

17-1224

To be Argued by: Paul D. Silver

**United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 17-1224**

UNITED STATES OF AMERICA,
Appellee,

v.

JARRET EAGLIN, AKA Jarret L. Eaglin,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE UNITED STATES OF AMERICA

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STATEMENT OF THE ISSUE PRESENTED

Whether the district court abused its discretion by imposing conditions of supervised release that prohibit defendant from possessing or viewing sexually explicit material, including adult pornography, and prohibit him from accessing the internet without permission from the court, where defendant has a history of sexually assaulting adult and minor females; defendant's violations of supervised release include using the internet to search for sexual partners and adult pornography, leading defendant to leave the district without permission and to be charged with a sexual assault (which charge was later dismissed); and where defendant repeatedly violated the conditions of

his supervised release by surreptitiously obtaining internet-capable devices and viewing adult pornography.

STATEMENT OF THE CASE

A. Introduction

Defendant-Appellant Jarret Eaglin appeals from a judgment imposed in the Northern District of New York (D'Agostino, *J.*) following his admission to having violated the conditions of his supervised release. Eaglin argues that the district court abused its discretion by including in Eaglin's new term of supervised release a condition that Eaglin not possess sexually explicit material and a condition that he refrain from accessing the internet without approval from the court.

B. Procedural History

On May 30, 2012, a one-count indictment was returned in the district court for the District of New Hampshire charging Eaglin with failing to accurately update his sex offender registration in the State of New Hampshire, as required by the Sex Offender Registration and Notification Act ("SORNA"), in violation of Title 18, United States Code, Section 2250(a). NH Dkt. #1; A. 88.¹ On September 11, 2012,

¹ References to "NH Dkt. #_" are to the docket in the District of New Hampshire relating to Eaglin's

pursuant to a written plea agreement, Eaglin pled guilty to the single count in the indictment. NH Dkt. #13; Text Minute Entry dated September 11, 2012. On December 20, 2012, the New Hampshire district court (DiClerico, Jr., *J.*) sentenced Eaglin to a twenty-one month term of imprisonment to be followed by a 15-year term of supervised release. Text Minute Entry dated December 20, 2012; NH Dkt. #18; A. 89-92.

Eaglin began his term of supervised release on November 28, 2013. A. 11. On January 10, 2014, the district court for the District of New Hampshire ordered the transfer of Eaglin's supervision to the Northern District of New York. A. 10. The Northern District of New York (D'Agostino, *J.*) accepted the transfer of jurisdiction on January 24, 2014. A. 10.

On April 17, 2017, Eaglin appeared before the district court in the Northern District of New York and admitted two violations of the conditions of his supervised release. A. 66-81. Following Eaglin's admission, the court sentenced him to a twelve-month

conviction for violating the provisions of SORNA. The District of New Hampshire docket appears in the appendix filed by Eaglin at pp. 7-9. References to "Dkt. #_" are to the docket in the Northern District of New York after the transfer of supervision. The Northern District of New York docket appears in the appendix at pp. 1-6. References to "A._" are to the appendix.

term of imprisonment to be followed by an eleven-year term of supervised release. A. 75.

Judgment against Eaglin was filed on April 20, 2017. Dkt. #24; A. 82-86. Eaglin filed a timely notice of appeal on April 25, 2017. Dkt. #25; A. 87. Eaglin is serving the imprisonment portion of the district court's sentence.

STATEMENT OF FACTS

A. Eaglin's Early History

In 2003, when he was twenty-one years old, Eaglin had sexual intercourse on at least three occasions with a thirteen-year-old female, who he falsely told that he was seventeen years old. PSR, ¶ 29. This resulted in Eaglin's conviction on three counts of felonious sexual assault. *Id.*

In 2004, Eaglin was again convicted of a felonious sexual assault. PSR, ¶ 30. The conviction followed allegations that he digitally penetrated two minor females. *Id.*

In December of 2004, Eaglin's girlfriend accused him of having unwanted sexual contact with her at knifepoint. PSR, ¶ 31. Eaglin was acquitted of the resulting criminal charges. *Id.*

B. Eaglin's History on Supervised Release

1. Eaglin fails to secure employment and has unauthorized contact with a minor.

After serving his term of imprisonment following his SORNA conviction in New Hampshire, Eaglin was released from a halfway house on November 28, 2013, at which time his supervision began. A. 11. Eaglin failed to secure employment between the date of his release and April 22, 2014. *Id.* Eaglin worked as a dishwasher from April 23, 2014, until being laid off on May 5, 2014. *Id.*

