No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Petitioner,

TAQUARIUS FORD

v.

UNITED STATES OF AMERICA,

Respondent.

_____

MOTION FOR LEAVE

TO PROCEED IN FORMA PAUPERIS

_____

The petitioner, Taquarius Ford , requests leave to file the attached petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39.1 of this Court and 18 U.S.C. §3006A(d)(7). The petitioner was represented by counsel appointed under the Criminal Justice Act in the District of Oregon and on appeal in the Ninth Circuit Court of Appeals.

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IN THE

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TAQUARIUS FORD ,
Petitioner,

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On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

When the defendant personally objects at sentencing to a hearsay accusation in a presentence report that he raped a woman, even though his attorney neglected to do so, does Rule 32 of the Federal Rules of Criminal Procedure require the district court to make a finding on the matter or state that it will not consider the matter in sentencing?

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OPINION BELOW

The relevant opinion of the Ninth Circuit is unpublished and is attached at App. 1-13.

JURISDICTION

The Ninth Circuit Court of Appeals issued its opinion on July, 24, 2020. The court denied Ford's petition for rehearing on November 18, 2020. App. 14. This Court has jurisdiction to consider a petition for certiorari under 28 U.S.C. § 1254 (1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Rule 32 (i) (3) (B) of the Federal Rules of Criminal Procedure provides in relevant part that at sentencing "the court must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing."

STATEMENT OF THE CASE

On January 29, 2014, the Government filed a two-count indictment against the petitioner Taquarius Ford and his co-defendant Konia Prinster. The indictment alleged one count of Sex Trafficking Conspiracy in violation of 18 U.S.C. §§1591(a)(1), (b)(1), and 18 U.S.C. §§1594(a) and (c); and one count of Sex Trafficking by Force, Fraud and Coercion, in violation of §§1591(a)(1), (b)(1) and

§§1594(a) and (c). A Superseding Indictment was later filed that expanded the period of the conspiracy and the number of alleged victims (Count 1), and added a separate substantive count (Count 3) alleging sex trafficking by force, fraud and/or coercion. On April 28, 2015, the Government filed a Second Superseding Indictment charging Mr. Ford with two additional offenses: (1) Obstruction of the Enforcement of Section 1591 in violation of 18 U.S.C. §1591(d); and (2) Tampering with a Witness, Victim or Informant, in violation of 18 U.S.C. §§1594 (b)(1) and 1521(b)(3).

On November 8, 2016, co-defendant Prinster entered a plea of guilty to Count 1 of the Second Superseding Indictment and agreed to become a witness for the government.

At trial the government presented evidence that, under the guise of promising young women a career in modeling, Ford lured them into prostitution and kept them working for him through intimidation and sexual violence. Several women testified that Ford sexually assaulted them. Testifying on his own behalf, Ford admitted to being a pimp, but denied ever assaulting or raping any of the women. On December 21, 2016, the jury found Ford guilty of Counts One, Two, Three, and Four of the Second Superseding Indictment.

The draft presentence report (PSR) contained a summary of the trial testimony of the women as well as a double hearsay statement (from an agent's

interview) from Emily Hallman, one of the women whom Ford recruited but who did not testify at the trial. Hallman told the FBI agent interviewing her that Ford had raped her. App. 15 ¶ 37. In a letter to the PSR writer, Ford's attorney objected to this allegation and every other statement attributed to Hallman. App. 17. As the defense wrote,

> Mr. Ford objects *to any statements* attributed to *alleged victim E.H* [EMILY HALLMAN] contained in Paragraphs 35-37 of the draft Presentence Report. E.H. did not testify at the trial in this matter, and any statements attributed to her regarding contact with Mr. Ford were contradicted by the testimony of Ms. Prinster and were not given under oath and subject to cross-examination."

App. 17 (emphasis added). Moreover the PSR expressly acknowledged Ford's objection. App. 16, ¶17a. Trial counsel's objection letter was attached to the final PSR which went to the trial court.

At the sentencing hearing, the prosecutor repeatedly stressed that Mr. Ford deserved a lengthy sentence because of his "sexual assaults" on the women. App. 18-21. Ford's attorney reminded the court that Ford denied sexually assaulting any women. App. 23, lines 12-13, but failed to mention the specific denial of the rape of Hallman as reported in PSR ¶ 37. In addressing the court before sentence was pronounced, Ford himself expressly denied raping *any* of the women. As the panel noted, Ford told the court: "I never raped…none of these women." App. 8, n. 3; App. 22, lines 22-23.

Contrary to the requirements of Rule 32, the district court made no rulings

on Ford's objection to the allegation that he had raped any of the women including Hallman. On November 6, 2017, the district court sentenced Ford to 33 years in prison (400 months) to be followed by a lifetime of supervised release. On November 9, 2017, on the government's motion, the court dismissed the case against Prinster.

On appeal, Ford argued, among other things, that the district court violated Rule 32 by not resolving the question whether he raped Hallman, or by not stating that the court would not rely on the allegation. App. 24-25 (excerpt from opening brief); App. 26 (except from reply brief). The court of appeals agreed with Ford that the district court erred in not making findings as Rule 32 requires, but held that error was not "plain," that an aspect of the argument was waived, and that the error was in any event harmless. App. 8-10.

REASONS FOR GRANTING THE WRIT

Under Rule 32(i) (3) (B), the district court "must for any disputed portion of the presentence report . . . rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing." The great majority of circuits hold that "strict compliance" with this provision and other provisions of Rule 32 is required and failure to comply results in a remand for resentencing. *See United States v. Fernandez-Angulo*, 897 F.2d 1514, 1516 (9th Cir. 1990) (en banc); *United*

States v. Villasenor, 977 F.2d 331, 339 (C.A.7 1992) ("we emphasize that "strict compliance with Rule 32(c)(3)(D) is not discretionary but mandatory"); *United States v. Walker*, 896 F.2d 295, 301 (8th Cir. 1990) ("It is now well settled that failure to comply with rule 32(a)'s requirement requires a remand for resentencing."); *United States v. Arevalo*, 628 F.3d 93, 96 (2d Cir. 2010) ("Generally, if a district court fails to strictly comply with Rule 32's requirements, the case must be remanded and resentencing may be required.").

