

No. _____

IN THE
Supreme Court of the United States

JAMES DARRICK BEELER,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

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

APPENDIX

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CONTENTS

Appendix A: Opinion of the Eighth Circuit, <i>United States v. Beeler</i> , No. 24-3307 (8th Cir. Mar. 6, 2026).....	1a
Appendix B: Excerpt of Sentencing Hearing Transcript, <i>United States v. Beeler</i> , No. 4:23-cr-00081-SEP (E.D. Mo. Oct. 30, 2024).....	8a
Appendix C: Judgment of the District Court, <i>United States v. Beeler</i> , No. 4:23-cr-00081-SEP (E.D. Mo. Oct. 30, 2024).....	16a
Appendix D: Order on Rehearing, <i>United States v. Beeler</i> , No. 24-3307 (8th Cir. Apr. 14, 2026).....	25a
Appendix E: 18 U.S.C. § 2252A (2021).....	27a
Appendix F: 18 U.S.C. § 2256 (2021).....	30a

Appendix A

United States Court of Appeals
For the Eighth Circuit

No. 24-3307

United States of America

Plaintiff - Appellee

v.

James Darrick Beeler

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: November 21, 2025
Filed: March 6, 2026

Before COLLOTON, Chief Judge, SHEPHERD and ERICKSON, Circuit Judges.

ERICKSON, Circuit Judge.

James Darrick Beeler pled guilty to possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). The district court¹ determined that Beeler was subject to a 10-year mandatory minimum sentence due to his prior Missouri

¹The Honorable Sarah E. Pitlyk, United States District Judge for the Eastern District of Missouri.

conviction for abuse of a child. See 18 U.S.C. § 2252A(b)(2). Beeler was sentenced to 120 months' imprisonment to be followed by a lifetime of supervised release. Beeler appeals his sentence, claiming the district court improperly applied the sentencing enhancement and violated due process. We affirm.

I. BACKGROUND

In June 2022, Missouri state police linked Beeler to an IP address sharing videos of child pornography on a peer-to-peer file sharing program. Officers obtained a search warrant for Beeler's residence and seized several electronic devices, including a laptop computer, multiple cell phones, a tablet, and two USB drives. Forensic analysis of the laptop computer and USB drives revealed numerous images of child pornography. Beeler pled guilty to possession of child pornography.

Beeler was previously convicted in 2007 of abuse of a child, in violation of Mo. Rev. Stat. § 568.060.1, for recording two nude minor children for the purpose of sexual gratification. He appeals the district court's determination that this conviction implicates 18 U.S.C. § 2252A(b)(2).

II. DISCUSSION

Beeler raises two issues: (1) the district court erred when it found his Missouri conviction triggered the mandatory minimum in § 2252A(b)(2), and (2) Section 2252A(b)(2) is unconstitutionally vague. We review both issues *de novo*. United States v. Carrillo Topete, 116 F.4th 792, 794 (8th Cir. 2024) (statutory interpretation); United States v. Madden, 135 F.4th 629, 631 (8th Cir. 2025) (constitutional challenge).

A. Mandatory Minimum

Beeler contends 18 U.S.C. § 2252A(b)(2) is inapplicable in his case because his Missouri conviction for abuse of a child does not categorically relate to any of

the offenses specified in the statute. While § 2252A(b)(2) does not define what it means for a prior conviction to “relate to” an enumerated offense, this Court has held the phrase “carries a broad ordinary meaning, i.e., to stand in some relation to; to have bearing or concern; to pertain; refer; to bring into association or connection with.” United States v. Sonnenberg, 556 F.3d 667, 671 (8th Cir. 2009); see also United States v. Mayokok, 854 F.3d 987, 993 (8th Cir. 2017). Accordingly, the mandatory minimum applies if Beeler has a prior conviction that pertains to, is connected with, or stands in some relation either to abusive sexual conduct or to the production of child pornography.

In 2007, the Missouri statute of conviction provided:

1. A person commits the crime of abuse of a child if such person:

(1) Knowingly inflicts cruel and inhuman punishment upon a child less than seventeen years old; or

(2) Photographs or films a child less than eighteen years old engaging in a prohibited sexual act or in the simulation of such an act or who causes or knowingly permits a child to engage in a prohibited sexual act or in the simulation of such an act for the purpose of photographing or filming the act.

