

No. 26-\_\_\_\_\_

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

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MORONI JOHNSON,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Petitioner, the father of multiple female and male children with his longtime spouse and other women, was convicted of conspiring to transport minor females (including some of his own minor daughters) in interstate commerce for illegal sexual activity. The district court sentenced petitioner to serve 25 years in federal prison. The court also imposed a lifetime term of supervised release to commence upon petitioner's release from prison. One of the conditions of supervised release categorically prohibits petitioner from having any type of direct or indirect "contact" with all victims, as well as all of the victims' "family" members, without written permission of a supervising probation officer. On its face, that broad condition necessarily prohibits petitioner from having any unapproved contact with his spouse and also all of petitioner's non-victim adult children, who are the siblings or half-siblings of petitioner's daughters who were victimized.

On appeal to the Ninth Circuit, petitioner challenged the condition of supervision as an infringement of his fundamental constitutional right to associate with his immediate non-victim family members. Petitioner requested, as a remedy, a remand to the district court with instructions simply to modify the condition so as not to prohibit petitioner from having unapproved contact with any immediate family member who is neither a victim of the offense nor a minor.

The Ninth Circuit refused to address the merits of this constitutional challenge after concluding that the issue was not "ripe" for resolution because, by the time that petitioner will be released at the end of his lengthy prison sentence, his familial relationships may differ from the relationships that exist at the time his direct appeal.

The questions presented are:

- I. Whether a purely legal challenge to a condition of supervised release raised on direct appeal by a federal defendant who still must serve a significant term of imprisonment before commencing supervised release is "ripe" for resolution when the condition, on its face, violates a fundamental constitutional right.
- II. Whether this Court should overrule its precedent recognizing a "prudential" ripeness doctrine and limit ripeness analysis to Article III considerations.

## **PARTIES TO THE PROCEEDING**

The only parties to the proceeding are those two that appear in the caption of the case in this petition: (1) Moroni Johnson; and (2) the United States of America. *See* Sup. Ct. R. 14.1(b)(i).

## **RELATED PROCEEDINGS**

This case arises from the following proceedings:

- *United States v. Moroni Johnson*, No. 3:24-cr-08016-SMB United States District Court for the District of Arizona. Judgment was entered on May 14, 2025.
- *United States v. Moroni Johnson*, No. 25-3266, United States Court of Appeals for the Ninth Circuit. Judgment was entered on June 11, 2026.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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## OPINIONS BELOW

The original opinion of the Ninth Circuit (**Appendix A**) is unreported but available at 2026 WL 1694210. The amended opinion of the Ninth Circuit (issued upon the denial of petitioner’s petition for rehearing en banc) (**Appendix B**) is unreported but available at 2026 WL 1986686. The judgment of the district court (including the challenged condition of supervised release) (**Appendix C**) is unreported.

## JURISDICTION

The Ninth Circuit issued its amended opinion on July 9, 2026 in conjunction with the court’s order denying petitioner’s petition for rehearing *en banc*. This petition for writ of certiorari was timely filed within 90 days of the order denying rehearing *en banc*. This Court thus has jurisdiction under 28 U.S.C. § 1254.

## CONSTITUTIONAL PROVISIONS INVOLVED

Article III of the U.S. Constitution provides that federal courts possess jurisdiction over all “cases” and “controversies” arising under federal law. U.S. Const. Art. III, sec. 2, cl. 1.

The Due Process Clause of the Fifth Amendment provides: “... nor shall any person ... be deprived of life, liberty, or property, without due process of law ....” U.S. Const. Amend. V.

