

PETITION APPENDIX

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2026

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY FRANK SCOVOTTO, AKA
Franky Pisano, AKA frankypisano93, AKA
frankypis, AKA Franky, AKA Frankie,

Defendant - Appellant.

No. 24-1996

D.C. No.

2:22-cr-00306-DSF-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted February 12, 2026
Pasadena, California

Before: WARDLAW, BADE, and H.A. THOMAS, Circuit Judges.

Anthony Frank Scovotto pleaded guilty to attempting to produce child pornography in violation of 18 U.S.C. § 2251(a), (e). On appeal, he challenges his sentence, arguing that the district court improperly calculated his Guidelines range and that his sentence was substantively unreasonable. We have jurisdiction under

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

28 U.S.C. § 1291 and 18 U.S.C. § 3742, and we affirm.

1. Assuming the district court improperly calculated Scovotto’s Guidelines range, any such error was harmless. “An error in calculating a criminal defendant’s Guidelines range is subject to harmless-error review.” *United States v. Prigan*, 8 F.4th 1115, 1122 (9th Cir. 2021). The district court explained that “the correct Guidelines range [wa]s in dispute” and calculated the Guidelines ranges under both the government’s and Scovotto’s calculations. *See United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011) (per curiam). The imposed sentence was within the Guidelines range under Scovotto’s calculations, and the district court explained its reasons for imposing that sentence adequately, noting that it would have imposed the same sentence even without grouping offenses under U.S.S.G. § 1B1.2(c).

2. The district court did not abuse its discretion in imposing a 360-month sentence. “The substantive reasonableness of a district court’s sentence is reviewed for abuse of discretion.” *United States v. Thompson*, 130 F.4th 1158, 1164 (9th Cir. 2025). We “should only vacate a sentence if the district court’s decision not to impose a lesser sentence was ‘illogical, implausible, or without support in inferences that may be drawn from the facts in the record.’” *United States v. Laurienti*, 731 F.3d 967, 976 (9th Cir. 2013) (quoting *United States v. Treadwell*, 593 F.3d 990, 1011 (9th Cir. 2010)). The district court adequately

explained its reasons for sentencing Scovotto to 360 months, and those reasons have support from the facts in the record. Moreover, the 360-month sentence was within the Guidelines range under Scovotto's calculation, and within the mandatory minimum (300 months) and mandatory maximum (600 months) for the conviction.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 9 2026

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY FRANK SCOVOTTO, AKA
Franky Pisano, AKA frankypisano93, AKA
frankypis, AKA Franky, AKA Frankie,

Appellant.

No. 24-1996

D.C. No.

2:22-cr-00306-DSF-1

Central District of California,
Los Angeles

ORDER

Before: WARDLAW, BADE, and H.A. THOMAS, Circuit Judges.

Judges Wardlaw, Bade, and Thomas have unanimously voted to deny the petition for panel rehearing. The petition for panel rehearing, Dkt. 49, is

DENIED.

No. 24-1996

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY FRANK SCOVOTTO,

Defendant-Appellant.

Appeal from the United States District Court for the
Central District of California

Hon. Dale S. Fischer, United States District Judge
No. 2:22-cr-306-DSF

APPELLANT'S PETITION FOR PANEL REHEARING

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INTRODUCTION

The Court’s decision affirming Mr. Scovotto’s sentence misapprehended the nature of the substantive-unreasonableness argument raised in his briefing and argument. In particular, the Court concluded that the sentence is substantively reasonable because the district court “adequately explained its reasons” and because “those reasons have support from the facts in the record.” Op. 2–3.¹

But those two issues—adequate explanation and evidentiary support—are principally matters of procedural reasonableness, not substantive. Mr. Scovotto did not raise those procedural issues as errors in this appeal. *See* OB-21–23; RB-11–12. He nowhere argued that the district court failed to explain its reasons, which concerned the seriousness of the offense and deterrence. Nor did he argue that the district court’s findings in that regard were unsupported on this evidentiary record. The Court’s decision resolved unraised issues.

Instead, Mr. Scovotto argued that the district court failed to give any weight to his personal history and circumstances. *Id.* The district court

¹ The Court’s memorandum disposition, Dkt. 46, is included as an appendix to this petition.

unreasonably minimized this factor under 18 U.S.C. § 3553(a), effectively setting that part of the statute aside. By so doing, it committed “a clear error in judgment.” RB-23 (quoting *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055 (9th Cir. 2009)); accord *United States v. Thompson*, 130 F.4th 1158, 1165 (9th Cir. 2025).

The Court’s holdings on procedural error do not address that substantive-unreasonableness argument. An adequately explained and factually supported sentence is nevertheless unreasonable when it is rendered without meaningful consideration of a § 3553(a) factor raised by the parties. *Thompson*, 130 F.4th at 1164–65.

