APPENDIX

NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DAVID ROGER FRANKLIN, Defendant - Appellant.	No. 25-1208 D.C. No. 1:23-cr-02026-SAB-1 MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Stanley Allen Bastian, District Judge, Presiding

Submitted May 26, 2026**

Before: S.R. THOMAS, MILLER, and H.A. THOMAS, Circuit Judges.

David Roger Franklin appeals from the district court's judgment and challenges the 360-month sentence imposed following his guilty-plea conviction for production, transportation, and possession of child pornography in violation of 18 U.S.C. §§ 2251(a), (e) and 2252A(a)(1), (a)(5)(B), (b)(1), and (b)(2). We have

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Franklin argues that his sentence, which is effectively a life sentence given his age, is substantively unreasonable because: (1) the district court improperly considered pending state charges alleging that Franklin had committed hands-on offenses; (2) the district court's Guidelines calculation was empirically flawed; and (3) the sentence does not sufficiently account for Franklin's advanced age, health conditions, low risk of recidivism, lack of criminal history, and the need to avoid sentencing disparities. Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing the 30-year sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

First, contrary to Franklin's assertion, even if the district court considered the allegations underlying the state charges, that did not violate due process. The allegations were supported by "minimal indici[a] of reliability beyond mere allegation" in that they were consistent with Franklin's admitted conduct. *See United States v. Vanderwerfhorst*, 576 F.3d 929, 936 (9th Cir. 2009). Moreover, the court did not "demonstrably" make the state allegations the basis of the sentence. *See id.* at 935-37. Rather, the court relied primarily on other factors in selecting the sentence, including the nature of the federal offenses, the trauma suffered by the victim and other family members, and Franklin's lack of remorse.

Second, because the Guidelines range of life was higher than the statutory

maximum for each offense, the court properly calculated an alternate range of 130 years under U.S.S.G. § 5G1.1(a). Even if Franklin is correct that this calculation is "nonsensical," it did not result in a substantively unreasonable sentence here.

Finally, the record reflects that the district court was aware of Franklin's mitigating and disparity arguments. Though it agreed that some of Franklin's mitigating arguments weighed in favor of a shorter sentence, it found that they were "moderated" by the aggravating factors. Franklin's "mere disagreement" with how the district court weighed the factors does not amount to abuse of discretion. *See United States v. Dunn*, 728 F.3d 1151, 1159 (9th Cir. 2013). The 30-year sentence is substantively reasonable under the 18 U.S.C. § 3553(a) factors and the totality of the circumstances. *See Gall*, 552 U.S. at 51.

AFFIRMED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. DAVID ROGER FRANKLIN, Defendant.	Case No. 1:23-CR-02026-SAB-1 February 18, 2025; 10:31 am Yakima, Washington Sentencing Hearing Pages 1 to 52

BEFORE THE HONORABLE STANLEY A. BASTIAN
CHIEF UNITED STATES DISTRICT COURT JUDGE

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(February 18, 2025; 10:31 am)

THE COURTROOM DEPUTY: All rise.

Court is reconvened.

THE COURT: Morning. Please be seated.

10:31:52 THE COURTROOM DEPUTY: We have *United States of America v. David Roger Franklin*, Case No. 1:23-CR-2026-SAB, time set for a sentencing hearing.

Counsel, would you please make your appearances for the record.

10:32:08 MR. MURPHY: Michael Murphy on behalf of the United States.

THE COURT: Morning.

MR. SCOTT: Gregory Scott on behalf of Mr. Franklin, Your Honor. Mr. Franklin appears seated at counsel table and is 10:32:19 in custody of the United States Marshal.

THE COURT: All right. Good morning to both of you.

So we're here for sentencing. Let me summarize what we're sentencing about. Mr. Franklin pled guilty a few months ago without the benefit of a plea agreement to Counts 1, 2, and 10:32:37 3, which are all charges of production of child pornography, carry maximum sentences of 15 to 30 years, with a $250,000 fine possibility, $100 special penalty assessment for all counts; pled guilty to Count 4, which was transportation of child pornography, carries a maximum fine of a five-year mandatory 10:33:04 minimum up to 20 years, with a fine of, possibility of up to

$250,000; and, finally, to Count 5, which was possession of child pornography, and that has no mandatory minimum but a maximum penalty of up to 20 years, with the same possibility of a fine of $250,000. There should be a $100 special penalty
10:33:27 assessment for all counts, and since there's five counts, that would be a $500 total.

