

Attachment A

11th Circuit Opinion

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12682
Non-Argument Calendar

D.C. Docket No. 1:15-cr-00395-WSD-RGV-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEONARD NATHANIEL PERAGINE, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(May 8, 2018)

Before MARCUS, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

Leonard Peragine appeals his 340-month sentence for enticement of a child for sexual activity and possession and distribution of child pornography under 18 U.S.C. §§ 2422(b), 2252(a)(2), 2252(b)(1), 2252(a)(4)B), and 2252(b)(2). On appeal, he argues that the district court committed both procedural and substantive errors. He asserts that the district court's sentence was procedurally unreasonable because it applied the sentencing enhancements found in U.S.S.G. § 2G2.2 without regard to a report from the Sentencing Commission in 2013 that those enhancements are "outdated," and because it should have instead applied the Guidelines calculation for enticement of a child for sexual activity under § 2G1.3. And he contends that the district court's sentence was substantively unreasonable because the sentence it imposed was greater than necessary to account for the factors listed in 18 U.S.C. § 3553(a).

We review the reasonableness of a sentence for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 41 (2007). The party who challenges a sentence bears the burden to show that the sentence is unreasonable in light of the record and the § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010).

I

We review for procedural reasonableness to ensure that the district court committed no significant procedural error, such as (1) improperly calculating the defendant's sentencing range, (2) treating the Guidelines as mandatory, (3) failing

to consider the 18 U.S.C. § 3553(a) factors, (4) selecting the sentence based on clearly erroneous facts, or (5) failing to adequately explain the chosen sentence. *Gall*, 552 U.S. at 51. Procedural errors are harmless when the district court would have imposed the same sentence regardless of a particular Guidelines calculation, and when the ultimate sentence is reasonable. *United States v. Keene*, 470 F.3d 1347, 1349 (11th Cir. 2006).

Here, the district court did not procedurally err. Peragine does not contend the district court incorrectly calculated the Guidelines. Nor does he argue that the court improperly treated the Guidelines as mandatory or committed a clear error of judgment. Instead, he asserts that sentencing him under § 2G2.2—rather than § 2G1.3—unfairly “warp[ed] the assessment of [his] offense conduct.” For support, Peragine points to a report issued by the U.S. Sentencing Commission in 2013 that critiqued the enhancements available under § 2G2.2 as outdated in light of modern technology. But this Court has squarely rejected similar arguments before, and has held on substantially similar facts that “the Commission’s 2013 report does not render the non-production child pornography guidelines in § 2G2.2 invalid or illegitimate”—or, for that matter, “alter[] our appellate duties in reviewing a § 2G2.2-based sentence or the district court’s sentencing duties or discretion in any way.” *United States v. Cubero*, 754 F.3d 888, 900 (11th Cir. 2014). Peragine’s related contention that the district court was “authorized to

consider” the 2013 Report misses the point. The sole question here is whether the district court abused its discretion when it applied the enhancements available under § 2G2.2. This Court’s precedent makes clear that it did not.

Nor does anything in this Court’s precedent support Peragine’s suggestion that, in the case of multiple counts which cannot be grouped together, a district court must determine which crime Congress intended to be the more serious and use the Guidelines calculation applicable to that offense. In basing the Guidelines calculation on the group of offenses that yielded the higher offense level, the district court here was following the explicit instructions of U.S.S.G. § 3D1.4.

Finally, even if Peragine were correct that the district court committed a procedural error in applying the Guidelines, the error would be harmless because the court expressly stated that it would have imposed the same sentence regardless of the Guidelines calculation:

I made all these guideline rulings to the best of my ability. I believe that they are right. But in a case like this, at the end of the day, it’s ... ultimately deciding what’s fair and just and consistent with the criteria under the [§] 3553 factors. And having gone through what the guidelines would be if I was wrong on all this ... regardless of what my rulings were and whether they were wrong in the guidelines, this is the appropriate sentence in the case.

For all of these reasons, we reject Peragine’s argument that the district court committed procedural error.

II

For a sentence to be substantively reasonable, the district court must impose a sentence that is “sufficient, but not greater than necessary to comply with the purposes” listed in 18 U.S.C. § 3553(a), including the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, deter criminal conduct, and protect the public from the defendant’s future criminal conduct. *See* 18 U.S.C. § 3553(a)(2). The court must also consider the nature and circumstances of the offense and the history and characteristics of the defendant. *Id.* § 3553(a)(1).

Although we do not formally presume that a sentence falling within the Guideline range is reasonable, we ordinarily “expect” such a sentence to be reasonable. *United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008). The weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court. *United States v. Clay*, 483 F.3d 739, 743 (11th Cir. 2007). A court can abuse its discretion when it (1) fails to consider relevant factors that were due significant weight, (2) gives an improper or irrelevant factor significant weight, or (3) commits a clear error of judgment by balancing the proper factors unreasonably. *United States v. Irej*, 612 F.3d 1160, 1189 (11th Cir. 2010) (*en banc*). Moreover, a district court’s unjustified reliance on any one § 3553(a) factor

may be indicative of an unreasonable sentence. *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008).

Here, the district court's sentence is not substantively unreasonable. The court discussed the § 3553(a) factors at sentencing and gave detailed justifications for its sentence, which focused on the need to reflect the severity of the crime as well as the need to ensure that Peragine would not harm children in the future. The court acknowledged that Peragine was a victim himself when he was a child, but reasonably balanced against this mitigation evidence the need for a sentence that properly reflected the seriousness of Peragine's crimes as well as the necessity to protect other victims.

Moreover, under our precedent, it is also significant that the sentence that the district court imposed was not just within the applicable Guidelines range of 360 months-to-life, *see Hunt*, 526 F.3d at 746, but *below* both the Guidelines range and the statutory maximum, which was life imprisonment, *see United States v. Holt*, 777 F.3d 1234, 1269 (11th Cir. 2015).

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 1:15-CR-00395-WSD

LEONARD NATHANIEL PERAGINE, JR.

Defendant's Attorney
Richard Brooks Holcomb

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant pleaded guilty to Counts 1, 2, and 3 of the Indictment.

Accordingly, the defendant is adjudged guilty of such counts which involve the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count No.</u>
18 U.S.C. § 2422(b)	Enticement of Child for Sexual Activity	1
18 U.S.C. §§ 2252(a)(2) and 2252(b)(1)	Distribution of Child Pornography	2
18 U.S.C. §§ 2252(a)(4)(B) and 2252(b)(2)	Possession of Child Pornography	3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of **\$300.00**, which shall be due immediately.


The Court finds that the defendant is indigent and **waives the \$5,000.00** additional special assessment pursuant to 18 U.S.C. § 3014.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within thirty (30) days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Social Security Number: xxx-xx-7483
Defendant's Date of Birth: 1983
Defendant's Mailing Address:
Canton, Georgia 30115

Date of Imposition of Sentence: May 31, 2017

Signed this 1st day of June, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **THREE HUNDRED FORTY (340) MONTHS as to Count 1, TWO HUNDRED FORTY (240) MONTHS as to Count 2, and TWO HUNDRED FORTY (240) MONTHS as to Count 3, all to run CONCURRENTLY for a total sentence of THREE HUNDRED FORTY (340) MONTHS.**

The Court requests that the defendant promptly be evaluated for psychosexual, substance abuse, and mental health issues and be assigned to a facility with a psychosexual inpatient and aftercare program.

The defendant is remanded to the custody of the United States Marshal Service.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **LIFE as to Counts 1, 2, and 3, to run CONCURRENTLY for a total term of supervised release of LIFE.**

Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following additional conditions:

SPECIAL CONDITIONS

The defendant shall not unlawfully possess a controlled substance.

The defendant shall submit to one drug urinalysis within 15 days after being placed on supervision and at least two periodic tests thereafter.

Pursuant to 42 U.S.C. § 14135a(d)(1) and 10 U.S.C. § 1565(d), which require mandatory DNA testing for federal offenders convicted of felony offenses, the defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not own, possess, or have under his control any firearm, dangerous weapon, or other destructive device.

The defendant shall submit to a search of his person, property (real, personal, or rental), residence, office, and/or vehicle, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition. The defendant shall permit confiscation and/or disposal of any material considered contraband or any item which may be deemed to have evidentiary value related to violations of supervision.

The defendant shall not have access to the internet or any other future developed internet-like electronic or technological means of accessing information using a computer or other device or means except as may be allowed by the probation officer under the direction of the probation officer. The probation officer shall have access to any computer or other future developed device which the defendant owns, controls or uses, or which is capable of accessing the internet or any other electronic or technological means of accessing information. If the defendant uses a computer at his place of employment, the probation officer shall first consult with the Court to request defendant's access to an employer-provided computer. The defendant shall assist the probation officer to access any and all places on the defendant's computer(s) that are permitted to be searched without the Court's prior permission and any other electronic or technological device with internet or other information-accessing capability, including information that discloses the sites that the defendant has visited and persons or entities whom the defendant has communicated with or sent or received information. The defendant shall permit confiscation and/or disposal of any material that is considered contraband or any other item that may be deemed to have evidentiary value related to violations of supervision that results either from a search of the defendant's personal property or the defendant's computer or other electronic or technological device.

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The defendant shall participate in a mental health treatment program under the guidance and supervision of the probation officer, and if able, contribute to the cost of services for such treatment.

The defendant shall participate in a sex offender treatment program, which may include a psychosexual evaluation and other psychological testing and treatment, under the guidance and supervision of the probation officer. If able, the defendant shall contribute to the cost of the treatment services.

The defendant, as a convicted sex offender, shall (A) register where he resides, where he is an employee, and where he is a student, and for the initial registration, he also shall register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence; (B) provide information required by 42 U.S.C. § 16914; and (C) keep such registration current for the full registration period as set forth in 42 U.S.C. § 16915.

The defendant shall undergo a polygraph examination once a month, at which time he will be inquired as to whether he has viewed any pornographic materials or engaged in any inappropriate sexual contact with minors.

The defendant shall have no access to cable television.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other reasons;
6. The defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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FINE

The Court waives the fine and cost of incarceration.

Attachment C

U.S. District Court Sentencing Transcript

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

3 UNITED STATES OF AMERICA)
)
4 Plaintiff,) CRIMINAL ACTION FILE
) NO. 1:15-CR-395-WSD
5 v.)
) ATLANTA, GEORGIA
6 LEONARD NATHANIEL PERAGINE, JR.)
)
7 Defendant.)
)
)

8
9 TRANSCRIPT OF PROCEEDINGS
10 BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,
 UNITED STATES DISTRICT JUDGE

11 **SENTENCING**
12 Wednesday, May 31, 2017

13
14
15 APPEARANCES OF COUNSEL:

16 For the Plaintiff: OFFICE OF THE U.S. ATTORNEY
 (By: John Shantanu Ghose)
17
18 For the Defendant: FEDERAL DEFENDER PROGRAM INC.
 (By: Richard Brooks Holcomb)

19
20
21
22 *Proceedings recorded by mechanical stenography*
23 *and computer-aided transcript produced by*
 NICHOLAS A. MARRONE, RMR, CRR
 1714 U. S. Courthouse
24 75 Ted Turner Drive, S.W.
 Atlanta, GA 30303
25 (404) 215-1486

Wednesday Morning Session

May 31, 2017

9:40 a.m.

-- -- --

P R O C E E D I N G S

-- -- --

(In open court:)

THE COURT: Good morning. This is the sentencing in the United States v. Leonard Peragine, which is Criminal Action No. 15-395.

Would counsel announce their appearances, please?

MR. GHOSE: Good morning, Your Honor. John Ghose for the United States.

THE COURT: Good morning.

MR. HOLCOMB: Good morning, Your Honor. Rick Holcomb, and I'm here with Mr. Peragine.

THE COURT: Good morning.

And good morning, Mr. Peragine.

THE DEFENDANT: Good morning, sir.

THE COURT: Mr. Peragine, there was prepared in your case a document called a presentence report that has a lot of background information about the case and you and a couple sections that are dedicated to the guideline recommendation.

I just want to make sure that you have received a

1 copy of that and you have had a chance to review it and to
2 discuss it with Mr. Holcomb. Have you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: There are some factual objections
5 I guess is the best way to characterize them, but they
6 seem -- this is my interpretation of them, looking at the
7 presentence report as a whole.

8 They generally pertain to that interpretation of
9 the guidelines in which the probation officer and the
10 government relies upon three instances for the purpose of a
11 five-point increase for a pattern of activity involving the
12 sexual abuse or exploitation of a minor.

13 And my understanding of the defendant's position
14 with respect to those are the first having to do with
15 activity involving a niece when the defendant was a teenager,
16 second is an action that is pending in the Lumpkin County
17 Superior Court involving activity with another teenager
18 that's more recent, and then some e-mails between -- well,
19 I guess conversations with the undercover agent in which the
20 defendant made some comments about conduct with his daughter
21 at some time in the past.

22 And that the defendant takes the position that
23 those three things are either disputable, although he doesn't
24 take any position on the second one involving activity with
25 his son because of the pending Lumpkin County action.

1 And I don't think he disputes number one, although
2 he makes an argument that because of his age, it shouldn't be
3 considered as part of a pattern of activity to support a
4 pattern for conduct that is far more recent.

5 And then with respect to the third, that the
6 government can't prove the truth of those, and that those
7 were puffing or exaggerations.

8 And I saw most of these relating -- most of the
9 objections relating to those three incidents. Is that a fair
10 summary of what the overall dispute is?

11 MR. HOLCOMB: I think so, Your Honor.

12 I would add just as to the first allegation that he
13 takes no position as to that either, the first one.

14 The second one, as you mentioned, is pending
15 litigation.

16 The third, he does deny that that actually took
17 place, that the statements in the chats were true. And
18 there is outside indications to support that position in
19 terms of the forensic evaluation and what the forensic
20 evaluator told his ex-wife, who is here with us in the
21 courtroom today.

22 Also there is an additional issue as to whether or
23 not both the pattern should apply from Chapter 2 and also
24 from Chapter 4.

25 THE COURT: Right.

1 MR. HOLCOMB: There is a five-point bump for both,
2 so a ten-point swing in the guidelines for what is
3 predicated, as we can see from the report, on the same
4 instances of conduct. And we think that's excessive and we
5 consider it to be double-counting.

6 I can address that now or I can wait in turn to say
7 something about the law on that issue?

8 THE COURT: No, I just want to frame the issue so
9 that we can focus the discussion.

10 MR. HOLCOMB: Yes, sir.

11 THE COURT: I guess we will begin with the three
12 instances that are cited in the presentence report, and
13 whether or not, because the government has to prove those,
14 whether the government intends to put on any additional
15 evidence with respect to those three instances.

16 MR. GHOSE: Yes, Your Honor.

17 So, Your Honor, regarding the three different
18 instances involving the one-year-old daughter, the
19 14-year-old son, and the 8- and 6-year-old cousins, first
20 I would like to just highlight what is already in the PSR,
21 and then, as necessary, I do have a witness and some exhibits
22 as well that can bolster the facts that are already contained
23 in the PSR.

24 So regarding the three instances of prior child
25 sexual abuse outside the instant conduct that's charged,

1 first I will address the one-year-old infant daughter.

2 I would just like to point out and highlight that
3 at Paragraph 28 of the PSR, which contains an accurate
4 excerpt of the *Kik* exchange between the defendant and the
5 undercover agent, as you can see, there is a reference that
6 the defendant makes to touching, stroking and playing with
7 the child, the one-year-old child.

8 Now, I understand that the defendant does not
9 object to the content of the chat, but he objects to the
10 truthfulness of that statement that he made during that
11 chat. And I just want to point out some facts that I think
12 show that there is a reason to believe that that actually was
13 a reliable statement at least beyond a preponderance.

14 So, first of all, what I want to do first is I just
15 want to point out all the other instances in this case where
16 Mr. Peragine's statements during the chat were, in fact,
17 accurate statements.

18 The defendant has stated that often in these cases
19 the chatting is fabrications because it's part of a fantasy
20 and role playing.

21 That is true in some cases, but in this particular
22 case I think it's reasonable to infer based on the other
23 facts that can be proven as true, facts that he stated during
24 the chat, if it's reasonable to infer that those facts are
25 true, this fact also was true.