Mo. Rev. Stat. § 568.060.1 (2007). The statute defined the phrase “prohibited sexual act” as:

sexual or anal intercourse, masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

Mo. Rev. Stat. § 568.060.2 (2007).

Under the plain language, a conviction under § 568.060.1 could result from conduct entirely unrelated to abusive sexual conduct or to the production of child

pornography, which means the statute is overbroad. See Dolic v. Barr, 916 F.3d 680, 684 (8th Cir. 2019) (explaining a state statute is overbroad if there is a realistic probability that the statute applies to conduct that would not qualify under federal law). If a statute is overbroad, we consider whether it is divisible. Divisibility is determined by looking at “the statute itself and state authority interpreting the statute.” Arroyo v. Garland, 994 F.3d 905, 911 (8th Cir. 2021). A statute is divisible “only if it effectively creates several different . . . crimes . . . by listing alternative elements.” Dolic, 916 F.3d at 685 (quotations and citations omitted).

The two subsections in § 568.060.1 set forth alternative ways to violate Missouri law, as indicated by use of the word “or.” Alonzo v. Lynch, 821 F.3d 951, 961 (8th Cir. 2016). The disjunctive “or” enumerates alternative bases and is “[t]he hallmark of divisibility.” United States v. Bankhead, 746 F.3d 323, 326 (8th Cir. 2014). This Court and Missouri state courts have treated the subsections contained in § 568.060.1 as separately enumerated offenses. See, e.g., United States v. Wilson, 568 F.3d 670, 672 (8th Cir. 2009) (stating § 568.060 “prohibits two categories of behavior”); State v. Foster, 838 S.W.2d 60, 67-68 (Mo. Ct. App. 1992) (affirming conviction for child abuse under § 568.060.1(2)).

Because the statute is divisible, we next must determine whether Beeler’s conviction is a qualifying offense. To do so, we examine whether the conviction “relates to” conduct enumerated in § 2252A(b)(2). Beeler pled guilty to recording nude minor children, which was a violation of Mo. Rev. Stat. § 568.060.1(2). Federal law defines “child pornography,” in relevant part, as “any visual depiction . . . of sexually explicit conduct” where “the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct.” 18 U.S.C. § 2256(8). While a mere visual depiction of a nude child does not automatically qualify as child pornography under federal law, see United States v. Wallenfang, 568 F.3d 649, 657 (8th Cir. 2009), the statute triggering the mandatory minimum requires only a relation to an enumerated offense, not an equivalency, see United States v. Weis, 487 F.3d 1148, 1151-52 (8th Cir. 2007) (noting the question is

whether an offense relates to specified offenses, not whether a particular element is present).

Even if state and federal law do not prohibit exactly the same conduct, a state conviction “relates to” conduct enumerated in § 2252A(b)(2) if the state offense broadly pertains to, is connected with, or stands in some relation to the federal offense. Mayokok, 854 F.3d at 992-93; United States v. Box, 960 F.3d 1025, 1027 (8th Cir. 2020). Although Missouri law may not have included each element of child pornography, as defined under federal law in 18 U.S.C. § 2256, Beeler’s conviction under Mo. Rev. Stat. § 568.060.1(2) undeniably pertains to, is connected with, or stands in some relation to child pornography. Cf. United States v. Bennett, 823 F.3d 1316, 1323-25 (10th Cir. 2016) (determining state conviction for sexual exploitation of a child “relates to” child pornography for purposes of § 2252A(b)(2), even if state law might punish more conduct than federal law). Because Beeler’s prior conviction is a qualifying offense, the mandatory minimum set forth in § 2252A(b)(2) applies.

B. Vagueness

Beeler also asserts § 2252A(b)(2) is unconstitutionally vague. The Due Process Clause renders a criminal statute unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited” or “is so standardless that it authorizes or encourages seriously discriminatory enforcement.” United States v. Cook, 782 F.3d 983, 987 (8th Cir. 2015). We must keep in mind that statutes have a “presumptive validity.” United States v. Ghane, 673 F.3d 771, 777 (8th Cir. 2012).

