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BY: ELISA HERRERA /s/
DEPUTY
Case No. CR20251454
HON. D. DOUGLAS METCALF

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IN THE PIMA COUNTY SUPERIOR COURT,
FOR THE STATE OF ARIZONA

State of Arizona,

Plaintiff,

v.

Lane Myers,

Defendant.

Case No. CR20251454-001

Honorable Brendan Griffin

MOTION TO MODIFY CONDITIONS OF PROBATION

MOTION TO MODIFY CONDITIONS

Myers moves this court pursuant to Arizona Rules of Criminal Procedure 27.3 (b) to modify his special conditions of probation put in place July 1st, 2025 by Judge Metcalf.

<u>**INTRODUCTION**</u>

Myers was sentenced to Probation for 3 years on July 1st, 2025 in Pima County Superior Court. Judge Metcalf issued his order for the "special conditions" of probation. That included the conditions listed in Exhibit 1(Exh.1). Myers has been on probation ever since following those conditions as they are being applied by the Probation Department. Myers wants to clear that this Motion does not arise out of a conflict with the Probation Department. The Probation Department has been nothing but professional, respectful, and very communicative. Whether Myers agrees with the conditions or not, he is aware that the Probation Department is not the one responsible for ordering the conditions.

This is not about looking back at what has taken place since sentencing, this is about setting up a clear framework moving forward that is clearly defined for Myers, this Court, and the Probation Department. Myers has taken his time to research what conditions the court may impose while following the required legal precedents. Myers now moves forward with this Motion to Modify/Clarify Conditions of Probation so his conditions can be modified in accordance with the court's duty in protecting the alleged victim, while maintaining his legal rights free from the threat of prosecution.

ARGUMENT-

Myers moves this court pursuant to Arizona Rules of Criminal Procedure 27.3 (b) to modify his special conditions of probation put in place July 1st, 2025 by Judge Metcalf. As instructed in the language of AzRuleCrimPr 27.3(b)(1), any modification of probation must comply with case law and statutes, due process, and statutory limitations.

Myers believes that the current conditions are not supported by existing case law and statutes, deprive him of due process, and exceed statutory limitations as they are currently written and enforced. Specifically, Myers argues that the following conditions are unlawful as currently written and enforced….

-Do not engage in activities that would be reasonably expected to cause others to harass or contact the victim or her family

-Remove all videos from YouTube and social media that mention the victims or her family, including identifying information about them

-Do not post information about the victim or her husband and 2 kids on YouTube or social media

-Do not associate with or communicate directly or indirectly Josh Gray or Mark Kelly

This case goes to the core of the First Amendment. The sentencing court imposed restrictions impacting Myers ability to publish statements concerning the professional history and performance of public officials. These statements are classic political speech subject to the highest level of First Amendment protection.

Myers acknowledges that “a probationer is subject to restriction of his constitutional rights to a greater degree than would be permissible outside the criminal-justice system.” State v. Montgomery, 115 Ariz. 583, 584, 566 P.2d 1329, 1330 (1977) (noting that probationers enjoy a reduced expectation of privacy and upholding a probation condition which dictated that the defendant would submit to a warrantless search by police at any time).

“The question is whether there is a reasonable nexus between the conditions imposed and the goals to be achieved by the term of probation.” State v. Davis, 119 Ariz. 140, 142, 579 P.2d 1110, 1112 (App. 1978)(finding such a nexus existed in upholding a condition prohibiting probationer from obtaining custody of her children)

Myers argues there is not a reasonable nexus between these conditions, as written, and the goals to be achieved by probation. These conditions are both vague and overbroad and are not supported by case law. Myers argues these conditions can be modified to find that balancing point and still achieve the desired goals of probation.

Distributing public information to third parties is constitutionally protected. Schneider v. State, 308 U.S. 147 (1939). The distributor of such information may not be held liable. Id. Social Media is protected under the First Amendment. Packingham v. North Carolina, 137 S.Ct. 1730, 1737, 198 L.Ed2d 273 (2017). Prosecution of speech that inspires others to take lawful action is unconstitutional. See Org. for a Better Austin v. Keefe, 415 U.S. 415, 419-420, 91 S.Ct. 1575 (1971). The claim that expressions are intended to cause a coercive impact on respondents does not remove them from the reach of the First Amendment. Id.

These special probation conditions imposed by the sentencing court…..