1 So, for example, at Paragraph 14 in the PSR, the
2 defendant indicates during the chat that his name, in fact,
3 is Lenny Peragine. That's an accurate statement, and again
4 there is no objection to Paragraph 14.

5 Paragraph 15, there is a reference -- and all of
6 this is borne out in the actual chats themselves, which
7 I have if the Court would like to review the actual chats,
8 the primary evidence. But in Paragraph 15, the defendant
9 indicates that he lives in Lawrenceville, Georgia, during the
10 chat with the undercover agent. That also is an accurate
11 statement of fact, and there is no objection to
12 Paragraph 15.

13 In Paragraph 16 of the PSR, there is a reference to
14 the defendant mentioning where he works, what he does for
15 work, and what car he drives during the chat.

16 He says he owns a home maintenance and remodeling
17 business and that he drives a 2006 Dodge truck. Those facts
18 are true. That's the car he that was driving when he was
19 arrested, and also there is evidence that shows that a
20 records search indicated that, in fact, that was his car.

21 And it is true that he owned -- he was a contractor
22 and he did home maintenance and construction. He said that
23 during his postarrest interview, and there is other evidence
24 that proves that that fact is true. And again there is no
25 objection to Paragraph 16.

1 In Paragraph 17 of the PSR, there is a description
2 of the chat the defendant has with the undercover where he
3 describes his three children and their ages. He says during
4 the chat he has a 14-year-old son, a 13-year-old daughter and
5 a one-year-old daughter. That's correct. Those are the
6 three children that he has and those are their genders and
7 their ages. So once again he's being accurate during his
8 chat.

9 So to the extent that there is a suggestion that
10 he's falsifying and lying about things throughout the chat,
11 there is a lot of instances where he's being accurate.

12 That same paragraph -- and this will come up when
13 I talk about the 14-year-old -- the defendant talks about a
14 camping trip he went on with his son with an adult female
15 friend. That's an accurate statement as well. That's proven
16 by other evidence, and there is no objection, although there
17 is no concession, to Paragraph 17.

18 Paragraph 18 of the PSR, the defendant -- there is
19 a description of the defendant's chat with the undercover
20 where he states that he committed an armed robbery when he
21 was 18 years old. That's correct, the NCIC report and other
22 evidence shows he was -- he did commit and was convicted of
23 armed robbery twice when he was 18.

24 So all of these things show that he's truthful
25 during the chats, and therefore I would argue that it's

1 reasonable to infer that he's also truthful when he
2 discusses doing the sexual conduct with the one-year-old
3 infant.

4 Now, it is correct that there was a physical
5 examination of the child done, and that that examination, as
6 far as I know, did not reveal any indication of physical
7 trauma on the child in her private areas.

8 But I want to just point out that the defendant
9 isn't stating that he had done anything that would have
10 caused a physical trauma on her. He just talks about taking
11 pictures and doing touching and stroking and things like
12 that. So the fact that she had no injuries is consistent
13 with what he stated was the conduct that he engaged in with
14 her.

15 THE COURT: You know, the difference between the
16 paragraphs that you rely on is those are all present
17 verifiable facts. There is some record evidence of that.

18 MR. GHOSE: Right.

19 THE COURT: This is a statement about conduct for
20 which there is no conviction, there is no arrest.

21 He does have to convince the undercover agent
22 that with respect to this conduct -- they are not planning to
23 rob a bank together or commit a robbery -- he's trying -- he
24 has to persuade her that they ought to go forward with his
25 desire to have this sexual relationship with a child.

1 And that's the one thing different from all of
2 these. That is more in terms of his advocacy, which I think
3 makes it different than looking at verifiable facts like the
4 ones that are in Paragraphs 14, 15, 16 and 18.

5 MR. GHOSE: Right. That --

6 THE COURT: And so it's harder to find the
7 truthfulness with respect to these verifiable facts as
8 circumstantial evidence where you can infer that this very
9 different kind of fact in the absence of any verifiable
10 information is true, whether the government has proved it
11 beyond a reasonable doubt.

12 I'm not sure that you discredit it based upon the
13 examination of the child. I don't even know why the child
14 was examined and what the proximity would have been between
15 the alleged touching at the time as described in the chat
16 versus the physical examination of the child. I don't know.

17 If that was in close proximity, then the absence of
18 any sort of irritation might be important, but I don't know,
19 and I don't think there is anything in the PSR or that's
20 available to me to tell me what the temporal proximity is of
21 those two events.

22 So I just have a hard time reaching the same
23 conclusion you reached, that where you have a different
24 kind of fact, that you can use that to infer that a very
25 different kind of fact that is necessary for him to persuade

1 the way he wants to persuade is sufficient to find that the
2 government has proved that even by a preponderance of the
3 evidence.

4 MR. GHOSE: I think if you were to -- and I agree,
5 Your Honor, if we were to stop just with that, what I have
6 said just thus far, I think that would fall short. But I did
7 want to make a point at least that this is a person who
8 actually is truthful when he's speaking about things that he
9 probably shouldn't be truthful about, such as his real name
10 and his address.

11 And also the other two instances regarding the
12 camping trip and the cousins -- I think he says niece in the
13 chat, but they are actually his cousins -- the agents ran
14 down those leads during the investigation, and those leads
15 came from his statements during the chats.

16 And as it turns out, as I will get to, the camping
17 trip did occur. He references a gang bang with his
18 14-year-old son. The evidence shows that that did occur. He
19 was being truthful when he was referencing the other child
20 abuse. And the same is true to a lesser extent regarding who
21 he calls as a niece.

22 So when he references the niece that he abused when
23 he was a teenager -- it turns out it actually wasn't a niece,
24 it was a cousin, and there were two of them -- but he was a
25 teenager.

1 And although he didn't, according to their
2 interviews, have intercourse with them like he said in the
3 chat, he did perform oral sex on them. So there is --

4 THE COURT: So now you are saying that with respect
5 to the things that are the same genre as the one that's in
6 the third paragraph, now you are saying those inconsistencies
7 and nontruthfulness can be disregarded because they are
8 partially true?

9 MR. GHOSE: No.

10 THE COURT: Actually I think it supports the fact
11 that he embellishes and exaggerates.

12 MR. GHOSE: He embellishes, but he doesn't
13 fabricate out of thin air.

14 THE COURT: No, but exaggeration at least could be
15 consistent with what he said in the three -- I mean, you
16 don't need three anyway.

17 MR. GHOSE: Right. Well --

18 THE COURT: And I don't really know what the facts
19 are that you have with respect to the incident involving his
20 son.

21 MR. GHOSE: Well, so let me set aside the infant,
22 because all it takes is two instances to satisfy the
23 requirement for the pattern enhancement.

24 THE COURT: Right.

25 MR. GHOSE: So let me take a look at the

1 14-year-old son. This is the strongest --

2 THE COURT: The other argument I need for you to
3 address is what is a pattern? Can two isolated incidents be
4 sufficient for a pattern when they are -- so what's the
5 temporal proximity between the first and second incidents?

6 MR. GHOSE: Under the Chapter 4 enhancement, it's
7 remarkably -- it's a remarkably low bar to meet. All it
8 requires is two instances.

9 THE COURT: Well, I know, but it has to -- it still
10 has to be a pattern.

11 MR. GHOSE: It can even be on the same night based
12 on my understanding of this enhancement.

13 Let me just pull it up here.

14 THE COURT: So when did the instances involving the
15 nieces occur?

16 MR. GHOSE: Well, those occurred when the defendant
17 was a teenager.

18 THE COURT: What year, approximately?

19 MR. GHOSE: Well, he was 32 at the time of the
20 instant conduct, and there is conflicting evidence from what
21 the cousins say, which is that he was around the age of 16
22 and 17, versus what the defendant says in his sentencing
23 memorandum, which is that he was probably more likely 15.
24 So we are talking about a good at least fifteen years
25 prior.

1 Now, keep in mind he was in prison for ten years in
2 the interim. So he went into state prison I think at the age
3 of 18, approximately came out ten years later at around the
4 age of 28. So there is a large gap, but the pattern persists
5 whether it's before or after his ten-year prison term.

6 THE COURT: Are there any cases on what constitutes
7 a pattern other than this application note? Which really
8 talks about -- which I think says that the bar is low as far
9 as the number, but I don't think it says anything about the
10 proximity of the conduct.

11 And I think that the number, if it happens on the
12 same night, I would agree, that's a pattern. But where you
13 have got I guess a decade gap, what do the cases say about
14 that?

15 MR. GHOSE: Well, the cases -- here I am relying
16 mostly on the application note.

17 THE COURT: I know.

18 MR. GHOSE: I don't have a case right offhand on
19 the temporalness. But I would point out that the camping
20 trip regarding the 14-year-old was temporally close to the
21 conduct with the undercover agent. So that trip is only a
22 few months apart from one another.

23 So the camping trip based on the evidence is that
24 it occurred probably in July or possibly even August --
25 I think it was late July of 2015 -- and the conduct that's at

1 issue in this federal case is from September of 2015.

2 So I understand the Court's concern to the extent
3 that there is a 15-year gap between the teenage conduct and
4 the instant conduct, plus the fact that he was a juvenile at
5 the time he committed that conduct.

6 I would point out that we did research whether
7 being a juvenile would preclude him from having the pattern
8 apply, and there is no indication that it would. I just
9 didn't find -- we didn't find a case one way or the other on
10 that, and there is nothing in the application note.

11 The camping trip, though, is close in time, it
12 really is. The 13-year-old turned 14 in the summer of
13 2015. The defendant took him on a camping trip for his
14 birthday, and as part of the camping trip, he decided he
15 would provide a woman for him to have sex with, and basically
16 forced the child to have sex with that woman. And that
17 happens only a few months prior to the instant conduct. And
18 that --

19 THE COURT: And what's the source of all that
20 information?

21 MR. GHOSE: So -- it's abundant. So the camping
22 trip, now starting with the chats, that's at Paragraph 17,
23 the defendant says, quote, during the chat -- this is
24 Paragraph 17 of the PSR -- my son had a gang bang with me and
25 a buddy a few months back.

1 He's stating this in September. He's referring to
2 conduct we believe in July or June of 2015.

3 THE COURT: What's the corroborating evidence of
4 that statement?

5 MR. GHOSE: So the --

6 THE COURT: And has the boy been interviewed, and
7 what does he say?

8 MR. GHOSE: Yes. So there's -- okay, so I want to
9 run through the detail, but just quickly, the child has been
10 interviewed; he corroborates it.

11 The other friend of Peragine was interviewed; he
12 corroborates it.

13 The wife of Peragine corroborates that there was a
14 camping trip.

15 The social services person who interviewed the
16 child first corroborates that the child said that when he was
17 first interviewed.

18 The FBI interviewer who later interviewed the child
19 corroborates that the child again said the camping trip
20 happened.

21 THE COURT: The child being the son?

22 MR. GHOSE: The child, the 14-year-old son.

23 And to the extent the Court wants to take notice of
24 this fact, both Mr. Peragine, the friend, and the woman, they
25 have all been charged in state court, and the male friend and

1 the woman have also pled guilty and admitted that the conduct
2 happened as well.

3 THE COURT: So let me ask Mr. Holcomb this.
4 I understand your position that you have taken in your
5 response to the PSR. I guess the question I have is do you
6 admit that there is evidence that the government could
7 present in the form that he just described and that's set out
8 in the PSR?

9 MR. HOLCOMB: I am aware of the existence of that
10 evidence. I don't know how much it has been tested in
11 Lumpkin County, Your Honor.

12 THE COURT: But have you reviewed the statements of
13 the son and --

14 MR. HOLCOMB: I have, I have seen the statement of
15 the son, I have seen the statement of the social worker, and
16 of the agent. I'm not sure that I have seen everything --
17 I have seen part of the statements, the initial ones, that
18 were a part of the investigation in the beginning of the case
19 from the two co-defendants in Lumpkin County. I haven't seen
20 their plea colloquys or anything like that since.

21 THE COURT: Have there been plea colloquys?

22 MR. GHOSE: I don't have access to them, but they
23 did -- I was informed this morning that they have pled guilty
24 to the aggravated child molestation charges in Lumpkin
25 County.

1 THE COURT: And that happened when?

2 MR. GHOSE: One minute, Your Honor.

3 I'm sorry, Your Honor, I'm not sure when it
4 happened. I don't have access to that. But the pleas I am
5 told from the case agent, that they were entered.

6 THE COURT: All right. But there has got to be --
7 I mean, that would be pretty compelling if, in fact, in a
8 colloquy they admitted their culpability and probably made
9 statements about the defendant's culpability --

10 MR. GHOSE: Right.

11 THE COURT: -- and participation in those
12 instances.

13 And I don't -- can we get that?

14 MR. GHOSE: That is something I could definitely
15 get. I just don't have it available. I just heard about it
16 this morning.

17 THE COURT: So are we talking about something that
18 happened really recently?

19 MR. GHOSE: I don't know if it was recent or not.
20 I'm not sure.

21 THE COURT: Does the agent know?

22 MR. GHOSE: I just asked him, and he's not sure.

23 But I do know the ADA there. I could probably find
24 out and report back to the Court.

25 But our position, though, is that there is so much

1 other evidence --

2 THE COURT: I understand that, but I need a record
3 in this case --

4 MR. GHOSE: Right.

5 THE COURT: -- and that would be the most
6 compelling evidence that would meet the standard by a
7 preponderance. And if it's available and now that I know
8 that it's available and that statement has been made to me,
9 I think I ought to look at that.

10 MR. GHOSE: I can probably get that.

11 THE COURT: I'm not the kind of guy that says.
12 Well, what you have is enough when there is something that
13 would be much more convincing.

14 MR. GHOSE: Right.

15 THE COURT: Can we do that now? I mean, that's
16 going to be central to the rest of my rulings.

17 MR. GHOSE: Yeah, we could take a recess and
18 I could call the ADA. I don't know if I will be able to get
19 through to him.

20 THE COURT: You might even call the judge's
21 chamber, whoever the judge was that was presiding over the
22 case.

23 MR. GHOSE: We could.

24 THE COURT: And what I would do, Mr. Holcomb, would
25 you call with him and hear what the evidence -- what the

1 statements were, even if we can't get a transcript, to see if
2 you can agree at least on what was stated at the plea
3 colloquy with respect to Mr. Peragine?

4 MR. HOLCOMB: Yes, Your Honor.

5 THE COURT: Okay. I think we should do that.

6 MR. GHOSE: Yes, Your Honor.

7 THE COURT: So could we take a recess, and as soon
8 as you have got that, would you let me know?

9 MR. GHOSE: Yes.

10 THE COURT: Okay. We will be in recess.

11 (A recess is taken at 10:03 a.m.)

12 -- -- --

13 (In open court at 10:22 a.m.):

14 THE COURT: So what did you find out?

15 MR. GHOSE: Yes, Your Honor. So I spoke -- we
16 spoke with -- we called the assistant district attorney, his
17 name is Frank Moran, he's prosecuting the case in Lumpkin
18 County against Amanda Roberts, Tommy Casse -- I misspoke
19 earlier, it's C-a-s-s-e -- and Leonard Peragine in connection
20 with the camping trip in the summer of 2015 where the
21 14-year-old son of Mr. Peragine had sex with a woman, the
22 adult woman.

23 What he told us just now in the conference call was
24 that Amanda Roberts has pled guilty. She pled in January of
25 2017 to statutory rape, felony statutory rape.

1 I have the indictment here. He didn't give me the
2 code provision, but I have it here in the indictment.

3 THE COURT: Okay. So that -- there is nothing in
4 the PSR about that plea in January, is there?

5 MR. GHOSE: No, I don't believe so.

6 THE COURT: That was in January when?

7 MR. GHOSE: January of this year, 2017.

8 THE COURT: All right.

9 MR. GHOSE: He says that there was no plea
10 transcript produced yet, although we could get it. But it
11 sounds as if, because he's the one who conducted the plea
12 colloquy during the plea hearing, I mean, he handled the plea
13 hearing, and during the colloquy it was mentioned that
14 Mr. Peragine was present and that Mr. -- Ms. Roberts had sex
15 with the 14-year-old child during the camping trip, but there
16 was no facts about Mr. Peragine's role other than his
17 presence.

