

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

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ROGER EDWARD PICARD

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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On Petition For a Writ of Certiorari  
to the United States Court of Appeals for the First Circuit

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APPENDIX

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*Appendix A*

**United States Court of Appeals  
For the First Circuit**

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No. 19-1855

UNITED STATES OF AMERICA,

Appellee,

v.

ROGER EDWARD PICARD,

Defendant, Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

[Hon. Lance E. Walker, U.S. District Judge]

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Before  
Lynch and Thompson,  
Circuit Judges.\*

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William S. Maddox on brief for appellant.  
Noah Falk, Assistant United States Attorney, and Halsey B. Frank, United States Attorney, on brief for appellee.

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April 14, 2021

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\* While this case was submitted to a panel that included Judge Torruella, he did not participate in the issuance of the panel's judgment. The remaining two panelists therefore issued the judgment pursuant to 28 U.S.C. § 46(d).

**LYNCH, Circuit Judge.** Roger Edward Picard appeals from an order that revoked his supervised release on the underlying conviction of failing to register as a sex offender in violation of federal law. The district court found that Picard, upon his release following his imprisonment for this underlying conviction, once more failed to register as a sex offender, which violated the conditions of his release, as well as state and federal law. The court sentenced Picard to nine months' imprisonment.

Picard argues on appeal that the district court abused its discretion in not excusing his failure to register. He also argues that his within-guidelines sentence was procedurally and substantively unreasonable. We reject his challenges and affirm.

I.

On January 19, 1983, Picard was convicted in Massachusetts state court of one count of Rape of a Child under 14 and one count of Indecent Assault and Battery of a Child under 14. The state court sentenced Picard to concurrent terms of thirteen to twenty years' imprisonment for the rape offense and eight to ten years' imprisonment for the indecent assault and battery offense. Picard was also classified as a lifetime sex offender registrant in Massachusetts.

Picard was released from prison in 2001 in Massachusetts. In December 2003, Picard informed the

Massachusetts Sex Offender Registry that he planned to move from Massachusetts to Hawaii. On January 18, 2004, Picard signed a Sex Offender Registration form in Hawaii. By signing, he acknowledged that he had been "informed and underst[ood]" that if he moved to another state, he would need to "register [his] new address with the designated law enforcement agency in the new state within ten days of establishing residence."

In 2006, while Picard was in Hawaii, Congress enacted the Sex Offender Registration and Notification Act ("SORNA"), which made "knowingly fail[ing] to register or update a registration as required by [SORNA]" a federal crime for certain types of sex offenders. 18 U.S.C. § 2250(a). SORNA requires sex offenders to "register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student." 34 U.S.C. § 20913(a) (formerly cited as 42 U.S.C. § 16913(a)). Further, "[a] sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry." Id. § 20913(c) (formerly cited as 42 U.S.C. § 16913(c)).

A. Picard's Underlying Federal Conviction for Failure to Register as a Sex Offender in Maine and His Conditions of Release

In the spring of 2014, Picard moved to Penobscot County in Maine, where he had purchased property in 2013. He did not register as a sex offender upon moving there, as he was required to do by SORNA. On April 2, 2015, Picard received and signed a notice which again explicitly informed him of his registration requirements under SORNA. He still did not register then or ever as a sex offender in Maine.

On March 1, 2018 he was visited by an agent from the U.S. Marshals Service and arrested. On May 17, 2018, Picard pleaded guilty to one count of failure to register as a Sex Offender in violation of 18 U.S.C. § 2250(a). The district court sentenced Picard to eighteen months' imprisonment followed by five years of supervised release. His conditions of release stated:

You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense.

[and]

You must not commit another federal, state, or local crime.

On July 1, 2019, while he was still in custody, the Bureau of Prisons ("BOP") told Picard that he would need to register as a sex offender within twenty-four hours of being

released from prison. On July 12, 2019, the BOP released Picard to the District of Maine.

B. Violations of Conditions of Release and Revocation

Although Picard lived in Penobscot County, on July 13, 2019, he attempted to register at the Piscataquis County Sheriff's Department. The sheriff's department could not register him because he did not live in that county and directed him to go to the Penobscot County Sheriff's Department. Despite these instructions, Picard did not go and never registered or even contacted the Penobscot County Sheriff's Department.

United States Probation officers Maria Schokman and Kanni Francis visited Picard's home to complete an intake and home inspection on July 16, 2019. Picard told them he knew he had to register and had not. He called his offense "bullshit" and stated that he should not have to register. Although he lived in Penobscot County, he told the officers he could not afford to travel to the Penobscot County Sheriff's Department. In response, the officers told him of a low-or-no-cost transportation service available to him.

On July 17, 2019, Schokman called the Penobscot County Sheriff's Department, which told her that Picard had not registered there or even contacted their office. On July 18, 2019, Schokman once more contacted the Penobscot County Sheriff's Department, which again reported that Picard had not registered or contacted

the office. On July 18, 2019, the Marshals Service arrested Picard at his home for violating two conditions of his supervised release: (1) Failing to "comply with the requirements of [SORNA]" and (2) "commit[ting] a federal, state, or local crime."

