

File Name: 26a0265p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GARRY LEBRON HAYES,

Defendant-Appellant.

No. 25-5893

Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.
No. 1:24-cr-00123-1—Curtis L. Collier, District Judge.

Argued: July 30, 2026

Decided and Filed: September 15, 2026

Before: STRANCH, BUSH, and MURPHY, Circuit Judges.

COUNSEL

ARGUED: Conrad Benjamin Kahn, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Knoxville, Tennessee, for Appellant. Samuel R. Fitzpatrick, UNITED STATES ATTORNEY’S OFFICE, Knoxville, Tennessee, for Appellee. **ON BRIEF:** Conrad Benjamin Kahn, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Knoxville, Tennessee, for Appellant. Samuel R. Fitzpatrick, UNITED STATES ATTORNEY’S OFFICE, Knoxville, Tennessee, for Appellee.

BUSH, J., delivered the opinion of the court in which STRANCH, J., concurred, and MURPHY, J., concurred in part and concurred in the judgment. MURPHY, J. (pg. 14), delivered a separate concurring opinion.

OPINION

JOHN K. BUSH, Circuit Judge. Garry Lebron Hayes repeatedly contacted and threatened two members of Congress. After he left a particularly violent voicemail, Hayes was charged with transmitting a threat in interstate commerce. He pleaded guilty. The district court then sentenced him to a term of imprisonment and supervised release. As a condition of supervised release, the court banned Hayes from contacting all members of Congress, regardless of the reason, for the one-year supervised release period. Hayes now argues that the district court plainly erred because the no-contact condition was too broad. Although we agree that the condition should have been narrower, the district court’s error was neither obvious nor clear. For that reason, we **AFFIRM**.

I.

Hayes has a history of harassing and threatening public officials over the phone. From 2022 to 2024, he left numerous threatening voicemails to a South Carolina Senator and a Georgia Congresswoman. For example, in December 2022, Hayes contacted the Congresswoman, calling her a “trifling b***h” and claiming that he would “meet [her] one day.” R. 35, Presentence Report, PageID 102. Then, according to Hayes, he was “gonna beat [her] . . . in front of [her] children.” *Id.* In January 2024, he left a message for the Senator stating: “I will slice your throat, [expletive].” *Id.*, PageID 104.

The threats only escalated from there. In July 2024, Hayes left a voicemail and threatened to kill the Congresswoman: “I’m in Chattanooga. You got, you got to ask your kids to [expletive] finally kiss your ass, [expletive]. Imma kill your ass Imma kill you, [expletive].” *Id.* at PageID 102.

Hayes later pleaded guilty to transmitting a threat in interstate commerce based on the July 2024 voicemail. As a result, the district court sentenced him to twenty-four months in prison and one year of supervised release. The court ordered that, while on supervised release, Hayes could not “have contact with the victims or any members of Congress, directly, indirectly,

through a third party, through social media, or in any way that could be construed as harassing or threatening.” R. 61, Sentencing Hr’g Tr., PageID 414. The district court concluded that the condition was necessary to protect the public and deter “others from engaging in this type of conduct.” *Id.* at 406. Hayes did not object to the condition.

He timely appealed.

II.

On appeal, Hayes narrowly challenges the substantive reasonableness of the supervised release condition and argues that the district court erred because the one-year “blanket ban” on contact with Congress does not comport with 18 U.S.C. § 3583(d)(2) and unnecessarily burdens his First Amendment rights. Appellant Br. at 1, 9. Because Hayes did not object to the supervised-release condition, we review only for plain error. *See* Fed. R. Crim. P. 52(b); *United States v. Williams*, 169 F.4th 727, 730 (6th Cir. 2026).

To show plain error, Hayes must demonstrate “(1) an error, (2) that was obvious or clear, (3) that affected his substantial rights, and (4) that seriously affected the fairness, integrity, or public reputation of the judicial proceedings.” *United States v. Sears*, 32 F.4th 569, 573 (6th Cir. 2022) (quoting *United States v. Price*, 901 F.3d 746, 749–50 (6th Cir. 2018)). Plain error is a high bar, *United States v. White*, 920 F.3d 1109, 1114 (6th Cir. 2019), and that stringent requirement decides this appeal. We find plain error only when the error is so clear that the district court “was derelict in countenancing it.” *Sears*, 32 F.4th at 573 (quoting *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc)).