## STATEMENT OF THE CASE

### I. Procedural Background

A criminal information charged petitioner with conspiring with Samuel Rappylee Bateman to transport several minor children – identified as “Jane Doe 3,” “Jane Doe 4,” “Jane Doe 5,” “Jane Doe 6,” and “Jane Doe 7” – in interstate commerce with the intent that these minors engage in illicit sexual activity, in violation of 18 U.S.C. § 2423(a) & (c). ER-106.<sup>1</sup>

On March 19, 2024, pursuant to a written plea agreement (ER-45), petitioner pleaded guilty to the charge in the information before U.S. Magistrate Judge Eileen S. Willett. ER-65. After the district court (Honorable Susan M. Brnovich, presiding) adopted Magistrate Judge Willett’s report and recommendation that the court find petitioner guilty, the district court adjudicated petitioner guilty and sentenced him to 25 years in federal prison, to be followed by a lifetime term of supervised release. ER-8.

### II. Statement of the Relevant Facts

The facts concerning the offenses are set forth in detail in the presentence report (PSR). *See* PSR ¶¶ 5-95. For purposes of this petition, the relevant facts are that four minor victims are the biological children of petitioner and two different women – (1) Julia Johnson, petitioner’s legally-recognized wife, who is the mother of two minor victims, Jane Doe 3 and Jane Doe 4; and (2) Alice Barlow, one of petitioner’s former “spiritual wives,” who is the mother of two other minor victims, Jane

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<sup>1</sup> “ER” stands for the Excerpts of Record filed in the Ninth Circuit.

Doe 5 and Jane Doe 6. PSR ¶ 8. The PSR notes that petitioner’s marriage to Julia is still intact and that they intend to remain married despite petitioner’s prison sentence. PSR ¶ 179. Alice Barlow is Julia Johnson’s half-sister. PSR ¶ 180. Petitioner has many other children, who were not victimized, with Julia, Alice, and other women. Several of his children are now adults, and all will be adults at the time of petitioner’s projected release from federal prison. See PSR ¶¶ 179-183. Petitioner and the mothers of all of his children were members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS). PSR ¶ 175.

The PSR set forth proposed conditions of supervised release, including three “mandatory” conditions, 13 “standard” conditions, and nine “special” conditions. Among the “special” conditions is the following:

You must not directly or indirectly contact any victim(s) and ***victim(s)[] family*** of the instant offense(s) without prior written permission [from the supervising probation officer<sup>2</sup>]. . . . Indirect contact includes, but is not limited to letters, communication devices, audio or visual devices, communication through a third party and/or your presence at any location the victim(s) may be known to frequent. You must immediately report any contact to the probation officer.

PSR, at pp. 58-59 (emphasis added).

As “justification” for this proposed condition, the PSR stated in a conclusory manner that: “Prohibitive contact with victim(s) and victim(s)[] family [members] is

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<sup>2</sup> Although this condition does not explicitly say “permission *from the probation officer*,” the prior proposed condition – which limits petitioner’s unapproved contact with children, including his own children – states that petitioner may not contact children “without prior written permission from the probation officer.” PSR, at p. 59.

necessary to protect them from further trauma and protect the community.” *Id.* at p. 59.

At the sentencing hearing, the district court asked petitioner and his counsel whether they had reviewed all “mandatory, standard, and special conditions of supervision” listed in the PSR. ER-44. Petitioner and his counsel responded that they had done so. ER-44. The court then stated: “So I’m not going to reread all of them, but they are imposed and you have to follow all of them.” ER-44. Neither petitioner nor his counsel objected to any of the conditions. The district court incorporated all of the conditions proposed in the PSR into the court’s formal written judgment, including the sweeping no-contact condition (ER-06). App. C. at 4.

On appeal to the Ninth Circuit, petitioner – in reliance on well-established Ninth Circuit precedent holding that a district court cannot impose supervised release conditions that prohibit contact with a defendant’s “life partner” or children when those persons are not victims of the defendant’s offense<sup>3</sup> – challenged as reversible plain error<sup>4</sup> the district court’s condition prohibiting petitioner from having

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<sup>3</sup> *United States v. Wolf Child*, 699 F.3d 1082, 1091 (9th Cir. 2012); *United States v. Napulou*, 593 F.3d 1041, 1047 (9th Cir. 2010); *see also Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (“We have said that the Constitution protects ‘certain kinds of highly personal relationships,’ *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 619–620 (1984) ... including association among members of an immediate family ....”); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974) (“This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.”).