18 And I don't believe that that would be required for
19 the offense elements for statutory rape. It's just that the
20 sex occurred with the child and that she knew that he was a
21 child.

22 THE COURT: Well, so that would be an offense in
23 which she engaged?

24 MR. GHOSE: Yes, exactly.

25 Now, I misspoke earlier, Tommy Casse has not pled

1 guilty. His case has been continued, although I'm not sure
2 why.

3 And, of course, Mr. Peragine's case is pending
4 because -- pending resolution of this federal case.

5 THE COURT: So as far as that conversation, it
6 doesn't really add much about Mr. -- because you are relying
7 upon his sexual abuse of the minor, so that doesn't really
8 add anything.

9 MR. GHOSE: It doesn't add much, and we would not
10 rely on it much.

11 I do think it does show that the conduct between
12 the adults and the child did occur, because she admitted to
13 that during the plea colloquy.

14 THE COURT: Well, was she there -- so she wasn't
15 there or at least she didn't stay -- did she observe any
16 sexual abuse of the child by Mr. Peragine?

17 MR. GHOSE: No, and the government's position is
18 Mr. Peragine never abused the child. Our position is that
19 the abuse is that he forced the child to have sex with the
20 adult.

21 THE COURT: And did she say that -- did she say
22 that?

23 MR. GHOSE: I don't believe she said that based on
24 my conversation just now with the ADA. She just admitted to
25 having sex with the child knowing that he was a child and

1 that Mr. Peragine and Tommy Casse were present.

2 THE COURT: So now we are back to what -- does
3 anybody have the child's statement and what he told the
4 authorities happened that night?

5 MR. GHOSE: Yeah, I have it as an exhibit. I was
6 planning on playing a portion of it.

7 THE COURT: All right. Let's focus first on what
8 he says happened and what his account is of the day.

9 MR. GHOSE: So the child was interviewed twice,
10 first by -- actually, the child spoke about it three
11 different instances. First the child spoke about it with his
12 guardian, briefly; next the child spoke about it with the
13 Department of Social Services interviewer; and then after
14 that, the child spoke about it a third time with the FBI
15 forensic interviewer. And this all happened in the fall of
16 2015.

17 The PSR has facts regarding these statements, and
18 I want to point out a couple other things too.

19 The camping trip I think undeniably occurred.
20 At Paragraph 26 there is references to the camping trip
21 photos that were posted on the defendant's social media
22 account.

23 THE COURT: Well, I suspect the defendant doesn't
24 disagree that there was a camping trip on that day.

25 MR. GHOSE: Well, I don't know if he does or not.

1 THE COURT: Mr. Holcomb, does he deny that a
2 camping trip occurred?

3 MR. HOLCOMB: I think there is evidence that a
4 camping trip took place, Your Honor.

5 THE COURT: All right. So let's focus on what
6 happened at the camping trip.

7 MR. GHOSE: Now, regarding what happened,
8 Paragraph 33 of the PSR -- sorry -- yeah, Paragraph 33, this
9 is the first recounting of what the child, who I will refer
10 to as T.P. -- that's how he is referred to in the PSR -- what
11 he said to his guardian.

12 And here -- now, this fact is not objected to other
13 than to say that there is no statement one way or the other
14 about the truth.

15 And here it says in Paragraph 33, Miller -- that's
16 the guardian -- advised she had already questioned T.P. about
17 the activities alleged to have occurred on a campout. T.P.
18 confirmed that he, the defendant, and the defendant's friend
19 all had sex with an unidentified female on their camping
20 trip.

21 THE COURT: I mean, this is hearsay. Let's get to
22 what the son said.

23 MR. GHOSE: Okay.

24 THE COURT: Can you play that?

25 MR. GHOSE: Do you want me to play the tape?

1 THE COURT: Don't you have a tape of his
2 interview --

3 MR. GHOSE: I do.

4 THE COURT: -- where he states what happened to him
5 on that day?

6 MR. GHOSE: I do, yeah.

7 THE COURT: All right. So let's -- I mean, that's
8 the evidence on this point.

9 MR. GHOSE: Sure. Do you want me to do it through
10 a witness, or if there is no objection, I can just play it?

11 THE COURT: Well, does Mr. Holcomb know what the
12 tape is and does he object to it being authentic?

13 MR. GHOSE: He -- I don't know.
14 What's your position?

15 THE COURT: If not, we can go through the process
16 of having the tape authenticated.

17 MR. HOLCOMB: I think that would probably be best,
18 Your Honor, just for Mr. Peragine's sake. He is subject to
19 separate charges.

20 THE COURT: I understand. I mean, that's the way
21 it should be done, so let's go ahead and authenticate the
22 tape.

23 MR. GHOSE: So the agent I would like to call up is
24 the case agent.

25 THE COURT: Well, you might be able to proffer

1 that. If you proffer it, maybe Mr. Holcomb would agree to
2 it.

3 MR. GHOSE: Well, I'm happy to do that too.

4 THE COURT: Would a proffer be sufficient,
5 Mr. Holcomb?

6 MR. HOLCOMB: Yes, Your Honor. I think that we --
7 I am aware of the contents of the other three statements, and
8 I did not object to the recitation of the facts that are
9 contained in the presentence report at Paragraph 34 as not
10 conforming with those documents.

11 We have never interviewed the kid. We have never
12 interviewed the guardian. Neither of those two have ever
13 testified in court or been put under oath. That's the status
14 of the evidence that we have.

15 THE COURT: Well, we are about to hear what the
16 young man says happened.

17 MR. GHOSE: Right. Now, does the Court want to
18 hear about -- it is hearsay because I don't have a recording
19 of this -- but what he said to the first interviewer, the
20 Department of Social Services interviewer? Because this is
21 recounted in Paragraph 34 of the PSR, and there is more
22 detail on this than there was with the guardian.

23 THE COURT: I want to hear what the 14-year-old
24 said happened.

25 MR. GHOSE: From his mouth?

1 THE COURT: Yes.

2 MR. GHOSE: So, Your Honor, this interview
3 occurred, this is as part of a -- this is documented in an
4 FBI 302. I can show it here to defense counsel.

5 Okay. The forensic interview, this is a
6 specially-trained FBI interviewer who came in from out of
7 town, I believe, to interview the child in North Carolina
8 where he lives. The interviewer's name is documented in the
9 discovery, and the interview took place on October 8th, 2015,
10 at the Mission Children's Hospital in Asheville,
11 North Carolina.

12 It was also observed by another agent, and it was
13 recorded, audio and video recorded. And what I have marked
14 as Government's Exhibit 2 is that exhibit.

15 THE COURT: That's the video recording?

16 MR. GHOSE: Yes, the video and audio recording.

17 THE COURT: Okay.

18 MR. GHOSE: Now, it's long, it's lengthy, and
19 I would like to admit it into evidence, but I do have a part
20 cued up that I think is most relevant.

21 THE COURT: That needs to be admitted into
22 evidence, the entirety of it, but you can play a portion of
23 it.

24 MR. GHOSE: Right. So I move to admit Government's
25 Exhibit 2.

1 THE COURT: Any objection?

2 MR. HOLCOMB: No objection, Your Honor.

3 THE COURT: It's admitted.

4 MR. GHOSE: Now, this is at that Children's
5 Hospital. You will see the child is at the middle top of the
6 screen and the interviewer is at the bottom.

7 It's a little hard to hear, and unfortunately,
8 Your Honor, I don't have a transcript, but hopefully enough
9 of it is something that you can hear.

10 Now, this is at about the -- just for the record,
11 the video is recorded according to the time it was taken.
12 The date stamp is correct, it says October 8th, 2015, and the
13 time stamp that I'm going to start playing is at the
14 approximately 9:39 a.m. mark.

15 THE COURT: Could you enlarge the picture?

16 MR. GHOSE: I don't -- unfortunately, I don't think
17 this is -- this is the the Evidence Reviewer program. I
18 don't know how to do that, I'm sorry.

19 THE COURT: You should.

20 MR. GHOSE: Yeah. Let me see if I can figure it
21 out here. Oh, there we go.

22 *(A video file with audio is played in open*
23 *court as follows:)*

24 *THE INTERVIEWER: How about did Amber do any*
25 *touching to any of Tommy's body, tell me about*

1 that?

2 T.P.: She did the same as my dad.

3 THE INTERVIEWER: Okay. And so you say the
4 same as dad, as in sucked his dick?

5 T.P.: Yes.

6 THE INTERVIEWER: Okay. Anything different?

7 T.P.: No.

8 THE INTERVIEWER: Okay. And did Tommy do any
9 touching to your dad's body?

10 T.P.: No.

11 THE INTERVIEWER: Did Tommy do any touching to
12 Amber's body?

13 T.P.: Yeah, the same as my dad.

14 THE INTERVIEWER: Okay. When you say the same
15 as your dad, sexual intercourse, is that the same,
16 or different?

17 T.P.: Yeah.

18 THE INTERVIEWER: Okay. All right. And where
19 were you when all of this happening?

20 T.P.: I was in my hammock.

21 THE INTERVIEWER: Okay. Did anyone say
22 anything to you when this was happening?

23 T.P.: My dad told me to get out of my hammock
24 and come over there.

25 THE INTERVIEWER: Okay. So tell me where your

1 dad was when he said that to you?

2 T.P.: He was right beside me.

3 THE INTERVIEWER: Okay. So tell me how --
4 tell me where this tarp was and tell me where you
5 were?

6 T.P.: The tarp was right here, and then there
7 was two trees right here and then a little pack of
8 trees over here and I had my hammock over here.

9 THE INTERVIEWER: Uh-huh. So your dad was
10 right beside you. And tell me how he got from the
11 tarp to right beside you?

12 T.P.: He walked.

13 THE INTERVIEWER: He walked, okay. So then he
14 said what?

15 T.P.: I'm your son, I want to show you
16 something.

17 THE INTERVIEWER: And what happened next?

18 T.P.: I got out of my hammock and I walked
19 over.

20 THE INTERVIEWER: And then what happened next?

21 T.P.: He made me have sex with Amber.

22 THE INTERVIEWER: Okay. Tell me what you mean
23 by that?

24 T.P.: Intercourse.

25 THE INTERVIEWER: Okay. And tell me how he

1 made you have intercourse with her?

2 T.P.: He said he was teaching me stuff.

3 THE INTERVIEWER: Tell me how your clothes
4 were when that happened?

5 T.P.: He told me to take them off.

6 THE INTERVIEWER: Okay. And how about Amber's
7 clothes, how were her clothes?

8 T.P.: Off.

9 THE INTERVIEWER: Off? How did her clothes
10 get off?

11 T.P.: She took them off.

12 THE INTERVIEWER: She took them off,
13 okay. Where was your dad when he made you have
14 intercourse with Amber?

15 T.P.: There.

16 THE INTERVIEWER: There? Tell me what you
17 mean by there?

18 T.P.: Right beside us.

19 THE INTERVIEWER: Right beside you, okay.
20 Tell me what position you were in and what position
21 Amber was in? Lying down, sitting down, something
22 different?

23 T.P.: Lying down and -- lying down, sitting
24 down, and -- yeah.

25 THE INTERVIEWER: How many times did your dad

1 make you have intercourse with Amber?

2 T.P.: Three times.

3 THE INTERVIEWER: Three times, okay. Did he
4 make you do any other touching to Amber besides
5 intercourse?

6 T.P.: No.

7 THE INTERVIEWER: Did he make Amber do any
8 touching to you?

9 T.P.: (Nods head.)

10 THE INTERVIEWER: Tell me about that?

11 T.P.: Amber sucked my dick.

12 THE INTERVIEWER: Okay. Tell me where your
13 dad was when he made Amber do that to you?

14 T.P.: Right there.

15 THE INTERVIEWER: Okay. Where was Tommy
16 during all this?

17 T.P.: Right there too.

18 THE INTERVIEWER: Okay. Did Tommy say
19 anything while this was happening?

20 T.P.: (Shakes head.)

21 THE INTERVIEWER: Okay. Anyone take any
22 pictures?

23 T.P.: I don't know.

24 THE INTERVIEWER: Tell me what that means, I
25 don't know?

1 T.P.: All that I know is that they were
2 there. I didn't know if anyone else was around or
3 anything.

4 THE INTERVIEWER: Okay. Did Amber say
5 anything during all this?

6 T.P.: (Shakes head.)

7 THE INTERVIEWER: Okay. Did she say anything
8 to you at any time?

9 T.P.: (Shakes head.)

10 THE INTERVIEWER: Okay. Did -- tell me how
11 all that made you feel?

12 T.P.: It made me feel weird.

13 THE INTERVIEWER: Okay. How did it all end?

14 T.P.: We went to sleep. Amber stayed the
15 night with my dad in the tent.

16 THE INTERVIEWER: Did anyone say anything to
17 you about telling or not telling?

18 T.P.: Yeah.

19 THE INTERVIEWER: Yeah? Who said that?

20 T.P.: All of them.

21 THE INTERVIEWER: When you say all of them,
22 tell me who you mean?

23 T.P.: Tommy, Amber and my dad.

24 THE INTERVIEWER: Okay. Did they say what
25 would happen if you did tell?

1 T.P.: They said -- Amber said she will kill
2 me, and that's all. And my dad said that he would
3 try and hurt me.

4 (Playing interrupted.)

5 MR. GHOSE: That's the part I was going to play. I
6 was planning on stopping. I'm happy to keep playing if you
7 want?

8 THE COURT: No, I think that's sufficient.

9 MR. GHOSE: Okay. So regarding the -- I'm sure the
10 Court heard it, but he did say, quote, My dad made me have
11 sex with her, and he did say that it happened three times,
12 which I believe that alone would satisfy the pattern
13 enhancement, just this incident alone.

14 Our position is still that there is these other
15 incidents that occurred with the cousins fifteen years
16 earlier prior to the defendant's state sentence when he was a
17 teenager, as well as the baby, although the Court I don't
18 think is impressed by that argument.

19 But this alone I would assert, Your Honor, is
20 direct evidence that the pattern should apply.

21 THE COURT: Well, it's not that I am not impressed
22 with your argument. I just don't agree with it.

23 MR. GHOSE: Right. No, I understand.

24 Now, I do have other facts, but I feel like this is
25 sufficient.

1 Now, there is other inferences that I can -- that
2 I can draw from other evidence in the case, and the other
3 kind of really core piece of evidence that I wanted to play
4 is a phone call that happened during the sting operation
5 where the defendant called the mother, who he believed to be
6 the mother of the nine-year-old child, and then spoke to who
7 he thought was the nine-year-old child.

8 And that conversation I thought was pretty
9 relevant, Your Honor, because it shows what I would argue is
10 a cavalier attitude toward children and sex and adults, and
11 I think it's consistent with what the child here is
12 describing about the camping trip.

13 THE COURT: All right. Why don't you play that.

14 MR. GHOSE: And just for the record, I do want to
15 move Exhibit 2 under seal just because -- although you can't
16 see the identity of the child from the video, early on the
17 recording does state his full name.

18 THE COURT: Any objection to that?

19 MR. HOLCOMB: No objection.

20 THE COURT: It will be filed under seal.

21 MR. GHOSE: Now, regarding the other exhibit,
22 which is Exhibit No. 1 -- and I will proffer this as well --
23 this is one of several calls that took place between the
24 defendant and the OCE, the undercover agent or the online
25 confidential employee, who the defendant believed was the

1 mother who was providing her nine-year-old child for sex with
2 adults.

3 This call occurred on September 18th, 2015.

4 THE COURT: Is there any --

5 MR. GHOSE: This is Government Exhibit No. 1.

6 MR. HOLCOMB: No, Your Honor. I received that in
7 discovery.

8 THE COURT: So you are moving that into evidence?

9 MR. GHOSE: I move to admit this into evidence.

10 THE COURT: Any objection?

11 MR. HOLCOMB: No objection, Your Honor.

12 THE COURT: It's admitted.

13 MR. GHOSE: And this does not need to be under
14 seal.

15 And for the record, the portions that I'm going to
16 play are from the approximately one minute 17 second mark to
17 the two minute 28 second mark, and then from the four minute
18 41 second mark to the seven minute mark.

19 And just to set the stage, this is -- you will hear
20 the conversation between the defendant and the mother
21 referencing videos of child pornography that were sent to the
22 mother for her to show the child, and this is included in the
23 PSR. And I don't think there is an objection from defense
24 counsel that that occurred.

