

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES VICTOR FLINT— PETITIONER

VS.

UNITED STATES OF AMERICA— RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

APPENDIX A

TO

PETITION FOR WRIT OF CERTIORARI

Decision Below:

United States v. Flint, No. 23-8069 (10th Cir. July 30, 2024)

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 30, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES VICTOR FLINT,

Defendant - Appellant.

No. 23-8069
(D.C. No. 2:23-CR-00067-ABJ-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **HARTZ**, **BALDOCK**, and **MORITZ**, Circuit Judges.

Last year, Charles Flint pleaded guilty to possessing child pornography under 18 U.S.C. § 2252A(a)(5)(B). At sentencing, the district court determined, over Flint's objection, that his 2007 Colorado conviction for attempted sexual assault on a child triggered a mandatory minimum ten-year sentence under § 2252A(b)(2) because that conviction "relat[es] to aggravated sexual abuse, sexual abuse, or abusive sexual

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

conduct involving a minor.” The district court then sentenced Flint to ten years in prison, followed by five years of supervised release.

Flint now challenges the district court’s application of the enhancement under § 2252A(b)(2). He argues that under the categorical approach, his Colorado conviction for attempted sexual assault on a child does not qualify as a predicate offense for the enhancement because the state statute criminalizes a broader range of conduct than the generic federal offenses listed in § 2252A(b)(2). *See Descamps v. United States*, 570 U.S. 254, 261 (2013) (explaining that under formal categorical approach, state-law conviction cannot trigger statutory enhancement “if the [state] statute sweeps more broadly than the generic [federal] crime”). But Flint acknowledges that our precedent forecloses his argument, and he brings it only to preserve it for further review.

Indeed, we have held that “neither the text nor the history of the enhancement statute limits triggering offenses to those mirroring federally[]defined offenses.” *United States v. Bennett*, 823 F.3d 1316, 1325 (10th Cir. 2016); *see also United States v. Hebert*, 888 F.3d 470, 475 (10th Cir. 2018) (same). By its plain terms, the statute requires a mandatory minimum ten-year prison sentence if the defendant “has a prior conviction . . . under the laws of any [s]tate *relating to* aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor.” § 2252A(b)(2) (emphasis added). Giving the phrase “*relating to*” its ordinary meaning, we explained that “the offense need only ‘stand in some relation to,’ ‘pertain to,’ or ‘have a connection’ with” aggravated sexual abuse, sexual abuse, or abusive sexual conduct

involving a minor. *Bennett*, 823 F.3d at 1322 (quoting *United States v. Becker*, 625 F.3d 1309, 1310 (10th Cir. 2010)). If it does, the enhancement in § 2252A(b)(2) applies—even if the state statute criminalizes more conduct than the federal law. *Id.* at 1322–25. And here, Flint does not dispute that under this interpretation of the statute, his Colorado conviction for attempted sexual assault on a minor qualifies as a predicate offense for the mandatory minimum under § 2252A(b)(2).

As Flint recognizes, “[w]e are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court.” *United States v. Begay*, 974 F.3d 1172, 1176 (10th Cir. 2020) (quoting *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993) (per curiam)). Because our precedent forecloses Flint’s challenge to the application of the § 2252A(b)(2) enhancement, we affirm.¹

Entered for the Court

Nancy L. Moritz
Circuit Judge

¹ Because our precedent forecloses Flint’s challenge, we affirm without reaching the government’s contention—which Flint vigorously disputes—that Flint waived his appellate arguments by “chang[ing] his theory on appeal” and failing to argue plain error. Aplee. Br. 7; *see also United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019) (“When an appellant fails to preserve an issue and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived (rather than merely forfeited) and decline to review the issue at all”).

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TO

PETITION FOR WRIT OF CERTIORARI

Final Judgment:

United States v. Flint, No. 2:23-cr-00067-ABJ-1 (D. Wyo.) (Oct. 2, 2023)



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA

vs

CHARLES VICTOR FLINT

Case Number: 2:23CR00067-01J

Defendant's Attorney(s):
Tracy Racicot Hucke

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT pled guilty to count 1.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 2252A(a)(5) (B) and (b)(2)	Possession of Child Pornography	March 1, 2023	1

The defendant is sentenced as provided in pages 2 through 9 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Defendant's USM No: 60869-510October 2, 2023

Date of Imposition of Sentence

Alan B. Johnson
Alan B. Johnson
United States District Judge

10/2/2023
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months.

The Court strongly recommends to the Bureau of Prisons that this defendant be designated to Englewood in Colorado for its sex offender treatment program which has a good reputation for being effective in offering state of the art information and assistance in dealing with those kind of issues involving child sexual exploitation.

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

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

United States Marshal/Bureau of Prisons

By: _____
Authorized Agent

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

The defendant shall not commit another federal, state or local crime. The defendant shall not illegally possess a controlled substance. **However, mandatory drug testing for this defendant is waived.**

If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (see 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.

The defendant shall submit to the collection of a DNA sample at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

The defendant shall comply with the standard conditions that have been adopted by this Court as defined in the contents of the Standard Conditions page (if included in this judgment). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

The defendant may use a personal computer(s) or personal Internet capable device(s); however, he/she must limit that use and/or possession to personal computers or personal Internet capable devices that are capable of being monitored by the U.S. Probation Officer, and have monitoring software installed and approved by the U.S. Probation Officer. Any computer or Internet capable device must be able to be effectively monitored by and comply with the requirements of monitoring software utilized by the Probation Office. In order to allow for effective monitoring, the defendant may be limited to possessing a total of only two computer(s) or personal Internet capable device(s). For the purposes of this condition, the term computer is defined at 18 U.S.C. § 1030(3), which includes, but is not limited to, traditional computers (Windows/Apple/Linux based machines), cellular phones, Internet tablets, and game machines and related accessories. The defendant must disclose any username or identification(s) and password(s) for all wireless routers, computers or Internet capable devices to the probation officer.

The defendant must, at his/her own expense, allow the Probation Officer to install any software/hardware designed to monitor activities on any computer or Internet capable device you are authorized by the Probation Officer to use. This monitoring may record any and all activity on the device, including, but limited to, the capture of keystrokes, application information, Internet use history, email correspondence, and chat conversations. You must inform all parties who

access approved computer(s) or similar electronic devices(s) that the device(s) is subject to search and monitoring. You must not attempt to remove, tamper with, reverse engineer, or in any way circumvent the monitoring software/hardware. The defendant shall not make any attempt to conceal or erase the names of sites visited, or any other data. The defendant shall be prohibited from using any form of encryption, cryptography, steganography, compression, password protected files and/or other method that might limit access to, or change the appearance of, data and/or images without prior approval from the Probation Officer.

The defendant shall provide a complete and accurate inventory of all computers, computer-related equipment, and communications devices and services on an inventory form provided by the Probation Office. The defendant agrees to ensure that all information on the inventory form is complete, accurate, and current at all times. The defendant shall not use, possess, or access any electronic device or service not reported on the inventory form. The defendant shall consent to the Probation Officer conducting periodic unannounced examinations of his/her computer(s), hardware, software, and other electronic devices, which may include retrieval and copying of data from his/her computer(s). This also includes the removal of such equipment if necessary, for the purpose of conducting a more thorough inspection or investigation.

The defendant shall participate in a sex-offense specific evaluation and treatment program approved by the Probation Officer. The Probation Officer, in consultation with the treatment provider, will supervise the defendant's participation in and compliance with the treatment program. The defendant must comply with all rules and regulations of the treatment program that are specified by the treatment agency. The defendant shall not discontinue treatment without the permission of the Probation Officer.