Here, the Ninth Circuit agreed with Ford that "the district court erred because it did not resolve Ford's objections to the PSR during sentencing," App. 9; nevertheless, the court did not remand for resentencing. The court reasoned that because Ford's attorney at sentencing had not asked the district court specifically to rule on the Hallman hearsay allegation, the plain error standard applied. App. 8. This conclusion was wrong because the court failed to consider that Ford himself had asserted *at sentencing* that he had not raped any women whom he recruited. The court acknowledged Ford's statement, but held it was insufficient to invoke Rule 32 because Ford's pro se objection as raised for the first time in oral argument by Ford's appellate counsel; therefore, said the court the argument was waived. App. 8, n.3. This too was wrong. The court itself elicited the fact that Ford objected when it inquired of appellate counsel whether trial counsel had reiterated her objections at sentencing. In response, counsel said the objections were not

reiterated by trial counsel but were made by Mr. Ford himself. *Id*. See Ninth Circuit oral argument archive, 32:30; 1:34, found at https://www.ca9.uscourts.gov/media/view.php?pk_id=0000035563. Thus, Ford provided court with an additional *fact*, not a new argument. Ford cannot be said to have waived an argument when he answered the panel's question with a fact from the record and then used that fact to bolster an argument he had already made in both the opening and reply briefs.

The panel reasoned, in the alternative, that it was "doubtful" that Ford's objection to the district judge that he had not raped anyone, without referring to the specific paragraph in the PSR, was sufficient to alert the court of its duty under Rule 32 to resolve the objection. App. 8, n.3. This conclusion was wrong. The panel overlooked the fact that Mr. Ford's pro se statement that he did not rape anyone was more powerful than any objection his trial counsel could have raised. As this Court has stated in a different context, "the most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself." *Green v. United States*, 365 U.S. 301, 304 (1961). In any event, trial counsel's objections to the prosecutor's argument at sentencing concerning Ford's sexual assaults on the women, App. 23, and Ford's personal denial of raping anyone, should have alerted the district court to it duty to resolve the question

whether Ford had raped Hallman.

Finally, the court of appeals held that the district court's error in not ruling on the objections to the PSR did not rise to the level of plain error because Ford failed to show that the district court relied on the Hallman rape allegation in imposing sentence. App. 9. The panel's conclusion was wrong because it overlooked the trial record. Although, Hallman did not testify at trial, her name as an alleged victim of sexual assault came up very frequently, for example, in the opening statements and in the testimony of others including law enforcement officers. Furthermore, before pronouncing sentence, the district court expressly referred to "the sexual assaults which were testified to." App. 27:16-17. So the trial court did rely on the Hallman allegation.

The law in is clear that "even when it is only questionable whether the trial court may have relied on contested items in the presentence report," remand for resentencing is required. *United States v. Baron*, 860 F.2d 911, 919 (9th Cir. 1988). As emphasized by the Ninth Circuit en banc, "If the district court states that the controverted matters will not be considered in imposing sentence, the sentencing record must unambiguously reflect that the district court placed no reliance on the controverted matters. If the record is ambiguous in this regard, the sentence must be vacated and remanded for resentencing." *Fernandez-Angulo*, 897 F.2d at 1516, n. 2. Here, the trial court's remarks were at best ambiguous;

therefore, remand for resentencing was required.

CONCLUSION

This case raise an important question concerning the application of Rule 32. The court of appeals agreed that the district court violated Rule 32 by not ruling on the Hallman objections to the PSR, but held that because Ford had failed to call the district court's attention to the Hallman rape allegation in the PSR, the plain error standard applied. This conclusion was wrong. The prosecutor repeatedly argued at sentencing that Ford deserved a lengthy sentence because of his sexual violence against the women he recruited. Trial counsel objected to this argument, denying any sexual violence. Ford himself denied ever raping anyone. Furthermore, Ford repeatedly objected below and in his briefs to raping anyone.

The court also held that Ford's argument--that his pro se objection to the district court that he had not raped anyone was sufficient to invoke Rule 32--was waived because the argument was not raised in the briefs. The court was wrong because at oral argument Ford presented a fact from the record to support an argument thoroughly raised in the briefs; he did not raise a new argument.

The panel held in the alternative that even if the argument was not waived, it was "doubtful" that Ford's personal denial at sentencing of raping any women was sufficient to call the district court's attention to the objection to the Hallman rape allegation in the PSR. This conclusion was wrong because the trial counsel's

written objections to the PSR and her objections to the prosecutor's statements at sentencing, taken together with Ford's own forceful denials of raping anyone, were amply sufficient to alert to the district court to its duty to resolve the issue or state that the allegation of the Hallman rape would play no part in the sentence.

Finally, even assuming that the court correctly held that the plain error standard applied, the court erred in concluding that Ford could not show that the district court relied on the Hallman allegation. The record shows that the district court did rely on allegations of sexual assault against Hallman. At the very least, whether the district court relied on the allegation was ambiguous. In such circumstances remand for resentencing was required.

In sum, because this cases raises an important question of how Rule 32 is to be interpreted and implemented, the Court should grant the writ.

Respectfully Submitted:

/s/ *Michael R. Levine*
Attorney for Taquarius Ford

CERTIFICATE OF SERVICE

I, Michael R. Levine certify that on the date set forth below I caused to be mailed a copy of this petition to the Office of the Solicitor General addressed as follows:

Office of the Solicitor General
Room 5614
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

Dated: April 17, 2021

/s/*Michael R. Levine*

.

