



1 the condition as: (1) lacking support for its imposition from the district court or the  
2 record itself; and (2) impermissibly overbroad and vague. We agree that neither  
3 the district court’s comments during the sentencing hearing nor the record show  
4 that it fulfilled the requirements necessary to impose the special condition of  
5 supervised release in question. For that reason, we vacate the condition and  
6 remand for the limited purpose of permitting the district court to further explain  
7 its reasoning or develop the record as needed.

8  
9 VACATED IN PART AND REMANDED.

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12 \_\_\_\_\_  
13 James P. Egan, Assistant Federal Public Defender,  
14 Federal Public Defender’s Office, Northern District of  
15 New York, Syracuse, NY, *for Defendant-Appellant*.

16 Emmet O’Hanlon, Assistant United States Attorney *for*  
17 Carla B. Freedman, United States Attorney for the  
18 Northern District of New York, Albany, NY, *for Appellee*.

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21 \_\_\_\_\_  
22 MYRNA PÉREZ, *Circuit Judge*:

23 In this appeal, Defendant-Appellant Dewey K. Sims challenges the district  
court’s imposition of a “special condition”<sup>1</sup> of supervised release prohibiting him

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<sup>1</sup> In this decision, we use the term “special conditions” to refer to the discretionary conditions imposed by sentencing courts that are not specifically required or recommended in 18 U.S.C. § 3583 (concerning the imposition of a term of supervised release after imprisonment) or the United States Sentencing Guidelines (the “Guidelines”). While the Guidelines technically describe a category of “recommended” conditions as “special” because their appropriateness is contingent on whether certain circumstances are present, we consider those recommended conditions to be “as necessary to the administration of supervised release as the standard conditions,” which “are presumed suitable in all cases.” *United States v. Thomas*, 299 F.3d 150, 153–54 (2d Cir. 2002) (quoting *United States v. Asuncion-Pimental*, 290 F.3d 91, 94 (2d Cir. 2002)); *see also Asuncion-Pimental*, 290 F.3d at 94 (“[T]he suitability of the conditions provided in § 5D1.3(d) may be contingent on the presence of specific factors in each case. Where these factors

1 from “associat[ing] with any member, associate, or prospect” of any “criminal  
2 gang, club, or organization.” Appellant’s App’x (“App’x”) at 92.

3 When imposing a sentence that includes a term of supervised release,  
4 sentencing courts are given broad discretion to attach “special conditions,” which  
5 constrain the defendant’s behavior. But the court’s authority to impose such  
6 conditions is not boundless. One limitation is that the sentencing court’s  
7 explanation of its decision to impose the special condition must be supported by  
8 the record. In this case, the sentencing court’s reason for imposing the special  
9 condition was neither adequately explained nor supported by the record, and  
10 therefore we vacate the condition and remand the case for further proceedings.

## 11 DISCUSSION

12 After a criminal defendant is found guilty of an offense, the court must turn  
13 to the important task of determining an appropriate sentence. Courts impose  
14 terms of supervised release in nearly every federal sentence, despite being  
15 required to do so only in certain limited circumstances. *See* U.S. Sent’g Comm’n,

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are present, however, these ‘special’ conditions are no different in practical terms from ‘standard’ conditions, that is, they are generally recommended.”). We note that the Guidelines also describe a set of “additional” special conditions, such as conditions requiring a defendant to reside in a community treatment center or be subject to an evening curfew, but those serve as specific examples of conditions that “may be appropriate on a case-by-case basis.” U.S.S.G. § 5D1.3(e).

1 *Federal Offenders Sentenced to Supervised Release* 52 (2010) (finding that from 2005 to  
2 2009, courts imposed terms of supervised release in 99.1% of cases where they  
3 were not statutorily mandated, with the terms averaging 35 months); *see also* 18  
4 U.S.C. § 3583(a) (providing that a sentencing court “shall” impose terms of  
5 supervised release if “required by statute or if the defendant has been convicted  
6 for the first time of a domestic violence crime,” but otherwise “may” impose such  
7 terms for felonies or misdemeanors).

8         When a court imposes a term of supervised release, it also determines what  
9 conditions or restrictions are appropriate for that defendant. Courts are given  
10 broad latitude to design their own “special conditions,” so long as the courts,  
11 among other things, consider the goals of sentencing, including the need for the  
12 sentence to provide adequate deterrence, protect the public, and provide the  
13 defendant with needed services. *See* 18 U.S.C. § 3583(c); U.S.S.G. § 5D1.3(b).  
14 Sentencing is a heavy task, and courts are asked to carefully balance the goals of  
15 supervised release while remaining mindful of the life-altering effects their  
16 judgments have on defendants, their families, and their communities.