On May 7, 2014, Eaglin's probation officer learned that Eaglin had had contact with a former neighbor's five-year-old son without notifying the probation officer. *Id.* The contact was supervised by the mother of the child, but she had not been approved to do so by the probation officer. *Id.*

Based on Eaglin's failure to maintain employment and his unauthorized contact with a minor, the probation office petitioned the district court to modify Eaglin's conditions of release by requiring him to spend two months in home detention. *Id.* Eaglin consented to this modification, A. 13, and the district court ordered it on May 13, 2014, A. 12.

2. Eaglin fails to stay away from the minor's residence.

On July 13, 2014, Eaglin's electronic monitoring ankle bracelet alerted his probation officer that contrary to the officer's instructions, Eaglin was at his old residence where the child with whom he had unauthorized contact resided. A. 14. Eaglin told his probation officer that he was there seeking a ride from his sister because the bus that he was scheduled to take to his sex offender treatment program had broken down. *Id.* Because Eaglin failed to notify his probation officer of the need to be in the vicinity of his old residence, the probation officer petitioned the court for a modification of Eaglin's supervision to include a two-month curfew. *Id.* Eaglin consented to this modification, A. 16, and the district court ordered it on July 18, 2014, A. 15.

3. Eaglin absconds from the Northern District of New York, is arrested in Massachusetts, admits five violations of supervised release and is sentenced to a term of imprisonment.

On June 2, 2015, the probation office filed a petition with the district court alleging new violations of Eaglin's conditions of supervised release. *See* Confidential Letter from Probation Office to District Court dated June 2, 2015. In a subsequent email message, the probation office explained to the court that Eaglin had been arrested and charged with rape in

Fitchburg, MA, but the alleged victim of that offense had recanted her story. *See* Email message from probation officer to court (provided under separate cover).

On August 19, 2015, the probation office filed an amended petition alleging five violations of the conditions of Eaglin's supervised release. A. 17-19. The violations included: 1) Eaglin's failure to attend, and his discharge from, sex offender treatment; 2) Eaglin's failure to notify his probation officer that he had been fired from his job as a result of not showing up for work; 3) Eaglin's failure to register for a ninety-day New York State mandated registration as a sex offender; 4) Eaglin's use of his phone to possess adult pornography, search the internet for pornography, and contact various women with whom Eaglin exchanged nude and sexually graphic pictures; and 5) leaving the Northern District of New York without permission. A. 17-18.

On November 24, 2015, Eaglin appeared before the district court and admitted violations 1, 2, 4 and 5 of the petition. At defense counsel's request, the matter was adjourned so that a resolution could be reached concerning the third violation in the petition. Text Minute Entry dated November 24, 2015.

On December 22, 2015, Eaglin again appeared before the district court and admitted the third violation in the August 19, 2015 petition. Text Minute

Entry dated December 22, 2015; A. 20-32. Following Eaglin's admission, the district court sentenced him to a sixteen-month term of imprisonment to be followed by a thirteen-year term of supervised release. Text Minute Entry dated December 22, 2015; A. 26. Among the special conditions of supervised release that the district court imposed were a prohibition on viewing or possessing materials that depict sexually explicit conduct and use or possession of an internet capable device unless Eaglin participated in a monitoring program or such use or possession was authorized by the court or the probation office. A. 28-29.

Judgment against Eaglin was entered on January 6, 2016. Dkt. #12; A. 34-36. Eaglin did not appeal from this judgment.

4. Eaglin fails to comply with Bureau of Prisons' programs.

On June 30, 2016, coinciding with Eaglin's release from imprisonment, the probation office petitioned the court, with Eaglin's consent, for a modification of the conditions of Eaglin's supervised release to include a four-month stay in a residential reentry or similar facility. Dkt. #13; A. 37-39. The modification was necessary, because the Bureau of Prisons denied Eaglin entry into its reentry program based on Eaglin's prior lack of success in a reentry facility; his refusal to participate in the Financial Responsibility Program; his refusal to go into general population; and his

having no photographic identification or birth certificate, both of which were needed for placement in the Bureau of Prisons reentry program. A. 37. The district court ordered the requested modification. A. 38.

