No. ___-_____

IN THE

SUPREME COURT OF THE UNITED STATES

SEAN J. TRAHAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX

United States v. Trahan

United States Court of Appeals for the First Circuit

August 8, 2024, Decided

No. 22-1390

Reporter
111 F.4th 185 *; 2024 U.S. App. LEXIS 19953 **; 2024 WL 3717147

UNITED STATES, Appellee, v. SEAN J. TRAHAN, Defendant, Appellant.

Prior History: [1]** APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. Hon. George A. O'Toole, Jr., U.S. District Judge.

United States v. Trahan, 2018 U.S. Dist. LEXIS 110631, 2018 WL 3238829 (D. Mass., July 3, 2018)

Core Terms

child pornography, sentence, enhancement, mandatory minimum, depicted, federal definition, trigger, sexual, sexual conduct, pretrial release, criminalizes, broadening, visual, imprisonment, consecutive, district court, guidelines, harmless, canon, overwhelming evidence, prior conviction, search warrant, broad meaning, state law, transportation, categorical, analyzing, uncharged, offenses, shipment

Case Summary

Overview

HOLDINGS: [1]-Defendant's 126-month sentence for possession and knowing access with intent to view child pornography was proper because a prior state conviction under a law relating to child pornography triggered the 10-year mandatory minimum sentence enhancement under *18 U.S.C.S. § 2252A(b)(2)*, even if the state law defined child pornography more broadly than federal law.

Outcome

Defendant's sentence affirmed.

LexisNexis® Headnotes

Computer & Internet Law > Criminal Offenses > Crimes Involving Minors > Child Pornography

Criminal Law & Procedure > ... > Child Pornography > Employing Minor to Engage in Child Pornography > Elements

Criminal Law & Procedure > ... > Child Pornography > Employing Minor to Engage in Child Pornography > Penalties

HN1[] **Crimes Involving Minors, Child Pornography**

18 U.S.C.S. § 2256, which applies to all of Chapter 110, including *18 U.S.C.S. § 2252A*, defines child pornography as any visual depiction of a minor engaged in sexually explicit conduct, also specifying the types of depictions and types of minor involvement (i.e., actual or apparent use of a minor) that qualify as child pornography. *18 U.S.C.S. § 2256(8)*.

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Burdens of Proof

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Definition of Plain Error

HN2[] **Plain Error, Burdens of Proof**

To succeed under the plain error standard, a defendant must establish four elements: (1) that an error occurred

(2) which was clear or obvious and which not only (3) affected the defendant's substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial proceedings.

Governments > Legislation > Interpretation

HN3[] **Legislation, Interpretation**

When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series. As with any canon of statutory interpretation, the series-qualifier canon aims to capture the most natural reading of a sentence, but the reading resulting from the canon is not an absolute and can assuredly be overcome by other indicia of meaning.

Governments > Legislation > Interpretation

HN4[] **Legislation, Interpretation**

Courts begin with the important presumption of statutory construction that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, and common meaning. It is well established that the phrase relating to has a broad meaning.

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Findings

Criminal Law & Procedure > Sentencing > Ranges

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Statutory Maximums

HN5[] **Imposition of Sentence, Findings**

Any fact leading to the imposition of a mandatory minimum sentence must be found by a jury beyond a reasonable doubt.

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Constitutional Rights

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Evidence

HN6[] **Harmless & Invited Error, Constitutional Rights**

Preserved Alleyne challenges are reviewed de novo. In this Circuit, it is well established that challenges are subject to harmless error review. Where the claimed error is of constitutional dimension and has been preserved below, the harmless error standard requires the government to prove that the error was harmless beyond a reasonable doubt, or, put another way, that it can fairly be said beyond any reasonable doubt that the assigned error did not contribute to the result of which the appellant complains. When reviewing challenges for harmless error, overwhelming evidence of the uncharged fact at issue generally serves as a proxy for determining whether the error contributed to the result. Put simply, the question under harmless error is whether there is overwhelming evidence, of the uncharged fact.

Counsel: William W. Fick, with whom Fick & Marx LLP was on brief, for appellant.

Alexia R. De Vincentis, Assistant United States Attorney, with whom Joshua S. Levy, Acting United States Attorney, was on brief, for appellee.

Judges: Before Montecalvo, Selya, and Lynch, Circuit Judges.

Opinion by: MONTECALVO

Opinion

[*187] MONTECALVO, Circuit Judge. In October 2021, defendant-appellant Sean J. Trahan pleaded guilty to possession and knowing access with intent to view child pornography, both in violation of *18 U.S.C. § 2252A(a)(5)(B)*. The district court later sentenced Trahan to 126 months' imprisonment -- applying a sentencing enhancement based on Trahan's prior state conviction for possession of "visual material of child depicted in sexual conduct" that the court determined required the imposition of a ten-year mandatory minimum under *§ 2252A(b)(2)*.[1] On **[*188]** appeal from

[1] We note that the terminology used across the states to describe "child pornography" is wide-ranging and many states

his sentence, Trahan insists that his state conviction should not have triggered the ten-year mandatory minimum because the enhancement provision of § 2252A(b)(2) cannot cover state convictions under statutes that criminalize more conduct than § 2252A(b)(2) enumerates.

Trahan also mounts an *Alleyne* challenge **[**2]** to the district court's imposition of a consecutive six-month sentence pursuant to 18 U.S.C. § 3147 for an offense he committed while on pretrial release. See *Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013)*. Trahan argues that, because of the application of the § 2252A(b)(2) mandatory minimum, the additional consecutive sentence based on an uncharged violation violated the *Sixth Amendment*. For the reasons that follow, we reject Trahan's arguments and affirm the sentence.

I. Background

As this appeal follows a guilty plea, our recitation of the facts is derived from "the undisputed sections of the presentence investigation report [('PSR')] and the transcripts of the change-of-plea and sentencing hearings." *United States v. Spinks, 63 F.4th 95, 97 (1st Cir. 2023)* (cleaned up) (quoting *United States v. Ubiles-Rosario, 867 F.3d 277, 280 n.2 (1st Cir. 2017)*).

In 2015, the Federal Bureau of Investigation ("FBI") initiated Operation Pacifier, a nationwide investigation targeting online access to images of minors engaged in "sexually explicit conduct." *18 U.S.C. § 2256(8)*. As part of that investigation, the FBI identified an internet protocol ("IP") address associated with Trahan that had been used to access over 400 online conversations with links to child pornography. The FBI executed a search warrant of the home linked to the IP address and found a computer, which Trahan admitted having exclusive access to and which contained **[**3]** "approximately ten images of child pornography." Following the search, FBI agents arrested Trahan.

On October 27, 2020, a grand jury indicted Trahan on one count of possession of child pornography (count I) and one count of knowing access with intent to view child pornography (count II), both in violation of *18 U.S.C. § 2252A(a)(5)(B)*.[2] In November, Trahan pleaded not guilty and was released with pretrial conditions.

On September 8, 2021, following up on information from an out-of-state sheriff's office regarding an online chat group that contained child pornography, the FBI executed another search warrant of Trahan's house. This search yielded a tablet computer, which Trahan's pretrial conditions prohibited him from possessing. A search of the tablet revealed online conversations in which another user sent Trahan videos of child pornography. Trahan was then arrested and held in federal custody.

The government later filed a superseding information that realleged counts I and II and added a second count of possession **[*189]** of child pornography based on the 2021 arrest (count III). Count III did not allege that Trahan committed the offense while on pretrial release nor did it reference *18 U.S.C. § 3147*, the statute outlining the penalty **[**4]** for offenses committed while on release. Trahan waived his right to an indictment, consented to prosecution by information, and pleaded guilty to all three counts without a plea agreement.

During the change-of-plea hearing, the government listed the range of possible criminal penalties, providing that each count "carries a mandatory minimum of ten years in prison because . . . Trahan has a prior state . . . conviction" for possession of visual material of child

---

have opted to use terms other than "child pornography." See, e.g., *Utah Code Ann. § 76-5b-201(2)* (criminalizing possession of "child sexual abuse material"); *Ala. Code § 13A-12-191* (criminalizing "[d]issemination or public display of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts"); ***Alaska Stat. Ann. § 11.61.127*** (criminalizing "[p]ossession of child pornography"); *Ariz. Rev. Stat. Ann. § 13-3553* (criminalizing possession of "visual depiction" of "sexual exploitation of a minor"); *Ark. Code Ann. § 5-27-304* (criminalizing possession of images "depicting sexually explicit conduct involving a child"); *Cal. Penal Code § 311.1* (criminalizing possession of "[o]bscene matter depicting sexual conduct by minor"); cf. EARN IT Act of 2023, S. 1207, 118th Cong. § 6 (2023) (proposing that federal statutes replace the term "child pornography" with "child sexual abuse material," while retaining "the same legal meaning"). Here, we do not attempt to reconcile these many terms and, for clarity's sake, use, as appropriate, the terminology that Congress and the Massachusetts legislature have adopted.