17         Here, the district court imposed two conditions of supervised release that  
18 limited Sims’s ability to associate with certain groups. The first is a standard

1 condition listed under U.S.S.G. § 5D1.3(c), which presumptively applies to all  
2 terms of supervised release. It directs that Sims not “communicate or interact with  
3 someone the defendant knows is engaged in criminal activity” and further that  
4 “[i]f the defendant knows someone has been convicted of a felony, the defendant  
5 shall not knowingly communicate or interact with that person without first getting  
6 the permission of the probation officer” (the “Standard Non-Association  
7 Condition”). *See* U.S.S.G. § 5D1.3(c)(8); *see also* App’x at 91.

8         The second condition prohibits Sims from “associat[ing] with any member,  
9 associate, or prospect of the Jungle Junkies, or any other criminal gang, club, or  
10 organization” (the “Special Non-Association Condition”). App’x at 92. In this  
11 case, we primarily review the court’s imposition of the Special Non-Association  
12 Condition.

### 13     **I. Factual Background<sup>2</sup>**

14         This sentencing appeal arises from Sims’s guilty plea for possession of a  
15 firearm as an individual previously convicted of a felony, in violation of 18 U.S.C.  
16 § 922(g). Sims was stopped by law enforcement for a speeding violation and  
17 patted down. During that interaction, Sims conceded that he had a gun, and the

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<sup>2</sup> The facts are primarily taken from the Presentence Investigation Report, adopted by the district court as its findings of fact.

1 officers recovered a semi-automatic pistol from him. Upon running a criminal  
2 history check, they discovered that Sims had a prior felony conviction, which  
3 meant that he was prohibited from possessing firearms under 18 U.S.C. § 922(g).

#### 4 **A. The Presentence Report and Parties' Submissions**

5 Sims entered a guilty plea, and the United States Probation Office prepared  
6 a Presentence Investigation Report ("PSR") for sentencing. As relevant here, the  
7 PSR noted that the National Crime Information Center ("NCIC") records  
8 identified Sims as a member of the Jungle Junkies criminal gang, which Sims has  
9 consistently denied. Sims's criminal history does not contain any charges or  
10 convictions of gang-related activity. The PSR noted that thirty-one Jungle Junkies  
11 gang members were charged and convicted in a separate Racketeer Influenced and  
12 Corrupt Organizations Act ("RICO") conspiracy, but that Sims was not one of  
13 those individuals.

14 The PSR also mentioned Sims's tattoos—including a sleeve displaying the  
15 names of Sims's friends who passed away during his childhood—and that reports  
16 in the RICO conspiracy case had identified some of those individuals as Jungle  
17 Junkies members. During his presentencing interview, Sims informed the  
18 Probation Office that he had grown up with the individuals on his sleeve but

1 contended that he “was friends with them long before they were ever charged” as  
2 Jungle Junkies in the RICO case.

3 The Probation Office recommended a sentence that included a term of  
4 supervised release and three special conditions, including the Special Non-  
5 Association Condition. In his sentencing submission to the court, Sims objected to  
6 the proposed Special Non-Association Condition and the portions of the report  
7 describing him as having any gang affiliation. Sims further argued that the  
8 Standard Non-Association Condition, prohibiting him from communicating or  
9 interacting with individuals involved in criminal conduct or with known felons,  
10 would achieve the same sentencing goals as the recommended Special Non-  
11 Association Condition. Therefore, Sims contended that the proposed Special Non-  
12 Association Condition was more restrictive than necessary.

### 13 **B. The Sentencing Hearing**

14 At the beginning of the sentencing hearing, the district court adopted the  
15 factual information in the PSR, without explanation or specifically addressing  
16 Sims’s objections. After doing so, it asked whether Sims had any ongoing  
17 objections to the facts in the PSR, to which Sims’s attorney responded: “No, your

1 Honor. Just the objections noted in the sentencing memo concerning the  
2 recommended conditions of supervision . . . .” App’x at 70.

3           When it was time for Sims to be heard, his attorney argued that: (1) the  
4 Special Non-Association Condition was unrelated to the factors under 18 U.S.C.  
5 § 3553(a), as the offense conduct did not show that Sims was connected to any  
6 gang members; (2) any loose connection to former gang members described in the  
7 PSR only established that, while Sims had grown up and was friendly with those  
8 individuals, he was never a member of a gang nor ever charged with a gang-  
9 related crime; and (3) the condition would be overly restrictive. Sims’s counsel  
10 reiterated that many of the people appearing on Sims’s tattoos were deceased, and  
11 that the Standard Non-Association Condition would “more than be suitable” for  
12 the purposes of sentencing. App’x at 74. In addition, Sims requested that the court  
13 recommend placement at a Bureau of Prisons facility near family in Pennsylvania  
14 so that he could “try and start over and start fresh.” *Id.* at 75.