<sup>4</sup> The error is “plain.” *See Wolf Child*, 699 F.3d at 1096-97 (“[I]t is clear from the record that the parts of special condition 9 that prohibit Wolf Child from residing with or being in the company of his children and socializing with or dating his fiancée are

(continued)

any direct or indirect “contact” with the “family” members of his victims. Opening Brief of Appellant (9th Cir. No. 25-3266), at 4-10. The remedy petitioner sought on direct appeal was a remand with instructions for the district court to amend the challenged condition to provide that, upon petitioner’s release from prison, petitioner would not be prohibited from having contact with any biological mother of his children as well as any of his children who was neither a victim nor a minor the time of petitioner’s release:

This Court should vacate the challenged condition of supervised release and remand it to the district court to modify it in order to comply with the Constitution. Such a modification should not prohibit appellant from having unapproved direct or indirect contact with any close family member of appellant (including any biological mother of his children and any child) who is neither a victim of the offense of conviction nor under the age of 18 when appellant is on supervised release.

Opening Brief of Appellant (9th Cir. No. 25-3266), at 10.

In its brief, the government contended that petitioner’s challenge to the condition of supervised release was not “ripe”:

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substantively unreasonable and may not be reimposed. Nothing in the record would support a finding that these restrictions on his fundamental liberties involve no greater deprivation of liberty than is reasonably necessary to accomplish the goals of deterrence, protection of the public, or rehabilitation.”). The error affects petitioner’s “substantial rights.” *See id.* at 1095.

In addition, the appellate waiver provision in petitioner’s plea agreement (ER-53) is unenforceable because, if left intact, it would result in a “miscarriage of justice.” *Cf. Hunter v. United States*, 146 S. Ct. 1702, 1713 (2026) (stating that dismissing an appeal pursuant to an appellate waiver “would call into doubt the judicial system’s very attachment to law” in certain “situations, ... such as [when a defendant challenged] a condition of supervised release that the defendant not become pregnant”); *see also id.* at 1720 (Gorsuch, J., concurring, joined by Sotomayor & Jackson, JJ.) (“[A] defendant may be able to appeal a sentence imposing a condition of release that violates ... condition that violates one of his recognized constitutional rights.”).

Whether Johnson will have a constitutionally-protected liberty interest in association with the victims' family members upon his release from custody at the end of his 25-year sentence is speculative, and the issue is not fit for review under the inquiry Johnson argues is required. Johnson will suffer no hardship from deferral of his claim until closer to his release, when the district court may consider modifying the condition under 18 U.S.C. § 3583(e). ...

The relief Johnson seeks is a remand to the district court to undertake a fact-intensive analysis of his intimate relationships and to exempt certain individuals from the condition. ... But given the complexity of the relationships and factual circumstances of this case, there is simply no way for the district court to predict with any reliability whether it will be appropriate in twenty years for Special Condition 8 to exempt certain individuals. ... It would be pointless for the district court to conduct an individualized review of Johnson's relationships as they are now and attempt to extrapolate its findings into the future. All of Johnson's relationships will be impacted by the harsh reality of a long prison sentence. Johnson will be at least 75 years old when he is released. (PSR at 4.) Even his youngest children will all be adults, and all his relationships may well be drastically different than they were before his incarceration.

Brief for Appellee (9th Cir. No. 25-3266), at 17, 21-22.<sup>5</sup>

Petitioner's reply brief contended that petitioner's challenge was ripe for consideration on direct appeal:

... [A]ppellant's claim is not so speculative as to not be ripe on direct appeal. The record is sufficiently clear that (1) appellant has numerous non-victim family members related to one or more victims and (2) such non-victim family members will be adults when appellant is released from prison – including his wife, Julia, and multiple sons. *See* Appellant's Opening Brief, at 8-9. Appellee's brief also fails to acknowledge that appellant's pretrial and presentence release conditions expressly permitted appellant to have unapproved contact with Julia. ER-61. Yet

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<sup>5</sup> The government was incorrect in contending that petitioner sought "a remand to the district court to undertake a fact-intensive analysis of his intimate relationships and to exempt certain individuals from the condition." As the above quotation from his opening Ninth Circuit brief shows, petitioner merely requested a remand for a modification of the condition so it does not prohibit him from having unapproved contact with any close family member who is neither a victim nor under the age of 18 when petitioner is released from prison.

under the district court’s challenged supervised release condition, appellant must obtain the approval of the probation officer to have any direct or indirect contact with Julia. Appellant’s challenge thus is not unripe on direct appeal merely because he will serve a lengthy prison sentence before being released.