On August 16, 2019, the district court held a revocation hearing, where Picard was represented by counsel. The court adopted the factual findings in U.S. Probation's revocation report.<sup>1</sup> The court concluded that Picard's failure to register was a Grade C violation and the court, without objection, adopted Probation's Guidelines sentencing range calculation of five to eleven months' imprisonment. Schokman testified and Picard argued that the government had not shown a violation because Picard attempted to register but failed. The district court found that Picard had violated the conditions of his release. After considering the Guidelines sentencing range and 18 U.S.C. § 3553(a) factors, the court sentenced Picard to nine months' imprisonment followed by two months' community confinement and five years' supervised release. The court also stated that it would have "impose[d] the same sentence even if the applicable

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<sup>1</sup> Except for paragraph 23, which the court did not adopt as Picard disputed its factual basis. Paragraph 23 described the facts underlying Picard's 1983 conviction for Rape of a Child under 14 and Indecent Assault and Battery of a Child under 14, but did not state from what documents it drew this information.

sentencing guideline range would have been reduced by any . . . objections." This appeal followed.

II.

A. Standard of Review

We review the district court's decision to revoke supervised release and the sentence it imposes for abuse of discretion. United States v. Wright, 812 F.3d 27, 30 (1st Cir. 2016). We review the underlying finding of a violation of supervised release for clear error and legal questions de novo. Id. "'[W]e consider the evidence in the light most favorable to the government,' and 'we recognize the district court's broad legal power to determine witness credibility.'" Id. at 29 (quoting United States v. Portalla, 985 F.2d 621, 622 (1st Cir. 1993)).

B. The District Court Did Not Abuse its Discretion in Finding that Picard Violated the Terms of His Supervised Release

Picard conceded to the district court that he did not register as a sex offender within the required time, but argued that his failure to register should be excused for cause because he attempted to register at the wrong Sheriff's Department. On appeal, Picard argues that he did not understand the instructions to register and so lacked the required mens rea to violate SORNA. He also argues that he is entitled to the affirmative defense that he could not register "as directed." We disagree.

Any person who must register under SORNA, "travels in . . . interstate commerce," and "knowingly fails to register or update a registration as required by [SORNA]" is subject to a fine and/or imprisonment. 18 U.S.C. § 2250(a). To prove a failure to register violation of SORNA, the government need only show general intent. United States v. Thompson, 431 Fed. App'x 2, 3-4 (1st Cir. 2011) (unpublished) (citing United States v. Stevens, 640 F.3d 48, 51 (1st Cir. 2011) (cert. granted, judgment vacated on other grounds, 565 U.S. 1255 (2012))). The record before the district court was more than sufficient to conclude that Picard knew of his registration requirement. Picard told Probation Officers Schokman and Francis that he knew he had to register but was unwilling to do so. Multiple other agencies also informed Picard of his registration obligation. There was no error in the district court concluding the general intent mens rea requirement in SORNA was satisfied.

SORNA also allows for an affirmative defense when "uncontrollable circumstances prevent[] the individual from complying," the individual did not contribute to the circumstances "in reckless disregard of the requirement to comply," and then "complied as soon as such circumstances ceased to exist." 18 U.S.C. § 2250(c). As our recitation of the facts makes clear, this affirmative defense was not available to Picard on these facts.

Picard alludes to the affirmative defense by saying that he could not register "as directed" because he was "bewildered" by the instructions given to him. He says the instructions were "not clear." This is inaccurate. The BOP directed Picard "to register as a sex offender within 24 hours of release, per Maine State requirements." After failing to register with the proper sheriff's department per Maine law, Schokman and Francis on July 16, 2019, directed Picard to register with the Penobscot County Sheriff's Department and provided him with the Office's contact information. As of July 18, 2019, Picard had still not registered, or made any effort to contact either Probation or the Penobscot County Sheriff's Department to clarify his registration obligations.

C. Picard's Sentence was Procedurally and Substantively Reasonable

Picard next argues that his within-Guidelines sentence was "both procedurally and substantively unreasonable because the sentencing court decision lacked adequate explanation and the length of the sentence was greater than necessary."<sup>2</sup> These arguments are meritless.

A "court, at the time of sentencing, [must] state in open court the reasons for its imposition of the particular

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<sup>2</sup> Picard also argues that the district court relied on clearly erroneous facts, and so its sentence was unreasonable. But Picard does not identify which factual findings he contends are erroneous, and so has waived this argument. United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

sentence." 18 U.S.C. § 3553(c)(1). "The court's explanation is adequate for purposes of § 3553(c)(1) if it specifically identif[ies] some discrete aspect of the defendant's behavior and link[s] that aspect to the goals of sentencing." United States v. Rivera-Clemente, 813 F.3d 43, 52 (1st Cir. 2016) (alterations in original) (internal quotation marks omitted) (quoting United States v. Rivera-Gonzalez, 626 F.3d 639, 646-47 (1st Cir. 2010)). "A sentence is substantively reasonable when . . . the sentencing court [gives] a plausible sentencing rationale and reached a defensible result." United States v. Abreu-García, 933 F.3d 1, 6 (1st Cir. 2019) (internal quotation marks omitted) (quoting United States v. Rodriguez-Adorno, 852 F.3d 168, 177 (1st Cir. 2017)).

The district court weighed all of the § 3553(a) factors and gave a plausible rationale for the sentence it imposed. It identified Picard's "substantial criminal history" and "proclivity toward violence" as the main factors behind its sentencing decision. The district court adopted the government's reasoning that Picard's history of violence made him a "danger to the community" and "danger to kids," and his "unwillingness to accept responsibility" for his failure to register required a sentence sufficient to protect the community and ensure that Picard learns and accepts that "registering and complying with the conditions of release are not suggestions; they are mandatory."