15           The court sentenced Sims to 33 months’ imprisonment to be followed by  
16 three years of supervised release. The court granted Sims’s placement request and  
17 recommended that he be placed in a facility as close to Pennsylvania as possible.



1           As to the term of supervised release, the court imposed fifteen “standard”  
2 conditions,<sup>3</sup> one of which was the Standard Non-Association Condition, and the  
3 special conditions recommended by the Probation Office in the PSR, including the  
4 Special Non-Association Condition that is at issue.

5           The court turned to a discussion of the special conditions, stating that it  
6 found them:

7                   necessary and justified based upon the nature of the instant  
8 offense as well as your history and characteristics as the  
9 defendant as outlined in detail in the presentence report and to  
10 promote rehabilitation of the defendant.

11  
12                   It is noted that the special conditions were previously  
13 disclosed to the parties and are included in the presentence  
14 report. And this afternoon I have heard arguments both for the  
15 special conditions and against the special conditions.

16  
17                   . . . .

18  
19                   As far as the condition that the defendant not associate  
20 with any gang members, I know what I know from reading the  
21 presentence investigation report, which does indicate,  
22 according to the National Crime Information Center, that this  
23 defendant has had some gang affiliation.

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<sup>3</sup> During sentencing, the district court stated that it was imposing fifteen “standard” conditions. We note that U.S.S.G. § 5D1.3(c) lists thirteen standard conditions. Upon review, it appears that two of the “standard” conditions imposed by the district court fell under the set of conditions provided under U.S.S.G. § 5D1.3(d), which “are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases.” U.S.S.G. § 5D1.3(d).

1           You know, if most of the gang members have passed  
2 away or if indeed it's true that Mr. Sims was not associated with  
3 the gang, this will be an easy condition for him to follow, I  
4 would think. But, again, I'm going to err on the side of caution  
5 because I think it will promote his rehabilitation if indeed he  
6 has participated in gang activity . . . .  
7

8 App'x at 81–82. This timely appeal followed.

## 9    **II. Analysis**

10           On appeal, Sims challenges the Special Non-Association Condition on two  
11 grounds: (1) the record fails to indicate that the condition is reasonably related to  
12 the purposes of supervised release and constitutes a greater infringement on  
13 Sims's liberty than is necessary; and (2) the condition was impermissibly vague.  
14 We vacate and remand the Special Non-Association Condition based on the first  
15 argument. Accordingly, we need not reach the second.

### 16    **A. Standard of Review**

17           We review special conditions of supervised release for both procedural and  
18 substantive reasonableness. *United States v. Eaglin*, 913 F.3d 88, 94 (2d Cir. 2019).  
19 Sims challenges the procedural reasonableness of his sentence, and because he  
20 preserved his objection in the district court, we review for abuse of discretion. *See*  
21 *United States v. Betts*, 886 F.3d 198, 201 (2d Cir. 2018).

1           As with our review of other aspects of a sentence, “[t]he procedural inquiry  
2 looks to whether the sentencing judge has properly accounted for the factors that  
3 constrain its sentencing discretion; substantive reasonableness examines whether,  
4 after accounting for those constraints, the district court’s exercise of its discretion  
5 can be ‘located within the range of permissible decisions.’” *United States v. Kunz*,  
6 68 F.4th 748, 759 (2d Cir. 2023) (quoting *United States v. Matta*, 777 F.3d 116, 124  
7 (2d Cir. 2015)).

## 8           **B. Applicable Law**

9           When deciding whether a term of supervised release is appropriate—and if  
10 so, the length of the term and the conditions that should apply—the court is  
11 directed to consider certain factors listed in 18 U.S.C. § 3553(a). Those factors  
12 include: “the nature and circumstances of the offense and the history and  
13 characteristics of the defendant,” as well as “the need . . . to afford adequate  
14 deterrence to criminal conduct,” “to protect the public from further crimes of the  
15 defendant,” and “to provide the defendant with needed educational or vocational  
16 training, medical care, or other correctional treatment in the most effective  
17 manner.” 18 U.S.C. § 3553(a); *see also* 18 U.S.C. § 3583(c) (directing courts to  
18 consider some, but not all, of the § 3553(a) factors when imposing terms of

1 supervised release). As part of that assessment, the Sentencing Guidelines  
2 specifically advise courts to consider the defendant’s criminal history and any  
3 abuse of controlled substances or alcohol, and it notes that a term of supervised  
4 release is recommended in such cases. *See* 18 U.S.C. § 3583(d); U.S.S.G. § 5D1.1  
5 cmt. 3.