-Do not engage in activities that would be reasonably expected to cause others to harass or contact the victim or her family

-Remove all videos from YouTube and social media that mention the victims or her family, including identifying information about them

-Do not post information about the victim or her husband and 2 kids on YouTube or social media…….

are unconstitutional because they threaten political and other speech of public concern for no legitimate reason related to deterrence and rehabilitation, not least because they are excessively vague. All of these original conditions are void on their face because they unconstitutionally discriminate based on viewpoint, which the government may not do even when it may restrict the content of speech.

The court cannot avoid these constitutional requirements simply by labeling this as “harassment” and concocting its own blend of harassment elements. The strict requirements that protect criticism of public officials apply to any case, regardless of the legal theory used to punish speech. Apart from these constitutional questions, to import the complexity of constitutional law into a revocation and resentencing proceeding would undermine judicial economy and effective supervision by requiring in-depth factual and legal analysis of context-dependent considerations.

The sentencing court abused its discretion by imposing additional overbroad conditions on Myers, such as blanket prohibitions against posting public information about Matt Walker, not allowing Myers to associate with Josh Gray or Mark Kelly, not allowing Myers to speak about his own court case, not allow Myers to criticize public employees because they are married to Shannon Walker, not allow Myers to "mention" or speak "about" Shannon Walker under any circumstances, which far exceed the legitimate interests of deterrence and rehabilitation. This Court should substantially narrow or eliminate the foregoing conditions to comply with the First Amendment of the US Constitution, Article 2, Section 6 of the Arizona Constitution, as well as Rule 3.6 of the Arizona Rules of Professional Conduct related to Trial publicity. (Exh.2)

This Court must carefully review conditions of supervised release "affecting fundamental rights." United States v. Wolf Child, 699 F.3d 1082, 1089 (9th Cir. 2012). Courts have emphasized the importance of avoiding overbroad restrictions on "speech that is protected by the First Amendment." United States v. Gnirke, 775 F.3d 1155, 1158 (9th Cir. 2015); cf. 18 U.S.C. § 3583(d)(2) (condition of release must involve "no greater deprivation of liberty than is reasonably necessary . . ."); United States v. Soltero, 510 F.3d 858, 867 (9th Cir. 2007) (condition limiting association

with “any known member of any . . . disruptive group” was overbroad for abridging right to strike or protest).

Release conditions restricting speech are “classic examples of prior restraints” because they “actually forbid speech activities” before they occur. Alexander v. United States, 509 U.S. 544, 550 (1993). Ordinarily, such prohibitions would be considered “unconstitutional restraint[s] upon publication.” Near v. Minnesota ex rel. Olson, 283 U.S. 697, 723 (1931). In the supervised release context, however, conditions restricting speech may be valid prior restraints only when narrowly tailored and reasonably related to deterrence and rehabilitation. United States v. Turner, 44 F.3d 900, 903 (10th Cir. 1995); United States v. Nu-Triumph, Inc., 500 F.2d 594, 596 (9th Cir. 1974). This Court must ensure that conditions do not impose an “overly broad prior restraint upon speech, lacking plausible justification.” Tory v. Cochran, 544 U.S. 734, 738 (2005).

This Court must closely scrutinize those conditions and their application to prevent them from casting a “pall of fear and timidity” over those under supervision “who would give voice to public criticism . . . .” New York Times Co. v. Sullivan, 376 U.S. 254, 278 (1964). This issue concerns the public just as it does Myers because the freedom of speech “serves significant societal interests wholly apart from the speaker’s interest in self-

expression" and "protects the public's interest in receiving information." Pac. Gas & Elec. Co. v. Pub. Util. Comm'n, 475 U.S. 1, 8 (1986) (quotation marks and citation omitted).

Under the First Amendment, "speech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). Therefore, speech critical of the government is "subject to the highest degree of First Amendment protection." Wolfson v. Concannon, 750 F.3d 1145, 1152 (9th Cir. 2014). That protection extends to "[c]riticism of those responsible for government operations . . . lest criticism of government itself be penalized." Rosenblatt v. Baer, 383 U.S. 75, 85 (1966).

Criticism of police officers and other public officials is often pointed and harsh. But "[t]he sort of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office," which "will not always be reasoned or moderate." Hustler Mag. v. Falwell, 485 U.S. 46, 51 (1988). The First Amendment reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." New York Times, 376 U.S. at 270.

Therefore, "in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." Snyder v. Phelps, 562 U.S. 443, 458 (2011) (quotation marks and citation omitted).

Whatever the sentencing court may have intended, this Court must "review the language of the condition as it is written and cannot assume . . . that it will be interpreted contrary to its plain language." United States v. Aquino, 794 F.3d 1033, 2015 WL 4394869, at *3 (9th Cir. July 20, 2015) (quotation marks and citation omitted).