The record also plainly contradicts his argument that he was penalized for exercising his right to a revocation hearing. Indeed, the record clearly supports the district court's conclusion that Picard at no point accepted responsibility for not registering.

III.

The judgment of the district court is affirmed.

# United States Court of Appeals For the First Circuit

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No. 19-1855

UNITED STATES OF AMERICA,

Appellee,

v.

ROGER EDWARD PICARD,

Defendant, Appellant.

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## JUDGMENT

Entered: April 14, 2021

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: William Stuart Maddox, Julia M. Lipez, Noah Falk, Roger Edward Picard

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Appendix 

# United States Court of Appeals For the First Circuit

No. 19-1855

UNITED STATES,

Appellee,

v.

ROGER EDWARD PICARD,

Defendant - Appellant.

Before

Howard, Chief Judge,  
Lynch, Thompson, Kayatta and Barron,  
Circuit Judges.

## ORDER OF COURT

Entered May 25, 2021

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

William Stuart Maddox  
Roger Edward Picard  
Julia M. Lipez  
Noah Falk

## Appendix C

1

4 UNITED STATES OF AMERICA )  
5 )  
5 ) CRIMINAL ACTION  
6 VS. )  
6 ) Docket No. 1:18-cr-00057-LEW-1  
7 )  
7 ROGER EDWARD PICARD, ) CONFERENCE OF COUNSEL  
8 ) and FINAL REVOCATION HEARING  
8 Defendant. )

10  
11 TRANSCRIPT OF PROCEEDINGS

12 Pursuant to notice, the above-entitled matter came on  
13 for CONFERENCE OF COUNSEL and FINAL REVOCATION HEARING before  
14 the HONORABLE LANCE E. WALKER, in the United States District  
15 Court, Bangor, Maine, on the 16th day of August, 2019, at  
16 10:30 a.m.

18 APPEARANCES:

19 For the Government: James M. Moore, Esquire  
20 For the Defendant: William S. Maddox, Esquire  
21 For U.S. Probation: Jennifer L. Kuhn  
Maria Schokman

23 Julie G. Edgecomb, RMR, CRR  
Official Court Reporter

25 Proceedings recorded by mechanical stenography; transcript produced by computer.

1                   MR. MADDOX: If I may have one second, Your Honor?

2                   THE COURT: Of course.

3                   (Defendant speaking with Mr. Maddox.)

4                   MR. MADDOX: We -- we have nothing to offer, Your  
5 Honor.

6                   THE COURT: Thank you.

7                   All right. Mr. Maddox, do you have any argument  
8 regarding whether or not the government has met its burden of  
9 establishing that Mr. Picard has violated one or more  
10 conditions?

11                  MR. MADDOX: Yes, Your Honor. If one were to view  
12 this type of situation as a strict liability offense, either  
13 he did or he didn't --

14                  THE COURT: Hm-hmm.

15                  MR. MADDOX: -- follow through.

16                  THE COURT: Hm-hmm.

17                  MR. MADDOX: And there is no room therefore for a  
18 for-cause excuse for failing to register.

19                  However, I think that under SORNA, there is a for-cause  
20 excuse for failing to register, and I think that by the  
21 probation officer's own testimony, she has elicited a  
22 for-cause response; that a man who is 68 years old -- or will  
23 be this Halloween, who has been receiving social security  
24 disability benefits since the year 2002, who walks with a  
25 cane, who walked to -- eight to nine miles to register within

1 24 hours, but he went to the wrong place, and but for going to  
2 the wrong place, as the probation officer said, had he gone to  
3 the right place, this whole proceeding would not have been  
4 enacted.

5 So it's my feeling, therefore, that, by the probation  
6 officer's testimony, that he's amply demonstrated for cause,  
7 that somebody in his condition -- his shape, his size, his  
8 disability -- he really went above and beyond the call of  
9 duty, above and beyond what most people would do, and I think  
10 that someone in his situation should not be deprived of their  
11 residence. He has spent money to buy that residence; it's his  
12 home; he enjoys it. He enjoys Dover-Foxcroft, he -- that area  
13 -- Garland, where he lives, just over the border.

14 It just seems to me that someone in his position could  
15 easily be misinterpreted and misconstrued in his answers. For  
16 instance, if he says, I shouldn't have to register and someone  
17 takes that as a refusal, when he could be basing it on a law  
18 that changed over ten years after he initially was convicted  
19 of an offense which gave rise to the duty to register, and  
20 even though he had registered previously in his life in Hawaii  
21 as the -- I think the revocation report has stated, and I  
22 assume that the court will accept the representations in those  
23 court -- except inasmuch as they've been contested, that --  
24 that he could be easily misconstrued, and that he should not  
25 be forced to be deprived of his property, and that somebody

1 with his disabilities should be given every ability to comply  
2 because he wants to comply.

3 The mere fact that he -- he undertook an 18-mile  
4 expedition for somebody in his shape and size within 24 hours  
5 shows tremendous effort. In fact, I hesitate to -- to  
6 quantify what percent of the population would undertake such  
7 an undertak -- engage in such an undertaking.