6 If the court decides a term of supervised release is appropriate, it must also  
7 determine what conditions should apply. 18 U.S.C. § 3583(c); *United States v.*  
8 *Truscello*, 168 F.3d 61, 62 (2d Cir. 1999) (“Implicit in the very nature of supervised  
9 release is that certain conditions are necessary to effect its purpose.”). The court is  
10 given “wide latitude” to impose “special conditions,” or any conditions it deems  
11 appropriate. *United States v. MacMillen*, 544 F.3d 71, 74 (2d Cir. 2008). While courts  
12 have considerable discretion to impose special conditions as they see fit, that  
13 discretion is not unlimited. The limits, shaped in large part by 18 U.S.C. § 3583(d)  
14 and the Sentencing Guidelines, U.S.S.G. § 5D1.3(b), are vital for safeguarding the  
15 rights of criminal defendants and have been explained to varying degrees by our  
16 precedent.

17 We highlight in greater detail below certain of the requirements a court must  
18 satisfy when imposing special conditions of supervised release.

1                   **1. The court must conduct an individualized assessment and**  
2                   **find that the special condition is reasonably related to the**  
3                   **sentencing factors.**

4           Our precedent makes clear that for the imposition of special conditions of  
5 supervised release to be procedurally reasonable, “a District Court must ‘make an  
6 individualized assessment when determining whether to impose a special  
7 condition of supervised release, and . . . state on the record the reason for imposing  
8 it,’” and “[a]ny explanation provided by the District Court must be adequately  
9 supported by the record.” *Eaglin*, 913 F.3d at 94 (quoting *Betts*, 886 F.3d at 202).

10           In other words, the court is required to make findings specific to the  
11 defendant, connecting those findings to the applicable § 3553(a) factors that would  
12 justify including the special condition in this case.<sup>4</sup> *See United States v. Salazar*,  
13 No. 22-1385-cr, 2023 WL 4363247, at \*3 (2d Cir. July 6, 2023) (vacating judgment  
14 where district court “did not make individualized findings about the nexus

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<sup>4</sup> The need for an individualized assessment may be particularly useful for certain cases involving non-association conditions, given that commentators have expressed concerns with the structural limitations on databases that track gang membership, citing the lack of transparency as to how they are maintained, the lasting effects of misclassification, particularly on communities of color, and the lack of opportunity to challenge misclassification. *See generally* K. Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*, 23 St. Thomas L. Rev. 620 (2011). Some studies indicate that databases may be overinclusive because the criteria for being added to the database may target entirely innocuous behavior. *Id.*; *see also* Beth Caldwell, *Criminalizing Day-to-Day Life: A Socio-Legal Critique of Gang Injunctions*, 37 Am. J. Crim. L. 241 (2010).

1 between the breadth of the condition, on the one hand, and [the defendant’s]  
2 characteristics and offense conduct, on the other”); *United States v. Barden*, No. 22-  
3 492, 2023 WL 3487771, at \*2 (2d Cir. May 17, 2023) (“[T]he district court was . . .  
4 required to assess [the defendant]’s individual circumstances and to explain its  
5 reasons for imposing [a special condition] . . . .”); *United States v. Corsey*, 723 F.3d  
6 366, 377 (2d Cir. 2013) (per curiam), *as corrected* (July 24, 2013) (requiring the court  
7 to make individualized determinations for co-defendants and directing it to “come  
8 to an independent determination of the appropriate punishment for each  
9 defendant” on the record); *United States v. Bell*, 915 F.3d 574, 577–78 (8th Cir. 2019)  
10 (finding that court abused its discretion in imposing special conditions based on  
11 its “general experience with prior offenders” and without conducting  
12 individualized inquiry); *United States v. Azcona-Polanco*, 865 F.3d 148, 153 (3d Cir.  
13 2017) (“[A] district court must ‘explain and justify’ the imposition of supervised  
14 release . . . .” (quoting *United States v. Murray*, 692 F.3d 273, 281 (3d Cir. 2012))).

15 “There must be a reasonable relationship between the factors considered by  
16 the district court in the individualized assessment and the special condition of  
17 release being challenged.” *United States v. Haverkamp*, 958 F.3d 145, 151 (2d Cir.  
18 2020) (citation omitted); *see* 18 U.S.C. § 3583(d)(1) (listing § 3553(a) factors for

1 consideration); *see also* 18 U.S.C. § 3583(c) (same); U.S.S.G. § 5D1.3(b)(1) (same). A  
2 special condition need not reasonably relate specifically to any particular § 3553(a)  
3 factor, including the offense conduct, so long as there is a sufficient relationship  
4 between the special condition and at least one of the other factors. *See United States*  
5 *v. McLaurin*, 731 F.3d 258, 262 (2d Cir. 2013).