These conditions chill protected speech by requiring Myers to "guess at its contours." Gentile v. State Bar of Nev., 501 U.S. 1030, 1048 (1991). An individual on supervised release could not be faulted for staying far away from speech that might encroach on vague conditions. Aquino, 2015 WL 4394869, at *3 (individuals "should not be forced to guess whether an overzealous probation officer will attempt to revoke [their] supervised release . . ."). Regardless of assurances the government might make about a vague condition, "we cannot assume that, in its subsequent enforcement, ambiguities will be resolved in favor of adequate protection of First Amendment rights." Doe, 772 F.3d at 579. "[T]he First Amendment protects against the Government; it does not leave us at the mercy of noblesse

oblige," and this Court should "not uphold an unconstitutional [condition] merely because the Government promised to use it responsibly." United States v. Stevens, 559 U.S. 460, 480 (2010).

That is particularly true where, as here, conditions of probation are based on a vague and undefined term. The sentencing court failed to define what "mention" or "about" Shannon Walker, or Matt Walker might be, nor is there any clear definition of that term for Myers to adhere to. The sentencing court's reliance on such a vague term should itself void that condition. See Dambrot v. Cent. Mich. Univ., 55 F.3d 1177, 1184 (6th Cir. 1997) (university code prohibiting "negative" or "offensive" speech was void for vagueness); cf. Cal. Teachers Ass'n v. State Bd. of Educ., 271 F.3d 1141, 1150 (9th Cir. 2001) ("When First Amendment freedoms are at stake, courts apply the vagueness analysis more strictly"). If the condition against speaking "about" or "mentioning" a government employee, public court cases, court documents, or their performance as a government employee is upheld it could easily stifle valuable speech from activists and others under supervision. For instance, in Letter from the Birmingham Jail, Dr. Martin Luther King, Jr. remarked that "[w]e are sadly mistaken if we feel that the election of Albert Boutwell as mayor will bring the millennium to Birmingham. While Mr. Boutwell is a much more gentle person than Mr.

Connor, they are both segregationists, dedicated to maintenance of the status quo." Had Dr. King been subject to the same conditions as Myers, he might have been resentenced for some of his most popular writing. Worse still, he might never have published at all.

Individuals on probation, parole, or supervised release are uniquely qualified to "critically evaluate one's encounter with the criminal justice system; document scandal and corruption in government and business; describe the conditions of prison life; or provide an inside look at the criminal underworld." Keenan v. Superior Ct., 27 Cal. 4th 413, 433 (2002). Because they are "likely to have informed and definite opinions" on those subjects and others, "it is essential that they be able to speak out freely on such questions without fear" of revocation proceedings. Pickering v. Board of Educ., 391 U.S. 563, 572 (1968). Yet these conditions as written, if imposed on others in the future, could deter contributions to public dialogue on issues of importance. Thus, the conditions of probation prohibiting statements or videos that "mention" or speak "about" Shannon or Matt Walker, or "cause others to harass or contact" government employees violates the First Amendment on its face. The Court should strike that condition entirely.

The sentencing court’s conditions are void on their face because they discriminate based on viewpoint by prohibiting criticism, but not praise, of public officials and others. The First Amendment prohibits above all else discrimination based on the viewpoint of speech, especially in the political context. “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819, 829 (1995) (citation omitted); see also Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226 (2015). Even in the limited circumstances where the government may restrict the content of speech, it may not discriminate based on viewpoint. Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 806 (1985).The conditions as imposed prevent Myers from criticizing public officials, but do not prohibit him from praising them. Accordingly, the sentencing court’s order “impermissibly regulates speech on the basis of a speaker’s viewpoint.” Chaker v. Crogan, 428 F.3d 1215, 1228 (9th Cir. 2005). The sentencing court’s ability to impose conditions of supervision does not extend to viewpoint-based conditions, especially when they may encroach on political speech. See Best v. Nurse, No. CV 99-3727 (JBW), 1999 WL 1243055, at *5 (E.D.N.Y. Dec. 16, 1999) (parole officer violated First Amendment if he “acted against [parolee]

because he disapproved of the literature he was distributing”); Sobell v. Reed, 327 F. Supp. 1294, 1304 (S.D.N.Y. 1971) (denying “others the hearing of [parolee’s] views on prison conditions . . . violate[s] the First Amendment”); Hyland v. Procunier, 311 F. Supp. 749, 751 (N.D. Cal. 1970) (state may not prohibit parolees “from addressing lawful public assemblies . . . because of the expected content of the speech”); People v. Warren, 89 A.D.2d 501, 502 (N.Y. App. Div. 1982) (court could not require “a contribution that would advance one side of [the gun control] controversy”).