25 So when he's referencing that, this call happened

1 shortly after those videos were sent, and you will hear
2 conversation about whether or not the mother showed the
3 videos to the child, and then you will hear the defendant
4 speaking to who he thought was the child. It's actually an
5 agent posing as the child.

6 THE COURT: And I did review yesterday videos that
7 I understand were sent by the defendant to the mother. Are
8 those the videos that --

9 MR. GHOSE: Yes.

10 THE COURT: And was it all of those videos?
11 I believe there were five or six of them.

12 MR. GHOSE: Four of those videos were sent to the
13 mother, and then two of them were also located, separate
14 videos, were located on his cell phone.

15 THE COURT: And do you know which ones were sent to
16 the mother?

17 MR. GHOSE: Yes. The -- this is in the PSR, and
18 there is some overlap, I believe. The four videos and one
19 photo sent to the mother is at Paragraph 22. There is no
20 objection to this paragraph. And they all -- they are
21 described there in the PSR.

22 The videos and photos found from the phone are in
23 Paragraph 36 of the PSR, and there is some overlap. They are
24 slightly different. There is no objection to those as well.

25 THE COURT: All right. Thank you. Go ahead.

1 (An audio file begins playing.)

2 THE COURT: I'm sorry, can you turn that down?

3 MR. GHOSE: Sorry. I'm going to fast-forward to
4 one minute 17 seconds.

5 THE CLERK: Can you turn it down?

6 THE COURT: Why don't you stop until you are ready.

7 MR. GHOSE: All right.

8 THE COURT: Please turn the volume down.

9 MR. GHOSE: More? Okay.

10 About 50 percent, how is that?

11 THE COURT: I don't know. It was just distorted
12 and too loud.

13 MR. GHOSE: Okay. So I am going to start it over
14 at one minute 17 seconds.

15 (An audio file is played in open court as
16 follows:)

17 AGENT/MOTHER: Yeah, all right, all right,
18 all right. Well --

19 MR. PERAGINE: That was the plan. Did you sit
20 down and talk with her for a little while?

21 AGENT/MOTHER: Yeah, I did. We talked last
22 night and I showed her some of those videos.
23 I didn't show her the one that was really rough.

24 MR. PERAGINE: Yeah. Did you show her them
25 when you got home?

1 AGENT/MOTHER: Yeah, yeah, I showed her the
2 video. And she, you know, at first thought that it
3 was a little bit weird, she had some questions, and
4 then she actually said that one, the girl in the
5 bathtub, kind of looked like her.

6 MR. PERAGINE: Ha-ha.

7 AGENT/MOTHER: Ha-ha.

8 MR. PERAGINE: What's her take on it? What
9 does she think?

10 AGENT/MOTHER: Yeah, you know, I think she's
11 open to it. She's curious.

12 MR. PERAGINE: Curious?

13 AGENT/MOTHER: Yeah.

14 MR. PERAGINE: Ha-ha.

15 (Audio interrupted.)

16 MR. GHOSE: There is about two and a half minutes
17 of conversation where the defendant expresses his concern
18 that he thinks this is a sting and she's the police, so
19 I'm going to skip that part, unless the Court wants to hear
20 it.

21 THE COURT: How long is that?

22 MR. GHOSE: That's about two minutes, two and a
23 half minutes.

24 THE COURT: Just play it.

25 MR. GHOSE: Okay.

1 *(The audio resumes:)*

2 MR. PERAGINE: *Basically I'm just trying --*
3 *you know what I'm saying?*

4 AGENT/MOTHER: *Just what?*

5 MR. PERAGINE: *I'm trying to be positive.*

6 AGENT/MOTHER: *Me too.*

7 MR. PERAGINE: *Worried -- you know, I'm*
8 *worried about the situation and everything else,*
9 *you know what I mean? I was wanting -- basically*
10 *I have already incriminated myself, if I look at it*
11 *that way. You know what I mean?*

12 AGENT/MOTHER: *Uh-huh.*

13 MR. PERAGINE: *By having the videos and*
14 *sharing at the videos. So I was looking for you to*
15 *do something similar. That way I know we are both*
16 *on the same page, both on the same level.*

17 And right now it's just like I'm sitting here,
18 I'm incriminated, but you are not. So if something
19 were to go down, you know what I'm saying, it ain't
20 all on my end, you know what I'm saying? Do you
21 understand?

22 AGENT/MOTHER: *Yeah.*

23 MR. PERAGINE: *I know how they set up stings*
24 *and everything else.*

25 AGENT/MOTHER: *Yeah. I mean, I don't have any*

1 of those videos, and like I told you, I don't want
2 to send more pictures of her, because I have done
3 that in the past and then, you know, after I sent
4 the pictures, then that's all the guys want. They
5 just want the fantasy deal. They don't want to
6 really follow through with it.

7 MR. PERAGINE: No, I'm willing to follow
8 through, and that's why I sent what I did, saying,
9 well, I have already got these, you know what I'm
10 saying? And there is more, you know what I'm
11 saying? Some that like the umm-umm-umm-umm.
12 I talked with some people over a period probably
13 say the past six months or so.

14 AGENT/MOTHER: Uh-huh.

15 MR. PERAGINE: Through Kik, you know what I'm
16 saying, where they share the videos and stuff like
17 that. And I'm just trying to be cautious, you know
18 what I'm saying? So, I mean, I just sent you the
19 videos to take a look at.

20 AGENT/MOTHER: Uh-huh.

21 MR. PERAGINE: That's why I'm just kind of
22 leery you haven't incriminated yourself at all, so
23 basically, you know what I'm saying, it has me
24 scared. That's what I'm scared about.

25 AGENT/MOTHER: Uh-huh, okay.

1 MR. PERAGINE: I mean --

2 AGENT/MOTHER: So do you want to talk to her?

3 MR. PERAGINE: I mean, I can, yeah.

4 AGENT/MOTHER: Okay. All right. Let me --

5 just talk to her for a minute and then I will talk
6 to you again; all right?

7 MR. PERAGINE: Okay.

8 AGENT/MOTHER: All right. Here she is.

9 MR. PERAGINE: Okay.

10 AGENT/CHILD: Hello?

11 MR. PERAGINE: Hello. How you doing?

12 AGENT/CHILD: I'm -- I'm okay.

13 MR. PERAGINE: You are okay? Have you talked
14 with your mom?

15 AGENT/CHILD: Yeah, a little bit.

16 MR. PERAGINE: She told you a little bit?

17 AGENT/CHILD: Yeah.

18 MR. PERAGINE: So are you curious?

19 AGENT/CHILD: Umm, yes.

20 MR. PERAGINE: A little bit, a lot, what?

21 AGENT/CHILD: A little bit.

22 MR. PERAGINE: A little bit? So if we were to
23 meet and talk for a little while, do you think you
24 want to try some of it?

25 AGENT/CHILD: I think so.

1 MR. PERAGINE: You think so? You are not
2 sure? Ha-ha.

3 AGENT/CHILD: My mom says that you are nice.

4 MR. PERAGINE: I am.

5 AGENT/CHILD: Okay.

6 MR. PERAGINE: I try my best to be, ha-ha.
7 I try to be nice. I just want to be nice.

8 AGENT/CHILD: Okay.

9 MR. PERAGINE: But, yeah, I was planning on
10 meeting up with your mom and maybe meeting you
11 tomorrow as well.

12 AGENT/CHILD: Okay.

13 MR. PERAGINE: Do you like that idea?

14 AGENT/CHILD: I do.

15 AGENT/MOTHER: Okay.

16 Okay, are you there?

17 MR. PERAGINE: Yeah, I'm here.

18 AGENT/MOTHER: Okay. I just, you know, feel a
19 little hesitant. You know, you haven't even met
20 her or anything.

21 MR. PERAGINE: Uh-huh. I was saying -- I
22 don't know if you could hear what I was saying or
23 not, but I was just asking her if she was curious
24 and if she was willing to try it, and I was
25 thinking about meeting up with you and then

1 *possibly with her as well.*

2 AGENT/MOTHER: *Uh-huh.*

3 MR. PERAGINE: *She was trying to figure out,*
4 *you know, exactly what is going on, because,*
5 *I mean, you've got to understand a little bit.*

6 *(Audio interrupted.)*

7 MR. GHOSE: There is about a minute and a half
8 more, I can keep playing it, more conversation about worried
9 about it being a police sting.

10 THE COURT: Is there anything else you are going to
11 play?

12 MR. GHOSE: That is all of the audio and video
13 evidence.

14 I did want to put -- so this is Government's
15 Exhibit 1 that's going in not under seal.

16 I did want to put in, just for completeness of the
17 record, a full copy of all the chats. Many of the relevant
18 parts are referenced in the PSR, but I thought it might be a
19 good idea to put this in for the record as well.

20 THE COURT: Any objection, Mr. Holcomb?

21 MR. HOLCOMB: No objection, Your Honor.

22 THE COURT: All right. It's admitted.

23 MR. GHOSE: And that's Government's Exhibit
24 No. 8. It's not under seal.

25 And that's all I have on the camping trip,

1 Your Honor.

2 I can address lastly, if the Court wants to hear
3 about it, the six- and eight-year-old cousins, although if
4 the temporal issue is a concern or the juvenile issue is a
5 concern, I can set it aside.

6 THE COURT: No, let's talk about the -- give me
7 whatever evidence you have on the first instance, which is
8 the sexual activity with the 9-year-old niece.

9 MR. GHOSE: So after the -- I believe it was after
10 the plea actually was entered, Your Honor, again, the agents
11 were trying to run down the leads based on the references the
12 defendant made during the chats, and Agent Kabrhel was able
13 to locate the cousins that the defendant referenced although
14 somewhat incorrectly as nieces -- although incorrectly as
15 nieces -- or niece in the chats. And those --

16 THE COURT: Well, the PSR calls it a niece too.

17 MR. GHOSE: Yeah, I think that might be a
18 mistake. I think they are actually cousins based on the 302
19 reports. And I think the reason it says niece is because the
20 defendant had referred to them as a niece.

21 But at Paragraphs 37 and 38, there is a brief
22 summary of the interviews the case agent had with the two
23 children who are now adults, D.N. and T.C., and the full 302s
24 I wanted to put into the record.

25 The interviews are not -- the interview reports are

1 not lengthy but they do establish additional sexual conduct.
2 Let's see if I can find it here.

3 These are Government's Exhibits 10 and 11. They
4 are just redacted versions of the interview reports of these
5 two individuals.

6 I would move to admit these into evidence.

7 THE COURT: Any objection?

8 MR. HOLCOMB: No objection, Your Honor.

9 THE COURT: They are admitted.

10 MR. GHOSE: And they do essentially summarize the
11 same incident, although from the point of view of two
12 different victims.

13 THE COURT: Well, I should note too that they have
14 been redacted. What's been redacted out?

15 MR. GHOSE: The 302 reports have been redacted
16 so only their initials appear, so those exhibits do not
17 need to be under seal. But they are just slightly longer
18 versions of the summary that's in the PSR at those paragraphs
19 I mentioned.

20 And they do establish that when the defendant
21 was a teenager and the cousins were ages six and eight,
22 he took them both out of a bath, laid them down, and
23 performed oral sex on both of them during this incident that
24 occurred a good fifteen years prior to the instant offense
25 conduct.

1 Now, the government recognizes that both this
2 evidence -- well, this evidence I think is fairly strong, but
3 the evidence of the baby is a little bit weaker.

4 Really our core argument is that the camping trip
5 with the 14-year-old son that occurred, you know, a few
6 months prior to the instant conduct and that is supported by
7 the video-recorded statements of the child that are also
8 corroborated by other evidence as referenced in the PSR,
9 that alone should establish the pattern enhancement under
10 Chapter 4.

11 Now, Mr. -- I could address the guidelines later,
12 but Mr. Holcomb had mentioned that there is double-counting
13 involved with the Chapter 2 and Chapter 4 patterns. The
14 government agrees with that, and we would only seek the
15 Chapter 4 pattern enhancement, not the Chapter 2 enhancement
16 on top of that.

17 That would be -- although it would be legal to seek
18 them both, I think it would be unfair and would more or less
19 count as double-counting.

20 THE COURT: Well, you can't have that Chapter 4
21 enhancement without the Chapter 2 enhancement, can you?

22 MR. GHOSE: Well, I think the chapter --

23 THE COURT: Doesn't Chapter 4 require there to be a
24 finding that there was a pattern of sexual activity, and
25 isn't that what triggers the five-point enhancement under

1 Chapter 4?

2 MR. GHOSE: I don't believe so. I don't believe
3 that that's -- I don't believe that that's correct. But if
4 that is correct, then we would seek to set aside the
5 Chapter 4 enhancement and only -- well, no, I think the
6 Chapter 4 enhancement applies to all the counts. It applies
7 to enticement as well as the child pornography counts.

8 The child pornography guideline has a pattern
9 specific offense characteristic within that guideline unlike
10 the enticement count. So the Chapter 4 adjustment applies to
11 all covered sex crimes, which are Counts One, Two and
12 Three.

13 Counts Two and Three, the CP, the child porn
14 counts, have a pattern within the specific offense
15 characteristics, and I think to apply them both would be
16 unfair. But they mirror one another.

17 THE COURT: Mr. Holcomb, does the defendant agree
18 that under chapter -- under Section 4B 1.1 -- 1.5, I'm sorry,
19 that the offenses to which the defendant pled guilty are
20 covered sex offenses, a covered sex crime?

21 MR. HOLCOMB: I think it is underneath the
22 application note subsection (a) if you found that --
23 I'm sorry, Application Note 2 after Chapter 109 (a) and
24 Chapter 110.

25 I was interested in hearing what the government's

1 federal analog was for the pattern, that's the instant
2 offense of conviction, but I think the requirement in
3 subsection (b) (1) is that there be a specific sex offense
4 that is an analog to one of the -- the provision actually
5 makes reference to Section 2426 (b) (1) (A) or (B), which is
6 the U.S. Codes repeat sex offender section, and what
7 I haven't heard yet is what, for instance, the camping trip,
8 the federal charge would be for that.

9 Because 2426 (a) (1) (A) or (B) also makes
10 reference to 109 (a) and Chapter 110, or a state law that
11 would have been a violation of a statute within those
12 chapters.

13 THE COURT: Well, it doesn't really matter if I
14 find a pattern of sexual activity.

15 MR. HOLCOMB: I think that sexual activity has to
16 be a violation of a statute in those sections, though,
17 Your Honor.

18 THE COURT: Well, that's if we are dealing with
19 Section 4.

20 MR. HOLCOMB: It is, Your Honor, that's
21 Section 4B 1.5, and I think there is a similar operation
22 to 2, to Chapter 2.

23 THE COURT: Is that right, Mr. Ghose?

24 MR. GHOSE: Well, I think the analog would be
25 the enticement of a -- enticement of a child for illegal

1 sexual conduct. I mean, he's bringing his child to the
2 camping trip for the purposes of engaging in illegal sexual
3 conduct.

4 I mean, it's not a whole lot different from the
5 charged offense. He's enticing a nine-year-old to engage in
6 illegal sexual conduct the same as he's enticing the
7 14-year-old to do so as well.

8 THE COURT: Well, pattern of sexual activity has
9 as a definition any combination of two or more separate
10 instances of the sexual abuse or sexual exploitation of a
11 minor by the defendant, whether or not the abuse or
12 exploitation occurred during the course of the offense,
13 involved the same minor, or resulted in a conviction of such
14 conduct.

15 And then there is a separate definition of sexual
16 abuse and exploitation means the following:

17 (A), conduct described in Title 18 2241, 2242,
18 2243, 2251 (a) through (c), 2251 (d) (1) (B), 2251 (a),
19 2260 (b), 2421, 2422 or 2423;

20 An offense under state law that would have been an
21 offense under any other section if the offense had occurred
22 within the special maritime or territorial jurisdiction of
23 the United States;

24 Or an attempt or conspiracy to commit any of the
25 offenses described under subsections (a) or (b).

1 So, Mr. Ghose, what is the statute that constitutes
2 sexual abuse or exploitation that is described in
3 Subparagraph 2 of the pattern of activities?