6 **2. The court must explain its reasoning, which must be**  
7 **supported by the record.**

8 The court’s individualized assessment, and its explanation for imposing the  
9 special condition following that assessment, “must be adequately supported by  
10 the record.” *Eaglin*, 913 F.3d at 94. If the court fails to provide an explanation, we  
11 may uphold the special condition only if the court’s reasoning is “self-evident in  
12 the record.” *Betts*, 886 F.3d at 202 (quoting *United States v. Balon*, 384 F.3d 38, 41  
13 n.1 (2d Cir. 2004)).<sup>5</sup>

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<sup>5</sup> Some articles suggest that providing defendants with an explanation of their sentence may be particularly important with regard to special conditions of supervised release, which can have a significant impact on day-to-day life. As commentators have discussed in connection with non-association conditions and gang injunctions specifically, such restrictions may leave releasees isolated from their communities at a time when they most need support or make it difficult for the releasee to avoid violating supervised release and returning to prison, thereby increasing recidivism and stalling rehabilitation and reintegration. *See generally* James M. Binnall, *Divided We Fall: Parole Supervision Conditions Prohibiting “Inter-Offender” Associations*, 22 U. Pa. J.L. & Soc. Change 25 (2019) (discussing pro-social benefits of inter-offender associations).

1                   **3. The condition must not impose a greater deprivation of**  
2                   **liberty than reasonably necessary to accomplish sentencing**  
3                   **objectives.**

4           The court must also consider how a special condition will impact any  
5   cognizable liberty interests in light of any sentencing objectives. 18 U.S.C.  
6   § 3583(d)(2). Courts must first identify the cognizable liberty interest affected,  
7   then “consider the sentencing goal to which the condition relates, and whether the  
8   record establishes its reasonableness.” *United States v. Myers*, 426 F.3d 117, 126 (2d  
9   Cir. 2005). Courts “must then consider whether [the condition] represents a  
10   greater deprivation of liberty than is necessary to achieve that goal,” or whether  
11   “the deprivation is narrowly tailored to serve a compelling government interest.”  
12   *Id.* The imposition of a special condition affecting a cognizable liberty interest  
13   must be “supported by particularized findings that it does not constitute a greater  
14   deprivation of liberty than reasonably necessary to accomplish the goals of  
15   sentencing.” *Matta*, 777 F.3d at 123 (quoting *United States v. Mike*, 632 F.3d 686,  
16   695–96 (10th Cir. 2011)).

17                   **4. The condition must be consistent with any pertinent policy**  
18                   **statements issued by the Sentencing Commission.**

19           In addition, courts are required to consider the Sentencing Commission’s  
20   policy statements on, among other things, the appropriate use of conditions of



1 supervised release. 18 U.S.C. § 3583(d)(3); *see also* 28 U.S.C. § 994(a)(2)(B). The  
2 policy statements are set forth in U.S.S.G. § 5D1.3 and include the Sentencing  
3 Commission’s recommendations on certain conditions, such as the standard  
4 conditions, and when they should be imposed.

5 **5. The court must orally pronounce the condition in open court.**

6 Under Federal Rule of Criminal Procedure 43(a)(3), “the defendant must be  
7 present at . . . sentencing.” With regard to the imposition of terms of supervised  
8 release, we have interpreted Rule 43(a)(3) to require that the sentencing court  
9 orally pronounce special conditions in open court, and when there is a conflict  
10 between the court’s unambiguous oral pronouncement of a special condition and  
11 the written judgment, the oral pronouncement controls. *See Thomas*, 299 F.3d at  
12 152–53.

13 **6. The condition must be sufficiently clear.**

14 “[A] defendant has a due process right to conditions of supervised release  
15 that are sufficiently clear to inform him of what conduct is prohibited so that he  
16 may act accordingly.” *United States v. Carlineo*, 998 F.3d 533, 536 (2d Cir. 2021).  
17 The condition must give the defendant “notice as to what conduct could trigger a  
18 charge of violating the condition,” including “what he must do, [and] for how

1 long, to ensure he will not be re-incarcerated.” *Id.* at 537 (citation omitted).<sup>6</sup> “A  
2 condition is too vague if it requires a reasonable person to speculate as to its  
3 meaning.” *Id.* at 536 (citation omitted). However, “[c]onditions need not be cast  
4 in letters six feet high, or describe every possible permutation, or spell out every  
5 last, self-evident detail.” *United States v. Reeves*, 591 F.3d 77, 81 (2d Cir. 2010)  
6 (ellipses omitted) (quoting *Johnson*, 446 F.3d at 280).