5. Eaglin violates supervised release by using internet capable device to access adult pornography.

On February 24, 2017, the probation office petitioned the district court, with Eaglin's consent, to modify the conditions of Eaglin's supervision by requiring Eaglin to serve three months of home detention. Dkt. #14; A. 42. The modification was requested because the probation office discovered an internet capable Xbox Edge during a home visit. Eaglin admitted that he had used the Xbox Edge to view pornography on the internet, and a forensic examination of the Xbox Edge disclosed a browsing history that included adult pornographic videos. A. 40. The district court ordered the requested modification. A. 41.

6. Eaglin again violates supervised release by possessing internet capable devices and accessing adult pornography.

On March 10, 2017, the probation office filed a petition with the district court alleging that Eaglin violated the conditions of his supervised release by

possessing internet capable devices and viewing pornography. Dkt. #15; A. 43-44. According to the petition, during home contact with Eaglin on March 10, 2017, probation officers seized four internet capable devices: a PlayStation 2, PlayStation 4, Samsung smartphone and an Amazon Firestick. A. 43. The second violation in the petition was based on Eaglin's admission on January 18, 2017, that he had used the Xbox Edge to view pornography. A. 44.

The probation office amended its petition on March 30, 2017, to include an allegation that Eaglin failed to submit his property to search by refusing to provide the probation officer with the PIN number for his Samsung telephone. Dkt. #21; A. 45-47. The probation office then filed a second amended petition that removed the allegation that Eaglin failed to allow a search of his telephone, but added an allegation that Eaglin committed new criminal conduct by utilizing email accounts without reporting their existence as required by the provisions of the New York State Sex Offender Registration Act. Dkt. #22; A. 48-50.

a. Eaglin files prehearing submission.

Eaglin submitted a letter to the district court in anticipation of a revocation proceeding. A. 51-58. In relevant measure, Eaglin objected to the court reimposing special condition no. 6, which proscribed Eaglin's use or possession of an internet capable device unless he participated in the Computer and

Internet Monitoring Program (CIMP) or the court or the probation office approved such use or possession. A. 36, 54-55.

Eaglin maintained that there was no apparent connection between his conviction for committing a sex offense against a thirteen-year-old girl and use of the internet. A. 55. Eaglin also maintained that none of his prior convictions appeared to have involved use of a computer. A. 56. Eaglin concluded that the condition was unreasonable and inflicted a greater deprivation of his liberty than necessary. A. 56.

Eaglin also objected to reimposition of special condition no. 7, precluding him from viewing and possessing sexually explicit conduct. A. 36, 56-58. Eaglin acknowledged that banning access to adult pornography has been upheld in other circumstances, but claimed that such a ban bore no relation to his failure-to-register offense or any factor in 18 U.S.C. § 3553(a). A. 57. And, Eaglin argued that the condition effected a greater deprivation of his liberty than necessary. A. 56.

b. The government files prehearing submission.

In its letter to the court, the government requested that the two disputed special conditions be reimposed, but that the limitation on Eaglin's possession of internet capable devices be modified to ban his access to the internet. A. 59-61. The government noted that

Eaglin previously violated a condition of supervised release by leaving the Northern District of New York and traveling to Massachusetts where he was arrested on a charge of sexual assault. A. 59. Although the charge was later dismissed, Eaglin had used his internet capable telephone to find sexual partners and to view pornography, resulting in Eaglin traveling to Massachusetts without permission. A. 59. The government maintained that restricting Eaglin's access to adult pornography and the internet served to protect the public, supervise him effectively and promote his reintegration and rehabilitation. A. 59-60.

After noting that Eaglin continued to violate the conditions of supervised release by using internet capable devices to find sexual partners and to view pornography, the government recounted that one of Eaglin's convictions involved a knifepoint rape² of an adult female. A. 60. And, the government noted that Eaglin's use of his internet capable telephone would have been permitted if he had participated in the monitoring program. A. 60. According to the government, the special conditions at issue were necessary to protect the public, deter Eaglin from

² Although the government characterized Eaglin's conduct as a rape, the victim alleged a sexual assault not amounting to rape. Criminal charges resulting from this incident either were *nol-prossed* or Eaglin was acquitted of them. PSR, ¶ 31.

committing future violations, and to promote his rehabilitation. A. 60.

c. District court conducts revocation proceeding.

On April 17, 2017, Eaglin appeared before the district court and admitted the first violation, commission of new criminal conduct by failing to register email accounts as required by the New York State Sex Offender Registration Act, and the third violation, viewing and possessing sexually explicit materials. Text Minute Entry dated April 17, 2017; A. 66-81.