The defendant shall be required to submit to periodic polygraph testing as a means to assess risk and ensure that he/she is in compliance with the requirements of his/her supervision or treatment program.

The defendant shall not meet, have direct contact or spend time with, any person under the age of 18, or have verbal, written, telephonic, or electronic communication with any such person, except with the express permission of the minor's parent or legal guardian who is aware of the nature of the defendant's background and current offense, and the supervising Probation Officer. Direct contact does not include incidental contact during ordinary daily activities in public places.

The defendant is permitted to use computer systems at his/her place of employment, or school, for employment or educational purposes only. If your employment requires the use of a computer, you may use an employer-owned computer in connection with your employment, at your place of employment, provided you notify your employer of: (1) the nature of your conviction; and (2) the fact that your conviction was facilitated by the use of a computer. The Probation Officer shall confirm your compliance with this notification requirement. Employer-owned computers may not be used in the defendant's residence, or any other location outside the employer's place of business, unless monitoring software is installed and approved by the Probation Officer. The defendant may use computer systems at an approved public employment

agency for employment purposes only and shall complete a computer activity log provided by the Probation Office any time such computer system is accessed.

The defendant shall not search for, access, possess, send, or receive any material constituting or containing child pornography as defined in 18 U.S.C. § 2256(8), or any material constituting or containing the obscene visual representation of the sexual abuse of children as defined in 18 U.S.C. § 1466A.

The defendant shall not search for, access, possess, send, or receive any visual depiction, including any photograph, film, video, picture, or computer or computer generated image of child erotica. Child erotica is depiction of a minor in a sexually suggestive pose or clothing. When considering whether a minor is pictured in a sexually suggestive pose or clothing, the following non-exhaustive list of factors should be considered: i. whether the focal point of the visual depiction is on minor's genitalia, pubic area, or breasts; ii. whether the setting of the depiction appears to be sexually inviting or suggestive – for example, in a location or in a pose associated with sexual activity; iii. whether the minor is depicted in an unnatural pose or in an inappropriate attire; iv. whether the minor is fully or partially clothed or nude; v. whether the visual depiction appears to convey sexual coyness or an apparent willingness to engage in sexual activity; or vi. whether the visual depiction appears to have been designed to elicit a sexual response in the viewer.

The court orders, as an explicit condition of supervised release for the defendant, who is a felon and required to register under the Sex Offender Registration and Notification Act, that he submit his person, and any property, storage facility, house, residence, office, vehicle, papers, computer, or other electronic communications or date storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision function.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act in any federal, state, local or tribal jurisdiction where the defendant resides, is employed, carries on a vocation, or is a student, as direct by law.

The defendant shall participate in a cognitive-behavioral treatment regimen that may include, but is not limited to, Moral Reconation Therapy, Cognitive Thinking, Thinking for a Change, or Interactive Journaling. The defendant shall actively participate in treatment until successfully discharged or until the U.S. Probation Officer has excused the defendant from the treatment regimen.

The defendant shall participate in and successfully complete mental health treatment in a program approved by the U.S. Probation Officer, and abide by the rules, requirements, and conditions of the treatment program. The defendant shall not discontinue treatment without the permission of the probation officer.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of the time the defendant was sentenced or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant shall answer truthfully the questions asked by the probation officer.
5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

10. The defendant shall 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. The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may, after obtaining Court approval, require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

FINANCIAL PENALTIES

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below.

Count	Assessment	Community Restitution	Fine	
1	\$100.00	\$0.00	\$0.00	
Notes:				
Totals:	\$100.00	\$0.00	\$0.00	

The fine and/or restitution includes any costs of incarceration and/or supervision. The fine and/or restitution, which is due immediately, is inclusive of all penalties and interest, if applicable.

The defendant shall pay interest on any fine and/or restitution of more than Two Thousand Five Hundred Dollars (\$2,500.00), unless the fine and/or restitution 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 below payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The court has determined that the defendant does not have the ability to pay interest or penalties and it is ordered that the interest and penalties not be applied to fine and/or restitution.

THE COURT FINDS that restitution is mandatory; however, no restitution has been requested.

THE COURT FINDS the defendant is indigent and unable to pay a \$5,000 special assessment pursuant to the Justice for Victims of Trafficking Act of 2015.

THE COURT FINDS the defendant is unable to pay an assessment pursuant to the “Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018” of up to \$17,000 and waives this assessment.

THE COURT FINDS the defendant does not have the ability to pay a fine within the guideline range.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) community restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties; (7) JVTA Assessment.

The total fine and other monetary penalties shall be due in full immediately.

IT IS ORDERED the defendant shall pay a special assessment fee in the amount of \$100, which shall be due immediately. Payments for monetary obligations shall be made payable by cashier's check or money order to the Clerk of the U.S. District Court, 2120 Capitol Avenue, Room 2131, Cheyenne, Wyoming 82001 and shall reference the defendant's case number, 2:23CR00067-01J. The defendant shall participate in the Inmate Financial Responsibility Program to pay his/her monetary obligations. The defendant shall pay all financial obligations immediately. While incarcerated, the defendant shall make payments of at least \$25 per quarter. Any amount not paid immediately or through the Inmate Financial Responsibility Program shall be paid commencing 60 days after his/her release from confinement in monthly payments of not less than 10% of the defendant's gross monthly income. All monetary payments shall be satisfied not less than 60 days prior to the expiration of the term of supervised release.

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APPENDIX C

TO

PETITION FOR WRIT OF CERTIORARI

Transcript of Sentencing Proceedings:

United States v. Flint, No. 2:23-cr-00067-ABJ-1 (D. Wyo.) (Oct. 2, 2023)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING

3 UNITED STATES OF AMERICA, DOCKET NO. 23-CR-00067-ABJ
4 Plaintiff, (Pages 1 through 40)
5 vs.
6 CHARLES VICTOR FLINT, Cheyenne, Wyoming
7 Defendant. Monday, October 2, 2023
8 9:38 a.m.
9

10 TRANSCRIPT OF SENTENCING PROCEEDINGS

11 BEFORE THE HONORABLE ALAN B. JOHNSON
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiff: CHRISTYNE M. MARTENS
15 ASSISTANT UNITED STATES ATTORNEY
16 DISTRICT OF WYOMING
17 100 East B Street, Suite 2211
18 Casper, WY 82601

19 For the Defendant: TRACY RACICOT HUCKE
20 FEDERAL PUBLIC DEFENDER'S OFFICE
21 District of Wyoming
22 214 West Lincolnway, Suite 31-A
23 Cheyenne, WY 82001

24 MELANIE L. HUMPHREY-SONNTAG, RDR, CRR, CRC
25 Federal Official Court Reporter
26 2120 Capitol Avenue, Room 2228, Cheyenne, WY 82001
27 307.433.2169 * *MelanieSonntagCRR@gmail.com*

28 Proceedings reported with realtime stenography;
29 transcript produced with computer-aided transcription.

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1 (Proceedings commenced 9:38 a.m., October 2, 2023,
2 within the presence of the defendant in custody.)

3 THE COURTROOM DEPUTY: Court is now in session.

4 THE COURT: Thank you. Please be seated.

5 We have a sentencing hearing today in the case of the
6 United States of America against Charles Victor Flint. This
7 matter comes before the Court under Criminal
8 Docket 23-CR-00067.