4 MR. GHOSE: Well, there is two different things,
5 I think. The camping trip is aggravated sexual -- aggravated
6 child molestation.

7 THE COURT: And what section is that under
8 Title 18?

9 MR. GHOSE: That would be -- so it says were it in
10 the special maritime or territorial jurisdiction of the
11 United States, under Title 18 I know that there is -- I just
12 don't have it right here; I would have to find it.

13 If this were on like a military base, aggravated
14 child molestation, there would be a federal analog to that
15 were it on a territorial -- I just have to look it up.
16 I have to find that. Just give me a minute.

17 THE COURT: Well, if you are on military bases, it
18 has to be concurrent or nonconcurrent jurisdiction.

19 MR. GHOSE: Or maybe not a military base, but just
20 a territorial jurisdiction.

21 THE COURT: And what crime would this be on a
22 military base or a territorial jurisdiction?

23 MR. GHOSE: The aggravated child molestation
24 would be the federal version of that. I just don't know the
25 Title 18 section. I have to just look it up.

1 But the other -- my fallback argument -- and I do
2 want to look that up, but my fallback argument is that the
3 camping trip also is enticement. It's the same offense he's
4 charged with in this case, enticement of a minor for illegal
5 sexual activity. He's enticing, in the same way that
6 Mr. Peragine is enticing the nine-year-old to engage --

7 THE COURT: And what section is that under
8 Title 18?

9 MR. GHOSE: That's Count One, which is --

10 MR. HOLCOMB: 2422.

11 MR. GHOSE: Yeah, 2422, yeah. 18 U.S.C. 2422.

12 THE COURT: So one of your positions is that the
13 conduct described in subparagraph (b) is a federal crime
14 under 2242, enticement of a minor?

15 MR. GHOSE: Yes, correct.

16 THE COURT: And your second argument is that in the
17 territorial jurisdiction of a territory of the United States
18 that it would be aggravated sexual conduct?

19 MR. GHOSE: Yes.

20 THE COURT: Sexual assault?

21 MR. GHOSE: Yeah, I just have to figure out what
22 it's called under Title 18.

23 THE COURT: Yeah. Well, why don't you figure that
24 out.

25 MR. GHOSE: Okay.

1 MR. HOLCOMB: I did want to note that the basis for
2 Count One for Mr. Peragine, 2422 (b), is whoever using the
3 mail or any facility or means of interstate or foreign
4 commerce -- in other words, our chats --

5 THE COURT: Well, those are --

6 MR. HOLCOMB: -- induces or entices an individual
7 to engage in sexual activity.

8 That is I think an essential element of the offense
9 for his Count One conviction. I would query whether or not
10 there has been establishment of that element as to the
11 camping trip.

12 MR. GHOSE: I can't point to a phone call that was
13 made between the defendant and his son, but I suspect that
14 I could find that and assert that that is the jurisdictional
15 hook there for that particular offense. It was not charged
16 because it was charged in Lumpkin County, and also we already
17 charged this offense, and we were going to wrap it up as
18 relevant conduct.

19 THE COURT: Well, I understand that, but the whole
20 purpose of this hearing was for you to show me that there are
21 certain things that are required to be met before I can make
22 findings in this case where there is no plea agreement and
23 where I have to make findings so that the Court of Appeals,
24 if there is an appeal, can determine whether or not my
25 guideline findings were right. It just doesn't sound like

1 you are prepared to do that.

2 And then my question is does it really matter if
3 it, in fact, under -- well, I guess it does matter even under
4 Chapter 2.

5 MR. GHOSE: Well --

6 THE COURT: I think I'm about to the point,
7 Mr. Ghose, where if you can't articulate your argument, I'm
8 not going to agree with you.

9 MR. GHOSE: Well, part of the problem is that this
10 was not asserted in any objection or in the sentencing
11 memorandum.

12 THE COURT: It doesn't really matter. I mean, the
13 purpose of the guidelines is that they have to be interpreted
14 by me.

15 MR. GHOSE: Right, I understand.

16 THE COURT: You know that. It's a constitutional
17 requirement.

18 MR. GHOSE: If I could just have a moment, please?

19 Okay. So Mr. Jeffers has pointed out the code
20 provision that precedes the Count One -- no, I'm sorry, it's
21 different, a different part.

22 Title 18 United States Code Section 2243, sexual
23 abuse of a minor or a ward. Whoever -- and this is
24 subsection (a) -- whoever in the special maritime and
25 territorial jurisdiction of the United States, or in a

1 federal prison or any prison, institution or facility, then
2 it goes on, knowingly engaged in a sexual act with another
3 person who has attained the age of 12 years but has not
4 attained the age of 16 years, is at least four years younger
5 as the person so engaging, or attempts to do so, shall be
6 fined under this title.

7 And then through aiding and abetting liability,
8 that would apply to Mr. Peragine in his coordination of
9 arranging to have the adult female have sex with the child.

10 THE COURT: This is 2243?

11 MR. GHOSE: 18 U.S.C. 2243. So this is one the
12 enumerated provisions.

13 THE COURT: Yeah. So what is the evidence --
14 I think we understand that the cousins, not niece, is between
15 12 and 16, and is at least four years younger than the person
16 so engaging.

17 What's the evidence of the difference in age?

18 MR. GHOSE: Well, their statements to the special
19 agent, they say they are ages six and eight, and they state
20 that the defendant was 17, although there is some evidence to
21 suggest that he was 15, but either way that would meet the
22 age --

23 THE COURT: It would still be the four-year
24 difference.

25 MR. GHOSE: Yeah, it would meet the age

1 requirements.

2 THE COURT: So, Mr. Holcomb, that does seem to be
3 the case based upon the record before me, that if this had
4 been committed in a place where there is territorial
5 jurisdiction of the United States, that this could be a
6 charged offense under 2243.

7 MR. HOLCOMB: I think that what we have in the
8 statements, which is literally all I have in discovery about
9 those incidents, is the estimates of ages, first, of
10 Mr. Peragine that we know is incorrect. The estimate was 16
11 to 17 years of age, but we know that Mr. Peragine was married
12 and living in a different state at that age.

13 So we know that that age is -- the initial
14 calculation is incorrect. The second piece --

15 THE COURT: Well, I will give you the benefit of
16 the doubt that it is 15. I mean, you said it was probably
17 when he was 15. I will accept that.

18 MR. HOLCOMB: Well, the second part -- or 14. But
19 the second part is the estimates of their own ages. So they
20 are making a recollection of when the incidents occurred to
21 them, stuff that was never reported to the authorities,
22 apparently never shared with parental figures or anything of
23 that nature. Some twenty years on they are recollecting what
24 age they were when it took place, and that's the sum
25 reliability of the age difference.

1 THE COURT: But they have a recollection, don't
2 they?

3 MR. HOLCOMB: They have a recollection. Whether or
4 not they are correct about their own ages, I do not know.
5 I do know that they are incorrect about Mr. Peragine.

6 THE COURT: Well, even if I assume that he was 15
7 or 14, at least with respect to one of the cousins, there was
8 an age difference of at least four years.

9 MR. HOLCOMB: Also the statements I would note are
10 internally inconsistent in terms of other estimates. One
11 of them says that there is a four-year age difference
12 between the two girls, the other one says when it happened
13 one was six and one was eight, and I don't think both can be
14 true.

15 THE COURT: Mr. Ghose, how do you respond to that?

16 MR. GHOSE: Well, the 302 -- this is Government's
17 Exhibit 10. This is D.C., she says that she was 8 years old
18 and Peragine was 16 or 17. T.C. says that when she was six
19 or seven years old, and she's referring to the same incident
20 because she references her sister, that would place him at
21 the same age, 16 or 17 years old.

22 I think that this is better evidence than what they
23 have, which is nothing. He is asserting that he was out of
24 the house --

25 THE COURT: It's not his responsibility or burden

1 to prove this, it's yours.

2 MR. GHOSE: I know.

3 THE COURT: Well, if you know that, then you
4 shouldn't say that.

5 MR. GHOSE: But it's not really legitimately
6 controverted. I mean, he's suggesting -- and as Your Honor
7 pointed out, it's sort of a moot point, because it still
8 meets the age difference requirement even if he were 15. And
9 even if the children were off by a year or two, they are
10 clearly children.

11 THE COURT: Well, Paragraph 10 and 11, which are in
12 evidence and are part of the record before me, is sufficient
13 to establish by a preponderance of the evidence that under
14 2243, that the incident involving the two cousins could have
15 been charged in the territorial jurisdiction of the
16 United States as an offense under 2243 because it meets the
17 two criteria set forth in Subparagraphs 1 and 2.

18 And, therefore, I find that there is an analog or a
19 charge that is encompassed in the definition of sexual abuse
20 or exploitation under 2G 2.2 in which the defendant engaged,
21 and thus qualifies as an incident of sexual abuse or
22 exploitation of a minor, and, therefore, qualifies as an
23 analog not only for 2G 2.2 but 4B 1.5 (b) (1).

24 Because the defendant engaged in a pattern of
25 activity involving prohibited sexual conduct as described in

1 4B 1.5 (b), and as I found the pattern of sexual activity
2 under 2G 2.2, but my understanding is that the government
3 will not seek a ten-point enhancement, but only a five-point
4 enhancement, but I still need to make guideline findings.

5 I think the only objection is to under Group 2,
6 pattern of sexual activity under 2G 2.2 (b) (5), the
7 defendant claimed that there shouldn't be a five-point
8 enhancement because there is no pattern of sexual activity,
9 and there was an objection under the Chapter 4 enhancement of
10 4B 1.5 (b) (1).

11 I find that there was a pattern of sexual activity
12 that applies to my guideline findings under the -- under
13 2G 2.2 (b) (5) because there was a pattern of activity.

14 There is, in fact, a direct authority on the
15 temporal requirement that was decided by the circuit, which
16 you apparently were unaware of. It was decided fairly
17 recently, in 2012 -- I'm sorry, 2010. The case is
18 *United States v. Turner* at 626 F 3d 566, a case that my clerk
19 found in about five minutes' worth of research during the
20 last break.

21 In this case, the defendant argued that his 1990
22 sexual abuse conviction, which was years before the
23 activity for which he was convicted, was too remote in time
24 to constitute a pattern of activity, and the Court said
25 this:

1 This court has explained that the commentary to
2 U.S.S.G. Section 2G 2.2 defining the phrase pattern of
3 activity involving the sexual abuse or exploitation of a
4 minor permits the sentencing court to consider conduct
5 unrelated to the offense of conviction.

6 The court went on to say that we have not addressed
7 whether U.S.S.G. 2G 2.2 (b) (5) has a temporal limitation on
8 unrelated conduct that is considered.

9 The court went on to say the five circuits that
10 have addressed this question have consistently concluded
11 that the plain language of 2G 2.2 (b) (5) does not place
12 a time limit on past instances of sexual abuse or
13 exploitation that a court may consider in finding a pattern
14 of activity.

15 Then later at page 573, the court went on to say
16 that nothing in 2G 2.2 (b) (5) or its commentary suggests
17 that the pattern of activity must be temporally close to
18 the offense of conviction. Under the plain terms of the
19 commentary, the only requirements for establishing a
20 pattern of activity are two or more instances of sexual
21 abuse or exploitation of a minor that are separate from one
22 another.

23 Turner's repeated sexual abuse of a little girl
24 over several years in the late 1980s more than satisfies
25 those requirements.

1 So there being no temporal requirement, my finding
2 that the sexual abuse and exploitation of a minor that has
3 been discussed this morning that occurred with the two
4 cousins, as well as the three -- alone provides that, along
5 with the charged conduct, an unrelated offense that qualifies
6 to show a pattern of sexual activity.

7 And then, secondly, the three instances in which
8 the defendant's son was forced to engage in sexual relations
9 or allowed somebody to perform a sexual act on him alone
10 shows a pattern of activity. But certainly there were at
11 least two if you consider the cousins.

12 And, therefore, I find that the enhancement
13 under 2G 2.2 (b) (5) applies, and that objection is
14 overruled.

15 Because that enhancement applies, it means that
16 the number of units in the increase is one level because
17 they are 1.5 units and not two as the defendant argued if
18 he prevailed on eliminating the 2G 2.2 (b) (5) five-point
19 enhancement.

20 And, finally, under Chapter 4, under 4B 1.5 (b)
21 (1), that there is a pattern of activity that qualifies also
22 for a five-point enhancement. So I overrule that
23 objection.

24 So my guideline -- is there anything else to which
25 there has been an objection and upon which I have to rule?

1 MR. HOLCOMB: I did mention earlier about the
2 double-counting, Your Honor.

3 THE COURT: Well, I need to make my guideline
4 findings --

5 MR. HOLCOMB: Yes, Your Honor.

6 THE COURT: -- and then I think that that would be
7 separate and apart from the guidelines.

8 So my guideline findings are that the defendant's
9 total offense level is 43, his criminal history category is
10 five, which provides for a custody guideline range of life,
11 and a fine guideline range of \$25,000 to \$250,000.

12 Are there any objections to those findings based
13 upon my prior findings?

14 MR. HOLCOMB: I do think he is a four. Did you say
15 category five, Your Honor?

16 THE COURT: If I did, I meant four, which still
17 provides for a custody guideline range of life and a fine
18 guideline range of \$25,000 to \$250,000.

19 Are there any objections to those findings?

20 MR. HOLCOMB: I think they are consistent with your
21 prior rulings. We stick with our earlier arguments,
22 Your Honor.

23 THE COURT: I understand.

24 MR. GHOSE: No objections, Your Honor.

25 THE COURT: All right. So I think the right

1 process now is if there is anything in extenuation or
2 mitigation, we would do that first.

3 Then I would like to hear from each of you.
4 I think that's where you would make your argument about
5 double-counting and whether or not I should vary from my
6 guideline findings by the five points that I think the
7 government is going to concede on. And then give me, when
8 you make those comments, what you think would be a reasonable
9 sentence in the case.

10 And why don't we start with you, Mr. Holcomb, and
11 then we will go over to Mr. Ghose, and the last person
12 I would like to hear from is Mr. Peragine.

13 MR. HOLCOMB: We did supply the Court with our
14 sentencing memorandum and also a social history of
15 Mr. Peragine that had been compiled with interviews of a
16 number of folks. I'm not really sure exactly how one would
17 term it, I think they are nieces. I think they are his
18 half-sister's daughters, but for what it's worth, just for
19 our record.

20 But in any event, the social history goes through,
21 starting with the generation proceeding against Mr. Peragine
22 and his mother and father, and then tracks his life and those
23 of his siblings.

24 I know that once the Court has derived its
25 calculation of the Sentencing Guidelines, that there is

1 still, you know, some steps to go through in terms of the
2 3553 (a) factors. I do think -- and I had included in my
3 sentencing memorandum some recitation of a few cases that
4 I think are particularly egregious compiled primarily through
5 interviews of other people in my office.

6 The guideline range is extraordinarily high in this
7 case. It doesn't get any higher. The actual calculation in
8 the presentence report sums out a cumulative total of 49
9 points before the operation of the section that reduces it to
10 the table.

11 I would note that Eric Rudolph after trial was a
12 45, just in terms of assessing how the guidelines get us
13 where we are.

14 I understand that the Court is going to have to be
15 looking at a few of the 3553 (a) factors with great
16 concern. One is obviously deterrence, just punishment,
17 protection of the public is one thing that I think is
18 significant in Mr. Peragine's case, and also another one that
19 I referenced in the memorandum as well is the need to provide
20 the appropriate correctional treatment.

21 The case is what it is, but it is set against the
22 backdrop of a life that is deeply, deeply troubling and
23 deeply concerning.

24 There is a quote that goes into almost all
25 criminal defendants' sentencing memorandums when we get down

1 to the history and the characteristics of the defendant.

2 It comes from *Koon*, the case out of Los Angeles, and the
3 Supreme Court said that it has been uniform and constant in
4 the federal judicial tradition for the sentencing judge to
5 consider every convicted person as an individual and every
6 case as a unique study in the human failings that sometimes
7 mitigate, sometimes magnify the crime, and the punishment to
8 ensue.

9 In this particular case I think that in arriving at
10 the sentence or assessing even Mr. Peragine's culpability,
11 intent and future dangerousness, one has to account for a
12 very difficult family life that's outlined in the social
13 history.