Because Mr. Scovotto’s argument was left unresolved by the Court’s decision, it should grant panel rehearing to address it and to order re-sentencing.

STANDARD OF REVIEW

Panel rehearing is appropriate when the Court’s decision “has overlooked or misapprehended” a “point of law or fact.” Fed. R. App. P. 40(a); accord *Armster v. U.S. Dist. Ct. for the C.D. of Cal.*, 806 F.2d 1347, 1356 (9th Cir. 1986).

ARGUMENT

I. The Court misapprehended Mr. Scovotto’s substantive-unreasonableness argument.

The Court’s decision addressed two issues that Mr. Scovotto had not raised in this appeal. At the same time, it did not address the argument he did raise. This misapprehension is a prototypical example warranting rehearing. Fed. R. App. P. 40(a).

I.A. Mr. Scovotto did not raise the issues that the Court resolved.

On substantive reasonableness, the Court reached two key conclusions. First, it held that the district court “adequately explained its reasons” for imposing a 360-month sentence. Op. 2–3. Second, it held that those reasons “have support from the facts in the record.” Op. 3.

Both these issues bear principally on the procedural reasonableness of a sentence, not its substantive unreasonableness. First, a sentence is procedurally unreasonable if the district court failed to provide an adequate explanation. *E.g., United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc). Second, a sentence is procedurally unreasonable if based on clearly erroneous facts—i.e., findings that are “without support in inferences that may be drawn from the facts in the record.” *United States v. Pineda-Doval*, 692 F.3d 942, 944 (9th Cir. 2012).

These were not the errors assigned here. Mr. Scovotto did not dispute that the district court adequately explained the seriousness- and deterrence-based reasons for the sentence. Rather, he conceded the circumstances “were serious and warranted a significant sentence.” RB-11; *accord* OB-22. Likewise, Mr. Scovotto did not dispute that there was record support for the district court’s seriousness- and deterrence-based reasons. As this Court is aware, Mr. Scovotto’s arguments about the factual basis were technical and legal, not about record support for the seriousness of his conduct. *See* Op. 2 (addressing Guidelines grouping).

I.B. The Court did not resolve the *Thompson* error that Mr. Scovotto did raise.

Instead, Mr. Scovotto argued substantive unreasonableness arising from the district court’s “overreliance on the circumstances of the offense and disregard of the uncontroverted mitigation.” RB-12; *accord* OB-22–23. At argument, counsel identified this as “*Thompson* error,” Oral Arg. 7:42–46,² citing the decision—issued mid-briefing in this case—that crystallized the law in this area, *United States v. Thompson*, 130 F.4th 1158 (9th Cir. 2025).³

² <https://www.youtube.com/watch?v=57r0Bw6TFbo>.

³ *Thompson* described the principle already embodied in the cases cited in Mr. Scovotto’s briefing, including *United States v. Amezcua-Vasquez*, 567 F.3d

A *Thompson* error is not about adequate explanation or evidentiary support. It arises when “it does not appear that [a district court] gave [a § 3553] factor meaningful weight in selecting the sentence that it imposed.” *Id.* at 1167. As an example, a district court might have sufficient record support to find that a defendant “is transgender, autistic, and has suffered prior trauma in her life.” *Id.* at 1166. It might explain its findings in adequate detail, and if so, those findings would be “proper considerations at sentencing.” *Id.* But even if those reasons are adequately explained and supported by the record, they still “may not be the sole basis for the chosen sentence.” *Id.*

That was precisely the error argued here, just with different § 3553(a) factors. OB-21-23; RB-11-12.

The Court’s decision here did not address Mr. Scovotto’s argument. It cited *Thompson* for the abuse-of-discretion standard. Op. 2. But then it did not consider whether the district court here abused its discretion in precisely the same way as in *Thompson*. Instead, it changed lanes and addressed procedural unreasonableness, as well as legality under the statutory minimum and maximum. Op. 2-3; *supra* at 3-4. Mr. Scovotto does not dispute the Court’s

1050 (9th Cir. 2009), *cited at* OB-21-23; RB-11. *See Thompson*, 130 F.4th at 1165, 1170 (citing *Amezcuva-Vasquez*).

views on those issues for purposes of this petition, but he respectfully submits that the decision misapprehended and failed to address his argument.

II. The Court should grant rehearing and order resentencing.

The error here was just as fundamental as in *Thompson*. The district court did not meaningfully engage with Mr. Scovotto's background and then reasonably decide to give it only modest weight.

Instead, it disregarded an entire § 3553(a) factor. *See, e.g.*, ER-38 ("There is nothing mitigating about the offense."); ER-39 ("His basic needs were taken care of."); *id.* ("There is nothing mitigating about his history or characteristics."). The district court seemed to think it faced a binary choice: whether the personal-background factor could somehow overcome the others. *See, e.g.*, ER-39 ("I appreciate the letters of support but the fact that Mr. Scovotto has been kind and caring to some people does nothing to ameliorate his conduct in this case."); *id.* ER-40 ("It's unfortunate ... but I reject any suggestion that this somehow caused or contributed to his conduct here."). But in reality, the district court was supposed to weigh all these factors together to craft a sentence, not pick just one factor as the winner.