9 Present today are Christyne M. Martens, who is the
10 Assistant United States Attorney in charge of this case. And
11 representing the defendant is Tracy Racicot Hucke.

12 I note that Laura M. Harris cannot be here today --
13 she is the author of the presentence investigation report --
14 but representing that office is Kristen Simmer.

15 The defendant -- well, I'll let Ms. Martens introduce
16 the case.

17 MS. MARTENS: Thank you, Your Honor.

18 As you mentioned, we're here this morning for
19 sentencing.

20 Mr. Flint was charged by an indictment back in May,
21 which charged a single count of possession of child
22 pornography. He entered a plea agreement with the
23 United States, which was filed with this Court on July 7th,
24 and in that plea agreement he agreed to plead guilty to the
25 single count charged. The United States agreed to recommend a

1 low end guideline sentence, and the parties left for
2 litigation at sentencing -- at or before sentencing -- the
3 question of whether Mr. Flint's prior convictions qualify him
4 for the 10-year mandatory minimum under the statute.

5 And so since we are here at sentencing today, we have
6 some pleadings that have been filed in advance of today's
7 hearing, an objection by Mr. Flint to that 10-year mandatory
8 minimum, and briefing by the United States and the sentencing
9 memo in support of that mandatory minimum. And as
10 I understand it, that will be the principal issue this
11 morning.

12 THE COURT: Very well. Thank you.

13 Would the defendant please come forward with his
14 counsel.

15 MS. HUCKE: Well, Your Honor, Mr. Flint would ask if
16 he could remain at counsel table. He does have the -- his
17 prosthetic leg, which makes it hard and really uncomfortable
18 for him to stand for long periods of time.

19 But if he's making a statement, I'll make sure that
20 he's speaking clearly or in direct view of Ms. Sonntag so that
21 she can clearly take down everything that he says.

22 THE COURT: Very well. If you'll arrange for your
23 microphones and -- please raise your right hand and be sworn.

24 (Defendant sworn.)

25 THE COURT: Please state your full name.

1 THE DEFENDANT: Charles Victor Flint.

2 THE COURT: And your age, Mr. Flint?

3 THE DEFENDANT: 63.

4 THE COURT: Mr. Flint, are you under the influence of
5 any drug, alcohol, pill, or medication today?

6 THE DEFENDANT: No.

7 THE COURT: You take medications regularly for a
8 number of conditions, don't you?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: And are you compliant with the
11 medications that have been prescribed for you?

12 THE DEFENDANT: Yes.

13 THE COURT: You're taking the meds?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you under the influence of any
16 unlawful drug, alcohol, pill, or medication?

17 THE DEFENDANT: No, sir.

18 THE COURT: Very well. And, actually, you were
19 taking a series of medicines for your conditions that were
20 prescribed by physicians outside of the Bureau of Prisons or
21 the detention facility; is that correct?

22 THE DEFENDANT: Yes, sir.

23 (Telephone interruption.)

24 MS. HUCKE: Sorry. I'm trying to put it on silent.

25 THE COURT: And the -- it's my understanding that the

1 detention facility has changed some of those medications.

2 THE DEFENDANT: Yes, they did.

3 THE COURT: How are you doing?

4 THE DEFENDANT: I'm doing good.

5 THE COURT: Are you suffering from any mental or
6 physical condition today that would interfere with your
7 understanding of what's happening?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you been able to meet with your
10 counsel and discuss the presentence investigation report?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And has she made it available to you so
13 that you could read it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And do you understand it?

16 THE DEFENDANT: Yes.

17 THE COURT: The issue is very significant in this
18 matter. As I understand it, if -- if the Government's
19 arguments in this matter prevail, you're facing a mandatory
20 minimum sentencing range of 120 months or 10 years'
21 imprisonment.

22 On the other hand, if the matter is not sentenced in
23 that way and if your prior convictions do not control this
24 matter, the sentencing range will be a sentencing range of
25 57 to 71 months. And that is based on a total offense

1 level of 25 and a Criminal History Category of I.

2 Are you satisfied that all questions that you've had
3 concerning this matter have been satisfactorily answered by
4 your counsel?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And are you satisfied with the work she's
7 been doing for you?

8 THE DEFENDANT: Yes.

9 THE COURT: Very well.

10 The significant issue in this matter, then, is
11 that -- is whether or not the defendant has a qualifying
12 conviction which would trigger the mandatory 120-month
13 sentence in this matter.

14 And I'll, Ms. Hucke, hear from you first.

15 MS. HUCKE: Thank you, Your Honor.

16 I don't really have anything additional to add to the
17 argument than what was submitted.

18 But we do contend that the two prior convictions are
19 overly broad and, therefore, under the categorical approach,
20 would not apply. We understand that there is the Tenth
21 Circuit precedent. And, as stated in the -- the statement, we
22 ask for the Court to find that it is overbroad; however, if
23 the Court finds that they do apply, we would -- he would like
24 to reserve that argument for future review since the Circuits
25 are split on that.

1 And we don't really have any additional argument than
2 what was laid out other than to ask that the Court find that
3 they were overly broad and that they do not apply.

4 THE COURT: Very well.

5 Ms. Martens.

6 MS. MARTENS: Thank you, Your Honor.

7 May I come to the podium?

8 THE COURT: Please. Would you.

9 MS. MARTENS: So in advance of sentencing today, we
10 filed a memorandum laying out the law, and I'd just like to
11 walk through that memorandum a little bit. I don't intend to
12 rehash it in its entirety, but I think that I can add a little
13 more meat to the bones.

14 THE COURT: Would you, please.

15 MS. MARTENS: So when we're thinking about the
16 categorical approach in this area, the categorical approach is
17 something that -- well, it's awful in general. It's the
18 subject of much litigation, and it's a messy subject in the
19 courts.

20 But when we're thinking about the categorical
21 approach under this particular statute, the inquiry is quite a
22 bit easier because we're dealing with what the statutory
23 language relates to. So what we see here is that we don't
24 need a tight categorical fit in this area like we would with
25 the crime of violence questions that have been driving the

1 Courts nuts since *Taylor* -- and I'm thinking about the
2 original *Taylor* case dealing with burglary.

3 So in looking at Mr. Flint's convictions, what we see
4 is he has two separate convictions, one for an attempted
5 sexual assault on a child and one for Internet luring of a
6 child.

7 I think that it's probably most efficient to address
8 the Internet luring statute first. That was one of those
9 statutes -- when I first looked at Mr. Flint's criminal
10 history, read the statute, I thought, "Well, surely that's a
11 qualifying sex offense" because in this area all we're looking
12 for to trigger that 10-year mandatory minimum is a prior
13 conviction that relates to aggravated sexual abuse, sexual
14 abuse, and abusive sexual contact with a minor -- conduct with
15 a minor. Excuse me.

16 So "Internet luring of a child" certainly sounds, at
17 face value, like it should fit. And when we look at the
18 statute, it sure looks like it would relate to those
19 questions. Essentially, given the case law talking about
20 "relate to" is a broad legislative command, we're looking to
21 capture anything that is in the subject area.

22 But it turns out that the Colorado Courts have read
23 that statute so that it does not require proof of a desire to
24 have sexual contact with a juvenile; rather, the crux of the
25 offense is that the defendant knew or believed he was

1 communicating with a person under 15 years of age. It's
2 irrelevant whether the defendant sought to have sexual contact
3 with the other person.