A.

To begin, we make one thing clear: communications like Hayes’s cause serious concern. Indeed, his voicemails were, as the district court noted, “awful,” “atrocious,” and “uncivilized.” R. 61, Sentencing Hr’g Tr., PageID 409. And such “hateful tirades” certainly harm society as a whole. *United States v. Taubert*, 810 F. App’x 41, 45 (2d Cir. 2020) (order) (recognizing that the defendant’s threats “hurt people”); *see also United States v. Thorn*, No. 24-12791, 2026 WL 1133623, at *3 (11th Cir. Apr. 27, 2026) (per curiam) (noting that the district court correctly

characterized the defendant's threats to a federal judge and his family as "cruel" and correctly acknowledged that such conduct "was becoming more common"); *United States v. Riggensberg*, 494 F. App'x 685, 686 (8th Cir. 2012) (per curiam) (affirming special conditions of supervised release that were necessary to protect the public after the defendant threatened various federal and state officials). As the district court appropriately noted during the sentencing colloquy, individuals are understandably discouraged from running for public office when "people call into their office and tell them they're going to slit their throats, they're going to kill them in front of their children, [and] they're going to kill them in front of their spouses" R. 61, Sentencing Hr'g Tr., PageID 409–10.

Our system of governance works only because dedicated Americans choose to sacrifice time and opportunities outside government for public service to this Nation. At a time when threats to law enforcement, the judiciary, and Congress are becoming all too common, Hayes contributed to that disturbing trend and threatened multiple dedicated public servants who did nothing to wrong him—members of Congress who, it is worth noting, do not even represent Hayes's state or congressional district. The district court was right to consider that impact in its sentencing decision, if for no other reason than "to protect our society, our democracy, [and] our way of life." R. 61, Sentencing Hr'g Tr., PageID 412; *see Thorn*, 2026 WL 1133623, at *3 (holding that the nature of the threats made was a valid consideration in sentencing); *United States v. Saldana-Gonzalez*, 70 F.4th 981, 984 (7th Cir. 2023) (holding that sentencing courts can consider how the defendant's crime fits within a "broad[er]" social "context"). To that end, no one disputes that a condition restricting Hayes's speech and petition rights in some capacity is appropriate. The question is whether this specific condition goes too far. With respect to the district court and due regard for its understandable desire to protect the public, we think it does.

Consider the text of the condition. The supervised release condition prohibits Hayes from having contact with "*any*" member of Congress, "directly" or "indirectly," "through a third party, through social media, or in *any way* that could be *construed* as harassing or threatening." R. 61, Sentencing Hr'g Tr., PageID 414 (emphases added). We accept the parties' reading that this is a sweeping ban, and it prohibits Hayes from contact with all members of Congress, and their staffs, regardless of the manner of contact or the substance of the communication.

Although a district court is afforded “broad discretion” when imposing special conditions of supervised release, it is not unlimited. *See Sears*, 32 F.4th at 576; 18 U.S.C. § 3583(d)(2). In fact, 18 U.S.C. § 3583(d)(2) allows a district court to impose a special condition of supervised release *only* if the condition “involves no greater deprivation of liberty than is reasonably necessary” to deter future similar conduct, rehabilitate the defendant, and protect the public. *Id.*; *see also United States v. Inman*, 666 F.3d 1001, 1004 (6th Cir. 2012) (per curiam). And when a condition implicates “a fundamental right safeguarded by the Constitution, that restriction must also be directly related to rehabilitating the defendant and protecting the public.” *Williams*, 169 F.4th at 733. Otherwise, the supervised release condition is substantively unreasonable. *See id.*

