

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA

v.

MARC JACQUES

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No. 1:24-cr-00019-PB-TSM

Government’s Sentencing Memorandum

Consistent with the parties’ plea agreement, the United States respectfully recommends that the Court impose a sentence of 78 months’ imprisonment in this case. This represents a low-end of the guidelines sentence after applying a 2-level downward variance to offset the use-of-computer enhancement at USSG §2G2.2(b)(6). The proposed sentence is sufficient, but not greater than necessary, to accomplish the goals of sentencing enumerated in 18 U.S.C. § 3553(a).

The defendant waived his right to indictment and pleaded guilty to an information charging him with one count of distribution of child pornography. He was identified as an investigative target after numerous CyberTips eventually led to the execution of a federal search warrant at his home. Examination of the devices seized from the defendant’s home revealed the presence of roughly 100 images and 200 videos of apparent child sexual abuse material (CSAM). Evidence of chats between the defendant and others related to the sexual exploitation of children was also found on his devices. As reflected in the victim impact statements that have been submitted to this Court, the defendant’s offense is a serious one that caused real suffering to numerous victims. His conduct warrants a meaningful sentence.

The Guidelines

The United States agrees with the probation officer’s calculation of the guideline sentencing range. Under *United States v. Booker*, 543 U.S. 220, 245 (2005), the Sentencing

Guidelines are merely advisory. Nonetheless, at sentencing, “district courts are still required to ‘begin all sentencing proceedings by correctly calculating the applicable Guidelines range.’” *United States v. Millan-Isaac*, 749 F.3d 57, 66 (1st Cir. 2014) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). “[C]orrectly calculating the GSR serves an important function; it provides a ‘framework or starting point’ to guide the exercise of the court’s discretion.” *Millan-Isaac*, 749 F.3d at 66 (quoting *Freeman v. United States*, 564 U.S. 522, 529 (2011)). After giving both parties an opportunity to be heard, the district court should then consider all of the factors under 18 U.S.C. § 3553(a) to fashion an appropriate sentence. *See Gall*, 552 U.S. at 49-50.

The defendant argues that the sentencing guidelines for non-production child exploitation offenses have not evolved to keep pace with the current technology and that they therefore result in “unreasonably high sentences in otherwise ‘run-of-the-mill’ cases.” Defendant’s Sentencing Memorandum, ECF No. 16, at 11-12. The United States acknowledges, at least to a degree, that the current sentencing scheme does not account for technological changes in offense conduct that have occurred since the guidelines were promulgated. For instance, as noted in its 2021 Report to Congress, the United States Sentencing Commission has recognized the need to re-examine the use-of-computer enhancement “to reflect the widespread modern use of computers and internet technologies such as [peer-to-peer] file sharing programs.” *See* “Federal Sentencing of Child Pornography: Non-Production Offenses,” *available at* https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210629_Non-Production-CP.pdf. (hereafter, USSC 2021 Report) at 25. The Commission report notes that in fiscal year 2019, over 95 percent of non-production child pornography offenders received the use-of-computer enhancement, which suggests that the enhancement may no longer be a useful tool in differentiating between more and less culpable

offenders. *Id.* In light of this guidance, the United States will recommend that the Court apply a 2-level downward variance to offset the use of computer enhancement in this case.

Nature and Circumstances of the Offense

While the guidelines are an important tool in fashioning an appropriate sentence, the United States Sentencing Commission has advocated revising the current scheme to account not only for changes in technology, but also emerging social science research about offender behavior and variations in offender culpability and sexual dangerousness. *See* USSC 2021 Report at 2. The Commission recommends that three primary factors be considered when imposing sentences in non-production child pornography offenses: 1) the **content** of an offender's child pornography collection and nature of the offender's collecting behavior; 2) the offender's degree of involvement with other offenders, particularly in an internet **community** devoted to child pornography and child sexual exploitation; and 3) the offender's engagement in sexually abusive or exploitative **conduct** in addition to the child pornography offense. *Id.* Under the current sentencing scheme, these factors can provide instructive guidance in the Court's assessment of the nature and circumstances of the offense.

Regarding **content**, the majority of the defendant's collection were video files depicting prepubescent and pubescent children ranging in age from roughly 10 to 16 years old, including depictions of children engaged in sexual acts with adults. There were no depictions of infants or toddlers or sadomasochistic abuse. As discussed below, it appears that the defendant amassed his collection directly from other offenders through messages sent on various social media platforms. Of particular concern was the presence of images within the defendant's collection depicting an identifiable minor female (referenced in the PSR at ¶¶ 12 and 15(1)) whose face had been superimposed onto sexually explicit images of others. It was evident from chats recovered

from the defendant's phone that he had shared these images with other offenders and provided at least one offender with the minor's Instagram account and encouraged the offender to message her.

Regarding **community**, the concerns related to an offender's participation in online forums devoted to child exploitation are largely self-evident. In its report, the Commission specifically references the role of internet communities in contributing to the child pornography market and the development of offenders' sexual interest in children. *Id.* at 36. The Commission also references findings from an earlier report that these online communities provide a forum in which offenders can discuss their sexual interest in children without fear of condemnation, which in turn helps offenders to develop positive feelings about their deviant sexual beliefs. *Id.*

The Commission identified an offender as part of a child pornography community if he or she engaged in any of the following: 1) participating in an online group whose members interact with each other primarily via the internet through posts, discussions, and one-on-one chatting in a forum devoted to child pornography; 2) having conversations with at least one other individual about child pornography or the sexual abuse of a minor; 3) distributing or receiving child pornography via personal means (e.g., text, email, or instant message); or 4) working with another individual to produce child pornography. *Id.* at 38. Roughly 50% of distribution offenders were found to have engaged in at least one of these behaviors; the defendant here engaged in three of the four. *Id.*

Numerous chats were recovered from the defendant's electronic devices wherein he is engaging directly with other offenders and both sending and receiving CSAM via direct messages. Many of the chats were extremely graphic in nature, with the defendant describing

the content of some of his favorite CSAM files and discussing fantasies related to the sexual abuse of children. The defendant's engagement with other offenders is a factor that weighs strongly in favor of a significant sentence.

Finally, regarding **conduct**, excepting the conduct described in ¶ 12 of the PSR, the investigation uncovered no evidence that the defendant has engaged in any sexually abusive or exploitative conduct in addition to the child pornography offenses to which he pled guilty.

Collectively, these factors are probative of the nature and circumstances of the offense and underscore the need for a meaningful custodial sentence.

The Defendant's History and Characteristics

The defendant has no criminal history and has remained gainfully employed throughout his adult life. He is divorced, has two teenaged children who live primarily with him, and enjoys supportive relationships with his immediate family members. The defendant described an "idyllic" childhood free of abuse or neglect and in which all of his basic needs were met.

The defendant described a history of mental health issues including depression and suicidal thoughts, though he denied any current suicidal ideation or intent. He reported suffering from a "sexual addiction" that included an addiction to pornography. The defendant is currently in therapy and participates in an online 12-step program to address his addiction. Regarding substance abuse, the defendant is currently sober, though he described a history of alcohol abuse that coincided with his commission of the instant offense.

Remaining 3553 Factors

Looking to the remaining 3553 factors, the sentence imposed must reflect the seriousness of the offense, which can be measured in part by the pain the defendant has caused to his victims. This pain is reflected in the gut-wrenching impact statements provided to this Court by the

victims and their families. These letters are just a glimpse into the horror brought upon these victims by the defendant and others who trade in CSAM. The government submits that the proposed sentence of 78 months strikes an appropriate balance between the nature and circumstances of the offense and the seriousness of the offense on the one hand and the defendant's history and characteristics on the other. It is sufficient, but not greater than necessary, to ensure just punishment, promote respect for the law, afford specific and general deterrence, and protect the public.

Restitution

Restitution in this case is mandatory. 18 U.S.C. § 2259(a). The government has received restitution requests from four victims in this case totaling \$23,500. Based on conversations with defense counsel, the United States understands that the defendant will not contest restitution. The United States notes that the defendant has assets sufficient to satisfy an order of restitution in full prior to surrendering to serve his sentence. *See* PSR ¶ 67.

Conclusion

In light of the foregoing, the United States respectfully asks this Court to impose a sentence of 78 months' imprisonment, followed by five years of supervised release.

Dated: August 28, 2024

Respectfully submitted,
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