4 So in light of the way that the Colorado Courts have
5 construed that statute, I just struggle with saying that it
6 truly relates to sexual abuse of another person or a child.
7 That "any -- any purpose" language, I guess, really does mean
8 any purpose. I certainly wouldn't have read it that way or
9 argued it that way, but I'm not in charge of the Colorado
10 Courts.

11 So setting that Internet luring conviction aside,
12 really, then the focus is on his conviction for attempted
13 sexual abuse of a child.

14 So when we look at that conviction, first of all,
15 I think it's noteworthy that his criminal history, his
16 judgment, the face of the judgment really appear to be for the
17 face -- or the substance of the crime, rather than an attempt.

18 So we attached that judgment, and I think it is our
19 sentencing attachment -- yes, it is Attachment 1. So if the
20 Court goes to page 9 of Document 33-1 -- excuse me; page 10 of
21 33-1 -- what we see there is that the statute of conviction is
22 simply 18-3-405(1), and there's no reference to attempt on
23 this judgment. But when you compare it to the charging
24 document, it's clear that Mr. Flint pled guilty to
25 Count Three, which was charged as an attempt.

1 And my understanding of Colorado law is that,
2 essentially, the way that attempt works is it's substantively
3 the same as Federal law where you have to have an overt act
4 but you charge the second statute, which is evident on the
5 charging document, 18-2-101, and then you get one step down on
6 the level of felony. So that's how you get to an F5 or a
7 Felony 5 on Count Three, which is consistent with the F5
8 reflect- -- reflected on the face of the judgment.

9 So to the extent there's maybe some ambiguity in
10 exactly what it was that Mr. Flint pled guilty to and that the
11 Court should be looking at, I really do think that we should
12 be considering this conviction as an attempt. Because when we
13 look at both his charging document and his judgment, I think
14 that reading those together make that clear that that's an
15 attempt.

16 But I don't know that that's enough ambiguity to take
17 us out of a strict categorical approach. And by that I mean
18 that the Court should really just be looking at the statute of
19 conviction, regardless of the factual underpinnings for the
20 crime. And that's consistent with the *Hebert* case, which is
21 the case both parties have relied on.

22 That's actually a relatively recent District of
23 Wyoming Tenth Circuit case clarifying that we should be using
24 the categorical approach in this area, meaning that we really
25 don't get into the factual underpinnings of the crime; we're

1 really looking strictly at the statute of conviction, and,
2 from there, once we are looking at the statute of conviction,
3 that is when we decide whether that crime, based on the
4 statute alone, relates to aggravated sexual abuse, sexual
5 abuse, and abusive sexual conduct involving a minor.

6 So setting that up, what we've done in our sentencing
7 memorandum is to lay out for the Court where it is we look for
8 those things.

9 So Chapter 109A, which is the sexual abuse crimes
10 under Federal law, that's really the starting point that we
11 look to to decide whether something relates to those sexual
12 abuse crimes laid out, and I thought it was really helpful to
13 look at that Seventh Circuit case. Certainly, it's not
14 binding, but it's more recent than our Tenth Circuit case and,
15 as I mentioned, the law in this area is ever evolving.

16 So what the Seventh Circuit pointed out is, again,
17 the breadth of that "relating to" language, and that's
18 consistent with the most recent case law, also from the
19 US Supreme Court pointing out that that "relating to" language
20 is really quite broad; we really do mean anything in the
21 subject area counts.

22 And I thought it was particularly helpful when the
23 Tenth Circuit pointed out that, had Congress really meant to
24 limit this "relating to" sexual abuse crimes to the
25 Chapter 109A crimes, it would have said so and it didn't.

1 So, then, when we think about the breadth of that
2 "relating to," we really have to then turn to the Colorado
3 statute at issue. So the substantive offense, 18-3-405(1),
4 requires an individual to knowingly subject another person,
5 not their spouse, to sexual contact and that the victim be
6 under 15 years of age.

7 So that's awfully similar to our sexual abuse crimes
8 with -- we think of sexual abuse of a minor requires a person,
9 the victim, to be 12 to 16 years old and the actor to be at
10 least four years older.

11 So the Colorado statute actually requires the child
12 to be under 15, whereas the Federal statute requires 12 to 16.
13 And they both require a four-year age gap. So, so far, they
14 are -- everything tracks.

15 We look at the definitions, including sexual contact,
16 and there's a minor disagreement between the parties here.

17 So Mr. Flint's conviction was finalized in 2006, and
18 that requires us to go back in time and make sure that we're
19 looking at the right version of the statute in play at the
20 time that he was convicted.

21 For the Court's convenience, Attachment No. 3 is the
22 2006 version of the Colorado definition of "sexual contact."

23 And you'll see that subparts (b) and (c) -- which are
24 broader than the Federal definition -- are simply not present
25 in the 2006 version. By my research, subsections (b) and (c)

1 were added in 2019 to change that definition.

2 So, given the definition that was in play at the time
3 of his conviction, it really strongly tracks the current
4 Federal definitions for "sexual contact."

5 So if we're looking, then, just at the -- the crimes
6 themselves, really, we pretty much have a categorical fit here
7 with the substantive crime of sexual abuse of a child under
8 Colorado law and abusive sexual contact under Federal law.

9 And we get down to abusive sexual contact because the least
10 culpable thing that is available in the definitions in
11 Colorado law is touching the intimate parts of a child over
12 clothing, so that would be sexual contact under Federal law.
13 Occurring under the circumstances laid out in 2243 with that
14 age differential, that gets us to what I think, even under the
15 strict approach, if we were looking in the kind of statutory
16 language at play with like a crime of violence, that would be
17 a categorical match.

18 But we don't have to have that here, and there is a
19 difference between Colorado law and Federal law on this point.
20 If we're looking at sexual contact, there is no attempt crime
21 available for that kind of sexual contact. But I don't think
22 that that changes whether or not this crime relates to abusive
23 sexual contact -- yeah, abusive sexual -- or excuse me --
24 aggravated sexual abuse, sexual abuse, and abusive sexual
25 contact under Federal law.

1 So when we think about that "relate to" language,
2 that's where the amendment gets pulled in. Mr. Flint, in
3 pleading guilty to this crime, still, under this statute, must
4 have intended to complete the substantive crime and taken a
5 substantial step to do so.

6 When we look at him, his intent and the intent
7 required for any individual convicted of this crime to engage
8 in that abusive sexual conduct with a minor, that certainly
9 relates to that sexual abuse listed out in the Federal
10 statute, and this is where I think the -- the *Becker* case,
11 pointed out by Probation in the addendum to the presentence
12 report, is particularly helpful. So *Becker* is a little
13 older -- and that citation is 625 F.3d 1309 -- is a little
14 older. And the approach -- the categorical approach taken in
15 *Becker* has been since rejected by the Tenth Circuit, but
16 there's part of the analysis that I still think is helpful to
17 this Court in deciding what it needs to do with that "relate
18 to" language because in *Becker* they were willing to engage in
19 the modified categorical approach, which involved looking at
20 the underlying conduct rather than just the statute.

21 But in discussing the statute and the crime at issue,
22 *Becker* said that inchoate crimes certainly relate to sexual
23 abuse as defined for the purposes of triggering this 10-year
24 mandatory minimum. It surveyed the sister circuits that had
25 reached the same conclusion and said that -- you know, in that

1 case, Mr. Becker had, in fact, done something very similar to
2 what Mr. Flint had done here. He had chatted with an
3 undercover law enforcement officer, tried to meet the child,
4 and arrested at that point.