The district court's treatment of Mr. Scovotto's father illustrates its failure to engage meaningfully with this § 3553(a) factor. *See* OB-3, 23; Oral

Arg. 6:40–7:10. When Mr. Scovotto was eight months old, his father left California for Louisiana and abandoned his family. OB-3; PSR-28 (¶ 98). Scovotto “has never met his father or seen his father since.” PSR-28 (¶ 98).

The district court found this experience worthy of no weight at sentencing because, it said, “It’s not clear whether Mr. Scovotto’s father abandoned the family or whether something happened to him that prevented him from returning.” ER-39. That ruling trivializes a significant childhood loss—one that children quite reasonably grieve, even when they do not know their parent’s reasons. Perhaps especially when they do not know.

This might have just been a careless remark from the district court. It might not have intended that remark to form the entirety of the judicial basis for discarding this childhood trauma as a sentencing consideration. But if so, then a careless remark was all this issue got, when meaningful consideration was due.

* * *

Mr. Scovotto asked the district court to consider and meaningfully weigh his personal history and characteristics and sentencing. When the district court did not do so, he asked this Court to correct that oversight. If the panel

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decision stands, Mr. Scovotto's reasonable request—and statutory right—will have been twice overlooked. The Court should grant rehearing.

CONCLUSION

Mr. Scovotto respectfully requests that the Court grant panel rehearing, vacate the sentence, and remand for re-sentencing.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

Dated: May 1, 2026

By: /s/ James Anglin Flynn
James Anglin Flynn
Deputy Federal Public Defender

Attorneys for Defendant-Appellant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) NO. CR 22-306-DSF
)
ANTHONY FRANK SCOVOTTO,)
)
Defendant.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Monday, April 1, 2024, 11:00 A.M.

Sentencing Hearing

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1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 1, 2024; 11:00 A.M.

2 -oOo-

3 THE CLERK: All rise.

4 This United States District Court is again in
5 session, the Honorable Dale S. Fischer, Judge presiding.

6 Please be seated and come to order.

7 Calling Item No. 4, Case No. CR 22-306-DSF, United
8 States of America v. Anthony Frank Scovotto.

9 Counsel, please state your appearances.

10 MS. KELLY: Good morning, Your Honor.
11 Claire Kelly and Scott Lara on behalf of the United States.

12 THE COURT: Good morning.

13 MR. NATAL: Good morning, Your Honor.

14 DFPD Daniel Natal on behalf of Anthony Scovotto
15 who is in custody seated to my left. I'm also joined at
16 counsel table by my colleague Julia Deixler.

17 THE COURT: Good morning.

18 MR. NATAL: Good morning.

19 THE COURT: Would you approach the lectern with
20 your client, please.

21 MR. NATAL: May I request that Mr. Scovotto remain
22 seated?

23 THE COURT: You know, I forgot that. Why don't
24 the both of you just remain there?

25 MR. NATAL: Yes, Your Honor.

1 THE COURT: All right. This is the time set for
2 sentencing. I've read and considered the revised
3 presentence report and the three addenda.

4 I have also read and considered the position
5 papers filed by the parties including the victim impact
6 statements and the very supportive letters submitted on
7 Mr. Scovotto's behalf as well as the stipulation regarding
8 restitution which I will approve unless you have any other
9 comments.

10 MS. KELLY: I just wanted to note that per the
11 stipulation the parties agree the payment should be made
12 forthwith so we would ask the Court to order that payments
13 be made forthwith regarding restitution.

14 THE COURT: All right. So I will approve the
15 restitution and the payment. Payments are to be made
16 forthwith.

17 Mr. Natal, have you had enough time to review
18 those documents with Mr. Scovotto?

19 MR. NATAL: Yes, Your Honor.

20 THE COURT: Have you explained their contents to
21 him?

22 MR. NATAL: I have.

23 THE COURT: Do you have any concerns about his
24 ability to understand them?

25 MR. NATAL: I do not.

1 THE COURT: Sir, did you get those documents?

2 THE DEFENDANT: Yes. Yes, Your Honor.

3 THE COURT: Did you read them?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you need any more time to read
6 them?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Did your attorney explain them to you?

9 THE DEFENDANT: Yes, he did, Your Honor.

10 THE COURT: Did you understand them?

11 THE DEFENDANT: Yes, I did, Your Honor.

12 THE COURT: Mr. Natal, do you want to contest or
13 change anything in the presentence report other than what
14 was submitted in writing?

15 And I do -- I've reviewed your argument from the
16 last hearing but feel free to say anything that you want to
17 add.