[2] This was the second indictment related to the 2015 arrest. Trahan was originally indicted in November 2015. In the first proceeding, the district court granted Trahan's motion to dismiss the indictment for violations of the *Speedy Trial Act, 18 U.S.C. §§ 3161 et seq.*, and dismissed the case without prejudice.

depicted in sexual conduct. Specifically with respect to count III, the government noted that Trahan committed the offense while on pretrial release, thus requiring additional imprisonment that "shall be consecutive to any other sentence of imprisonment" under § 3147. The government also summarized the facts that would support a conviction for count III. In particular, the government explained that when "the FBI obtained a search warrant for . . . Trahan's house and executed it on September 8, 2021," based on information regarding online child pornography sharing, "Trahan had been out on bail." After the government provided the summary, Trahan agreed that it was a true description of the offenses.

As alluded to, these were not Trahan's **[**5]** first offenses involving images of children engaged in sexual conduct. In 2006, Trahan was convicted in Massachusetts state court of "possession of visual material of child depicted in sexual conduct" in violation of Mass. Gen. Laws ch. 272, § 29C ("§ 29C"). Accordingly, the PSR that the United States Probation Office for the District of Massachusetts ("Probation") prepared in advance of sentencing reflected a criminal history category of I and a mandatory minimum of ten years' incarceration for each count pursuant to 18 U.S.C. § 2252A(b)(2). The PSR also noted that Trahan was "out on bail" when the FBI executed the September 8, 2021 search warrant and subsequently arrested Trahan. Because Trahan committed the offense while on pretrial release, the PSR provided that § 3147 compelled an additional sentence that would not exceed ten years. The PSR reported a United States Sentencing Guidelines ("guidelines") range of 121 to 151 months.

Trahan objected to the imposition of the mandatory minimum, arguing that "the prior conviction is not necessarily one relating to child pornography as that term is defined under federal law" because § 29C "criminalizes possession of images containing content that is not criminalized under the definitions in 18 U.S.C. § 2256 governing federal **[**6]** child pornography offenses." In response, Probation explained that it was "not aware of any First Circuit precedent that has found [§ 29C] to be overbroad in the context of . . . § 2252A" but deferred resolution of the objection to the court. Trahan also "object[ed] to the imposition of any consecutive term of imprisonment under . . . § 3147 arising from" count III because it "would necessarily have the effect of increasing the mandatory minimum without a separate charge" in violation of Alleyne, 570 U.S. 99. Probation disagreed and made no change to the report. Trahan did not object to any of the factual allegations about the September 8, 2021 search warrant.

Also prior to sentencing, the parties filed sentencing memoranda for the district court's consideration. In its memorandum, the government agreed with Probation that the guidelines range was 121 to 151 months and requested a sentence of 126 months -- "120 months concurrent for" **[*190]** each of the three counts and "6 months consecutive" for Trahan's violation of his pretrial release conditions. In addressing the applicability of the mandatory minimum, the government relied on the "relating to" clause contained in § 2252A(b)(2), arguing that it "allows for [a] state . . . offense to be **[**7]** [a] close but not necessarily exact" match to the federal offense. As for the Alleyne challenge, the government emphasized that "[t]he application note for [guidelines] § 3C1.3 calls for using the § 3147 enhancement only as a means of calibrating where within the [guidelines] for the underlying offense to sentence the defendant" and that it was recommending a sentence at the low end of the guidelines.

For his part, Trahan agreed that the guidelines range was 121 to 151 months. Assuming the district court denied his objection to application of the mandatory minimum and his Alleyne challenge, he requested a sentence of 121 months' imprisonment, 120 months for the three counts and one month consecutive pursuant to § 3147. But if the district court were to sustain his objections, he asked for a sixty-month sentence. He then reiterated his argument that § 2252A's enhancement provision could not apply in his case because § 29C's definition of "visual material of child depicted in sexual conduct" is broader than the federal definition of "child pornography." Thus, he argued that his prior § 29C conviction did not qualify as a "prior conviction" under § 2252A. Finally, he argued that the imposition of a sentence under § 3147 in addition to the mandatory **[**8]** minimum would increase the mandatory minimum absent a separate charge, thereby violating his Sixth Amendment rights.

At the sentencing hearing, Trahan again objected to the imposition of the ten-year mandatory minimum and the additional sentence under § 3147, relying on the arguments made in his sentencing memorandum. Through counsel, he requested "the lowest [sentence] the [district] court c[ould] impose legally."

Before issuing the sentence, the district court determined that the ten-year mandatory minimum

applied, explaining that it agreed with "the majority of circuits that have dealt with the question," and then explained that it was not persuaded by Trahan's *Alleyne* challenge. The district court then sentenced Trahan to a term of 120 months on each count, to be served concurrently, and to an additional six months pursuant to *§ 3147*, to be served consecutively, for a total of 126 months' imprisonment. Trahan timely appealed.

II. Discussion

Now, Trahan again raises his challenge to the district court's application of *§ 2252A(b)(2)*'s mandatory minimum and its imposition of the additional *§ 3147* sentence. We address each in turn, and, for the reasons that follow, we reject both claims. Accordingly, we affirm the district court's 126-month **[**9]** sentence.

A. State-Conviction Sentence Enhancement

Trahan argues that Massachusetts' law criminalizing possession of "visual material of child depicted in sexual conduct," *§ 29C*, is too broad to trigger the enhancement because "[i]t criminalizes possession of material that does not necessarily constitute child pornography as defined in Chapter 110 of the U.S. Code."[3] His argument **[*191]** largely turns on whether the phrase "relating to" as used in the statute has a broadening effect or not -- he argues that it does not. Thus, he contends that his Massachusetts state conviction cannot trigger application of the *§ 2252A(b)(2)* enhancement. The government argues that the phrase carries its usual broadening effect such that Trahan's Massachusetts conviction triggered the enhancement.

We review this preserved challenge de novo, ultimately agreeing with the government's interpretation. See *United States v. Rivera-Morales, 961 F.3d 1, 15 (1st Cir. 2020)* (holding that in sentencing appeals, "we review preserved claims of error for abuse of discretion" but "review . . . questions of law . . . de novo"); *United States v. Kennedy, 881 F.3d 14, 19 (1st Cir. 2018)* (explaining that whether statutory mandatory minimum applied is a legal question to be reviewed de novo).

We begin by setting forth the relevant statutory text. First, the enhancement itself. In relevant part, **[**10]** *§ 2252A(b)(2)* provides that:

> Whoever violates . . . subsection (a)(5) [(knowing possession of access with intent to view child pornography)] shall be fined under this title or imprisoned not more than [ten] years, or both, but, . . . if such person has a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than [ten] years nor more than [twenty] years.

(Emphases added). ***HN1***[] *Section 2256 of Title 18*, which applies to all of Chapter 110, including *§ 2252A*, defines "child pornography" as "any visual depiction" of a minor engaged in "sexually explicit conduct," also specifying the types of depictions and types of minor involvement (i.e., actual or apparent use of a minor) that qualify as child pornography. See *18 U.S.C. § 2256(8)*. As will become clear, the federal provision defines "sexually explicit conduct," the essential component of the definition of child pornography, relatively narrowly. See id. Under the federal definition, "sexually explicit conduct" is limited to:

> [A] ctual **[**11]** or simulated --
> (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
> (ii) bestiality;
> (iii) masturbation;
> (iv) sadistic or masochistic abuse; or
> (v) lascivious exhibition of the anus, genitals, or pubic area of any person.

Id. *§ 2256(2)(A)*.

Section 29C prohibits the knowing purchase or possession of "visual material of child depicted in sexual

[3] In his opening appellate brief, Trahan also argued that *§ 29C* is too broad to trigger the enhancement because "it criminalizes an act -- purchase -- that [doe]s not necessarily entail one of the types of conduct enumerated in *[§] 2252A(b)(2)*." However, Trahan abandoned this argument in his reply brief, acknowledging that "[a] prior offense for 'purchase' of [visual material of child depicted in sexual conduct] is, indeed, an offense 'relating to' the 'production, possession, receipt, mailing[,] sale, distribution, shipment[,] or transportation' of child pornography." (quoting *§ 2252A(b)(2)*). Thus, we need not consider this argument or address the government's contention that it was not preserved for review.

conduct,"[4] similarly specifying the types of depictions that qualify as prohibited material. The Massachusetts statute criminalizes material that **[*192]** depicts a minor who is actually or by simulation:

> (i) . . . engaged in any act of sexual intercourse with any person or animal;
> (ii) . . . engaged in any act of sexual contact involving the sex organs of the child and the mouth, anus or sex organs of the child and the sex organs of another person or animal;
> (iii) . . . engaged in any act of masturbation;
> (iv) . . . portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal;
> (v) . . . engaged in any act of excretion or urination within a sexual context;
>
> (vi) . . . portrayed or depicted as bound, fettered, or subject **[**12]** to sadistic, masochistic, or sadomasochistic abuse in any sexual context;
> (vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed genitals, pubic area, buttocks or, if such person is female, a fully or partially developed breast of the child.