5 But focusing just on the statutory part of it, the
6 Court talked about how these crimes relate to -- as inchoate
7 crimes -- that they relate to the sexual abuse contemplated to
8 trigger that 10-year statutory mandatory minimum.

9 So between that Tenth Circuit precedent already
10 concluding that these crimes can relate to sexual abuse as
11 contemplated to trigger that 10-year mandatory minimum and the
12 continued certainty that we have that there is a pretty broad
13 brush that we use when we're trying to deal with this kind of
14 statutory language, most recently the US Supreme Court,
15 talking about that in cases like *Lamar* -- that's from 2018 --
16 saying that we -- we do still mean that "relate to" is quite
17 broad, or -- I think you say it *Pugin*, P-u-g-i-n -- that was
18 decided just in 2023, continuing to say that "relate to" is
19 very broad.

20 I think that between those cases that this
21 conviction, even though it's an attempt, does qualify as a
22 prior conviction triggering that 10-year mandatory minimum.

23 THE COURT: Thank you.

24 MS. MARTENS: Thank you, Your Honor.

25 Does the defense wish to respond?

1 MS. HUCKE: Yes. Thank you, Your Honor.

2 I will just ask the Court to -- to focus on the
3 arguments by the defense that we've already previously
4 outlined and just -- even as the Government concedes, that --
5 not relying on *Becker*, which has been overturned and has not
6 been the correct analysis.

7 I think even under the categorical approach, when
8 looking at the statutes directly, there is language in the
9 Colorado statutes, as mentioned in the briefing, that do make
10 it overly broad.

11 So I -- I think we -- we do agree in the sense that
12 the Court can take a look at this offense just based under the
13 categorical approach, rather than taking the next step to the
14 modified categorical approach, and find that the Colorado
15 statutes are overly broad and do not apply.

16 However, if the Court does feel that they do apply,
17 Mr. Flint does want to preserve his right to have that be
18 reviewed, since there is a circuit split, and really agrees
19 with the dissent in the -- in the *Bennett* case, which has
20 outlined how we should look closely at the "related to"
21 language and it should not be as broad and the Court should
22 really narrow that down to find that they do not apply.

23 THE COURT: Thank you.

24 Anyone listening to what we're doing today would have
25 to be puzzled, and there is really no way to make it any

1 clearer than Ms. Martens has attempted to do today. And this
2 entire area seems to be -- provide sufficient questions and to
3 occupy the public Courts across the land when the criminal law
4 at sentencing should be relatively straightforward.

5 Here, the difference is roughly 60 months of -- of
6 confinement.

7 I find that the Government's position prevails in
8 this matter and that the Court is constrained to impose a -- a
9 sentence that represents the minimum mandatory sentence in
10 this matter with a person who has a previous conviction that
11 relates to this offense, I guess is the most simple way to
12 explain it, in applying the so-called categorical approach to
13 arrive at that -- at that position.

14 Do the parties need any further findings?

15 MS. MARTENS: Just on the -- the fact of triggering
16 that mandatory minimum, I don't think so, Your Honor.

17 THE COURT: Very well.

18 MS. HUCKE: I agree, Your Honor.

19 THE COURT: I'd be very pleased to hear from you,
20 Ms. Hucke, and, also, to hear from Mr. Flint.

21 MS. HUCKE: Thank you, Your Honor.

22 With the Court's finding that the mandatory minimum
23 120 months does apply, Mr. Flint has no other choice but to
24 ask the Court to apply the 120 months of mandatory minimum.
25 And I think the Court correctly nails it on the head that this

1 is as clear as mud, but the consequence for Mr. Flint is
2 five years of his life additional in prison.

3 I know that this is nothing that the Court can do,
4 and I have previously argued that just the child pornography
5 guidelines, as well as the law, is highly politicized, and
6 I don't -- it's extremely unfair to Mr. Flint that he sits
7 here for this particular conduct and, in this sense, his
8 guidelines are even below the mandatory five-year we often see
9 for somebody distributing child pornography because his
10 conduct isn't -- wasn't as bad as we can see for people who
11 often possess child pornography.

12 However, because this is such a politicized event in
13 Congress, that they can get some movement if we say, "Oh,
14 Let's be hard on sex offenders," Mr. Flint is really the one
15 who is getting the severe punishment, which I know that's not
16 the Court's fault, but I think it's worth noting.

17 Mr. Flint has taken responsibility for his conduct,
18 and as the Court -- as outlined in the PSR, with his
19 relationship with his family and his -- the property that he
20 owns in Sundance, the consequences for him are extremely
21 great.

22 He is most likely going to lose his property. He's
23 hoping that he's going to have some family members that can
24 help him sell it because his son is currently in a rehab
25 program and is not working and is not able to pay both

1 mortgages and is really addressing a lot of things in his
2 life.

3 And right now his son feels that he can't have
4 contact with his father because it's such a trigger that is
5 triggering his addiction, so he is working through that.

6 Mr. Flint takes this extremely heavy, the burden of -- that
7 he's placed on his son and his family, which is also just an
8 additional consequence that he is suffering.

9 He's hopeful that he can get treatment while he's in
10 custody. He does ask to be designated to Englewood, Colorado,
11 because he wants to engage in any sex offender treatment that
12 he can get while he's there because, obviously, him engaging
13 in this conduct is an addiction and he needs treatment to
14 address his addiction as well as one-on-one counseling to
15 address what led him to fall into this type of addiction
16 pattern. He wants to do that while he's there and, hopefully,
17 he'll get the benefit of some First Step Act programming.

18 I know the policy statement through BOP does say
19 someone who has been convicted of a sex offense or possession
20 of child pornography is not necessarily eligible for some of
21 those benefits, but, as I know, dealing with BOP, each
22 particular facility really addresses those policies in the way
23 that they see fit, and I have been being -- I have been
24 informed by clients that they have received some benefit from
25 the programming, so Mr. Flint is also hopeful that he can get

1 that, as well.

2 For all those reasons, Your Honor, Mr. Flint does ask
3 the Court just impose -- sadly -- impose the mandatory minimum
4 of 120 months, and he does ask for a designation in Englewood,
5 Colorado.

6 THE COURT: Thank you.

7 Mr. Flint, I'd be pleased to hear from you, anything
8 you wish to say.

9 THE DEFENDANT: I greatly regret what I have done.
10 I had been on good behavior with no problems for almost
11 16 years, since my last conviction. I do not know what
12 triggered it again, but I'd like to find out.

13 THE COURT: Does the Government have anything it
14 wishes to present?

15 MS. MARTENS: Your Honor, I don't have any additional
16 factual or, say, victim impact information to present, but
17 I do have some argument on the 53 -- 3553(a) factors if the
18 Court wishes to hear it.

19 THE COURT: Surely.

20 MS. MARTENS: May I approach the podium.

21 THE COURT: I would like to hear you.

22 Let me ask one thing. Paragraph 75 of the
23 presentence investigation report has various conditions.
24 They're really pretty onerous; again, reflecting the
25 seriousness by which Congress considers these matters.

1 Any objection or thoughts, Ms. Hucke?

2 MS. HUCKE: Your Honor, Mr. Flint and I have
3 discussed the conditions of supervised release. I've also
4 advised him that we've had some significant litigation around
5 some of these -- the language in these conditions and kind of
6 how he would like to address it, but at this time Mr. Flint
7 did not have an objection.

8 He does feel that not possessing any images of child
9 erotica would probably be in his best interests moving
10 forward, so we do not have any objections to those. And as
11 I previously mentioned, he and I have discussed those at -- at
12 length.

13 THE COURT: Very well. Thank you.

14 MS. MARTENS: I had all of my papers, and then I put
15 them down, so then I had them all in the wrong order.

16 The condition to deal with child erotica was
17 something that I wanted to draw the Court's attention to to
18 make sure that we had talked about today.

19 As to that condition, I think that it's worth
20 mentioning here that there is no general prohibition on the
21 possession of sexually explicit materials in the conditions
22 that have been proposed for Mr. Flint. So we've got a
23 slightly different consideration for Mr. Flint than we do
24 evident from cases like *Englehart* and *Koch*, which I know this
25 Court is very familiar with. It's really very narrow.

1 What we're doing here, in light of the fact that
2 Mr. Flint had over 17,000 images of child erotica -- and child
3 erotica is one of those subject areas that has been held to be
4 admissible at trial in a case on possession of child
5 pornography because it shows that demonstrated sexual interest
6 in children as material that is not illegal but is very
7 closely related to -- adjacent to child pornography.

8 So in focusing on this very, very narrow category of
9 otherwise legal material and prohibiting him from having that
10 material, the hope is that this very narrow restriction on
11 legal material would help to keep him away from behavior
12 that -- I think in Probation's experience, in my experience,
13 and the experience of investigators -- is material that goes
14 hand-in-hand with the possession of child pornography.

15 And based on the facts in this case, Mr. Flint
16 possessed child pornography and had a very, very large amount
17 of child erotica. So prohibiting him specifically from having
18 this material, the intention here is to help him succeed when
19 he goes out to supervised release by providing Probation those
20 tools to monitor him and intervene before he goes to material
21 that could result in yet another new law violation.

22 I think that we are in agreement in terms of the rest
23 of the calculation that the Court mentioned this morning and
24 as adjusted through the addendum to the presentence report, so
25 I think we have an offense level and a Criminal History

1 Category that everyone is in agreement on here in the
2 courtroom.

3 So triggering that 10-year mandatory minimum means
4 that the guideline sentence here is going to be, at bottom,
5 that 10-year mandatory minimum, and that is the sentence that
6 the Government is asking the Court to impose today, is that
7 mandatory minimum sentence, but I think it's worth thinking
8 some about Mr. Flint's history and characteristics in imposing
9 that sentence.

10 The presentence investigation report I think details
11 both the offense and Mr. Flint's history quite well, and
12 I know that the Court has certainly carefully reviewed those
13 documents in preparation for sentencing today.

14 But I do think that it's worth mentioning on the
15 record that -- Mr. Flint's conduct underlying those two
16 Colorado convictions. He chatted with undercover officers
17 posing as very young girls, 13 years old, and actually drove
18 to meet one of them to engage in a sexual act, and that's what
19 triggered his priors, the impulse to engage in the hands-on
20 offense.

21 What we find in this area is not only does the
22 trafficking in child pornography result in total devastation
23 to the victims whose images are trafficked, but there is a
24 relationship between the folks who traffic in child
25 pornography and those who engage in hands-on offenses against

1 children.

2 Thankfully, law enforcement was able to intervene
3 before Mr. Flint was able to commit such a hands-on offense.
4 But having taken that real-world action, he is the kind of
5 offender that does need to be separated from society for that
6 10 years.

7 He made admissions during his interview with law
8 enforcement that are deeply concerning. I'm particularly
9 concerned about his chat conversation with the man in South
10 Dakota and the discussions about, again, meeting a child for
11 sexual actions.

12 Now, hopefully, those things didn't occur. But, in
13 general, through my own human experience, the first step to
14 taking an action is making a plan, and that sure looks like a
15 plan, and I think that that makes Mr. Flint the kind of
16 offender where a 10-year sentence is well justified, even if
17 it is a mandatory minimum sentence.

18 The presentence report also recounts some of those
19 things that were found in Mr. Flint's home. I have deep
20 concerns about the fact that we have items belonging to
21 children found alongside of condoms and vaginal contraceptive,
22 that there was a child's pillow in his bed, and the -- again,
23 we have real-world manifestation in these things in his home
24 showing a sexual interest in children.

25 So having seen those real-world manifestations,

1 having looked at the conversations where he was engaging and
2 at least planning in taking real-world action that would
3 sexually harm a child, I do believe Mr. Flint is the kind of
4 offender who does deserve that 10-year mandatory minimum
5 sentence.

6 THE COURT: Thank you.

7 MS. MARTENS: Thank you, Your Honor.

8 THE COURT: Ms. Hucke, I -- looking at the terms and
9 conditions that are set forth in paragraph 75 and the
10 subparts, I didn't find a mental health condition on that.

11 MS. HUCKE: Your Honor, Mr. Flint does not object if
12 the Court wanted to add a mental health evaluation and
13 counseling because he feels that that is a big component of,
14 you know, what -- he is trying to get as much treatment as he
15 can at BOP, and he would want to continue his mental health
16 treatment while on supervision, so he has no objections to
17 that.

18 THE COURT: You know, I'd hesitate -- if I'm wrong,
19 I want it to be brought to my attention. But, as I recall, he
20 does not have a very strong memory of his childhood growing
21 up, and that's somewhat of a concern to me, that there are --
22 a red flag that there may be issues that he needs to deal
23 with.

24 THE DEFENDANT: May I address that, Your Honor?

25 THE COURT: Certainly.

1 THE DEFENDANT: As far as the memory loss, when I was
2 17 and was in the car accident and lost my leg, I did have a
3 head injury, also, and I've had memory loss due to that head
4 injury. I do remember some but not a lot.

5 MS. HUCKE: And, Your Honor, I think, additionally --
6 if I could just add a few more statements on behalf of
7 Mr. Flint.

8 Since he's been in custody, he has come in contact
9 with his brother and sister, his brother Michael and --

10 THE DEFENDANT: Lisa.

11 MS. HUCKE: -- and his sister Lisa, which has been a
12 really good step moving forward. They are supportive of him;
13 they know of his situation. Hopefully, they can provide some
14 support as he goes forward with his counseling to fill in any
15 gaps on his childhood.

16 But I know that building those relationships and
17 having them back in his life and that support has been really
18 meaningful for Mr. Flint and I think really shows that he is
19 really proactively working on a lot of those underlying
20 issues.

21 Just a couple of statements that I know Mr. Flint
22 wants the Court to note -- to note: As far as some of the
23 items that were found in his house, his son did give him the
24 pillow after he had shoulder surgery. So he -- he knows that
25 it can look bad because it's a child pillow, but it really was

1 given to him as just a pillow to help prop up his shoulder,
2 and he has taken responsibility for his conduct.

3 He wants to explore what really led him there, what
4 was the trigger, but he had no intention of ever meeting up
5 with a child or having any hands-on offense. It really was
6 part of fantasy talk that he was having with this other
7 individual, and so he wanted the Court to note that.

8 THE COURT: Very well.

9 I would think, nevertheless, there would be -- and
10 I certainly accept the explanation of the child's pillow. But
11 the presence of feminine underwear and other items that would
12 tend to indicate preparation have not been refuted in this
13 matter and, certainly, raise a concern in the Court's mind
14 of -- all of these offenses, the hands-on portions, seem to be
15 preceded by grooming and manipulation and attempts to place
16 someone in a position where -- of access one way or another.

