

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
) Dkt. No: 1: 21-cr-10355
v.)
)
HECTOR ACEVEDO)
)

HECTOR ACEVEDO'S SENTENCING MEMORANDUM

Mr. Acevedo is lifelong resident of Massachusetts that has struggled for decades with undiagnosed mental health challenges . He stands before this court remorseful, ashamed, and fully cognizant of the harms he has caused the victim in this case. Having taken responsibility for his offense and pled guilty to one count of Receipt of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A) and (b)(1), he now requests a sentence of incarceration of 240 months. This is a harsh and significant term of imprisonment that will incarcerate Mr. Acevedo until he is in his fifties.¹ As Mr. Acevedo is currently thirty-three years old, this comprises a significant length of time that is *more than half of his entire life*.

Pursuant to the parties binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C),² Mr. Acevedo submits that a sentence of 240 months, which is well above the fifteen-year mandatory minimum penalty proscribed for a conviction under 18 U.S.C. §

¹ A sentence of 240 months will keep Mr. Acevedo in prison until age 50 (should he receive all the statutory good time credit available to him) and approximately age 53 (should he not). It is important to note that, given Mr. Acevedo's conviction under 18 U.S.C. § 2252A(a)(2)(A) and (b)(1), he will not be eligible for any earned time credits under the First Step Act and will not be eligible for early transfer from his sentence to a halfway house, home confinement, or supervised release.

² A copy of the parties executed plea agreement is available at Docket Entry 106.

2252A(a)(2)(A) and (b)(1), will afford him adequate deterrence and punishment. Further, as explained below, the consequence of this requested sentence is that Mr. Acevedo's risk of recidivism will approach zero when he is released to supervision in his sixth decade of life. For these reasons, and the reasons that follow, a sentence of 240 months imprisonment –followed by a term of supervised release for an additional 60 months is “sufficient but not greater than necessary” to achieve the goals of sentencing in this case. 18 U.S.C. § 3553(a)(1).

In making this request, Mr. Acevedo asks this Honorable Court to impose a sentence that both recognizes the seriousness of the offenses and is evidence-based, driven not by society's revulsion of his conduct but by the wealth of relevant research which suggests that at the end of a 240-month sentence, he will pose a significantly diminished risk of recidivism and concern for public safety. This, coupled with the request for a 60-month term of supervised release to follow, with sex offender registration and sex offender-specific treatment, will further these goals, and achieves a sentence is consistent with the factors set forth in 18 U.S.C. §3553(a) and will result in a sentence that is sufficient, but not greater than necessary, to effectuate the purposes of sentencing. *United States v. Kimbrough*, 128 S.Ct. 558 (2007); *United States v. Booker*, 125 S.Ct. 738 (2005); *United States v. Martin*, 520 F.3d 87 (1st Cir. 2008); *United States v. Rodriguez*, 527 F.3d 221 (1st Cir. 2008).

1. Nature of the Offense and History and Characteristics of Mr. Acevedo

Nature of the Offense

At the outset, Mr. Acevedo wishes to communicate his profound remorse, absolute shame, and regret for his actions. Although his offending is purely ‘hands-off’ and he has never engaged in any physically abusive or physically sexually abusive conduct with anyone, he understands the gravity and the impact that his behavior has had on the victim and the victim's family and he

makes no attempt to lessen or excuse his actions. In no way does Mr. Acevedo seek to minimize his offense conduct and he unequivocally accepts responsibility for the damage he has caused.

It is, however, important to note that in the instant offense, and in Mr. Acevedo's prior offense from 2014 (which subjects Mr. Acevedo to a 15-year statutory mandatory minimum sentence under 18 U.S.C. § 2252A(a)(2)(A) and (b)(1)) Mr. Acevedo's offending conduct has been limited in scope to on-line communications and on-line interactions with minor aged girls. Never did Mr. Acevedo have any type of in-person physical sexual contact with the victim in the instant offense, nor was he ever in close physical proximity to her. Mr. Acevedo made no threats to the victim, nor did he engage in any type of distribution.³ And unlike a majority of offenders⁴ sentenced under the § 2G2.1 production guideline, Mr. Acevedo held no familial role or caregiving position, or position of trust with the victim, but was instead an 'internet stranger' whose only interactions with the victim were on-line, all the while separated by a physical distance, from Massachusetts to Ohio, of roughly 700 miles.

