

NO: 17-7024

**IN THE
SUPREME COURT OF THE UNITED STATES**

HUGO MONROY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

The question presented in Mr. Monroy's petition is:

Whether (as in the Fourth and Eleventh Circuits) a miscalculation of the Guidelines range is automatically harmless where the court baldly states, without more, that it would impose the same sentence, or whether (as in the Third, Eighth, and Tenth Circuits) a miscalculation of the Guidelines is harmless only where the court calculates an alternative range and properly justifies any variance therefrom.

In its brief in opposition, the government has attempted to reframe the issue before the Court, in order to evade what it reluctantly concedes are “formal differences” among the circuit courts’ application of harmless error review. (BIO I, 12). To be clear, Mr. Monroy is not merely asking this Court to review the Eleventh Circuit’s finding of harmlessness in his case. He is asking the Court to resolve a decade-long conflict regarding the proper standard of appellate review in Guidelines cases. The conflict is real; it is longstanding; and it controlled the outcome of Mr. Monroy’s appeal.

1. The Eleventh and Fourth Circuits’ “assumed harmless error” approach differs materially from ordinary harmless error review.

a. The government concedes that “formal differences exist in the articulated requirements for harmless error review when a district court has offered an alternative sentencing determination.” (BIO 12). The government is wrong to assert, however, that those differences do not “reflect any meaningful substantive disagreement.” (BIO 12). The differences are significant, and they compel disparate resolution of criminal appeals.

Chief Judge Carnes was quite clear, in both his concurring opinion in *United States v. Williams*, 431 F.3d 767, 773 (11th Cir. 2005) (Carnes, J., concurring) and his opinion for the court in *United States v. Keene*, 470 F.3d 1347, 1349 (11th Cir. 2006), that the Court was adopting a new approach to appellate review, in order to avoid what it deemed the “pointless reversals and unnecessary do-overs of sentence proceedings” brought about by the remedial holding in *United States v. Booker*, 543 U.S. 220 (2005). (See Pet. 8-9). See also *Keene*, 470 F.3d at 1349 (“The ... approach is, after all, an assumed harmlessness inquiry.”); *United States v. Savillon-Matute*, 636 F.3d 119, 123 (4th Cir. 2011) (expressly incorporating *Keene*’s “approach” into the law of the Fourth Circuit).

Furthermore, both Judge Gregory of the Fourth Circuit, and Judge Emilio Garza of the Fifth, have recognized that such an approach deviates significantly from the one required by *Gall v. United States*, 525 U.S. 38 (2007). See *United States v. Gomez-Jiminez*, 750 F.3d 370, 391-92 (4th Cir. 2014) (Gregory, J., concurring in part and dissenting in part) (arguing that the assumed harmless-error inquiry approach employs an “analytical fiction” which “values form over the substance *Gall* requires”; “abdicate[s] . . . responsibility to meaningfully review sentences for procedural error,” and “has placed *Gall* mothballs.”); *United States v. Bonilla*, 524 F.3d 647, 659 (5th Cir. 2008) (Garza, J., dissenting) (district court’s statement that it would impose an identical sentence even if wrong about the Guidelines “flies in the face of *Gall*, which states that a properly calculated guidelines range is a prerequisite to a reasonable sentence”).

b. Contrary to the government’s assertion, the Court of Appeals did not apply “ordinary principles of harmless error review to the circumstances of this case.” (BIO 10). Instead, the court expressly applied *Keene* and declined to review Mr. Monroy’s guidelines claims based solely on the district court’s statement of intent to “moot” appellate review. The court’s discussion of harmless error follows:

We need not address the merits of these guidelines issues, however, because any error in calculating Monroy’s advisory guidelines range was harmless and did not affect his substantial rights. Under our precedent, a guidelines calculation error is harmless if: (1) the district court stated it would impose the same sentence even if it decided the guidelines issue in the defendant’s favor; and (2) assuming an error occurred and the lower guidelines range applied, the sentence resulting from consideration of § 3553(a) factors would still be reasonable. *See United States v. Keene*, 470 F.3d 1347, 1349 (2006)....

Here, the district court, in imposing the 108-month sentence, noted the objections to the its guidelines [sic] calculations and, “in an effort to moot” them, made an alternate ruling on the record that, independent of the advisory guidelines, it would impose the same sentence based on its consideration of the 18 U.S.C. § 3553(a) factors. Further, for the reasons discussed below, the district court’s 108-month sentence is substantively reasonable in light of the circumstances and the § 3553(a) factors. Accordingly, any error in calculating Monroy’s advisory guidelines range did not affect his ultimate sentence and does not require a remand for resentencing.