The same is not true here where conditions restrict pure speech based on viewpoint, not just conduct or limited association rights. Even in the context of probation, the government has no legitimate interest in imposing a viewpoint-based restriction on pure political speech. As a result, the conditions as written are unconstitutional on their face.

The sentencing court could not evade the First Amendment’s restrictions by crudely cobbling together elements of defamation and harassment. Regardless of labels or legal theories, the First Amendment prohibits any punishment for speech criticizing public officials unless the strict requirements for proving defamation are met. See Hustler Mag., 485 U.S. at 56. The government thus “cannot avoid the obstacles involved in a defamation claim” involving a public official “by simply relabeling it as a

claim for intentional infliction of emotional distress" or, here, harassment. Chaiken v. VV Pub. Corp., 119 F.3d 1018, 1034 (2d Cir. 1997).

It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society." Id. at 357 (citation omitted). That principle is especially important for persons convicted of crimes, who may have important messages to convey, but fear identifying their past mistakes. "As with other forms of expression, the ability to speak freely on the Internet promotes the robust exchange of ideas and allows individuals to express themselves freely without 'fear of economic or official retaliation . . . [or] concern about social ostracism.'" In re Anonymous Online Speakers, 661 F.3d 1168, 1173 (9th Cir. 2011) (quoting McIntyre, 514 U.S. at 341-42.) Therefore, the condition against any "mention" or statement "about" Shannon or Matt Walker must be stricken or narrowed to remove improper restrictions on public speech.

-THE DISTRICT COURT IMPOSED OVERBROAD CONDITIONS AGAINST THE POSTING OF ANY INFORMATION ABOUT MATT OR SHANNON WALKER

The conditions imposed on Myers against “posting” or “reveal[ing] any information that is “about” or “mentions” Matt or Shannon Walker or . . . engage in activities that would be reasonably expected to cause others to harass or contact the victim or her family. . . on the internet” are overbroad because they improperly chill protected speech on matters of public concern.. Although conditions might be narrowed to comply with the First Amendment, as written they reach far beyond any legitimate interests in deterrence and rehabilitation.

The mere invocation of “privacy,” without more, does not defeat First Amendment rights. The First Amendment allows liability “for an invasion of privacy only if the matter publicized is of a kind which . . . is not of legitimate concern to the public.” Virgil v. Time, Inc., 527 F.2d 1122, 1129 (9th Cir. 1975) (citation and quotation marks omitted). In addition, the government may not generally punish the publication of “truthful information” once “lawfully obtained.” Florida Star v. B.J.F., 491 U.S. 524, 541 (1989). The condition imposed on Myers against revealing public information must therefore be narrowed to allow disclosure of information that is of legitimate public concern and obtained by Myers through lawful means. See Bartnicki v. Vopper, 532 U.S. 514, 535 (2001).

Similarly, the condition against "do not engage in activities that would be reasonably expected to cause others to harass or contact the victim or her family" must be narrowed or eliminated to prevent infringement of protected speech unrelated to deterrence and rehabilitation. As Courts have confirmed, "constitutional protection is afforded some false statements" because an "erroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'" Johnson v. Multnomah Cty., 48 F.3d 420, 424 (9th Cir. 1995) (quoting New York Times Co., 376 U.S. at 271-272). Although the government may punish certain "false claims . . . made to effect a fraud or secure moneys or other valuable considerations," false speech is not "presumptively unprotected" by the First Amendment. United States v. Alvarez, 132 S. Ct. 2537, 2547-48 (2012) (plurality opinion).

Myers wishes to post on his personal blog statements regarding the professional history and performance of public employees that were derived from personal experience, and other internet sources. And for that, he is being improperly punished.

The conditions of supervision that the sentencing court issued against Myers, and many of the conditions subsequently imposed—such as

prohibiting the posting of *any mention* of Myers court cases, removing his fundraiser because others “mentioned” Shannon or Matt Walker, removing videos related to Matt Walkers prosecution of Myers, removing recordings of his own court hearings, removing comments on government social media “about” or “mentioning” Shannon or Matt Walker, restricting Myers ability to speak with news outlets about his case, restricting his ability to attend public meetings and speak about his case, and similar impositions,—do not comport with the First Amendment.

The foregoing conditions imposed by the sentencing court should be stricken or substantially narrowed.