8 So I just think that it's a shame -- this whole  
9 proceeding, and I think that the probation officer doesn't  
10 know him, hasn't investigated him, didn't know he had a  
11 disability, doesn't know the law, doesn't know when the law  
12 changed. It just -- it just seems really preposterous.

13 In the alternative, were the court to order further  
14 incarceration or make a finding, it seems to me that whatever  
15 conditions are elicited -- or -- or the court chooses to  
16 impose, he should be given every opportunity to -- by the  
17 department of probation to facilitate those and not to rely on  
18 a free cab. He told the probation officer -- he complied with  
19 that, also. He told the probation officer he had no  
20 transportation to go to Bangor. I suspect he didn't want to  
21 travel the 60 miles back and forth, so -- or whatever the  
22 mileage is because he had already done it once and he had  
23 failed. And Pen -- he told the probation officer that he had  
24 a ride set up for July 23rd, and she decides, well, that's not  
25 good enough, I'm going to arrest him five days before that has

1 an opportunity to go forth. It just doesn't seem to me the  
2 appropriate way to handle things.

3 And I think that the -- the department of probation  
4 should be held to it. I think they should be ordered to help  
5 facilitate any and every appointment, and if that's to provide  
6 their own transportation, then that could be, or if the court  
7 could find another way, then that should happen. And so  
8 that's -- that's what I'm arguing, Your Honor.

9 THE COURT: Thank you.

10 MR. MADDOX: Thank you.

11 THE COURT: Mr. Moore?

12 MR. MOORE: Your Honor, just very briefly.

13 THE COURT: Hm-hmm.

14 MR. MOORE: This defendant has registered in -- in  
15 Hawaii; he's registered in Massachusetts. He's served a very  
16 lengthy prison term in Massachusetts for the underlying crime,  
17 and then he's been prosecuted here in Maine, where he served  
18 18 months for failing to register. He knew he was required to  
19 register. Even looking at this under a summary judgment  
20 standard, in the light most favorable to this defendant, he  
21 was aware he was required to register. He went to the wrong  
22 place on a Saturday. That shows knowledge that he knew he was  
23 to register.

24 Under the facts of this case, as of July 1, the defendant  
25 was informed by the Bureau of Prisons, you need to register

1 when you leave, and then he was informed by Officer Francis  
2 and Officer Schokman that he needs to register. Officer  
3 Schokman very patiently waited a number of days before she  
4 filed a petition with this court and even twice checked with  
5 Sergeant Mannette at the Penobscot Sheriff's Office and gave  
6 the defendant a chance to register, even provided him with an  
7 avenue for free transportation and he refused to take that.

8       So for these reasons, Your Honor, we submit that the  
9 defendant has violated the conditions of supervised release as  
10 alleged in the petition.

11           THE COURT: Thank you.

12           All right. Considering the evidence that's been  
13 presented today, it seems clear to me that the government has  
14 met its burden in establishing by a preponderance that the  
15 defendant has, in fact, committed the violations charged at  
16 Counts 1 and 2.

17           So the next issue, notwithstanding the fact, Mr. Maddox,  
18 and I expect to hear about your policy considerations again as  
19 we talk about the appropriate sentence, I am personally not  
20 aware, notwithstanding the reasonable frustrations that you  
21 express, of any proviso, in either the text of the statute or  
22 case law interpreting the statute, that makes this type of an  
23 offense anything but an analogue to strict liability offenses.

24           So, Mr. Maddox, let's talk about the revocation report  
25 itself first. We had an in chambers conference before today's

1 hearing. Other than those issues that you brought to the  
2 court's attention and to the government's attention, are there  
3 any other challenges to the report itself?

4 MR. MADDOX: No, Your Honor.

5 THE COURT: Thank you.

6 So based on the report, it appears that the guideline  
7 sentencing range is as follows. This is a grade of violation  
8 C, a criminal history category of III, which yields a range of  
9 five to eleven months, a statutory range of up to two years,  
10 further term of supervision up to life, \$100 special  
11 assessment fee.

12 Are there any challenges to the guideline sentencing  
13 range as I've just stated it, Mr. Moore?

14 MR. MOORE: No, Your Honor.

15 THE COURT: Mr. Maddox?

16 MR. MADDOX: No, Your Honor.

17 THE COURT: Thank you.

18 In terms of an appropriate sentence and the government's  
19 recommendation, Mr. Moore, let me hear from you.

20 MR. MOORE: Thank you. Might I just have one  
21 moment --

22 THE COURT: Of course.

23 MR. MOORE: -- to talk with Ms. Schokman?

24 THE COURT: Of course.

25 (Mr. Moore speaking with Ms. Schokman.)

1                   MR. MOORE: Thank you, Your Honor. I appreciate  
2 your patience.

3                   May it please the court, Judge Walker, and defense  
4 counsel, Attorney Maddox. The defendant's repeated failure to  
5 register as a sex offender is a serious criminal offense. As  
6 stated earlier this morning, Mr. Picard was informed by the  
7 Bureau of Prisons, by Probation Officer Francis, by Probation  
8 Officer Schokman that he was required to register, and despite  
9 these three warnings, he refused to do so.

10                  As Your Honor knows, the purpose of the Sexual Offender  
11 Registration and Notification Act is to protect the public and  
12 children, in particular, from sex offenders. An obvious  
13 benefit of this legislation is that the defendant's neighbors  
14 and parents within this community, in particular, will know  
15 that they can't rely on him as a baby-sitter, that -- and that  
16 he's a danger and that they should keep their kids away from  
17 him.