18 MR. NATAL: I have nothing further to add, Your
19 Honor.

20 THE COURT: All right.

21 Anything you want to say in mitigation or
22 otherwise present on behalf of Mr. Scovotto?

23 MR. NATAL: Nothing other than what was expressed
24 at the last hearing.

25 THE COURT: All right. Thank you.

1 Mr. Scovotto, is there anything you would like to
2 say before I sentence you?

3 THE DEFENDANT: Yes, Your Honor.

4 Good morning, Your Honor.

5 THE COURT: Good morning.

6 THE DEFENDANT: I want to begin by offering my
7 deepest apologies to the victims and the government, the
8 Court, and my family for my actions.

9 After many months of reflection and examination of
10 conscience and prayer, I acknowledge and see with great
11 clarity that my behavior as well as my actions have forever
12 impacted the lives of those who I have caused emotional and
13 painful mental injury.

14 I am certain that my deception and manipulation
15 have negatively changed their lives of the three victims and
16 their families.

17 While in jail, I have reflected on my actions for
18 many hours and days and weeks; and as I stand before the
19 Court today, I want the Court to know that I do understand
20 that what I did was positively abhorrent and unacceptable.

21 More than that, I am truly ashamed of myself and
22 my behavior. The phrase "I apologize" is much too simple
23 and insufficient to express how sorry I truly am for my
24 actions and my behavior.

25 I'm disgusted with myself and do not like what I

1 see in the mirror. The amount of self-hatred and resentment
2 I feel towards myself cannot be overstated. I cannot and do
3 not want to be the man I see in the mirror any longer.

4 I want to improve myself and to reconfigure my
5 moral character and foundation of God and work and family.

6 However, I know that I first must earn forgiveness
7 from all who I've hurt and carelessly injured; and I may
8 never earn their forgiveness and they certainly have no
9 obligation to forgive me, but I promise the Court that I
10 will work until my last breath to be a man worth forgiving.

11 In addition to those I've harmed and the Court, I
12 plan to continue to seek forgiveness from All Mighty God and
13 allow my spirit to heal and regrow from my careless,
14 hurtful, and destructive actions.

15 I know that I cannot obtain forgiveness and
16 redemption alone, whether it be in the community or in
17 prison, I ask the Court to assist me with the professional
18 help I require.

19 I've been in the death-care profession for many
20 years and I enjoy working with families by assisting in the
21 planning and arrangements for their loved one's final
22 tributes.

23 Having done this for so long and wishing to
24 continue to eventually do so brings a great sense of purpose
25 to my life. Helping a grieving family to get through the

1 loss of their loved one allows me to become fulfilled with
2 compassion and peace.

3 I feel some sense of irony now realizing that I
4 will soon have to bear the loss of my own mother without the
5 benefit of any support or empathy from those I love.

6 For that I have only myself to blame and my
7 problems were created by me alone and I know that I must
8 work through them.

9 I'm not too proud to admit that I cannot do it
10 alone. I committed to seek out as much professional help
11 and spiritual assistance as possible for as long as it takes
12 in order to change the behaviors that led me to where I am
13 today.

14 Your Honor, I humbly ask that you deal with me
15 justly and allow me to one day return to my profession,
16 family, and friends. Given my age, I fear to die alone
17 without the people I love ever so much.

18 I sincerely thank you for giving me this
19 opportunity to speak from my heart.

20 Thank you.

21 THE COURT: Thank you.

22 Anything from the government?

23 MS. KELLY: No, Your Honor. Thank you.

24 THE COURT: Have all the victims been notified?

25 MS. KELLY: There are three victims. We were able

1 to contact one who has been notified. She submitted the
2 victim impact statement. We have been unable to reach the
3 other two.

4 THE COURT: All right. Thank you.

5 The first addendum and revised PSR reflect a
6 change addressing one of the defense contentions and
7 correcting several factual errors. I will not address those
8 further.

9 Mr. Scovotto contends that the grouping rules
10 pursuant to Sentencing Guidelines 1B1.2(c) do not apply
11 because he did not stipulate to every element of the
12 additional crime of production of child pornography with
13 regard to the other two victims described in his factual
14 basis.

15 He is incorrect for the reasons stated by the
16 government and probation officer.

17 I do admit the language in the guidelines seem
18 somewhat confusing in the discussion of grouping and
19 discussion of relevant conduct. But even if grouping did
20 not apply, the Court would impose the same sentence.

21 Mr. Scovotto contends that the three-level
22 reduction for acceptance of responsibility should be applied
23 after his offense level is reduced to the maximum level for
24 a three.

25 He is incorrect for the reasons stated by the

1 government. I find that all of the objections lack merit
2 and are overruled.

3 In addition, Mr. Scovotto objects to several other
4 portions of the PSR and states that he does so for the
5 purpose of preserving his future right to appeal his
6 sentence.

