pleading guilty to possession of child pornography. His guilty plea was pursuant to a Plea Agreement entered by the parties. The Plea Agreement contains a waiver of appeal provision that states in relevant part:

> Defendant, knowing and understanding all of the matters aforesaid, including the maximum possible penalty that could be imposed, and being advised of Defendant's rights ... [including his right] to appeal the conviction and sentence ... hereby expressly waives ... the right to appeal the conviction and sentence imposed in this case, or the manner in which that sentence was imposed, on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever....

The Plea Agreement contains a further waiver of "the right to contest the conviction and sentence or the manner in which the sentence was imposed in any post-conviction proceeding, including but not limited to a motion brought under Title 28, United States Code, Section 2255[.]"

The prosecution sought enforcement of the waiver provision via the Motion to Dismiss Appeal described above. The Fifth Circuit granted the Motion, and this Petition for Writ of Certiorari followed.

V. ARGUMENT:
Review on certiorari should be granted in this case.

A. Introduction.

As described above, the Fifth Circuit never reached the merits of Mr. Parker's appeal. Instead, it ruled that the argument is barred from consideration by the waiver of appeal provision in the Plea Agreement. Because the Fifth Circuit never addressed the merits of Mr. Parker's argument, the only issue presented in this Petition is whether the Fifth Circuit erred in its analyses and conclusions regarding the waiver of appeal issue.[4]

Certiorari is warranted under Rule 10 of the Supreme Court Rules, which states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." The Court should exercise its "judicial discretion" and grant certiorari because the subject issue involves important constitutional issues under the Free Speech Clause of the First Amendment, the Due Process Clause of the Fifth Amendment, and the Equal Protection Clause of the Fourteenth Amendment. As presented below, the concurrence opinion in *United States v. Melancon*, 972 F.2d 566 (5th Cir. 1992) articulates these constitutional concerns in the waiver of appeal context.

[4] As set forth above, the Fifth Circuit's analyses and conclusions are practically nonexistent. The Order granting the Motion to Dismiss contains only two sentences and fails to address Mr. Parker's arguments regarding why Motion should be denied.

We ask this Court to grant certiorari and reverse the Fifth Circuit's ruling. If the Court grants certiorari and rules that the waiver of appeal provision is unenforceable, then the case must be remanded to the Fifth Circuit for consideration of Mr. Parker's argument on the merits.

B. The waiver of appeal was made unknowingly.

United States v. Melancon involves the same issue before the Court in Mr. Parker's case – whether a waiver of appeal provision in a plea agreement is enforceable. 972 F.2d at 567. Regarding the prosecution's motion to dismiss the appeal, the *Melancon* Court held, "a defendant may, as part of a valid plea agreement, waive his statutory right to appeal his sentence." *Id.* at 568. Accordingly, the Court granted the prosecution's motion to dismiss Melancon's appeal. *Id.*

Judge Robert M. Parker authored a lengthy and well-reasoned concurring opinion in *Melancon*. 972 F.2d at 570-80. He began by stating, "I concur specially because I cannot dissent. This panel is bound by the unpublished, *per curiam* opinion, *United States v. Sierra*, No. 91-4342 (5th Cir. Dec. 6, 1991) [951 F.2d 345 (Table)]." *Id.* at 570. He went on to state, "I write separately to express why I think the rule embraced by this Circuit in *Sierra* is illogical and mischievous – and to urge the full Court to examine the '*Sierra* rule,' and to reject it." *Id.*

Judge Parker reasoned that "[t]he rule articulated in *Sierra* is clearly unacceptable, even unconstitutional policy: the '*Sierra* rule' manipulates the concept of knowing, intelligent and voluntary waiver so as to insulate from appellate review the decision-making by lower courts in an important area of the criminal law." *Melancon*, 972 F.2d at 571. "I do not think that a defendant can ever knowingly and intelligently waive, as part of a plea agreement, the right to appeal a sentence that has yet to be imposed at the time he or she enters into the plea agreement; such a 'waiver' is inherently uninformed and unintelligent." *Id.*

Judge Parker acknowledged that waivers can be valid in some scenarios. However,

> [i]n the typical waiver cases, the act of waiving the right occurs at the moment the waiver is executed. For example: one waives the right to silence, and then speaks; one waives the right to have a jury determine one's guilt, and then admits his or her guilt to the judge. In these cases, the defendant knows what he or she is about to say, or knows the nature of the crime to which he or she pleads guilty.