18                  To suggest that it's unreasonable for him to have to  
19 merely register given the horrific crime that he's committed  
20 really is a failure to appreciate the purpose of this  
21 legislation which was enacted on July 27th, 2006, and  
22 specifically, Your Honor, the act -- it says, an act to  
23 protect children from sexual exploitation and violent crime,  
24 to prevent child abuse and child pornography, to promote  
25 Internet safety, and to honor the memory of Adam Walsh and

1 other child crime victims. I'd submit, Your Honor, that the  
2 victim of the defendant's crimes -- and paragraph 23 aside --  
3 he has a violent history, and more particularly, those in  
4 Penobscot County who have young children would all agree that  
5 Ms. Schokman's handling of this case was very reasonable and  
6 that it's entirely appropriate in this case that the defendant  
7 be sentenced to imprisonment for his failure to register.

8 As I mentioned, he -- having registered both in  
9 Massachusetts and Hawaii and having been prosecuted here in  
10 Maine, he clearly knew he was required as a sex offender to  
11 register. It might initially seem that the defendant's  
12 violation can be written off as a harmless mistake by an  
13 elderly defendant, but we all recently read about the crime in  
14 Lewiston, a man ten years older than this defendant, 77 years  
15 old, repeatedly stabbing a woman 11 times outside of a  
16 laundromat in front of her own children.

17 While Mr. Picard is 67 years old and older offenders  
18 usually are less likely to recidivate following release, the  
19 many years that this defendant has been in prison do not seem  
20 to have altered his mind-set whatsoever. The defendant, as  
21 noted in the presentence investigation report, has committed  
22 additional crimes of violence, in addition to the predicate  
23 offense. Paragraph 23 of the PSI report aside, there are a  
24 number of details in that report which indicate Mr. Picard is  
25 an outright mean and violent person. The defendant, according

1 to that report, put his fingers inside the mouth of his  
2 fiancée and ripped the skin from both sides of her mouth, and  
3 he also gave her a concussion by punching her in the head.  
4 This is unusually cruel behavior. Not including the facts set  
5 forth within paragraph 23 of the presentence investigation  
6 report, there are also about 20 other criminal charges and  
7 arrests listed in that PSI report that are very disturbing.  
8 The most recent of these charges involved the defendant's  
9 tying up his fiancée, holding her hostage for three and a half  
10 hours, and threatening to burn her with lighting -- lighter  
11 fluid.

12 According to the revocation report, the defendant praised  
13 Timothy McVeigh as a hero and stated he wanted to kill anyone  
14 who broke into his house. As Your Honor knows, Mr. McVeigh  
15 bombed a federal building, killed 168 people, including 19  
16 children. To praise someone who did that as a hero -- there  
17 were 500 other people that were injured.

18 Consistent with the defendant's reported statements, he  
19 previously acknowledged he had no respect for humans and  
20 admitted that he had trained his pitbull to bite strangers.

21 The probation office also noted in its presentence  
22 investigation report that Mr. Picard's history of violent  
23 crime and poor compliance with community corrections were  
24 potential grounds for a prison sentence above the guideline  
25 range.

1        This defendant needs to learn that registering and  
2 complying with conditions of release are not suggestions; they  
3 are mandatory. And it's clear today, after a hearing -- a  
4 contested hearing, which is relatively rare in a revocation  
5 proceeding, that it's clear he's unwilling to accept  
6 responsibility. He needs, we submit, Your Honor, a greater  
7 amount of time to contemplate whether he will attend sex  
8 offender training and to report to his probation officer as  
9 directed.

10       The defendant, as noted in the presentence investigation  
11 report, during his previous incarceration planned three prison  
12 escapes, and he had well over 40 disciplinary actions while  
13 he's been incarcerated. And, also, as Your Honor very well  
14 knows, our probation officers are tasked with an impossible  
15 job. They have a list of defendants to supervise that is  
16 impossible to adequately supervise. They are forced to  
17 prioritize and spend their time where it's most desperately  
18 needed, and it's very clear if Mr. Picard were to be sentenced  
19 to, I believe, six months or less, he -- he hasn't learned his  
20 lesson. He's going to take a lot of time from our probation  
21 officers that should be directed elsewhere, but he's refusing  
22 to cooperate, he won't attend sex offender treatment, he won't  
23 visit with his probation officer, he's unwilling to leave the  
24 rural area that he has without telephone service.

25       And I've conferred with the probation office, Your Honor,

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1 and in light of the defendant's continued unwillingness to  
2 accept responsibility, as demonstrated by his unwillingness to  
3 even admit to the most simple violation here of failing to  
4 register -- it's a clear-cut case, there's no paperwork here,  
5 there's no suggestion, no witness that says he registered --  
6 he won't even admit to that -- suggests that he's going to be  
7 a difficulty in continued supervision, and also his history  
8 dictates he has to be supervised. He's a danger to the  
9 community, danger to kids, in particular.

10 As a result of the defendant's long history of violence  
11 and in order to protect the public, the United States, having  
12 conferred with Probation Officer Schokman, recommends a  
13 sentence of ten months of imprisonment, along with the  
14 recommended conditions of supervised release for five years,  
15 including the two new conditions that he reside for two months  
16 in a halfway house upon release of imprisonment, and  
17 specifically that he not own or possess any firearm or other  
18 dangerous weapon.