7 For the purposes of sentencing; the objections are
8 overruled. The nature of the rights he has preserved, if
9 any, would be determined eventually by the Court of Appeals
10 to the extent to which he did not waive those rights.

11 I don't need to address that issue.

12 I find the revised report to be accurate and
13 correct. I adopt the report and the calculation of the
14 advisory sentencing guidelines.

15 The advisory guidelines are the starting point and
16 the initial benchmark in the Court's analysis. I'm
17 consulting and taking into account the current edition of
18 the Guidelines.

19 The total offense level is 43. The criminal
20 history category is I. The guideline range for custody is
21 the statutory maximum of 50 years. The range for supervised
22 release is five years to life. The range for the fine is
23 \$50,000 to \$250,000, and the special assessment to the Crime
24 Victims Fund is \$100.

25 In making an individualized determination based on

1 the facts, I'm also considering the factors described in
2 18 United States Code, Section 3553(a), especially but not
3 exclusively the nature and circumstances of the offense and
4 the history and characteristics of the defendant; the need
5 for the sentence to reflect the seriousness of the offense;
6 to promote respect for the law and provide just punishment,
7 to afford adequate deterrence for criminal conduct and to
8 protect the public from further crimes of the defendant.

9 I'm considering the kinds of sentences available
10 and the need to avoid unwarranted sentence disparities among
11 defendants with similar records who have been convicted of
12 similar offenses as well as the need to provide restitution
13 to victims of the offense.

14 There is nothing mitigating about the offense.
15 The comparison made by the defense is not valid. If the
16 stipulations in the plea agreement were insufficient to
17 support the grouping of pseudo-counts, I would find the
18 facts relating to the other two victims to be aggravating as
19 to the 3553(a), factor 1.

20 Therefore, even with an offense level of 40 and a
21 guidelines range of 262 to 365 months, I would sentence
22 defendant to 360 months which is lower than the high end of
23 the range and only because the government recommends it.

24 A sentence exceeding that range would be
25 appropriate. In fact, the government does not explain why a

1 sentence lower than 600 months is appropriate if the Court
2 accepts the conclusion and that of the probation officer
3 that an offense level of 43 is appropriate.

4 It's not clear whether Mr. Scovotto's father
5 abandoned the family or whether something happened to him
6 that prevented him from returning.

7 In any event, he had a long and loving
8 relationship with his mother and three other family members.
9 His basic needs were taken care of.

10 I appreciate the letters of support but the fact
11 that Mr. Scovotto has been kind and caring to some people
12 does nothing to ameliorate his conduct this case.

13 It was not a one-time mistake. He is not an
14 outstanding member of the community.

15 Under no circumstances would Mr. Scovotto be
16 released in time to assist his failing mother so there's no
17 reason for the Court to consider her health.

18 There is nothing mitigating about his history or
19 characteristics. In fact, although he has no criminal
20 history points, he began committing crimes in his 20s
21 including a crime against a minor that required him to
22 register as a sex offender.

23 That previous offense is aggravating and I reject
24 the argument that the previous court's response to that
25 offense is mitigating in any way.

1 It's unfortunate for both him and his mother that
2 he had to spend so much time taking care of her but I reject
3 any suggestion that this somehow caused or contributed to
4 his conduct here. It's a very common experience as parents
5 and grandparents live to be older and older.

6 Dr. Meier, the psychologist used the Ceport Risk
7 Assessment Tool from 2015 and a 2017 tool referred to as
8 Casic. Ceport is C-e-p-o-r-t. Casic, C-a-s-i-c.

9 She relied almost completely on Mr. Scovotto's
10 self-reports. She found two risk factors for recidivism and
11 only age as a protective factor or one that reduces risk.

12 She arrived at a seven-percent chance, only
13 slightly greater than a male with no history at all of
14 sexual offenses.

15 She doesn't explain how this is calculated and she
16 admits the tools can only predict an estimate of the chance
17 of being charged with a child pornography or noncontact
18 offense within five years after release, not whether an
19 offense will be or is likely to be committed..

20 She also concludes that, Mr. Scovotto's offense
21 appears to stem from his desire for an emotional connection
22 and loneliness. To put it bluntly, that sounds ridiculous.
23 The Court does not find the report to be at all helpful.

24 But even if I were to conclude the risk of
25 recidivism were small, that would not change my sentence.

1 In fact, the probation officer's recommendation of 600
2 months is not unreasonable. It could theoretically be less
3 than the guidelines range she calculates.

4 In any event, I agree with the government that the
5 defendant continues to pose a risk to young victims. He
6 contacted minors online as recently as the night before his
7 arrest. All he needs is access to a computer.

8 Advanced age is no deterrent or obstacle to
9 committing this conduct again and there is no assurance that
10 he will become more socialized while he is in prison and,
11 therefore, according to Dr. Meier's analysis, less likely to
12 commit this type of crime.