See United States v. Monroy, 698 F. App’x 1015, 1018 (11th Cir. June 29, 2017), *reh’g denied*, (11th Cir. Sept. 6, 2017) (emphasis added). The court of appeals made no inquiry whatsoever as to whether the record corroborated the district court’s bald assertion that it would have imposed the identical 108-month sentence if, in fact, the correct guidelines range had been 37-46 months. Nor did the court ensure that such a variance – if in fact it had been one – was accompanied by a “sufficiently compelling” justification. *See Gall*, 552 U.S. at 50-51.

The government has either misread the Eleventh Circuit’s opinion, or else has taken passages out of context to avoid this fact. For example, the government writes that “as the court of appeals noted, the district court ‘discussed several factors at length.’” (BIO 11) (quotation and alteration omitted). This statement, however, related to “Mr. Monroy’s claim that the district court failed to consider the § 3553(a) factors in fashioning its sentence or to adequately explain the chosen sentence.” *Monroy*, 698 F. App’x at 1019. This discussion neither addressed the purported harmlessness of the Guidelines errors, nor constituted a finding the district court would have imposed an upward variance had the lower Guidelines range applied. Nor did the district court ever state that a “**lower** sentence” would “[understate] the seriousness of his offense,” ... and “send[] the wrong message to those who might engage in this kind of offense,” as represented in the government’s brief. (BIO 6) (emphasis added). Instead, the court spoke about the impropriety of imposing a **non-Guidelines** sentence. (DE 63:20) (“I think to the extent that it suggests **that a guideline sentence is inappropriate** sends the wrong message to this defendant about the seriousness of the offense ...”; “and I think if we were to follow your suggestion, it winds up, one, **not giving him presumptively the correct guideline sentence**, but it undermines **some of the goals of guidelines generally**, but just the seriousness of the offense in the first instance.”) (emphasis added). ¹

¹ The relevant pages of the sentencing transcript are attached as Exhibit A to this Reply Brief.

Thus, if the court of appeals had applied “ordinary principles of harmless-error review” (BIO 10), it would have noted that this was not a case where the district court calculated the Guidelines, and then, after independent consideration of the § 3553 factors, determined that a 108-month sentence should be imposed regardless of the Guidelines calculations. To the contrary, the district court expressly stated its intent to “moot” Mr. Monroy’s ability to appeal the Guidelines calculations by imposing an alternative sentence several pages of transcript before identifying the sentence it selected. (DE 63:17). In the interim – after stating that it would impose an identical sentence regardless of the Guidelines range – the district court expressed such unyielding fidelity to the Guidelines, that it suggested Mr. Monroy’s criticisms of the calculated Guidelines range would be better addressed to the Sentencing Commission itself, rather than the court. (*See* DE 63:19) (“this is an honest debate that those who advocate before the Sentencing Commission can take up”). A traditional review of the record would have revealed absolutely no indication – apart from its express “effort to moot” Mr. Monroy’s challenges on appeal – that the district court would have imposed the same, 108-months sentence, as a variance from a lower Guidelines range.

2. The decision below conflicts with published decisions of the Third, Eighth, and Tenth Circuits.

By accepting a district court’s bald statement that it would have imposed the same sentence in the absence of an asserted Guidelines error, without conducting any more searching review, the Fourth and Eleventh Circuit have created a direct

split of authority with the Third, Eighth, and Tenth Circuits, which have expressly refused to sanction such practice. *See United States v. Smalley*, 517 F.3d 208, 214 (3d Cir. 2008); *United States v. Bah*, 439 F.3d 423, 431 (8th Cir. 2006); *United States v. Pena-Hermosillo*, 522 F.3d 1108, 1109 (10th Cir. 2008). It is clear, based on the unambiguous law of these circuits, that Mr. Monroy’s appeal would have been decided differently in any of these jurisdictions. The government’s attempt to show otherwise falls flat.