19 THE COURT: Thank you.

20 MR. MOORE: Thank you, Your Honor.

21 THE COURT: Mr. Maddox?

22 MR. MADDOX: Your Honor, Mr. Moore's presentation  
23 has focused on the allegation that Mr. Picard has failed to  
24 accept responsibility. He mentioned that phrase at least  
25 twice, maybe more, but everything he had said about that goes

1 to that main point.

2 It -- I think it does not strain credulity to believe  
3 that a 68-year-old man or a 67-year-old who's collecting  
4 disability, who needs to walk with a cane, who walks --  
5 engages to undertake an expedition of 18 miles to comply with  
6 a registration requirement is someone who hasn't compli --  
7 accepted responsibility. He is trying to do what he -- what  
8 is required of him, and there are physical limitations, and he  
9 has real limitations that were ignored in this case. As the  
10 probation officer said, if he had gone to the right place, we  
11 wouldn't be here.

12 So it just seems to me that he -- he went above and  
13 beyond the call of duty in many respects to try to comply.  
14 And he then -- the fallback ability to comply, he was arrested  
15 before that could take place. So he tried to comply with the  
16 fallback method, as well. So there is -- and any statement  
17 that Mr. Moore has suggested with respect to maybe threats or  
18 anything, they were conditional, and with respect to Timothy  
19 McVeigh, the -- the context of that was that this is a man who  
20 didn't have these registration requirements for the -- the  
21 majority of his period of incarceration. They were imposed at  
22 the end of his incarceration by the SORNA law.

23 And so it's not -- it does not strain credulity to  
24 understand that someone with his physical and mental  
25 limitations, such as they are, might have some bewilderment

1 concerning certain requirements and then still engage in an  
2 18-mile trek to comply. So a lot of these statements just  
3 seem to be offhand comments that have no applicability.

4 One thing that Mr. Moore has ignored from the probation  
5 report is that the interviews by the prior probation officer  
6 with his girlfriend in Hawaii indicated that she was well  
7 aware of their long-term relationship and that she wanted to  
8 come back with him and she was not fearful of being threatened  
9 or harmed or violent and that there were differing stories,  
10 that there were two different stories, and that a lot of these  
11 allegations were nothing more than that, and that -- that it's  
12 not like they're proven points.

13 And so to the extent of those obligations, I know it's  
14 late in the game, but I -- I would object on behalf of my  
15 client to those allegations inasmuch as he has alternative  
16 explanations for that and that his girlfriend of long-standing  
17 obviously is not -- was not deterred by that. When he was  
18 notified that she had died earlier this year, he was very  
19 moved, very empathetic, and so he's not somebody who has a  
20 lack of empathy and a lack of concern for others. And he was  
21 very upset that his dog had died and that -- while he was  
22 incarcerated this last time, and so that comes through in the  
23 report, as well.

24 And I would suggest, Your Honor, that police officers,  
25 when they pull somebody over for breaking the speed limit,

1 that's a strict liability crime; yet they don't give a ticket  
2 every single time, they show discretion. And I don't think  
3 that discretion was exercised properly in this case.

4 THE COURT: Let's stop there, not forever, but just  
5 for the moment.

6 MR. MADDOX: Yeah.

7 THE COURT: To the extent -- and I understand your  
8 frustration -- to the extent that your argument turns, in  
9 part, on a disappointment that more restraint wasn't exercised  
10 by probation, and ultimately the government in prosecuting the  
11 instant petition to revoke, it would seem to me to be an act  
12 of judicial vanity in the extreme to call into question that  
13 decision. Isn't -- doesn't that ultimately rest with a  
14 separate branch of government? And while I may -- and I'm not  
15 saying that I do necessarily -- but even if I did harbor the  
16 same frustrations that you're expressing now, while that may  
17 bear on the appropriate sentence, there's not much I can do to  
18 disrupt that decision, that discretionary decision, to go  
19 ahead and prosecute the petition.

20 MR. MADDOX: No, Your Honor, but recognition of the  
21 discretion also has a bearing as to the sentence imposed. And  
22 it also -- it's not necessarily a separate branch of  
23 government; it might be a separate branch of the judicial  
24 branch.

25 THE COURT: Well -- well, the prosecution represents

1 the government and that -- that's --

2 MR. MADDOX: Oh, I meant the appellate court, Your  
3 Honor.

4 THE COURT: Yeah, yeah, no, no, I don't --

5 MR. MADDOX: And --

6 THE COURT: We don't need to talk about the  
7 appellate court here; that's -- it's well above my pay grade.  
8 But I was really referring to the government's decision to  
9 prosecute the instant petition and to revoke probation. To  
10 the extent that that is a discretionary decision of whether or  
11 not to pursue it, that rests with the government. I  
12 understand your position; I understand your frustration. That  
13 goes to an appropriate sanction, not whether or not -- it's of  
14 little moment to me at this point, after we just had a  
15 contested hearing, whether the government should or shouldn't  
16 have decided to pursue the -- the petition.

