United States Court of Appeals
For the First Circuit

No. 22-1190

UNITED STATES,

Appellee,

v.

JORDAN WINCZUK,

Defendant, Appellant.

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

[Hon. Timothy S. Hillman, U.S. District Judge]

Before

Gelpí, Lynch, and Howard,
Circuit Judges.

Christine DeMaso, Assistant Federal Public Defender, for appellant.

Randall E. Kromm, Assistant United States Attorney, with whom Rachael S. Rollins, United States Attorney, was on brief, for appellee.

May 2, 2023

LYNCH, Circuit Judge. Jordan Winczuk pleaded guilty on October 27, 2021, to one count of attempted sexual exploitation of a minor, see 18 U.S.C. § 2251(a), (e), and one count of committing a felony involving a minor while required to register as a sex offender, see id. § 2260A. The district court sentenced him to 45 years of imprisonment. This sentence was composed of a 35-year mandatory minimum on the § 2251 count based on two prior state convictions "relating to the sexual exploitation of children," id. § 2251(e), and a 10-year consecutive mandatory minimum on the § 2260A count.

On appeal, Winczuk agrees that § 2251(e)'s separate 25-year minimum and § 2260A's 10-year minimum both apply. However, he argues that the district court erred in imposing § 2251(e)'s 35-year minimum because, he contends, the phrase "relating to the sexual exploitation of children" refers only to the production of child pornography. We reject his arguments and affirm. In doing so, we join the views of the Third, Fourth, Sixth, and Eighth Circuits. See United States v. Pavulak, 700 F.3d 651, 673-75 (3d Cir. 2012); United States v. Mills, 850 F.3d 693, 696-99 (4th Cir. 2017); United States v. Sanchez, 440 F. App'x 436, 440 (6th Cir. 2011) (unpublished); United States v. Smith, 367 F.3d 748, 750-51 (8th Cir. 2004).

I.

A.

The facts underlying Winczuk's federal guilty plea are as follows. Because Winczuk pleaded guilty, "we draw the[se] facts from the plea colloquy, the unchallenged portions of the presentence investigation report, and the transcript of the sentencing hearing." United States v. De la Cruz, 998 F.3d 508, 509 (1st Cir. 2021) (quoting United States v. Padilla-Colón, 578 F.3d 23, 25 (1st Cir. 2009)).

In January 2018, Winczuk (then 34) began messaging an 11-year-old boy on Instagram, using the alias "Joey Carson." Winczuk began by grooming the boy, asking him about school and complimenting his appearance. Winczuk's messages became progressively more sexually explicit. He asked the child about erections and masturbation, then repeatedly requested that the child send pictures of his genitals. Winczuk proposed plans for the child to visit him and described in detail the sex acts he would perform on the boy.

About two weeks after Winczuk began messaging the child, the child's mother became aware of the messages. She posed as her son and continued the conversation. She elicited identifying information from Winczuk, including his real name, a picture of his driver's license, and pictures of his face and tattoos. She then provided this information to the Worcester Police Department,

which was able to identify Winczuk. On executing a search warrant at Winczuk's New Jersey apartment, officers found multiple internet-capable phones, including one tied to the "Joey Carson" Instagram account. A search warrant for the contents of this account revealed evidence that Winczuk had engaged in similarly explicit conversations with other social media users who appeared to be children.

At the time he was sentenced in this case, Winczuk had two prior state convictions in New Jersey for sex offenses involving minors. In 2008, he was charged in a 28-count indictment with sexually assaulting four minors, several of them during a sleepover when he was serving as the babysitter. He pleaded guilty in 2010 to one count of sexual assault on a person between the ages of 13 and 15 by a defendant at least four years older, in violation of N.J. Stat. Ann. § 2C:14-2c(4) (West 2008).

In 2009, while Winczuk was on release pending resolution of the 2008 charges, he was charged with file sharing child pornography. He pleaded guilty in 2010 to one count of endangering the welfare of a child by file sharing child pornography, in violation of N.J. Stat. Ann. § 2C:24-4b(5)(a) (West 2009).