APPENDIX A

NOT FOR PUBLICATION

FILED

JUL 24 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TAQUARIUS KAREAM FORD, AKA Cameron, Defendant-Appellant.	Nos. 17-30231 18-30053 D.C. No. 3:14-cr-00045-HZ-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, Chief District Judge, Presiding

Argued and Submitted July 7, 2020
Portland, Oregon

Before: BENNETT and MILLER, Circuit Judges, and PEARSON,** District Judge.

Taquarius Ford appeals from his jury convictions and sentences for one count of conspiracy to engage in sex trafficking by force, fraud, or coercion, two counts of sex trafficking by force, fraud, or coercion, and one count of obstructing

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Benita Y. Pearson, United States District Judge for the Northern District of Ohio, sitting by designation.

the enforcement of a sex trafficking statute. He also challenges the district court's denial of two pretrial motions, a motion for discovery related to his "selective enforcement and/or prosecution" claim and a motion to suppress evidence.[1]

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. We review de novo whether the district court applied the correct discovery standard. *United States v. Sellers*, 906 F.3d 848, 851 (9th Cir. 2018). And we review the district court's determination that a defendant failed to meet the requisite discovery standard for abuse of discretion. *Id.*

Ford argues that, because he asserted a selective enforcement claim (as opposed to a selective prosecution claim), the district court applied the wrong discovery standard under *United States v. Armstrong*, 517 U.S. 456 (1996). He contends that the district court should have applied the more lenient discovery standard in *Sellers*.[2] Alternatively, Ford argues that even if it was proper for the

[1] Ford also appealed the personal money judgment entered against him, but he later conceded that his argument challenging the money judgment is foreclosed by binding precedent.

[2] While we make no finding as to whether *Sellers* applies to this case, we note that language in *Sellers* could be read as limiting its application to cases involving reverse-sting operations. *See, e.g.*, 906 F.3d at 850, 854, 855 ("We hold that in these stash house reverse-sting cases, claims of selective enforcement are governed by a less rigorous standard than that applied to claims of selective prosecution under *United States v. Armstrong*[.]"; "The Third and Seventh Circuits have already come to the conclusion that *Armstrong*'s rigorous discovery standard does not apply in the context of selective enforcement claims involving stash house reverse-sting operations."; "[W]e join the Third and Seventh Circuits and hold that *Armstrong*'s rigorous discovery standard for selective prosecution cases does not

district court to apply *Armstrong*, the court abused its discretion in determining that he failed to meet the requisite discovery standard.

Though Ford attempts to style his claim on appeal as one for selective enforcement, the record does not support his characterization. Ford's motion did not make any distinction between selective enforcement and selective prosecution claims. His motion quoted *Armstrong* as providing the applicable standard, and he primarily argued that he was improperly *selected for prosecution* because he is a black male. Considering his motion as a whole, it was proper for the district court to construe his claim as one for selective prosecution. *Cf. Sellers*, 906 F.3d at 851 n.5 (construing claim as a selective enforcement claim even though it was at times styled as a selective prosecution claim because "Sellers takes issue with how he was targeted at the outset of the operation"). Accordingly, the district court applied the correct discovery standard under *Armstrong*.

Under *Armstrong*, to establish he is entitled to discovery on a selective prosecution claim, Ford had to produce "some evidence tending to show the existence of the essential elements of the defense, discriminatory effect and discriminatory intent." 517 U.S. at 468 (quotation marks and citation omitted). The district court did not abuse its discretion in finding that Ford failed to present

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apply strictly to discovery requests in selective enforcement claims like Sellers's.").

some evidence of discriminatory intent. There is no indication that the government targeted Ford because he is a black male. The officers did not know Ford would be present in the hotel room and only arrested him after he was identified as a sex trafficker by the victim. Moreover, the government filed sworn declarations from law enforcement and prosecutors denying that race and gender played any part in their decision to prosecute Ford. Given Ford's lack of evidence, the circumstances surrounding Ford's arrest, and the government's strong evidence, the court did not abuse its discretion in denying Ford's motion on the basis that he failed to offer some evidence of discriminatory intent.

2. De novo review applies to the denial of a motion to suppress, and clear error applies to the underlying factual findings. *See United States v. Dorais*, 241 F.3d 1124, 1128 (9th Cir. 2001). "The determination of whether a seizure exceeds the bounds of a *Terry* stop and becomes a *de facto* arrest is reviewed *de novo*." *United States v. Torres-Sanchez*, 83 F.3d 1123, 1127 (9th Cir. 1996). De novo review also applies to whether a search warrant is overbroad "for failing to particularly describe the items to be seized." *United States v. Washington*, 797 F.2d 1461, 1471 n.14 (9th Cir. 1986).

The district court correctly determined that Ford lacked standing to challenge the officers' entry into the hotel room under the Fourth Amendment because any reasonable expectation of privacy Ford had in the room, which had

been rented by Ford's co-defendant Konia Prinster, ended when the hotel manager informed Ford and Prinster that they were being evicted, and it was well past their check-out time. *See Dorais*, 241 F.3d at 1128 ("This court has held that a defendant has *no* reasonable expectation of privacy in a hotel room when the rental period has expired and the hotel has taken affirmative steps to repossess the room.").

The district court properly determined that Ford's detention was not a de facto arrest without probable cause. Considering the totality of the circumstances, the officers had reasonable suspicion to detain Ford while they investigated his connection to the suspected prostitution activity, and it was reasonable for the officers to handcuff Ford for safety reasons while they continued their investigation, as they were outnumbered. *See United States v. Baron*, 860 F.2d 911, 914 (9th Cir. 1988) ("In determining whether an investigative detention has ripened into an arrest, we consider the totality of the circumstances."). Even assuming Ford's detention was an arrest without probable cause, the evidence seized after the officers entered the hotel room (which would include the electronic devices), was not the product of that alleged illegal arrest and should not be suppressed.