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<sup>6</sup> Although we need not reach Sims’s arguments as to this point, we note that prior panels have rejected vagueness and overbreadth challenges to non-association conditions like the one here. We previously have assumed a mens rea requirement and “constitutionally required limitations on the breadth of ‘association,’” such “that the prohibition only limits association with [criminal enterprise members] *known to*” the defendant. *United States v. Green*, 618 F.3d 120, 123 (2d Cir. 2010) (citation omitted); *see also United States v. Floyd*, 840 F. App’x 625, 628 (2d Cir. 2021) (rejecting overbreadth challenge to non-association condition on the assumption that “the condition only limits [defendant’s] association with gang members known to him and excludes ‘incidental contacts’”). “Generally, supervised release provisions are read to exclude inadvertent violations.” *United States v. Johnson*, 446 F.3d 272, 281 (2d Cir. 2006).

1                   **7. The condition must not result in the court exceeding its**  
2                   **ability to delegate decision-making authority to Probation.**

3           While a district court may delegate to the Probation Office decision-making  
4 authority over the details of supervised release, it may not delegate the authority  
5 to make choices as to the extent of a special condition because such delegation  
6 makes “a defendant’s liberty contingent on a probation officer’s exercise of open-  
7 ended discretion.” *Carlineo*, 998 F.3d at 538. “In other words, the Probation Office  
8 may supervise and execute a sentence but may not fashion a sentence’s terms.” *Id.*

9           **C. Application**

10           We focus our discussion on the requirement that the court must conduct an  
11 individualized assessment as to whether the special condition is reasonably  
12 related to the applicable § 3553(a) sentencing factors and must state on the record  
13 the reason for imposing it. *See Betts*, 886 F.3d at 202. Of course, when the court’s  
14 explanation for imposing the special condition is lacking, we may uphold it only  
15 if the court’s reasoning is “self-evident” from the record. *Id.* This guiding  
16 principle assumes heightened import in situations such as the one we have here,  
17 where the condition being imposed impacts the defendant’s liberty interest  
18 significantly.

1           The special condition central to this case falls within a particular  
2 subcategory of non-mandatory conditions of supervised release which we refer to  
3 as “non-association” conditions. Non-association conditions order the defendant  
4 to “refrain from frequenting specified kinds of places or from associating  
5 unnecessarily with specified persons.” 18 U.S.C. § 3563(b)(6); *see* 18 U.S.C.  
6 § 3583(d) (authorizing sentencing court to impose discretionary conditions of  
7 probation listed under 18 U.S.C. § 3563(b) as conditions of supervised release, so  
8 long as the conditions: are reasonably related to the factors listed under  
9 § 3553(a)(1), (a)(2)(B)–(D); involve no greater deprivation of liberty than is  
10 reasonably necessary for the purposes listed under § 3553(a)(2)(B)–(D); and are  
11 “consistent with any pertinent policy statements issued by the Sentencing  
12 Commission pursuant to 28 U.S.C. 994(a”).

13           During the sentencing hearing, the court stated that it was imposing all three  
14 of the special conditions suggested by the Probation Office based on Sims’s  
15 offense, his history and characteristics as described in the PSR, and the promotion  
16 of rehabilitation. And as mentioned previously, one such special condition was a  
17 non-association condition—the Special Non-Association Condition.  
18 Acknowledging that the Special Non-Association Condition need only be related

1 to one of the sentencing factors, *see McLaurin*, 731 F.3d at 262, we review each of  
2 these factors below.

### 3 **1. The Nature and Circumstances of the Offense**

4 First, turning to the nature and circumstances of the offense, 18 U.S.C.  
5 § 3553(a)(1), the court’s reliance on this factor to justify the Special Non-  
6 Association Condition is not supported by the record. Nothing in the record  
7 indicates that the offense was in any way related to the Jungle Junkies or any other  
8 gang, or that any association with a gang contributed to Sims’s prior criminal  
9 behavior.

10 In that way, this case is unlike many of our other non-association cases,  
11 where the record established that the prohibited association had some relationship  
12 to the crime of conviction. *See, e.g., United States v. Bolin*, 976 F.3d 202, 210–13 (2d  
13 Cir. 2020) (collecting cases).