Appellant’s Reply (9th Cir. No. 25-3266), at 2-3.

In its original opinion, the Ninth Circuit agreed with the government and dismissed petitioner’s appeal on the ground that it was not ripe:

Johnson’s challenge to Special Condition 8 is not yet ripe. ... Here, Johnson’s intimate relationships before his conviction, or even his relationships as they exist now, will not necessarily resemble his intimate relationships as they may exist at the end of his decades-long prison sentence. “We thus affirm the sentence the district court imposed, but without prejudice as to the challenged condition of supervised release such that [Johnson] may raise the argument again by asking the district court to modify the condition when the issue is no longer speculative.” *United States v. Vinge*, 85 F.4th 1285, 1291 (9th Cir. 2023).

App. A, at 2-3.

Petitioner filed a timely petition for rehearing *en banc*, which noted the Ninth Circuit’s precedent<sup>6</sup> that prohibits defendants on supervised release from using 18 U.S.C. § 3583(e) to challenge conditions of supervised release on constitutional grounds. Rather than directly addressing that issue, the panel modified its original opinion to include a new footnote stating:

Because we affirm without prejudice, the district court in reviewing any future modification request may construe that request as part of Johnson’s direct appeal because that claim was not yet ripe when asserted on direct appeal. *See United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002) (identifying (1) direct appeal, (2) § 2255 habeas corpus, and (3) Rule 35(c) motions as three ways for defendants to challenge the legality of supervised release conditions).

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<sup>6</sup> *United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002).

App. B, at 4 (footnote 1).

The Ninth Circuit cited no authority for the novel and illogical proposition that a district court’s modification of a condition under 18 U.S.C. § 3583(e) after the conclusion of the defendant’s direct appeal is somehow “part of [the] direct appeal” process. No such authority exists, of course. Modifications of supervised release conditions under § 3583(e) are part of the “post-conviction” judicial process, *United States v. Lonjose*, 663 F.3d 1292, 1300 (10th Cir. 2011) – not part of the “direct appeal process.”

## REASONS FOR GRANTING THE PETITION

### **I. This Court Should Grant Certiorari Because the Ninth Circuit’s Decision Conflicts with this Court’s Ripeness Precedent.**

Under this Court’s current precedent, “ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.” *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43, 57 n.18 (1993).<sup>7</sup> Whether an issue is ripe (under this Court’s “prudential” ripeness doctrine) turns on (1) the “fitness” of the issue for judicial decision, and (2) the “hardship” to the party raising the issue if the court refuses to address it. *Ohio Forestry Ass’n v.*

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<sup>7</sup> This Court has noted that the “prudential” aspect of its ripeness doctrine may be unfounded. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (“To the extent respondents would have us deem petitioners’ claims nonjusticiable on grounds that are ‘prudential,’ rather than constitutional, [t]hat request is in some tension with our recent reaffirmation of the principle that a federal court’s obligation to hear and decide’ cases within its jurisdiction ‘is virtually unflagging.’”) (citations and internal quotation marks omitted). As set forth below in Part III., petitioner contends that this Court should overrule its prior precedent deeming “ripeness” to be, in part, a “prudential” doctrine.

*Sierra Club*, 523 U.S. 726, 733 (1998); *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 670 n.2 (2010). Whether an issue is fit for judicial review turns on whether it is “purely legal” in nature and whether judicial consideration would benefit from “further factual development.” *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 581 (1985). A claim is not ripe for adjudication if it rests upon “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.* at 580-581 (citation and internal quotation marks omitted).