You know, I have to say, Mr. Murphy, I'm not sure I've ever seen transportation of child pornography before. If you could provide a little clarification of what that is. Usually
10:33:46 it's receipt of, possession of, production of, but transportation is I think a little somewhat new to me.

MR. MURPHY: Your Honor, it is a separate statute under Section -- 18 USC 2252A. Transportation is accomplished when one does just that. And it is not charged as often as receipt
10:34:08 or possession, but in this case the gravamen of the United States' claim to which the defendant pled guilty is that in 20-- if I remember correctly, 2022 the defendant sent an email from a personal Gmail account to a work email account to which were appended four images of child pornography -- I take that
10:34:33 back, Your Honor -- three images of child pornography and another image of a child.

That transportation, in the United States' view, was in furtherance of some further possession or some further use of that child pornography. However, the court should be clear that
10:34:54 it was transportation by Mr. Franklin from one of his accounts

to another one of his accounts using means of interstate commerce, to wit, the Internet.

THE COURT: Since I have you there, I'll ask a question I was gonna ask a little bit later, but I might as well do it now. What is the status of the state charges? I know that Mr. Franklin was charged by the state for the crimes involving actual touching and abuse of the victim.

10:35:12

MR. MURPHY: He had charged, Your Honor -- and I have not spoken to the prosecutor for the state in quite some time. My general understanding from conversations taken at the beginning of this case was that the state was going to review this matter following our sentencing to determine whether or not it was what they deigned to be the best use of their prosecutorial resources.

10:35:29

THE COURT: Okay. I appreciate that.

10:35:49

MR. MURPHY: It is pending, but there has been no action on it. It essentially is a detainer in writ which is out there.

THE COURT: Okay.

MR. MURPHY: And I think actually Mr. Scott was aware of the state charges before I was.

10:35:59

THE COURT: Thank you.

All right. And then to finalize my summary, I have reviewed the presentence report which carries these calculations: a total offense level of 43, with a criminal history category of level I, which leads to a recommended --

10:36:12

I'll call it a range, but it's not really a range -- but it's 1,560 months.

Are there objections to the presentence report?

Mr. Scott, I did get your written objections somewhat late in the process. So I have them here in front of me, but I didn't work through them prior to the hearing because they came in a bit late. But I'll listen to your objections now -- or take your objections.

MR. SCOTT: Thank you, Your Honor, if I may.

10:36:41 THE COURT: Yeah.

MR. SCOTT: Your Honor, I had several objections to the -- hang on just a moment -- the PSIR beginning at paragraph 5 -- I'm sorry -- paragraph 15, and I believe that it overstates -- I think it overstates the government's case a

10:37:30 little bit and is somewhat internally inconsistent.

For example, it states that on July 18 there were discovered seven images depicting prepubescent females pulling down their shorts and underwear with close-up of their vaginal area. And we learn later in that paragraph that of those seven,

10:38:00 there are three that are considered child pornography under the statute because it exposes the vagina. The others are not child pornography because they do not meet that.

In addition, all of the photographs are laid out by number, including the date on which they were taken. That is

10:38:27 taken off of the metadata from the photograph itself, so we know

exactly when each photograph was taken. Two of the three are -- one is just a close-up; the same image. It's just a close-up. So I think that that's a -- it's a bit overstated, Your Honor.

THE COURT: What are you asking the court to do about that assuming I agreed with you?

10:38:51

MR. SCOTT: I'm asking the court to either strike it or rephrase it indicating that there were seven images, and three of those would be considered child pornography.

THE COURT: The government's response?

MR. MURPHY: Your Honor, I would argue to the court that Mr. Scott's summary shows that this was an accurate recounting of the defendant's conduct. It does basically lay out through the course of the PSIR that not all of the images qualify under the statute as child pornography but that they were all taken of the child.

10:39:10

10:39:30

And I would go further and note that although not recounted in the PSIR, should we have proceeded to trial, the United States would have shown through the unique identifiers for images, for instance, that where we had one image at a slightly larger distance and a close-up, that those were two separate images, in other words, two separate pushings of a shutter button. And the images in question were charged in a single count because it was based upon a single day when we're talking about the further out and the close-up image.

10:39:47

So basically I think that counsel's own argument shows

10:40:06

that the court was given a clear picture of some of the conduct by the defendant, and the court should not strike the paragraph.

MR. SCOTT: Your Honor?

THE COURT: Go ahead.

10:40:19 MR. SCOTT: The government charged three counts of production. There are three images, less than half of the seven that the PSIR says are child pornography. But Count 1 is one image. Count 2 is one image. Count 3 is one image. They were not charged in one count. They were charged in three separate

10:40:46 counts.