17 MR. MADDOX: Oh, I know I'm going down a -- the  
18 wrong alley. What I -- what I'm trying to say is that  
19 discretion does come into -- with respect to the ultimate  
20 sentence, and also a frustration and an argument that I would  
21 like to make is that there should be a sense of mens rea  
22 involved in this and -- and not be such a strict liability  
23 issue. And I'm not so certain that when you commit a  
24 violation of -- of supervised release, that it's completely  
25 absent of mens rea considerations, and so that's -- that's all

1 I was arguing. And -- and so -- because it clearly shows that  
2 he did want to comply; he just did it the wrong way and that  
3 maybe, for whatever reason -- I'm sure the court is better  
4 aware than I am actually of -- of many of those limitations.

5 And so -- so -- so what we would recommend then is credit  
6 for time served, and if he's released to a halfway house, that  
7 he be given every ability, facilitated by the department of  
8 probation. I know that what we try to do in the justice  
9 system is to individualize our sentencing, our arguments, our  
10 conditions to the defendant involved. Right now, there's a  
11 movement afoot that elderly defendants should be given a  
12 greater ability -- who are incarcerated, should be given a  
13 greater ability to leave incarceration early because of their  
14 infirmities.

15 And so we're -- we're at a point where we don't have to  
16 engage in that kind of consideration. We know that this is an  
17 elderly man with disabilities, and I just think that it's a  
18 waste of the taxpayers' dollar to follow through with the  
19 probation officer's suggestion, let alone with the  
20 government's suggestion, as to further federal sentencing, and  
21 that a halfway house, one of the practical considerations that  
22 the court is probably aware of, is that the state of Maine  
23 does -- no longer has a halfway house in the Bangor area, that  
24 all of them would have to go to Portland. And so if he were  
25 to be sent to a halfway house, that -- that his registration

1 ability could be facilitated there and that he be given  
2 transportation to his home afterwards and -- and any future  
3 appointment that the probation deems just and proper.

4 THE COURT: Thank you.

5 MR. MADDOX: Okay. Thank you.

6 THE COURT: Mr. Moore, anything else?

7 MR. MOORE: No, Your Honor. Thank you.

8 THE COURT: Thank you.

9 Mr. Picard, as a defendant before the court, you have the  
10 perfect right to speak to me at this time if you so choose.  
11 That's ultimately your decision, whether you want to or not.  
12 Do you have anything you want to say to me?

13 THE DEFENDANT: I just want to say one thing. Last  
14 year when I got arrested for not registering, when I left the  
15 state of Hawaii, Hawaii told me I did not have to register in  
16 the state of Maine. So I didn't register, figured, hey,  
17 they've got to know what the hell's going on, and I was here  
18 for like four years before I got arrested.

19 I had called the police one time because somebody stole a  
20 car that I had bought I was going to restore, and they -- it  
21 went over the embankment right directly across the street from  
22 my house. My girlfriend that I supposed to have assaulted so  
23 bad called the -- the police. They had them come to check on  
24 me to see if I was dead in the house of a heart attack. And  
25 the -- and the last one is I called because of a guy down the

1 street feeding my dog. So if I was on the run, I wouldn't --  
2 my house wouldn't even be registered. You know, I mean, this  
3 is crazy.

4 THE COURT: Okay. Mr. Maddox, have you had an  
5 opportunity to review the mandatory standard and special  
6 conditions with your client?

7 MR. MADDOX: Yes, Your Honor, and -- but maybe I  
8 should go over them again. I -- I know that the conditions --  
9 the standard conditions obviously were reviewed with him at  
10 his last hearing, and so it may behoove everyone were I to go  
11 over them again.

12 THE COURT: Go ahead.

13 MR. MADDOX: Okay. Thank you, Your Honor.

14 (Defendant speaking with Mr. Maddox.)

15 MR. MOORE: Your Honor, I have no objection if the  
16 court wants to recess for a few minutes and come back.

17 THE COURT: Mr. Maddox?

18 MR. MADDOX: I think if -- if the court wants to. I  
19 think we're only about five minutes away.

20 THE COURT: All right. We'll be in recess for ten  
21 minutes. Court's in recess.

22 (Court recessed from 12:25 p.m. to 12:32 p.m.)

23 THE COURT: All right. Mr. Maddox, have you had an  
24 opportunity to go over the -- all of the conditions with  
25 Mr. Picard?

1 MR. MADDOX: Yes, Your Honor.

2 THE COURT: Are you confident he understands those  
3 conditions?

4 MR. MADDOX: Yes, I am.

5 THE COURT: Are we objecting to any of those  
6 conditions?

7 MR. MADDOX: No, Your Honor.

8 THE COURT: Okay. Does that also include the  
9 recommended additional conditions related to use and  
10 possession of firearms?

11 MR. MADDOX: Yes, Your Honor. He can't anyway, I  
12 think, because of the felony, and so he would like a bow and  
13 arrow to hunt. He understands that he cannot have a crossbow,  
14 however.

15 THE COURT: All right. Very good.

16 All right. I've reviewed the following written materials  
17 in preparation for the hearing.

18 MR. MOORE: Your Honor? I'm sorry.

19 THE COURT: Yes, Mr. --

20 MR. MOORE: I don't mean to interrupt.

21 THE COURT: Yes.

22 MR. MOORE: The condition is that he not have any  
23 other dangerous weapons. A bow and arrow would be dangerous.

24 THE COURT: Whether or not crossbow or not.

25 MR. MADDOX: Well, it's my understanding from

1 probation that they allow a bow and arrow to hunt.