The Ninth Circuit’s decision that petitioner’s challenge to the supervised release condition is not “ripe” conflicts with this Court’s ripeness precedent. Whether it violates due process to categorically prohibit contact with *all* of petitioner’s immediate family members – when they are neither victims nor minors – is a pure legal issue. And the issue is not going to change during the course of petitioner’s prison sentence. Except in the extremely unlikely event that petitioner’s wife and all of his many non-victim children were to die before petitioner is released from prison, petitioner will have one or more non-victim adult immediate family members when he is released from prison. Therefore, further factual development at the time of petitioner’s future release from prison is unnecessary to decide the issue of whether the condition of release is facially unconstitutional. The issue can, and should, be decided now. The federal courts have a “virtually unflagging ... obligation” to exercise their jurisdiction when a constitutional issue is raised. *Susan B. Anthony List*, 573 U.S. at 167.

In concluding that the issue on appeal is not yet ripe, the Ninth Circuit erroneously reasoned that petitioner’s “intimate relationships before his conviction, or even his relationships as they exist now, will not necessarily resemble his intimate relationships as they may exist at the end of his decades-long prison sentence.” App. B, at 4. Regardless of whether the *quality* of petitioner’s “relationships” with his non-victim adult family members may change during the course of his lengthy imprisonment (e.g., he could become estranged from his non-victim children), they still will be his immediate family members when he is released from prison. It is unconstitutional to prohibit any direct or indirect contact with them – including even his sending letters or emails or making phone calls to them or even asking a third person to say happy birthday to them. Such a sweeping prohibition also is inconsistent with petitioner’s potential rehabilitation. Maintaining or rebuilding relationships with his non-victim family members may be essential to petitioner’s successful rehabilitation when he is released from prison.

Moreover, petitioner’s relationships with his non-victim immediate family members *while he is serving his prison sentence* may suffer *because* of their knowledge that, as soon as he is released from prison, petitioner will no longer be able to have any further contact with them under the existing no-contact condition. During his imprisonment, the challenged condition has no legal effect because petitioner is not yet on supervised release. Therefore, petitioner currently can have contact with them. Yet, under the challenged condition, petitioner suddenly will lose the right to

have any contact with them the moment that he is released from prison. The condition thus creates hardship for petitioner *now* because of its potential deleterious effect on petitioner's relationship with these family members *while he is in prison*. Therefore, he should be permitted to raise the issue on direct appeal and not have to wait until he is released from prison in the future to do so.

Finally, the Ninth Circuit's holding that petitioner's challenge is not ripe on direct appeal because the district court supposedly has the ability to modify the challenged condition when petitioner is released from prison is problematic for two independent reasons. First, according to the majority of circuit courts (including the Ninth Circuit in a prior published decision), a district court lacks authority to entertain a constitutional challenge to a condition of supervise release under 18 U.S.C. § 3583(e) as the basis for modifying the condition. *See United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002); *see also United States v. Faber*, 950 F.3d 356, 359 (6th Cir. 2020) (noting all circuits but one agree with *Gross*). Second, even assuming *arguendo* that a modification motion under § 3583(e) were a vehicle available to petitioner after he is released from prison, a district court has discretion whether to grant such a motion<sup>8</sup> and, thus, petitioner's constitutional challenge to the condition may evade meaningful judicial review.

For these reasons, under this Court's precedent, the due process issue that petitioner has raised on direct appeal is ripe.

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<sup>8</sup> *See, e.g., United States v. Bainbridge*, 746 F.3d 943, 951-52 (9th Cir. 2014).

**II. This Court Should Grant Certiorari to Resolve the Widespread Conflict Among the Circuits Concerning Whether a Defendant’s Challenge to a Condition of Supervised Release on Direct Appeal Is “Ripe” When He Still Must Serve a Significant Prison Sentence Before Being Released.**

This Court also should grant certiorari in order to resolve the longstanding conflict among the federal circuit courts concerning the issue of whether a defendant who is serving a significant prison sentence may challenge a supervised release condition on direct appeal. As an initial matter, there is conflict about this question among different panels of the Ninth Circuit<sup>9</sup> – which the *en banc* Ninth Circuit refused to resolve when it denied petitioner’s petition for rehearing *en banc* that had called attention to the intra-circuit conflict.