Here, the broad one-year ban on contacting Congress burdens not only Hayes’s rights under the First Amendment’s Free Speech Clause but also his right to petition Congress under that Amendment’s Petition Clause. This latter provision states that “Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.¹ The use of the word “Government” in the Petition Clause includes the legislative branch. Julie M. Spanbauer, *The First Amendment Right to Petition Government for a Redress of Grievances: Cut from a Different Cloth*, 21 Hastings Const. L.Q. 15, 17–18 (1993). “[T]here cannot be a doubt” that people have a right to petition Congress for a redress of potential grievances, William Rawle, *View of the Constitution of the United States of America* 120 (1825), even people like Hayes. Indeed, the historical record supports a robust right to petition for the unenfranchised, including prisoners and felons. Stephen A. Higginson, *A Short History of the Right to Petition Government for the Redress of Grievances*, 96 Yale L.J. 142, 153 (1986). Completely barring Hayes from any contact with Congress for a year is inconsistent with that understanding of the right.

Prisoners have petitioned legislatures since colonial America. In 1765, for example, a Georgia prisoner petitioned the Commons House of Assembly about inhumane treatment, prompting legislators themselves to inspect the jail. Ralph Harlow, *History of Legislative*

¹The First Amendment provides that “Congress shall make no law” abridging certain enumerated freedoms—guarantees that, as relevant here, also constrain the federal judiciary when interpreting the law. *See Alexander v. United States*, 509 U.S. 544, 550, 553 n.2 (1993) (applying First Amendment prior-restraint doctrine to a court-ordered forfeiture imposed under RICO).

Methods in the Period Before 1825 97 (1917). Such petitions not only helped prisoners; they also served an information-gathering function for legislative bodies, helping nonprofessional legislators learn about conditions throughout the colonies in an era before modern investigative news reporting. Higginson, *supra*, at 153. During the Revolutionary War, prisoners petitioned the Virginia House of Delegates about delays in their trials and a lack of winter clothing; three days later, the House deemed their request reasonable. Va. H.D. Jour. 39, 45 (Oct. 1776) (Richmond, Samuel Shepherd & Co. 1828). One group of British prisoners of war likewise petitioned the Continental Congress for relocation and additional clothing. Pet. from Major French and Others (Prisoners) to Continental Congress (March 21, 1776), *reprinted in* 5 Peter Force, *American Archives* 452–53 (4th ser., Washington, D.C., M. St. Clair Clarke & Peter Force 1844). After the Revolution, petitions from debt prisoners spurred legislative reform movements to address widespread economic hardship. Gregory A. Mark, *The Vestigial Constitution: The History and Significance of the Right to Petition*, 66 Fordham L. Rev. 2153, 2182 (1998). And this tradition of prisoner petitions endured. In 1914, for example, Philadelphia prisoners petitioned their legislature to enact prohibition of liquor sale as a means of reducing crime. *Jail Men Favor Prohibition: Fifteen Hundred Inmates of Pennsylvania Penitentiary Seek Prevention of Liquor Sale*, Monroe J., July 28, 1914, at 7.

The historical record also includes petitions from convicted felons no longer in prison. For example, in the early nineteenth century, former Sing Sing prisoners petitioned their state legislature to investigate cruel treatment at the prison. Jennifer Graber, *Engaging the Trope of Redemptive Suffering: Inmate Voices in the Antebellum Prison Debates*, 79 Pa. Hist.: J. Mid-Atl. Stud. 209, 220 (2012). And in 1855, a former convict who, like Hayes, had served in the military petitioned Congress for a pension based on his service. Mary C. Glenn, *Forging Manhood and Nationhood Together: American Sailors' Accounts of their Exploits, Sufferings, and Resistance in the Antebellum United States*, 8 Am. Nineteenth Century Hist. 30, 34 n.32 (2007).

Formerly incarcerated persons continue to petition Congress today, such as through direct testimony in support of criminal justice reform. See *Exploring the National Criminal Justice Commission Act of 2009: Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on*

the Judiciary, 111th Cong. 12–27 (2009) (statement of Pat Nolan, Vice President, Prison Fellowship); *see also Five Years of the First Step Act: Reimagining Rehabilitation and Protecting Public Safety: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. 8–11 (2024) (statement of Matthew Charles, First Step Act Beneficiary).