2 MS. SCHOKMAN: On an individual circumstance, Your  
3 Honor, based on an offender's need for food, we -- and if they  
4 have a valid hunting license, on an individual basis, we allow  
5 bow and arrow.

6 THE COURT: Do we -- do we know how that affects  
7 Mr. Picard?

8 MS. SCHOKMAN: It would depend on if he had a  
9 hunting license, and I do not know if he does.

10 (Defendant speaking with Mr. Maddox.)

11 MR. MADDOX: He hasn't been out sufficiently long  
12 enough, I think, to get one, but if he -- if he plans to get  
13 one, which I think is the case, then he would certainly get  
14 one.

15 THE COURT: All right. Well, we don't have to  
16 decide this today. I'm going to impose the condition as it's  
17 drawn today, and if you want to modify that condition, you can  
18 do that.

19 MR. MADDOX: Okay.

20 THE COURT: Okay? All right. I reviewed the  
21 following written materials in preparation for the hearing --  
22 a report from probation, along with the admitted exhibits.

23 I adopt the revocation report in its entirety as my  
24 findings save for paragraph 23 for purposes of today's  
25 proceeding, as was further explored in our chambers conference

1 before coming into the courtroom to start the proceeding this  
2 morning.

3 I've carefully reviewed the revocation report and take  
4 the content of that report into account in determining  
5 sentence. I've also considered what I've heard from counsel  
6 today, both here in the courtroom and in our chambers  
7 conference, as well as the allocution made by Mr. Picard.

8 In determining sentence, I first consider the sentencing  
9 range established by the sentencing guidelines and all other  
10 sentencing factors in accordance with 18 U.S.C. Section  
11 3553(a), and I have, in fact, considered all of those factors.

12 In terms of a balancing of aggravating and mitigating  
13 characteristics and circumstances, what concerns me most, even  
14 leaving aside for purposes of my analysis paragraph 23 of the  
15 report, is Mr. Picard's ineluctable history of -- substantial  
16 criminal history, but more troubling than that is his  
17 proclivity toward violence, and I take that into account when  
18 arriving at an appropriate sentence.

19 I do not see this as a variant sentence below the range  
20 for the reasons summarized by the government in its sentencing  
21 recommendation and for the rationale provided in the report  
22 itself.

23 Mr. Picard, sir, are you able to stand, or would you  
24 prefer to sit?

25 THE DEFENDANT: I'd rather sit because of my hip.

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1                   THE COURT: Go ahead. If you're in pain or  
2 discomfort you may sit, okay?

3                   THE DEFENDANT: Uh-huh, okay.

4                   THE COURT: Based on all of these considerations, I  
5 conclude that a just and fair sentence is as follows: The  
6 defendant is committed to the custody of the United States  
7 Bureau of Prisons to be imprisoned for a total term of nine  
8 months. The defendant is remanded to the custody of the  
9 United States Marshal.

10                  Upon release from imprisonment, the defendant shall be on  
11 supervised release for a term of five years. Defendant will  
12 continue to be on the existing conditions of supervised  
13 release. In addition, I'm imposing the following new  
14 conditions of supervised release: Defendant shall not own or  
15 possess any firearm or other dangerous weapon or knowingly be  
16 at any time in the company of anyone known by him to possess a  
17 firearm or other dangerous weapon.

18                  In addition, defendant shall reside in a community  
19 confinement for a period of two months to begin as soon as  
20 practicable following release and shall observe the rules of  
21 that facility and of the supervising officer.

22                  There is a mandatory \$100 per count special assessment.

23                  And in terms of whether there were objections to my  
24 calculation as they may or may not have affected the guideline  
25 analysis, even if I had accepted one or all of those

1       objections, the sentence I've announced today is completely  
2       untethered from the guidelines. I would impose the same  
3       sentence even if the applicable sentencing guideline range  
4       would have been reduced by any or all of the objections, no  
5       matter when they were made, by the defendant.

6           Mr. Picard, you have a -- a right to appeal if you wish.  
7       To exercise your right to appeal your revocation and this  
8       sentence, you must file with the clerk of court within 14 days  
9       a written notice of appeal. Do you understand?

10           THE DEFENDANT: 14 days? Yes.

11           THE COURT: If you fail to timely file a written  
12       notice of appeal, you will have given up your right to appeal  
13       this sentence and conviction. Do you understand?

14           THE DEFENDANT: Yes.

15           THE COURT: If you cannot afford to file an appeal,  
16       you can appeal without cost to you. On your request, the  
17       clerk will immediately prepare and file a notice of appeal on  
18       your behalf. Do you understand that, sir?

19           THE DEFENDANT: Yes.

20           THE COURT: Defendant is remanded to the custody of  
21       the United States Marshal in execution of the sentence  
22       imposed.

23           Anything further, Mr. Moore, from the government?

24           MR. MOORE: No, Your Honor. Thank you.

25           THE COURT: Mr. Maddox, anything further?

1 MR. MADDOX: No, Your Honor. Thank you.

2 THE COURT: Thank you. Good luck, Mr. Picard.

3 Court's in recess.

4 (Proceedings concluded at 12:39 p.m.)

5 CERTIFICATION

6 I certify that the foregoing is a correct transcript from  
7 the record of proceedings in the above-entitled matter.

8

9

10 /s/ Julie G. Edgecomb  
11 Julie G. Edgecomb, RMR, CRR  
Official Court Reporter

10 October 22, 2019  
Date

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