17 And so we see these cases in many different forms,
18 from the traveler who may travel hundreds of miles to engage
19 in sexual activity with a child, to those who primarily are
20 alone and in their -- their rooms or basements viewing child
21 erotica and child pornography on their computer. And, of
22 course, the full gamut of individual behavior in those
23 circumstances is -- can be quite different, but it is
24 addictive behavior, certainly, as reflected here by a
25 collection of nearly 20,000 images of children in this case,

1 and it is a relatively short step, looking at some of the
2 areas that were being presented to the Internet to collect
3 materials, to proceed into this area of -- of child
4 pornography.

5 Mr. Flint does present as a person who has a number
6 of physical issues. 63 years of age, that's one factor. At
7 an earlier age, lost in an automobile accident -- I think he
8 was acting largely as a -- a Samaritan in that situation and a
9 collision caused the loss of his leg at an early age. Now
10 suffers from age-related and -- and health-related issues,
11 including Type 2 diabetes, previous -- as he says -- previous
12 head injury, high blood pressure that he is having to confront
13 and will continue to confront those kinds of issues while he
14 is in confinement in this case.

15 I would like to add the mental health component in
16 terms of the time of supervised release in this matter. If
17 it's not necessary, then it can be dispensed with, but
18 I think -- I think there may be issues that need to be dealt
19 with, and I think, with the help of his brother and sister,
20 those areas may be better exposed.

21 Like any addictive behavior, there is no magic pill
22 that can be offered to an individual, whether it's drugs or
23 alcohol or viewing child pornography or collecting these
24 images. I wish that there was but, sadly, it doesn't exist.

25 So whatever this defendant achieves by way of freeing

1 his mind from this preoccupation or addiction will be
2 something that he accomplishes using any techniques or
3 information that is provided in programming that he might
4 receive. You always hope it's successful.

5 One of the most powerful drives that individuals
6 have -- although in this case a deviant one -- is the sexual
7 drive, so it's no small thing when an individual is able to
8 incorporate that change in terms of their lifestyle, and it is
9 something that grows up over many, many years, as reflected in
10 this case by the amount of child erotica that has been
11 collected.

12 And, of course, we routinely see individuals who are
13 addicted to substances who have spent their -- the majority of
14 their lives feeding those addictions and the horrible
15 consequences that has on families and children growing up and
16 how often we see it being a multigenerational issue.

17 This defendant has been convicted of his third felony
18 offense, all of which have been sex offenses, all of which
19 have involved issues with regard to underage children, even
20 prepubescent children.

21 The defendant is 63 years old. He is a divorced
22 father of two grown sons, has worked for the better part of
23 his work life, at least recently, and is using his expertise
24 as a counterperson in parts departments. He has recently
25 relocated to Wyoming from his home state in Colorado and

1 was -- and had established himself in Sundance, Wyoming, where
2 he was doing, outwardly, quite well.

3 His son was living there with his family, although
4 I think the relationships with children following the divorce
5 have been distant, at best.

6 At the time of his arrest for the instant offense, he
7 was residing alone, recovering from shoulder replacement
8 surgery. Incidentally, further injury to that shoulder
9 occurred, and the status of that is unresolved at this point,
10 his surgeon suggesting additional time should be given to
11 seeing whether the body will heal while he continues
12 self-rehabilitation.

13 His prior offenses both involved online stings and
14 occurred in 2006 and involved contact with two separate
15 undercover law enforcement officers in two separate counties
16 within Colorado, all occurring in the same time frame. He
17 followed through enough with the arranged meeting in Jefferson
18 County, Colorado, first and, upon his arrival to engage in
19 whatever, he was arrested at that time.

20 The defendant had not done this since, although the
21 case file does indicate some discussions with a man -- who is
22 this South Dakota grandfather -- about arranging an encounter
23 with his minor granddaughter. This did not come to fruition
24 or amount to any further development.

25 His interest -- the defendant's interest is in minor

1 females between the ages of 10 and 12 as he engages and has
2 engaged in online solicitation of sex with adults, which is
3 arranged through online dating sites.

4 Here again -- I mean, the computer is being used
5 to -- for sexual purposes. It is worth noting. He has come
6 across potential access to minor children during online
7 pursuits with adults, and the defendant has recognized his
8 deviance during his interview with the ICAC agents and
9 discussed that he believes distributing child pornography is
10 wrong; however, it was impossible for him -- or he did not
11 bring himself -- to admit readily that reviewing and using
12 child pornography for sexual gratification was equally wrong.
13 He's been unable to rid himself of his compulsion to collect
14 and view child erotica and has devoted considerable time and
15 money to pursuing that interest.

16 He has multiple risks of sexual deviancy that revolve
17 around the use of the Internet and pornographic material, such
18 as high-risk sexual encounters with people he meets through
19 online sites, having discussions with women and children about
20 gaining access to their children for sexual purposes. The
21 defendant denies acting on these thoughts and claimed that his
22 sexual interest in preadolescent girls is a fetish.

23 He came dangerously close at least twice but was,
24 fortunately, dealing with law enforcement officers rather than
25 real victims. The defendant clearly denies and is in denial

1 about how powerful and destructive his drive for deviance is,
2 and that represents a risk to minors.

3 He will likely always -- you know, this doesn't go
4 away, and it -- even a 10-year minimum mandatory sentence in
5 this matter does nothing to change the chemical and
6 electrochemical behavior of a person's mind. Hopefully, the
7 things that he learns and the programming he has will help him
8 in dealing with this situation.

9 According to his son and his former wife, the
10 defendant is severely dysfunctional, does not care for himself
11 well or address his health concerns very well. They feel
12 compassion for him. And he will be in his early 70s and will
13 be dependent on a meager social security income. He likely at
14 that point will be unemployable, and it will be a difficult
15 situation for the defendant.

16 Pursuant to the Sentencing Reform Act of 1984 and
17 those factors enumerated in Title 18, United States Code,
18 Section 3553(a), it is the judgment and sentence of the Court
19 that the defendant, Charles Victor Flint, is hereby sentenced
20 to a term of 120 months in custody of the Bureau of Prisons.
21 Upon his release from imprisonment, Mr. Flint shall be placed
22 on supervised release for five years.

23 Within 72 hours of release from custody of the Bureau
24 of Prisons, he shall report in person to the probation office
25 in the district to which he is released, and, while on

1 supervised release, Mr. Flint shall comply with the mandatory
2 and standard conditions adopted by this Court, as set forth in
3 the general order adopting and setting forth District of
4 Wyoming's mandatory and standard conditions of supervised
5 release and probation filed on July 20 of 2023 and referenced
6 in the presentence investigation report except that mandatory
7 drug testing is waived.

8 The probation officer will provide State officials
9 with any and all information required by the State sex
10 offender registration agency and may direct the defendant
11 report to that agency personally for additional processing,
12 such as photographs and fingerprinting.

13 In accordance with those factors set forth in
14 Title 18, United States Code, Section 3553(a), additional
15 special conditions as detailed in paragraph 75 of the
16 presentence investigation report are and have been added in
17 order to address the nature and circumstances of the instant
18 offense and the defendant's documented criminal history.

19 In addition, due to the nature of the offense of
20 conviction, conditions are recommended and have been
21 recommended to address his risk of sexually deviant behavior.
22 These include monitoring of computer use, sex offender
23 registration, restrictions on associating with minor children
24 and vulnerable adults, periodic polygraphs, and sexual
25 offender treatment.

1 Given the nature and extent of the defendant's
2 criminal history, a condition is imposed to address cognitive
3 thinking errors. The nature of sex crimes and the need to
4 address officer safety justify a search condition that is
5 ordered to promote public safety through effective oversight,
6 to enforce other conditions of supervision, and to achieve the
7 desired outcomes of supervision.