14 For example, in *Bolin*, the defendant pled guilty to making false statements  
15 to the FBI Joint Terrorism Task Force during an investigation into threatening  
16 content that he had posted on social media. *Id.* at 211–13. The defendant’s social  
17 media posts had explicitly endorsed white supremacist violence against Jews,  
18 Muslims, and African Americans. *Id.* Thus, as a condition of supervised release,

1 the defendant was prohibited from participating in certain internet communities  
2 that promoted violence or crime or that were maintained by any groups espousing  
3 those ideas. *Id.* In upholding the special condition, we explained that “[t]he  
4 connection between the hate speech which led to the crime and the crime itself was  
5 . . . substantial” and that the “interests of rehabilitation and public safety would  
6 be served by ‘separating’ Bolin from racist, anti-Semitic, anti-Muslim, and other  
7 threatening communications.” *Id.* at 212–13.

8         Likewise, in a non-precedential case, *United States v. Rakhmatov*, we upheld  
9 a special condition that prohibited the defendant from associating with or  
10 accessing websites affiliated with criminal or terrorist organizations, explaining  
11 that its purpose was “self-evident,” given the underlying offense of providing  
12 material support to a foreign terrorist organization. Nos. 21-151(L), 21-167(Con),  
13 2022 WL 16984536, at \*3 (2d Cir. Nov. 17, 2022) (citing *Betts*, 886 F.3d at 202); *see*  
14 *also United States v. Schiff*, 876 F.2d 272, 276 (2d Cir. 1989) (“It is not an abuse of  
15 discretion for a district court to require that a person convicted of attempted tax  
16 evasion not associate with people who encourage tax evasion. We have upheld  
17 probation conditions that restrict a person’s liberty before, when, as here, those  
18 conditions bear a reasonable relation to the crime of which the defendant stands

1 convicted.”). In this case, however, there is no nexus between the underlying  
2 offense and the Special Non-Association Condition.

## 3 **2. The History and Characteristics of the Defendant**

4 Next, turning to Sims’s history and characteristics, 18 U.S.C. § 3553(a)(1), we  
5 find the district court’s comments during the sentencing hearing justifying the  
6 Special Non-Association Condition to be similarly unsupported by the record.

7 Sims has never been charged with or convicted of a crime related to, or on  
8 behalf of, the Jungle Junkies or any other gang, gang member, or associate.

9 Though the district court referred to Sims’s presence in the NCIC database, it  
10 noted it was imposing the Special Non-Association Condition, even “if most of the  
11 gang members have passed away or if indeed it’s true that Mr. Sims was not  
12 associated with the gang.” App’x at 82. It justified imposing the Special Non-  
13 Association Condition in any event by explaining that it “will be an easy  
14 condition” for Sims to follow. *Id.* But that explanation casts doubt on whether the  
15 Special Non-Association Condition should be imposed in this case. As we have  
16 discussed, we may only uphold a special condition unexplained by the district  
17 court if the court’s justification for imposing the condition is “self-evident in the  
18 record.” *Betts*, 886 F.3d at 202. If Sims indeed had no association to a gang, as he

1 contends and as posited by the district court, it is neither apparent nor self-evident  
2 how his history and characteristics would be reasonably related enough to support  
3 imposing the Special Non-Association Condition.

4         The reasonableness of the Special Non-Association Condition in connection  
5 with Sims's particular history and characteristics is even less clear given that Sims  
6 had already requested (and the court granted) placement out of state, well away  
7 from any members of the Jungle Junkies with whom he might be acquainted.  
8 Further, the court imposed, and Sims had no objection to, the Standard Non-  
9 Association Condition, which prohibited Sims from communicating or interacting  
10 with individuals engaged in criminal activity or with known felons. Nonetheless,  
11 the court did not acknowledge Sims's argument that the Standard Non-  
12 Association Condition would achieve the same effect.

13         Of course, there will be times when a sentencing court's decision to impose  
14 both the Standard Non-Association Condition and a condition like the Special  
15 Non-Association Condition here is appropriate, given a defendant's history and  
16 characteristics. In this case, however, it was not. Most notably, we have often  
17 upheld the imposition of both conditions when the defendant admitted and/or did  
18 not contest his relationship to the prohibited group.



1           Three recent non-precedential decisions where we upheld a special  
2 condition similar to the one at issue here illustrate how critical the defendant's  
3 history and circumstances are to assessing the appropriateness of the special  
4 condition. For example, in *United States v. Floyd*, we upheld a special condition  
5 prohibiting the defendant from frequenting any place where criminal gangs may  
6 meet pursuant to a non-exclusive prohibition list provided by the probation  
7 department. See 840 F. App'x at 628, *aff'g* No. 15-CR-0287-12(WFK), 2018 WL  
8 3918166, at \*3 (E.D.N.Y. Aug. 14, 2018). In that case, the district court relied on,  
9 among other things, the undisputed fact of the defendant's history of being  
10 affiliated with multiple gangs. 2018 WL 3918166, at \*3. In *LoFranco v. United States*  
11 *Parole Commission*, we affirmed a condition prohibiting the defendant from  
12 associating with chapters of the Hell's Angels Motorcycle Club, of which he and  
13 his co-conspirators were members and in which he held a high-ranking leadership  
14 position. 175 F.3d 1008 (2d Cir. 1999) (unpublished), *aff'g* 986 F. Supp. 796, 804–08  
15 (S.D.N.Y. 1997).