Beeler’s constitutional challenge is an issue of first impression in this Court. Other courts that have considered this issue have unanimously determined the statute is constitutional. See United States v. Ragonese, 47 F.4th 106 (2d Cir. 2022) (concluding “relating to” standard in § 2252A(b)(2) is not unconstitutionally vague); United States v. Hudson, 986 F.3d 1206 (9th Cir. 2021) (same); see also United States v. Portanova, 961 F.3d 252 (3d Cir. 2020) (determining “relating to” standard

in § 2252(b)(1) is not unconstitutionally vague); United States v. Caldwell, 655 Fed. Appx. 730 (11th Cir. 2016) (unpublished) (finding the “relating to” language in § 2252(b)(1) and § 2252A(b)(1) is not unconstitutionally vague).

In Ragonese, the Second Circuit noted that while § 2252A(b)(2) is broad, breadth alone does not render a statute unconstitutional. 47 F.4th at 113-14. Likewise, the Ninth Circuit in Hudson noted that “the ‘relating to’ language . . . has a broadening effect [that] will allow certain flexibility at the margins, but it is not without limits.” 986 F.3d at 1214. Such flexibility is “not an indicator that the statute is impermissibly vague” because “the state offense must share a core substantive element of the generic federal definition” to trigger the increased sentence. Id. at 1214-15. Interpreting a similar provision in 18 U.S.C. § 2252, the Third Circuit concluded that the “relating to” standard is not unconstitutionally vague because “there is no question that a person of ordinary intelligence would have fair warning that a conviction pursuant to 18 U.S.C. § 2252 could expose him to greater penalties if such a person has a prior state conviction ‘relating to . . . the . . . possession . . . of child pornography.’” Portanova, 961 F.3d at 263. And in Caldwell, the Eleventh Circuit determined that the mandatory minimum under § 2252A(b)(1) was not unconstitutionally vague where the defendant did “not show that either executive or judicial interpretations of [the] term have been at all inconsistent, unpredictable, or arbitrary” and only argued that “relating to” “can be read broadly, to cover many state offenses.” 655 Fed. Appx. at 733.

A person of ordinary intelligence would understand that recording a nude minor for sexual gratification “relates to” child pornography. Cf. Portanova, 961 F.3d at 263 (explaining a statute is not unconstitutionally vague when a “person of ordinary intelligence would have fair warning that a conviction . . . could expose him to greater penalties”). Even if statutory language is broad, the Constitution does not require a defendant to be able to definitively determine whether his prior conviction would expose him to a longer sentence. Due process does not require certainty; it is sufficient if a person in Beeler’s position would have fair warning that his prior conviction might trigger the mandatory minimum. See Planned Parenthood

of Minn. v. State of Minn., 910 F.2d 479, 485 (8th Cir. 1990) (“[S]tatutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language.”).

Nor does § 2252A(b)(2) authorize or encourage arbitrary enforcement. Beeler suggests the mandatory minimum invites arbitrary enforcement because the sentencing court must determine whether a prior conviction “relates to” one of the listed offenses. For the mandatory minimum to apply, a prior conviction must “share a core substantive element of the generic federal definition.” Hudson, 986 F.3d at 1214. When faced with broad statutory language, courts are permitted to “extrapolate its allowable meaning.” Grayned v. City of Rockford, 408 U.S. 104, 110 (1972). “‘Extrapolation,’ of course, is a delicate task.” Id. But extrapolation is permissible because “we can never expect mathematical certainty from our language.” Id. While this case presents a close question, “the existence of a close case in the application of a statute does not render it unconstitutionally vague.” Ghane, 673 F.3d at 778.

We join the other Circuits that have determined the “relating to” language in § 2252A(b)(2) is not unconstitutionally vague. “[S]tatutes fixing sentences . . . must specify the range of available sentences with ‘sufficient clarity.’” Beckles v. United States, 580 U.S. 256, 262 (2017) (quoting United States v. Batchelder, 442 U.S. 114, 123 (1979)). But due process does not void an otherwise lawful statute merely because “it will sometimes be difficult to determine” whether a sentencing enhancement applies. United States v. Williams, 553 U.S. 285, 306 (2008).

III. CONCLUSION

For the foregoing reasons, the judgment of the district court is affirmed.