8 According to Title 18, United States Code,
9 Section 3583(d), the Court finds these conditions are
10 reasonably related to the deterrence of criminal conduct, the
11 protection of the public from further crimes of the defendant,
12 defendant's educational, vocational, medical, or other
13 correctional needs. Prison is a bad place to address
14 educational, vocational, medical, or other correctional needs,
15 especially medical.

16 They involve no greater deprivation of liberty than
17 is reasonably necessary for the purposes of deterring criminal
18 activity, protecting the public, and promoting the defendant's
19 rehabilitation and are consistent with any pertinent policy
20 statement issued by the Sentencing Commission.

21 I find that restitution is mandatory; however, no
22 restitution has been requested. None is ordered.

23 The Court finds the defendant is indigent and unable
24 to pay a \$5,000 special assessment pursuant to the Justice for
25 Victims of Trafficking Act of 2015.

1 The Court finds the defendant is unable to pay an
2 assessment pursuant to the Amy, Vicky, and Andy Child
3 Pornography Victim Assistance Act of 2018 of up to \$17,000 and
4 waives this assessment.

5 I find the defendant does not have the ability to pay
6 a fine within the guideline range. It is, however, ordered
7 the defendant shall pay the mandatory special assessment fee
8 in the amount of \$100, which shall be due immediately.

9 Payments for monetary obligations shall be made
10 payable by cashier's check or money order to the Clerk of the
11 District Court, 2120 Capitol Avenue, Room 2131, Cheyenne,
12 Wyoming 82001. The defendant shall participate in the Inmate
13 Financial Responsibility Program to pay his monetary
14 obligations. The defendant shall pay all financial
15 obligations immediately. While incarcerated, the defendant
16 shall make payments of at least \$25 per quarter.

17 The defendant's disabilities in this matter will
18 certainly affect his ability to obtain meaningful employment
19 within the prison system, and \$25 per quarter seems to me to
20 be a reasonable amount that defendant could pay and
21 accumulate.

22 I would note that the defendant will need support
23 from his family with regard to his hygiene needs, possibly
24 medication needs, possibly some clothing -- shoes to wear,
25 underwear, those sorts of things.

1 Any amount not paid immediately through the Inmate
2 Financial Responsibility Program shall be paid commencing
3 60 days after release from confinement in monthly payments of
4 not less than 10 percent of the defendant's gross monthly
5 income, and these monetary payments shall be satisfied not
6 less than 60 days prior to the expiration of the term of
7 supervised release. I'm fairly certain that the defendant
8 will be able to pay his minimal special assessment of \$100.

9 The defendant has not waived his right to appeal as a
10 condition of his plea agreement. I simply remind the
11 defendant that he has 14 days from the date of entry of
12 judgment to file a notice of appeal. He should discuss that
13 appeal with his counsel, who has a continuing responsibility
14 in that regard, if he wishes to appeal, to file that notice of
15 appeal within 14 days following the filing of the judgment and
16 sentence with the Clerk of Court's Office.

17 I strongly recommend to the Bureau of Prisons a place
18 of designation, that this defendant be designated to Englewood
19 in Colorado, which has a sex offender treatment program which
20 has a good reputation as being effective in offering
21 state-of-the-art information and assistance in dealing with
22 these kind of issues involving child sexual exploitation, and
23 I note that Englewood in Colorado, the facility, is located
24 close to family members and the support that this defendant
25 obviously needs, both financial and emotionally and,

1 hopefully, will -- will receive in the future.

2 I would note that in the event that the Tenth Circuit
3 may further clarify, through the appeal process, sentencing
4 and the application of the categorical approach to this
5 offense, that the defendant may end up coming back here, in
6 which case we will deal with the sentencing at that time.

7 Any questions?

8 MS. MARTENS: Nothing from the Government,
9 Your Honor.

10 MS. HUCKE: We have no questions, Your Honor.
11 Thank you.

12 THE COURT: Thank you.

13 We'll stand in recess.

14 THE COURTRoom DEPUTY: All rise.

15 (A recess was taken from 10:48 a.m. to 10:53 a.m.,
16 outside the presence of the defendant)

17 THE COURTRoom DEPUTY: Court is now in session.

18 THE COURT: Thank you. Please be seated.

19 We are resuming in the matter of United States of
20 America, plaintiff, against Charles Victor Flint under
21 Docket 23-CR-00067.

22 Present are counsel for each of the parties, for the
23 defendant Ms. Hucke and, for the Government, Ms. Martens. The
24 defendant is not present in court. He's been returned to
25 travel back to Scotts Bluff, Nebraska.

1 MS. HUCKE: Your Honor -- and I do apologize.
2 I should have mentioned it earlier. There is just one minor
3 correction that we have to the PSR, and I believe everybody is
4 in agreement.

5 The very last paragraph, I believe if a variance is
6 appropriate -- the PSR does, on paragraph 88, list that.

7 Based on our -- our district's policy of giving
8 someone a two-level variance for the use of computer, the
9 guideline range would actually be 46 to -- is it 46 to 57? --
10 would actually be 46 to 57, rather than 51 to 63.

11 That only accounts for a one-level variance. So if
12 the Court varied down two levels to Offense Level 23, Criminal
13 History Category I, it would be 46 to 57.

14 So we'd just ask that that be corrected.

15 THE COURT: It should be corrected.

16 And I'll make that finding, that the appropriate
17 level in this matter is a level -- it seems puzzling at
18 this -- he's in a Category I. All right.

19 The total calculation in this matter is -- under the
20 presentence -- is Criminal History Category 26, Criminal
21 History Category I. And if you take off the two levels, that
22 would be 24, Category I.

23 Am I correct?

24 MS. MARTENS: Your Honor, I had 25, and that was
25 paragraph 30 of the PSR as our starting place.

1 THE COURT: Hm-m.

2 Yeah, I was looking at paragraph 30. Was it -- was
3 there a revised presentence investigation report?

4 MS. HUCKE: Yes, Your Honor.

5 MS. MARTENS: Yes.

6 MS. HUCKE: It was revised because there was an
7 objection to -- an addition for some videos.

8 So the revised PSR does have a total offense level of
9 25, and that's including the plus 2 for use of a computer. So
10 minus 2 would be a 20- -- Offense Level 23.

11 THE COURT: All right.

12 23, then, and I will accept that. The range is 46 to
13 57 months.

14 Thank you for catching that.

15 MS. HUCKE: I don't have any other corrections.

16 Thank you, Your Honor.

17 THE COURTROOM DEPUTY: All rise.

18 (Proceedings adjourned at 10:59 a.m., October 2, 2023.)

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1 C E R T I F I C A T E
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3
45 I, MELANIE HUMPHREY-SONNTAG, Federal Official Court
6 Reporter for the United States District Court for the District
7 of Wyoming, a Registered Diplomate Reporter, Certified
8 Realtime Reporter, and Certified Realtime Captioner, do hereby
9 certify that I reported by realtime stenography the foregoing
10 proceedings contained herein on the aforementioned subject on
11 the date herein set forth and that the foregoing pages
12 constitute a full, true, and correct transcript.

13

14 Dated this 9th day of November, 2023.

15

16

17

18 /s/ Melanie Humphrey-Sonntag

19

20 MELANIE HUMPHREY-SONNTAG
21 RDR, CRR, CRC
22 Federal Official Court Reporter

23

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25