Melancon, 972 F.2d at 571 (citations omitted). But "[t]he situation is completely different when one waives the right to appeal a Guidelines-circumscribed sentence before the sentence has been imposed. What is really being waived is not some abstract right to appeal, but the right to correct an erroneous application of the Guidelines or an otherwise illegal sentence." *Id.* at 572. "*This right cannot come into existence until after the judge pronounces sentence*; it is only then that the

defendant knows what errors the district court has made – i.e., what errors exist to be appealed, or waived." *Id.* (emphasis added; citation omitted).

For the reasons thoughtfully articulated by Judge Parker, this Court should grant certiorari and find that Mr. Parker's waiver of the right to appeal was made unknowingly. But the analysis does not end here. Judge Parker's attack on the majority's opinion also extends to constitutional concerns.

C. The waiver of appeal provision is unconstitutional.

1. Fifth Amendment due process and Fourteenth Amendment equal protection rights render the waiver of appeal provision unenforceable under the facts of Mr. Parker's case.

Judge Parker opines that the rule adopted by the majority "reflects the imposition of an unconstitutional condition upon a defendant's decision to plead guilty." *Melancon*, 972 F.2d at 577.

> Unconstitutional conditions occur "when the government offers a benefit on condition that the recipient perform or forego an activity that a preferred constitutional right normally protects from governmental interference. The 'exchange' thus has two components: the conditioned government *benefit* on the one hand and the affected constitutional *right* on the other."

Id. (quoting Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 Harv.L.R. 1415, 1421-1422 (1989) (emphasis in original)). "With a '*Sierra* Waiver,' the government grants to the criminal defendant the *benefit* of a plea agreement only on the *condition* that the defendant accept the boot-strapped abdication of his or her right to appeal." *Melancon*, 972 F.2d at 578 (emphasis in original). This is at

least unacceptable, even if the government may withhold the benefit (i.e., the plea agreement) altogether." *Id.* (citation omitted).

Judge Parker recognized that to create the constitutional issue described in the previous paragraph of this Brief, there must be a constitutional right. "The right to appeal is a statutory right, not a constitutional right." *Melancon*, 972 F.2d at 577 (citation omitted). However,

> [e]ven if the Due Process and Equal Protection Clauses of the Constitution do not require the government to create a statutory system of appellate rights, these constitutional clauses do require the government, once it has decided voluntarily to create such a system (as it has), to allow unfettered and equal access to it.

Id. (citing *Griffin v. Illinois*, 351 U.S. 12 (1956) (holding that government has a due process duty not to limit the opportunity of a statutorily created direct appeal in a criminal case)). In other words, once the statutory right to appeal is established, due process and equal protection bar the government from infringing on the right in an improper manner. This Court should grant certiorari to clarify this issue for the lower courts.

2. A lifetime ban on the use of "any internet-capable device" without advance permission and approval is an unconstitutional restriction on Mr. Parker's First Amendment rights.

a. *Packingham v. North Carolina*, 582 U.S. 98 (2017) established a fundamental right to access the Internet.

The supervised release condition banning Mr. Parker from using any Internet-capable device without prior permission unconstitutionally restricts Mr.

Parker's First Amendment rights and constitutes an unconstitutional deprivation of his liberty. In *Packingham v. North Carolina*, this Court struck down as unconstitutional a North Carolina criminal statute that made it a felony for sex offenders to access certain social media websites. The Court analyzed the issue under the First Amendment right to freedom of speech. 582 U.S. at 187.

The restriction considered in *Packingham* created a permanent restriction applicable to all registered sex offenders, including those persons who were no longer subject to the supervision of the criminal justice system. *See* 582 U.S. at 109. The Court found that prohibiting sex offenders from using social media websites "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." *Id.* at 107. Accordingly, the Court held that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." *Id.* at 108. "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." *Id.*

b. The Fifth Circuit has not yet considered the impact of *Packingham* beyond plain error review.