16           In *United States v. Marshall*, we upheld a special condition identical to the  
17 one imposed on Sims. 808 F. App'x 11, 14 (2d Cir. 2020). But in that case, the  
18 defendant admitted gang membership in an interview with the FBI, then later

1 denied it. *Id.* Thus, in that context, we cited with approval the Ninth Circuit’s  
2 view that “[a] condition barring contact with an organization may be substantively  
3 reasonable even if the defendant denies membership.” *Id.* (alteration in original)  
4 (quoting *United States v. Evans*, 883 F.3d 1154, 1161 (9th Cir. 2018)).

5 In this case, however, Sims has consistently denied any affiliation with the  
6 Jungle Junkies or any other criminal gang, and the PSR provides nothing but a  
7 conclusory statement classifying him as a gang member. In fact, Sims’s affiliation  
8 with the Jungle Junkies was so unestablished that even the district court  
9 acknowledged that Sims may not have been affiliated with the Jungle Junkies at  
10 all. Given the doubt surrounding Sims’s affiliation with the Jungle Junkies,  
11 clarification from the district court as to why the condition is warranted in this  
12 particular case is necessary.

13 **3. The Need for the Sentence to Deter Criminal Conduct, Protect**  
14 **the Public, and Provide the Defendant with Rehabilitative**  
15 **Treatment**

16 Turning to the sentencing goals listed under § 3553(a)(2), the court stated  
17 that it was erring on the side of caution by imposing the Special Non-Association  
18 Condition to promote Sims’s rehabilitation. As an initial matter, we have  
19 suggested that the mere reference to a sentencing goal may not be sufficient to

1 justify imposing the special condition. *See Eaglin*, 913 F.3d at 95 (“The District  
2 Court’s general reference to the conditions as being necessary to protect the  
3 community does not suffice, even on the background of [the defendant’s] repeated  
4 infractions of [prior] terms of supervised release.”).

5 Further, the court provided little explanation for why imposition of the  
6 Special Non-Association Condition was reasonably related to the goal of  
7 rehabilitation in this case. The record says nothing about a history of gang-related  
8 crimes, nor does it suggest a likelihood that Sims would commit gang-related  
9 crimes in the future, and the court acknowledged that Sims may indeed have no  
10 association to any gangs or living gang members.

11 If the goal is to, as a general matter, deter criminal conduct and prevent  
12 recidivism by prohibiting interactions with those involved in criminal behavior,  
13 the same is true of every case. Indeed, that goal is addressed and furthered by a  
14 Standard Non-Association Condition, which is usually already included in a  
15 defendant’s term of supervised release. *See Betts*, 886 F.3d at 203 (vacating a special  
16 condition prohibiting all alcohol use and noting, among other things, that “[g]iven  
17 the factual record below,” the standard condition prohibiting “excessive use” was  
18 “sufficient to further the objectives of sentencing”); *see also United States v. Reed*,

1 421 F. App'x 113, 116 (2d Cir. 2011) (vacating special condition and remanding,  
2 with the direction that “[i]n determining whether special conditions are indeed  
3 necessary, we specifically direct the court to consider whether ‘standard’ condition  
4 U.S.S.G. § 5D1.3(c)(7), also imposed by the court’s judgment, adequately addresses  
5 the court’s alcohol and substance abuse concerns given the record in this case”).

### 6 **III. Conclusion**

7 There may be good reasons for imposing the Special Non-Association  
8 Condition. But because we have determined that the reasonableness of imposing  
9 the Special Non-Association Condition is not self-evident from this record as it  
10 stands, vacating the Special Non-Association Condition and remanding is  
11 appropriate so that the district court may provide the necessary justification or  
12 further develop the record to support the imposition of the special condition.<sup>7</sup>

13 We have considered all of the parties’ remaining arguments on appeal and  
14 have found them to be without merit. The judgment of the district court is  
15 **VACATED IN PART** with respect to the Special Non-Association Condition, and  
16 the case is **REMANDED** for further proceedings consistent with this opinion.

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<sup>7</sup> Because we vacate the Special Non-Association Condition on this basis, we do not discuss whether the court’s imposition of the special condition was otherwise sufficient.