In advocating for a sentence of 240 months, which, as discussed below, is both within the prescribed guideline sentencing range calculated by probation and is five years higher than the mandatory minimum sentence (triggered by his prior offense) under 18 U.S.C. § 2252A(a)(2)(A)

³ Approximately 23.4 to 27.4 percent of offenders sentenced under the § 2G2.1 production guideline engaged in distribution in fiscal years 2010 and 2019. Sent'g Comm'n, *Federal Sentencing of Child Pornography Production Offenses*, at p. 20, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211013_Production-CP.pdf

⁴ "The typical production offender maintains a position of trust over the victim and has physical access to the child during the production of child pornography. Of the 512 child pornography production offenders sentenced in fiscal year 2019, 60.3 % were related to or otherwise maintained a position of trust over the minor victim, whether through familial relationships or by virtue of the offender's role as a teacher or coach, for example". U.S. Sent'g Comm'n, *Federal Sentencing of Child Pornography Production Offenses*, at p. 4, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211013_Production-CP.pdf

and (b)(1), Mr. Acevedo accepts and understands the grave consequences of his behavior. He is now facing a sentence of incarceration that is *14 years longer* and more severe than any previous punishment he has ever received, see PSR at ¶¶ 45-48, and he is focused on ways to seek meaningful treatment and improvement during that time, once he is incarcerated in the Bureau of Prisons.

Having been held in south bay house of correction for the conduct underlying this matter since his arrest on October 20, 2021, Mr. Acevedo has incurred no disciplinary reports and has served approximate 27 months of pre-trial custody without incident. See PSR at ¶¶ 1, 6. Unfortunately, given the lack of resources at south bay house of correction, Mr. Acevedo has had no opportunity to engage in any type of sex offender or mental health treatment, however, he requests a judicial recommendation for a placement in FMC-Devens, where he can participate in meaningful and rigorous sex offender treatment and mental health treatment, and work towards his goals of positive rehabilitation and growth.

Mr. Acevedo's History and Characteristics

Mr. Acevedo has a history of learning disabilities and delays,

See Evaluation of Hector Acevedo, pp. 1-3, 11-2,

attached as Exhibit A.

Born and raised in Boston, Mr. Acevedo was raised in an unstable, chaotic home environment that was compounded by financial difficulties. PSR at ¶¶ 57-58. A special education student in the Boston Public schools (“BPS”), Mr. Acevedo repeated both the 6th and 9th grades

and ultimately failed to graduate, dropping out in 2008, in the 10th grade, at the age of 18. PSR at ¶ 77.

. PSR at ¶ 77; *Exhibit B*, p. 50.

Continuing his difficulties with learning and neurodevelopment delays, as a teenager and adult Mr. Acevedo also struggled with

. *Exhibit A*, pp. 11-12.

Unfortunately, Mr. Acevedo's intellectual and social deficits have had grave consequences for him as an adult.

and his marked difficulties in interpersonal connection and communication, have resulted in Mr. Acevedo's difficulties functioning socially and sexually with age-appropriate peers. See *Exhibit A*, p. 12.

⁵ http://www.idrs.org.au/s32/guide/p040_2_2_DiagnosisTerms.php#.V6S4yrgrK70. Borderline intellectual functioning is, in and of itself, a recognized disability that is covered by the Social Security Administration's coverage of neurodevelopmental disorders. <https://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm>

⁶ For developmental comparisons, 6th grade comprises the ages of 11 to 12.

Importantly, in Dr. Plaud's evaluation of Mr. Acevedo, he notes that Mr. Acevedo

Instead, as articulated by Dr. Plaud, “

Exhibit A, p 12.

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Exhibit A, p. 2.

Crucially, his behavior underlying these offenses was not driven by pedophilic sexual interests, but instead, motivated by his own low functioning social and interpersonal abilities, coupled with a mood disorder and pervasive difficulties with healthy interpersonal connection, and issues of low self-esteem and self-worth. Notably, as to his statistically risk of recidivism on the *Child Pornography Offender Risk Tool* (CPORT), the sexual re-offense range for sexual offenders with Mr. Acevedo's particular score range is approximately fifteen percent, indicating that the overwhelming majority, eight five percent, of individuals with the same score range and risk factors as Mr. Acevedo, did not reoffend. *Exhibit A, pp. 9-10.*

Set against the context of his own disabilities, delays, and mental health issues, when reviewing Mr. Acevedo's prior sex offense in 2014 and his offending in the present matter, *both of which are non-contact and non-violent sex offenses that involve no physical contact with victims*, a picture emerges of a limited individual who struggled with healthy and age appropriate interpersonal connection and instead historically sought to get his social, emotional, and sexual needs met, via the removed medium of the internet, with an inappropriately aged child. Once Mr. Acevedo returned to the community in October 2020 after serving the sentence for his first offense, Mr. Acevedo was confronted with the death of his mother only a month later, in November 2020. PSR at ¶¶ 48, 61. The intense feelings of guilt and worthlessness that Mr. Acevedo experienced after his mother's passing were only compounded by the challenges of life brought about during the COVID-19 Pandemic, which in turn exacerbated his depression further, lead to extreme self-isolation, and fostered an unhealthy focus on connecting with others, often exclusively, via the internet. Ultimately, this toxic combination of factors influenced Mr. Acevedo's return to his patterns of unhealthy internet interactions, which included his behaviors and choice to engage with the minor victim in this case. It is behavior that he takes full

responsibility for and which he is committed to doing the work necessary to understand the impetus for his offending, engage in long-term sex offender treatment, and successfully complete the years of supervised release that he will be subjected to.