The district court correctly determined that the 2012 search warrant was not overbroad in violation of the Fourth Amendment. In *Washington*, we considered

language in a warrant very similar to the language in the warrant at issue here and found that it was sufficiently particular. 797 F.2d at 1472. Thus, under *Washington*, the 2012 search warrant satisfies the Fourth Amendment's particularity requirement.

3. We review Ford's challenge to the admission of certain trial testimony for plain error as he failed to object to the testimony below and the record does not support his argument that an objection would have been "futile." Under plain error review, Ford must show that "(1) there is an 'error'; (2) the error is 'clear or obvious, rather than subject to reasonable dispute'; (3) the error 'affected the appellant's substantial rights, which in the ordinary case means' it 'affected the outcome of the district court proceedings'; and (4) 'the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" *United States v. Marcus*, 560 U.S. 258, 262 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

Even assuming it was error to admit all of the challenged testimony and the error was obvious, Ford fails to show that there is "a reasonable probability that the error affected the outcome of the trial," *Marcus*, 560 U.S. at 262, given the overwhelming evidence supporting his guilt. *See United States v. Morfin*, 151 F.3d 1149, 1151 (9th Cir. 1998) (per curiam) (holding that the error was not prejudicial "[b]ecause the direct and circumstantial evidence against [the defendant] was

overwhelming"). Thus, the district court did not plainly err by failing to sua sponte strike the challenged testimony.

4. De novo review applies to "whether the jury instructions accurately define the elements of a statutory offense . . . ." *United States v. Hicks*, 217 F.3d 1038, 1045 (9th Cir. 2000). Abuse of discretion applies to a "district court's ultimate formulation of the instructions." *Id.*

The district court did not give an incomplete definition of "fraud" in the sex trafficking instructions by failing to include the materiality concept. Viewing the entirety of the district court's instructions, the concept of materiality that Ford argues should have been included was in fact included in the instructions. The court's definition of fraud read together with its instructions on counts 2 and 3 informed the jury that the government had to prove that Ford knew that the "fraud" (defined as "an instance or an act of trickery or deceit especially when involving misrepresentation") "*would be used to cause* [T.H. and A.C.W.] to engage in a commercial sex act."

The district court did not err in declining to define "force" in the sex trafficking instruction for count 2 because it is a common term that a jury would readily understand. *See, e.g.*, *Hicks*, 217 F.3d at 1045 (holding that the court did not err in failing to define "statement" and "false" because, among other things, these are common terms that a jury would understand). We also reject Ford's

argument that the district court should have provided the jury with the definition of "force" set forth in *Johnson v. United States*, 559 U.S. 133 (2010). *Johnson* defined "force" as used in a statute that is irrelevant here. *See id.* at 140–42.

5. Ford argues that the district court failed to comply with Federal Rule of Criminal Procedure 32(i)(3)(B) because it did not resolve during sentencing four objections he made to the facts stated in the presentence report ("PSR"). Because Ford did not object at sentencing to the district court's compliance with Rule 32, plain error review applies.[3] *See United States v. Wijegoonaratna*, 922 F.3d 983, 989 (9th Cir. 2019) ("[W]here a defendant does not object at sentencing to a

[3] Ford did not specifically object at sentencing to the district court's compliance with Rule 32. Ford also failed to raise an objection even though the court specifically asked Ford whether he had any other issues after it had imposed the sentence. After imposing the sentence, the district court asked Ford's counsel whether "there [is] anything else from your perspective?" And his counsel responded, "I think that concludes everything."

During oral argument, Ford's counsel argued for the first time that statements made by Ford himself during sentencing sufficiently raised a Rule 32 objection that the court had to resolve—whether Ford raped E.H. Oral Argument at 1:25–1:48, *United States v. Ford*, Nos. 17-30231, 18-30053 (9th Cir. July 7, 2020). Ford waived this argument as he failed to raise it in his briefs. *See Butler v. Curry*, 528 F.3d 624, 642 (9th Cir. 2008) (finding argument waived when raised for the first time at oral argument). But even were the argument not waived, it is doubtful whether Ford's general statement denying that he had raped any victims, without any reference to the PSR and without referring to E.H. specifically, would have been sufficient to raise a Rule 32 objection. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 515 (9th Cir. 1992) ("[An] argument must be raised sufficiently for the trial court to rule on it." (quoting *In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989))). Ford stated during sentencing that he "never raped [T.H.], . . . never, never, none of these women."

district court's compliance with [Rule 32], we review for plain error."). Under Rule 32, the district court must "for any disputed portion of the presentence report . . . rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing." Fed. R. Crim. P. 32(i)(3)(B).

The district court erred because it did not resolve Ford's objections to the PSR during sentencing. But the error does not rise to the level of plain error because Ford fails to show that "there is a reasonable probability that he would have received a different sentence had the district court not erred." *United States v. Christensen*, 732 F.3d 1094, 1102 (9th Cir. 2013).

Regarding E.H.'s and C.H.'s hearsay statements in the PSR, including that Ford raped E.H., it was entirely appropriate for the district court to rely on the statements as they were supported, at the very least, "by 'some minimal indicia of reliability.'" *United States v. Berry*, 258 F.3d 971, 976 (9th Cir. 2001) (quoting *United States v. Petty*, 982 F.2d 1365, 1369 (9th Cir. 1993)). Regarding the other factual disputes that the court failed to resolve (i.e., that Ford urged Prinster to have an abortion and trafficked over 40 victims), Ford fails to point to any parts of the record that show the district court relied on those facts in sentencing him. Because there is no indication that these facts had any bearing on Ford's sentence, Ford fails to show that he was prejudiced by the court's failure to rule on them.

Thus, the district court's failure to comply with Rule 32 does not rise to the level of plain error.