13 The 3553(a) factors 2, 3, and 7 do not change
14 regardless of the grouping analysis; and any lesser sentence
15 than the recommended 360 months would create rather than
16 avoid unwarranted sentence disparities among defendants with
17 similar records who have been convicted of similar offenses.

18 For these reasons, whether I determine defendant's
19 sentence based on the range with or without the challenged
20 grouping analysis, the lowest sentence that is reasonable
21 and is sufficient to comply with the purposes stated in 18
22 United States Code, Section 3553(a), is 360 months.

23 The Court agrees with the government and probation
24 officer that a lifetime period of supervision is essential.

25 I will now state the sentence but counsel will

1 have a final chance to make legal objections before sentence
2 is imposed.

3 Does either counsel know of any reason why
4 sentence should not now be imposed?

5 MS. KELLY: No, Your Honor. Thank you.

6 MR. NATAL: No, Your Honor.

7 THE COURT: I find that the following sentence is
8 reasonable and is sufficient but is no greater than
9 necessary to comply with the purposes stated in 18 United
10 States Code, Section 3553(a).

11 And I will recommend that the defendant be placed
12 in FCI Terminal Island, FCI Englewood, or FMC Devens,
13 D-e-v-e-n-s, and that he be allowed to participate in a
14 nonresidential or residential sex offender treatment
15 program.

16 It's ordered that the defendant shall pay to the
17 United States a special assessment of \$100 which is due
18 immediately.

19 Any unpaid balance shall be due during the period
20 of imprisonment at the rate of not less than \$25 per quarter
21 and pursuant to the Bureau of Prisons' Inmate Financial
22 Responsibility Program.

23 The additional special assessment pursuant to
24 18 United States Code, Section 3014(a) and 2259A(a), are
25 waived as the defendant is found to be an indigent person.

1 It is ordered that the defendant shall pay
2 restitution pursuant to 18 United States Code, Section 2259
3 and pursuant to the stipulation that I have just approved.

4 The defendant shall comply with Second Amended
5 General Order 20-04.

6 All fines are waived as the Court finds that the
7 defendant has established that he's unable to pay and is not
8 likely to become able to pay a fine.

9 Has there been any order of forfeiture?

10 MS. KELLY: No, Your Honor.

11 THE COURT: Pursuant to the Sentencing Reform Act
12 of 1984, it's the judgment of the Court that the defendant
13 Anthony Frank Scovotto is committed on Count 1 of the
14 Indictment to the custody of the Bureau of Prisons for a
15 term of 360 months.

16 The Court recommends that the Bureau of Prisons
17 conduct a mental health evaluation of the defendant and
18 provide all necessary treatment.

19 On release from imprisonment, the defendant shall
20 be placed on supervised release for a term of life under the
21 following terms and conditions:

22 1. The defendant shall comply with the rules and
23 regulations of the US Probation and Pretrial Services Office
24 and Second Amended General Order 20-04, including the
25 conditions of probation and supervised release set forth in

1 Section 111 of Second Amended General Order 20-04.

2 2. During the period of community supervision,
3 the defendant shall pay the special assessment and
4 restitution in accordance with this judgment's orders
5 pertaining to such payment.

6 3. The defendant shall cooperate in the
7 collection of a DNA sample.

8 4. The defendant shall apply all monies received
9 from income tax refunds, lottery winnings, inheritance,
10 judgments, and any other financial gains to the
11 court-ordered financial obligation.

12 5. The codefendant shall possess and use only
13 those digital devices, screen-user names, email accounts,
14 social media accounts, messaging applications, and cloud
15 storage accounts as well as any passwords or passcodes for
16 all such digital devices and accounts that have been
17 disclosed to the probation officer on commencement of
18 supervision.

19 Any new devices, accounts, applications,
20 passwords, or passcodes are to be disclosed to the probation
21 officer prior to the first use.

22 A digital device is any electronic system or
23 device that can access, view, obtain, store, or transmit
24 visual depictions of sexually explicit conduct involving
25 children.

1 6. All computers, computer-related devices and
2 their peripheral equipment used by the defendant shall be
3 subject to search, seizure, and computer monitoring.

4 This shall not apply to items used at the
5 employment site that are maintained and monitored by the
6 employer.

7 7. The defendant shall comply with the rules and
8 regulations of the computer monitoring program. The
9 defendant shall pay the cost of the computer monitoring
10 program.

11 8. Within three days of release from custody, the
12 defendant shall register as a sex offender and keep the
13 registration current in each jurisdiction where the
14 defendant resides, is employed, and is a student.

15 I should say "or is a student" pursuant to the
16 registration procedures that have been established in each.
17 When registering for the first time, the defendant shall
18 also register in the jurisdiction in which the conviction
19 occurred if different from the defendant's jurisdiction of
20 residence.