The Fifth Circuit considered, on plain error review, *Packingham*'s application to an Internet ban in *United States v. Halverson*, 897 F.3d 645, 650-59 (5th Cir. 2018). Whereas the *Packingham* statute only banned access to certain social networking sites where minors might be present, 582 U.S. at 101, the condition imposed in *Halverson* was a lifetime ban on Internet access, unless approved in advance in writing by probation, 897 F.3d at 650. The Fifth Circuit ultimately held that the defendant could not "plainly" show that *Packingham* applied to the context of supervised release, but the court did not squarely decide if *Packingham* applied to defendants still serving their sentence on supervised release. *Id.* at 658.[5]

Other circuits, however, have held that *Packingham* established a constitutional right to access the internet, regardless of current imprisonment status. *See, e.g., United States v. Eaglin*, 913 F.3d 88, 95-96 (2d Cir. 2019) (recognizing that citizens have a First Amendment right to access the Internet); *United States v. Ellis*, 984 F.3d 1092, 1105 (4th Cir. 2021) (same); *see also United States v. Holena*, 906 F.3d 288, 290 (3d Cir. 2018) (holding that supervised release

[5] The Fifth Circuit also referenced *Packingham* in *United States v. Caillier*, 80 F.4th 564, 568 (5th Cir. 2023), but only in reference to the defendant's argument that United States Probation Office was seeking modification of his supervised release condition because it was now unconstitutional in light of *Packingham*.

restrictions may not restrict First Amendment rights more than reasonably necessary or appropriate to protect the public).

c. The approaches taken by other circuits are instructive.

In *United States v. Eaglin*, the Second Circuit considered a ban on Internet access without special permission as a condition of a multi-year term of supervised release. 913 F.3d at 91, 96 n.7. Noting that the restriction in *Packingham* was different from that applying to an individual subject to the supervision of the criminal justice system, the court nevertheless determined that "[i]n our view, *Packingham* nevertheless establishes that, in modern society, citizens have a First Amendment right to access the internet." *Id.* at 96.

The *Eaglin* court noted that the substance of the Internet ban at issue was even broader than the restriction in *Packingham*: "[w]hereas 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 [the defendant] prohibits his access to *all* websites." 913 F.3d at 96 (emphasis in original). Accordingly, the Second Circuit determined that the supervised release condition implicated the same First Amendment concerns present in *Packingham*, establishing that the defendant "has a First Amendment right to be able to email, blog, and discuss the issues of the day on the Internet while he in on supervised release." *Id.*

The Second Circuit also noted that the ban would prevent him from maintaining employment because "to search for a job in 2019, the Internet is nearly essential, as the Court in *Packingham* recognized." *Eaglin*, 913 F.3d at 96. Accordingly, the Second Circuit held that in light of its precedent and "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." *Id.* at 97.

The Fourth Circuit has also invalidated Internet bans as conditions of supervised release in light of *Packingham.* In *United States v. Ellis*, the court relied on *Holena* and *Eaglin* to discuss the "vast liberty [an Internet ban] deprives" and to likewise hold that "an internet ban implicates fundamental rights," endorsing the Second Circuit's determination that defendant has a First Amendment right to access the Internet while on supervised release. *Ellis*, 984 F.3d at 1104-05.

In *United States v. Holena*, the Third Circuit considered a special condition of supervised release that forbade the defendant from using the Internet without his probation officer's approval and from possessing or using any computers, electronic communications devices, or electronic storage devices. 906 F.2d at 290. The court determined that § 3583's tailoring requirement reflects constitutional concerns and that district courts must consider First Amendment implications of conditions imposed on supervised release. *Id.* at 294.

In *Holena*, both the defendant's "computer ban and internet ban limit[ed] an array of First Amendment activity" not related to his crime. 906 F.2d at 2940. Accordingly, the Third Circuit determined that the supervised conditions "suffer[ed] from the same 'fatal problem' as North Carolina's restriction on using social media" because "'[t]heir wide sweep precludes access to a large number of websites that are most unlikely to facilitate the commission of a sex crime against a child.'" *Id.* at 295 (quoting *Packingham*, 582 U.S. at 114 (Alito, J., concurring)). It further noted that such "blanket internet restrictions will rarely be tailored enough to pass constitutional muster" under *Packingham*. *Holena*, 906 F.3d at 295.

The bans that the Second, Third, and Fourth Circuits determined unconstitutionally infringed upon a defendant's First Amendment rights were all less restrictive than that imposed upon Mr. Parker. While *Halvorsen* determined that *Packingham* did not "plainly" apply to defendants still completing their sentence, this Court has rejected absolute internet bans "[w]here they effectively preclude a defendant from meaningfully participating in modern society for long periods of time." *United States v. Becerra*, 835 F. App'x 751, 756 (5th Cir. 2021) (internal quotation marks and citation omitted); *see also, e.g., United States v. Naidoo*, 995 F.3d 367, 384 (5th Cir. 2021).