6. De novo review applies to a district court's interpretation of the sentencing guidelines. *See United States v. Wei Lin*, 841 F.3d 823, 825 (9th Cir. 2016). Ford argues that the district court erred in calculating the total offense level by treating four victims as if each of them had been named in separate substantive counts and assigning each of those counts an adjusted offense level of 38.[4] He argues that because these victims were named in the conspiracy count, the court should have treated them as if they were named in separate conspiracy counts and assigned each of the counts the much lower offense level corresponding with the offense level assigned to the conspiracy count.

Section 2G1.1(d)(1) of the United States Sentencing Guidelines provides: "If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction." Application Note 5 to that section further explains:

> For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. . . . In addition, subsection

[4] We note that one victim (D.J.) was not named in the conspiracy count. But Ford does not raise this as an issue, and his own argument treats D.J. as if she were named in the conspiracy count.

> (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

U.S.S.G. § 2G1.1 cmt. n.5.

Because the four victims were victims of the offense conduct charged in the substantive sex trafficking counts—that is, Ford recruited them knowing that fraud, force, or coercion would be used to cause them to engage in commercial sex acts in violation of 18 U.S.C. § 1591(a)(1) and (b)(1)—it was proper for the court to treat each victim as if they had been named in separate substantive counts and to assign each of those counts an adjusted offense level of 38 (the same adjusted offense level assigned to the substantive sex trafficking counts 2 and 3). Nothing in U.S.S.G. § 2G1.1(d)(1) or Application Note 5 indicates that, if a victim is named in a conspiracy count (but was also a victim of the conduct charged in the substantive count), then the court must treat the victim as if she were contained in a separate conspiracy count.

We also reject Ford's argument that the district court erred in finding that E.H. and C.H. were victims for sentencing purposes because it was improper for the court to rely on their unreliable hearsay statements in the PSR. The court properly relied on the hearsay statements because, again, they were, at the very least, "accompanied by 'some minimal indicia of reliability.'" *Berry*, 258 F.3d at

976 (quoting *Petty*, 982 F.2d at 1369). E.H.'s and C.H.'s hearsay statements were partly corroborated by Prinster's testimony and were also consistent with other evidence admitted at trial.[5]

7. Ford argues that the district court imposed a substantively unreasonable sentence. The substantive reasonableness of a sentence is reviewed for abuse of discretion. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

We first reject Ford's contention that the district court failed to consider his argument that sentencing disparities between him and Prinster justified a downward variance. The record clearly shows that the district court considered this argument. Moreover, there were significant and obvious differences between him and Prinster, including that he set up the sex trafficking scheme, he made the millions of dollars from the scheme, Prinster testified for the government, and Prinster either was or may have been a victim.

[5] Over the government's objection, the district court agreed with Ford that the base offense level for the conspiracy count should be 14 (as opposed to 34) under *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016). The government argues on appeal that *Wei Lin* is not controlling because it is distinguishable on the facts. We do not reach the issue of whether *Wei Lin* applies to this case as it is unnecessary given our holding that the district court's total offense level calculation was proper, even using the lower base offense level of 14 for the conspiracy count. But we note that the government's argument appears to have some force as, unlike in *Wei Lin*, the conspiracy count here referenced 18 U.S.C. § 1591(a)(1), (b)(1), and 18 U.S.C. § 1594(c), and Ford was convicted of two sex trafficking counts that each carried fifteen-year minimum sentences.

The record also shows that the district court engaged in a reasonable and meaningful consideration of the 18 U.S.C. § 3553(a) sentencing factors. That the court departed downward significantly from the guideline range of life imprisonment and the PSR's recommended sentence of 55 years, and imposed a sentence of 400 months, further shows that it sought to impose a sentence that was not greater than necessary under the circumstances. The district court did not abuse its discretion in imposing the sentence.

AFFIRMED.

APPENDIX B

FILED

NOV 18 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. TAQUARIUS KAREAM FORD, AKA Cameron, Defendant-Appellant.	No. 17-30231 18-30053 D.C. No. 3:14-cr-00045-HZ-1 District of Oregon, Portland ORDER

Before: BENNETT and MILLER, Circuit Judges, and PEARSON,* District Judge.

Defendant-Appellant has filed a petition for panel rehearing and a petition for rehearing en banc. The panel has voted to deny the petition for panel rehearing. Judges Bennett and Miller vote to deny the petition for rehearing en banc, and Judge Pearson so recommends.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f).

The petition for panel rehearing and the petition for rehearing en banc are DENIED.

* The Honorable Benita Y. Pearson, United States District Judge for the Northern District of Ohio, sitting by designation.

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37. **Ford** became increasingly angry and physical, slapped E.H. across the face, placed a blindfold over her eyes, and told her if she took off the blindfold she would lose her eyes. E.H. further reported that **Ford** raped her while in Tucson. E.H. reported they then placed her into a car, drove her to Tempe, Arizona and dropped her on a random side street near a hotel.

Interview of Victim C.H.

38. Victim C.H. was interviewed and reported **Ford** told her she could have a career in modeling and convinced her he could make her famous. He said he would pay for all her expenses to get famous, and she could pay him back after she became a model. Within a week of meeting **Ford**, he introduced her to Prinster, and they persuaded her to become an escort. She made over $500 her first day and was required to turn all of that money over to **Ford**.

39. C.H. traveled with **Ford** and Prinster to North Carolina and Georgia where she and Prinster were arrested for prostitution. Prior to her arrest, Prinster instructed her not to say anything to police.

Testimony of Victim D.J.

39a. D.J. testified that she met **Ford** in June 2012. She said she initially contacted **Ford** in response to a Craigslist ad indicating he was looking to hire someone in PR and marketing. She initially corresponded with **Ford** electronically, and eventually met him in Old Town Scottsdale, Arizona. She said she was about 34 years old at the time.