Appendix B

1 **PROBATION OFFICER:** Yes, Your Honor.

2 **THE COURT:** Thank you so much. If you have any
3 concern about the exact phrasing, emailing the parties
4 afterwards and making sure that it's what they are expecting
5 would be fine.

6 Okay. All right. So that's it for the factual
7 matter. Then we have a legal question of whether or not this
8 offense qualifies him for the ten-year mandatory minimum;
9 correct?

10 **MS. CRANE:** Correct, Your Honor.

11 **THE COURT:** Okay. So apart from those things, the
12 one that we have now addressed and then the legal question
13 that we are about to discuss, are there any further objections
14 to the contents of the PSR?

15 **MS. CRANE:** No, Your Honor.

16 **MR. BATEMAN:** No, Your Honor.

17 **THE COURT:** Okay. Then let's talk about the legal
18 objection. I want you to know, because you've put a lot of
19 work into this, that I've carefully reviewed everything that
20 you've submitted. I've read the cases. I believe I'm
21 familiar enough with the issue that you do not need to
22 recapitulate it for me today.

23 But I do want to give you the opportunity,
24 especially in light of supplemental authority being filed, to
25 add anything that you did not put in those briefs in further

1 support of your argument. But you can take for granted that I
2 understand and I've reviewed everything you've submitted so
3 far.

4 **MS. CRANE:** Okay.

5 **THE COURT:** There are a couple of cases that just
6 came out; right? So if you have something that you want to
7 say to modify or supplement your argument in light of them.

8 **MS. CRANE:** I just would say, Your Honor, when we
9 reviewed the supplemental case law that was provided, I don't
10 think it changes our position as we laid out in the -- all of
11 our briefing on the actual objection. We think that with this
12 basic offense or the offense that is being used for the
13 enhancement, it differs from the case law that we have in
14 there of what specifically happened.

15 The other cases provided more sexual conduct, which
16 is how we distinguish this case from those. The Missouri law
17 is different than those statutes as well, and what is required
18 under the child pornography and also the sexual abuse aspect
19 of what is used for an enhancement, we believe it falls
20 outside and is too broad in order to qualify for that
21 enhancement.

22 As far as the sexual abuse, one of the things that I
23 don't know if we specifically put in there is that when you
24 look at the intent of what that statute is, Congress
25 specifically put in specific offenses that they believe should

1 be an enhancement. If all sex offenses are relating to, then
2 that's not what the intent was because they specifically put
3 those offenses in. If they wanted all sex offenses, they
4 would have put that in there.

5 And so that's kind of what our argument is, is that
6 the law is getting -- where's the cutoff in the law that
7 narrows it down that makes this particular offense fall into
8 that category for sexual abuse, aggravated sexual abuse, and
9 sexual abuse of a minor? How does it fall into that? Where
10 is the line for that? And in this we don't believe the facts
11 support that, and Missouri law is different enough and broad
12 enough --

13 **THE COURT:** When you say "the facts," you mean the
14 elements of the Missouri law?

15 **MS. CRANE:** Correct.

16 **THE COURT:** Not the facts of what he did but the
17 elements that he pled guilty to?

18 **MS. CRANE:** Correct.

19 **THE COURT:** Okay. You can continue. You don't
20 think it satisfies the -- as aggravated -- relating to
21 aggravated sexual abuse, sexual abuse, or abusive sexual
22 contact involving a minor or ward?

23 **MS. CRANE:** Correct.

24 **THE COURT:** Okay. And that is your -- you are
25 taking into consideration in that argument what the Eighth

1 Circuit has said about what "relating to" means and how it's
2 applied it in other cases?

3 **MS. CRANE:** Correct, yes.

4 **THE COURT:** All right. Thank you. Is there
5 anything else you want to add?

6 **MS. CRANE:** I don't believe so.

7 **THE COURT:** Okay, thank you.

8 Mr. Bateman.

9 **MR. BATEMAN:** The only thing, so the Eighth Circuit
10 cases cited by both parties are pretty clear that that term
11 "relating to" should be interpreted broadly. That's, again,
12 reiterated in the *Garner* case that was just decided last week
13 or maybe two weeks ago.

14 **THE COURT:** Yes.