First, the fact that the district court was “well aware” of the lower range advocated by Mr. Monroy does not in any way distinguish this case from *United States v. Smalley*, 517 F.3d 208 (3d Cir. 2008). *Compare* BIO 12 *with Smalley*, 517 F.3d at 211 (“Smalley and the Government both argued at sentencing that Smalley . . . should only receive a three-level enhancement The District Court accepted the recommendation from the Probation Officer and applied the four-level enhancement.”). Additionally, the Third Circuit has repeatedly cited *Smalley* for the proposition that a court’s reasons for imposing an alternate sentence “must be a adequately explained,” and “a bare statement devoid of any justification’ is not enough.” *See United States v. Leon*, 570 F. App’x 258, 261 (3d Cir. 2014) (citing *Smalley*, 517 F.3d at 215).²

²*See also United States v. Vasquez*, 515 F. App’x 104, 106-07 (3d Cir. 2013) (distinguishing *Smalley*, where district court noted that sentencing range overlapped with range advocated by defendant and expressly stated if the lower range applied, it “would have either imposed a sentence at the high end of the sentencing range or varied upward” to arrive at the sentence); *United States v. Kuni*, 514 F. App’x 203, 205 (3d Cir. 2013) (distinguishing *Smalley* where district court “methodically

Second, there is no meaningful difference between Mr. Monroy's case and *United States v. Bah*, 439 F.3d 423 (8th Cir. 2006), and *United States v. Icaza*, 492 F.3d 967 (8th Cir. 2007), where "the sentencing court pronounced a blanket identical alternative sentence to cover any potential guidelines calculation error asserted on appeal without also basing that sentence on an alternative guidelines calculation." (BIO 13).

Nor is there any indication that the Eighth Circuit's law has changed since *Gall*. Tellingly, each of the cases cited in the government's brief to suggest that the "Eighth Circuit [has] repeatedly found guidelines-calculations errors harmless" involve departures or variances from the Guidelines ranges as determined by the district court. (See BIO 13-14) (citing *United States v. Ortiz*, 636 F.3d 389, 394-95 (8th Cir. 2011), *United States v. Sanchez-Martinez*, 633 F.3d 658, 659-660 (8th Cir. 2011), and *United States v. Jackson*, 594 F.3d 1027, 1030 (8th Cir. 2010)). In those cases, it was easy for the court of appeals to determine, using traditional principles of harmless error review, that the calculation error did not affect the court's chosen sentence.

described the calculation of Kuni's offense level, making clear . . . the offense level that Kuni would have received if the authentication feature enhancement were not applicable," and "thoroughly articulated the reasons why it would have varied upward to imposed the same sentence based on the relevant factors under 18 U.S.C. § 3553."); *United States v. Cotton*, 415 F. App'x 403, 403-04 (3d Cir. 2011) (citing *Smalley* for the proposition that "[I]f a district court wishes to provide for the possibility that a different Guidelines calculation applies by handing down an alternative sentence, it must still begin by determining the correct alternative Guidelines range and properly justify the chosen sentence.").

In *Ortiz*, the district court departed upward from the Guidelines based on the defendant's criminal history, and stated that it would have imposed the same sentence as a variance. 636 F.3d at 394-95. Therefore, the court of appeals had "no doubt the district court would have imposed the same sentence, and for the same reasons, regardless of any procedural error it may have made in failing to discuss the intermediate criminal history categories." *Id.* Moreover, the court specifically distinguished, and thus reaffirmed, *Bah* – writing: "This is not a case like *United States v. Bah*, 439 F.3d 423, 431 (8th Cir.2006), 'where the sentencing court pronounced a blanket identical alternative sentence to cover any potential guidelines calculation error asserted on appeal without also basing that sentence on an alternative guidelines calculation.'" *Ortiz*, 636 F.3d at 395.

In *Sanchez-Martinez*, there was a dispute about how a prior offense should be classified for purposes of a sentencing enhancement under U.S.S.G. § 2L1.2. 633 F.3d 658. The district court concluded, erroneously, that a sixteen-level enhancement applied. However, the court then departed downward from the Guidelines as it calculated them, and made clear that it would have imposed the imposed the same sentence regardless of how the specific dispute about the classification of the offense had been resolved. *See Sanchez-Martinez*, 633 F.3d at 659 ("The court explained that it would treat the prior conviction as though it required a twelve-level increase under the guidelines. The court thus declined to give full effect to the sixteen-level increase for a crime of violence, but also stated that an eight-level increase was insufficient, no matter how the crime was pleaded in

state court.”). On appeal, the court found that “the record is clear that the district court intended to impose the same sentence of 36 months’ imprisonment based on 18 U.S.C. § 3553(a), whether the appropriate increase under § 2L1.2(b)(1) was eight, twelve, or sixteen levels. *Id.* at 661.