39b. D.J. indicated that she met with **Ford** at a bar, where he bought her a drink and they discussed business. According to D.J., **Ford** represented himself as a well-connected professional and the owner of a successful PR agency with a modeling division. He showed her pictures of himself with various celebrities at award shows, and pictures of women who he indicated were his models.

39c. According to D.J., **Ford** said he intended to expand his Beverly Hills business, to include Arizona. He asked her if she had any children or personal circumstances that would prevent her from traveling to California. He also provided her with fliers for an event he was promoting, which he asked her to distribute. D.J. said that she had consensual sexual intercourse with **Ford** on one occasion, on the night of this first meeting.

39d. D.J. said that she initially believed **Ford** was a legitimate businessperson. She remained in contact with him regarding his proposed employment position, which he indicated would require her to travel back and forth between Arizona and California. D.J. said that **Ford** later arranged for her to travel to Los Angeles to meet with him and a co-worker he indicated was named “Laniey” (actually Konia Prinster).

39e. **Ford** obtained a round-trip ticket for D.J. for a day-and-a-half trip to Los Angeles in July 2012. **Ford** picked her up from the airport on the morning of the first day, and they had brunch at a local restaurant. During the meal, Prinster arrived, and **Ford** introduced her as

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police arrived. Officers subsequently made contact with Prinster and **Taquarius Ford** in room 209, and a female, later identified as victim, T.H. (age 18), in room 211.

13. Prinster was interviewed and reported she purchased T.H. a plane ticket to Portland to hang out. When questioned about the male who had just been inside the room, Prinster indicated he wanted her help in developing a website for his plumbing business.

14. Investigation revealed Prinster's name was associated with a prostitution account for "Russian Emma" on www.tnaboard.com, active since June 2010. There were profiles of both Prinster and T.H. which listed prices and descriptions of prostitution services they provided. Prinster's telephone number was found to be connected to other online advertisements in Portland, Oregon; St. Louis, Missouri; Phoenix, Arizona; and Orange County, California.

15. **Ford** was interviewed and informed officers he was looking for office space in Portland for his company, Victory Public Relations. He reported he had known Prinster for a long time and he met T.H. online. **Ford** then stated he was not talking anymore.

16. Officers later located and interviewed the man observed leaving the hotel subsequent to police arriving. He admitted he searched for prostitution advertisements online and paid to have sex with both Prinster and T.H.

17. **Ford** and Prinster were arrested. **Ford** was initially charged with Attempt to Commit a Class B Felony in Multnomah County Circuit Court case #1213637. The state was unable to proceed with the charges in February 2012, and the case was dismissed pending further investigation.

Victim Interviews

17a. (The defendant objects to the inclusion of the victim statements summarized below, on the grounds that they include statements that are hearsay and that were not provided in sworn testimony. The defendant further argues that the statements are unreliable, uncorroborated, and irrelevant, and that they violate the defendant's Sixth Amendment right of confrontation).

Interview of Victim T.H.

18. Victim T.H. was interviewed. She indicated she met **Ford** and Prinster a year earlier when they approached her in a mall in Boise, Idaho, gave her a business card, and inquired if she was interested in modeling. She eventually went to Los Angeles to meet with them, visited **Ford** on multiple occasions, and accompanied him to the Playboy mansion and the Sundance Film Festival in Utah.

19. **Ford** and Prinster told her she would need to be photographed topless in seductive poses for her modeling profile and she later participated in these photographs. While in Los Angeles, T.H. engaged in a prostitution act, but did not collect money from the man before he left the hotel, and **Ford** slapped her and called her stupid. T.H. reported that on one occasion, **Ford** came into her room, took off her clothes, and started to have sex with

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her trips to meet with him. He also financed travel and recreation for A.F.W.'s friends. Trial Tr. Day 5, 77, Dec. 13, 2016. A.F.W. used Mr. Ford as a "sugar daddy", and was "willing to accept the money from him." Trial Tr. Day 5, p. 68, Dec. 13, 2016.

Paragraph 34:

Mr. Ford objects to the PSR writer's mischaracterization of the facts and lack of corroboration related to the alleged threats towards A.F.W. Trial Tr. Day 5, pp. 44-46, Dec. 13, 2016. Ms. Prinster acknowledged she was jealous of Mr. Ford's relationship with A.F.W. Mr. Ford explained how Ms. Prinster threatened to expose A.F.W.'s relationship with Mr. Ford and others, and how Mr. Ford convinced A.F.W. that he had addressed the issue with Ms. Prinster by showing A.F.W. the fake "black-eye" photo. A.F.W. testified that Mr. Ford never threatened her or used violence towards her. Ultimately, she testified that, in hindsight, she might have traveled to Los Angeles knowing that she would be involved in escorting. Trial Tr. Day 5, pp. 44-46, December 13, 2016.

Interview of Victim E.H.

E.H. did not testify at trial. Mr. Ford objects to the use of interview rather than sworn testimony. To the extent that any information was not heard in live testimony at trial it is hearsay, unreliable, uncorroborated and irrelevant. Further, the inclusion of this information violates Mr. Ford's Sixth Amendment right of confrontation.

Paragraphs 35 -37:

Mr. Ford objects to any statements attributed to *alleged victim E.H* contained in Paragraphs 35-37 of the draft Presentence Report. *E.H.* did not testify at the trial in this matter, and any statements attributed to her regarding contact with Mr. Ford were contradicted by the testimony of Ms. Prinster and were not given under oath and subject to cross-examination in violation of *Crawford v. Washington*, *Apprendi v. New Jersey* and *Blakely v. Washington.*

Interview of Victim C.H.

C.H. did not testify at trial. Mr. Ford objects to the use of interview rather than sworn testimony. To the extent that any information was not heard in live testimony at trial it is hearsay, unreliable, uncorroborated and irrelevant. Further, the inclusion of this information violates Mr. Ford's Sixth Amendment right of confrontation.