THE COURT: And your client pled guilty.

MR. SCOTT: He did.

THE COURT: All right.

MR. SCOTT: But it's not -- I just need to make clear,

10:40:54 the record, that it is not one count. It is three counts, and he has accepted responsibility. He has pled guilty and accepted responsibility for that.

THE COURT: Okay. So let me just clarify. Is that an accurate reflection of the government's evidence, Mr. Murphy?

10:41:10 MR. MURPHY: Your Honor, I'm afraid Mr. Scott and I disagree somewhat as to the government's evidence.

THE COURT: Okay.

MR. MURPHY: Turning to paragraph 15, for instance, that notes that there are different images taken -- an image taken on

10:41:26 June 10. I would note that within the indictment we charged

images taken on June 6, 2021, where the child was wearing pink pants; July 17, 2021, where the child was wearing green pants; and on or between April 11, 2018, and August 6, 2021, where the child was wearing brown pants. So essentially there are -- there is more specificity in the PSIR than in the indictment.

As to the specific dates where there is a single exact date charged, that is based, as counsel says, on EXIF or metadata from the image. The date range for Count 3 is because we did not have metadata to charge the exact day. However, each count is supported by more than a single image. For a given day, in some instances, there was more than one image taken.

However, for charging and trial purposes, I chose to charge one count for a given day because, as Mr. Scott recounted, in one instance you have an image from some distance and another image much closer up. That would be evidence should we have gone to trial in support of a single count.

THE COURT: Okay. I think I understand what 15 is trying to tell me. Are all three of the dates of charges referenced in paragraph 15? That is the one thing I'm confused about.

MR. MURPHY: Your Honor, I don't believe that they're all in paragraph 15. I think they're in some of the other paragraphs as well. For paragraph 15, I see June 20.

And to be clear, Your Honor, the June 10 image referenced first in paragraph 15 is not, as counsel says, a

statutory image of child pornography because it does not reveal the unclothed genitalia of the child.

I see June 6, that is charged.

June 29 is not an image of statutory child pornography because, again, it does not show unclothed vagina.

10:44:05

I see July 17.

THE COURT: I have a proposal that might take care of the objection. I'm gonna suggest that right after the first sentence which ends with "with a close-up view of their vaginal area" that we put in parentheses "not all of these images qualify as child pornography pursuant to the relevant statute," which appears to be the objection --

10:44:39

MR. SCOTT: It is.

THE COURT: -- and the point that defense is trying to make.

10:44:50

MR. MURPHY: The United States does not object to that amendment to the PSIR, Your Honor, because it is factually accurate.

THE COURT: Okay. Ms. Valencia, did you get that?

THE PROBATION OFFICER: Yes, Your Honor.

10:45:03

THE COURT: Okay. Next objection?

MR. SCOTT: Paragraph 18, the PSIR indicates that -- and, again, referring to the previous photographs described in paragraph 15, those are images 1 through 7. And the statement that there is some belief that the age of the child was

10:45:37

somewhere between 4 to 6 years old implies a three-year span; 4, 5, and 6.

Yet the evidence that is contained in and described in paragraph 15 and borne out by the investigation is that all of these things happened in roughly a five- or six-week period in 2021, so the child would have been 5 is my calculation.

10:46:01

But it's a very narrow window of time between I think it is June 6 of 2021 and July 17 of 2021. It does not extend over a three-year period. So I would ask that the -- that sentence be stricken.

10:46:36

THE COURT: What sentence specifically? It's a long paragraph.

MR. SCOTT: It is a long paragraph, and it starts -- one, two, three -- four lines down at the very end. The last word on that line is "the," and it has a name, "thought the photographs of," has initials, "were taken when she was 4 to 6 years old."

10:46:48

THE COURT: Okay. Ms. Valencia, I think we can all hear you from where you are, but let me ask you: Is this sentence that's being challenged, was that based on your conversations with the Waddingtons or was that based on your review of the police reports?

10:47:08

THE PROBATION OFFICER: Your Honor, that was based upon my review of the police reports that were within discovery.

THE COURT: Okay. Did you ask -- during your interview

10:47:25

of Mr. Franklin for purposes of preparing this document, did you ask him any questions about that?

THE PROBATION OFFICER: I do not recall asking him any questions specific to the victim's age at the time of the offense.

10:47:37

THE COURT: All right. I'm gonna deny the motion for purposes of -- paragraph 18 is not based on an interview of the defendant. It's based on a review of the police reports, and it's an accurate reflection of them.

10:47:54

Next objection.

MR. SCOTT: Your Honor, paragraph 19. It is found on page 7.