3. Conclusion – the waiver of appeal provision is unconstitutional.

Under Rule 10(a) of the Supreme Court Rules, certiorari should be granted when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter[.]" The Fifth Circuit's decision in Mr. Parker's case conflicts with the rulings of the Second, Third, and Fourth Circuits.

The defense recognizes that the issue before the Court is the enforceability of the waiver of appeal provision in Mr. Parker's Plea Agreement. However, under the facts of Mr. Parker's case, the constitutional concerns implicated by the subject waiver provision support ruling that the waiver provision is unenforceable. Therefore, we ask this Court to grant certiorari.

D. The special condition of supervision at issue is not covered by the waiver of appeal provision.

1. Introduction.

The lifetime condition of supervised release prohibiting Mr. Parker from "using any internet-capable device, including computers at businesses, private homes, libraries, schools, or other public locations, unless he is granted permission in advance by the supervising U.S. Probation Officer" must be reformed or vacated because it is impermissibly restrictive and overly broad.

2. Special conditions of supervised release must be narrowly tailored to avoid unreasonable restrictions of a defendant's liberty.

Although a district court has "wide discretion" in imposing terms and conditions of supervised release, *United States v. Winding*, 817 F.3d 910, 914 (5th Cir. 2016), a condition must be "reasonably related" to the factors set forth in 18 U.S.C. §§ 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D), 18 U.S.C. § 3583(d)(1). The condition cannot involve a "greater deprivation of liberty than is reasonably necessary" to afford adequate deterrence, to protect the public from further crimes of the defendant, and to provide the defendant with needed training, medical care, or other treatment. § 3583(d)(2); *see* § 3553(a)(2)(B)-(D); *United States v. Caillier*, 80 F.4th 564, 569 (5th Cir. 2023). Thus, a ban on computer or internet use must be "narrowly tailored either by scope or by duration." *United States v. Duke*, 788 F.3d 392, 399 (5th Cir. 2015).

Of particular significance, "[n]o circuit court of appeals has ever upheld an absolute, lifetime Internet ban." *Duke*, 788 F.3d at 399. In *Duke*, the Fifth Circuit stated that "it is hard to imagine that such a sweeping, lifetime ban could ever satisfy § 3583(d)'s requirement that a condition be narrowly tailored to avoid imposing a greater deprivation than reasonably necessary" and that such a ban is "the antithesis of a narrowly tailored sanction." *Id.* (internal quotation marks and citation omitted).

3. The lifetime ban on Mr. Parker's use of "any internet-capable device" without prior United States Probation Office approval is an impermissible condition of supervised release.

a. Precedent establishes that the supervised release condition is impermissibly restrictive.

It is well-established that the supervised release condition Mr. Parker challenges is unreasonably restrictive. Indeed, the Fifth Circuit invalidated the very same condition on multiple occasions. In *Naidoo*, 995 F.3d at 384, the Fifth Circuit determined that the same ban Mr. Parker faces—a "condition of supervised release which requires him to seek permission from a Probation Officer prior to using any Internet-capable device"—was unreasonably restrictive and that "individual approval is not required every single time [the defendant] must use a computer or access the Internet." Accordingly, it affirmed the condition subject to the interpretation that individual approval is not required each time the defendant needed to use a computer or access the Internet. *Id.*; *see United States v. Melton*, 753 F. App'x 283, 289 (5th Cir. 2018) (same); *United States v. Clark*, 784 F. App'x 190, 193-94 (5th Cir. 2019); *United States v. Page*, No. 22-40722, 2023 WL 4015261, *1 (5th Cir. June 14, 2023); *United States v. Taylor*, No. 23-40273, 2024 WL 1134728, *2 (5th Cir. March 15, 2024); *see also Becerra*, 835 F. App'x 751 at 756-58 (quote at 756) (vacating a ten-year ban on computer and Internet use and stating that even USPO "prior approval requirements must generally be applied in such a way as to give defendants meaningful access to computers or the Internet").

b. Access to the Internet and Internet-capable devices is fundamental to functioning in modern society.

In *Duke*, the Fifth Circuit vacated an absolute computer and Internet ban, determining that such a ban "narrowed neither by scope nor by duration." 788 F.3d at 400. In so holding, it addressed the difficulties facing a defendant subject to such ban for the rest of his life, including "prevent[ing] him from using a computer for benign purposes such as word processing," prohibiting him "from using the Internet for other innocent purposes such as paying a bill online, taking online classes, or video chatting and emailing with his family." *Id.* The Fifth Circuit further recognizes 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." *United States v. Sealed Juvenile*, 781 F.3d 747, 756 (5th Cir. 2015).