Throughout the last 27 months that Mr. Acevedo has remained incarcerated, pretrial, as a result of his offending in this case, he has reflected on the ways his mental health issues, cognitive limitations, and his difficulties with healthy social and interpersonal functioning all have contributed to his behavior and thought processes that lead ultimately to his offending in this case. Despite the fact that he has had no resources available to him for mental health or sex offender treatment, he has benefited from consulting with Dr. Plaud and is committed to seeking and completing treatment, as soon as that opportunity becomes available to him.

Further, during the last 27 months of his incarceration, he has maintained close relationships with his sisters, Tamara and Yessenia, his brother Luis, and his girlfriend of two years, Jairalis. PSR at ¶¶ 59-65; 66. Both his siblings and his girlfriend are aware of the details of Mr. Acevedo's offense, and remain strong supports for him. They are committed to helping to support him in reintegrating successfully into the community after what will be at least a two-decade sentence of imprisonment. See PSR at ¶¶ 59, 66.

2. The Sentencing Guidelines

As a threshold matter, Mr. Acevedo does not disagree with federal probation's calculation of his sentencing guidelines, which result, under § 2G2.1, in a total offense level of 35 and a corresponding guideline sentencing range of 210-262 months. PSR at ¶¶ 39, 50-52, 86. In Mr. Acevedo's case, where he has been convicted of one count of receipt of child pornography under 18 U.S.C. § 2252A(a)(2)(A) and (b)(1), the application of § 2G2.1 to his case is driven not by his statute of conviction, but rather is triggered by § 2G2.2(c)(1), the non-

production child pornography guideline. The switch from § 2G2.2 to the production guideline of § 2G2.1 is significant - increasing his base offense level from 22 under § 2G2.2(a)(2) by *ten points*, to a base offense level of 32 under § 2G2.1(a). Mr. Acevedo does not disagree with probation's ultimate application of § 2G2.1 and the corresponding application of a significantly higher starting point than the base offense level assigned to § 2G2.2.

The Sentencing Guidelines in Context

While this Court must correctly calculate the guideline range, *Gall v. United States*, 552 U.S. 38, 49 (2007), it may not treat that range as mandatory or presumptive, *id.* at 51; *Nelson v. United States*, 555 U.S. 350, 352 (2009), and must instead treat it as “one factor among several” to be considered in imposing an appropriate sentence under § 3553(a). *Kimbrough v United States*, 552 U.S. 85, 90 (2007). The Court must “consider all of the § 3553(a) factors,” “make an individualized assessment based on the facts presented,” *id.* at 49-50; *Pepper v. United States*, 131 S. Ct. 1229, 1242- 43 (2011). The Court’s “overarching” duty is to “‘impose a sentence sufficient, but not greater than necessary’ to accomplish the goals of sentencing.” *Kimbrough*, 552 U.S. at 101; *Pepper*, 131 S. Ct. at 1242-43.

The guidelines are only “a rough approximation of sentences that might achieve § 3553(a)’s objectives.” *Rita v. United States*, 551 U.S. 338, 351 (2007). The Court is free to reject a guideline sentence, “perhaps because the Guidelines sentence itself fails properly to reflect § 3553(a) considerations, or perhaps because the case warrants a different sentence regardless.” *Id.* at 350-351. Where a particular guideline application does not consider “empirical data and national experience” and would yield “a sentence greater than necessary to achieve § 3553(a)’s purposes,” a district court’s decision to vary from the guidelines is not an abuse of discretion. *Kimbrough*, *supra*, at 110. The child pornography guidelines have been called “a one-way ratchet, repeatedly

turned by Congress,”⁹ with the increasingly punitive amendments driven by politics rather than empirical or evidence-based research. *United States v. Dorvee*, 616 F.3d 174, 184-85, 187-188 (2nd Cir. 2010) (describing the child pornography guideline as “an eccentric Guideline of highly unusual provenance which, unless carefully applied, can easily generate unreasonable results” and mechanical application of the guidelines was “fundamentally incompatible with § 3553(a).”).