A New Jersey state court sentenced Winczuk to concurrent 5-year sentences for these two offenses and to lifetime parole supervision. The convictions each triggered a requirement that Winczuk register as a sex offender in New Jersey. As a condition

of his parole, Winczuk was prohibited from possessing internet-capable devices and from contacting minors.

B.

On April 4, 2019, a federal grand jury returned an indictment charging Winczuk with one count of attempted sexual exploitation of a minor, see 18 U.S.C. § 2251(a), (e), and one count of committing a felony involving a minor while required to register as a sex offender, see id. § 2260A. Winczuk pleaded guilty to both counts on October 27, 2021.[1]

At sentencing, Winczuk argued that § 2251(e)'s 35-year mandatory minimum did not apply on the theory that the phrase "relating to the sexual exploitation of children" means only the production of child pornography. He also cited to a Ninth Circuit decision, United States v. Schopp, 938 F.3d 1053 (9th Cir. 2019), in support of his position. The district court rejected this argument and applied the 35-year minimum, for a total sentence of 45 years.

This timely appeal followed.

II.

The sole question presented in this appeal concerns the interpretation of the phrase "relating to the sexual exploitation

[1] Winczuk did not enter a plea agreement with the government.

of children" in § 2251(e). We review this question of law de novo. See United States v. Blodgett, 872 F.3d 66, 69 (1st Cir. 2017).

Section 2251(e) is § 2251's sentencing provision. It states, in relevant part:

> Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life.

18 U.S.C. § 2251(e) (emphasis added). The provision contains a baseline 15-year mandatory minimum, a higher 25-year minimum for recidivists with one federal or state predicate conviction, and a higher 35-year minimum for recidivists with two or more federal or state predicate convictions. See id.

As said, Winczuk argues that his two prior state convictions for sexual assault of a minor and file sharing child pornography do not trigger the 35-year minimum because "relating to the sexual exploitation of children" means only the production of child pornography.[2] The government's position is that "relating to the sexual exploitation of children" means any "conduct through which a person manipulates, or takes advantage of, a child to sexual ends" and so captures Winczuk's prior convictions. We conclude that the government has the better reading of the statute.

A.

In order to analyze the issue before us, we set forth the amendment history of both the substantive criminal prohibitions in § 2251 and § 2251(e)'s recidivist sentencing provision.

Section 2251 was originally enacted in 1978. See Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, § 2(a), 92 Stat. 7, 7 (1978). At that time, its penalty provision provided for a recidivist enhancement if a defendant had a prior conviction "under this section." Id. In

[2] Winczuk implicitly concedes that his case is stronger as to the sexual assault conviction, presumably because even on his logic the conviction for file sharing child pornography could conceivably "relat[e] to" the production of child pornography. He emphasizes that the 35-year minimum is applicable only if both prior convictions meet the definition. See 18 U.S.C. § 2251(e) (predicating 35-year minimum on "2 or more prior convictions").

1986, Congress amended § 2251 to expand its substantive reach to, inter alia, advertising related to child pornography. See Child Sexual Abuse and Pornography Act of 1986, Pub. L. No. 99-628, §§ 1-3, 100 Stat. 3510, 3510. In 1994, Congress amended § 2251's penalty provision by expanding the predicates for the recidivist enhancement from prior convictions under "this section" to those under "this chapter or chapter 109A," the latter of which addresses sexual abuse. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 160001, 108 Stat. 1796, 2037; 18 U.S.C. ch. 109A.

In 1996, Congress adopted § 2251's current two-step structure of recidivist minimums and broadened the list of predicates to include state convictions. See Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, div. A, tit. I, § 121(4), 110 Stat. 3009-26, 3009-30. The 1996 amendments introduced the language at issue here: both recidivist minimums were triggered where a defendant had (either one or two) prior convictions "under this chapter or chapter 109A, or under the laws of any State relating to the sexual exploitation of children." Id. (emphasis added). These amendments were accompanied by findings detailing Congress's concern with the close connection between child pornography and child sexual abuse. See id. § 121(1).

Congress later added even more federal predicates. See Protection of Children from Sexual Predators Act of 1998, Pub. L. No. 105-314, § 201(c), 112 Stat. 2974, 2977 (adding convictions under "chapter 117"); PROTECT Act, Pub. L. No. 108-21, § 507, 117 Stat. 650, 683 (2003) (adding convictions under "chapter 71" and under "section 920 of title 10 (article 120 of the Uniform Code of Military Justice)"). The 2003 amendments were accompanied by congressional findings identifying "those who sexually exploit [children]" as "including both child molesters and child pornographers." PROTECT Act § 501(2).

While the statute stood in this form, two courts of appeals interpreted the phrase "relating to the sexual exploitation of children." In United States v. Randolph, 364 F.3d 118 (3d Cir. 2004), the Third Circuit rejected the argument that this was "a term of art relating exclusively to crimes involving the production of [child pornography]" and held that it encompassed child molestation. Id. at 122 (citing United States v. Galo, 239 F.3d 572, 581-83 (3d Cir. 2001)). And in United States v. Smith, the Eighth Circuit rejected the same argument and held that the term "unambiguously refers to any criminal sexual conduct with a child" because "[b]y its very nature, any criminal sexual conduct with a child takes advantage of, or exploits, [the] child sexually." 367 F.3d at 751. Thus, even before the next amendments further broadened the substantive reach of § 2251 and its

sentencing provisions, the phrase "relating to the sexual exploitation of children" was understood as not being limited to the production of child pornography.

Congress amended the penalty provision to its current form in the Adam Walsh Child Protection and Safety Act of 2006 ("Adam Walsh Act"). See Pub. L. No. 109-248, § 206(b)(1), 120 Stat. 587, 613-14. In an amendment titled "[i]ncreased penalties for sexual offenses against children," Congress replaced the phrase "sexual exploitation of children" "the first place it appears" (i.e., the 25-year minimum) with the phrase "aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography."[3] Id. Congress did not amend the 35-year minimum, leaving the "relating to the sexual exploitation of children" language unchanged. See id. In a different section of this Act, Congress authorized additional funding to prosecute offenses "relating to the sexual exploitation of children." Id. § 704. Congress defined that term broadly, for purposes of the section, as including "any offense" committed in violation of 18 U.S.C. chs. 109B or 110, or of 18 U.S.C. chs. 71,

[3] The Adam Walsh Act also amended the 25-year minimum by adding 18 U.S.C. § 1591, which addresses sex trafficking, as a federal predicate. § 206(b)(1).

109A, or 117 involving a victim who is a minor, or of 18 U.S.C. § 1591. Id.

Later amendments further expanded § 2251's substantive scope. See Effective Child Pornography Prosecution Act of 2007, Pub. L. No. 110-358, § 103, 122 Stat. 4001, 4002-03 (2008) (clarifying types of covered transmissions); PROTECT Our Children Act of 2008, Pub. L. No. 110-401, § 301, 122 Stat. 4229, 4242 (prohibiting broadcast of live images of child abuse). The PROTECT Our Children Act of 2008 also defined "child exploitation," for purposes of the Act, as "any conduct, attempted conduct, or conspiracy to engage in conduct involving a minor that violates section 1591, chapter 109A, chapter 110, and chapter 117 of title 18, United States Code, or any sexual activity involving a minor for which any person can be charged with a criminal offense." § 2.

B.

Section 2251(e) "does not expressly define ['sexual exploitation of children,'] so we interpret that phrase using the normal tools of statutory interpretation." Esquivel-Quintana v. Sessions, 581 U.S. 385, 391 (2017); see also 18 U.S.C. § 2251; id. § 2256 (applicable definitions section).

We begin, as always, with the text of the statute. We interpret the phrase "sexual exploitation of children" according to its "plain meaning at the time of enactment." Tanzin v. Tanvir,

141 S. Ct. 486, 491 (2020); see also Sw. Airlines Co. v. Saxon, 142 S. Ct. 1783, 1788 (2022).

At the time this phrase was added to the statute in 1996, see Child Pornography Prevention Act of 1996 § 121(4), Black's Law Dictionary did not define "sexual exploitation," much less "sexual exploitation of children." Black's Law Dictionary did, however, define "exploitation" in relevant part as "[t]aking unjust advantage of another for one's own advantage or benefit." Exploitation, Black's Law Dictionary (6th ed. 1990). Contemporary non-legal dictionaries reflect a similar understanding of the term "exploitation." See Exploitation, Webster's Third New International Dictionary, Unabridged (1993) ("[A]n unjust or improper use of another person for one's own profit or advantage . . . ."); Exploitation, Oxford English Dictionary (2d ed. 1989) ("The action of turning to account for selfish purposes, using for one's own profit.").[4] These general definitions of

[4] Black's Law Dictionary also defined "exploitation" as the: "Act or process of exploiting, making use of, or working up. Utilization by application of industry, argument, or other means of turning to account, as the exploitation of a mine or a forest." Exploitation, Black's Law Dictionary (6th ed. 1990). Webster's also noted the use of the term to mean the "utilization of the labor power of another person without giving a just or equivalent return." Exploitation, Webster's Third New International Dictionary, Unabridged (1993). And the Oxford English Dictionary also defined the term, in relevant part, as "[t]he action of exploiting or turning to account; productive working or profitable management." Exploitation, Oxford English Dictionary (2d ed. 1989).

"exploitation" are not specifically geared to the special case of "sexual exploitation of children." However, Webster's definition as the "improper use of another person for one's own profit or advantage" does encompass children.

In a later but roughly contemporary definition of "sexual exploitation," Black's Law Dictionary defined that term as "[t]he use of a person, esp. a child, in prostitution, pornography, or other sexually manipulative activity that has caused or could cause serious emotional injury." Sexual Exploitation, Black's Law Dictionary (8th ed. 2004). This definition goes well beyond the mere production of child pornography and specifically references child prostitution "or other sexually manipulative activity" using children. It reflects the special vulnerability of children and captures additional criminal sexual conduct involving children.

We reject Winczuk's argument that dictionary definitions of sexual exploitation "require not only that a sexual act occur, but that the act enrich or benefit 'the perpetrator beyond sexual gratification'" (quoting Schopp, 938 F.3d at 1062). The definitions we have just cited, including those addressed to the sexual exploitation of children, encompass all sexual uses of children. See Mills, 850 F.3d at 697 (canvassing dictionary definitions and concluding that this term means "to take advantage of children for selfish and sexual purposes"); Smith, 367 F.3d at 751 ("By its very nature, any criminal sexual conduct with a child

takes advantage of, or exploits, [the] child sexually."). We agree with the government that "[p]rohibitions on sexual acts with minors, even where purportedly consensual, rest on a recognition that the potential for manipulation or coercion is always present." We conclude that the plain text of "sexual exploitation of children" unambiguously refers to any criminal sexual conduct involving children.

The use of the language "relating to the sexual exploitation of children" further expands the breadth of this phrase. 18 U.S.C. § 2251(e) (emphasis added). "[W]hen asked to interpret statutory language including the phrase 'relating to,' . . . [the Supreme] Court has typically read the relevant text expansively." Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 1760 (2018) (collecting cases); see also Silva v. Garland, 27 F.4th 95, 102-03 (1st Cir. 2022).

Our reading also draws support from statutory context. It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." King v. Burwell, 576 U.S. 473, 492 (2015) (quoting Util. Air Regul. Grp. v. E.P.A., 573 U.S. 302, 320 (2014)); see also Scalia & Garner, Reading Law: The Interpretation of Legal Texts 167 (2012). Here, the phrase "relating to the sexual exploitation of children" appears at the end of a list of federal predicates. These federal predicates

criminalize a broad range of sexual conduct related to minors. See, e.g., 18 U.S.C. § 2252 (criminalizing the distribution and possession of child pornography); id. § 2243 (chapter 109A provision criminalizing sexual abuse of a minor).[5] The breadth of these neighboring predicates makes Winczuk's narrow interpretation directly contrary to congressional intent. See Sanchez, 440 F. App'x at 440 ("It is implausible that Congress intended to include so many prior federal offenses, but chose to restrict qualifying state offenses to child pornography production."); see also Pavulak, 700 F.3d at 675 (similar).

Finally, the amendment history of the statute supports our reading. Several points from the above discussion of this history bear note. First, the state predicate trigger language in the 25- and 35-year minimums was not enacted simultaneously. The phrase "relating to the sexual exploitation of children," which is the phrase at issue, was added to both minimums in 1996. That phrase was judicially construed by every circuit which addressed the issue as not being limited to the production of child pornography. See Randolph, 364 F.3d at 122; Smith, 367 F.3d at 750-51; see also Ryan v. Gonzales, 568 U.S. 57, 66 (2013) ("We

[5] As discussed above, Congress added additional federal predicates after the "relating to the sexual exploitation of children" language was enacted in 1996. But the list of federal predicates was already broad in 1996, encompassing any prior conviction under Code chapters 110 and 109A. See Child Pornography Prevention Act of 1996 § 121(4).

normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent." (quoting Merck & Co. v. Reynolds, 559 U.S. 633, 648 (2010))). Ten years later, Congress replaced this phrase in the 25-year minimum but left the 35-year minimum unchanged. Second, Congress has repeatedly amended § 2251 both to expand its substantive reach and to add additional predicates for the recidivist enhancements. Congress has broadened the statute, not narrowed it. Third, Congress has on multiple occasions defined "exploitation" (albeit not specifically for purposes of § 2251) as encompassing a broad range of criminal sexual conduct related to children. See Adam Walsh Act § 704; PROTECT Our Children Act of 2008 § 2.

These additional indicators of statutory meaning reinforce our conclusion that the plain text of "relating to the sexual exploitation of children" unambiguously refers to any criminal sexual conduct involving children. We join four other circuits in adopting a broad reading of this phrase. See Mills, 850 F.3d at 696-99 (interpreting § 2251(e) post-2006 amendment); Pavulak, 700 F.3d at 673-75 (same); Sanchez, 440 F. App'x at 440 (interpreting § 2251(e) pre-2006 amendment); Smith, 367 F.3d at 750-51 (same).

c.

Our prior analyses, employing the rules of statutory interpretation, dispose of Winczuk's arguments. But we add the following points as to why Winczuk's contrary arguments fail.

Winczuk relies heavily on the notion that the title of § 2251 operates to define the phrase "sexual exploitation of children." Section 2251 is titled "[s]exual exploitation of children." 18 U.S.C. § 2251. That title has been unchanged since § 2251's enactment in 1978. See Protection of Children Against Sexual Exploitation Act of 1977 § 2(a). The offenses criminalized by this section involve sexually explicit visual depictions of a minor -- i.e., child pornography. See, e.g., 18 U.S.C. § 2251(a) (criminalizing use of minor with intent that minor "engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct"); id. § 2251(b) (imposing liability on parent or guardian who knowingly permits minor to engage in same); id. § 2251(d)(1) (criminalizing advertising regarding same). Winczuk asserts that the section title is limited by the section's content to mean the production of child pornography, and that this also limits the meaning of "sexual exploitation of children" as that phrase is used in § 2251(e)'s recidivist penalty provision.

Winczuk's reliance on § 2251's title is misplaced. A title is not the same as a formal definitional section. It has

long been clear that section titles are "tools available" to "shed light on . . . ambiguous words[s] or phrase[s]," but they "cannot limit the plain meaning of the text." Bhd. of R.R. Trainmen v. Balt. & O. R. Co., 331 U.S. 519, 528-29 (1947); see also Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 212 (1998); Scalia & Garner, supra, at 221-24. "[S]exual exploitation of children" unambiguously extends beyond the production of child pornography to encompass other criminal sexual conduct involving children, and § 2251's title cannot limit this plain meaning.[6]

We also agree with the Fourth Circuit that the definition of "exploitation" in 18 U.S.C. § 3509, the very different child victims' and witnesses' rights statute, does not apply. See Mills, 850 F.3d at 699. Section 3509 defines "exploitation" as "child pornography or child prostitution." Id. § 3509(a)(6). As § 3509 itself says, that definition applies only to § 3509. Id. § 3509(a). We reject the argument that this separate statute bears on the meaning of § 2251(e). Cf. Erlenbaugh v. United States, 409 U.S. 239, 243-44 (1972) (discussing in pari materia canon of statutory construction). Section 3509 was enacted six years before

[6] Winczuk relies on Esquivel-Quintana, where the Supreme Court looked to the title of 18 U.S.C. § 2243 -- "[s]exual abuse of a minor or ward" -- as a "definition of that phrase." 581 U.S. at 394. But the Esquivel-Quintana Court looked to this title only as consistent "further evidence" of the conclusion it had already reached based on the text. Id.; see id. at 391-92. Here, Winczuk's title-based argument contradicts the plain text.

the 1996 amendments to § 2251, see Crime Control Act of 1990, 1 Pub. L. 101-647, tit. II, § 225(a), 104 Stat. 4789, 4798; see also Erlenbaugh, 409 U.S. at 244, and serves a distinct purpose. And Congress has elsewhere defined the term "exploitation" to have a much broader meaning. See Adam Walsh Act § 704; PROTECT Our Children Act of 2008 § 2.

We further reject Winczuk's argument that the 2006 Adam Walsh Act, which replaced the phrase "sexual exploitation of children" in the 25-year minimum with an enumerated list of state predicates but left the 35-year minimum unchanged, shows that Congress understood this phrase to have a narrow meaning.

Winczuk's argument rests on a false premise. He contends that the phrase "relating to the sexual exploitation of children" in the 35-year minimum cannot be read broadly, because then it would have the same meaning as the enumerated list of state predicates in the 25-year minimum. See Scalia & Garner, supra, at 170 ("[A] material variation in terms suggests a variation in meaning."); see also Salinas v. U.S. R.R. Ret. Bd., 141 S. Ct. 691, 698 (2021). Winczuk is wrong. A broad reading of "relating to the sexual exploitation of children" does not render this phrase coterminous with the enumerated list of state predicates in the 25-year minimum. To count as a state predicate for the 35-year minimum, an offense must "relat[e] to the sexual exploitation of children," whereas the 25-year minimum can also be triggered by

sexual abuse and aggravated sexual abuse offenses generally. 18 U.S.C. § 2251(e) (emphasis added). The different phrases have different meanings.

If anything, the presumption that different language indicates a different meaning cuts against Winczuk's position. Winczuk contends that "sexual exploitation of children" means the production of child pornography, but Congress explicitly recognized "the production . . . of child pornography" as a predicate offense for the 25-year minimum. Id. The fact that Congress clearly named this offense in the 25-year minimum weighs against giving different language in the 35-year minimum the same precise meaning. See Pavulak, 700 F.3d at 674-75.

Further, the effect of the 2006 Adam Walsh Act amendment was to broaden and not limit the mandatory minimum triggers. There was no effort to make the punishment equivalent for one prior conviction and two prior convictions. When the enumerated state predicates were added to the 25-year minimum, Congress at the same time defined "relating to the sexual exploitation of children" broadly for appropriations purposes. See Adam Walsh Act § 704. Congress is also presumed to know of prior judicial interpretations of this phrase. See Gonzales, 568 U.S. at 66. Winczuk's argument that Congress, aware of the broad construction previously given to this language, meant to narrow the statute while saying it was trying to expand its reach is simply untenable.

We agree with the Third Circuit that it is "implausible" that Congress in enacting the 2006 Adam Walsh Act amendment was materially limiting the state predicates for the 35-year minimum to the narrow category of production of child pornography. Pavulak, 700 F.3d at 675 (quoting Sanchez, 440 F. App'x at 440). The Fourth Circuit reached the same conclusion in Mills after analyzing, as we have done, the ordinary meaning of "sexual exploitation of children." See 850 F.3d at 697-98.

Winczuk is again wrong in his attempt to invoke the rule of lenity. That rule applies "only when a criminal statute contains a 'grievous ambiguity or uncertainty,' and 'only if, after seizing everything from which aid can be derived,' the [c]ourt 'can make no more than a guess as to what Congress intended.'" Ocasio v. United States, 578 U.S. 282, 295 n.8 (2016) (quoting Muscarello v. United States, 524 U.S. 125, 138–39 (1998)). This statute shows neither grievous ambiguity nor grievous uncertainty. Congress intended to punish dual recidivists with two prior state convictions more harshly than those with one prior conviction. That is what deterrence is about. And Congress made clear its concern about the inadequacy of prior law to provide the needed deterrence.[7]

[7] Winczuk's reliance on Esquivel-Quintana's reference to state criminal codes is also misplaced. See 581 U.S. at 395-97. The clear text and the usual rules of statutory interpretation end the matter here. See id. at 396 n.3.

D.

Winczuk does not dispute that his prior convictions count as predicates under the broader reading of "relating to the sexual exploitation of children" that we adopt today. Given this concession, we do not reach the parties' assumption that we should assess prior convictions for purposes of § 2251(e)'s sentencing enhancement using the categorical approach.

III.

For the foregoing reasons, the judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA
v.
Jordan Winczuk

JUDGMENT IN A CRIMINAL CASE

Case Number: **4 19 CR 40011 - 001 - TSH**

USM Number: 72460-050

Scott Lauer/Timothy Watkins
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1-2

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2251(a)	Attempted Sexual Exploitation of a Minor	02/12/18	1
18 U.S.C. § 2260A	Commission of a Felony Offense Involving a Minor When Required to Register as a Sex Offender	02/12/18	2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/18/2022
Date of Imposition of Judgment

/s/ Timothy S. Hillman
Signature of Judge

The Honorable Timothy S. Hillman
U.S. District Judge
Name and Title of Judge

3/16/2022
Date

DEFENDANT: Jordan Winczuk
CASE NUMBER: **4 19 CR 40011 - 001 - TSH**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 540 month(s)

This term consists of terms of 420 months on Count 1, and a term of 120 months on Count 2, to be served consecutively to the term imposed on Count 1.

☑ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to an institution commensurate with security where the defendant can participate in sex offender treatment.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jordan Winczuk
CASE NUMBER: **4 19 CR 40011 - 001 - TSH**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : 5 year(s)

This term consists of a term of 5 years on Count 1, and a term of 3 years on Count 2, such terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

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SPECIAL CONDITIONS OF SUPERVISION

1. You must use your true name and are prohibited from the use of any false identifying information which includes, but is not limited to, any aliases, false dates of birth, false social security numbers, and incorrect places of birth.
2. Pursuant to the Adam Walsh Child Protection and Safety Act of 2006, you shall register as a sex offender not later than 3 business days (from release or sentencing, if granted probation). You will keep the registration current, in each jurisdiction where you reside, are employed or are a student. You must, not later than 3 business days after each change in name, residence, employment, or student status, appear in person in at least one jurisdiction in which you are registered and inform that jurisdiction of all changes in the information. Failure to do so may not only be a violation of this condition but also a new federal offense punishable by up to 10 years' imprisonment. In addition, you must read and sign the Offender Notice and Acknowledgment of Duty to Register as a Sex Offender per the Adam Walsh Child Protection and Safety Act of 2006 form.
3. You must participate in a sexual specific evaluation or sex offender specific treatment, conducted by a sex offender treatment provider, as directed and approved by the Probation Office. The treatment provider shall be trained and experienced in the treatment of sexual deviancy and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual specific evaluation may include psychological and physiological testing which may include polygraph testing and the Visual Reaction Time Assessment (e.g. ABEL screen). You must disclose all previous sex offender or mental health evaluations to the treatment provider.
4. You must submit to periodic polygraph testing as a means to ensure that you are in compliance with the requirements of your supervision or treatment program. When submitting to a polygraph exam, you do not waive your Fifth Amendment rights, and your exercise of such rights will not give rise to a violation proceeding. The results of the polygraph examinations may not be used as evidence in Court to prove that a violation of community supervision has occurred but may be considered in a hearing to modify release conditions and/or could initiate a separate investigation.
5. You must allow the installation of computer internet monitoring software on approved internet capable devices but may still use a computer for work purposes that has been previously approved by the Probation Office. The program(s) used will be designed to identify, for the Probation Office, the viewing, downloading, uploading, transmitting, or otherwise using any images or content of a sexual or otherwise inappropriate nature. You must not attempt to remove or otherwise defeat such systems and must allow the Probation Office to examine such computer and receive data from it at any reasonable time.
6. You must advise anyone using the monitored internet capable devices that those devices are being monitored by the Probation Office.
7. You must not possess or use any computer or internet-capable device without prior approval from the Probation Office. Any such device should not be used to knowingly access or view sexually explicit materials as defined in 18 U.S.C. §2256 (2)(A).
8. You must disclose all account information relative to internet access, social networking, and email, including user-names and passwords, to the Probation Office. You must also, if requested, provide a list of all software/hardware on your computer, as well as telephone, cable, or internet service provider billing records and any other information deemed necessary by the Probation Office to monitor your computer usage.
9. You must provide the probation officer with access to any requested financial information for purposes of monitoring compliance with the imposed computer access/monitoring conditions, including, but not limited to, credit card bills, telephone bills, and cable/satellite television bills.
10. You must not knowingly have direct contact, or contact through a 3rd party, with children under the age of 18, unless previously approved by the Probation Office, or in the presence of a responsible adult who has been approved by the Probation Office, and who is aware of the nature of your background and current offense.
11. You must not knowingly have any contact with victims or their families without prior approval of the Probation Office. This includes letters, communication devices, audio or visual devices, visits, social networking sites, or third parties not covered by any other condition.
12. You must consent to third party disclosure to any employer or potential employer concerning any computer-related restrictions that are imposed upon you, unless excused by the probation officer. You are prohibited from being employed in any capacity that may cause you to come in direct contact with children, except under circumstances approved in advance by the supervising probation officer. In addition, you must not participate in any volunteer activity that may cause you to come into direct contact with children, except under circumstances approved in advance by the probation officer. Contact is defined as any transaction occurring face to face, over the telephone, via mail, over the internet, and any third-party communication.

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SPECIAL CONDITIONS OF SUPERVISION

13. Prior to accepting any form of employment, you must seek the approval of the Probation Office, in order to allow the Probation Office, the opportunity to assess the level of risk to the community you may pose if employed in a particular capacity.
14. You shall be required to contribute to the costs of evaluation, treatment, programming, and/or monitoring (see Special Condition #s 3, 4, and 5), based on the ability to pay or availability of third-party payment.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 200.00	$	$	$

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☑ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the First Circuit

No. 22-1190

UNITED STATES,

Appellee,

v.

JORDAN WINCZUK,

Defendant - Appellant

Before

Barron, Chief Judge,
Lynch, Howard, Kayatta, Gelpí, and Montecalvo,
Circuit Judges.

ORDER OF COURT

Entered: June 21, 2023

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. 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 petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Timothy G. Watkins, Christine DeMaso, Jordan Winczuk, Donald Campbell Lockhart, Randall Ernest Kromm, Kristen M. Noto, Danial Bennett