THE COURT: I have it, yeah.

MR. SCOTT: Paragraph 19 has absolutely nothing to do with this case. It is simply prejudicial. It implies something that is not borne out in the discovery. It implies that it was -- the image was taken for the purposes somehow related to child pornography. That's what this case is about.

10:48:07

That's not true. It's not borne out in any of the police reports. It's just simply an image taken. That entire paragraph should be stricken. It adds nothing of relevance to this case.

10:48:32

THE COURT: All right. I'll start with Ms. Valencia. Why is it in your report? I ask not to challenge your decision. I'm just asking what the decision was.

10:48:50

THE PROBATION OFFICER: Absolutely, Your Honor. This, again, was information that was derived from discovery material. It's simply put in there for the court's knowledge. It doesn't have any bearing on the guideline calculations; does speak to the defendant's history and characteristics. There's an image. It was not false. It was in the discovery. There's an image that this paragraph speaks to as well as another image of Mr. Franklin.

10:49:05

THE COURT: Okay. Government, Mr. Murphy, should it be here or not, or why is it important that it is here if you're arguing that it should be?

10:49:20

MR. MURPHY: Your Honor, it's important in that it does show some of the proof at trial and some of the conduct of the defendant. In fact, the images in question were appended to the United States' sentencing memorandum as Exhibits B and D specifically. So the court can review them and determine for itself, in the context of the sentencing memorandum, whether or not it's relevant to the defendant's conduct.

10:49:35

Specifically, the image of Mr. Franklin, which is attached to my sentencing memorandum at Exhibit B, was part of the investigation and would have ultimately been part of the chain of proof given the context of where it was taken within the trailer, and specifically a quilt that was visible in the background.

10:49:52

In D is the redacted -- Exhibit D to the United States'

10:50:07

sentencing memorandum is a redacted version of the image at the end of -- I'm sorry -- at the beginning of paragraph 19 which is of the male hand pulling down the child's pants and underwear.

This is also an example, Your Honor, of some of the 10:50:31 conduct which is not child pornography. The image at D is not in itself child pornography because it doesn't show the exposed anus or genitals of the child.

Nonetheless, should we have gone to trial, the United States would have sought to admit it to establish identity, 10:50:53 because there are other images of the child and of the defendant within the context of that fifth-wheel.

THE COURT: All right. I'm gonna leave it in. Objection is denied.

I'll just put on the record, I don't know, the image of 10:51:09 the defendant, it seems like it could be available to defense -- excuse me -- to the government if there were a trial to show that perhaps he was using that image to prepare the children, "Look, you know, Grandpa takes photographs like this. Maybe it's okay for you to take photographs like this." I don't know. 10:51:25 But it does seem like it's part of the story that's being told.

Next objection.

MR. SCOTT: Yes, Your Honor, paragraph 20.

Paragraph 20, there is a claim of 89 videos and 21 photographs depicting child pornography in various forms. That 10:51:49 is also taken from and is part of the police reports, the

reports coming into this -- leading to these charges and supporting the government's case.

However, my investigator and I have reviewed the videos, photographs, and other digital media collected, and we believe that there are far less than 89 videos of child pornography and probably at least 21 photographs.

Many of the videos that we saw were either adults or were repeated. The fact that there is the same video that appears five different times, four different times, or three different times does not -- should not be counted repeatedly, should not be -- the same one should not be repeated four or five or two or three times. So we're objecting to that.

Below that is a description of some of -- videos, and it's quite prejudicial and is unnecessary.

10:53:18 THE COURT: Why? I mean, the charge is production, transportation, and possession of child pornography. How could it --

MR. SCOTT: That is correct.

THE COURT: How could it be any more prejudicial than 10:53:27 the charges themselves?

MR. SCOTT: Then it would -- shouldn't be in the PSIR.

THE COURT: But what's prejudicial about?

MR. SCOTT: It's quite offensive.

THE COURT: Well, I'm gonna deny it on those grounds.

10:53:41 MR. SCOTT: All right. Understood.

THE COURT: All right. But in terms of the duplicate argument on the 89 videos and 21 photographs, if that's true, I would suggest -- and I'm not -- I'll let you respond if you don't think it's true, but I would suggest an addition of this parenthetical phrase, "Some of these videos and photographs were duplicates" for clarity purpose, unless you disagree to that.

MR. MURPHY: Your Honor, I do disagree with the court --

THE COURT: Okay.

MR. MURPHY: -- because we see -- I see in these cases many times that a particular video or image will be put on the Internet under multiple different titles, multiple different variations, sometimes a few seconds longer or shorter. The same basic conduct may be depicted.