Eaglin's admissions were made in satisfaction of the three violations in the probation office petition. A. 67-68. Also, Eaglin's admission to having committed new criminal conduct was made with the understanding that he would not face state criminal prosecution for his failure to register his email accounts. A. 71.

Before the court imposed sentence, counsel for Eaglin, in relevant measure, objected to the court's reimposition of special condition nos. 6 and 7, which proscribed Eaglin's viewing and possession of adult pornographic material and required that Eaglin not access the internet without monitoring or approval by the court or the probation office. A. 72. In doing so, counsel drew the court's attention to the memorandum

he previously submitted. A. 51-56. The government supported the reimposition of both of these conditions.

Before imposing sentence, the district court explained why the court deemed the contested conditions of supervised release to be necessary:

Well, Mr. Eaglin, you're well known to me because you've been in front of me previously for supervision issues. With respect to the conditions regarding Mr. Eaglin using the internet and viewing pornography, I do think that those conditions are very, very necessary in this case because the first time in December of 2015, when Mr. Eaglin was arrested in Massachusetts and I understand that ultimately the charges were dismissed, he was using an internet-capable device to look for sexual partners and to view pornography and I think that particularly for Mr. Eaglin . . .

For Mr. Eaglin, I think that it is very risky for you, sir, to be using internet devices and I think that based upon your previous conviction, your underlying conviction, that it is very advisable that you stay off of the internet, that you are prevented from using or viewing pornography. I'm aware it's not child pornography at this point that is being viewed but these appear to be significant risk factors to you in terms of your conduct.

I'm also concerned, Mr. Eaglin, that you know you have lied about having internet-capable devices and you've tried to hide these devices from probation. That in itself to me is dangerous and risky.

So, you know, these conditions that you not have internet-capable devices, that you not have email accounts, that you not be viewing pornography, they're just not suggestions. We're not asking you to do that. We're telling you to do that, and if you continue to violate, then you're going to continue to spend time in jail.

It's very important that the community is protected and when you lie, when you get internet-capable devices, when you view pornography, I happen to believe that the community is at risk from you. So, if you want to stay out of jail, you have to start following the conditions. It's that simple.

A. 73-74.

The court then imposed a bottom-of-the-guideline-range twelve-month term of imprisonment to be followed by an eleven-month term of supervised release. A. 74-75.

Before imposing special conditions of supervised release, the district court explained:

It is noted that this defendant has a criminal history that includes prior sexual assaults with both minor and adult female victims, prior probation and parole failures, prior failures to comply with state and federal sex offender notification requirements, and one prior revocation of supervised release for conduct that included absconding from supervision and using the internet to find sexual partners and seek pornography.

A. 75.

The court then included the following two special conditions as part of Eaglin's term of supervised release:

[1] While in treatment and for the remainder of the term of supervision following completion of treatment, the defendant shall not view, possess, own, subscribe to or purchase any material, including pictures, videotapes, films, magazines, books, telephone services, electronic media, computer programs or computer services that depict sexually explicit conduct as defined in 18 United States Code, Section 2256(2).

[2] You shall not access the internet from any computer or internet-capable device in any location unless authorized by the Court or as directed by the U.S. Probation Office upon approval of the Court. This ban on internet access shall remain in effect until such time as the Court determines that the ban is no longer necessary based on the Court's evaluation on your risks and needs, along with consideration of other factors outlined in 18 United States Code, Section 3553(a).

A. 77-78, 86 (new conditions 8 and 9).

SUMMARY OF ARGUMENT

The district court did not abuse its discretion in imposing conditions of supervised release that prohibit Eaglin from possessing or accessing materials that include sexually explicit conduct and prohibiting Eaglin's access to the internet unless approved by the court.

Eaglin has a history of sexually assaulting minor and adult females, as well as violating the conditions of his supervised release. Eaglin also has failed to participate in a sex offender treatment program while on supervised release, has failed to maintain employment and has failed to comply with New York State's registration requirements for sex offenders.

Eaglin has repeatedly violated the conditions of his supervised release by acquiring internet capable devices and by searching the internet for pornography. Eaglin also used these devices to search for sexual partners. On one such occasion, Eaglin found a partner in Massachusetts, leading Eaglin to leave the Northern District of New York without the court's permission. There, Eaglin was charged with rape, although the charge was dismissed when the victim recanted her accusation.