This reasoning also extends to cell phones. As this Court reiterated in *Carpenter v. United States*, 585 U.S. 296, 315 (2018), "cell phones and the services they provide are such a pervasive and insistent part of daily life that carrying one is indispensable to participation in modern society." (Internal quotation marks and citation omitted). Such access to participation in modern society cannot be forever denied purely based on an individual's prior conduct or incarceration status. "Although Internet access through smart phones and other devices undeniably offers the potential for wrongdoing, to consign an individual to

a life virtually without access to the Internet is to exile that individual from society." *United States v. Eaglin*, 913 F.3d 88, 91 (2d Cir. 2019). Thus, even where the Fifth Circuit upheld absolute Internet bans, it has only done so where they were limited in duration. *See Caillier*, 80 F.4th at 570.

As worded, the "internet-capable device" ban here includes not only laptops, desktops, tablet devices, and any modern smart phone, but would also even apply to modern cars and appliances.[6] Moreover, the condition not only bans all unapproved uses of such devices for the purposes of accessing the Internet, but it bans their unapproved possession and use for offline purposes, as well. Under the condition as worded, without advance permission Mr. Parker cannot use a computer to update his resume in Microsoft Word, use a gaming device to play video games or watch movies offline, or use a modern smart phone to text message family and friends. He cannot search for jobs online, use Google Maps to obtain directions, look up the meaning of a word on Dictionary.com, make an order on Amazon.com, or even access this a court's website. Moreover, the condition of supervision restricts Mr. Parker, who is currently navigating severe health issues,

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[6] In *United States v. Ellis*, 720 F.3d 220, 225 (5th Cir. 2013), the Fifth Circuit considered a special condition that a defendant not "possess, have access to, or utilize a computer or internet connection device . . . without prior approval of the court." Although the court noted that "modern devices such as cars and appliances do not come under the purview of the ban because the categorical term 'computers' is subject to a commonsense understanding of what activities the category encompasses," *id.* (internal alterations, quotation marks, and citation omitted), the restriction at issue here goes far beyond "computers or internet connection device" to extend to any Internet-*capable* device.

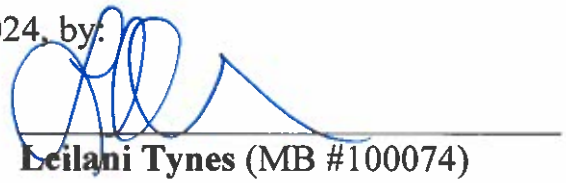
from receiving telehealth medicine or easily communicating with medical professionals.

None of these activities puts the public at risk. Additionally, the condition places no qualification on the prior-approval requirement, and it reads to require advanced permission and approval for every single use of a covered device without offering guidance on the sorts of usage that United States Probation Office should approve within the permissible goals of supervised release. These facts support a ruling that the waiver of appeal provision at issue is unenforceable as overly broad and overly restrictive.

VI. CONCLUSION

For the reasons stated above, this Court should grant certiorari. Specifically, we ask the Court grant certiorari and ultimately rule: either (1), the waiver of appeal provision was agreed upon unknowingly; or (2), under the First Amendment's freedom of speech guarantee, the Fifth Amendment's Due Process Clause and the Fourteenth Amendment's Equal Protection Clause, the subject waiver of appeal provision unconstitutionally infringes on Mr. Parker's statutory right to appeal his sentence; or (3) the lifetime ban on Mr. Parker's use of "any internet-capable device" without prior approval form the United States Probation Office is an impermissible condition of supervised release.

Submitted October 8, 2024, by:



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CERTIFICATE OF SERVICE

I, Leilani Tines, appointed under the Criminal Justice Act, certify that today, October 8, 2024, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No.779094753786, addressed to:

The Honorable Elizabeth B. Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
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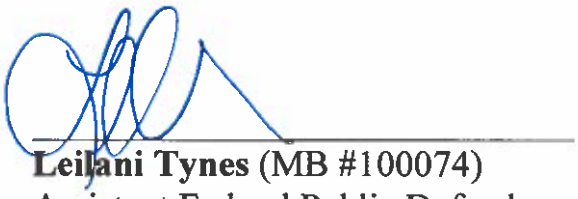
I further certify that all parties required to be served with this Petition and the Motion have been served.

Respectfully submitted, October 8, 2024, by:



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