15 **MR. BATEMAN:** I will add again, you know, I put in
16 my response, I'm just having difficulty conceptually
17 understanding the distinction the defense is drawing between
18 the *Mayokok* case with the Minnesota statute and this case
19 involving a Missouri statute. The Minnesota statute in that
20 case criminalized depictions of partially clothed individuals
21 posing in an act of apparent sexual stimulation or
22 gratification.

23 The Missouri statute here criminalizes photographing
24 or filming -- well, prohibited sexual act, which includes
25 nudity, if such nudity is to be depicted for the purpose of

1 sexual stimulation or gratification of any individual who may
2 abuse such depiction.

3 So they're both focused on one, it's worded apparent
4 sexual stimulation and gratification, and our statute here is
5 focused on nudity that's depicted for the purpose of sexual
6 stimulation and gratification of anybody who might view such
7 depiction.

8 So I don't understand the distinction and why
9 that's -- to me it's criminalizing the same type of conduct.
10 It's worded differently, but it's all focused on the
11 definition of lascivious. And we go into the *Dost* factors,
12 and there is clearly a *Dost* factor that says, whether the
13 picture is intended or designed to elicit a sexual response in
14 the viewer, so I think the reply is focused on the intent of
15 the photographer, but that's not what the Missouri statute
16 says. It's talking about the response of the viewer.

17 So again, I don't think we need to go into *Dost*
18 factors and all that. I think the Eighth Circuit has been --
19 is clear that this should be interpreted broadly, and it's the
20 government's position that both -- this crime both relates to
21 the production of child pornography and sexual abuse of a
22 minor, which are both qualifying enhancements under the
23 statute.

24 **THE COURT:** Okay. So the *Mayokok* point -- and I
25 don't know how to say that word, so forgive me if I'm saying

1 it wrong -- is that you think if that statute qualifies as
2 related to child pornography, then this statute does as well?

3 **MR. BATEMAN:** Yes.

4 **THE COURT:** The Missouri statute does as well. You
5 don't see daylight between those two as to their relationship
6 to child pornography?

7 **MR. BATEMAN:** I mean, they're worded differently.

8 **THE COURT:** Right.

9 **MR. BATEMAN:** But I think that is a good example of
10 how broad "relating to" is in this context where there are
11 examples in that statute, as in this statute, where the
12 conduct could be -- is not criminal under federal law but
13 would be criminal under Missouri law and the same thing under
14 Minnesota law. And, again, that's not the point, the hinging,
15 deciding factor that the Eighth Circuit focuses on anyway.

16 **THE COURT:** Okay. Thank you. Would you like to
17 respond to that?

18 **MS. CRANE:** In looking at *Mayokok*, which was dealing
19 with the child pornography, I think the difference is, is that
20 what he pled to, which was abuse of a child, so those two,
21 what they're looking for in their elements of what they need
22 to find, are completely different.

23 This includes in the Minnesota statute, it includes
24 lewd exhibition of genitals; that's not included in the abuse
25 of child Missouri statute. In fact, what we pointed out in

1 our brief is that if this were to be some type of child
2 pornography, there are specific statutes within Missouri that
3 address child pornography and would be more closely related to
4 the *Mayokok* case.

5 I understand "relating to" is supposed to be broad,
6 but I think there is distinctions between these two cases,
7 especially when it has to do with, when you're looking at the
8 facts of them, what the specific conduct was that they found
9 violated those particular statutes.

10 **THE COURT:** Okay. All right. Fair enough. This
11 has not been decided before, and so maybe the Eighth Circuit
12 will disagree with what I'm about to say, but I believe on my
13 reading of all of this case law and everything that the
14 parties have argued that the prosecution's position is more
15 consonant with what the Eighth Circuit has said about the
16 breadth of the term "relating to." *Mayokok*; another one,
17 *Topete*, how do you say that?

18 **MR. BATEMAN:** I'm not sure, Your Honor.

19 **THE COURT:** No idea? Okay. And the Eighth
20 Circuit's most recent opinion in *Garner* I think all support
21 the idea that the relating, the concept of "relating to"
22 carries a broad, ordinary meaning -- the term "relating to," I
23 should say, has a broad, ordinary meaning.