14 It involves significant incidents of childhood sex
15 abuse, physical abuse, trauma, the significant substance
16 abuse that took place in his teenage years and early
17 adulthood, of course the earlier death of his mother which he
18 witnessed, and a lack of any meaningful treatment or
19 supervision during that time period.

20 It's reasonable, I believe, to believe that
21 Mr. Peragine's childhood experiences impacted him and
22 impacted him deeply in the formation of the person that he is
23 today, and it's likely that those experiences exacerbated at
24 a minimum his teenage substance abuse.

25 By his account, his drug addiction was a factor and

1 motivated the two robberies that he was convicted of when he
2 was still a teenager and that put him at prison at that point
3 in time, where he remained for, as the government mentioned a
4 few minutes ago, ten years. It's a long time to spend in the
5 Georgia Department of Corrections, and it's a long time for
6 anyone, but especially so when you go in when you are 18
7 years old.

8 I would suggest that it wasn't an optimal
9 environment for Mr. Peragine to confront his issues. He
10 didn't receive any psychiatric help or any counseling or
11 anything like that we tracked, but one thing he did get, he
12 did get some counseling when he was in there, and that was
13 the substance abuse component. It came I believe later in
14 the service of his sentence prior to his release.

15 It's probably the only example in the entire life
16 history of Mr. Peragine of him getting such an opportunity to
17 actually interface with an adult that's in a supervisory
18 capacity that's providing him with that kind of meaningful
19 information about a problem that he has of that nature, and
20 by all accounts, including those of his ex-wife, who is here
21 today, he tried and was quite successful.

22 He stayed away from what is a notoriously difficult
23 addiction to break, methamphetamine. I think that we know
24 from some of our federal cases that have come through the
25 courthouse in the last several years that drugs of that

1 nature are available in the Georgia Department of
2 Corrections.

3 But Mr. Peragine not only stayed off drugs there,
4 took the substance abuse classes, got out, and then stayed
5 off drugs after he got out. That distinguishes him,
6 basically, from every other member of his family.

7 Once released from prison, Mr. Peragine got a job,
8 he started a family, and he tried to pursue what he thought
9 was going to be a normal existence.

10 There are plenty of unanswered questions for him
11 that remain that are unresolved and that are lurking under
12 the surface, and I think it's important to note just in terms
13 of the chronology of his life, of when he went into prison
14 and when he got back out, the world is a very different place
15 than when he went into prison. Computers are different,
16 telephones are different, and the internet is certainly very
17 different.

18 Mr. Peragine reported to agents when he was
19 initially arrested, he gave him his telephone, he offered
20 them his passwords and identifications on the chat network
21 that he was involved with, and related what he had been up
22 to, and some of those reports included his first forays
23 into the world of internet sex, and they involved adult
24 women.

25 He had conversations with adult women, he had at

1 least one relationship with an adult woman that started from
2 that, and one that was older than him. The forensic analysis
3 of his cellular telephone indicated a raft of adult
4 pornography that exceeded the child pornography on the
5 telephone.

6 But there is also a dark world -- a dark side to
7 the world of internet sex, and Mr. Peragine found it, and it
8 sucked him in. And when the investigation placed the ad,
9 Mr. Peragine, carrying that damage, he answered.

10 That life set him up for some of his mistakes.
11 What that life has not done to this point is provide him with
12 any reasonable alternative to his lurking in chat rooms.

13 He has not had the chance through his earlier
14 supervision as a child, through his time in the Georgia
15 Department of Corrections, to have any treatment that would
16 address what would surely be labeled posttraumatic stress
17 disorder as to his mother or to deal with the sex abuse, much
18 of which he has apparently blocked out, but much of which we
19 have also been able to corroborate through the reports of
20 other relatives and friends of the family.

21 The guidelines suggest a life sentence in
22 Mr. Peragine's case. I would suggest that extinguishing any
23 hope that he has of getting out of prison is not the answer,
24 and that Section 3553 (a) itself calls out for a balancing of
25 punitive measures with rehabilitative measures.

1 The BOP actually has prepared a program that is
2 designed to assist sex offenders while they are
3 incarcerated. The Sex Offender Management Program includes
4 both a residential and nonresidential component, and
5 Mr. Peragine is actually requesting designation to a SOMP
6 facility.

7 Following completion of the program, there is
8 another thing that happens, and that's Mr. Peragine may be
9 referred for review to determine if he's actually a sexually
10 dangerous person.

11 So there are two questions in terms of the 3553 (a)
12 factors that are not apparent at this point. How would
13 Mr. Peragine respond to any kind of course of treatment
14 specifically targeted towards sex offender issues. The other
15 question is, you know, when he comes out the other side of
16 that, would he still remain a danger.

17 But there are tools and mechanisms within the
18 Bureau of Prisons and that are at the hands of the government
19 to require that he go through those processes.

20 It's likely that he will receive mandatory
21 placement in some version of the SOMP program once he goes
22 in, but the other thing that is available under Section 4248
23 of Title 18 is a review of Mr. Peragine to determine before
24 he is released following completion of his sentence if he is
25 a sexually dangerous person.

1 It's been utilized over 50,000 times as of 2015,
2 the most recent data that I was able to find. 27,000 inmates
3 have been determined to have qualifying conduct. But the
4 existence of the mechanism actually permits the Bureau of
5 Prisons and the government to make a formal assessment of
6 Mr. Peragine after he receives treatment, and that is
7 something he has never had.

8 The guidelines I have contested in the sentencing
9 memorandum. I know that the Court has heard similar argument
10 before in other cases. I have had them with Your Honor.
11 I still contend that the guidelines arrive at a sentence that
12 is greater than necessary to achieve the sentencing factors
13 goals that are outlined in 3553 (a).

14 What I am suggesting in my recommended sentence is
15 that there is an available option that Congress explicitly
16 set up to deal with the situation where we have somebody that
17 we have no known history of that simply never had any other
18 opportunity to make himself well.

19 I do think that the history, the life history of
20 Mr. Peragine, his childhood experience, going into prison at
21 the age of 18, are things that this Court can take into
22 account when crafting a sentence.

23 The vast majority of enticement cases that we
24 receive do not involve this background, they don't involve
25 that life pattern. My interviews with other attorneys, my

1 own cases, usually indicate a child enticement person to be
2 average functioning, criminal history category one, no prior
3 convictions, and a lack of this kind of mitigation.

4 THE COURT: Well, you know, the balance too here
5 is -- I agree with your description of the typical case. But
6 my concern about the safety of the community is accentuated
7 by his conduct *vis-a-vis* his son and these two nieces.

8 MR. HOLCOMB: I understand.

9 THE COURT: And that's over a long period of time
10 that that's occurred.

11 And if you couple that with the clip that was
12 played of the discussion between the undercover agent or
13 employee and the defendant, and what I take from that is that
14 he is totally aware of what are the consequences and,
15 in fact, believes that he's already engaged in conduct that,
16 if found out, would have a consequence, which is why he's
17 trying to persuade the person he's talking to to at least be
18 as culpable as he is.

19 And I'm not so sure it's because he believed them
20 to be necessarily an undercover agent, but I think it's the
21 idea that if they are likely to get in trouble too, they are
22 less likely to disclose what they did even if they were just
23 a willing participant.

24 And what that does for me is that it shows that his
25 compulsion to do this is so significant that I wonder what

1 the treatment would do for him ultimately.

2 I guess I have never had a case where I have been
3 convinced that the -- this insatiable appetite that he has
4 for this conduct is as strong as it is according to the
5 evidence in this case.

6 MR. HOLCOMB: I think some of that can be put in
7 context in terms of the course of his life.

8 We do have somebody who is in prison for ten years
9 during his 20s, and in terms of the compulsive behavior, the
10 phone records in Mr. Peragine's own relation indicates that
11 he doesn't have a monofocus on pedophilic tendencies. It's
12 actually a free-floating sexual energy that has been locked
13 up for ten years in prison and that when he gets out kind of
14 explodes.

15 It's not solely targeted towards children. It
16 involves adult relationships, adult sex. Even the
17 allegations that are pending in Lumpkin County with the child
18 involve allegations that included him having sex with an
19 adult female and not participating in the adult female-child
20 interaction. So those are things that are different than
21 your ordinary enticement case.

22 In addition to that, there were multiple instances
23 where he called these things off. And one could argue, as
24 I'm sure the government would contend, that he thought he was
25 about to be arrested. But he called it off on I believe it

1 was three occasions. I know it's more than two.

2 He actually canceled meetings with the undercover
3 where he was supposed to go have sex with the child, and he
4 quit them. He made up reasons in the chats for why he did
5 that, but they were usually for work. He went and did work
6 instead of going to meet with this woman.

7 I also think that in the context of this explosion
8 of internet fantasy that was thrust upon him when he got out
9 of prison, that he was still sorting it out and making sense
10 of it.

11 And the whole road that he went down with the
12 undercover officer -- I understand the purpose of the
13 investigation, it's to sort out the folks who are out there
14 who are looking actively to have sex with kids. But that
15 process caught somebody like Mr. Peragine, who already had
16 that damage from his own childhood sex abuse, who wasn't
17 simply looking for sex with children, and pulled him down
18 that hole.

19 In the chats that were played for this Court
20 earlier, he described that he had gone back and had only been
21 doing any collecting of these videos, that he thought he
22 could get more videos for the prior six months. Well, he had
23 been out of prison for over three years at that point, and
24 that was him trying to puff and impress her.

25 So there are indications that this is something

1 that bubbled up to the surface for him, that he's not solely
2 focused on children, that he responded well to prior
3 substance abuse treatment when he had it.

4 He's not a person of low IQ. I can attest to that
5 from my interaction with him over the course of a couple of
6 years now.

7 And we don't know what the result would be of that
8 sex treatment in prison. We don't know what the result would
9 be, but we do know that there is a fail-safe. He can be
10 tested. It's up to the Department of Justice to say have him
11 reviewed before he gets out.

12 I think the offense conduct that is charged in the
13 indictment would make it a qualifying offense for a formal
14 review. He would be assessed, they would have to have a full
15 process, he would be appointed a lawyer, there would be an
16 examination, he would be subjected to tests, but even
17 independent of that --

18 THE COURT: What's the outcome of the test?

19 MR. HOLCOMB: It's submitted to the court for
20 review as to whether or not they'd make a final determination
21 as to whether or not he's a sexually dangerous person.

22 THE COURT: But I impose the conditions of
23 supervised release now. So, I mean, how is that supposed to
24 be used by a sentencing court?

25 MR. HOLCOMB: The Court knows that that resource is

1 available to the Bureau of Prisons and the Department of
2 Justice.

3 THE COURT: Right.

4 MR. HOLCOMB: It knows that that unanswered
5 question can be answered in a future proceeding prior to
6 Mr. Peragine's release. That's the purpose of the statute.

7 THE COURT: I got it. But what does that lead to?
8 Because his sentence is going to be a period of
9 incarceration, and then there are going to be some fairly
10 stringent requirements in a long period of supervised
11 release. So that's what would happen today.

12 So if at some time in the future they do this
13 statutory review and there is a finding -- let's say he's
14 found to be continuing to be sexually dangerous, what impact
15 does that have on the case?

16 MR. HOLCOMB: It would stay the result of your
17 order in this court, Your Honor. If he was due to be
18 released and they made such a finding, he would be subject to
19 civil commitment and he would not be released.

20 THE COURT: But that assumes he gets supervised
21 release for -- you mean not released from prison?

22 MR. HOLCOMB: He would not be allowed out of prison
23 at all. That's the purpose of the civil commitment
24 finding.

25 There is a procedure through which it would have to

1 go before they would arrive at this position.

2 THE COURT: It's like a civil commitment procedure,
3 I guess, under state law?

4 MR. HOLCOMB: It is. It's 18 U.S.C. 4248, and the
5 government initiates the action. So they have that option,
6 and there is a list, and they have done it 50,000 times. So
7 it's not a protocol that they are unfamiliar with.

8 But what it would provide for this Court is the
9 knowledge that prior to him going back on the street, he can
10 be looked at and checked and you can get an answer to that
11 question that we can't answer today, which is that he can be
12 checked to see whether or not he's a sexually dangerous
13 person.

14 We have the additional assurances that this Court
15 can impose as a condition of supervised release. It is not
16 uncommon for sex offenders to have to take polygraphs once a
17 month once they are released on supervision. Things of that
18 nature are likely to be a part of any aspect of this Court's
19 judgment and commitment. But this is something entirely
20 separate.

21 I mean, it's not often that I invite this kind of
22 review. In many instances, defense lawyers tell folks, you
23 know, don't tell them anything.

24 Mr. Peragine is somebody who has actually expressed
25 a willingness to get well and wants to do it. He has

1 aspirations for having another part of his life where he can
2 put it back together.

3 THE COURT: Right.

4 MR. HOLCOMB: He's been denied that up to this
5 point through many forces that have been out of his control.
6 But with an existing mechanism that can be a fail-safe,
7 I think it should affect the balance between incapacitation
8 and rehabilitation.

9 Mr. Peragine did have some words that he wanted to
10 say.

11 THE COURT: Let me first hear from Mr. Ghose.

12 MR. HOLCOMB: Thank you, Your Honor.

13 MR. GHOSE: Your Honor, the guideline range as
14 calculated by the Court is a life sentence, and defense
15 counsel has asked for a sentence in the range of ten to
16 fifteen years' imprisonment.

17 The government's position is that the sentence in
18 this case should fall somewhere in between that;
19 specifically, 32 years, which is 384 months.

20 I just want to speak a little bit about how the
21 government came to this conclusion.

22 And I want to say at the outset that this
23 recommendation is not one that we took lightly. I had
24 meetings both with my section supervisors and the U.S.
25 Attorney twice directly, and we also heard directly from

1 Mr. Holcomb himself in a meeting with the U.S. Attorney after
2 the social history was produced by the social worker who did
3 the investigation into Mr. Peragine.

4 And we do take very seriously all of the factual
5 history that's included about his life, and we acknowledge
6 that his life in many respects is full of neglect and abuse
7 and it's horrific. And there is nothing else to say about
8 that.

9 But the conduct in this case also is horrific, and
10 you have seen two prime examples of it in court today where
11 you witnessed the after-effects of what I would probably
12 argue is the most egregious of the other relevant conduct,
13 which is the conduct involving the defendant's 14-year-old
14 son on his 13th going on 14th birthday.

15 That child is a middle schooler at the time of the
16 camping trip. He had -- I believe he has some developmental
17 issues, because he was born with a congenital heart defect
18 that was the result of his mother's drug use during
19 pregnancy. The child has a pacemaker. He hasn't been in his
20 parents' care since 2005. He's being raised by the
21 defendant's father's ex-wife, and he himself has had a
22 difficult go of it, a difficult life.

23 And the defendant, in the short amount of time that
24 he was released from state prison and that he probably didn't
25 have much interaction with his son, decided to do that to his

1 own child, having gone through similar abusive conduct as a
2 child.

3 And I understand the cycle of abuse argument or
4 implication from the defense, but he is -- explosion is an
5 appropriate word for his conduct.

6 His criminal history, when you look at how he
7 compares as to other similar cases -- and Mr. Holcomb didn't
8 talk about it much during his remarks, but his sentencing
9 memorandum did focus on several comparable cases.

10 Our position is that you can't really glean a whole
11 lot of useful information from those comparisons because,
12 number one, all of those other cases involved people with
13 criminal history category one, and they all involved
14 negotiated plea agreements. This case doesn't involve either
15 of those two things.

16 The defendant has a substantial criminal history.
17 He has explosions of violent conduct.

18 You see it in the PSR at Paragraphs 73 through 76,
19 a string of offenses that occurred in many instances within
20 days. The theft offense occurred on February 21st, 2002.
21 The first armed robbery occurred on February 22nd, 2002. And
22 the next armed robberies -- or next armed robbery occurred on
23 March 7th or March 8th of 2002.

24 And it was a string of explosive criminal activity,
25 which is similar to this string of explosive criminal

1 activity in this case, where you have the defendant both
2 doing the conduct to his own child in the camping trip, and
3 then seeking out sex with a nine-year-old child whom he
4 speaks with on the telephone.

