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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ARTURO SIGALA-SALAZAR, Defendant-Appellant.	No. 21-10342 D.C. No. 2:19-cr-00296-JAD-EJY-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Argued and Submitted November 18, 2022
San Francisco, California

Before: LINN,** RAWLINSON, and HURWITZ, Circuit Judges.

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

** The Honorable Richard Linn, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

Arturo Sigala-Salazar pleaded guilty to possession of child pornography and was sentenced to a prison term to be followed by seven years of supervised release. On appeal, he challenges several conditions of supervised release. Because trial counsel failed to object to those conditions, we review for plain error. *See United States v. Wolf Child*, 699 F.3d 1082, 1089 (9th Cir. 2012). We affirm in part, vacate in part, and remand.

1. Sigala's plea agreement waived his right to appeal anything but an above-Guidelines sentence, which he did not receive. But, "[w]hen a defendant with an otherwise valid appeal waiver challenges the legality of her sentence, the claim as to waiver rises and falls with the claim on the merits." *United States v. Nishida*, No. 21-10070, 2022 WL 16986253, at *4 (9th Cir. Nov. 17, 2022) (cleaned up). We therefore turn to Sigala's various claims that the terms of supervised release were illegal.

2. It was not plain error for the district court to impose a term of supervised release that would continue after Sigala is removed upon completion of his custodial sentence. The court provided "a specific and particularized explanation that supervised release would provide an added measure of deterrence." *United States v. Valdavinos-Torres*, 704 F.3d 679, 693 (9th Cir. 2012); *see also* U.S.S.G. § 5D1.1 cmt. 5. Moreover, the government conceded at argument that the conditions of

supervised release will not be enforced against Sigala unless he returns to the United States after removal.

3. We vacate Special Condition 4 and remand for the district court to reconsider its language in light of *Nishida*, 2022 WL 16986253, which dealt with a similar supervised release condition.

4. We also vacate Special Condition 8, which prohibits Sigala from viewing or possessing pornographic materials that could "compromise [his] sex offense-specific treatment," as unconstitutionally vague because people "of common intelligence must necessarily guess at its meaning" and may "differ as to its application." *United States v. Evans*, 883 F.3d 1154, 1160 (9th Cir. 2018) (cleaned up). We note that any vagueness problem with Special Condition 8 would not be present if Sigala were simply forbidden from viewing or possessing any pornographic materials. *See United States v. Ochoa*, 932 F.3d 866, 870 (9th Cir. 2019).

5. The court did not plainly err by imposing Special Conditions 11 and 12. These conditions adopt the 18 U.S.C. § 1030(e)(1) definition of "computer." Because that definition "potentially could be understood to encompass common household objects," we have held it vague when used in a supervised release condition that restricts a releasee's ability to "possess or use a computer." *United States v. Wells*, 29 F.4th 580, 588 (9th Cir. 2022). Special Conditions 11 and 12,

however, do not restrict Sigala's possession of computers, but merely subject them to search and monitoring by a probation officer. The vagueness issue posed in *Wells* is therefore not present here. Moreover, Special Conditions 11 and 12 pertain only to devices on which a probation officer can "install computer monitoring software." Sigala will be informed about which devices have software installed, and therefore know which devices he "must warn" others "may be subject to searches."

6. The district court did not plainly err by imposing Special Condition 7, which permits searches of electronic communications, data storage devices, media, and computers. The condition is not vague because it requires "reasonable suspicion" of violation before any search, pertains only to devices that might "contain evidence" of violation, and can only result in revocation if Sigala "fails" to submit to a search. Sigala's duty to warn others about the possibility of search is not vague because it applies only to his property.[1]

7. The district court did not plainly err by imposing Standard Condition 12. We have recently held that "there is nothing unconstitutionally vague about" a nearly identical risk-notification provision. *United States v. Gibson*, 998 F.3d 415, 423 (9th Cir. 2021).

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[1] Sigala also claims that Special Conditions 7, 11, and 12 unconstitutionally infringe on his Fourth Amendment rights. But the government interest in supervising Sigala upon release is plainly sufficient to impose search and monitoring conditions on Sigala's computers, electronic communications, and data storage devices. *See United States v. Kincade*, 379 F.3d 813, 835 (9th Cir. 2004) (en banc).

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.