24 And applying that broad meaning, I do find that the
25 defendant's prior Missouri conviction for abuse of a child

1 relates to abusive sexual conduct involving a minor defined by
2 the Eighth Circuit in *Sonnenberg*, as the physical or
3 nonphysical misuse or maltreatment of a minor for a purpose
4 associated with sexual gratification.

5 So using that definition of sexual conduct
6 involving -- abusive sexual conduct involving a minor and the
7 broad definition of "relate to," I think that the Missouri
8 conviction qualifies for that prong.

9 And then I also find that the defendant's prior
10 conviction relates to the production of child pornography as
11 defined by federal law under *Mayokok* and other Eighth Circuit
12 precedence.

13 Of course, if the Eighth Circuit, again, disagrees
14 with my application of their precedence in this novel context,
15 I will gladly revisit this question with the benefit of their
16 more specific guidance. So I do not presume to have settled
17 this for all time, and I know the parties have reserved the
18 right to appeal the issue, and I encourage you to do so and
19 get more guidance from the Eighth Circuit on this.

20 But for today the objection is overruled, and I do
21 think that the mandatory minimum by the letter of the law and
22 its most reasonable interpretation, the mandatory minimum
23 applies to this defendant.

24 Any questions about that before we move on?

25 **MR. BATEMAN:** No, Your Honor.

Appendix C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA

v.

JAMES DARRICK BEELER

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: 4:23-CR-00081-SEP(1)

§ USM Number: 47310-510

§ Tara Rebecca Crane

§ Defendant's Attorney

THE DEFENDANT:

☒	pleaded guilty to count(s)	1 of the indictment on May 3, 2024
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	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

18 U.S.C. § 2252A(a)(5)(B) and 18 U.S.C. § 2252A(b)(2)

Possession of Child Pornography

Offense Ended

07/06/2022

Count

1r

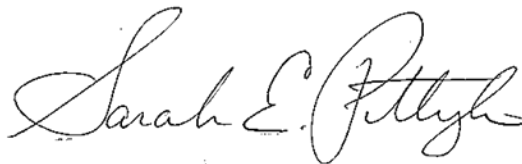
The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ 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.

October 30, 2024

Date of Imposition of Judgment



Signature of Judge

SARAH E. PITLYK,
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 30, 2024

Date

DEFENDANT: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 month(s) as to count 1r.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- While in the custody of the Bureau of Prisons, it is recommended the defendant be evaluated for participation in the Sex Offender Management Program (SOMP). It is also recommended the defendant be evaluated for participation in mental health treatment. It is also recommended the defendant be evaluated for participation in an Occupational/Educational program, specifically, in tree services, plumbing, and electrical work. It is further recommended that the defendant be housed at the following facilities in order: Englewood FCI in Colorado, Elkton FCI in Ohio, Seagoville FCI in Texas, or Butner FCI, in NC. Such recommendations are made to the extent they are consistent with the Bureau of Prisons policies.
- ☒ 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.

MARSHALS RETURN MADE ON SEPARATE PAGE

DEFENDANT: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **life**.

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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☒ 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 which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ 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 additional conditions on the attached page.

DEFENDANT: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

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: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

SPECIAL CONDITIONS OF SUPERVISION

While on supervision, the defendant shall comply with the standard conditions that have been adopted by this Court and shall comply with the following additional conditions. If it is determined there are costs associated with any services provided, the defendant shall pay those costs based on a co-payment fee established by the probation office.

As part of your supervision, you must comply with the following additional special conditions. If it is determined there are costs associated with any services provided, you shall pay those costs based on a co-payment fee established by the probation office:

You must not have direct contact with any child you know or reasonably should know to be under the age of 18, without the permission of the probation officer. If you do have any direct contact with any child, you know or reasonably should know to be under the age of 18, without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.

You are prohibited from engaging in any occupation, business, profession, or volunteer work where you have access to children under the age of 18 without prior written approval from the probation office. You must not go to, or remain at, any place where you know children under the age of 18 are likely to be, including parks, schools, playgrounds, and childcare facilities. You must not go to, or remain at, a place for the primary purpose of observing or contacting children under the age of 18.

You must not possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic or other electronic communications or data storage devices or media without approval of the probation office.