5 I mean, his "compulsion" that the Court used is
6 an appropriate word, because you can hear from the call
7 that he had a pretty good inkling that this might be a law
8 enforcement investigation, and yet he still went through
9 with it.

10 He did cut off contacts with the OCE on numerous
11 occasions. He says in his postarrest interview that he
12 deleted the *Kik* app, but then he reinstalled it and
13 recontacted her and he went through with this conduct to the
14 point of showing up with a condom and being prepared to have
15 sex with a nine-year-old child after having spoken to what he
16 believed was that child on the phone, and having sent the
17 child not just pornography, but hard-core recorded rapes of
18 children, which he sent to the child, spoke to the child
19 about it, and asked the child if she wanted to engage in that
20 conduct.

21 I mean, that is about as severe as you can get
22 when it comes to cross-over offenses that melds child
23 pornography offenses with sexual exploitation enticement
24 offenses.

25 While a life sentence in the government's view is

1 not appropriate, a substantial sentence is appropriate, and a
2 ten- to fifteen-year sentence is much, much too low, well
3 below what an appropriate sentence would be in this case.
4 There are not anything near justifications in our view that
5 would warrant such a substantial variance in that kind of
6 case.

7 Now, I guess one of the things I want to address is
8 why not a life sentence, and I do want to highlight to some
9 parts that the government does agree with the defendant in
10 his plea -- or with his sentencing memoranda.

11 The 2G 2.2 guidelines are harsh. And I'm sure the
12 Court has heard this from our office before, but there are
13 certain specific offense characteristics that are just --
14 that apply certainly, the Court has calculated the guidelines
15 correctly, but that because they apply to so many defendants,
16 it actually kind of waters down or sort of drowns out the
17 actually really culpable defendants and it kind of rises
18 them all up to this certain level and then creates an
19 unfair system where they are all treated as the worst
20 offenders.

21 Now, Mr. Peragine is among, in our view, the worst
22 offenders, but as potential justification for the variance
23 down from life would include the guidelines that relate to
24 use of the computer and number of images. And so the
25 government's view is that those are potential sources of a

1 discount or a variance.

2 It is true that technological advances have
3 rendered enhancements for the number of images and the use of
4 the computer as sort of less compelling.

5 But the enhancements for content that has
6 prepubescent minors or sadistic and masochistic content,
7 there is nothing about technological change in our view that
8 makes those specific offense characteristics less relevant or
9 less compelling.

10 It's true that the ease of access to number of
11 images is facilitated by technological changes, but a
12 person's interest in the really egregious child pornography,
13 like those involving prepubescents or those involving
14 sadistic or masochistic activity, that doesn't have anything
15 to do with technological change, and those specific offense
16 characteristics are appropriate.

17 Another source of a potential justification for a
18 variance down from life is the double-counting that we
19 referenced earlier, where although the guidelines suggest
20 and Eleventh Circuit law suggests that you can count a
21 pattern enhancement of five levels under both Chapter 2 and
22 Chapter 4, that it's really not fair to double count them in
23 that fashion.

24 THE COURT: Well, if I understand what you say,
25 and giving him credit -- because I think Chapter 2, the

1 enhancements are severe, and I have been polled about that
2 and I agree that they are too high.

3 If I were to take the six points for use of the
4 computer and the number of images, the number of his images
5 are a fraction of what I normally see --

6 MR. GHOSE: Right.

7 THE COURT: -- that would put him at a subtotal for
8 Group 2 of 40, plus one for the number of units, which
9 I guess would put him at offense level 41.

10 Offense level -- I think that's right, offense
11 level 41, based upon the argument you are making for a
12 category three would be 360 to life.

13 MR. GHOSE: The government, we agree that
14 actually -- that's the metric that we are using is 360 to
15 life. I think, though, our way of getting there might be
16 slightly different, and I can get into that if you want to,
17 or not.

18 But the long and short of it, we agree that 360 to
19 life is actually an appropriate metric to use. The way I got
20 there -- or the way we got there is currently the total
21 offense level on Group 2, the child porn counts, Counts Two
22 and Three, is 49. If you remove --

23 THE COURT: Well, it's really not 49. It's 43
24 because it maxes out.

25 MR. GHOSE: Well, before you adjusted down to 43,

1 this is how I got there, is you -- it's 49, minus eleven,
2 which is the two levels for the use of a computer, four
3 levels for the number of images, and five levels for the
4 double-counting on pattern, that drops to a total of 38.

5 Then you add two levels for multiple counts,
6 because the two groups are then equivalently serious, and
7 then you add the Chapter 5 pattern, which is five, you get
8 to 42 -- I'm sorry, you get to 45.

9 And then you subtract three for acceptance, and you
10 get to 42, at category four is 360 to life. That was my own
11 kind of internal calculation.

12 Another way to look at it is just to use, as
13 defense counsel I think to some extent appropriately argues,
14 Count One as the driving guideline. And I don't think there
15 is any dispute from anybody that the guideline there is what
16 is in the PSR.

17 The guideline on Group 1 is a base of 28.

18 THE COURT: So what's your recommendation, 380?

19 MR. GHOSE: 384 based on a range --

20 THE COURT: In this district in the last five
21 years, other than the one life sentence that I'm familiar
22 with, who else has gotten a sentence of 384 months or more?

23 MR. GHOSE: I can't name one. We went through --
24 I went through the PSRs that were referenced in the defense
25 counsel's memorandum --

1 THE COURT: Yeah, all of those are much lower than
2 what you are recommending.

3 MR. GHOSE: Yes, that's correct.

4 THE COURT: I can't even think of any violent crime
5 where somebody was -- I don't think I have ever sentenced
6 anybody to -- including some pretty severe cases -- to this
7 many months.

8 MR. GHOSE: Well, I believe the last time I was
9 before this Court, Your Honor, was a serial armed robber who
10 had a 32-year sentence. So that does happen.

11 THE COURT: A serial armed robber --

12 MR. GHOSE: A serial armed robber.

13 THE COURT: -- who shot at people, as I recall.

14 MR. GHOSE: He didn't, but he committed 25 armed
15 robberies, and he got 32 years. And I'm not suggesting that
16 we should compare him with Mr. Peragine. They really are
17 very different offenses.

18 I think life is inappropriate. I think the Court
19 probably agrees with that. But fifteen years or even twenty
20 years is much too low if you look at the comparators even in
21 the defendant's own sentencing memorandum.

22 THE COURT: So 384 months is 32 years, more than
23 somebody who robs 25 banks?

24 MR. GHOSE: Well, the same as 32 years, that's what
25 he got as well, 384.

1 The reason it's 384 and not 360, 30 years, is
2 because -- and like I said, we met at length with everyone in
3 the office about what to recommend. This was a difficult
4 case. I mean, we struggled, struggled over this.
5 I struggled over this case.

6 And it's not a low end case, Your Honor. There is
7 nothing in here that suggests that this is a low end case.
8 The 360 to life --

9 THE COURT: You are actually one of the few
10 assistants that's come in and argued for a guideline sentence
11 in the past few years.

12 MR. GHOSE: Right, but this is not a guideline
13 sentence. This is a below guideline sentence. Guideline as
14 you --

15 THE COURT: Well, I know, but these guidelines are
16 so high, it's as if they are --

17 MR. GHOSE: But they are life. They are
18 legitimately life. If you were to take, even if you were to
19 remove, as I suggested, you know, some, but maybe not all, of
20 something, you are still getting to life.

21 He's so far above life -- he's at 49. I know it
22 gets adjusted down to 43, but his conduct is so egregious,
23 and his criminal history is different. When was the last
24 time you had a child porn defendant with a category four?
25 He's not category three, he's category four.

1 So if you look at the 360-to-life range and, like
2 I have said, my internal guideline is that he is --

3 THE COURT: Look, I understand that you are where
4 you are. I am not going to be where you are, so let's
5 complete your argument.

6 MR. GHOSE: But I want to make the point, though,
7 Your Honor, if you accept what I've -- and I know you are not
8 accepting it, but if you take an offense level of 42, it's
9 360 to life across the row. It doesn't matter whether he's a
10 category one or a category four. He is a category four.

11 THE COURT: I understand. Let's move on.

12 MR. GHOSE: Okay. That's why we are not
13 recommending low end.

14 Now, I think all the comparable cases, I think the
15 *Greer* case cited by the defendant in his memo is probably the
16 closest one, and the range there was 324 to 405 months. The
17 defendant in that case got 30 years, 360.

18 That was what the government recommended. That was
19 a middle of the guideline range sentence. That was well
20 above what the defendant was recommending, and that was on a
21 negotiated plea.

22 Now, the facts are severe in that case, but I would
23 point out that I don't believe that in that case there
24 were -- there was actual completed contact offenses. The
25 planning that he engaged in was horrific, but --

1 THE COURT: Why do you keep distinguishing between
2 a negotiated plea and one with a plea agreement?

3 MR. GHOSE: Well, there is no -- there is very
4 little risk when the defendant agrees to, in many cases in
5 these comparable ones, comparators, to do a joint
6 recommendation.

7 The defendant is agreeing to waive his appeal
8 rights and to end litigation and he's accepting the case on
9 the government's terms. And I think that in many instances
10 the court is not even aware, for instance, in *Greer*,
11 you know, there is another federal investigation that no one
12 was even permitted to discuss, which sometimes there are
13 reasons driving those plea agreements.

14 Here he's waived nothing other than his trial,
15 which is significant, and he gets the three points for
16 that.

17 And I don't think he deserves a life sentence.
18 That's a factor that we have considered. But to say that he
19 should get the same benefit as some of these other defendants
20 who waived appeal and had less egregious conduct and are
21 still coming out in many cases in the 20- to-25-year range,
22 I just think that that places him firmly in what we are
23 asking for, which is not the low end, but the lower half of a
24 guideline range that is kind of an internal calculation, not
25 even the actual guideline calculation itself.

1 There are cases where defendants get life
2 sentences. There is a sex-trafficking case that I'm aware of
3 in our office where the defendant pled guilty and received a
4 life sentence for forcibly and violently, you know, forcing
5 women to prostitute themselves. And he got a life
6 sentence. It does happen.

7 This isn't one of those cases, but it's on the
8 spectrum that I think would warrant more than 360 months, and
9 certainly, certainly much more than what the mandatory
10 minimums call for, which is the least that Congress decided a
11 defendant should get.

12 Thank you, Your Honor.

13 THE COURT: Mr. Holcomb, anything you want to
14 respond to?

15 MR. HOLCOMB: I do, Your Honor.

16 First on the mandatory minimums, it's a ten and
17 five, but they can be run concurrent. The recommendation
18 from the sentencing was a difficult choice between myself and
19 my client and involved a bit of a compromise there.

20 But I did want to respond in part to some of the
21 discussion, and particularly with regard to, you know, the
22 severity of his conduct, which, you know, I recognize. We
23 have all heard it today, and it's very difficult to even read
24 some of the stuff and listen to some of the stuff.

25 But the resulting recommendation is not in

1 accordance with the cases that I have put in my sentencing
2 memorandum.

3 I noted in there when I put them in there that
4 I did not believe they were analogous to Mr. Peragine's case,
5 and that was one of the reasons why they are included.

6 I believe that there are much more egregious facts,
7 including *Greer*, which does involve a contact offense. It
8 was actually the defendant in that particular case convinced
9 a young male of 16 or 17 years of age at the time to actually
10 sexually abuse his eleven-year-old daughter for the prurient
11 interests of the defendant.

12 Part of what has always driven I think
13 Mr. Peragine's case is one that's not charged here, but it is
14 a basis for some of the enhancements, and that's the conduct
15 with his son.

16 I don't pretend to defend, as a father of four,
17 Mr. Peragine's choices. I do think there is a context that
18 is a little bit explicable in terms of where he was at that
19 point in time. The extended separation between himself and
20 his son. His son had expressed or repeated interest of
21 having sex. And then, unfortunately, a fairly long and
22 somewhat regional tradition of fathers introducing their sons
23 to sex in circumstances where they encounter a paid sex
24 worker or something of that nature.

25 Again, I don't think that that is something that is

1 going to change the Court's mind about condoning that kind of
2 behavior or would move most of us, but they are realities
3 that make them different than the underlying pattern
4 enhancements and aggravating factors that exist in the other
5 cases.

6 THE COURT: I assume he's still subject to
7 prosecution for that incident anyway, isn't he?

8 MR. HOLCOMB: He is still subject for prosecution.
9 They are waiting for that. And as I mentioned -- or I think
10 Mr. Ghose actually mentioned it, the other case is still
11 pending as well as to Mr. Casse.

12 In terms of where we are, part of it is driven --
13 there is an element of the guideline calculation that is
14 influenced by the prior convictions, but I do not agree with
15 the government that they are analogous to the offense conduct
16 that's here.

17 There was a comparison between the explosion of
18 armed robberies and then this sexual contact post-release
19 from prison by Mr. Peragine. I think that those earlier
20 robberies, their proximity in time, the age of which he
21 committed them, the fact that we know from many, many, many
22 family members in the social history what his situation was
23 with regard to substance abuse, that they are consistent
24 with, as I described them, meth-addicted robberies, a meth
25 addict committing a series of robberies at the age of 18.

1 That's what happened.

2 Then we have the release from prison and we have
3 this snowballing of sexual activity on the part of
4 Mr. Peragine. I think that's also -- it's consistent with
5 compulsive behavior, which Your Honor used the phrase,
6 I believe. It's also something that has never been treated,
7 and something that could potentially be treated.

8 In terms of the guidelines score itself, I would
9 definitely refrain from using a term like legitimate to
10 describe a recommended sentence that exceeds sentences like
11 Eric Rudolph.

12 Or if we are going to stick with sex offenses,
13 I know the Court is likely familiar with the case of *Irey*,
14 which gives us a lot of the jurisprudence about appellate
15 review and procedural and substantive reasonableness. That's
16 a 360-month sentence for that man.

17 That is a person that had four-, five- and
18 six-year-old victims, at least fifty of them, that he raped
19 and filmed and drew on. That's the sentence that was meted
20 out in *Irey*, and it was subsequently approved as
21 substantively reasonable by the Eleventh Circuit.

22 *Kapordelis* is from our district, which is also a
23 particularly notorious case, and that was a sentence for -- a
24 35-year sentence for a defendant who over the span of twenty
25 years drugged two boys, age eleven and fourteen, traveled

1 abroad, molested and took digital videos of three minors, he
2 drugged and engaged in oral and anal sex with at least one,
3 drugged a 16-year-old second cousin and videotaped himself
4 having sex with a minor, repeated really violent, aggressive
5 conduct. That's in our district; that was a 35-year
6 sentence.

7 *Harris* is another case that came through our office
8 within three years of my arrival there, a 30-year sentence
9 for the defendant. Filmed and photographed seven 15- and
10 16-year-old boys, two of them were his godchildren.
11 Videotaped them, showed the videotapes to his friend, had his
12 friend come over, and then videotaped his friend having sex
13 with one of them.

14 There is also *United States against Hodnett*, a
15 30-year sentence for the defendant, who possessed six hundred
16 images of child pornography, had in the past engaged in
17 these -- these were the bases for his aggravated factors --
18 sexual activities with minors, kidnapping and raping a
19 6-year-old girl, molesting and engaging in sexual
20 intercourse with two stepdaughters, oral sex with a
21 16-year-old girl.

22 So what I am suggesting is that I certainly
23 appreciate and have for at least a couple of years now what
24 the conduct is of Mr. Peragine's case, but there are cases
25 out there that are pursued in this circuit, in this district,

1 on much, much more egregious facts that don't wind up with
2 30-year-plus sentences.

3 I understand that the criminal history category is
4 aggravated by the armed robberies, but in the context of
5 Mr. Peragine's life, I see them as things that have
6 actually -- that took place when he was a very young man at
7 the end of a period of pretty severe abuse. And then he went
8 to prison for ten years, and he got out of that little
9 incubation chamber, and this modern world was thrust upon
10 him.

11 And he tried, he certainly tried, Your Honor, in
12 many respects. He did not go back to drugs. He did not go
13 back to armed robberies. He formed his own business. He was
14 being industrious.

15 But this side, this aspect of his life that was
16 very much a real part of his childhood, the only thing he had
17 ever known, was something that he couldn't address on his
18 own.