Paragraphs 38-39:

Mr. Ford objects to any statements attributed to *alleged victim C.H.* contained in Paragraphs 38-39 of the draft Presentence Report. C.H. did not testify at the trial in this matter, and any statements attributed to her regarding contact with Mr. Ford were not given under oath and subject to cross-examination in violation of *Crawford v. Washington*, *Apprendi v. New Jersey* and *Blakely v. Washington.*

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portion, the other sentencing portion of this case. I will start with the Government.

MS. BOLSTAD: Thank you, Your Honor.

In this case the Government is recommending a sentence of 55 years' imprisonment, followed by a lifetime of supervised release, a $400 fee assessment, and all of the conditions recommended by probation as special conditions.

In making that recommendation, which we do not do lightly, the Government spent significant time comparing Mr. Ford's case to others and evaluating the statutory factors required under Section 3553(a). Starting with the nature and circumstances of the offense, as you've seen in the PowerPoints from Ms. Bender, we've said it again and again in cases like this: This crime is one of the most horrific crimes that we see in federal court. It's not an impulse crime. It's not the crime of a moment. It's not the crime committed out of just a burst of anger. This defendant's crime took place over a six-year period in almost every state in America, and it involved dozens of victims.

The crime itself, 1591, may be committed through mere attempts or mere threats or mere fraud, but Mr. Ford's crime involved so much more. It involved sexual assaults, terrifying threats to the victims' personal safety, and blackmail and threats to the family members of those victims, as you heard all throughout trial.

victims who testified. She thought that Mr. Ford was trying to hold her hand at times, trying to impress her with his friends and the parties.

All of these victims had in common that Mr. Ford crossed the line in terms of intimate partner relationships. So if that's a high risk for Ms. Gotch, I think that is telling for the Court's assessment, because that's how he commits this crime: romantically luring women in and then sexually assaulting them and then blackmailing them to do his bidding.

In sum, the history and characteristics of this defendant show he has psychopathic tendencies and he's a dangerous person. He lacks remorse for his conduct, and he deflects blame. These are core tenets of psychopathy. His entire sentencing presentation seems to be deflecting blame: Blame the Government for targeting black men, blame women for not getting more time, blame -- blame everyone but himself.

In contrast to these aggravating characteristics about Mr. Ford, what is mitigating about him? I think today you heard some information that Mr. Ford has found God, and I think that that's wonderful. I think we all can agree that that's a positive step for Mr. Ford. But it's sure convenient. He finds God and starts baptizing people after getting charged with this offense and after doing what he did. So the Government is -- I think it's a stretch to accept that

highest risk to offend, in the domestic relationship setting.

Well, let's look back at this crime. This crime is one of intimate partner sexual violence. I think Ms. Gotch limited her opinion to Mr. Ford's relationship with Ms. Prinster. That was the longest term relationship he had, and it was indeed very violent sexually.

The other victims that you heard from at trial, though, they also talked about how Mr. Ford wooed them and courted them. He courted this idea of having a relationship. Fifteen-year-old Abby Ware testified that she met him when she was 15, and she testified as an adult, she thought that he came onto her as though he would be her boyfriend, as though he would be someone to protect her. Indeed, he ended up having sex with her because of this romance that he put forth.

Dawn Jolley, similarly, had dinner with Mr. Ford at which he tried to impress her, and then that ended up with taking her to bed.

Angela Williams testified. She thought she had to have sex with Mr. Ford in a relationship way in order to get the benefits that he was promising.

Taylor Harris talked about sexual violence with Mr. Ford in California, that it seemed like Mr. Ford was trying to woo her. He bought her clothes. He took her out. He tried to impress her.

Similarly Jordan Davis -- Jordan Davis was one of the

rare that the Government makes such a recommendation, but because of the facts and because of Mr. Ford's conduct, we view him as a danger. We have serious concerns about his manipulation of others, his lying, his taking the witness stand and telling tales. We have concerns that he views himself as a victim, as he testified at trial.

And because we want the Court to remember one of the things that distinguishes Mr. Ford from others, and lest the Court have any doubt of the sexual violence that the defendant used, this is the fear of violence that the Government has about releasing Mr. Ford to the street: Government's Exhibit 51 shows how Mr. Ford acted with his intimate, intimate partner. And this is the danger, even acknowledged by the defense expert.

MS. BENDER: Your Honor, I am going to object to the display of this exhibit.

THE COURT: Is this the video about Konia Prinster that I saw at trial?

MS. BOLSTAD: Yes, Your Honor.

THE COURT: I recall it vividly. I don't need to see it again.

MS. BOLSTAD: Very well, Your Honor.

But it's that fact. It's that conduct to her in that video, straddling her, putting his hands around her neck and punching her in the face while asking her to be a good girl

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this earth. We had some domestic issues. We had some very out there sexual fantasies that we did with each other. But Konia to me, man, she was my heart, Your Honor. And I feel so remorseful that I allowed this situation to break our relationship up, to break up our friendship. She's probably somebody that I may not ever see again, and that -- that hurts the most.

To Taylor Harris, I will put on the record, sir, that, you know, Taylor I thought was a friend. My heart goes out to her. I didn't know she had the depression issues that she had. I didn't know she was on psych medication when I met her.

But the record reflects that she contacted me. I never met her in a mall, and I definitely never raped her. That's why I went to trial, because Krista Shipsey was saying, "Taquarius, just take a deal." I said, "I can't. They're calling me a rapist."

What I did with Konia, what me and Konia had, the BDSM relationship that we had, I didn't have with any of these other women. And I begged Laurie to show those tapes. We had videos with me with Angela having sex, me and Abigail having sex, and I was gentle. I never raped Taylor, sir, never, never, none of these women.