These examples show that Hayes’s objection to the no-contact bar is based on more than unrealistic hypotheticals. Indeed, there is a robust history and tradition of current and former prisoners’ exercising their constitutional rights of speech and petition to Congress.

In addition, particular aspects of the condition involved here confirm that it worked a greater deprivation of liberty than was reasonably necessary. Consider a few potential implications of the broad ban. Under the condition, Hayes cannot contact a member of Congress to inquire about his veteran benefits, encourage action on a certain policy issue, request a copy of a report, or seek information about a candidate’s position. Regardless of the substance or purpose of the communication, the order arguably bars Hayes from doing things such as write a letter, post an emoji response on social media, or sign up for a newsletter (all examples of “indirect” communications) if Congress is involved. And, of course, he is completely banned from contacting “any” member of Congress. Although such a broad ban could arguably deter future criminal conduct (by sending a strong message), rehabilitate Hayes (by preventing access to the persons he previously threatened), and protect the public (by shielding all members of Congress)—it squarely fits in the box of a “greater deprivation of liberty than was reasonably necessary.”

Consider the ways in which the district court could have more narrowly drawn the condition. The court could have limited the manner of contact (by restricting phone calls but permitting letters), the people contacted (by restricting contact with the same Congress members Hayes previously threatened), or the substance of that communication (by prohibiting harassing or threatening comments but allowing protected speech). *See United States v. Etienne*, 102 F.4th 1139, 1142, 1147 (11th Cir. 2024) (upholding a supervised release condition that prohibited the defendant from visiting specific courthouses and contacting those judges’ chambers because the condition did “not amount to an *absolute* bar on access” to all courts); *see also United States v. Santos Diaz*, 66 F.4th 435, 450 (3d Cir. 2023) (upholding a supervised release condition that

prohibited the defendant from “contact with one person” and “[d]id not cover other individuals”). It also could have allowed Hayes to contact Congress for legitimate purposes with his probation officer’s approval. *See, e.g., United States v. Marcum*, No. 20-5280, 2021 WL 1038272, at *3 (6th Cir. Jan. 20, 2021). Those narrowly drawn conditions would still have served the purposes outlined in 18 U.S.C. § 3553(a).

Such narrowing would have been consistent with *United States v. Nixon*, 664 F.3d 624, 625–27 (6th Cir. 2011), where the supervised release condition barred the defendant, Nixon, from contacting any postal service employee. We held that the condition was reasonably related to his offense, which included sending a threatening letter with a white-powder substance to a judge. *Id.* at 625. Crucially, the condition imposed no greater deprivation of liberty than necessary because it did not prohibit Nixon from using the mail altogether; it barred only contacting postal service employees. *Id.* at 627. Hayes’s condition, by contrast, bars him from any type or means of communicating with Congress, including on legitimate matters such as his veteran benefits. And although the condition in *Nixon* may have implicated the defendant’s free-speech rights, there is no expressly particularized constitutional right to use the post office. The First Amendment, by contrast, expressly protects the right to petition Congress.² Thus, the no-contact order in *Nixon* is inapposite.

We have recognized that supervised release conditions may limit First Amendment rights in certain circumstances “so long as they [are] directly related to the defendant’s rehabilitation

²Also distinguishable is the no-contact order in *United States v. Brogdon*, 503 F.3d 555, 558, 563–66 (6th Cir. 2007). *Brogdon* involved a condition of supervised release prohibiting a defendant convicted of child-sex crimes from contacting any child under eighteen. 503 F.3d at 558. We approved the condition because it was reasonably related to the convictions, which included the defendant’s indecent exposure involving minors and aggravated sexual assault of his three-year-old son. *Id.* at 565. Unlike the order here, the *Brogdon* condition did not infringe the defendant’s constitutional rights. The Free Speech Clause does not confer an unfettered right on a convicted child-sex offender to contact children generally, but both the Free Speech and Petition Clauses protect the right of “We the People” to contact Congress, the elected body responsible for our Nation’s laws. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 388 (2011) (“The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives . . .”). In that respect, this case more closely resembles *Etienne*, which involved access to the federal judiciary, the interpreters of our Nation’s laws. There, the court upheld restrictions barring a defendant who threatened a judge and courtroom deputy from contacting those officials and visiting certain courthouses. 102 F.4th at 1142, 1147. But, important for the court’s reasoning, the restrictions did not completely bar the defendant’s constitutionally protected access to the courts. *Id.* at 1147. Further, defense counsel in *Brogdon* repeatedly acknowledged that his client’s mental condition was unlikely to improve. 503 F.3d at 565. Here, Hayes’s counsel explained that Hayes had recently made considerable strides in improving his mental condition and behavior. R. 61, Sentencing Hr’g Tr., PageID 392–96.

and the protection of the public” as provided in 18 U.S.C. § 3553(a)(2)(C)–(D). *Id.* But the condition must involve “no greater deprivation of liberty than is reasonably necessary for the purposes set forth in” 18 U.S.C. § 3553(a)(2)(B)–(D). 18 U.S.C. § 3583(d)(2)); *Nixon*, 664 F.3d at 627. Our cases involving conditions that implicate First Amendment rights illustrate one way to narrow a broad condition without undermining those purposes. In *Marcum*, for example, we upheld a condition barring the defendant from possessing any device with internet access. 2021 WL 1038272, at *1, *3. Although broad, the condition allowed him to obtain his probation officer’s permission to access the internet for legitimate purposes, such as working or applying for a job. *Id.* at *3. We emphasized the same feature in *United States v. Phillips*, 370 F. App’x 610, 620–21 (6th Cir. 2010), and *United States v. Lewis*, 565 F. App’x 490, 497–98 (6th Cir. 2012), where approval provisions allowed otherwise restricted internet or computer use for legitimate purposes.³ Hayes’s condition contains no such approval provision. He cannot seek permission to contact Congress even for a plainly legitimate purpose, such as inquiring about his veteran benefits.

In sum, we conclude that the total one-year ban on contact with Congress, with no built-in mechanism (such as a parole officer’s permission) to allow exceptions for lawful, non-threatening communication with Congress, was overly broad.

We therefore hold that the district court’s one-year ban on any contact with Congress was in error.

B.

The district court erred, but we nevertheless affirm because only plain-error review applies, given Hayes’s failure to object below, and the error was neither obvious nor clear in light of prior case law. An obvious or clear error is one that is not “subject to reasonable dispute.” *United States v. Massey*, 663 F.3d 852, 856 (6th Cir. 2011) (quoting *United States v.*

³We have employed similar reasoning when conditions burden other constitutional rights. In *United States v. Shultz*, 733 F.3d 616, 619, 623 (6th Cir. 2013), we upheld a condition barring the defendant from associating with minors over his claim that it infringed his constitutional right to associate with his children. In doing so, we noted that he could obtain his probation officer’s approval to contact or live with them. *Id.* at 623. *See also United States v. Arnold*, 549 F. App’x 491, 498 (6th Cir. 2013) (upholding restriction on associating with minors where the defendant could obtain approval to associate with his daughter).

Marcus, 560 U.S. 258, 262 (2010)). Stated differently, “[a]n error is ‘plain’ when, at minimum, it ‘is clear under current law.’” *United States v. Al-Maliki*, 787 F.3d 784, 794 (6th Cir. 2015) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)). As a result, we cannot find plain error where there is “[a] lack of binding case law that answers the question presented.” *Id.*; see also *United States v. Amos*, 501 F.3d 524, 529 n.2 (6th Cir. 2007). And that case law must address the specific question presented here: may a district court impose a supervised release condition barring for one year any and all contact with any and all members of Congress and their staffs after a defendant has made repeated threats to some of those members?

No binding case law answers that question. As noted, our case law recognizes that a supervised release condition may limit fundamental constitutional rights if the condition is “directly related to rehabilitating the defendant and protecting the public.” *Williams*, 169 F.4th at 733. But our cases do not address how this general principle applies to limitations on the rights to speech and to petition Congress, particularly where, as here, the defendant’s crime arose from prior threats to members of Congress.

Hayes suggests that our case law does not “require precedent involving [an] identical” factual scenario to the one we have here because “§ 3583(d)’s tailoring requirement was already firmly established” Reply Br. at 3. He might have had a point if we were talking about a defendant who was sentenced to 150 years in prison for a crime that carries a statutory maximum sentence of 6 months. See *United States v. Nichols*, 897 F.3d 729, 733 (6th Cir. 2018) (holding that an above-statutory-maximum sentence is per se plain error). In such a scenario, whether the district court complied with the terms of the relevant statute is a black-and-white question, and the mere existence of the statute puts the question of whether the sentence is unlawful beyond debate. See, e.g., *United States v. Miller*, 978 F.3d 746, 763–64 (10th Cir. 2020) (“The absence of circuit precedent does not prevent the clearly erroneous application of statutory law from being plain error.”) (cleaned up). As we explained above, the district court here had many different options that could have complied with § 3583(d)(2)’s tailoring requirement. But critical here, it had no case law guidance as to how that tailoring should be accomplished in a context analogous to this case. The only way to put the impropriety of the district court’s supervised release condition plainly beyond doubt is to have a binding case on point saying that such a

condition is improper. Without binding case law, the law is “subject to reasonable dispute” on that point and thus precludes reversal based on the plain error standard. *Massey*, 663 F.3d at 856.

True, we do have precedents, mostly non-published, that pertain to restrictions in other contexts involving First Amendment rights. Specifically, we have decided cases evaluating whether a supervised release condition was plainly erroneous when it prohibited the use of the internet and access to certain materials after a defendant was convicted of sex-related crimes. *See United States v. Borders*, 489 F. App’x 858, 863 (6th Cir. 2012); *United States v. Lantz*, 443 F. App’x 135, 140–41 (6th Cir. 2011). But those precedents do not align closely enough with the circumstances of this case to make the error plainly evident here.

For example, in *Lantz*, the district court imposed a condition of supervised release that, in part, prohibited the defendant from possessing or “hav[ing] under his control any matter that is pornographic or that depicts or alludes to sexual activity or depicts minors under the age of 18.” 443 F. App’x at 140. There, we acknowledged that we lacked an on-point binding case, but the condition could not survive plain error review because restricting material that merely “alludes to” sexual activity could encompass essentially all literature and media. *Id.* at 141. In that sense, “the error was clear and obvious,” “affect[ed] substantial First Amendment rights,” and “call[ed] into question the fairness of the proceedings because of the severity of the restriction.” *Id.*

Likewise, in *Borders*, we vacated a supervised release condition that stated the defendant “shall not view, listen to, or possess anything sexually explicit or suggestive, including, but not limited to, books, videos, magazines, computer files, images, and internet sites.” 489 F. App’x at 863. We held that the words “or suggestive” could encompass almost everything; therefore, it was constitutionally overbroad and the district court plainly erred. *Id.*

But the holdings in *Lantz* and *Borders* are not close enough to the issue presented here. Those cases involved entirely different factual scenarios, crimes, and supervised release conditions. *See Vonner*, 516 F.3d at 386 (noting that we find plain error “only in exceptional circumstances” because the error must be “so plain” under our case law (cleaned up)).

More to the point, the overbroad and vague conditions found to constitute plain error in *Lantz* and *Borders* did not even arguably relate to victim protection. As a reminder, § 3583(d)(2) requires that the supervised release condition “involves no greater deprivation of liberty than is reasonably necessary” for the reasons delineated in § 3553(a)(2)(B)–(D). One of those reasons, as relevant, is “to protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C). In *Lantz* and *Borders*, the broad supervised release conditions that we reversed were not required to “protect the public,” especially potential victims, from future crimes.

The conditions in *Lantz* and *Borders* banned the defendants from listening to a song with suggestive lyrics, reading the Bible if it “allude[d] to” anything sexual, or playing a video game if it did the same. *See* 443 F. App’x at 141; *see also* 489 F. App’x at 863. None of those prohibitions have any direct relation to the protection of victims those defendants had targeted or would possibly target in the future. So, in *Lantz* we said that the restriction was “so broad that it seems to have little to do with any of the sentencing factors.” 443 F. App’x at 141. Likewise, in *Borders* we found that the restriction was “so expansive that it does not seem to be tied to the purpose of the sentencing factors.” 489 F. App’x at 863.