19 There is a path forward that involves both
20 incarceration for a lengthy time period, a fail-safe to check
21 whether or not he's sexually dangerous before he gets out,
22 and sex treatment in between.

23 And it seems to me that, given the existence of
24 those mechanisms, that aren't just -- you know, they are not
25 a social worker suggestion. These are things that are

1 administered by the Bureau of Prisons and were created by
2 Congress. That's why they exist.

3 And in a case like Mr. Peragine's, I think that,
4 you know, we should use them and rely on them to see how he's
5 going to do. Because there is a method for dealing with him
6 if they find that it doesn't work. And that's why we suggest
7 the result that we do, Your Honor.

8 I'm happy to take any questions.

9 THE COURT: I don't have any.

10 Let me hear from Mr. Peragine now.

11 MR. HOLCOMB: Thank you, Your Honor.

12 THE DEFENDANT: I'm scared to death standing in
13 front of you to read this. I wrote this over a period of
14 about two weeks, trying to figure out what to write and what
15 to say. There is no excuses, there is nothing.

16 Your Honor, to start, I have to apologize for
17 allowing myself to be in this situation. I'm ashamed to be
18 looking at another prison sentence after working as hard as
19 I have to separate myself from any and everything I failed
20 with the influence of my past.

21 During my prior incarceration, I was able to
22 overcome and get control of a meth addiction. I was able to
23 find an interest and a direction for a better way of life.

24 I've never experienced stuff sober. Every person
25 I ever knew did drugs, they were addicts, whether it was

1 coke, crack, meth or alcohol. My life was unstable, and
2 I didn't have anyone I could depend on.

3 After my release, I tried to avoid any association
4 with my past, even family, who were involved in drugs. I was
5 able to meet my wife, Tiffany, build a relationship, start a
6 family. With her support, I was able to start a business,
7 I was productive, I was moving forward. I thought I was
8 doing well. Now I have lost that.

9 Unfortunately, drugs wasn't my only downfall. The
10 mental, social and emotional damage I have stayed with me and
11 had not been addressed. Struggling with these issues, I had
12 not understood the effects suppressed issues were having on
13 my life.

14 I understand I will be receiving a prison
15 sentence. I know laws were broken. I never will hurt
16 anyone again, verbally, emotionally, physically. That's not
17 who I am.

18 I never could have imagined myself in this
19 situation. I hope I'm able to receive help, counseling, or
20 what have you during my incarceration. I hope to have the
21 opportunity to move forward with life.

22 I hope you find compassion in sentencing today.
23 This is the next step to the rest of my life.

24 THE COURT: Thank you, Mr. Peragine.

25 MR. HOLCOMB: Thank you, Your Honor.

1 THE DEFENDANT: Thank you.

2 THE COURT: Mr. Peragine, these are hard cases, not
3 only because I know that I have the authority to deprive you
4 of your liberty for a significant amount of time, but they
5 are also particularly hard because it's difficult sometimes
6 to look at somebody like you and to think about, you know,
7 what moves somebody, what compels somebody or drives somebody
8 to engage in the sort of conduct that you were willing to
9 engage in.

10 And I have a responsibility to everybody here.
11 I have a responsibility to you, I have a responsibility to
12 the public. But I have a responsibility to what you thought
13 was a real child, and thus what you thought was about to
14 become a real victim.

15 And when you think about people willing to engage
16 in the sort of conduct that you had engaged in in the past,
17 which to me was escalating into something that was more
18 egregious, it's just hard to imagine somebody capable of
19 doing that.

20 You know, when I walk around our neighborhood --
21 and we live close to an elementary school -- and I watch the
22 kids go to school in the morning, I think what would be the
23 impact on them if there hadn't been an undercover
24 investigation, but it had been one of those children who had
25 a despicable mother who was willing to offer that child up to

1 have sex with you.

2 I'm pretty sure I know this, that that person's
3 life would never be the same. I don't care how much
4 counseling they would go through, how much care and treatment
5 and affection they would get from people. That that person's
6 life would be inexorably altered in a way, the consequences
7 of which are unimaginable.

8 That's why this is such a serious offense. And
9 I think you have heard me say, and I do struggle to try to
10 understand why people do what they did, what motivates them
11 to do it, and to what extent are there systems in place that
12 would prohibit somebody from doing that again.

13 The 3553 factors are really the weighing of two
14 things. One is who are you, what are your characteristics,
15 what's your background been like.

16 I think you have lived a terrible life in the past,
17 none of which I think was of your own making, some of which
18 after you were raised became engrained within your life,
19 which caused you to be responsible for conduct in which you
20 engaged. But I think that that's a byproduct of your early
21 years.

22 I have read enough to know that sexual assault of a
23 child ends up with the child being much more -- having a
24 greater propensity to engage in inappropriate and illegal
25 sexual conduct in the future, and I believe you have not been

1 treated for that, although treatment for that is tough and
2 it's not always successful.

3 So I'm thinking about protecting the public from
4 your conduct, but I also would hope that our programs within
5 the Bureau of Prisons would help you address something that
6 has been I think long-standing with you and has had a
7 lifelong foundation.

8 But the fact is it's very, very serious conduct,
9 and that's the reason why the guidelines are so high.

10 There is -- I have been doing this for a long time,
11 whether it's been as a prosecutor or as a defense lawyer or
12 now as a judge, so I have a body of experiences that others
13 don't have.

14 And this is not a formulaic decision that I have to
15 make. It's one that ultimately comes down to what's the fair
16 period of incarceration considering all the 3553 factors,
17 including those which would offer you treatment in the Bureau
18 of Prisons, which I'm going to recommend that you get in the
19 residential program.

20 But I can't find that this is a case that requires
21 me or even urges me to be lenient because of the nature of
22 the conduct and the compulsion that I believe that you have,
23 which I am not sure you will ever rid yourself of.

24 So trying to weigh the community factors in what is
25 a fair sentence, a reasonable sentence, one that reflects the

1 seriousness of the offense, I have already made my comments
2 about that, offering you treatment and programs within the
3 prison which I think ultimately will help you against my
4 understanding of the background that might well have brought
5 this about.

6 So having -- this has been a long hearing, longer
7 than most, but it's been good for me to hear everything that
8 I have heard and the arguments that have been made.

9 But having considered what I think is a reasonable
10 sentence in this case, if you will stand, I will announce the
11 sentence I intend to impose.

12 Under the Sentencing Reform Act of 1984, it's my
13 judgment that you, Mr. Peragine, be committed to the custody
14 of the Bureau of Prisons to be imprisoned for a term of 340
15 months on Count One, 240 months on Count Two, and 240 months
16 on Count Three. All of those sentences will run
17 concurrently, for a total sentence of 340 months.

18 Because you have pled guilty to three offenses, you
19 have to pay a special assessment of \$300. That's due
20 immediately.

21 I know you don't have the ability to pay the fine
22 or the cost of incarceration, so I'm not going to impose
23 those.

24 When you are released from incarceration, you will
25 be placed on supervised release for a term of life on

1 Counts One, Two and Three, with the terms of supervision to
2 run concurrently with each other.

3 Within 72 hours of your release from custody, you
4 will report in person to the probation office in the district
5 into which you are released.

6 While on supervision you shall not commit another
7 federal, state or local crime, and you will comply with our
8 standard supervised release conditions that we have adopted,
9 and the following additional conditions.

10 You cannot unlawfully possess a controlled
11 substance, and you will submit to one drug urinalysis within
12 fifteen days after being placed on supervision and at least
13 two tests after that.

14 Under federal law that requires mandatory DNA
15 testing for those convicted of federal felony offenses, you
16 will cooperate in the collection of DNA as directed by your
17 probation officer.

18 You can't own, possess or have under your control a
19 firearm, dangerous weapon or other destructive device.
20 Besides being a violation of supervised release, you probably
21 know that if you were to do that, that's a separate crime
22 under the laws of the United States now having suffered a
23 felony conviction in the past and this one.

24 You will submit to a search of your person and any
25 property that you have at the request of your probation

1 officer.

2 You will undergo a polygraph examination once a
3 month, at which time you will be inquired as to whether or
4 not you have viewed any pornographic materials, and you will
5 also have to answer questions regarding whether you engaged
6 in any inappropriate sexual conduct with minors or other
7 children.

8 I'm restricting you and you shall have no access to
9 cable TV.

10 You will participate in a mental health
11 treatment program under the guidance and supervision of
12 your probation officer, and you will participate in a sex
13 offender treatment program which may include additional
14 psychological and other testing also under the guidance and
15 supervision of your probation officer. If you are capable at
16 that time of contributing to the cost of that treatment, you
17 will do so.

18 You will not have access and you shall not access
19 the internet or any other future-developed electronic --
20 internet-like electronic or technological means of accessing
21 information using a computer or any other device or means,
22 except as may be allowed and only under the supervision and
23 conditions set by your probation officer.

24 You shall request -- well, you shall at the request
25 of your probation officer grant the probation officer access

1 to any computer or other future electronic or technological
2 device which you may own, control, use, or have access to and
3 which could access the internet or any similar information
4 system.

5 You will assist the probation officer to access any
6 and all places on your computer or computers or other
7 electronic devices, including information that discloses the
8 sites that you visited and the persons and entities with whom
9 you have communicated with or sent or received information.
10 And to the extent that you have to provide information about
11 passwords and user names, you will provide that to your
12 probation officer so that analysis can be done.

13 As a person convicted of a sex offense, you will
14 register where you reside, where you are an employee or where
15 you are a student under the sex offender registry processes
16 and requirements, and for the initial registration you will
17 also register in the jurisdiction in which you were
18 convicted, in which case it will be this jurisdiction, if
19 it's different from where you live.

20 And you will provide information required by
21 federal law and keep your registration current for the
22 registration period provided for under federal law.

23 That's what I believe is a fair and reasonable
24 sentence in this case and the one I intend to impose. Is
25 there any objection from the government?

1 THE PROBATION OFFICER: Your Honor, my apologies.
2 Because of his conviction, there is an additional special
3 assessment under 18 U.S.C. 3014, unless the Court determines
4 that he doesn't have the ability to pay that.

5 THE COURT: What's that?

6 THE PROBATION OFFICER: It's the additional special
7 assessment, and I believe it's \$5,000. It's on the statement
8 of -- on the sentencing options page, but it was not in the
9 recommendations. My apologies for that.

10 MR. GHOSE: Your Honor, that's for the Victim
11 Restitution Fund.

12 THE COURT: Has anybody claimed restitution? I
13 mean, there wasn't a victim in the case.

14 MR. GHOSE: No, but I think that's a new
15 statute. It goes into like a general pool for all child
16 pornography victims.

17 If the Court finds that he's indigent, then he's
18 not required to pay that, but there is a \$5,000 additional
19 special assessment.

20 THE COURT: I do find he's indigent and I believe
21 will be indigent for a long time, so I'm not going to impose
22 it.

23 MR. GHOSE: I think he is indigent, Your Honor.

24 THE COURT: All right. Then based upon that
25 representation and my belief that that's true, then I'm not

1 going to impose that.

2 Any objection from the defendant?

3 MR. HOLCOMB: Yes, Your Honor. We objected earlier
4 to some of the Sentencing Guidelines findings on a procedural
5 nature.

6 I do appreciate the Court's finding on at least the
7 pattern charge and the temporal thing, the relationship
8 between the original offense conviction and the prior
9 incident. Part of our objection was in the memorandum that
10 he was allegedly a minor at the time and there was no
11 conviction, which I do think makes it different than
12 *Turner*.

13 But in addition to that, we do think that the
14 mitigation that we presented about Mr. Peragine and his life
15 and the available resources within the Bureau of Prisons
16 affects the substantive reasonableness of the case, and we
17 object on that ground as well.

18 THE COURT: All right. Those objections are noted,
19 and I impose the sentence I have just announced.

20 You may be seated.

21 MR. HOLCOMB: Thank you, Your Honor.

22 THE COURT: I will say this -- I think I implied
23 this at least -- is that I made all these guideline rulings
24 to the best of my ability. I believe that they are right.

25 But in a case like this, at the end of the day,

1 it's for me in this case, and others, it's ultimately
2 deciding what's fair and just and consistent with the
3 criteria under the 3553 factors.

4 And having mentally gone through what the
5 guidelines would be if I was wrong on all this, this is, as
6 hard a decision as this has been for me because of the number
7 of months involved, it is -- regardless of what my rulings
8 were and whether they were wrong in the guidelines, this is
9 the appropriate sentence in the case. And I think the
10 government asked for too much.

11 But there are some very, very troubling aspects of
12 this that require others to be deterred, and certainly
13 requires the community to be protected from Mr. Peragine. He
14 is different, and I'm not sure how he's going to respond to
15 these treatment programs that are available to him.

16 I am going to recommend that he undergo immediately
17 a psychosexual evaluation and a mental health and substance
18 abuse evaluation when he arrives at the Bureau of Prisons.

19 I am going to recommend strongly -- and I will use
20 whatever words I can to get the attention of the Bureau of
21 Prisons -- that he be as soon as possible enrolled -- well,
22 that he be assigned to one of the institutions that has an
23 inpatient treatment program for those with psychosexual
24 diagnoses, and that he be enrolled in every other follow-up
25 or after-care program that's available to him while he's in

1 prison so that he can get treatment that he has not received
2 in the past.

3 And in that case, I'm more concerned about him
4 going to that than necessarily how close he would be to any
5 particular place, because I know that those facilities are
6 limited. I think there are only two or three places where
7 they have the inpatient treatment program.

8 I don't know if there is any other recommendation
9 you want me to make, Mr. Holcomb?

10 MR. HOLCOMB: No, Your Honor. We talked about the
11 possibility of the geographical designation. I think that it
12 also could conceivably conflict with a SOMP facility
13 recommendation.

14 THE COURT: What I can do is I could say the
15 facility that has those treatment programs that is as close
16 to Atlanta as possible, or do you want some other city?

17 MR. HOLCOMB: I would not even do that,
18 Your Honor.

19 THE COURT: I'm sorry?

20 MR. HOLCOMB: I would not even do that,
21 Your Honor. I just don't think that there are that many
22 of those places.

23 THE COURT: Yeah, we would want him in whatever
24 ones that has capacity to take him.

25 MR. HOLCOMB: That's fine, Your Honor.

1 THE PROBATION OFFICER: Your Honor, the social
2 history that Mr. Holcomb provided to the Court was entered
3 under seal. Would that be possible to be unsealed or at
4 least have that attached to the presentence report so that
5 that would be available to BOP?

6 THE COURT: Well, I don't want to unseal it, but
7 I think that we ought to attach it to the presentence report
8 so that it goes to the BOP, along with any other medical or
9 mental health information that you might have that will help
10 them do their evaluation.

11 So if you want to get that to us and to the
12 probation office specifically so that that can be forwarded
13 to BOP along with the presentence report, I think that would
14 be helpful.

15 MR. HOLCOMB: Yes, Your Honor.

16 THE COURT: Mr. Peragine, let me read you your
17 appellate rights.

18 You have pled guilty, and you can appeal if you
19 believe your guilty plea was either unlawful or involuntary
20 or there was some fundamental defect in the proceeding that
21 was not waived by your plea.

22 An appeal begins with the filing of a notice of
23 appeal, which is a statement of your intention to appeal.
24 It's not very long and it's not hard to prepare.

25 Mr. Holcomb, who has admirably and I think very

1 competently represented you in this case, if he's not
2 available for some reason, if you will let the Clerk of Court
3 know, the Clerk of Court will help you file your notice of
4 appeal.

5 While it's easy to prepare, it doesn't take a lot
6 of time, it has to be filed within fourteen days of the entry
7 of the judgment in your case, and that will happen in a day
8 or two. It's once that becomes a part of the record in the
9 case that the fourteen days begins to run.

10 You will stay in the custody of the Marshal's
11 Service until you receive your institutional assignment.

12 And I don't think there is anything else we need to
13 cover today.

14 Is there anything else, Mr. Ghose?

15 MR. GHOSE: I don't think so, Your Honor.

16 THE COURT: Mr. Holcomb, anything else from you?

17 MR. HOLCOMB: Nothing further, Your Honor.

18 THE COURT: We will be in recess.

19 (Proceedings adjourn at 12:27 p.m.)
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C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 109 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 2nd day of June, 2017.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia