
No. _____

In the

Supreme Court of the United States

DONOVAN ROMO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

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

Appendix to Petition for a Writ of Certiorari

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AUG 1 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DONOVAN ROMO, AKA party.like.a.rock,

Defendant-Appellant.

No. 22-50075

D.C. No.
2:20-cr-00375-VAP-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, Chief District Judge, Presiding

Argued and Submitted July 13, 2023
Pasadena, California

Before: SANCHEZ and MENDOZA, Circuit Judges, and JACKSON, ** District Judge.

Defendant Donovan Romo pled guilty to one count of possessing child pornography under 18 U.S.C. § 2252A(a)(5), and one count of distributing it under 18 U.S.C. § 2252A(a)(2). The Guideline range was 151 to 188 months. The

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

** The Honorable Brian A. Jackson, United States District Judge for the Middle District of Louisiana, sitting by designation.

district court sentenced Mr. Romo to a 96-month term of imprisonment and a 30-year term of supervised release.

On appeal, Mr. Romo challenges the procedural adequacy of the district court's explanation of supervised release, as well as the substantive reasonableness of the term of imprisonment, term of supervised release, and three special conditions of supervised release. Reviewing the procedural challenges for plain error,¹ *United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and the substantive challenges for abuse of discretion, *United States v. Cruz-Mendez*, 811 F.3d 1172, 1175 (9th Cir. 2016), we affirm.

1. The district court did not plainly err by failing to explain in detail why it imposed a thirty-year term of supervised release. A sentencing court need not “expressly state its reasons” for imposing a term of supervised release when “the record shows that the court considered the arguments and evidence” presented.

United States v. Daniels, 541 F.3d 915, 922 (9th Cir. 2008). Here, as in *Daniels*, the district court stated that it had read the parties’ submissions, including “a PSR,

¹ Because Mr. Romo “failed to object on the ground that the district court erred procedurally in explaining and applying the § 3553(a) factors, we review only for plain error.” *Valencia-Barragan*, 608 F.3d at 1108. Mr. Romo argues we should review for an abuse of discretion because he “could not object before the sentence and conditions were imposed, because he could not foresee that the district court would fail sufficiently to explain them.” But our precedent does not require trial judges to “invite new objections after announcing the sentence but prior to adjourning a sentencing hearing.” *United States v. Vanderwerfhorst*, 576 F.3d 929, 934 (9th Cir. 2009).

the addendums, the government's position, the victim impact statement, defendant's position paper, the exhibits," and "the exhibit from the doctor." The court then explained its concerns about the risks of recidivism and recognized Mr. Romo's mitigating circumstances. It said that the 60-month statutory minimum was too low, but the Guideline range was too high. The court also summarized the issues and its concerns before imposing the sentence. The record shows that the parties' "arguments have been heard, and that a reasoned decision has been made."

United States v. Carty, 520 F.3d 984, 992 (9th Cir. 2008).

2. Nor did the district court plainly err in explaining its reasons for imposing special condition 11, which bars Mr. Romo from possessing or viewing sexually explicit materials, and special condition 18, which allows warrantless searches of Mr. Romo's electronic devices. "Circuit law establishes that a sentencing judge is not required 'to articulate on the record at sentencing the reasons for imposing each condition' of supervised release, where we can determine from the record whether the court abused its discretion." *United States v. Betts*, 511 F.3d 872, 876 (9th Cir. 2007) (footnote omitted) (quoting *United States v. Rearden*, 349 F.3d 608, 619 (9th Cir. 2003)). The record here assures us that the district judge did not plainly err in imposing special conditions 11 and 18. *See Daniels*, 541 F.3d at 922; *Rearden*, 349 F.3d at 619 (affirming where "the PSR spelled out the relationship between [the special conditions] and the factors set forth in § 3583(d) in detail").

Mr. Romo argues that the district court had to make special findings during sentencing before imposing special conditions 11 and 18 because they involve significant liberty interests. *See United States v. Weber*, 451 F.3d 552, 561 (9th Cir. 2006). However, he cites no controlling authority, and we are not aware of any, applying this heightened standard under similar circumstances. And an “error cannot be plain where there is no controlling authority on point and where the most closely analogous precedent leads to conflicting results.”² *United States v. Wijegoonaratna*, 922 F.3d 983, 991 (9th Cir. 2019) (quoting *United States v. De La Fuente*, 353 F.3d 766, 769 (9th Cir. 2003)).

3. Turning to Mr. Romo’s substantive challenges, the district court did not abuse its discretion by imposing a 96-month term of imprisonment followed by a 30-year term of supervised release. The district court considered the § 3553(a) factors, the 96-month sentence is significantly below the Guideline range of 151-188 months, and we have “held that sentencing individuals convicted of possessing child pornography to lifetime terms of supervised release is not substantively unreasonable.” *United States v. Apodaca*, 641 F.3d 1077, 1082 (9th Cir. 2011).

4. We also affirm the district court’s imposition of special conditions 9, 11,

² Mr. Romo says that *United States v. Bare*, 806 F.3d 1011 (9th Cir. 2015), overruled *Rearden* and the government’s other authorities. But *Bare* is inapposite; it dealt with a substantive challenge to the validity of a computer search condition, not a procedural challenge to the court’s explanation of the condition. *See Bare*, 806 F.3d at 1017–19.

and 18. We have rejected similar challenges to special condition 9, which subjects Mr. Romo to risk assessment evaluations and psychological testing. *See, e.g.*, *United States v. Hohag*, 893 F.3d 1190, 1194 (9th Cir. 2018); *Daniels*, 541 F.3d at 925–26; *United States v. Stoterau*, 524 F.3d 988, 1007 (9th Cir. 2008). The district court did not abuse its discretion because it expressed concerns of recidivism, and those concerns have “support in inferences that may be drawn from the facts in the record.” *United States v. Martinez-Lopez*, 864 F.3d 1034, 1043 (9th Cir. 2017) (en banc) (quoting *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc)).

The record also supports special condition 11. The presentence investigation report (“PSR”) explained the relationship between special condition 11 and the § 3583(d) factors, and the district judge articulated her own record-based concerns of recidivism and explained why she thought special condition 11 was reasonably necessary to guard against it. *See Rearden*, 349 F.3d at 619. Nor is special condition 11 overbroad in violation of the First Amendment. Mr. Romo relies on *United States v. Gnirke*, 775 F.3d 1155 (9th Cir. 2015), which considered a similar, but materially different, condition that barred the defendant “from setting foot inside his local Walmart, a library that loans R-rated movies, or a movie theater showing an R-rated film with a simulated sex scene (even if Gnirke enters the theater to see a different film).” *Id.* at 1162. Mr. Romo, on the other hand, can go

wherever he wants. He just cannot view or possess material with sexually explicit content. The district court did not abuse its discretion in imposing special condition 11.³

We also uphold special condition 18. “[T]o comply with the Fourth Amendment, [a computer monitoring condition] must be narrowly tailored—producing no greater deprivation of liberty than is reasonably necessary.” *United States v. Sales*, 476 F.3d 732, 737 (9th Cir. 2007). Such tailoring occurred here given the circumstances of Mr. Romo’s crime and his personal history, both of which were discussed in the PSR and by the district judge at sentencing. *See, e.g.*, *United States v. Quinzon*, 643 F.3d 1266, 1271–75 (9th Cir. 2011) (affirming a similar computer monitoring condition for a child pornography offense).

AFFIRMED.

³ We express no opinion about whether special condition 11—which bars Mr. Romo from viewing and possessing materials depicting actual, but not simulated, sexually explicit conduct involving adults, as defined by 18 U.S.C. §§ 2256(2)(A) and 2257(h)(1)—is unconstitutionally vague. Because neither party raised this argument before the district court or on appeal, we deem it waived. *See United States v. Lucas*, 70 F.4th 1218, 1221 (9th Cir. 2023).

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 MONDAY, APRIL 11, 2022

9:07 A.M.

LOS ANGELES, CALIFORNIA

CHIA MEI JUI, CSR 3287, CRR, FCRR
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

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25

1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 11, 2022

9:07 A.M.

— — —

4 THE CLERK: Calling CR 20-375-VAP, United States
5 of America versus Donovan Romo.

6 Counsel, state your appearances.

7 MS. STITELER: Good morning, Your Honor.

8 Maria Stiteler on behalf of the United States.

9 Also present at counsel table is FBI Special Agent Clint
10 Wilmsen.

11 THE COURT: Good morning to you both.

12 MR. WASSERMAN: Good morning, Your Honor.

13 David Wasserman on behalf of Mr. Romo who is
14 present before the Court on bond. Also in the audience is
15 Steve Liner from the CJA panel and Claire Kennedy from the
16 public defender's office.

17 THE COURT: Good morning to all of you.

18 We are here today for sentencing.

19 I have had a chance to review the pleadings in the
20 case. I just want to make sure I wasn't missing anything.

21 There is a PSR, the addendums, the government's
22 position, the victim impact statement, defendant's position
23 paper, the exhibits. And I want to make sure -- I know
24 there was the exhibit from the doctor.

1 Mr. Romo or no?

2 MR. WASSERMAN: No, Your Honor. There was the
3 psychological evaluation which was filed under seal. Then
4 there was an additional document, other history and
5 characteristics that was also filed under seal, and then
6 Mr. Romo, rather than writing a letter to the Court, is
7 choosing to elocute his letter to the Court today.

8 THE COURT: Perfect. I just want to make sure I
9 wasn't missing anything. All right.

10 So I think I have reviewed everything in
11 connection with this hearing.

12 Mr. Wasserman, have you had enough time to go over
13 the presentence report with Mr. Romo?

14 MR. WASSERMAN: I have, Your Honor.

15 THE COURT: Did you explain the contents of the
16 report to him?

17 MR. WASSERMAN: I did, Your Honor.

18 THE COURT: Do you have any concerns about his
19 ability to understand the report?

20 MR. WASSERMAN: No, Your Honor.

21 THE COURT: Mr. Romo, let me ask you did you get
22 the presentence report and go over it with your lawyer?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. Do you need any more time to go
25 over it with your lawyer?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Do you think you understood it?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Mr. Wasserman, back to you.

5 Do you want to contest or change anything in the
6 presentence report other than what's been submitted in
7 writing?

8 MR. WASSERMAN: Yes. There is just one thing,
9 Your Honor, which is not so much a change or contestation.

10 The presentence report and the recommendation
11 letter has language about how to pay monies received from
12 income tax refunds, lottery winnings, et cetera.

13 I would propose just the following change to that
14 language which is that: The defendant shall apply all
15 monies received from income tax refunds, lottery winnings,
16 inheritance, judgments, and any other financial gains, open
17 parenthetical, less any amount necessary to pay state and
18 federal taxes on the aforementioned financial gains, close
19 parenthetical, to the Court ordered financial obligation.

20 THE COURT: That's interesting, Mr. Wasserman.

21 Is that something -- you are not the first to do
22 it. Maybe you were the architect of it, but I have heard
23 this before.

24 Is that something that has been coming up as it
25 relates to your clients? Are they being put in a -- I don't

1 know if it's a Catch 22, where they owe taxes and they have
2 to make the decision don't pay taxes so I can pay this
3 obligation and then I get charged with a tax count later on.

4 MR. WASSERMAN: Your Honor, I can't speak to any
5 specifics in the office of whether or not that has happened.
6 Yes, my colleagues and I do communicate, but I will candidly
7 say I have not heard of that issue from my colleagues
8 specifically.

9 But I think the Court correctly identified the
10 issue, that, when you have to choose between paying the
11 government on one side versus paying the government on the
12 other side, it would seem to make sense to permit people to
13 comply with both sides of the law.

14 It's not saying don't pay your restitution. It's
15 just saying, if you are legally obligated to pay taxes on
16 income, pay those taxes and then the balance should go to
17 the restitution. Otherwise, people will just stay in the
18 hole for their entire life.

19 THE COURT: I am just trying to think, practically
20 speaking, presumably if you got a refund from your tax
21 returns -- okay? -- that would have -- wouldn't that have
22 already taken into account what you owed?

23 MR. WASSERMAN: Certainly, Your Honor. That's why
24 the way that I phrased the language is any amount necessary.

25 So, for example, if you get a tax refund -- and

1 you are not required to report that as income because it's a
2 tax refund -- you don't have to pay taxes on that. That can
3 go straight to restitution.

4 The problem is that the probation office lumps all
5 of your financial obligations in one sentence when it comes
6 to this issue.

7 So, again, that's why I inserted the word,
8 "necessary," and so, if you don't have to pay any income tax
9 on your refund, it's not a problem.

10 But we know, if you get lottery winnings and
11 certain types of inheritance, those are considered income by
12 the IRS and the FTB, and, therefore, you would have to pay
13 taxes on it.

14 And so rather than have the entirety of that then
15 moved over to the government -- at least the U.S. Attorney's
16 Office, we would ask just for that language so that the
17 defendant is protected from, you know, falling into a trap.

18 And I don't mean that in a nefarious sense. I
19 mean that, you know, you have to navigate these two systems.

20 THE COURT: Okay. Fair. It doesn't seem
21 unreasonable. Okay.

22 Anything else as it relates that you want to
23 contest or change? Obviously, I am going to give you a
24 chance to discuss your recommendation which I have read, but
25 anything else other than that?

1 MR. WASSERMAN: Nothing other than what is in the
2 papers. I do have some housekeeping matters when the Court
3 wants to get to it.

8 The biggest issue that I see in this case, quite
9 frankly, is the defendant's statements, and that is of big
10 concern to the Court. Do I think it merits 151 sentence?
11 Probably not, but by the same token, I'm not sure it merits
12 a 60-month sentence.

13 Wrong or right in the last four months I have had
14 a number of cases like this, and the ranges have gone from
15 60 months to life.

24 And I have seen it just by virtue of the letters
25 in this case but in other cases where I have had family

1 members come before the Court, and it's clear that this type
2 of activity is devastating.

3 With that, you have the unenviable task to talk
4 through these issues.

5 MR. WASSERMAN: No. And I appreciate the candid
6 nature of the Court's comments.

7 So I say a couple of things. I will go straight
8 to the Court's main concern -- the risk of recidivism
9 particularly in light of the statements made.

10 So the first thing is this: We did provide the
11 Court a psychological evaluation under seal which uses
12 validated metrics to try to assess risk.

13 The Court can think of those metrics as it wants,
14 but it's important to note that, at least according to that
15 report, Mr. Romo's conduct seems to be the product of
16 substance abuse, particularly the statements were a product
17 of substance abuse and not some sort of future risk of
18 recidivism, a very, very low risk of recidivism -- I believe
19 it was somewhere around eight percent.

20 Secondly, the evidence in the record in terms of
21 two things: One, Mr. Romo's conduct since execution of the
22 search warrant, Mr. Romo's conduct specifically while on
23 pretrial release in terms of any recidivist conduct is
24 nonexistent.

25 There is no evidence that he has done this again.

1 There is no real evidence that he will do this in the
2 future.

3 The Court has the ability to put him on supervised
4 release, as I am sure the Court will. And so the Court's
5 job in terms of assessing risk is also one in terms of
6 trying to ensure that it can monitor Mr. Romo's behavior.

7 So if it has the ability to monitor Mr. Romo's
8 behavior rather than incarcerate Mr. Romo, particularly when
9 evidence shows that while being monitored on pretrial
10 supervision this issue has not come up again, I think that
11 that's probably the preferred path in terms of trying to
12 figure out how to balance, sort of, the equities here.

13 I do think that it's also important when the Court
14 is considering those statements that were made that we not
15 credit them as necessarily true intent.

16 The reason I say that is, if we look at the
17 statements themselves -- right? -- yes, they are disturbing.
18 I am not going to argue there.

19 But at the same time, they are intermixed with
20 lies, with things that are simply not true and are simply
21 indicative of someone who is in some sort of online fantasy
22 world, not someone who is going to commit actual acts,
23 actual child predatory acts in the future.

24 THE COURT: When you say "intermixed with lies,"
25 you're talking about how old he is and all these other

1 things that he said that were not true in connection with
2 those statements.

3 MR. WASSERMAN: Well, how old he was, his
4 location, the fact that the photographs that he sent of a
5 nude woman were of a minor, which they weren't, the fact
6 that the child pornography that was distributed was
7 apparently him and a family member, which was not, and there
8 is no other evidence in the record that any of the other
9 things that he said were true in terms of him watching a
10 live show or doing his own live show -- there is no IP hits
11 that go back to his place associated with other social media
12 accounts that were alleged.

13 So, again, in the totality of the statements
14 made -- we're not saying that they weren't troublesome, to
15 put it lightly. But if the Court's concern is recidivism
16 and him acting on those statements, I would submit that, if
17 we look at the totality of that moment, those statements
18 were never anything more than puffery. Again, they weren't
19 great. They weren't nice. They were horrible.

20 But they're not indicative of future criminal
21 conduct, particularly in light of the psychological report
22 which again indicates that he is an eight percent risk of
23 recidivism -- and reason that he is only an eight percent
24 risk rather than lower is because of his age, and the
25 testing takes into account your youthfulness in assessing

1 your future risk of recidivism.

2 The psychological evaluation also notes that he
3 does not suffer from pedophilic disorder, that he does not
4 possess or display any of the characteristics that would be
5 associated with pedophilic disorder.

6 So again, if the Court's issue is how to assess
7 risk, I submit we look at the evidence in the record and not
8 speculate and that we have a psychological evaluation that
9 says not a very significant risk, number one; number two,
10 past is prologue, his ability to keep his composure and not
11 violate the conditions of supervision while on supervision.

12 For goodness sakes. Mr. Romo has a flip phone
13 that doesn't really work very well so much that he had to
14 take the battery out before coming into court today to make
15 sure it didn't accidentally turn on.

16 Now we have seen plenty of cases where people on
17 pretrial supervision for this sort of offense have somehow
18 gotten a smartphone, somehow accessed a computer. He did
19 not.

20 So if we're comparing him to other defendants who
21 have committed this sort of conduct, again, his actions
22 while a part of this case have displayed, at least relative
23 to other people that -- his level of recidivism and his
24 ability to comply with terms of supervision mean that a
25 lengthier period of custody rather than a longer period of

1 supervision is inappropriate in this particular case.

2 In terms of the guidelines, I can speak to that
3 briefly, but I will say this. I understand the Court has
4 read the papers and, obviously, has seen, sort of, my
5 analysis of national trends, local trends, this district,
6 the Ninth Circuit, Judge Phillips's sentences. And I went
7 and looked up Your Honor's sentences in a couple of cases,
8 at least, and, obviously -- I will put this out there --
9 this is not the Harrell case. That is probably the one end
10 of the spectrum; right?

11 However, the Court in a receipt case give a
12 78-month sentence -- that's the Bloom case. There the
13 defendant had more images than Mr. Romo, purchased the
14 images from a Website that specifically sold child
15 pornography and then tried to cooperate with the government.
16 And in that case, the government offered him two level -- a
17 two-level reduction.

18 THE COURT: That's what brought him down to that
19 rate.

20 MR. WASSERMAN: Right, gave him a two-level
21 variance even though they were not able to use the
22 information to prosecute anyone.

23 Again, as we discuss in our under seal filing, his
24 history and characters, Mr. Romo, we think warrants some,
25 sort of, downward variance.

1 There was no information that he had that the
2 government -- rather that law enforcement was interested in
3 in terms of peer-to-peer networks and child pornography
4 passwords and things like that that were present in the
5 Bloom case, and so Mr. Romo was not able to assist the
6 government in that sort of investigation.

7 Now, on the other hand, we have the Garcia case
8 that this Court heard which was another receipt case where
9 it imposed 121-month sentence.

10 There the government asked for 151 months because
11 the defendant failed a polygraph test, admitted sexual
12 fantasies about a child, collected child pornography via
13 peer-to-peer network, molested two toddlers when he was 16
14 while his parents were in the next room.

15 That is the type of aggravating behavior that the
16 guidelines say warrant -- or that the Sentencing Commission
17 rather, say warrant a guidelines sentence because --

18 THE COURT: Look. News flash. I don't think this
19 is 151-month sentence.

20 MR. WASSERMAN: Certainly.

21 THE COURT: I also don't think it's a 60-month
22 sentence. But, I mean, you got to make your pitch and try
23 to get me to see why I need to go skew more in that
24 direction than the other direction.

25 MR. WASSERMAN: Sure.

1 THE COURT: And you are doing a great job. So I
2 am not suggesting that you need to do something different.
3 I just don't think it's 151-month sentence.

4 MR. WASSERMAN: I appreciate that, Your Honor.

5 I think what I would say is this. Congress says
6 60 months is the mandatory minimum. Congress decided that
7 that's the least amount of punishment that is required for
8 this sort of offense.

9 If the Court goes beyond the 60 months because of
10 Mr. Romo's statements, we would submit that the Court is
11 punishing his speech. It's not great speech. But it's
12 based on words that he said and not deeds that he undertook.

13 Again, if we're thinking about the statements in
14 terms of recidivism and risk, the evidence that's in the
15 record we would suggest doesn't indicate that he is any
16 more, and in fact slightly far less, of a risk than most
17 child pornography offenders.

18 THE COURT: What weight or how should this be
19 factored into the sentence, the nature of the images, the
20 types of stuff that was being transmitted and viewed?

21 MR. WASSERMAN: Again, I think that that's an
22 issue that the Sentencing Commission has struggled with.

23 For example, the guidelines say that you give a
24 sentencing enhancement for sadomasochistic images regardless
25 of whether or not the defendant intended to view or access

1 or possess them. So it's almost like a strict liability
2 sort of analysis.

3 Now the guidelines are advisory. So it's not
4 criminally problematic in the constitutional sense. But if
5 we're striking at culpability and we're striking at what we
6 think people are trying to do, there needs to be some
7 measure of difference between those who go out and actively
8 seek disturbing images because that's the kind of violence
9 they want to see and those who open a -- who download a
10 folder and those images happen to be inside.

11 Sure, we understand what the guidelines say;
12 right? But if the Court is trying to determine how punitive
13 to be, why should someone who obtains those images because
14 of the nature of technology today, which the Sentencing
15 Commission acknowledges the guidelines have been outpaced
16 by, why should that person be punished the same as someone
17 who actively goes and looks for those types of images?

18 THE COURT: How do we know the difference,
19 particularly in a case like this? How do we know that -- I
20 think the hypothetical or the scenario you pose is someone
21 who clicks and these just happen to be the images that are
22 on them? Is that the case here, or do we know one way or
23 the other?

24 MR. WASSERMAN: In other cases, there have been
25 evidence produced that particular terms were searched for.

1 THE COURT: In this case we don't have that.

2 MR. WASSERMAN: We don't have that.

3 THE COURT: The flip side is we don't have
4 evidence to the contrary, meaning we don't have a scenario
5 where it's click and oops. This is what I got.

6 MR. WASSERMAN: Understood, Your Honor. However,
7 to flip it to say the contrary, that that somehow exists
8 here would be speculative, and the Court can't speculate
9 when imposing a sentence because of that particular fact.

10 THE COURT: But, I mean, it's interesting, and I
11 always enjoy these discussions with you. This topic,
12 obviously, has been one of national significance in the last
13 couple weeks.

14 MR. WASSERMAN: Sure.

15 THE COURT: But what is interesting about it is
16 that the guidelines for whatever reason say you should get
17 an enhancement when you have these images, whether you got
18 them, like, for lack of a better term, click bait and it
19 just came to you or whether you sought them. Right?

20 If that's the case, doesn't that suggest that the
21 Court should skew higher than the 60 months by virtue of
22 just the fact that the images in question, the guidelines
23 suggest merit an enhancement?

24 MR. WASSERMAN: No.

25 THE COURT: Okay.

1 MR. WASSERMAN: Here is why.

2 THE COURT: Okay.

3 MR. WASSERMAN: There is a disconnect, obviously,
4 between the Sentencing Commission reports which are 2020,
5 2021, and the guideline, which is from 2004, the last
6 edition of this particular guideline that has this
7 enhancement in it. And any changes to the guideline have to
8 go back to Congress in order to be ratified. Okay?

9 So whatever exists going on in Washington, D.C. in
10 terms of Congress not changing the guidelines themselves,
11 the Sentencing Commission has acknowledged that there are
12 other factors that warrant more aggravating sentences.

13 THE COURT: Okay.

14 MR. WASSERMAN: And that those factors don't exist
15 in this case. It's not the number of images. It's not the
16 nature of the images. Those are not the factors that the
17 Sentencing Commission is looking at.

18 It's aggravated sexual behavior. It's being
19 involved in large scale distribution, in peer-to-peer
20 networks where you are sharing thousands of files.

21 Those don't exist. There is no evidence in the
22 record that those exist in this case.

23 So the reason why we are asking for 60 months --
24 and I understand the Court's position -- is Mr. Romo is a
25 person who has been in jail for -- in his life for two

1 months, something like that.

2 The question is what's going to deter him? What's
3 going to deter other people like him? What reflects the
4 seriousness of the offense? Well, Congress thinks that the
5 minimum amount of time that reflects the seriousness of this
6 offense --

7 THE COURT: Is 60 months.

8 MR. WASSERMAN: -- is 60 months. It could make it
9 higher if it wants. It hasn't.

10 THE COURT: But you know the government,
11 Ms. Stiteler, is going to get up and vigorously advocate
12 it's, in addition to that, it's what message are we,
13 quote/unquote, sending to the community, that, if you do
14 this, for lack of a better term, well, it doesn't matter
15 what the images are, it doesn't matter what you say.

16 According to Judge Wasserman you should get 60 months?

17 MR. WASSERMAN: Well, I wouldn't -- I would say
18 that every case is unique.

19 THE COURT: Right. And this case you say merits
20 the 60-month sentence.

21 MR. WASSERMAN: That's right, particularly if you
22 look at other sentences from this year. In my brief I cite
23 a case that I had where somebody had a prior conviction for
24 receipt of child pornography. So the Congress made the
25 mandatory minimum sentence ten years.

1 Mr. Romo shouldn't get ten years when he has no
2 prior criminal history where he sent one video.

3 Now, I understand the government may get up and
4 say, well, sending one video intentionally is worse than
5 being part of a peer-to-peer network where you are sending
6 passively. But I am sure, had Mr. Romo sent thousands of
7 videos passively, the argument would be he is distributing
8 child pornography to the community and that's more
9 aggravating.

10 THE COURT: Right. Now to push back a little
11 bit -- I am just giving you a hard time because of my
12 respect for you. By the same token, if you had a client
13 that did more than what Mr. Romo would do, you would
14 creatively argue why still the sentence should not be 151
15 months or according to the guideline range.

16 So we can take the facts and -- I don't say -- and
17 we can select the portions both in aggravation and
18 mitigation on both sides to advocate for what the both sides
19 think is the right sentence.

20 MR. WASSERMAN: Certainly. That's why Your Honor
21 is sitting on the bench.

22 THE COURT: That's why I get paid the extra five
23 dollars.

24 MR. WASSERMAN: That's right.

25 The idea is what does Your Honor think. Right?

1 Certainly there are aggravating aspects to both of the
2 scenarios that I just presented. But there is mitigating
3 aspects to both of the scenarios I just presented.

4 THE COURT: And he has a number of mitigating
5 factors.

6 MR. WASSERMAN: I believe in his elocution you
7 will find even more mitigation.

8 So we would submit, Your Honor, that a 60-month
9 sentence in light of all the issues outlined in the brief,
10 the things that we've discussed here, particularly given the
11 Court's concerns about the statements and the way that they
12 impact the Court's thinking about recidivism and risk, I
13 believe that there is sufficient evidence in the record to
14 push back on that respectfully. And I think that the
15 Court -- I understand the Court is grappling with this
16 issue. It's very difficult.

17 But I do think that if the Court in its head is
18 saying, well, 60 months is a long time but those statements
19 are just so bad I got to give him some more time, well, then
20 what's that appropriate additional amount of time that's
21 somehow going to remediate those statements?

22 If the issue really is risk and recidivism, there
23 are ways to deal with that. There is continued drug and
24 alcohol treatment. Right?

25 There is continued mental health treatment. There

1 is supervision which we actually have evidence of working.

2 We don't have any evidence that prison is working.

3 But Congress said you got to give him five years. So that's
4 where we are.

5 So based on the record and respectfully, not
6 speculation, that's why we believe a 60-month sentence is
7 appropriate.

8 Let me know if the Court wants me to handle the
9 housekeeping issues about recommendations.

10 THE COURT: We'll deal with the recommendations at
11 the appropriate time.

12 MR. WASSERMAN: Very well.

13 THE COURT: And but just give some thought to --
14 the -- my question to you with respect to some of the
15 modifications of the recommendation is somewhat similar to
16 the income tax thing. I would be curious are these
17 anecdotal concerns about those modifications?

18 MR. WASSERMAN: You mean to the supervised release
19 condition?

20 THE COURT: Right.

21 MR. WASSERMAN: No.

22 THE COURT: Okay.

23 MR. WASSERMAN: I just think that the condition
24 not allowing people to possess adult pornography --

25 THE COURT: Got it. Let's talk about that in a

1 moment.

2 MR. WASSERMAN: Fair enough.

3 THE COURT: Mr. Romo, do you wish to be heard?

4 Do you want to say anything to me before I
5 sentence you, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Whatever you are more comfortable
8 with -- lectern or at the chair, whatever you are more
9 comfortable with.

10 THE DEFENDANT: First off, I would like to
11 apologize. When this all started, I did not realize how my
12 actions in viewing those images and videos would still
13 affect and haunt the victims to this day given the fact that
14 I experienced something similar as a kid as well.

15 Now that I realize what I did, regardless whether
16 I was under the influence or sober, was wrong. There is no
17 excuses for my actions.

18 To the Court, it was never my intention to cause
19 anyone distress.

20 And to the victims as well as their family, I am
21 truly sorry. I don't believe any of you deserve this
22 suffering you all endured, and your letters spoke to me in a
23 way that I will never forget.

24 Ever since this investigation started, I was
25 ripped away from my life and family. For a whole year I

1 lived in my car, and I was working. It was a hard time.
 2 Most of my paycheck would go to supporting my child and gas.
 3 I was fortunate enough to have a gym membership and I could
 4 shower and try to stay healthy, but for the most part I was
 5 always wondering when I would purchase the next meal.

6 My vehicle was my home, and I remember the
 7 scorching days and freezing nights. It gave me a lot of
 8 time to think for my actions on how I got here and how I
 9 wanted to change. So I started by getting sober.

10 After I got sober, I started making more money,
 11 and I was able to pay rent at a family member's home and
 12 live within my means.

13 After I met my beautiful wife, moved in with her,
 14 and we had a baby boy on the way. I was happy. It gave me
 15 a chance to become someone better. I finally felt like I
 16 was at peace, and I can move forward and learn from my
 17 mistakes.

18 But during the end of her second trimester, I was
 19 ripped away from that and put into custody. I was there
 20 long enough to think that I would never get out.

21 During my bail I was grateful. I kept sober
 22 despite the stress, helped people in the sober living home
 23 as best as I could, and I learned new skills and hobbies. I
 24 learned how to cook, and I learned how to work on my car.

25 Everything was self-taught, but I can confidently

1 say I can take apart my car and put it back together again
2 and make it work. Actually, after all this is said and
3 done, I would like to go and take formal education and get
4 certified as an ASE master mechanic and, hopefully, work my
5 way up to Mercedes AMG division.

6 On a final note, I accept the punishment for my
7 heinous crime that I committed, but I would like to ask to
8 not be judged only by this one mistake that I made years ago
9 but by my character, resilience, and attempts on being a
10 better citizen.

11 THE COURT: All right. Thank you, sir, I
12 appreciate it.

13 This is a tough scenario. Obviously you know you
14 put it in -- you put yourself in this scenario. I
15 appreciate what you have done since the arrest. And I've
16 got to give credit where credit is due. Others don't
17 necessarily stay the course because, like you point out, the
18 stress can be too much. It's unfortunate.

19 I mean, just given the fact that, you know, you
20 know what is at the end of this story -- you are going to go
21 to prison.

22 And it's going to impact -- quite frankly, I don't
23 know you, but I am more concerned about your family than
24 anyone else because of the ripple effect that this has on
25 young children.

1 But it is what it is, and I greatly appreciate
2 your comments. They seem very heartfelt, and it seems to me
3 that you are the type of person that's not going to just
4 serve your time, you will have your time serve you. You
5 will learn while you are in custody, and my hope is -- I say
6 this a lot of cases but particularly in these cases -- my
7 hope is this is the last time you and I ever see each other.

8 You will be on supervised release, you will
9 continue doing what you are supposed to do, and you will get
10 back on track, and you will move forward. So thank you for
11 your comments.

12 Let's hear from the government.

13 Ms. Stiteler, do you want to contest or change
14 anything in the presentence report other than what has been
15 submitted in writing?

16 MS. STITELER: Your Honor, the parties have
17 reached an agreement on restitution.

18 THE COURT: Okay. We can talk about that maybe in
19 the end, but that's good to know, thank you.

20 Is there anything else you want to contest or
21 change in the presentence report?

22 MS. STITELER: No.

23 THE COURT: So the floor is yours at this time. I
24 have read the victims' statements. I am looking around the
25 court. I don't believe there is any victims here in the

1 courtroom. Correct?

2 MS. STITELER: Correct, and we have not received
3 any additional victim statements.

4 THE COURT: The floor is yours. You heard
5 Mr. Wasserman's eloquent comments. He raised a lot of
6 important issues. Want to give the government the
7 opportunity an opportunity to be heard.

8 MS. STITELER: Thank you, Your Honor.

9 I want to begin by just saying I am very concerned
10 by the suggestion that consideration that those statements
11 is somehow in violation of the Constitution.

12 The defendant made those statements in connection
13 with the distribution of child pornography, and so the Court
14 is certainly entitled to consider those statements in the
15 context of the crime.

16 THE COURT: I don't think Mr. Wasserman was saying
17 that. He is ultimately saying it is puffery, that there was
18 no intent. And he would argue that, based on the record,
19 there is no suggestion -- like, for example, he cited the
20 other case of, I think, I had, where the defendant
21 acknowledged touching kids, things of that nature.

22 Here we have statements to that effect but no
23 external evidence. And I was going to ask -- I am assuming
24 there is no indication that the government is aware of of
25 any inappropriate contact between Mr. Romo and his children.

1 Correct?

2 MS. STITELER: Correct.

3 THE COURT: Okay. Go ahead.

4 MS. STITELER: I think intent is somewhat of an
5 issue, that not just the intent in distributing the videos,
6 also in downloading the 7,771 images and I think 248 videos,
7 that his -- the statements that he made show that this is a
8 defendant who is actively seeking out child pornography and
9 videos and images of child sexual abuse for his own
10 gratification --

11 He made statements as much himself as part of
12 these discussions with another person maybe with a hint of
13 fantasy, but at bottom his goal in those discussions was to
14 distribute and download himself child pornography.

15 With respect to the statements, there were --
16 there is no evidence that there was any actual abuse.
17 Otherwise, we would certainly have alerted the Court to
18 that.

19 But in the statements he discusses taking steps to
20 hide his tracks and to protect himself, and so the lack of
21 any evidence here I don't think is indicative that there was
22 nothing. It's -- he took steps to hide his trails.

23 THE COURT: He may have or --

24 MS. STITELER: Or he may not have.

25 THE COURT: Right. May or may not. And like many

1 of these cases, they're all trying to hide their tracks
2 because they don't want to end up on the south side of the V
3 on the pleading.

4 Go ahead.

5 MS. STITELER: There were -- this defendant was
6 pretty technically sophisticated. He was encrypting, using
7 encrypted hard drives to save files onto and using the Kik
8 messenger program to try and -- if he was deleting and
9 uninstalling, reinstalling it to try to hide traces from his
10 wife and authorities.

11 THE COURT: Ms. Stiteler, let me ask you. Look, I
12 know these are difficult cases. And I think based on your
13 Bar number alone, these cases may or may not be -- you may
14 not be as -- you may not have as many of these cases, but I
15 am curious.

16 No record, no -- I don't think even -- I think
17 there was one prior arrest, no indication at all he's been
18 on law enforcement's radar at all.

19 Again, these are the decisions I have to make
20 ultimately, but does that, sort of, suggest that he may be
21 outside the norm of what the guidelines might call for? Or
22 is it simply just based -- is the government's view the
23 images, the volume, the nature, and the statements just put
24 it squarely within the guidelines?

25 MS. STITELER: I mean, I think that there are

1 certain aspects to the defendant that, like you mentioned --
2 his record, his lack of prior offenses that serve as a
3 mitigating factor here.

4 The guideline range is pretty significant -- 151
5 months. Your Honor has already suggested that you don't
6 think that this is a 151-month case, which I understand.

7 And so in light of that, are these factors that
8 might justify a lower sentence? I mean, the 151 months is
9 the guidelines range. I think that's appropriate. I don't
10 think that those factors justify a departure all the way
11 down to 60 months which is what the defendant is asking for.

12 He -- there is a large volume of images here.
13 There is videos. There is these discussions of -- as it
14 suggests this isn't just an accident. This isn't -- it
15 didn't just end up on his computer accidentally. He was
16 seeking it. He was distributing these files, at least one
17 video.

18 All in all, I think this -- 60 months is too low
19 for what -- the criminal conduct at issue here in addition
20 to your concerns about deterrences also, as you mentioned
21 the general deterrence, people who see this case and they
22 think, oh, this guy downloaded all those videos and he sent
23 out videos and then there's these comments, and he still
24 only got the mandatory minimum.

25 I think that this is somewhere between 60 months

1 and then the guideline sentence of 151 months.

2 THE COURT: Are you suggesting I won't get any
3 Christmas cards from Senator Lindsey Graham if I gave a
4 60-month sentence? You don't need to comment.

5 Anything else from the government?

6 MS. STITELER: I think that's all.

7 THE COURT: I appreciate your candor. Look, these
8 are challenging cases all the way around. The nature of the
9 conduct is just horrific. And look. In some ways you wish
10 you had a case where someone had a prior, was doing this.
11 It makes it a lot easier.

12 But we're talking about an individual here who has
13 no record. The psychological report suggests the risk of
14 recidivism is low.

15 So I think all those things militate against a
16 guidelines sentence, but I do agree I don't think it's a
17 60-month sentence as well. But go ahead.

18 MS. STITELER: Your Honor, I actually would like
19 to address that psychological report because I read it, and
20 we don't offer a dueling report of our own -- obviously, I
21 don't think it's even possible, but it seemed like much of
22 the psychological report was based on defendant's
23 self-reporting of his state of mind. So I just --

24 THE COURT: Which is wrong or right, there is not
25 much more we can do. In fairness, it's a doctor who does an

1 evaluation based on different criteria, and that doctor's
2 assessment, based on his statements are, you know, he thinks
3 low risk.

4 And -- look. I have seen cases where there have
5 been evaluations and the person has reoffended. Again, it's
6 an assessment. It's his best judgment. I have to consider
7 it, but I also have to consider all the factors as well.
8 But I appreciate your perspective on it.

9 MS. STITELER: Other than that, unless the Court
10 has questions, I --

11 THE COURT: No. I don't. Thank you.

12 Now for the challenging part. Even with all the
13 comments, wrong or right, I think the calculation is
14 accurate as it relates to the presentence report.

15 So the guideline calculation in this case is --
16 total offense level is 34, Criminal History Category I.
17 That puts him at a sentencing guideline range of 151 to 188
18 months. Supervised release range is a minimum of five
19 years. Maximum could be life. The fine range is 35,000 to
20 250,000. There was no Plea Agreement entered in this case.

21 I have taken into consideration the most recent
22 edition of the guidelines. In making an individualized
23 determination, based on the facts, I am considering the
24 factors in 3553(a), the nature and circumstances of the
25 offense. It's a horrific offense. I don't think there is

1 anything more that needs to be said in that regard other
2 than, look. We are talking about an individual that -- the
3 volume of images is quite high -- images, videos, et cetera.

4 And so the need for the sentence has to reflect
5 the seriousness of the offense, promote a respect for the
6 law, provide just punishment as well but also to consider
7 the individual circumstances of this defendant.

8 Twenty-seven years old, I think, right now, sir.
9 Is that correct?

10 THE DEFENDANT: About to be 27.

11 THE COURT: About to be 27, zero criminal history.
12 No indication that there is any sort of connections with law
13 enforcement.

14 I think it is -- we can make a reasonable -- take
15 reasonable assurances that this probably was stemming from
16 substance abuse and that, sort of, got him to go down this
17 rabbit hole that puts him in this precarious situation.

18 I think those things militate a departure or more
19 specifically a variance from the guidelines.

20 By the same token, we are talking about a large
21 number of evidence. The impact on those victims is almost
22 life changing. I shouldn't say "almost." It is life
23 changing. The distribution, it is of one video, but that's
24 how it starts, and all those things are problematic.

25 I understand Mr. Wasserman's point about the

1 statements, but it goes both ways. The statements exist.
2 Whether they were puffery are not, these kinds of things
3 were done in the furtherance of the commission of this
4 crime.

5 Like I said, I do think a variance is warranted in
6 this case, not to the level that defense is asking for, but
7 I do think a variance is warranted in this case.

8 So I will now state the sentence, but I want to
9 give counsel a final chance to make any legal objections
10 before the sentence is imposed.

11 Does either counsel know of any reason other than
12 what has been stated as to why the sentence should not now
13 be imposed?

14 Ms. Stiteler?

15 MS. STITELER: No, Your Honor.

16 THE COURT: Mr. Wasserman?

17 MR. WASSERMAN: No, Your Honor.

18 THE COURT: I will read the sentence.

19 And, Mr. Wasserman, I think I know the paragraphs
20 where you have the objections and we may deal with them as I
21 go through them. If I miss one, just raise your hand, and
22 let me know, and I will stop because I am inclined -- I
23 thought based on the suggestions they didn't seem
24 unreasonable. So -- okay. I shouldn't say -- all of them
25 did not seem unreasonable. Some of them I disagree with.

1 So I will now state the final sentence.

2 It's ordered that Mr. Romo will pay a special
3 assessment in the amount of \$200 which will be due
4 immediately. Any unpaid balance shall be due during the
5 period of imprisonment at a rate of not less than \$25 per
6 quarter and pursuant to the Bureau of Prisons Inmate
7 Financial Responsibility Program.

8 It's ordered that Mr. Romo will pay restitution in
9 the amount of \$11,000 -- I'm sorry. The parties have agreed
10 to a restitution amount?

11 MS. STITELER: Yes, Your Honor.

12 THE COURT: What is that amount?

13 MS. STITELER: \$9,000.

14 THE COURT: So it's less than what probation is
15 recommending. Is that correct?

16 MS. STITELER: Yes, Your Honor.

17 THE COURT: So \$9,000. And how is that to be
18 distributed? Have the parties agreed as it relates to that?
19 Is it an even 3-, 3-, 3-?

20 MS. STITELER: Yes, Your Honor, between the three
21 victims, three victims in the report.

22 THE COURT: So it's ordered that the defendant
23 shall pay restitution in the total amount of \$9,000 pursuant
24 to Title 18 United States Code Section 2259. The amount of
25 restitution shall be paid as follows: Sweet White Sugar in

1 the amount of \$3,000, Jenny in the amount of \$3,000, and
2 TARA in the amount of \$3,000.

3 Ms. Stiteler, if you would be so kind, could you
4 email our courtroom deputy the addresses whether it's to the
5 government, to the U.S. Attorney's office, or otherwise
6 where the restitution should be paid?

7 MS. STITELER: Yes, Your Honor. With respect to
8 the Sweet White Sugar victim -- that's the series name, and
9 there are multiple victims associated with that series. So
10 I would ask that it be specific to the individual known as
11 Pia in the Sweet White Sugar series.

12 THE COURT: Specifically Pia?

13 MS. STITELER: P-i-a.

14 THE COURT: P-i-a. Thank you.

15 If the defendant makes a partial payment, each
16 payee shall receive approximately the proportional payment
17 unless another priority order or percentage payment is
18 specified in the judgment.

19 I'm going to waive the interest on the restitution
20 in this case.

21 Mr. Romo shall comply with the rules and
22 regulations in Second Amended General Order 20-04 or waive
23 any fines in this case.

24 Pursuant to the Sentencing Reform Act of 1984 it's
25 the judgment of this Court that Mr. Romo will be committed

1 on Counts 1 and 2 of the Indictment to the custody of the
2 Bureau of Prisons for a term of 96 months. The term of 96
3 months on each of Counts 1 and 2 will be served
4 concurrently. I will recommend the Bureau of Prisons
5 conduct a mental health evaluation and provide any and all
6 necessary treatment.

7 Upon release from imprisonment, Mr. Romo will be
8 placed on supervised release for a term of 30 years. The
9 term will consist on 30 years on each of Counts 1 and 2 of
10 the Indictment. All terms to run concurrently under the
11 following terms and conditions:

12 He shall follow the rules and regulations of the
13 U.S. Probation and Pretrial Services Office and Amended
14 General Order 20-04. While on supervision, he shall pay the
15 special assessment and restitution in accordance with this
16 judgment's orders.

17 This is the part I believe Mr. Wasserman made a
18 point that I think is well-taken.

19 But I want to give Ms. Stiteler -- do you have any
20 objection to the proposal that Mr. Romo had made with
21 respect to the financial gains just ensuring that it doesn't
22 put him in a Catch 22 where he owes taxes to the government
23 to the detriment of the obligation here?

24 MS. STITELER: Your Honor, my main concern with
25 this is it will delay restitution payment to the victims if

1 he receives an income or windfall early in the year and he's
2 been permitted to hold onto it until next year when income
3 taxes are filed before the --

4 THE COURT: The problem is that, if he does that,
5 then your colleagues in the other building will then
6 prosecute him for tax violation. Right?

7 MS. STITELER: I think his -- the defense's
8 objection is reasonable. I am just concerned about the
9 application in any particular case and the impact on --

10 THE COURT: I hear where you are coming from. I
11 am going to try to adopt the defense recommendation in this
12 case.

13 If there are issues, I know whether you or the
14 folks in the tax side -- or I should say the financial
15 litigation unit, they have been very active recently.
16 They'll let me know if there is an issue.

17 Mr. Romo shall apply all monies received from
18 income tax refunds, winnings, inheritances, judgments, and
19 other financial gains less any amount necessary to pay state
20 and federal taxes on the aforementioned financial gains to
21 the Court-ordered financial obligation.

22 He shall cooperate in the collection of a DNA
23 sample.

24 He shall refrain from any unlawful use of a
25 controlled substance.

1 He shall submit to one drug test within 15 days of
2 release from custody and at least two periodic drug tests
3 thereafter not to exceed eight tests per month as directed
4 by his probation officer.

5 He shall participate in an outpatient substance
6 abuse treatment and counseling program that includes
7 urinalysis, breath and/or sweat patch testing as directed by
8 his probation officer.

9 He shall abstain from using alcohol and illicit
10 drugs and from abusing prescription medications while on
11 supervision.

12 As directed by the probation officer, he shall pay
13 for all or part of the costs of the Court-ordered treatment
14 to the aftercare contractors during the period of
15 supervision. He shall provide proof of payment and payment
16 as directed by his probation officer.

17 If you have no ability to pay, sir, payment is not
18 required.

19 Your lawyer will go over all of these terms, but
20 the ones that I am going to read right now are particularly
21 important because I have seen folks in your situation get
22 tripped up on these. I'm not suggesting that you would, but
23 it's important to know that:

24 You shall register as a sex offender and keep the
25 registration current in each jurisdiction where you reside,

1 where you are an employee, and where you are a student to
2 the extent that those registration procedures have been
3 established in those jurisdictions.

4 When registering for the first time, you have to
5 register in the jurisdiction where the conviction occurred,
6 which is here in the Central District of Los Angeles
7 specifically, but you shall also register in the
8 jurisdiction where you reside if it's different from this
9 district.

10 I don't know where you live, but I have had a
11 scenario where someone lived in Santa Barbara, they have to
12 register in L.A. and in Santa Barbara. Just make sure you
13 are aware of that.

14 You shall provide proof of registration to the
15 probation officer within three days of your placement on
16 probation.

17 Mr. Wasserman, I think this next condition is one
18 where you are suggesting a modification -- is that
19 correct? -- about the Abel testing?

20 MR. WASSERMAN: Yes, Your Honor. Per our papers,
21 we don't think that Abel testing and a polygraph should be
22 included in the conditions.

23 THE COURT: Okay. Now, again, is this effective
24 advocacy or, I mean, I know in your papers you cite the
25 question and qualms about polygraphing, but have you seen

1 clients of yours, for lack of a better term, be brought into
2 Court for -- based on bad polygraphs or Abel testing?

3 MR. WASSERMAN: I have -- I am trying to make sure
4 that I say this in a way that doesn't complicate the
5 privilege.

6 THE COURT: Right. Fair point.

7 MR. WASSERMAN: There have been instances in which
8 I have seen complications result from the request or
9 polygraph such that I have seen questions that are presented
10 prior to polygraph statements and questions say -- or rather
11 the prefatory statements in those questionnaires say things
12 like, "if you fail, it's your fault."

13 THE COURT: Okay.

14 MR. WASSERMAN: They put on defendants the idea
15 that, if for some reason there is a problematic answer to
16 the polygraph, the only reason that it's happening is
17 because they are lying.

18 It also presents complex situations -- and when I
19 say "complex" I mean the questions are worded in a way that
20 I had to read it several times -- when it asked about
21 criminal history.

22 And so that, combined with the fact that as noted
23 in the papers, the Justice Department manual talks
24 specifically about why polygraphs are not necessarily
25 reliable, I don't quite understand why that condition exists

1 and how we measure its efficacy and if its efficacy has ever
2 been measured by the probation office.

3 So in light of that and then, in light of the
4 article quoting Dr. Abel about Abel testing, we just don't
5 think those two particular physiological tests should be
6 included as possible tests.

7 Now, other treatment and evaluations, I don't have
8 a problem with at this juncture. But given the lack of
9 science that appears to support these, I don't see why the
10 Court should impose.

11 THE COURT: I appreciate your comments.

12 Again, this is about assessment of risk. I am
13 going to keep my eye on this, but I am not going to change
14 the condition as it relates to this.

15 Mr. Wasserman, you know where I am. If there is
16 an issue or concern, I know you will bring it up. But I
17 appreciate it. I am going to keep a close watch on this
18 issue. I just have not seen it come up in my time.

19 Mr. Romo will participate in psychological
20 counseling, and/or psychiatric treatment and/or participate
21 in a sex offender treatment program which may include
22 inpatient treatment upon order of the Court as approved and
23 directed by the probation officer. He shall abide by the
24 rules, requirements, and conditions of the program including
25 submission to risk assessment evaluations and physiological

1 testing such as polygraph and Abel testing, but defendant
2 retains the right to invoke the Fifth Amendment. The
3 probation officer shall disclose the presentence report
4 and/or previous mental health evaluations or reports to the
5 treatment provider.

6 He shall pay for all or part of the costs of the
7 treatment to aftercare contractors and shall provide proof
8 of payment as directed by the probation officer.

9 Similarly, Mr. Wasserman, you have a concern more
10 as it relates to Condition 11 about the inability to view
11 any adult materials that are not illegal.

12 MR. WASSERMAN: Correct.

13 THE COURT: I guess my concern about that is,
14 again, looking at reports and studies, not necessarily in
15 this case but other cases, for lack of a better term, some
16 say that's the gateway or that's how people get down the
17 rabbit hole to the scenarios that Mr. Romo finds himself in,
18 and it strikes me that I believe this condition says that it
19 allows it in the course of treatment.

20 And I have -- I guess I am -- what's the right
21 word? That seems appropriate. Again, it seems like
22 Mr. Romo went down a rabbit hole.

23 Now, there may have been a whole host of
24 factors -- substance abuse, et cetera. But to the extent
25 that pornography lead down this rabbit hole, this seems to

1 guard against it. But I want to give you an opportunity to
2 be heard.

3 MR. WASSERMAN: Certainly, Your Honor.

4 I think we make our position clear in the papers.

5 What I would say is, from the record before us, there is
6 nothing that says, well, Mr. Romo was watching adult
7 pornography and got tired of it so he started looking at
8 child pornography. Right? Or even that he was watching
9 adult pornography, happened upon some child pornography, and
10 then went down that rabbit hole.

11 THE COURT: That is a fair point.

12 My point is, again, we are looking at overall
13 things, as you pointed out other things that I have had, and
14 there have been suggestions by people smarter than certainly
15 me that that can lead down that path. And this seems to
16 guard against it because it does say, you know, it doesn't
17 prohibit him from possessing it for purposes of the mandated
18 sex offender treatment program. This way there is some
19 guards, I guess, to try to prevent any deviations.

20 MR. WASSERMAN: Certainly. I understand. I get
21 where the Court is coming from. It's simply -- and based on
22 what I have seen -- and I understand the Court is using its
23 experience -- based on what I have seen in this case and
24 cases that I have had before as well, I have never seen that
25 be the issue.

1 And I have not seen any of these studies that talk
2 about it being a gateway. The argument could just as easily
3 be to the contrary -- right? -- that if, in fact, there ever
4 were some sexual urge vis-à-vis children, which as we noted
5 in the psych report indicates there is not in Mr. Romo's
6 case, then that actually could be remediated or lessened
7 because they actually have access to adult sexual material.

8 So, again, when I read this condition -- and I
9 have seen it in a lot of child pornography cases -- it
10 creates a cognitive difference to me because I don't think
11 that makes sense.

12 I can understand don't commit a crime, don't
13 possess child pornography -- right? -- don't further
14 victimize people. But what does that have to do with the
15 possession of legal sex material in this country that is, in
16 fact -- possession of which is, in fact, protected by the
17 First Amendment?

18 Now, obviously, while people are on supervision,
19 their rights are restricted. I'm not saying that imposing
20 this would necessarily create a constitutional problem.

21 But when we are talking about curtailing
22 constitutional rights, which inevitably that would do, I
23 think it's important to ask what is the purpose of this and
24 is it rooted in some sort of, you know, valid pedagogy and
25 valid science that would make it have some efficacy

1 vis-à-vis the charges here?

2 THE COURT: I hear your point. We'll have to
3 agree to disagree on this one, but I do hear where you are
4 coming from.

5 Mr. Romo shall not view, possess any materials,
6 including pictures, photographs, books, writings, drawings,
7 videos, video games depicting and/or describing child
8 pornography, as defined in Title 18 Section 2256(8), or
9 sexually explicit conduct involving children, as defined in
10 Title 18 2256(2). He shall not view or possess any
11 materials such as videos, magazines, photographs, computers,
12 computer images, or other matter that depict actual sexually
13 explicit conduct involving adults as described in Title
14 18 USC Section 2257(h)(1). This condition does not prohibit
15 Mr. Romo from possessing materials solely because they are
16 necessary to and used for a collateral attack, nor does it
17 prohibit Mr. Romo from possessing materials prepared and
18 used for the purposes of Mr. Romo's court-mandated sex
19 offender treatment, when Mr. Romo's treatment provider or
20 the probation officer has approved the possession of those
21 materials in advance.

22 He shall not associate or have verbal, written,
23 telephonic, or electronic communication with any person
24 under the age of 18 except in the presence of the parent or
25 legal guardian of said minor and on the condition that

1 Mr. Romo has notified said parent or legal guardian of his
2 conviction in the instant offense. This provision does not
3 encompass persons under the age of 18 such as waiters,
4 cashiers, ticket vendors, et cetera, with whom you must
5 interact with in order to obtain ordinary and usual
6 commercial services.

7 You shall not frequent, loiter, or be within
8 100 feet of school yards, parks, public swimming pools,
9 playgrounds, youth centers, video arcade facilities, or
10 other places primarily used by persons under the age of 18.

11 You shall not affiliate with, own, control,
12 volunteer, or be employed in any capacity by a business or
13 organization that causes you to be in regular contact with
14 persons under the age of 18.

15 You shall not affiliate with, own, control, or be
16 employed in any capacity by a business whose principal
17 product is the production or selling of materials depicting
18 or describing sexually explicit conduct as defined in
19 Title 18 section 2256(2).

20 Your employment has to be approved -- preapproved
21 by your probation officer. And you shall submit the name
22 and address of your proposed employer at least ten days
23 prior to any scheduled change.

24 You shall not reside within direct view of school
25 yards, parks, public swimming pools, playgrounds, youth

1 centers, video arcade facilities, or other places primarily
2 used by persons under the age of 18.

3 Your residence shall be approved by your probation
4 officer, and any change must be preapproved by your
5 probation officer. And you shall submit the address of the
6 proposed residence to your probation officer at least ten
7 days prior to any scheduled move.

8 You shall submit your person, property, house,
9 residence, vehicles, papers, other electronic communication
10 or data storage devices or media and effects to search at
11 any time with or without a warrant by any law enforcement
12 officer or probation officer with reasonable suspicion
13 concerning a violation of the condition of your supervised
14 release or unlawful conduct by you and any probation officer
15 in the lawful discharge of that officer's supervision
16 functions.

17 You shall possess and use only those computers and
18 computer-related devices, screen names, passwords, email
19 accounts, and internet service providers that have been
20 disclosed to your probation officer upon commencement of
21 supervision. Any changes have to be approved by your
22 probation officer prior to first use. Computers and
23 computer-related devices include personal computers, PDA's,
24 personal digital assistants, internet appliances, electronic
25 games, cellular telephones, and digital storage media, as

1 well as their peripheral equipment that can access or be
2 modified to access the Internet, electronic bulletin boards,
3 and other computers.

4 All computers, computer-related devices, and their
5 peripheral equipment used by you shall be subject to search
6 and seizure. This does not apply to your employment site --
7 or items that are at your employment site that are
8 maintained and monitored by your employer.

9 And you shall comply with the rules and
10 regulations of the computer monitoring program.

11 I will authorize the disclosure of this
12 Presentence Report to any substance abuse treatment
13 providers. Further redisclosure is prohibited without the
14 consent of this court.

15 Immediately following the sentence you shall
16 report directly to the probation office for instructions
17 regarding the sex offender registration requirements.

18 As far as the date for surrender, have you talked
19 about that with your client, Mr. Wasserman?

20 MR. WASSERMAN: I have, Your Honor.

21 THE COURT: What date are you proposing?

22 MR. WASSERMAN: Your Honor, I can give the Court
23 specific reasons if it desires, but we are asking for 60
24 days to surrender.

25 THE COURT: Is there a date -- you want me to give

1 you a date in 60 days, or do you have a date in mind?

2 MR. WASSERMAN: A date in 60 days would be fine.

3 THE COURT: Is June 13th, does that work?

4 MR. WASSERMAN: Yes, Your Honor.

5 THE COURT: Any objection from the government?

6 MS. STITELER: Your Honor, I think given the
7 nature of the crime, the court needs to make a finding of
8 exceptional circumstances to delay the --

9 THE COURT: Mr. Wasserman --

10 Thank you, Ms. Stitelser.

11 Mr. Wasserman, you want to make your record as to
12 why June 13th is appropriate.

13 MR. WASSERMAN: Sure, Your Honor. So there's
14 three reasons.

15 Number 1, Mr. Romo needs time to convey the title
16 of his car to his wife so that she can use it with their
17 son. There are still some things with the car that need to
18 be fixed, and so he wants to make sure there are no issues
19 for his wife to deal with the car when he gives it to her.

20 Two, it allows him to give notice at his group
21 home and allows him to turn off his cell phone service.

22 Three, what I think is probably the most
23 compelling for the Court, as the Court knows the Marshals
24 Service is not quite transporting people right now in
25 regular fashion. And so if Mr. Romo were remanded today, he

1 would sit in a detention facility for some period of time
2 rather than end up at his final destination.

3 I believe 60 days would be sufficient time to
4 allow him to get designated, and then he can report directly
5 to his place of designation, start programming when he gets
6 there, which I think would best achieve some of the goals of
7 3553.

8 Moreover, as the Court also knows, the difference
9 between a remand and a surrender is that the Bureau of
10 Prisons lowers your security classification just a little
11 bit when you are permitted to surrender. We believe that
12 that is a compelling reason.

13 Finally, what we would say is that the
14 self-surrender location should he not be designated by that
15 time be the Riverside courthouse, which is 3470 12th Street,
16 Room G122 --

17 THE COURT: Can he surrender there? Do they take
18 surrenders at that court? I thought for surrenders for
19 custodial prison sentence it only had to be Downtown.

20 MR. WASSERMAN: That's not my understanding,
21 Your Honor.

22 That's Riverside, California 92501.

23 And the Court can say in the event the Riverside
24 courthouse will not take him, then surrender in Los Angeles.

25 THE COURT: Well, I think those are all compelling

1 reasons to justify the surrender date of June the 13th.

2 So he will be ordered to surrender at the
3 institution designated by the Bureau of Prisons at or about
4 before 12:00 noon on June 13th, 2022.

5 In the absence of such designation, he can report
6 to the Riverside courthouse, which is located -- I should
7 know the address, but I don't.

8 Can you say it again, Mr. Wasserman.

9 MR. WASSERMAN: 3470 12th Street, Riverside,
10 California 92501.

11 THE COURT: All right. So 3470 12th Street,
12 Riverside, California 92501, at the U.S. Marshal Service.

13 If for whatever reason the U.S. Marshal Service is
14 unable to accept you at that time, if you have haven't been
15 designated, then you are to report to the First Street
16 courthouse here in this building at 350 West First Street,
17 Suite 3000, L.A., California.

18 Sir, you have the right to appeal your conviction
19 and sentence if you believe that the conviction or sentence
20 was unlawful or inappropriate. Generally speaking you must
21 file your Notice of Appeal within 14 days of the judgment
22 being entered.

23 If you can't afford a lawyer, you can make a
24 request to the Court of Appeals to have a lawyer assigned to
25 you.

1 If you need a copy of the transcript, you can make
2 a request and the transcript will be provided for you at the
3 government's expense.

4 This was -- there was no Plea Agreement in this
5 case. So I don't believe there are any remaining counts to
6 be dismissed.

7 For the record, the order of forfeiture, I believe
8 which was filed last week, that order of forfeiture will go
9 into effect as well.

10 And the bond will be exonerated in this case upon
11 his surrender on June 13th.

12 Is there anything further that I have missed,
13 Ms. Stiteler?

14 MS. STITELER: Your Honor, I would ask that you in
15 the judgment include that the five victims in this case, the
16 five named victims who submitted victim impact statements,
17 make findings that the victims are victims.

18 THE COURT: Yes. To the, I -- I am sorry I did
19 not make that statement. But yes, I have read and
20 considered those impact statements, and they are indeed the
21 victims in this case, and the record and the judgment will
22 reflect that.

23 MS. STITELER: Thank you. Also, there is not a
24 restitution scheduled.

25 THE COURT: Well --

1 MR. WASSERMAN: The parties have agreed to one.

2 THE COURT: Okay. Go ahead.

3 MS. STITELER: The -- our recommendation is that
4 restitution shall be due during the period of imprisonment
5 at the rate of not less than \$25 per quarter and pursuant to
6 the Bureau of Prisons Inmate Financial Responsibility
7 Program.

8 THE COURT: So that's consistent with the special
9 assessment. So basically after the special assessment, \$25
10 will go towards restitution.

11 MS. STITELER: If any of the amount of the
12 restitution remains unpaid after release from custody,
13 nominal monthly payments of at least ten percent of
14 defendant's gross monthly income but not less than \$25,
15 whichever is greater, shall be made during the period of
16 supervised release and shall begin 90 days after the
17 commencement of supervision. Nominal restitution payments
18 are ordered if the Court finds the defendant's economic
19 circumstances do not allow for immediate or future payment
20 of the amount ordered.

21 THE COURT: Does defense counsel agree to that?

22 MR. WASSERMAN: Yes.

23 THE COURT: That will also be reflected in the
24 judgment in this case.

25 Anything further, Ms. Stiteler?

1 MS. STITELER: Nothing further.

2 THE COURT: Thank you for engaging with the Court.
3 I appreciate it. You did an excellent job on behalf of the
4 government.

5 Mr. Wasserman.

6 MR. WASSERMAN: Two things -- or four things.

7 First, we would ask that the Court recommend
8 placement in the RDAP program.

9 THE COURT: I will make that recommendation in the
10 judgment.

11 MR. WASSERMAN: Second, we would ask that the
12 Court recommend that the Bureau of Prisons designate
13 Mr. Romo to Lompoc.

14 THE COURT: I will make that recommendation.

15 Mr. Romo, I am sure your lawyer has told you it's
16 just a recommendation, no guarantees, but I will place in
17 the judgment the recommendation that you be housed at
18 Lompoc.

19 MR. WASSERMAN: Third, I heard the Court's reading
20 of what was proposed Condition Number 18, which was the
21 search condition. I take it the Court is overruling the
22 defendant's objection to that.

23 THE COURT: Yes, that would be a fair assessment.

24 MR. WASSERMAN: Finally, Your Honor, just for the
25 record, to the extent that the Court is using the number of

1 images in the 7,000 range as a basis for the Court's
2 sentence, I would note that the 7,000-plus image and 248
3 video number are images which contain apparent child
4 pornography that were not necessarily confirmed by NCMEC.
5 There were at least 33 total NCMEC verified videos. This
6 was at page 4 of the government's sentencing position.

7 I just wanted to note that for the record because
8 the Court indicated that sentence higher than what the
9 defense was requesting was based in part on the number of
10 images.

11 THE COURT: That will be so noted. And yes, there
12 are 7,000, but I would submit even the amount that have been
13 verified is a significant amount. So that's why the Court
14 is imposed -- one of the reasons why the Court has imposed
15 the sentence that it has.

16 Anything further, Mr. Wasserman?

17 MR. WASSERMAN: No, Your Honor, thank you.

18 THE COURT: Thank you all. Excellent job on both
19 sides.

20 Good luck to you, Mr. Romo.

21 THE CLERK: All rise. This Court is in recess.

22 (Proceedings concluded at 10:18 a.m.)

23 --oo--

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1 CERTIFICATE
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4 I hereby certify that pursuant to Section 753,
5 Title 28, United States Code, the foregoing is a true and
6 correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter and that the
8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10 Date: June 1, 2022.

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14 /S/ CHIA MEI JUI

15 Chia Mei Jui, CSR No. 3287
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