And, in *Jackson*, the defendant objected to the finding that he qualified for a career offender enhancement based on a prior conviction for walk-away escape. The district court overruled his objection, but varied downward from the Guidelines and sentenced him within the non-enhanced range. Subsequently, this Court ruled in *Chambers v. United States*, 129 S. Ct. 687 (2009), that walk-away escape does not qualify as a predicate offense for the similarly-worded Armed Career Criminal Act enhancement. The Eighth Circuit found that the district court’s error in sentencing Mr. Jackson as a career offender was harmless, because “[t]he court provided comments leaving no doubt that it would apply the same sentence regardless of whether the career-offender provision applied.” *See id.* at 1030. These cases make clear that the Eighth Circuit continues to apply ordinary principles of harmless error review, and does not invoke the Eleventh and Fourth Circuits’ assumed harmless error approach.³

³ The above Eighth Circuit cases are consistent with the Court’s recognition in *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1347 (2016) that “[t]here may be instances when, despite application of an erroneous Guideline range, a reasonable probability of prejudice does not exist.” That opinion recognized, however, that the “centrality of the Guidelines to the sentencing process” must be taken into account in the error review. *See id.* *Molina-Martinez* further establishes that error must be assessed on a case-by-case basis, without resort to categorical rules: “The sentencing process is particular to each defendant, of course, and a reviewing court must

Finally, the Tenth Circuit’s finding in *United States v. Pena-Hermosillo*, 552 F.3d 1108 (10th Cir. 2008), that a “perfunctory explanation” for an alternative sentence “does not satisfy the requirements of procedural reasonableness” creates a direct conflict with the law of the Eleventh Circuit, which both permits and encourages such brevity. 552 F.3d at 1118. In *Pena-Hermosillo*, the Tenth Circuit found that “surely . . . some explanation beyond a vague statement that the sentence is appropriate under § 3553(a)” was required where the sentence imposed was five levels, and 136 months below, the correctly-calculated guidelines range. *Id.* at 1117. *See also Gall*, 552 U.S. at 50-51 (sentencing courts must “consider the extent” of any deviation from the Guidelines and “ensure that the justification is sufficiently compelling to support the degree of the variance”). In Mr. Monroy’s case, by contrast, the Eleventh Circuit found no such justification required, despite the fact that Mr. Monroy maintained that the correctly-calculated Guidelines range was a full eight levels, and 62 months, below the sentence imposed. Nonetheless, the court of appeals held that that Mr. Monroy had not met **his burden** of showing that the “108-month sentence is substantively unreasonable, even if it constitutes an upward variance from the 37-46 month range Monroy contends should have applied.” *Monroy*, 698 F. App’x at 1019.

consider the facts and circumstances of the case before it.” *Id.* at 1346. This holding is fundamentally at odds with the Eleventh Circuit’s approach, which places absolutely no weight on an erroneous Guidelines calculation and accepts even the most transparent assertion from the district court as categorical proof of harmlessness.

Significantly, neither the government, nor the district court, nor the court of appeals, ever suggested that an upward variance – let alone a “major” variance – was warranted on the facts of this case. *See Monroy*, 658 F. App’x at 1019 (“Monroy describes himself as a ‘low-level offender’ who does not ‘present[] a danger to any person’ and points out that he abstained from using the ARES network for periods of time and did not collect the child pornography he downloaded and viewed.”). The government has failed to address the significance of the fact that the 108-month sentence imposed in this case constitutes a “major” variance from the 37-46 month Guidelines range advocated by Mr. Monroy.

3. The government has failed to address the significant policy implications of the Eleventh and Fourth Circuits’ approach.

The government has not addressed the significant policy implications brought about by eliminating appellate review of alleged Guidelines errors. Simply stated, the Sentencing Commission cannot carry out its critical function of reviewing and revising the Guidelines if interpretation disputes and potential errors are shielded from appellate review. (*See* Pet. 20). Nor can a court of appeals adequately ascertain the extent of a variance from the Guidelines range, if it has not first ascertained what the properly-calculated range should be. The assumed harmless error inquiry approach, designed for the express purpose of preserving judicial resources, thus has negative implications both for the effectiveness of the Guidelines and the fair administration of justice.