21 The defendant shall provide proof of registration
22 to the probation officer within 48 hours of registration.

23 9. The defendant shall participate in a
24 psychological counseling or psychiatric treatment or a sex
25 offender treatment program or any combination thereof as

1 approved and directed by the probation officer.

2 The defendant shall abide by all rules,
3 requirements, and conditions of such program including
4 submission to risk assessment evaluations and physiological
5 testing such as polygraph and Abel testing.

6 The defendant retains the right to invoke the
7 Fifth Amendment.

8 The Court authorizes the probation officer to
9 disclose the presentence report and any previous mental
10 health evaluations or reports to the treatment provider.

11 The treatment provider may provide information but
12 not the presentence report to state or local social service
13 agencies such as the State of California, Department of
14 Social Services, for the purpose of the client's
15 rehabilitation.

16 10. As directed by the probation officer, the
17 defendant shall pay all or part of the cost of psychological
18 counseling or psychiatric treatment or a sex offender
19 treatment program or any combination thereof to the
20 after-care contractor during the period of community
21 supervision.

22 The defendant shall provide payment or proof of
23 payment as directed by the probation officer. If the
24 defendant has no ability to pay, no payment shall be
25 required.

1 11. The defendant shall not view or possess any
2 materials including pictures, photographs, books, writings,
3 drawings, videos or video games depicting or describing
4 child pornography as defined in 18 United States Code,
5 Section 2256(8), or sexually explicit conduct depicting
6 minors as defined in 18 United States Code, Section 2256(2).

7 This condition does not prohibit the defendant
8 from possessing materials solely because they are necessary
9 to and used for a collateral attack nor does it prohibit the
10 defendant from possessing materials prepared and used for
11 the purposes of the defendant's court-mandated sex offender
12 treatment when the defendant's treatment provider or the
13 probation officer has approved of the defendant's possession
14 of the material in advance.

15 12. The defendant shall not own, use, or have
16 access to the services of any commercial mail-receiving
17 agency nor shall the defendant open or maintain a post
18 office box without the prior written approval of the
19 probation officer.

20 13. The defendant shall not contact the victims
21 by any means including in person, by mail or electronic
22 means or via third parties.

23 Further, the defendant shall remain at least
24 100 yards from the victims at all times. If any contact
25 occurs, the defendant shall immediately leave the area of

1 contact and report the contact to the probation officer.

2 14. The defendant shall not enter or loiter
3 within 100 feet of Schoolyards, parks, public swimming
4 pools, playgrounds, youth centers, video arcade facilities,
5 amusement and theme parks or other places primarily used by
6 persons under the age of 18 without the prior written
7 authorization of the probation officer.

8 15. The defendant shall not associate or have
9 verbal, written, telephonic, or electronic communication
10 with any person under the age of 18 except (A) in the
11 presence of the parent or legal guardian of said minor and
12 (B) on the condition that the defendant notify said parent
13 or legal guardian of the defendant's conviction in the
14 instant offense or prior offense.

15 This provision does not encompass persons under
16 the age of 18 such as waiters, cashiers, ticket vendors,
17 et cetera, with whom the defendant must interact in order to
18 obtain ordinary and usual commercial services.

19 16. The defendant shall not affiliate with, own,
20 control, volunteer, or be employed in any capacity by a
21 business or organization that causes the defendant to
22 regularly contact persons under the age of 18.

23 17. The defendant shall not affiliate with, own,
24 control, volunteer, or be employed in any capacity by a
25 business whose principal product is the production or

1 selling of materials depicting or describing "sexually
2 explicit conduct" as defined in 18 United States Code,
3 Section 2256.2.

4 18. The defendant's employment shall be approved
5 by the probation officer and any change in employment must
6 be preapproved by the probation officer.

7 The defendant shall submit the name and address of
8 the proposed employer to the probation officer at least ten
9 days prior to any scheduled change.

10 19. Defendant shall not reside within direct view
11 of schoolyards, parks, public swimming pools, playgrounds,
12 youth centers, video arcade facilities or other places
13 primarily used by persons under the age of 18.

14 Defendant's residence shall be approved by the
15 probation officer and any change in residence must be
16 preapproved by the probation officer.

17 Defendant shall submit the address of the proposed
18 residence to the probation officer at least ten days prior
19 to any scheduled move.

20 20. The defendant shall submit to a search at any
21 time with or without warrant and by any law enforcement or
22 probation officer of the defendant's person and any
23 property, house, residence, vehicle, papers, computers,
24 cellphones, other electronic communication or data storage
25 devices or media, email accounts, social media accounts,

1 cloud storage accounts, effects, and other areas under the
2 defendant's control on reasonable suspicion concerning a
3 violation of a condition of supervision or unlawful conduct
4 by the defendant by any probation officer in the lawful
5 discharge of the officer's supervision functions.