You must advise the probation office of all computer, electronic equipment, and web-enabled equipment, including cell phones, that you possess or to which you have access, within 24 hours of obtaining same.

You must not access the Internet except for reasons approved in advance by the probation officer.

You must submit your computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media, to a search.

You must warn any other people who use these computers or devices capable of accessing the Internet that the devices may be subject to searches pursuant to this condition. A probation officer may conduct a search pursuant to this condition only when reasonable suspicion exists that there is a violation of a condition of supervision and that the computer or device contains evidence of this violation. Any search will be conducted at a reasonable time and in a reasonable manner.

You must allow the probation officer to install computer monitoring software on any computer (as defined in 18 U.S.C. § 1030(e)(1)) you use.

To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.

DEFENDANT: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

You must not possess or use any audio/visual recording or producing equipment at any location without the written approval of the probation office. If approval is given, you must consent to the probation office or probation service representative conducting unannounced examinations, including retrieval and copying of all data related to the equipment.

You must submit to periodic physiological testing which may include but is not limited to polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

You must not view or possess any "visual depiction" (as defined in 18 U.S.C. § 2256), including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of "sexually explicit conduct" (as defined in 18 U.S.C. § 2256).

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a physical or electronic search conducted by a United States probation officer. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation.

You must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

DEFENDANT: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$0.00	\$0.00		

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ 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 the schedule of payments page 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: |

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** 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: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)

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 payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ 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 20 (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1r, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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:
Under 21 U.S.C. § 853, the defendant has forfeited all right, title, and interest in the property previously identified in the Preliminary Order of Forfeiture granted on August 14, 2024.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: JAMES DARRICK BEELER
CASE NUMBER: 4:23-CR-00081-SEP(1)
USM Number: **47310-510**

**UNITED STATES MARSHAL
RETURN OF JUDGMENT IN A CRIMINAL CASE**

I have executed this judgment as follows:

Date defendant was delivered with certified copy of this judgment: _____

Name and location of facility: _____

☐ Defendant was sentenced to Time Served and was released on: _____

☐ Defendant was sentenced to _____ months/years of Probation and was released on: _____

☐ Defendant was sentenced to _____ months/years of Supervised Release and was released on: _____

NAME OF US MARSHAL/WARDEN

By: NAME OF DEPUTY US MARSHAL/CSO

Appendix D

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 24-3307

United States of America

Appellee

v.

James Darrick Beeler

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:23-cr-00081-SEP-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 14, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

Appendix E

18 U.S.C. § 2252A - Certain activities relating to material constituting or containing child pornography

(a) Any person who--

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes--

(A) any child pornography using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(3) knowingly--

(A) reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains--

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

(4) either--

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(5) either--

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct--

(A) that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce,

for purposes of inducing or persuading a minor to participate in any activity that is illegal; or

(7) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor.

shall be punished as provided in subsection (b).

(b)

(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or 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, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if any image of child pornography involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or 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 10 years nor more than 20 years.

(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that--

(1)

(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(B) each such person was an adult at the time the material was produced; or

(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) Affirmative defense.--It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant--

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof--

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) Admissibility of evidence.--On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) Civil remedies.--

(1) In general.--Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).

(2) Relief.--In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including--

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) Child exploitation enterprises.--

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.

(2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

Appendix F

18 U.S.C. § 2256 - Definitions for chapter

For the purposes of this chapter, the term--

(1) “minor” means any person under the age of eighteen years;

(2)

(A) Except as provided in subparagraph (B), “sexually explicit conduct” means actual 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;

(B) For purposes of subsection 8(B) of this section, “sexually explicit conduct” means--

(i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

(ii) graphic or lascivious simulated;

(I) bestiality;

(II) masturbation; or

(III) sadistic or masochistic abuse; or

(iii) graphic or simulated lascivious exhibition of the anus, genitals, or pubic area of any person;

(3) “producing” means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) “organization” means a person other than an individual;

(5) “visual depiction” includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;

(6) “computer” has the meaning given that term in section 1030 of this title;

(7) “custody or control” includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(8) “child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where--

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(9) “identifiable minor”--

(A) means a person--

(i)

(I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(10) “graphic”, when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

(11) the term “indistinguishable” used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.