Angela, Ms. Bolstad read the statements about Angela. You know, my heart goes out to her. But, you know -- and I'm

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accept the fact that he was involved and participated in the prostitution activity. The fact that one exercises their right to trial should not be an aggravating factor.

The sexual assault, Mr. Ford has not been convicted. He has not been arrested. He has not been prosecuted for sexual assault or any kind of violent assault on any individual, and so that should not be an aggravating factor in this case.

Now, you did hear testimony from the witnesses about their sexual relationship or sexual encounters with Mr. Ford. But there was another side to those witnesses' testimony, and we disputed that there was any sexual assault of Taylor Harris. The other individuals did not say that Mr. Ford sexually assaulted them.

So I don't think that that is a sufficient factor to aggravate this sentence. And, again, we're talking about -- we're talking about adult women. And the defense position throughout the case was that these women made choices, that they chose, that they took steps to travel to LA, that they were aware of the fact that Ms. Prinster and Mr. Ford were involved in the escorting business, that they had the ability -- and they did -- to leave Mr. Ford and Ms. Prinster and come back to Mr. Ford and Ms. Prinster. None of these women, in our presentation of the case, were coerced or forced to engage in any of the escort activities that they

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2. The district court failed to resolve whether defendant trafficked "more than 40 victims."

The PSR reported that Ford trafficked "more than forty victims." PSR¶ 11. The defense denied this assertion. PSR¶ 11a; ER 156. This was a serious allegation that if true, greatly magnified the gravity of Ford's crimes and could well have influenced the district court's sentence. Because the district court did not address much less resolve the issue, Rule 32 was violated and the Court should vacate the sentence. *Doe*, 705 F.3d at 1156; *Carter*, 219 F.3d at 868.

3. The court failed to resolve whether Ford raped Emily Hallman.

Emily Hallman did not testify at trial. The presentence report asserted that she told the police Ford raped her. PSR¶¶ 35-37. She said that after the rape, Ford and Prinster put her in in a car, drove her Tempe, Arizona, and left her on the road near a hotel. PSR¶¶ 35-37. Ford objected to the entirety of Hallman's statement. ER 161. He pointed out that her statement was contradicted by Prinster at trial because Prinster said nothing about any rape of Hallman and nothing about driving with her and Ford to Tempe. In fact, Prinster testified that after she first met Hallman, she never saw her again. Tr. 1424:19-20.

Rape is horrible act that would warrant severe punishment. However, because the district court did not address much less resolve the issue, neither

Ford nor this Court can know if the district court credited the allegation and increased Ford's sentence because of it. The district court violated Rule 32 and the Court should vacate the sentence. *Doe*, 705 F.3d at 1156; *Carter*, 219 F.3d at 868.

4. The district court failed to resolve the issue of the reliability of hearsay reports.

The PSR set forth law enforcement interviews of alleged victims who never testified at trial: Emily Hallman and Casandra Heynen. PSR ¶¶ 18-38. The defense objected to the district court's consideration of these statements on the ground that these statements were unreliable hearsay. ER 161; PSR ¶ 17a.

Sentencing Guideline § 6A1.3 provides that the court may consider hearsay at sentencing only if "the information has sufficient indicia of reliability to support its probable accuracy." Furthermore, entirely apart from the guidelines, when sentencing a defendant, if a district court relies upon information which is "materially false or unreliable . . . , the defendant's due process rights are violated." *United States v. Kerr*, 876 F.2d 1440, 1445 (9th Cir. 1989). *See also United States v. McGowan*, 668 F.3d 601, 607 (9th Cir. 2012) (court finds allegations of prisoner "insufficiently reliable to be considered at sentencing" in part because his allegations "were not subjected to many of the

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she could keep working." Ford specifically objected to the entire paragraph as "unsubstantiated." ER 162 at ¶ 47. No more specificity is required under Rule 32 because the district court is clearly alerted to the disputed issue.

2. *The objection to the alleged rape of Hallman was specific*.

Although Hallman did not testify at trial, the PSR asserted that she told the police that Ford raped her. PSR¶ 37. Ford objected to this and every other statement attributed to Hallman. As the defense wrote,

> Mr. Ford objects *to any statements* attributed to *alleged victim E.H* contained in Paragraphs 35-37 of the draft Presentence Report. E.H. did not testify at the trial in this matter, and any statements attributed to her regarding contact with Mr. Ford were contradicted by the testimony of Ms. Prinster and were not given under oath and subject to cross-examination…."

ER 161 (emphasis added). This objection alerts the district court to the disputed issue and is sufficiently specific under Rule 32.

3. *The objection to the claim of "more than 40" victims was specific*.

The PSR reported that Ford trafficked "more than forty victims." PSR¶ 11. As noted in the PSR itself, Ford flatly denied this assertion: "The defendant further contests that he recruited or trafficked over 40 victims." PSR ¶ 11a; *see also* ER 157 ("There was no evidence presented that defendant recruited or trafficked over "forty" victims. Mr. Ford objects to this statement

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consistent with what we learned about him and what was going on back at the time that these crimes were committed.

His history or his characteristics also indicate to the Court that in other respects, at least as he was evaluated recently, that he shows to have a low risk for recidivism generally.

His characteristics include that he's a very bright and articulate person. He has the ability to see and help people and has done so while he's been incarcerated. He helped in the prosecution of what sounds like a very dangerous individual while he was in the jail. There are numerous letters from people from the jail stating that he's been a model prisoner and has helped people, other inmates, find their path while they have been incarcerated.

So weighed against the nature and circumstances of the crime, horrible things that occurred, sexual assaults which were testified to, I look at his existing characteristics, as set forth by Dr. Gotch, or Ms. Gotch, and his low risk for future recidivism.

It is clear that Mr. Ford has not resolved all of his personality issues, notwithstanding his statement that he has turned to religion in an effort to redirect his life and to help others redirect their lives.

I need to choose a sentence that reflects the seriousness of this offense, promotes respect for the law, and