Following Congress’s lead and direction over the years with the tripping of the maximum penalties for production offenses,¹⁰ the Sentencing Commission followed suit with parallel increases in § 2G2.1’s base offense level. In response to the PROTECT Act’s exponential increase in the applicable mandatory minimums and maximums, for example, the Sentencing Commission was compelled to raise the base offense level for production offenses from 27 to 32 and to add additional enhancements that might potentially apply. U.S. Sentencing Commission, Amendment 664.

Advocates and courts alike have characterized certain specific offense characteristics and enhancements applied in the majority of child pornography cases as “all but inherent in the crime of conviction”, *Dorvee*, 616 F.3d at 186, and have widely critiqued the child pornography guidelines because of the plethora of “enhancements” that are present in nearly every case. An example of the problematic mechanical application of enhancements under the child pornography guidelines is the enhancement under § 2G2.1(b)(1) for minor victim age. As shown in the

⁹ See also Carol S. Steiker, “Lessons from Two Failures: Sentencing for Cocaine and Child Pornography under the Federal Sentencing Guidelines in the United States,” 76 *Law & Contemp. Probs.* Vol, 76, No. 1, at 37 (2013).

¹⁰ Until 1998, a production offense carried a maximum penalty of ten years with no required minimum sentence. In the next five years, Congress tripled the maximum sentence as part of its wholesale ratcheting up of child pornography penalties culminating in the PROTECT Act, which, in addition to extending the maximum sentence to thirty years, enacted the statutorily required minimum fifteen-year sentence.

Sentencing Commission statistics, the minor age enhancement applied to 90.8% of § 2G2.1 offenders in fiscal year 2019 (and similarly, 92.5 % in fiscal year 2010). United States Sentencing Commission, *Federal Sentencing of Child Pornography Production Offenses at 20 (Sentencing Characteristics 2021)*.¹¹ Like the oft criticized enhancement for ‘use of a computer’, when over 90% of all § 2G2.1 offenses qualify for the minor age enhancement, the enhancement serves only to inflate the guidelines without providing any effective or meaningful measure on degrees of culpability.

Judicial unease over upward ratcheting of the guidelines extends to production cases. A recent Sentencing Commission study of sentencing practices in such cases noted that the rate of downward variance from advisory guideline sentencing ranges in production cases is substantially higher than in other categories of cases – and that for a majority of production offenders - 57.2% - received a variance below the applicable guideline range.¹² Further, as seen in the JSIN data for defendants like Mr. Acevedo, whose primary guideline was § 2G2.1 (with a final offense level of 35 and a criminal history of III), the median sentence was 210 months, indicating that almost half of the sentences given were below the applicable guideline range of 210-262 months. PSR at ¶ 101. Not one sentence was given that exceeded the guideline sentencing range. *Id.*

Here, Mr. Acevedo’s request for a sentence of 240 months is driven by the parameters of the parties agreed upon plea agreement in this case, however, it is worth nothing that this request

¹¹ Available at: chrome-extension://efaidnbmnnnibpcajpcgiclfindmkaj/https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211013_Production-CP.pdf

¹² U.S. Sent’g Comm’n, *Federal Sentencing of Child Pornography Production Offenses*, at p. 3 *Key Findings*. available at: chrome-extension://efaidnbmnnnibpcajpcgiclfindmkaj/https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211013_Production-CP.pdf

is still over a year higher than the proscribed low end of his guidelines, even when still factoring in the +2 enhancement for minor victim age, which (in its application to the overwhelming majority of § 2G2.1 production offenders) provides no meaningful differentiation in culpability between offenders and offers little, in any, value as a guide for what a sentence no greater than necessary to achieve § 3553(a)'s purposes should be.

ARGUMENT

Mr. Acevedo's conduct warrants punishment, and the defense does not suggest otherwise. But the sentence that the government asks this court to impose is one that exceeds that guideline sentencing range in this case and exceeds the proscribed 15-year mandatory minimum which Mr. Acevedo faces because of his prior. Neither is it on par with the list of sentences given in what the government claims are "similar offenses" at pages 8-9 of their sentencing memorandum. None of the eight listed cases involve a defendant convicted of a sole count of receipt of child pornography, who is subject to enhanced guideline ranges under § 2G2.2(c)(1) for "causing a minor to engage in sexually explicit conduct for the purpose of transmitting a live visual depiction of such conduct". Nor do any of the cases share parallel facts of Mr. Acevedo's case. Instead, this list of "similar offenses" all reference cases of defendants convicted of multiple offenses of production, distribution of child pornography, and/or sexual exploitation of a minor, and include hands-on offending of minor children known to the defendants and entrusted to their care and protection for the purposes of creating child pornography, or the hands on offending of vulnerable children at the defendant's behest or instruction, for the purposes of creating child pornography, as well as defendants prolonged solicitation of, and distribution of, child pornography to others. All of these cases involve egregious patterns of hands-on offending and do not offer any type of meaningful comparison to Mr. Acevedo's case.

Sentencing Mr. Acevedo to any term of incarceration beyond the requested 240 months would only serve to incapacitate him for an additional five years, while subverting the goals laid out in 18 U.S.C. § 3553(a). A federal sentence cannot comport with the law if it driven solely by the moral outrage that guides the government recommendation.

Instead, under 18 U.S.C. § 3553(a)(2)(A), the Court must consider the need for the sentence to “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” As discussed throughout and below, the length of the proposed sentence reflects the severity of the crime but also takes into account Mr. Acevedo’s personal history and characteristics, the facts of his offending, his need for programming and sex offender treatment, and his substantially reduced risk of future recidivism. As to the need under 18 U.S.C. § 3553(a)(2)(B) for the sentence imposed to “afford deterrence to criminal conduct,” the proposed sentence will promote both specific and general deterrence. The length of the proposed sentence far exceeds any prior period of detention that Mr. Acevedo has served and will be more than sufficient to deter him from reoffending. Indeed, as will be discussed in more detail below, it will incapacitate him until he is in his sixth decade of life, further reducing the likelihood of recidivism. Moreover, the obvious severity of a 20-year sentence will promote general deterrence to any individual who might be inclined to engage in this sort of conduct.

Substantially Reduced Risk of Recidivism

Under 18 U.S.C. § 3553(a)(2)(C), the Court must also consider the need “to protect the public from further crimes of the defendant.” Given that Mr. Acevedo is now 33 years old and the proposed sentence would incarcerate him until he is in his fifties, with a term of supervised release further monitoring him until he is at least 55 and potentially 58, there is ample to reason to conclude

that he will pose a far lower risk of recidivism generally, and sexual recidivism specifically.¹³ In general, the Sentencing Commission has found that recidivism rates consistently drop as offenders age.¹⁴

Age is, unquestionably, the single most robust predictor of sexual recidivism. As one ages, the risk of sexual recidivism declines. This inverse relationship between age and sexual recidivism has been thoroughly documented in the peer-reviewed research literature in sex offender recidivism for over 20 years. In 1998, researchers Hanson and Bussière published their seminal meta-analysis examining predictors of sexual recidivism using data from twenty-one follow-up studies with a collective sample of 6,969 individuals. Their research revealed the consistently negative relationship between age and sexual recidivism: the older the individual, the smaller their risk for sexual reoffending.¹⁵ Several years later, Dr. Hanson conducted another large-scale examination of 4,673 individuals with sexual offenses from ten samples. This study also identified the decrease in sexual recidivism with age at release.¹⁶ Although Dr. Hanson discovered some

¹³ Prisoners are eligible to receive up to 54 days of good time for each year of the sentence under 18 U.S.C. § 3624(b). As noted earlier, due to the nature of his convictions, Mr. Acevedo is *not* eligible for additional earned time credits under the recently enacted First Step Act. *See* 18 U.S.C. § 3632(d)(4)(D) (listing the instant offenses as disqualifying offenses for the earning of additional time credits).

¹⁴ U.S. Sentencing Com'n, *The Effects of Aging on Recidivism Among Federal Offenders* at 3 (Key Findings) (December 2017), <https://www.usc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders> (noting both that the lack of a prior criminal history and completion of higher education were factors contributing to lower recidivism rates, and that older offenders were less likely to recidivate after release than younger offenders who had served similar sentences, regardless of the length of sentence imposed).

¹⁵ Hanson, R. K., & Bussière, M. T. (1998). Predicting relapse: A meta-analysis of sexual offender recidivism studies. *Journal of Consulting and Clinical Psychology*, 66(2), 348–362. <https://doi.org/10.1037/0022-006X.66.2.348>.

¹⁶ Hanson, R. K. (2002). Recidivism and age: Follow-up data from 4,673 sexual offenders. *Journal of Interpersonal Violence*, 17(10), 1046–1062. <https://doi.org/10.1177/08862605-0201710-02>.

differences in the relationship between age and recidivism across offense type¹⁷, sexual recidivism risk ultimately consistently and unquestionably decreased with age at release.

These findings are consistent with the significant body of research that has established that as age increases, the likelihood of reoffending decreases.¹⁸ This is especially true for those who were at, or over, age 50 at release, with very low sexual recidivism occurring, regardless of the nature of previous sexual offending.¹⁹

Additionally, as an internet-only offender with no physical hands-on offending, Mr. Acevedo's risk of recidivism for a future contact offense is equally low. "Online offenders who

¹⁷ In this study - the effect of age on recidivism was not uniformly linear, with the pattern of recidivism over time varying by type of offense. For example, individuals who committed extra-familial child molestation tended to remain at higher levels of risk in their 20s and 30s, plateauing in their 40s with a drop-off occurring after age 50; by contrast, risk among those who committed rape or incest reduced in a more linear fashion.

¹⁸ Helmus, L., Thornton, D., Hanson, R. K., & Babchishin, K. M. (2012). Improving the predictive accuracy of Static-99 and Static-2002 with older sex offenders: Revised age weights. *Sexual Abuse*, 24(1), 64–101. <https://doi.org/10.1177/1079063211409951>; Hanson R. K. (2006). Does static-99 predict recidivism among older sexual offenders? *Sexual Abuse: Journal of Research and Treatment*, 18(4), 343–355. 10.1177/107906320601800403; Nicholaichuk, T. P., Olver, M. E., Gu, D., & Wong, S. C. (2013). Age, actuarial risk, and long-term recidivism in a national sample of sex offenders. *Sexual Abuse*, 26(5), 406–428. <https://doi.org/10.1177/1079063213492340>

¹⁹ Barbaree, H. E., Blanchard, R., & Langton, C. M. (2003). The development of sexual aggression through the life span: The effect of age on sexual arousal and recidivism among sex offenders; In R. Prently, E. Janus, & M. Seto (Eds.), *Understanding and managing sexually coercive behavior* (Annals of the New York Academy of Sciences, Vol. 989, pp. 59-71). New York, NY, USA: New York, Academy of Sciences; Hanson, R. K. (2006). Does Static 99 predict recidivism among older sexual offenders? *Sexual Abuse*, 18(4), 343–355. <https://doi.org/10.1177/107906320601800403>; Ambroziak, Et. Al (2020). Are Civilly Detained and Committed Sexually Violent Persons Released after Age 60 Low Risk? *Criminal Justice and Behavior*, 48(7), 981-998. <https://doi.org/10.1177/0093854820972448>; Azizian, Et Al. (2021). A Preliminary Analysis of Sexual Recidivism and Predictive Validity of the Static-99R in Men Discharged From State Hospitals Pursuant to California's Sexually Violent Predator Act. *Sexual Abuse*, 34(1). <https://doi.org/10.1177/10790632211019726>; Harris, A. J. R., & Hanson, R. K. (2004). Sexual offender recidivism: A simple question. (Corrections User Report No 2004 – 01). Ottawa, Ontario, Canada: Public Safety and Emergency Preparedness Canada. Retrieved from <http://www.publicsafety.gc.ca/res/cor/rep/2004-03-se-offeng.aspx>.

had no history of contact offenses almost never committed contact sexual offenses.” Michael C. Seto *et al.*, *Contact Sexual Offending by Men With Online Sexual Offenses*, 23 *Sexual Abuse* 124, 137 (2011); *see also* Written Statement of Richard Wollert, Ph.D. before the U.S. Sent’g. Comm’n, at 14-17, 21-22 (Feb. 15, 2012) (reporting that in his study of 72 federal child pornography offenders under supervision, including three production offenders, with varying criminal histories, two were arrested for possessing child pornography and none were arrested for a contact offense within four years).²⁰ Simply put, the extensive body of empirical research on child pornography offenders establishes that these offenders “do not, as a group, present a significant risk of escalation to contact sexual offenses.” Helen Wakeling *et al.*, *Comparing the Validity of the RM 2000 Scales and OGRS3 for Predicting Recidivism by Internet Sexual Offenders*, 23 *Sexual Abuse: J. Res. & Treatment* 146, 164 (2011).

Similar results were found when data from nine previous studies of Internet child pornography offenders were analyzed. With an average follow up time of 3 ½ years, 3.4 % of the offenders had new child pornography offenses and only 2.1% were rearrested or reconvicted for a new contact sexual offense. Seto, *et. al.*, *Contact Sexual Offending by Men With Online Sexual Offenses*, 124-145 (2011); *see also* Jérôme Endrass *et al.*, *The Consumption of Internet Child Pornography and Violent Sex Offending*, 9 *BMC Psychiatry* 43 (2009) (study that followed 231 child pornography offenders for six years after initial offenses found that only two offenders (0.8%) committed a contact offense, and only nine offenders (3.9%) committed a non-contact sexual offense, and concluded that “the consumption of child pornography alone does not seem to represent a risk factor for committing hands-on sex offenses . . . at least not in those subjects without prior

²⁰ Available at http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120215-16/Testimony_15_Wollert_2.pdf.

convictions for hands-on sex offenses”); Michael C. Seto & Angela W. Eke, *The Criminal Histories and Later Offending of Child Pornography Offenders*, 17 *Sexual Abuse* 201, 207-08 & tbl.III (2005) (finding that 1.3% of those who had committed child pornography offending only recidivated with contact sex offenses; “our finding does contradict the assumption that all child pornography offenders are at very high risk to commit contact sexual offenses involving children.”); L. Webb *et al.*, *Characteristics of Internet Child Pornography Offenders: A Comparison with Child Molesters*, 19 *Sexual Abuse* 449, 463 (2007) (finding Internet-only offenders “significantly less likely to fail in the community than child molesters,” and concluding that “by far the largest subgroup of internet offenders would appear to pose a very low risk of sexual recidivism”).

Other factors, like treatment and social and community supports, will also reduce Mr. Acevedo’s risk of recidivism even further. The combination of Mr. Acevedo’s age, circumstances, and future treatment make the actual risk, once released after having served a sentence of 20 years of incarceration, approaching zero. When he is released, he will be subject to sex offender-specific conditions of supervised release – likely sixteen (16) special conditions in all. Most salient to the concerns regarding sexual recidivism, supervised release conditions will include sex offender treatment and third-party risk notification, and the Probation Office will scrupulously monitor his computer use and he will be prohibited from having any unsupervised contact with children.

Finally, at whatever time Mr. Acevedo completes his imprisonment, he will face the prospect of civil confinement under 18 U.S.C. § 4248 as a sexually dangerous person. Should the government contend that Mr. Acevedo poses a risk to the public decades from now, that matter can be fairly heard prior to his release—and with the benefit of considerably more extensive treatment and information about his risk than is available to the court today.

Need for Sex Offender Treatment

Under 18 U.S.C. § 3553(a)(2)(D), the Court must also consider the need “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” As undersigned counsel has indicated, sex offender treatment is not provided to pretrial detainees at south bay house of correction where Mr. Acevedo is detained; had it been available, he would have engaged and started treatment long ago. Mr. Acevedo recognizes the need to engage in sex offender treatment and intends to avail himself of all available treatment while serving his sentence.

A sentence of longer than 20 years will unnecessarily delay Mr. Acevedo’s access to treatment and would thus be antithetical to rehabilitation. He will undoubtedly receive sex offender treatment while imprisoned in the Bureau of Prisons (“BOP”), and indeed asks for a judicial recommendation to a facility where he can engage in such treatment. But because inmates ordinarily participate in the two relevant sex offender treatment programs during the last 36-48 months of their sentence,²¹ a sentence of longer than 20 years would only further remove Mr. Acevedo from the treatment he so obviously needs. There is no reason to further postpone treatment any longer than it will already be delayed. This would be antithetical to rehabilitation in violation of 18 U.S.C. § 3553(a)(2)(D) and, almost standing alone, would make a sentence of greater than 20 years “greater than necessary” to accomplish the purposes of sentencing.

As noted above, participation in sex offender treatment additionally contributes to his already low risk of recidivism. For sex offenders, cognitive behavioral therapy substantially

²¹ BOP, “*Sex Offenders*,” https://www.bop.gov/inmates/custody_and_care/sex_offenders.jsp (“Offenders typically participate in sex offender treatment in the final three years of their incarceration”), and BOP Program Statement 5324.10, “Sex Offender Programs,” https://www.bop.gov/policy/progstat/5324_010.pdf

reduces recidivism.²² When released from prison, Mr. Acevedo will be able to continue this treatment in the community, which will further reduce any future recidivism risk.

Sentencing Disparities

The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct is codified in 18 U.S.C. § 3553(a)(6). The Sentencing Commission provides data of dispositions for defendants whose primary guideline was U.S.S.G. § 2G2.1, and indeed, as indicated by federal probation, the average sentence for defendants with the same total offense level and criminal history as Mr. Acevedo was 218 months, with a median length of imprisonment of 210 months. PSR at ¶ 101.

Further, of the 512 defendants included in the Sentencing Commission's 2019 research regarding production offenders sentenced under guideline § 2G2.1, the Commission indicates that, of the defendants who were not physically present with their minor victims during the offense, the average sentence for the 'remote' offenders was 234 months. Similarly, when examining the relationship between the victim and the defendant, for defendants who were not in a close position of trust (like a coach or a teacher) or a familial relationship with the victim, but instead were an 'internet stranger', the average sentence was 249 months.²³ These facts most closely mirror those of Mr. Acevedo's case, and further support his request for a 240-month sentence.

²² U.S. Dep't of Justice, Center for Sex Offender Management, *Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses* 10 (2006); See U.S. Sent'g Comm'n, *Report to the Congress: Federal Child Pornography Offenses* (2012) [*"Child Porn Report"*] at 278 and n. 31 (quoting Center of Sex Offender Management, *The Comprehensive Approach to Sex Offender Management* 5 (2008), finding that "appropriate 'treatment interventions'...are associated with very significant lower rates of recidivism).