6 21. The defendant shall not view or possess any
7 materials including pictures, photographs, books, writings,
8 drawings, videos or video games; depicting or describing
9 child erotica which is defined as a person under the age of
10 18 in partial or complete state of nudity in sexually
11 provocative poses viewed for the purpose of sexual arousal.

12 22. The defendant shall not possess or view any
13 materials such as videos, magazines, photographs, computer
14 images, or other matter that depict actual sexually explicit
15 conduct involving adults as defined by 18 United States
16 Code, Section 2257(h)(1).

17 The Court authorizes the probation officer to
18 disclose the presentence report and any previous mental
19 health evaluations or reports to the treatment provider.

20 The treatment provider may provide information
21 excluding the presentence report to state or local social
22 service agencies such as the State of California, Department
23 of Social Services, for the purpose of the client's
24 rehabilitation.

25 The drug-testing condition mandated by statute is

1 suspended based on the Court's determination that the
2 defendant poses a low risk of future substance abuse.

3 Does the plea agreement contain its own set of
4 conditions of probation?

5 MS. KELLY: Yes, it does, Your Honor.

6 THE COURT: Compliance with the conditions of -- I
7 shouldn't have said "probation" -- of supervision listed in
8 the plea agreement are also incorporated as terms and
9 conditions imposed by this Court.

10 The defendant is remanded to the custody of the
11 US Marshal.

12 Does either counsel have anything further?

13 MS. KELLY: The government moves to dismiss the
14 remaining count of the Indictment, Count 2.

15 THE COURT: Granted.

16 MR. NATAL: Nothing further, Your Honor.

17 THE COURT: The statement of reasons shall be
18 included in the Commitment Order and Judgment and shall be
19 provided to the probation office, the Sentencing Commission,
20 and the Bureau of Prisons.

21 A complete copy of the revised presentence report
22 shall be provided to the Bureau of Prisons and the
23 Sentencing Commission. Any other copies of the report and
24 related materials shall remain confidential.

25 If an appeal is taken, counsel on appeal shall

1 have access to the report.

2 Sir, you have a right to appeal your conviction if
3 you believe that your guilty plea was somehow unlawful or
4 involuntary or if there were some other fundamental defect
5 in the proceedings that was not waived by your guilty plea.

6 You also have a right to appeal your sentence
7 under some circumstances particularly if you think your
8 sentence is contrary to law.

9 What's the position of counsel on the appeal of
10 the sentence?

11 MS. KELLY: Your Honor, there are certain
12 appellate waivers in the plea agreement including a waiver
13 of appeal sentencing that's at paragraph --

14 THE COURT: 22. An offense level of 33.

15 MS. KELLY: That's correct, Your Honor.

16 MR. NATAL: That's my understanding is that it was
17 conditioned on a guideline range based on an offense level
18 of 33.

19 THE COURT: So he does have the right to appeal?

20 MR. NATAL: He does.

21 THE COURT: Do you agree?

22 MS. KELLY: I agree that's what the plea agreement
23 says. I would just state that he's bound by the terms of
24 the plea agreement. It does appear, since his total offense
25 level is above 33, that he would have a right to appeal.

1 I just don't want to state anything that is
2 inconsistent with the plea agreement.

3 There's also a post-conviction collateral attack
4 waiver at paragraph 23.

5 THE COURT: All right.

6 As indicated, a defendant may waive certain rights
7 as part of a plea agreement and you've entered into a plea
8 agreement that waives some or all of your right to appeal
9 your conviction and your sentence. Those waivers are
10 generally enforceable but the plea agreement does control
11 your right to appeal.

12 So I believe you can discuss that with your
13 attorney and, also, if you believe the waiver is
14 unenforceable, you can present that theory to the Court of
15 Appeals.

16 If you retained any right to appeal, with few
17 exceptions the Notice of Appeal must be filed within 14 days
18 of judgment being entered.

19 Do you understand that, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: If you're unable to afford a
22 transcript of the record in this case, one will be provided
23 at government expense.

24 If you're unable to pay the cost of an appeal or a
25 filing fee, you may apply for leave to appeal *In Forma*

1 *Pauperis.*

2 If you do not have counsel to act on your behalf
3 and if you request it, the Clerk of the Court will prepare
4 and file a Notice of Appeal on your behalf.

5 You must make that request within 14 days. The
6 Notice of Appeal must designate the judgment or order
7 appealed from and the fact that you're appealing to the
8 Court of Appeals.

9 It should designate the portion of the proceedings
10 not already on file that you deem necessary for the reporter
11 to include.

12 Anything further?

13 MS. KELLY: No, Your Honor. Thank you.

14 MR. NATAL: No, Your Honor.

15 THE COURT: All right. Thank you.

16 THE CLERK: All rise.

17 Court is adjourned.

18 *(At 11:38 a.m., proceedings were concluded.)*

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