Mass. Gen. Laws ch. 272, § 29C.

Though the parties agree that *§ 29C* covers "a broader swath of conduct" than *§ 2252A*, we specifically note the main area of divergence between the two laws: the descriptions in subsections (iv), (v), and *(vii) of § 29C* clearly cover depictions that would not be covered by *§ 2252A* (per the definitions provided in *§ 2256(2)(A)*). Thus, we accept Trahan's contention that *§ 29C* is broader than its federal counterpart.

Thus, we turn to the question before us, which is, at its core, what role the phrase "relating to" plays when it comes to determining whether a state conviction triggers the federal sentence enhancement. We conclude that the phrase here takes on its usual broad meaning and its inclusion means that a state definition need not be a perfect match with the federal definition of child pornography in order to trigger application of the mandatory minimum. Rather, the state crime must merely be "related to" the federal definition of child pornography. In so concluding, **[**13]** we join four of the six circuits to have already considered this question.[5] See *United States v. Bennett, 823 F.3d 1316, 1322 (10th Cir. 2016)* (concluding that "the offense need only stand in some relation to, pertain to, or have a connection with" child pornography to trigger *§ 2252A(b)(2)*'s enhancement (cleaned up)); *United States v. Liestman, 97 F.4th 1054, 1065 (7th Cir. 2024)* (analyzing identical provision in *18 U.S.C. § 2252* and concluding "that 'relating to' . . . brings within the ambit of the enhancement any prior offense that categorically bears a connection with . . . 'the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography'"); *United States v. Portanova, 961 F.3d 252, 256 (3d Cir. 2020)* (analyzing *§ 2252*'s enhancement and concluding that "the phrase 'relating to' must be read expansively and encompasses crimes other than those specifically listed in the federal statutes" (cleaned up)); *United States v. Mayokok, 854 F.3d 987, 992-93 (8th Cir. 2017)* (analyzing *§ 2252*'s enhancement and concluding that "'relating to' carries a broad ordinary meaning" and that state and federal statutes need not "criminalize exactly the same conduct"). But see *United States **[*193]** v. Reinhart, 893 F.3d 606, 616 (9th Cir. 2018)* (analyzing *§ 2252* and concluding that "relating to" must be read narrowly and requiring a categorical match between state definition and federal definition of child pornography); *United States v. Davis, 751 F.3d 769, 776-77 (6th Cir. 2014)* (concluding that state conviction did not trigger *§ 2252*'s enhancement because state's definition **[**14]** was broader than federal definition of child pornography).

At first, Trahan asked us to conclude that, in order for a state crime to "relate to" child pornography, there must be an exact match between the state definition and the federal definition of child pornography -- or that the state definition cover no more than the federal definition of child pornography. Seeming to realize that this construction would be problematic because it wholly ignores the "relating to" phrase that Congress included in the provision, Trahan shifted gears in his reply. Trahan argued there that "relating to" referred only to the actions listed in *§ 2252A(b)(2)* -- "production,

---

[4] Trahan seems to think that there is something significant about the Massachusetts General Assembly's decision to refrain from using the term "child pornography," but he fails to explain how this should impact our analysis.

[5] As indicated in each case's parenthetical, many of these circuit opinions addressed *18 U.S.C. § 2252*'s identically worded enhancement for "certain activities relating to material involving the sexual exploitation of minors." *18 U.S.C. § 2252* (emphasis added); see id. *§ 2252(b)(1)*. Given the identical operative language, we assume that those circuits would apply the same analysis to *§ 2252A*'s enhancement.

possession, receipt, mailing, sale, distribution, shipment, or transportation" -- and not to the object -- the federal definition of child pornography. Thus, in this formulation, the action a state law criminalizes need not match the actions listed in § 2252A(b)(2), but the state definition cannot be more expansive than the federal definition of child pornography. Neither argument is availing.

First, Trahan's argument that "relating to" applies only to the listed actions and not to "child pornography" is both forfeited and waived because he **[**15]** did not raise the argument below, see *In re Redondo Constr. Corp., 678 F.3d 115, 121 (1st Cir. 2012)* ("It is black-letter law that arguments not presented to the trial court are, with rare exceptions, forfeit on appeal."), and because he raised it for the first time in his reply brief, see *United States v. Casey, 825 F.3d 1, 12 (1st Cir. 2016)* ("[A]rguments raised for the first time in an appellate reply brief [are] ordinarily deemed waived.").[6] However, even affording Trahan the benefit of plain error review, his argument cannot prevail. ***HN2***[⬆] To succeed under that standard, Trahan must establish "four elements: '(1) that an error occurred (2) which was clear or obvious and which not only (3) affected the defendant's substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial proceedings.'" *United States v. Lessard, 35 F.4th 37, 42 (1st Cir. 2022)* (quoting *United States v. Duarte, 246 F.3d 56, 60 (1st Cir. 2001)*). Trahan cannot shoulder this heavy burden.

Indeed, we can quickly dismiss Trahan's contention that "relating to" applies only to the actions listed in § 2252A(b)(2) ("production, possession, receipt, mailing, sale, distribution, shipment, or transportation") and not the federal definition of child pornography. There is no textual indication that "relating to" refers exclusively to the listed actions, and Trahan has provided no compelling explanation as to why **[**16]** we should so conclude. In any event, the series-qualifier canon of statutory interpretation is instructive here. See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012).

[6] At oral argument, Trahan's counsel contended that this was simply an "expansion" of his arguments below and a natural response to the government's responsive brief. We disagree with this description as this argument was self-evident from the beginning and is not a natural counter to the government's position. Nor is it a reframing or expansion of his arguments presented below. Trahan's reply brief presents a wholly new construction of § 2252A that rests on the abandonment of an earlier argument. See supra note 3.

HN3[⬆] Per that canon, "[w]hen there is a straightforward, parallel construction that **[*194]** involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Id. at 147. As with any canon of statutory interpretation, the series-qualifier canon aims to capture "the most natural reading of a sentence," *Facebook, Inc. v. Duguid, 592 U.S. 395, 403, 141 S. Ct. 1163, 209 L. Ed. 2d 272 (2021)*, but the reading resulting from the canon "is not an absolute and can assuredly be overcome by other indicia of meaning," *Barnhart v. Thomas, 540 U.S. 20, 26, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003)*. Using this canon, we naturally read § 2252A(b)(2) as providing that the enhancement is triggered by a prior conviction "relating to" each and every one of the listed actions in the statute. The result is any conviction that is related to the production of child pornography or related to the possession of child pornography (and so on with respect to the receipt of child pornography, the mailing of child pornography, the sale of child pornography, the distribution of child pornography, the shipment of child pornography, or the transportation **[**17]** of child pornography) would call for applying the sentencing enhancement. As we will explain, the statutory context and legislative history likewise compel us to conclude that "relating to" modifies both the listed action and the statutorily defined noun (child pornography).

Thus, we turn to Trahan's original argument and the focus of this appeal: does "relating to" retain its ordinary broad meaning? ***HN4***[⬆] Here, we begin with the important presumption of statutory construction that "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, and common meaning." *Perrin v. United States, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979)*. It is well established that the phrase "relating to" has a broad meaning. See *Silva v. Garland, 27 F.4th 95, 103 (1st Cir. 2022)* ("[T]he ordinary meaning of the phrase 'relating to' is 'a broad one . . . .'" (quoting *Morales v. Trans World Airlines, Inc., 504 U.S. 374, 383-84, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992)*)); *United States v. Winczuk, 67 F.4th 11, 17 (1st Cir. 2023)* ("[W]hen asked to interpret statutory language including the phrase 'relating to,' . . . [the Supreme] Court has typically read the relevant text expansively." (quoting *Lamar, Archer & Cofrin, LLP v. Appling, 584 U.S. 709, 717, 138 S. Ct. 1752, 201 L. Ed. 2d 102 (2018)*) (alterations in original)).

In Mellouli v. Lynch, however, the Supreme Court explained that "relating to" does not always have a broadening effect and that statutory context and history

can counsel in favor of a narrow reading of the phrase. See *575 U.S. 798, 811-12, 135 S. Ct. 1980, 192 L. Ed. 2d 60 (2015)*. Trahan relies **[**18]** in part on Mellouli, arguing that contextual indicia require construing "relating to" narrowly here. In Mellouli, the Supreme Court analyzed a statute that subjected a non-citizen to deportation based on a "convict[ion] of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in [the federal Controlled Substances Act])." *Id. at 801* (emphasis added) (quoting *8 U.S.C. § 1227(a)(2)(B)(i)*). The petitioner was convicted of a state offense for possession of drug paraphernalia -- specifically, a sock that concealed a substance categorized as a controlled substance under state law but not federal law. See *id. at 803-04*. The Court held that *§ 1227*'s use of "relating to" did not have its ordinary broad meaning but instead warranted application of the strict categorical approach such that a state crime must criminalize no more than the federal law in order to trigger removal. See *id. at 803*. In particular, the Court pointed to the statute's "historical background" **[*195]** as evidence that "Congress and the [Board of Immigrations Appeals] have long required a direct link between [a non-citizen's] crime of conviction and a particular federally controlled drug." *Id. at 812*. Without such a link **[**19]** in the petitioner's case, the Court concluded that removal was only appropriate where a non-citizen had been convicted of a drug offense for a drug listed in the federal Controlled Substances Act. See *id. at 813*.

Trahan contends that Mellouli is controlling here. But unlike *8 U.S.C. § 1227*, the statute at issue in *Mellouli*, the text and context of *§ 2252A* are entirely consistent with "relating to" having a broadening effect rather than a narrowing one.

To begin, the Court in Mellouli acknowledged that the phrase "relating to" generally has a broadening effect, but the Court also made clear that "relating to" does not have a static statutory definition; rather, context, which includes legislative history, may dictate the extent to which the term broadens or narrows the statute's coverage. See *id. at 811-12*. So Trahan is incorrect to read Mellouli as establishing a new definition of the phrase.

Here, the context of *§ 2252A* points toward using the term's usual broadening effect. First, the history of *§ 2252A* and surrounding statutes evinces Congress's intent to expand criminal liability for child-pornography offenses and to widen the breadth of conduct that can trigger mandatory minimums for federal crimes involving child pornography. See, e.g. **[**20]** , *Child Protection Act of 1984, Pub. L. No. 98-292, §§ 2-5, 98 Stat. 204, 204-05 (1984)* (removing "for the purpose of sale or distribution for sale" and "for pecuniary profit" from *§ 2252* to ensure both commercial and noncommercial conduct covered); *Crime Control Act of 1990, Pub. L. No. 101-647, § 323(a)(4), 104 Stat. 4789, 4818-19 (1990)* (adding simple possession to *§ 2252*); *Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 160001(e), 108 Stat. 1796, 2036-37 (1994)* (adding attempt and conspiracy to *§ 2252*).[7]

In part, these efforts sought to address the "misconception" that child-pornography offenses "are not serious" and are, accordingly, subject to lenient sentences. See, e.g., H.R. Rep. No. 108-66, at 51 (2003). An expansive reading of *§ 2252A(b)(2)*'s "relating to" neatly aligns with Congress's intent to dispel such a misconception. Indeed, Trahan's reading of the statute makes little sense given that, at the time this provision became law, a majority of states had broader definitions of what constitutes child pornography than the then-newly-enacted federal definition of child pornography.[8] Trahan's approach would thus preclude

---

[7] We note here that "the difference [between *§ 2252* and *§ 2252A*] is that the former statute is directed only to depictions of actual minors while the latter includes [minors] but extends also to those who only appear to be minors or are fictitious creations but appear real." *United States v. Hilton, 257 F.3d 50, 57 (1st Cir. 2001)*.

[8] When the pertinent language was added to *§ 2252A(b)(2)* in 1996, at least thirty-one states had definitions of material depicting children engaged in sexual conduct that were broader than the federal definition of child pornography. See *§ 2252A(b)(2) (1996)* (adding state conviction "relating to" child pornography to enhancement provision); *§ 2256(8)* (current version substantially similar to that in effect in 1996). See also 1990 Alaska Sess. Laws Ch. 161, § 1 (including "lewd touching of" a person or child's "breast"); 1996 Ariz. Legis. Serv. 601 (including "defecation or urination"); 1995 Ark. Acts 5803 (including "[l]ewd exhibition of . . . the breast of a female"); 1996 Cal. Stat. 7372 (including "[d]efecation or urination"); 1979 Colo. Sess. Laws 737-39 (including "touching . . . clothed or unclothed . . . buttocks [or] breasts"); 61 Del. Laws 575 (1977) (including "nudity"); 1991 Fla. Laws 262 (including "contact with . . . clothed or unclothed . . . buttocks[] or . . . breast"); 1987 Ga. Laws 1165 (including "[p]hysical contact . . . with . . . buttocks[] or . . . nude breasts"); 1992 Idaho Sess. Laws 440 (including touching of buttocks or breasts and display of breasts); 1994 Ill. Laws 2818 (including "lewd exhibition of the unclothed . . . buttocks[] or . . . breast");

the government from applying the enhancement in any instance **[*196]** where the state law included a broader definition than the federal statute -- flying in the face of clear congressional intent.

Finally, unlike Mellouli, "a broad reading of the enhancement provision does not stretch [*§ 2252A*] 'to the breaking point.'"[9] *Bennett, 823 F.3d at 1323* (quoting *Mellouli, 575 U.S. at 811*). Thus, Mellouli does not require a narrow reading of *§ 2252A(b)(2)*'s "relating to," and we **[*197]** conclude that it carries its usual broad meaning. We thus join the other courts of appeals that have read Mellouli as turning not on the definition of "relating to" **[**21]** but on the particular removal statute's surrounding text and history. See *United States v. Kraemer, 933 F.3d 675, 681 (7th Cir. 2019)*; *United States v. Sullivan, 797 F.3d 623, 639-40 (9th Cir. 2015)*; *Bennett, 823 F.3d at 1322-23*.

Thus, having decided that *§ 2252A(b)(2)*'s enhancement can be triggered by a broader state law because the phrase "relating to" has a broadening effect, we turn to whether *§ 29C*'s definition of "visual material of child depicted in sexual conduct" categorically relates to "child pornography" as defined by federal law. We need not spend much time on whether the Massachusetts definition of "visual material of child depicted in sexual conduct" relates to the federal definition of "child pornography" as the core purposes of the statutes are the same -- both address the market for images of sexual abuse of children. Furthermore, Trahan makes no argument that the Massachusetts definition is not related to the federal definition -- he relies only on his argument that "relating to" does not extend past the listed actions and does not carry its usual broadening effect.

For these reasons, we affirm the district court's application of *§ 2252A(b)(2)*'s 10-year mandatory minimum.

1995 Ind. Acts 2377 (including "any fondling or touching of a child . . . intended to arouse or satisfy the sexual desires of either the child or the other person"); 1989 Iowa Acts 538 (including "nudity of a minor"); 1986 Ky. Acts 1147 (including "excretion" and "exposure . . . of the unclothed or apparently unclothed . . . buttocks[] or the female breast"); 1988 Mass. Acts 755-58 (including "exhibition in a state of nudity"); 1994 Mich. Pub. Acts 2150(including "touching . . . clothed or unclothed . . . buttocks[] or . . . breasts" and "passive sexual involvement"); 1983 Minn. Laws 540 (including "[p]hysical contact or simulated physical contact with the clothed or unclothed . . . buttocks . . . or the breasts"); 1995 Miss. Laws 488 (including "[f]ondling or other erotic touching of the . . . buttocks . . . or breast"); 1994 Mo. Laws 1133 (including "any touching of . . . the breast . . . [or any such touching through the clothing]" (alteration in original)); 1995 Mont. Laws 533 (including "lewd exhibition of the . . . breasts . . . or other intimate parts" and "defecation [and] urination"); 1986 Neb. Laws 1018 (including "display of . . . the human female breasts"); 1995 Nev. Stat. 950 (including "excretion"); 1995 N.J. Laws 599 (including "[n]udity"); 1993 N.C. Sess. Laws 587 (including "[u]ncovered, or less than opaquely covered . . . buttocks[] or the nipple or any portion of the areola of the human female breast"); 1996 Ohio Laws 5001 (including "any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person"); 1984 Okla. Sess. Laws 336 (including "any act of excretion in the context of sexual activity"); 1995 Pa. Legis. Serv. 991 (including "nudity"); 1987 S.C. Acts 1137 (including "touching . . . of the clothed or unclothed . . . buttocks . . . or the clothed or unclothed breasts"); 1990 Tenn. Pub. Acts 940 (including "physical contact with or touching of . . . clothed or unclothed . . . buttocks[] or breasts"); 1995 Va. Acts 1775 (including "nudity") & 1976 Va. Acts 593 (defining "nudity" to include "a state of undress so as to expose the . . . buttocks with less than a full opaque covering[] or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple"); 1989 Wa. Sess. Laws 161 (including "defecation or urination"); 1986 W. Va. Acts 1359 (including "[e]xcretory functions in a sexual context").