²³ U.S. Sent'g Comm'n, *Federal Sentencing of Child Pornography Production Offenses*, at pp. 44-45.

Conditions of Pretrial Detention

Though now well understood by the Court in 2024, the ongoing and devastating COVID-19 crisis served to fashion Mr. Acevedo's pretrial detention into something much more onerous and stressful. At the south bay house of correction where he has been imprisoned since his arrest for the conduct underlying this case, during his first year of detention he was subjected to frequent lockdowns and quarantine periods, which limited his movement and access within the facility. Pretrial programming was severely limited, if available at all. And although he was able to speak with family and friends by telephone, all in-person visits were significantly curtailed due to COVID exposure concerns. The first year of his pretrial detention was shaped by the pandemic and its associated lockdowns. Here, the Court has the benefit of understanding Mr. Acevedo's difficult experiences in pretrial detention and should consider that in imposing a parsimonious and proportional sentence. *United States v. Estrada*, No. 19-cr-5058-BAS, 2021 U.S. Dist. LEXIS 80602, at *2 (S.D. Cal. Apr. 27, 2021) (noting downward departure "because the conditions of confinement were particularly harsh during the pandemic."); *United States v. Romero*, 2021 U.S. Dist. LEXIS 73877, at *9 (S.D.N.Y. Apr. 16, 2021) (observing "long before the current pandemic, courts had recognized that periods of presentence custody spent in unusually hard conditions merited recognition by courts in measuring the just sentence."). Even before the pandemic, courts imposed downward departures based on harsh pretrial conditions. *See, e.g., United States v. Hernandez-Santiago*, 92 F.3d 97, 101, n.2 (2d Cir. 1996) (pre-COVID case noting district court's three-level downward departure "because the defendant had been incarcerated for 22 months . . . in a state facility, in the district court's view a 'harsher incarceration' than federal imprisonment because of its lack of educational and therapeutic programs.")

A Lifetime of Punishment

As several courts have recognized, collateral consequences of conviction, such as registration as a sex offender, are relevant to the “need” for the sentence imposed to reflect just punishment. *See, e.g., United States v. Garate*, 543 F.3d 1026, 1028 (8th Cir. 2008) (district court’s consideration of the lasting effects of being required to register as a sex offender is appropriate mitigating factor in sentencing); *United States v. Autery*, 555 F.3d 864, 875 (9th Cir. 2009) (characterizing sex offender registration as “a punishment of lifelong significance (which can cause the listed person to become so socially ostracized that he has difficulty living in many communities)”). These collateral consequences of conviction – though civil, and not intentionally punitive in nature – should nonetheless be considered in the calculus of a sentence’s reasonableness and parsimony. This is especially true where the “collateral consequences of child pornography convictions are extreme, perhaps more extreme in some ways than any other form of criminal activity... It is a crime of extreme shame and humiliation.” *United States v. Bhavsar*, 10-CR-40018-FDS, ECF No. 56, Excerpt Transcript of Sentencing at 8.

For Mr. Acevedo, this conviction will follow him the rest of his life, no matter whether he reoffends and no matter whether he successfully completes treatment. He likely will be subject to harassment, and maybe violence, both in prison and afterwards in the community. He will be ashamed, and shamed, for the rest of his life. He profoundly understands and is remorseful for the harm that his offenses have caused to his victims, to his family and friends, and to his community. But in considering the need for parsimony and for the sentence to reflect an individualized determination of his actions, personal history, and low risk of recidivism, it is important to recognize that Mr. Acevedo’s conviction alone in this case carry a lifetime of punishment and will require a lifetime of reparation in society’s eyes.

Conclusion

Hector Acevedo committed a serious crime that merits significant punishment. The requested sentence of 20 years' imprisonment is a profoundly severe, life-altering sentence that will deprive Mr. Acevedo of two decades of his life. The period of incarceration will unquestionably provide retribution and general and specific deterrence. Not only will it provide Mr. Acevedo ample time for rehabilitation, each day past the requested 20 years unnecessarily postpones the treatment he needs and undermines the very rehabilitation the law requires. Accordingly, that sentence is sufficient but not greater than necessary and should be imposed.

Respectfully submitted,
Mr. Hector Acevedo

By His Attorney,
/s/ Forest O'Neill-Greenberg
Forest O'Neill-Greenberg
B.B.O.# 674760
Federal Public Defender Office
51 Sleeper Street, 5th Floor Boston,
MA 02210
Tel: 617-223-8061

CERTIFICATE OF SERVICE

I, Forest O'Neill-Greenberg, hereby certify that this document filed through the ECF system will be sent electronically to the registered participant(s) as identified on the Notice of Electronic Filing (NEF) on January 21, 2024.

/s/ Forest O'Neill-Greenberg
Forest O'Neill-Greenberg