THE SENTENCING COURT IMPOSED UNCONSTITUTIONAL RESTRICTIONS ON MYERS ASSOCIATON RIGHTS-

Myers next argues that the restriction that ordered Myers “Do not associate with or communicate with directly or indirectly Josh Gray or Mark Kelly” is also unconstitutional because there is no legal or factual basis for this. There is no material facts in this case that support this restriction. This is completely arbitrary. Why of all the people on earth, were these 2 chosen?

This case differs from those where courts upheld narrow restrictions on certain forms of political conduct or association closely related to the circumstances of the underlying offense. See United States v. Schiff, 876 F.2d 272, 276-77 (2d Cir. 1989) (restricting a person convicted of attempted tax evasion from associating “with people who encourage tax evasion” or participating in meetings advocating for “such unlawful activity”); Malone v. United States, 502 F.2d 554, 556 (9th Cir. 1974) (defendant convicted of unlawfully exporting firearms prohibited from associating with certain groups because “the crime stemmed from high emotional involvement with Irish Republic sympathizers”). These courts upheld only closely tailored conditions against particular conduct or association directly connected to the conviction, not broad restrictions on pure speech or association, political and otherwise. As a result, the defendants remained free to legally associate with anyone, voice their opinions, and criticize public officials. Therefore, this condition must be eliminated.

Proposed conditions

Myers recognizes this court’s necessary balancing act, and does not feel the need to get hung up on being able to post Shannon Walkers personal contact information, or encourage others to contact her. So this argument is not attempting to get into that area of complexity. Myers

concedes for judicial efficiency that he is not asking to post Shannon Walkers private information, or encourage others to contact her because that is not his end goal.

For those reasons Myers is proposing the following, or close to, conditions. This will allow the court to protect Shannon Walker, and still give Myers his rights back. This court has no legal standing to limit communications about Matt Walker, City of Tucson Prosecutor, solely because he is married to Shannon Walker. Matt Walker is a government official, and subject to public scrutiny as such. There is no legal precedent or narrowly defined governmental interest to restrict public speech about, or involving a government official.

Proposed Conditions Language-

“-Do not contact the Shannon Walker, her kids, go to their home, or her place of employment.”- **Where does she work**?

“-Do not encourage others to contact Shannon Walker or her kids, go to her -home or place of employment” – **Where does she work**?

“-Allow Probation full access to YouTube and social media to determine whether you are abiding by the conditions.”

“Only remove videos from YouTube and social media that include personal identifying information about Shannon Walker, Matt Walker, or their kids.” -**This does not apply to public records, publicly available information, government contact information of Matt Walker, or information contained on government websites.**

“Do not post personal identifying information, including workplace information about Shannon Walker, and her 2 kids on YouTube or social media.”-**This does not apply to public records, publicly available information, government contact information of Matt Walker, or information contained on government websites**.

“Myers is allowed to speak about, mention, and criticize Shannon Walker in matters of public concern, court cases, public records, and legal analysis.”

“Myers is allowed to speak about, mention, and criticize Matt Walker in matters of public concern, court cases, public records, and legal analysis.”

“Myers is not responsible for public “comments”, or “commentary” that others make that include Shannon or Matt Walker on his social media or online postings, .”

“Do not send to, or tag Shannon Walker in, any social media posts, emails, or other electronic communications”

<u>CONCLUSION</u>

Myers asks this Court to modify the original Special Conditions of Probation to be consistent with established case law and statutes, due process, and statutory limitations as required. Myers asks this Court to find that balancing point of protecting Shannon Walker, without overbroad and vague restrictions on Myers 1st amendment protected activity. Myers must be granted the ability to speak about his own court cases and matters of public interest, free from retaliation and prosecution for his views and opinions. This Court must establish a clear boundary between “encouraging others to contact” and merely speaking “about” Shannon Walker. As long as Myers doesn’t “post her contact information”, or “encourage others to contact” he cannot be held responsible for what others say or do in regard to Shannon Walker. Merely speaking “about” or

"mentioning" Shannon Walker in social media posts is not something that the sentencing court can prohibit. Social media is no different than going to the park and standing on a park bench and speaking to an audience, therefore must be analyzed as such. There is no gag order in this case, and as the case law in this motion shows, distributing public information to third parties is constitutionally protected. Therefore, there is not a narrowly defined compelling governmental interest in prohibiting Myers from distributing public information about Shannon and Matt Walker to 3rd parties as a special condition of his probation. Furthermore, the condition prohibiting any communication or association with Mark Kelly and Josh Gray is not supported by any legal or factual basis and must be eliminated.

6-12-2026 By: /s/ Lane Myers,

Pro Se