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<sup>9</sup> The Ninth Circuit’s decision in petitioner’s case and the prior decision upon which it relied, *United States v. Vinge*, 85 F.4th 1285, 1291 (9th Cir. 2023), conflict with *United States v. Williams*, 356 F.3d 1045, 1051-52 (9th Cir. 2004), and its progeny. The Ninth Circuit in *Williams* (a case in which the still-imprisoned defendant challenged on direct appeal a supervised release condition requiring him to take psychotropic medication) held:

This court has stated clearly that “a defendant may challenge the legality of a supervised release condition[by] direct appeal.” *United States v. Gross*, 307 F.3d 1043, 1044 (9th Cir. 2002). While the government suggests that the issue before us cannot be ripe until Williams refuses to take prescribed medicine, we have not required violation of a specified supervised release condition to permit appellate review. See, e.g., *United States v. Johnson*, 998 F.2d 696 (9th Cir. 1993) (reviewing a condition requiring the appellant to participate in mental health counseling).

*Id.* at 1051; see also *United States v. Rodriguez- Rodriguez*, 441 F. 3d 767, 771-772 (9th Cir. 2006) (holding that a challenge to supervised release conditions by a defendant serving a 77-month prison sentence was ripe on direct appeal despite the government’s argument that the challenge depended on several contingencies that had not yet occurred).

More broadly, several other circuits have issued conflicting decisions. *Compare, e.g., United States v. Salvador*, 180 F.4th 470, 476 (2d Cir. 2026) (“[W]hen a challenge to a condition of supervised release involves a pure question of law, we regularly allow that challenge to proceed years or even decades before the defendant begins his term of supervision.”) (citations and internal quotation marks); *United States v. Rock*, 863 F.3d 827, 833 & n.1 (D.C. Cir. 2017) (“The government [contends] that it is not clear that Rock will ever be subject to penile plethysmograph testing in 2026 [the year of his projected release from prison] or thereafter, and his challenge is therefore unripe. But supervisory conditions are ordinarily ripe for challenge upon imposition, especially when as here the argument presents a purely legal issue requiring no further factual development and this court’s ruling will provide Rock with ‘an immediate, concrete, and valuable benefit: certainty’ regarding whether he will have to face such testing. *VanderKam v. VanderKam*, 776 F.3d 883, 889 (D.C. Cir. 2015).”); *United States v. Smith*, 606 F.3d 1270, 1283 n.4 (10th Cir. 2010) (“We are mindful that the special conditions imposed [including that the defendant have no contact with his non-victim child] will not be enforced until Smith is released from prison. While subject to later modification, the requirements are part of the sentencing court’s final orders, and are in that sense not contingent upon future events. For these reasons, they are ripe for consideration now.”); *United States v. Davis*, 242 F.3d 49, 51 (1st Cir. 2001) (holding that a challenge to a contingent supervised release condition was ripe, and “not hypothetical,” where the judgment explicitly spelled out

the condition and the defendant challenged “the special condition itself, not its application or enforcement” on an as-applied basis), *with United States v. Lee*, 950 F.3d 439, 449 (7th Cir. 2020) (declining to review condition restricting the defendant from contact with felons that did not exempt his adult children, who were felons, because “[a] lot can happen” during the defendant’s 210-month sentence); *United States v. Evers*, 669 F.3d 645, 661-62 (6th Cir. 2012) (ruling that a challenge to supervised release conditions on direct appeal was “premature in light of the 235-month sentence that [the defendant] has yet to serve, the leeway afforded the probation department in tailoring many of these special conditions, and the resultant contingencies that may or may not come to fruition”); *United States v. Thomas*, 198 F.3d 1063, 1065 (8th Cir. 1999) (ruling challenge to a gang-association condition was premature where the defendant would “not be subject to the condition for nearly a decade, during which time any number of events may occur that would make the condition irrelevant”).