The district court rightly concluded that Eaglin's unauthorized access to the internet and his acquisition of adult sexually explicit materials constituted risk factors likely to impede Eaglin's successful completion of his term of supervised release. The conditions are related to Eaglin's history and characteristics and the need to protect the public. They likewise effect no greater deprivation of liberty than necessary, particularly since Eaglin can access the internet under appropriate supervision, and the materials that Eaglin is precluded from accessing are limited to those that are sexually explicit.

ARGUMENT

The District Court Did Not Abuse Its Discretion by Imposing Conditions of Supervised Release that Prohibit Eaglin from Possessing or Viewing Sexually Explicit Material, Including Adult Pornography, and Prohibit Him from Accessing the Internet Without Permission from the Court, where Eaglin Has a History of Sexually Assaulting Adult and Minor Females; Eaglin's Violations of Supervised Release Include Using an Internet-Capable Device to Search for Sexual Partners and Adult Pornography, Leading Eaglin to Leave the District without Permission and to be Charged with a Sexual Assault (which Charge was later Dismissed); and where Eaglin Repeatedly Violated the Conditions of His Supervised Release by Surreptitiously Obtaining Internet-Capable Devices and Viewing Adult Pornography.

A. Governing Law and Standard of Review

Imposition of special conditions of supervised release is governed by 18 U.S.C. § 3583(d), which provides in pertinent part:

The court may order, as a further condition of supervised release, to the extent that such condition –

is reasonably related to the factors set forth in section 3553(a)(1) [(nature and circumstances of offense and history and characteristics of defendant)], (a)(2)(B) [(deterrence)], (a)(2)(C) [(public protection)], and (a)(2)(D) [(needed educational or vocational training, medical care, or other correctional treatment)]; 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 is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)

...

any other condition it considers to be appropriate.

Section 5D1.3 of the United States Sentencing Guidelines describes certain “mandatory” conditions of supervised release and, in policy statements, recommends certain “standard” and “special” conditions. Further, consistent with the above-quoted statutory provisions, subsection (b) provides that:

The court may impose other conditions of supervised release to the extent that such conditions (1) are reasonably related to (A) the nature and circumstances of the offense and the history and characteristics of the defendant;

(B) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (C) the need to protect the public from further crimes of the defendant; and (D) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (2) involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth above and are consistent with any pertinent policy statements issued by the Sentencing Commission.

Accordingly, this Court has recognized that “[a] sentencing court may impose special conditions of supervised release that are ‘reasonably related’ to certain statutory factors governing sentencing, ‘involve[] no greater deprivation of liberty than is reasonably necessary’ to implement the statutory purposes of sentencing, and are consistent with pertinent Sentencing Commission policy statements.” *United States v. Myers*, 426 F.3d 117, 123-24 (2d Cir. 2005). “[S]entencing courts have ‘broad discretion to tailor conditions of supervised release to the goals and purposes outlined in § 5D1.3(b).’” *United States v. Amer*, 110 F.3d 873, 883 (2d Cir. 1997) (quoting *United States v. Abrar*, 58 F.3d 43, 46-47 (2d Cir. 1995)). Further, “despite the continuous use of the . . . conjunctive ‘and’ in § 5D1.3(b), taking into account the authorizing statutes, a condition may be imposed if it is reasonably related to any one or more of the

specified factors.” *Abrar*, 58 F.3d at 46; *see also United States v. McLaurin*, 731 F.3d 258, 262 (2d Cir. 2013) (“A sentencing court may impose conditions of supervised release so long as they are reasonably related to any one or more of the specified factors.”) (citation and internal quotation marks omitted).

This Court “review[s] the propriety of conditions of supervised release for abuse of discretion.” *Myers*, 426 F.3d at 123 (citing *United States v. Brown*, 402 F.3d 133, 136 (2d Cir. 2005)); *see also United States v. Dupes*, 513 F.3d 338, 342-43 (2d Cir. 2008).

B. Discussion

Eaglin complains that the two supervised release conditions imposed by the district court precluding him from viewing sexually explicit materials and limiting his access to the internet infringe his First Amendment rights, are not reasonably related to the factors identified in § 3583(d), and involve a greater deprivation of liberty than is necessary. While Eaglin is correct in noting that these conditions implicate his First Amendment rights, he is wrong to assert that the district court abused its discretion by imposing them. *See, e.g., United States v. Thielemann*, 575 F.3d 265, 272-73 (3d Cir. 2009) (“courts must balance the § 3553(a) considerations ‘against the serious First

Amendment concerns endemic in” a condition barring access to adult sexually explicit material).³

The district court properly imposed a ban on Eaglin’s viewing of sexually explicit materials. His history includes sexual offenses committed against both minor and adult females. And, Eaglin violated the conditions of his release by failing to attend, and being unsuccessfully discharged from, a sex offender treatment program.⁴ A. 17.