Not so here. In this case, the focus of the district court’s prohibition was Hayes’s specific victim group: members of Congress. Indeed, the district court cut off any and all communications between Hayes and members of Congress, precisely because Hayes had shown that he could not communicate with that class of persons in a *non*-threatening or *non*-harassing way. This link between the challenged condition and the victims did not exist in *Lantz* and *Borders*. In those cases, the nexus between the supervised release conditions found to constitute plain error (e.g., the effective ban on Bible reading) and the victims of the sex crimes was far more attenuated than the connection here, where the challenged constitutional condition (pertaining to contact with Congress) more directly related to the congressional victims of the underlying crimes.⁴

⁴Nor is this case like *United States v. Dotson*, 715 F.3d 576 (6th Cir. 2013), or *United States v. Dodson*, No. 22-3998, 2024 WL 712494 (6th Cir. Feb. 21, 2024). In *Dotson*, we vacated a supervised release condition on plain error review because the district court procedurally erred when it did not “adequately state on the record the rationale for the conditions selected.” 715 F.3d at 585. Here, the district court adequately explained that the condition was to protect members of Congress by banning all forms of contact with that institution. Further, Hayes

With *Lantz* and *Borders* therefore inapposite, there is not even an arguable basis in the case law to show that the error here was obvious or clear. The absence of on-point precedent makes the issue of the challenged supervised release condition “subject to reasonable dispute,” meaning Hayes cannot survive plain error review. *Massey*, 663 F.3d at 856. We therefore **AFFIRM** the district court’s condition.

explicitly notes that he “does not raise a procedural challenge here.” Appellant Br. at 10. In *Dodson*, we held that the district court abused its discretion because conditions restricting the defendant’s internet use and access to extremist materials were unrelated to his offenses. 2024 WL 712494, at *11–13. Here, Hayes’s condition relates to his threat against a Congresswoman.

CONCURRENCE

MURPHY, Circuit Judge, concurring in part and concurring in the judgment. Garry Hayes raises a novel question about the scope of a district court’s power to impose special supervised-release conditions: May the court prohibit a defendant who threatened a Senator and a Congresswoman from contacting any member of Congress for a year? *See* 18 U.S.C. § 3583(d). All agree that Hayes did not object to this condition when the district court imposed it. So he must satisfy our demanding plain-error test. *See United States v. Al-Maliki*, 787 F.3d 784, 791, 794 (6th Cir. 2015). And defendants generally cannot meet that test if no “binding case law . . . answers the question” that they raise for the first time on appeal. *Id.* at 794.

This lack of precedent dooms Hayes’s claim. The condition here sits in between those that we have upheld and those that we have reversed. On the one hand, we have approved of class-based “no contact” orders, including those barring contact with all postal-service employees or children. *See United States v. Nixon*, 664 F.3d 624, 625–27 (6th Cir. 2011); *United States v. Brogdon*, 503 F.3d 555, 558, 563–66 (6th Cir. 2007). On the other hand, we have reversed broad limits on the use of the internet or computers. *See United States v. Dodson*, 2024 WL 712494, at *11–12 (6th Cir. Feb. 21, 2024); *United States v. Dotson*, 715 F.3d 576, 583, 586–87 (6th Cir. 2013). And we have reversed broad limits on possessing sexually suggestive materials that might be read to cover the Bible or ordinary television shows. *See United States v. Borders*, 489 F. App’x 858, 863 (6th Cir. 2012); *United States v. Lantz*, 443 F. App’x 135, 140–41 (6th Cir. 2011).

One could reasonably conclude that this case resembles those upholding no-contact orders more than those reversing limits on the use of the internet or the like. So no plain error exists. And I would say nothing more. I would not decide the condition’s validity under de novo review or suggest that the First Amendment restricts the ability of the court to limit the petitioning rights of felons. I thus join Part II.B of the majority opinion and otherwise concur in the judgment.