4. This case provides an excellent vehicle for review.

Nothing in the government's brief refutes Mr. Monroy's claim that his case presents an ideal vehicle to review the conflict. Notably, the government has not argued that this is a poor vehicle because the Guidelines calculation claims in Mr. Monroy's appeal would have been unsuccessful on their merits. At a minimum, therefore, it may be deemed conceded that Mr. Monroy's appeal raised substantial claims regarding the proper application of the Guidelines warranting review.

Nor has the government suggested that there are any preservation problems with the issue presented herein. To the contrary, Mr. Monroy objected to the relevant conduct enhancement in the district court, argued that he was entitled to the retroactive application of a clarifying amendment in the court of appeals, and specifically challenged the district court's effort to "moot" review by the purported alternate sentence.

Lastly, the fact that this Court has previously denied writs of certiorari on "similar issues," confirms that this is an important and recurring issue of law on which this Court's guidance is needed. (BIO 8) (citing, *e.g.*, *Savillon-Matute v. United States*, 565 U.S. 964 (2011)). Significantly, the most recent of the petitions cited by the government was denied in 2012. Yet, as authorities in Mr. Monroy's petition confirm, the practice of imposing putative "alternate" sentences continues in both the Fourth and Eleventh Circuits. (Pet. 16-17). The continued prevalence of the practice confirms that the question presented herein raises an important and

recurring question of federal law that is unlikely to be resolved without this Court's intervention.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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EXHIBIT

EXHIBIT A

Excerpt of Sentencing Transcript, *United States v. Hugo Monroy*,
No. 15-20938-CR-KMM (S.D. Fl. Aug 1, 2016)A

1 case. I think a guideline sentence is certainly appropriate,
2 and clearly the PSI shows that the defendant was well aware of
3 the ARES program. He was a longtime user of ARES. He was a
4 frequent user of ARES.

5 The only thing that arguably makes this case any
6 different is that the defendant took the time to delete his
7 child pornography collection on a regular basis.

8 I certainly think a guideline sentence is appropriate
9 in this case, and the Government is recommending a sentence of
10 92 months in prison.

11 THE COURT: Well, let me address the variance. I'm not
12 satisfied that counsel has demonstrated a sufficient basis to
13 grant a variance or to warrant a variance. So I'll deny that
14 motion.

15 Secondly, with respect to the guidelines that we've
16 addressed, the guideline calculations and the objections, that
17 in an effort to moot that issue, I'm going to sentence within
18 the guideline range, but I will in the alternative impose a
19 reasonable sentence independently of the guidelines post Booker
20 after consideration of the Title 18, United States Code, Section
21 3553 factors. So if for any reason the defendant appeals the
22 sentencing guideline calculation, I would state for the record
23 that the sentence would be imposed similarly after consideration
24 of the 3553 factors independent of the guidelines.

25 To the issue of the sentence to be imposed, I don't

1 think it would serve any purpose today to read into the record
2 paragraphs 8, 9, 10, 11, 12 and 13 of the Presentence
3 Investigation Report which describe in graphic detail the
4 repugnant nature of the material that the defendant was
5 possessing and viewing, but I do think that in the event the
6 sentence gets reviewed, I would certainly direct any appellate
7 court to those paragraphs of the Presentence Investigation
8 Report.

9 I understand that this defendant is not a producer or
10 manufacturer of the material in question, but for individuals in
11 his circumstance, he is the target audience for these
12 manufacturers and producers, and but for persons such as this
13 defendant, we would not have the continuous repeated
14 victimization of these young children that are displayed in
15 these videos. So I don't think we can -- I think the efforts to
16 minimize his involvement when he is the but for reason why these
17 materials are produced, understages the seriousness of his
18 offense.

19 And with respect to the guideline sentence itself and
20 your reference to the Sentencing Commission, I've yet to see --
21 and I understand there is an honest difference of opinion about
22 the seriousness of this type of offense and this type of
23 defendant, but I've yet to see the commission undertake a change
24 in the guidelines themselves. Have they?

25 MR. SWARTZ: Well, in the Clear case, they do cite a

1 different approach that the guidelines -- I mean, that the
2 Sentencing Commission would recommend.

3 THE COURT: Has the commission changed the guidelines?

4 MR. SWARTZ: They haven't.

5 THE COURT: Have not?

6 MR. SWARTZ: Have not.

7 THE COURT: Right, that's what I thought. So, I mean,
8 there's a lot of advocacy for a change in the guidelines. I
9 understand that and I respect your advocacy on behalf of your
10 client, but there are some strong concerns on the other side of
11 this issue, and at least to date, technology issues aside, the
12 Sentencing Commission has not seen fit to change the guidelines.
13 And my sense is that there are many who don't think those
14 guidelines should be changed.