³ Eaglin also cites *Packingham v. United States*, 137 S. Ct. 1730 (2017) for the notion that access to the internet is a fundamental liberty protected by the First Amendment. Brief at 24. The government does not dispute this proposition. But, *Packingham* is distinguishable from the circumstances presented here. In *Packingham*, the Court struck down a Carolina statute imposing a complete ban on access to social media sites by registered sex offenders. 137 S. Ct. at 1738. Moreover, although the issue was not before the Court, the Court noted “the troubling fact” that the statute imposed its ban on sex offenders who had served their sentences and were no longer under supervision. *Id.* at 1737.

⁴ Eaglin notes that the presentence investigation report recounted his successful participation in a Bureau of Prisons sex offender program. Brief at 29. However, Eaglin participated in that program following his conviction in New Hampshire for a

Also, when Eaglin violated the conditions of his supervised release by traveling outside of the district, an examination of his telephone revealed that he used it to search the internet for adult pornography and to find sexual partners. Under all of these circumstances, the prohibition on Eaglin accessing and possessing sexually explicit material relates to his history and characteristics, and is intended to protect the public.⁵

felonious sexual assault in 2003 or 2004, prior to his 2012 conviction for violating the provisions of SORNA, and long before his failure to participate in a sex offender program in 2015.

⁵ Eaglin argues that the two disputed conditions do not relate to his criminal history or the offense of conviction. *E.g.*, Brief at 28 (“The two special conditions of supervision bear no relation to the history and characteristics of Eaglin, who has never been charged with or convicted of any offenses involving pornography or used the internet in a criminal act or to somehow facilitate that act.”). Eaglin does not argue that the two conditions are unrelated to his history of supervised release violations, in particular, his leaving the district. In any event, conviction for a pornography offense is not a prerequisite to the imposition of a ban on sexually explicit materials. *E.g.*, *United States v. McGee*, 559 F. App’x 323, 328-30 (5th Cir. 2014) (affirming prohibition on viewing sexually arousing material,

Similarly, the need for the condition limiting Eaglin's access to the internet without approval is best exemplified by Eaglin having left the district after searching the internet for pornography and a sexual partner. Eaglin's use of the internet in this way led directly to him leaving the district in violation of the conditions of his release.

As the district court noted, Eaglin's improper departure from the district makes both of these conditions "very, very necessary." A. 73. The district court was correct to conclude that Eaglin's use of the internet and access to sexually explicit materials was "very risky" in light of his prior convictions and amounted to "significant risk factors" to Eaglin "in terms of [his] conduct."⁶ A. 73-74.

Eaglin notes correctly that courts of appeals have upheld district courts' bans on access to pornography

notwithstanding absence of criminal history relating to pornography).

⁶ New York State has designated Eaglin a Level 3 sex offender, indicating a high risk of a repeat offense and that a threat to public safety exists. *See* <http://www.criminaljustice.ny.gov/SomsSUBDirectory/offenderDetails.jsp?offenderid=40694&lang=EN> (last visited November 16, 2017).

when the record demonstrates their necessity. Brief at 25-26. Conversely, Eaglin points out that in the absence of findings by the district court demonstrating that such a ban is related to the appropriate § 3553(a) factors, courts have vacated the ban. Brief at 26-28. Eaglin is wrong to contend, however, that the circumstances presented here fall into to the latter category. As discussed above, the district court explained that Eaglin's use of the internet and his access to pornography were risk factors for Eaglin based on both his criminal convictions and his subsequent conduct while on supervision. A. 73-74. As such, this is not a case in which the district court failed to explain the rationale for imposition of the special conditions, as argued by Eaglin.

In short, in light of Eaglin's history and characteristics and the need to protect the public, as well as providing rehabilitative services to Eaglin, the district court did not abuse its discretion in imposing the limitation on Eaglin's use of the internet and the ban on his access to sexually explicit conduct.

CONCLUSION

The conditions of supervised release imposed by the district court should be affirmed in all respects.

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Respectfully submitted,

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