[9] Other courts have found significant that *§ 2252A* has no "link" to *§ 2256*'s definition of child pornography. In other words, courts have emphasized that *§ 2252A(b)(2)* does not cite to the specific subsection of *§ 2256* that defines child pornography. See, e.g., *United States v. Bennett, 823 F.3d 1316, 1323 (10th Cir. 2016)*. In Bennett, the Tenth Circuit emphasized that the statute at issue in *Mellouli* explicitly "linked" to the federal definition, thereby creating an explicit limiting principle for the phrase "relating to" vis-à-vis federal drug regulations. Id. (citing *Mellouli v. Lynch, 575 U.S. 798, 808 n.9, 135 S. Ct. 1980, 192 L. Ed. 2d 60 (2015)*). We find little to no significance in the fact that *§ 2252A(b)(2)* does not specifically cite to *§ 2256* as *§ 2256* makes clear that it applies to all statutes within Chapter 110 (where *§ 2252A* also appears). The statute at issue in *Mellouli*, however, was the Immigration and Nationality Act (contained in Title 8) and the referenced statute, the Controlled Substances Act (contained in Title 21), was in an entirely different title. *Mellouli, 575 U.S. at 801-02*. Thus, the statute had to provide a direct "link" to the controlling definition. Here, the federal child pornography definition similarly provides a controlling definition, but that does not counsel in favor of a narrower reading of the phrase "relating to" especially given the text and context of the statute.

B. Alleyne Challenge

Trahan next argues that, if we affirm the district court's imposition of the mandatory minimum, the sentencing court's additional imposition **[**22]** of the six-month consecutive sentence for the offense Trahan committed while on release violated his *Sixth Amendment* rights. See *Alleyne, 570 U.S. at 117*. ***HN5***[] Under *Alleyne*, "any fact leading to the imposition of a mandatory minimum sentence must be found by a jury beyond a reasonable doubt." *Butterworth v. United States, 775 F.3d 459, 461 (1st Cir. 2015)* (emphasis added).

Trahan contends that, because he was not charged with violating *§ 3147* -- but was instead charged with an additional possession charge -- the district court's decision to impose an additional six-month sentence pursuant to *§ 3147* violated *Alleyne*. It is not clear whether Trahan is arguing that *§ 3147*, the enhancement statute, had to be included as a separate charge in the information or whether he is arguing that the mere fact that he committed the second possession violation while on pretrial release had to be charged. To the extent Trahan seeks to argue the former, his argument fails on its face. *Alleyne* deals with uncharged facts, not uncharged enhancement statutes. Moreover, Trahan has failed to support or fully explain this argument, and, so, we treat it "as insufficiently developed and, thus, waived." *United States v. Boudreau, 58 F.4th 26, 32 (1st Cir. 2023)*. To the extent Trahan seeks to argue the latter, we conclude that any error was harmless.[10]

HN6[] Preserved *Alleyne* challenges are reviewed de novo. See *United States v. Gonzalez, 981 F.3d 11, 16 (1st Cir. 2020)*. In this Circuit, **[**23]** it is well established that *Alleyne* challenges are subject to harmless error review. See *United States v. McIvery, 806 F.3d 645, 649-50 (1st Cir. 2015)*; see also *Erlinger v. United States, 602 U.S. , **[*198]** 144 S. Ct. 1840, 1860, 219 L. Ed. 2d 451 (2024)* (Roberts, C.J., concurring); *id. at 1866* (Jackson, J., dissenting).

> Where, as here, the [claimed] error is of constitutional dimension and has been preserved below, the harmless error standard requires the government to "prove that the error was harmless beyond a reasonable doubt, or, put another way, that it can fairly be said beyond any reasonable doubt that the assigned error did not contribute to the result of which the appellant complains."

McIvery, 806 F.3d at 650 (quoting *United States v. Perez-Ruiz, 353 F.3d 1, 17 (1st Cir. 2003)*). When reviewing *Alleyne* challenges for harmless error, "overwhelming evidence" of the uncharged fact at issue "generally serves as a proxy for determining whether the *Alleyne* error contributed to the result." *Id. at 650-51* (quoting *United States v. Morris, 784 F.3d 870, 874 (1st Cir. 2015)*). Put simply, the question under harmless error is whether there is "overwhelming evidence," *id. at 650*, of the uncharged fact -- here, whether Trahan committed count III while on pretrial release.[11] If there is overwhelming evidence of that fact, Trahan suffered no violation of his *Sixth Amendment* rights.

Here, the government has established overwhelming evidence that Trahan committed count III while on pretrial release. Specifically, at Trahan's change-of-plea hearing, the **[**24]** government stated that Trahan was "out on bail" during the September 8, 2021 search, which resulted in count III of the information, and Trahan agreed that this allegation was true. Cf. *United States v. Jiminez, 498 F.3d 82, 87 (1st Cir. 2007)* (concluding that there was "sufficient factual basis" for defendant's guilty plea where he "conceded" " government's proffered facts . . . to be true"). Further, the PSR also provided that Trahan was "out on bail" when the FBI executed the September 8, 2021 search, and Trahan did not object to that statement either. See *United States v. Bregnard, 951 F.2d 457, 460 (1st Cir. 1991)* ("Time and again we have held that facts stated in presentence reports are deemed admitted if they are not challenged in the district court."). These two admissions constitute "overwhelming evidence" that Trahan committed count III while on pretrial release. Therefore, any error was harmless.

---

[10] For the purposes of harmless error review, we assume without deciding that the additional sentence violated *Alleyne*. Further, we need not decide whether, as the government contends, that, even assuming that *§ 3147* effectively raised the mandatory minimum, *Almendarez-Torres v. United States, 523 U.S. 244, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998)*, provides an exception to *Alleyne*.

[11] Trahan argues that any error could not be harmless because he received six additional months of incarceration pursuant to *§ 3147*, arguing that the additional sentence constitutes harm. This misconstrues the focus of the harmlessness inquiry in *Alleyne* challenges. As the government points out, Trahan's argument on harmlessness only addresses whether there was an *Alleyne* error, not whether any *Alleyne* error was harmless.

III. Conclusion

For the forgoing reasons, we **affirm** Trahan's sentence.

End of Document

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff	)	
vs.	)	No. 20-CR-10251-GAO
SEAN TRAHAN, Defendants.	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE
SENTENCING HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 22
One Courthouse Way
Boston, MA 02210

May 10, 2022
2:30 p.m.

Kathleen Mullen Silva, RPR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 7209
Boston, Massachusetts 02210
E-mail: kathysilva@verizon.net

Mechanical Steno - Computer-Aided Transcript

APPEARANCES:

United States Attorney's Office
AUSA James D. Herbert
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
617.748.3100
for Plaintiff

Fick & Marx LLP
William W. Fick, Esq.
3 Post Office Square, 7th Floor
Boston, Massachusetts 02109
857.321.8360
wfick@fickmarx.com
for Defendant

P R O C E E D I N G S

THE CLERK: All rise. United States District Court for the District of Massachusetts. Court is in session. Be seated for a sentencing in the case of United States v. Sean Trahan, 20-10251.

Would counsel identify yourselves for the record, please.

MR. HERBERT: Good afternoon, Your Honor. Jamie Herbert for the government.

THE COURT: Good afternoon.

MR. FICK: Good afternoon, Your Honor. William Fick for Mr. Trahan.

THE CLERK: And from probation.

PROBATION: Good afternoon. Tricia Marcy with U.S. Probation.

THE COURT: Mr. Trahan appears for sentencing on his conviction of two counts of possession of child pornography and one count of knowing access with intent to view child pornography, those convictions coming upon his tender of a plea of guilty to each of those charges. I have a final presentence report prepared by our Probation Office, of course, and I have sentencing memoranda from both the government and the defendant, and I thank you both for the quality of your briefing.

Let's start with the PSR, which is the usual place to

start. There don't seem to be any objections to it. Mr. Fick has some issues but I don't know that the calculation of the guidelines range is one of them.

MR. FICK: The guideline range I think is what it is.

THE COURT: Right.

MR. FICK: It's a question of the mandatory minimum and the 3147 impact, yes.

THE COURT: Right. And if you were to be correct that there was not a minimum mandatory, then the question of within or without the guideline range would be a sensible one, but if it's not -- if there is a mandatory minimum, then there's no question really about what the guidelines -- whether the sentence should be within the range calculated by the guidelines. I mention that only because it's not an uncommon event in child pornography cases for judges to vary from the guidelines recommendation. But this is not one of those cases I think the way it's structured, unless you win on the point. I guess that's what I'm saying.

MR. FICK: Yup.

THE COURT: As calculated by the Probation Office it wouldn't.

MR. FICK: Correct.

THE COURT: All right. So Mr. Herbert.

MR. HERBERT: Thank you, Your Honor. Well, as the court has noted, the possible framing of the sentence here is

narrow by the parties. There's no dispute that the guideline sentencing range is 120 to 150 months or that that that level reflects the will of Congress.

As we've argued, the court should apply the mandatory minimum in this case. We would rest on our briefing for that point unless the court has additional questions.

And as we've argued, the law is clear, we believe that a sentence consecutive to the ten-year mandatory minimum has to be applied under Section 3147.

So the only serious question is whether that consecutive sentence should be one month, as the defendant argues, or six months, as the government argues, or something more. But both those recommendations obviously are well within the guidelines sentencing range for the original federal offense here.

I think there would be a substantial question as to whether a consecutive sentence of merely one month would have any deterrent value whatsoever to somebody who's looking at a ten-year mandatory minimum as this defendant was on the original federal charge. It's hard to imagine how that would have any effect on somebody, particularly when offenses like this are so difficult to catch.

So I won't stand here and argue that a sentence of an additional six months would have a meaningful deterrent effect on somebody, but our recommendation is that largely out of

recognition that the penalty for this federal offense on top of a state conviction for possession of child pornography is very severe. Ten years is a lot of time for somebody who's not done time before. So we recognize that.

We do believe that some additional sentence of imprisonment is warranted in this case, a meaningful additional term of imprisonment is warranted for this continuing pattern of doing the same thing which essentially, by the defendant's own admission, has been his pattern for his entire adult life. He didn't stop as a result of a state conviction, one that did not result in any prison time. He did not stop as a result of a federal indictment under which he knew clearly that he was looking at ten years as a mandatory minimum. But he continued to do that even under conditions of pretrial release in this case.

So the question I would argue is really what does he do with his time in prison? And is there anything that could break this pattern of behavior so that when he gets out he does not go back to doing the exact same things that he was doing before, albeit just trying to be a little bit more careful. That's part of the pattern.

You know, after he had his initial state conviction, he went to using the Dark Web, if he hadn't been using it before. And even after he had his federal indictment, you know, he's back to engaging in child sexual abuse material

websites using fake names.

So the question is really what could get him to change. I think a meaningful term of imprisonment is probably part of that calculus, but candidly, the prospect of a meaningful prison term like that didn't get him to stop. So I don't know that the actual term of incarceration will. But I think ultimately it comes down to whether the defendant, who we're not alleging is a bad person, but whether he can ever come to a meaningful recognition of the harm that this activity is causing, and I think he would say, you know, he's been through significant therapy, individual and group therapy. He's heard about the type of harm that this has caused, but there's no indication that he's really internalized the effect that his actions are having on other people.

So with the Court's permission -- it's not very lengthy but I'd like to just read -- because I don't know whether the defendant has read the victim impact statement in this case. It's only a few pages. If the court would allow it, I'd just like to read that so at least we know the defendant has heard from the parent of one of the many victims of child sexual abuse that he's been, frankly, receiving his entertainment and gratification from over now many years.

So she says: "The following statement cannot begin to cover the totality of the impact the heinous acts against" -- "heinous impact of the heinous" -- I'm sorry. "The totality of

the impact of the heinous acts against our daughter. She was given a life sentence by the people who downloaded her images of her sexual abuse. She will forever have the stigma and branding of someone's sexual object of pleasure. The lifelong impacts for our daughter are tragic and we're afraid for her future well-being.

"For four long years our daughter's sexual abuse was recorded on camera and subsequently distributed over the Internet. Files were uploaded to secret hiding places where only other sexual abusers know about, the secret vault that caters to child pornography. Today's information age of technology where most people benefit from such advances has and will become even more so a living hell for our daughter. As we all know, once something is posted over the World Wide Web, it cannot be taken back. The despicable images and videos will forever be available to a person who seeks and finds pleasure in abusing children. Thousands upon thousands of people all over the world have access to images of our little girl during her darkest days to do so as they wish with those images. A person can download her image, create their own child pornography movie, share it with other monsters or keep it for themselves to continuously exploit our daughter in their own private bedroom.

"Our daughter is a child who does not deserve to be exploited day after day by everyone who has these images of

her. She unjustly has a lifelong sentence of abuse and exploitation. As our daughter grows up and comes to realize the impacts of the sexual abuse and the methodology used in its perpetration, her adjustment into society with these torrid past experiences will be monumental. It will be an ongoing lifelong process for her. To reiterate, her sentence is for LIFE," in all caps.

"The awareness that her sexual abuse has been memorialized by the Internet will forever be devastating. Although she is a child, it won't be long until she learns and realizes that thousands of people all over the world can view her sexual images as long as they wish. She has no control of the circulation of those horrid videos. This is our tragedy. Our daughter will always be a victim each time another monster, quote-unquote, 'enjoys' her videos. Again, this is a horrible tragedy and leaves us helpless because there's nothing we can to do stop the distribution of such images.

"Our daughter is bright, inquisitive and has a heart of gold. She" -- I'm sorry -- "she dreams of being a schoolteacher, perhaps to help and educate kids who have experienced similar abuses as her. Our daughter has natural athletic abilities, is a fantastic soccer and basketball player. As her parents we are committed to showing her what a typical loving family life is like, most definitely a life without ongoing sexual abuse.

"Knowing that people all over the world can continue to exploit her is the deepest concern. We dread the day we must tell her the abuse was videotaped and distributed all over the Internet. Once she fully comprehends how her suffered abuse has been spread around the Internet for others to, quote, 'enjoy,' it will shatter her soul. I repeat, we are afraid for her physical and mental health.

"While out shopping or eating at a restaurant, we are constantly worried and afraid one of these online monsters would recognize her from videos. If she is recognized, what stops them from approaching her, or possibly intending to kidnap her? As her mother, this is my worst fear.

"As she grows older and matures, the images of her abuse remain stagnant in that creeper's mind. Once she herself realizes the impact of her abuse, there's no telling how she would react. One can only imagine she has the potential to feel violated all over again. She might feel ashamed or embarrassed. She may be constantly distracted. She may even feel the abuse was her fault. Adding to these feelings, knowing that she wouldn't be able to take down her online images would be extremely painful and unnerving. She would feel helpless.

"As she becomes an adult and becomes more involved in society, how will her child abuse and continued exploitation affect her? At this time we are carefully and constantly

monitoring her for adverse signs of abuse. She is being monitored by a counselor and hopes to become and remain successful in the healing process. There's no telling how much counseling she will need. The sexual abuse itself is one aspect to heal from. But the other, more challenging aspect is the simple fact that her abuse is forever available online.

"Any person caught with sexual images of our daughter deserves the most severe punishment allowed by court. By having our daughter's sexual abuses online monsters will continue to exploit her, leaving her with a tremendous amount of of pain to deal with. Those individuals must be held accountable for their decisions. Our daughter has a lifelong sentence of victimization and will need help to recover from the trauma."

And that was written just about two years ago.

The only thing I would say about that statement, Your Honor, is I think as the court may be aware I've been involved in the Court's Restorative Justice program and I've heard from a number of victims and survivors who believe that the person who has harmed them is a monster, and that's a very common reaction.

There are others, though -- the woman who co-facilitates the Restorative Justice workshop is a woman named Janet Connors, who lost her son in a drug-related homicide. One of the things she says is -- she wrote in her

journal after what happened to her son happened, you know, "Who are these monsters who did this to my son?" And then a couple days later she wrote in that same journal, "We're not looking for monsters. We're looking for human beings who did this. If I think of them as monsters, I let them off the hook because monsters are only doing what monsters do. Monsters hurt people. But if I hold them in their humanity, I hold them accountable."

So that's the only point at which I would diverge from this mother's victim impact statement. I don't view the defendant as a monster. I view him as a human being who undoubtedly has gifts, who is capable of exercising, you know, free will in deciding whether he will or will not continue to harm people in the way that he has been for so much of his adult life.

I don't know whether Restorative Justice will ever be available to someone convicted of this type of crime in the Bureau of Prisons. I actually hope it will be. I don't know whether it will have more of an effect than the treatment that he's been given has had on him which, frankly, appears to have not done much good. But I really believe that's the issue here, even more than the sentence the court ultimately imposes, is will this defendant come to a genuine meaningful acceptance of responsibility and a recognition that his actions are having devastating, devastating effects on actual, real, innocent

people.

So I would recommend that the court impose the sentence of 126 months, but I don't know whether the court feels there's any point in making a judicial recommendation that the defendant be admitted to a Restorative Justice program if one ever becomes available to people convicted of this type of crime, but I do think that would be useful if that were available to him at some point.

MR. FICK: Thank you, Your Honor. There's certainly no denying the real devastation and pain experienced by the children depicted in the images that are at issue in these cases.

I can assure the court Mr. Trahan read the materials submitted in this case. I can assure the court he's struggling with those issues and thinking about them and has for his whole life. I would also add that with the government's encouraged participation, we've negotiated an agreed-upon restitution payment with the one identified victim in this case. It doesn't come close, of course, to making amends in any wholesome way but it's something that Mr. Trahan can actually afford realistically, a thousand dollars, as a contribution of the many hundreds of thousands of people who have viewed these images. He's withdrawn his objection to that and agrees to that joint restitution recommendation to the court for what it's worth and, again, against the backdrop of the devastation

it may not be much.

But I would say this in addition: I think Mr. Herbert is right, that it's -- as monstrous as the crimes are, it's not constructive or appropriate to view certainly viewers of these kind of materials as monsters. They're human beings with agency and responsibility and so they can and should be held accountable. You know, the question is how we do that in a measured way, accounting for the things we're trying to accomplish overall systemically.

You know, in Mr. Trahan's case, going from zero to over ten years is a huge hit however you slice it, however inured we become in this building to very, very large sentences. Of course, no one, no judge, no lawyer can ever see into a man's heart or predict the future or figure out where this is going to go. I will say there are sort of two things I think -- one is just sort of an empirical observation about defendants in these kinds of cases, and that is over time age is one of the greatest deterrents and sort of factors that lessen the likelihood of recidivism.

And specifically in Mr. Trahan's case, the one thing we can say is that, of course, nobody knows -- we don't know what we don't know. Right? We can't know everything that may have happened at all times when Mr. Trahan was out in the community, but it would appear from out in his history being on supervision actively makes a difference, not just going to

therapy but also being on supervision. Because what we see is it was the gap sort of between the first iteration of this case, where it got dismissed on speedy trial grounds, and then the institution of that case later, almost 11 months later. It was during that period, as far as we can tell, that the new offense conduct started. It's not an excuse. It's just an observation. And it's, I think, consistent with what we've seen.

You know, the case began in 2015. By all accounts Mr. Trahan was on release on restrictive conditions, working, taking care of his ailing parents, going to his therapy, doing pretty well. The case gets dismissed. There's a gap of about eleven months. The new offense conduct occurs. I think that at least gives some indicia or some reason for hope that after a very long sentence, which surely will have a deterrent effect, however long that sentence may be, being on an extended period of federal supervision at a much more advanced age gives the court at least some reason to hope and expect that Mr. Trahan will do better.

Can we know? Can we be certain? Of course not. On the other hand, we also know things about Mr. Trahan, right, that he is somebody with a documented history of certain cognitive and other deficits. Again, these are not excuses, but I think on the spectrum of cases like this we see, these are co-influencing factors or coincident factors that we see

that tell us at least something, I think, about what causes people to be wired in a way that a compulsion to view these images, you know, breaks through and causes the behavior, the offense conduct type behavior.

So, you know, against that backdrop, I would suggest that, you know, a sentence of ten years or more is just -- it's an enormous ratchet. It's an enormous upward move of the ratchet in a case like this and I think is more than sufficient in the circumstances, albeit not a guarantee, because there can never be a guarantee.

On the legal issues I think I would also rest on the paper. I think one way or the other, however the court views them, the First Circuit hasn't spoken, eventually it will speak, whether in this case or another. Those are complex issues. At the end of the day, regardless of how Your Honor comes out, Mr. Trahan is going to be spending a long time in prison, appropriately, given the nature of the offense conduct, but I would suggest the lowest number the court can impose legally is appropriate for a man who has, prior to this arrest, never spent any time in prison.

THE COURT: Okay. Before I invite Mr. Trahan to speak I just want to clarify the legal issues.

MR. FICK: Yes.

THE COURT: Essentially in a nutshell I agree with the government on all of them. And I agree with what appears to be

the majority of the circuits that have dealt with the question of whether it's a mandatory of ten years or not. So I find it is. And I find -- I'm not persuaded by the purported *Alleyne* argument with respect to the other matter.

So essentially I'm adopting the -- pretty much the PSR as it sets forth these matters and, of course, the government argues for that.

Mr. Trahan, you have the opportunity to make a statement if you wish. You don't have to if you don't want to but this is the chance to do it if you wish.

THE DEFENDANT: Thank you, Your Honor. I do want to address --

First I want to apologize to the government and to my family and to the families of the victims and everything that's been created by this material. And Mr. Herbert, I have read the material and I do understand where that family is coming from. During my therapy and everything in the last few months before being rearrested, I discussed it in my individual and group therapy that -- much as they call this a victimless crime, but it is not.

By me and individuals like myself keep viewing this material, we create a society that there has to be more material made, more victims made by this material, and I wish I never learned anything about this and causing the harm I have caused to individuals out there by viewing this material and

the harm I've caused to my family and friends and my parents who have passed. That I wish I could say it one more time before they passed, how sorry I was to them for causing this grief on them and my family.

I look forward to when I get out of prison continuing mental health and learning more about myself and how to keep myself safe and away from this material and other things that would cause me to relapse. And also I just want -- when I get out, I went to get reeducated in trades instead of being in retail and stuff. I'm looking forward to like wanting to go back to school and stuff for a trade instead of just relying on working in retail where I have been half of my life.

THE COURT: All right. Is that it?

THE DEFENDANT: Yes. Thank you, Your Honor.

THE COURT: Okay. Let me be clear on one point. The PSR was recommending a restitution in the sum of $10,000, which I think we've heard, but Mr. Fick says the government and defense have agreed to a different figure.

MR. HERBERT: Yes, Your Honor, the defendant has reached an agreement with counsel for the victim for a restitution payment of I believe $1,000.

THE COURT: All right.

MR. HERBERT: So the government would adopt that as its recommendation.

THE COURT: In a related matter, because restitution

and forfeiture are often confused, the forfeiture is for equipment --

MR. HERBERT: Yes.

THE COURT: -- but not a monetary amount; is that correct?

MR. HERBERT: That's correct, Your Honor, and I did forget to mention, when I was speaking before, the request that the court would include in its oral pronouncement of sentence and in the judgment the order of forfeiture for the Compaq tower PC and the Samsung Galaxy tablet that are mentioned in the forfeiture allegation and that the court would endorse the government's proposed preliminary order of forfeiture.

MR. FICK: The one other financial issue, Your Honor, is the statute now has an enhanced special assessment unless the defendant is indigent. I think Mr. Trahan qualifies as legally indigent in terms of appointed counsel. At least until his mother's estate clears, he has no money.

MR. HERBERT: I don't know that I would agree with that, Your Honor. There are courts that have considered a defendant's future earning capacity in a determination as to whether the defendant is indigent. In this case, I don't think there's any dispute that the defendant is the sole heir to an estate that at least includes a house that the defendant was living in. And I think it's a very reasonable conclusion that he will have the ability to pay that additional special

assessment. So I would not concede that he's indigent for purposes of that special assessment, which goes to good purposes.

MR. FICK: Well, he hasn't inherited anything yet. The estate was heavily mortgaged and there are debts. I don't know what, if anything, is going to be left. In the circumstances, I think the ordinary special assessment would be more appropriate so as not to make it even harder for him to get started ten plus years down the road when he comes out.

THE COURT: Okay. All right. Mr. Trahan, if you'd stand, please.

Sean Trahan, on your conviction of these offenses and pursuant to the Sentencing Reform Act of 1984, it is the judgment of the court that you be and you hereby are committed to the custody of the Bureau of Prisons on Counts One through Three to a term of 120 months on each of the counts of conviction to be served concurrently. Pursuant to Section 3147 of Title 18, there is an additional six-month from and after sentence, for a total of two years and -- I'm sorry, ten years and six months, 120 months and six months for a total of 126.

For supervised release I think a term of five years is sufficient under the circumstances. So upon your release from imprisonment, you'll be placed on supervised release for a term of five years, consisting of equal terms of five years on each of the counts of conviction, all to be served concurrently.

Within 72 hours of your release from the custody of the Bureau of Prisons, you shall report in person to the district to which you have been released.

Pursuant to the parties' agreement, restitution is ordered in the amount of $1,000.

The motion for preliminary order of forfeiture is granted and the property to be forfeited includes, but is not necessarily limited to, one Compaq tower PC personal computer bearing serial number CNX 92308W9 and one Samsung Galaxy 32-gigabyte tablet IME 357382100786079, and a written order to that effect will be entered.

While you're on supervised release, you shall comply with all the standard conditions that pertain to that status as set forth in the United States Sentencing Guidelines at Section 5D1.3(c). They're incorporated now by reference but will be set forth at length in the written judgment.

In addition to the standard conditions, you shall comply with the following conditions: You may not commit any federal, state or local crime. You must not unlawfully possess any controlled substance. It does not appear from the social history that drug abuse has been a factor, so I will not impose drug testing conditions, although if that should change, that could be modified.

You are to participate in any mental health treatment program that you may be directed to by the Probation Office

while you are on supervised release. You are to register pursuant to the Adam Walsh Child Protection and Safety Act of 2006 not later than three business days from your release from imprisonment. You will keep the registration current in each jurisdiction where you reside, are employed or are a student. You must not -- you must, not later than three business days, after each change in name, residence, employment, you are to appear in person in at least one jurisdiction in which you registered and inform the jurisdiction of all the changes in the information.

You are to participate in any sexual specific evaluation or sex offender specific treatment conducted by a sex offender treatment provider as directed and approved by the Probation Office. The provider shall be trained and experienced in the treatment of sexual deviancy and follow the guideline practices established by the association for the treatment of sexual abusers. The specific evaluation may include psychological and physiological testing which may include polygraph testing and visual reaction time assessment. You are to disclose all previous sex offender or mental health evaluations on request to a treatment provider.

If requested to do so, you are to submit to a periodic polygraph test as a means to ensure that you're in compliance with your supervision or treatment program. When submitting to a polygraph test, you do not waive your rights under the Fifth

Amendment not to incriminate yourself and your exercise of such rights will not give rise to a violation proceeding.

You must allow the installation of any computer Internet monitoring software or hardware on approved Internet capable devices under the supervision of the Probation Office. You may not possess any computer or Internet capable device without the approval of the Probation Office and any such device may not be used to knowingly access or view sexually explicit materials as defined in 18 United States Code 2256(2)(A).

You are to provide the Probation Office with any requested information about Internet access, social networking, email, user names, passwords and so on. You are to provide the Probation Office with access to any requested financial information for the purpose of monitoring compliance with the imposed computer access or monitoring conditions including, but not limited to, credit card bills, telephone bills, cable and satellite television bills.

You are to contribute to the cost of any evaluation, treatment programming and so on based on your ability to pay or the availability of third-party payment.

I will recommend to the Bureau of Prisons that if there is a program for Restorative Justice available at the institution, that you be made aware of it and given the opportunity voluntarily to participate.

Finally, there is a mandatory assessment in the total sum of $100 per count or a total of $300, which is due forthwith.

THE CLERK: Sean Trahan, you have the right to file a notice of appeal in this case. If you do wish to file an appeal, you must file it within 14 days from the date the judgment is entered. Do you understand, sir?

THE DEFENDANT: Yes, I do.

THE COURT: I believe that concludes the matter. We'll be in recess.

MR. FICK: Thank you, Your Honor.

MR. HERBERT: Thank you, Your Honor.

THE CLERK: All rise for the court. Court will be in recess.

(Proceedings adjourned at 3:05 p.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I certify that the foregoing is a correct transcript from the record of proceedings taken May 10, 2022 in the above-entitled matter to the best of my skill and ability.

/s/ Kathleen Mullen Silva 7/8/22

Kathleen Mullen Silva, RPR, CRR Date
Official Court Reporter

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA
v.
SEAN J. TRAHAN

JUDGMENT IN A CRIMINAL CASE

Case Number: 1 20 CR 10251 - 001 - GAO

USM Number: 97032-038

WILLIAM FICK, ESQUIRE
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1s-3s (Date of Plea: 10/19/2021)

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec. 2252A (a)(5)(B) and (b)(2)	Possession of Child Pornography	09/08/21	1,3
18 USC Sec. 2252A (a)(5)(B) and (b)(2)	Knowing Access with Intent to View Child Pornography	02/28/15	2

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

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

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

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

5/10/2022
Date of Imposition of Judgment

Signature of Judge

The Honorable George A. O'Toole Jr.
Judge, U.S. District Court
Name and Title of Judge

5/10/22
Date

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: 1 20 CR 10251 - 001 - GAO

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 126 month(s)

The term consists of terms of 120 months on counts 1-3 to run concurrently with each other and a term of 6 months on the 18 USC Sec. 3147 violation, to be served consecutively to the term imposed on counts 1-3.

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

The court recommends to the Bureau of Prisons that the defendant be given the opportunity to voluntarily participate in a Restorative Justice Program at the designated facility.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: **1 20 CR 10251 - 001 - GAO**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : 60 month(s)

on each of counts 1-3, all such terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: 1 20 CR 10251 - 001 - GAO

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: 1 20 CR 10251 - 001 - GAO

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a mental health treatment program as directed by the Probation Office.
2 Pursuant to the Adam Walsh Child Protection and Safety Act of 2006, you shall register as a sex offender not later than 3 business days (from release or sentencing, if granted probation). You will keep the registration current, in each jurisdiction where you reside, are employed or are a student. You must, not later than 3 business days after each change in name, residence, employment, or student status, appear in person in at least one jurisdiction in which you are registered and inform that jurisdiction of all changes in the information. Failure to do so may not only be a violation of this condition but also a new federal offense punishable by up to 10 years' imprisonment. In addition, defendant must read and sign the Offender Notice and Acknowledgment of Duty to Register as a Sex Offender per the Adam Walsh Child Protection and Safety Act of 2006 form.
3.You must participate in a sexual specific evaluation or sex offender specific treatment, conducted by a sex offender treatment provider, as directed and approved by the Probation Office. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual specific evaluation may include psychological and physiological testing which may include polygraph testing and the Visual Reaction Time Assessment (e.g. ABEL screen). You must disclose all previous sex offender or mental health evaluations to the treatment provider.
4.You must submit to periodic polygraph testing as a means to ensure that you are in compliance with the requirements of your supervision or treatment program. When submitting to a polygraph exam, you do not waive your Fifth Amendment rights, and your exercise of such rights will not give rise to a violation proceeding. The results of the polygraph examinations may not be used as evidence in Court to prove that a violation of community supervision has occurred, but may be considered in a hearing to modify release conditions and/or could initiate a separate investigation.
5.You must allow the installation of computer internet monitoring software on approved internet capable devices, but may still use a computer for work purposes that has been previously approved by the Probation Office. The program(s) used will be designed to identify, for the Probation Office, the viewing, downloading, uploading, transmitting, or otherwise using any images or content of a sexual or otherwise inappropriate nature. You must not attempt to remove or otherwise defeat such systems, and must allow the Probation Office to examine such computer and receive data from it at any reasonable time.
6. You must not possess or use any computer or internet-capable device without prior approval from the Probation Office. Any such device should not be used to knowingly access or view sexually explicit materials as defined in 18 U.S.C. §2256 (2)(A).
7.You must disclose all account information relative to internet access, social networking, and email, including user names and passwords, to the Probation Office. You must also, if requested, provide a list of all software/hardware on your computer, as well as
telephone, cable, or internet service provider billing records and any other information deemed necessary by the Probation Office to monitor your computer usage.
8. You must provide the probation officer with access to any requested financial information for purposes of monitoring compliance with the imposed computer access/monitoring conditions, including, but not limited to, credit chard bills, telephone bill, and cable/satellite television bills.
9. Defendant shall be required to contribute to the costs of evaluation, treatment, programming, and/or monitoring, based on the ability to pay or availability of third-party payment.

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: 1 20 CR 10251 - 001 - GAO

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 300.00	$	$	$ 1,000.00

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

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

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
Violet		$1,000.00	
TOTALS	$ 0.00	$ 1,000.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

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

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

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

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

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

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: **1 20 CR 10251 - 001 - GAO**

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

Payment of restitution shall begin immediately and shall be made according to the requirements of the Federal Bureau of Prisons' Inmate Financial Responsibility Program while the defendant is incarcerated and according to a court ordered repayment schedule as set down by probation or, if necessary, by the court after a hearing.

All restitution payment shall be made to the Clerk, US District Court for transfer to the identified victims. The defendant shall notify the US Attorney for this district within 30 days off any change of mailing or residence address that occurs while any portion of the restitution remains unpaid.

Defendant is prohibited from incurring new credit charges or opening additional lines of credit without the approval of the Probation Office while any financial obligations remain outstanding.

Defendant must provide the Probation Office access to any requested financial information, which may be shared with the Financial Litigation Unit of the US Attorney' Office.

DEFENDANT: SEAN J. TRAHAN
CASE NUMBER: **1 20 CR 10251 - 001 - GAO**

SCHEDULE OF PAYMENTS

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

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

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

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

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

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

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

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

The assessment fee is due forthwith.

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

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

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

One Compaq Tower PC, bearing serial number CNX92308Wp; and one Samsung galaxy 32 GB tablet, IME 357382100786079

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