The Courts of Appeals regularly grapple with ripeness issues when defendants sentenced to significant prison sentences challenge conditions of supervised release on direct appeal. As the above cases demonstrate, the lower courts are in disarray. Petitioner’s case provides this Court an excellent vehicle for resolving the circuit split and providing guidance to the lower courts.

### **III. This Court Should Overrule Its Precedent Recognizing a “Prudential” Ripeness Doctrine and Limit Ripeness Analysis to Article III Considerations.**

Consistent with this Court’s ripeness precedent, the Ninth Circuit considers both Article III requirements and “prudential” requirements in deciding whether an

issue is “ripe” to be considered on appeal. *See, e.g., Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir.2000) (*en banc*).<sup>10</sup> Although it did not distinguish between constitutional and “prudential” ripeness, the Ninth Circuit panel in petitioner’s case presumably followed binding Ninth Circuit precedent in declining to address petitioner’s due process claim on prudential ripeness grounds.<sup>11</sup> *See Stockton v. Brown*, 152 F.4th 1124, 1148-49 (9th Cir. 2025) (“The Plaintiffs are correct that [t]he Supreme Court has stated that the prudential ripeness doctrine is ‘in some tension’ with ‘the principle that a federal court’s obligation to hear and decide cases

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<sup>10</sup> As stated by the *en banc* Ninth Circuit:

The constitutional component of the ripeness inquiry is often treated under the rubric of standing and, in many cases, ripeness coincides squarely with standing’s injury in fact prong. ... Whether the question is viewed as one of standing or ripeness, the Constitution mandates that prior to our exercise of jurisdiction there exist a constitutional “case or controversy,” that the issues presented are “definite and concrete, not hypothetical or abstract.” *Railway Mail Ass’n v. Corsi*, 326 U.S. 88, 93 (1945). In assuring that this jurisdictional prerequisite is satisfied, we consider whether the plaintiffs face “a realistic danger of sustaining a direct injury ...,” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979), or whether the alleged injury is too “imaginary” or “speculative” to support jurisdiction. *Id.* We need not delve into the nuances of the distinction between the injury in fact prong of standing and the constitutional component of ripeness: in this case, the analysis is the same. ... In evaluating the prudential aspects of ripeness, our analysis is guided by two overarching considerations: “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Abbott Laboratories*, 387 U.S. [136,] 149 [(1967)]

....

*Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d at 1138-41.

<sup>11</sup> The government’s brief clearly argued a lack of “prudential” ripeness by contending that petitioner’s due process claim was not “fit” for review and that petitioner would suffer no “hardship” if the Ninth Circuit refused to address his due process claim. Brief for Appellee (9th Cir. No. 25-3266), at 17.

within its jurisdiction is virtually unflagging.’ ... But, as a three-judge panel, we remain bound by our prudential ripeness precedents unless they are clearly irreconcilable with the reasoning or theory of intervening higher authority.”) (some citations omitted; quoting *Susan B. Anthony List*, 573 U.S. at 167).

This Court should overrule its precedent recognizing a “prudential” aspect of the ripeness doctrine. That extra-constitutional aspect of the doctrine is inconsistent with “the principle that a federal court’s obligation to hear and decide’ cases within its jurisdiction ‘is virtually unflagging.’” *Susan B. Anthony List*, 573 U.S. at 167.

The due process claim that petitioner raised on appeal to the Ninth Circuit was, at the very least, “ripe” for purposes of Article III’s requirements. Petitioner alleged an injury in fact that is not hypothetical or abstract. He clearly possesses standing to raise the claim, and the Ninth Circuit thus was obligated to address the important constitutional issue that he raised.

## CONCLUSION

The Court should grant certiorari, vacate the Ninth Circuit's judgment, and remand with instructions to address petitioner's constitutional challenge to the condition of supervised release as "ripe."

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Respectfully submitted,



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