15 I mean, this is an honest debate that those who
16 advocate before the Sentencing Commission can take up; nor would
17 I note has Congress itself changed the statutory maximum
18 penalties for this offense, which from what I could tell, is a
19 statutory maximum penalty of 20 years. So Congress at least to
20 date has evinced a very serious concern for people who engage in
21 this kind of behavior including a sentence of up to 20 years,
22 and by that calculation his guideline range is 87 to 108 months.
23 So his guideline sentence is a fraction of the statutory
24 maximum.

25 So your suggestion is that we give him a fraction of a

1 fraction, and I think if we were to follow your suggestion, it
2 winds up, one, not giving him presumptively the correct
3 guideline sentence, but it undermines some of the goals of
4 guidelines generally, but just the seriousness of the offense in
5 the first instance.

6 So, as I said, I appreciate your advocacy, but I think
7 to the extent that it suggests that a guideline sentence is
8 inappropriate sends the wrong message to this defendant about
9 the seriousness of the offense. It sends the wrong message to
10 those who might engage in this kind of offense who are the end
11 users of why this material is manufactured and produced in the
12 first instance, and it does nothing, that type of sentence does
13 nothing to address the harm to the young children who are the
14 victims of this defendant and others who trade in this kind of
15 material.

16 The Court has considered the statements of all parties,
17 the Presentence Report which contains the advisory guidelines
18 and the statutory factors as set forth in Title 18, United
19 States Code, Section 3553(a).

20 It's the finding of the Court the defendant is not able
21 to pay a fine. Restitution, however, is mandatory and will be
22 ordered at a later date.

23 It's the judgment of the Court that the defendant, Hugo
24 Monroy, is committed to the Bureau of Prisons to be imprisonment
25 for 108 months as to Count I of the Indictment. It's further

1 ordered that pursuant to Title 18, United States Code, Section
2 3664(d)(5), the victims' losses are not yet ascertainable.
3 Therefore, the Court shall set a date for the final
4 determination of the victims' losses not to exceed 90 days after
5 sentencing.

6 Upon release from imprisonment, the defendant shall be
7 placed on supervised release for a term of 20 years. Within 72
8 hours of release from the custody of the Bureau of Prisons, the
9 defendant shall report in person to the probation office in the
10 district in which the defendant is released.

11 While on supervised release, the defendant shall not
12 commit any crimes, shall be prohibited from possessing a firearm
13 or other dangerous device, shall not possess a controlled
14 substance, shall cooperate in the collection of DNA, shall
15 comply with the standard conditions of supervised release
16 including the following special conditions: Surrendering to
17 immigration for removal after imprisonment, data encryption
18 restriction, computer modem restriction, computer possession
19 restriction, employer computer restriction disclosure, no
20 contact with minors, no contact with minors in employment, no
21 involvement in youth organizations, sex offender treatment,
22 restricted from possession of sexual materials, Adam Walsh Act,
23 search conditions, sex offender registration and financial
24 disclosure requirement, all as noted in Part G of the
25 presentence report.

1 It's further ordered the defendant shall pay
2 immediately to the United States a special assessment in the
3 amount of \$100.

4 And as I noted earlier, the sentence is imposed both
5 pursuant to the Sentencing Guidelines as a sentence within the
6 guideline range, and alternatively as a reasonable sentence
7 independently of the guidelines post Booker after consideration
8 of Title 18, United States Code, Section 3553 factors.

9 Forfeiture of the defendant's right, title and interest
10 in certain property is hereby ordered consistent with the Notice
11 of Forfeiture. United States shall submit a proposed Order of
12 Forfeiture within three days the proceedings.

13 Now that sentence has been imposed, does the defendant
14 or his counsel object to the Court's finding of fact or to the
15 manner in which sentence was pronounced?

16 MR. SWARTZ: Only the objections that I raised during
17 the sentencing, Your Honor.

18 THE COURT: Okay. Mr. Monroy, do you understand you
19 have a right to appeal the sentence that I've imposed?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Anything further?

22 MR. SWARTZ: I would ask, Your Honor, I don't know if
23 it could be possible with the Bureau of Prisons, but if you
24 could recommend that the place of designation be as close to
25 Miami as possible.