But when it comes to possession, the person who possesses it has downloaded it multiple times from different names or different locations and saved it, because in order to possess one of these images, you have to save them.

So the fact that there are multiple copies can frequently show multiple acts of saving a video. Had this objection been made --

THE COURT: All right.

MR. MURPHY: -- sooner, the United States would have --

THE COURT: I'm gonna deny them. I'm gonna deny it. You've convinced me. I'm gonna deny the motion and leave paragraph 20 unchanged.

MR. SCOTT: Your Honor, I further object to paragraphs 22, 23, 25, 26, 27, 28 and ask that all of them be stricken in their entirety. Most of -- most of this involves accusations that are related to a separate proceeding. That is the state
10:55:38 proceedings. Those are pending. They have been outlined as part of the PSIR. You've already asked about the status of that a little bit.

The problem is, it is fundamentally unfair to Mr. Franklin because this is going to go to prison with him, and
10:56:03 he is denied any ability to rebut or challenge or anything else these accusations because of the pending matter that is not even within this court's jurisdiction.

I understand that -- I understand that those charges involve the same person that is alleged in the production
10:56:32 counts. I get that. My concern, Your Honor, is that all of these things are unchallenged. Mr. Franklin has no ability to challenge that. Some of that is statements made outside of this case. Some of it is unverified. Paragraph 28 is unverified. None of that is there.

10:57:05 THE COURT: So, Mr. Scott, I'm gonna ask you, this report is 12 days old. Why did you wait until this morning to file your objection? It kind of puts the court in a difficult spot.

MR. SCOTT: It does.

10:57:16 THE COURT: It puts the government in a difficult spot.

MR. SCOTT: Your Honor, the author of the PSIR and I have discussed this several times, and we just have a basic disagreement. The PSIR author believes that this is relevant conduct. The government believes that it is part of broadest 10:57:42 information possible. That's my term. I'm paraphrasing my conversations with the government.

These are -- I understand, but every time we have these things, it implies something that has yet to be proved. And Mr. Franklin -- I believe that it is unfair to Mr. Franklin on 10:58:08 the basis that it will go into BOP as a verity without ever having been -- without him ever having the opportunity to address it. That's my concern.

THE COURT: Okay. Let me hear from the government. Is this relevant conduct?

10:58:28 MR. MURPHY: Your Honor, yes, the United States would argue it is relevant conduct.

First, the court is supposed to take -- to be able to take into account all matters which are relevant to the underlying conduct to have the fullest picture. I would 10:58:47 disagree with counsel that at this point we're talking about alleged production. At this point we're talking about proven production of child pornography with the same child.

As to this conduct in the PSIR, it is all contained within discovery. I realize that the defendant has pending 10:59:08 charges and has limited ability to contest the factual

recounting. However, this has been provided to him well before those charges. And the fact that a PSIR will accompany someone to prison is no basis for an objection. There's no basis in law for an objection on that ground.

10:59:33 And I think more importantly, Your Honor, in order for you to make a decision, you should have access to information which is in the parties' hands regarding the defendant's conduct because it must surely impact how the court chooses to proceed with sentencing that, one, this is not a case -- and I hate to 10:59:59 use the term -- but of mere voyeurism or review of materials; and, two, that there are pending state charges.

I don't have the case at the tip of my tongue, Your Honor, but I believe that the caselaw is quite strong that the court is to consider all relevant matters when coming to a 11:00:19 sentence. And the fact that this was provided to the defense in discovery, that this was all uncovered as part of the case's investigation, means that it should be in front of the court.

THE COURT: Okay. I'm looking at a "relevant conduct" definition in the guidelines. It does cover this (reading): In 11:00:41 determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning background, character, and conduct of the defendant, unless otherwise prohibited by law.

11:00:56 I am going to deny the motion to strike those paragraphs

on those grounds. If it's important to the defendant, we could include a sentence that the defendant denies those specific allegations, but the court is going to consider them as part of its sentence, and I'll consider the denial as well.

11:01:19 MR. SCOTT: I would ask that you -- Your Honor, I cannot address that because of the constitutional guarantees, and Mr. Franklin cannot respond to that at this time --

THE COURT: Okay. All right.

MR. SCOTT: -- either way.

11:01:43 THE COURT: Then I'm not gonna amend but I won't strike as requested, so defense motion is denied.

MR. SCOTT: Very well.

THE COURT: Any other?

MR. SCOTT: One final, and this involves the PSIR's

11:01:57 interpretation of guideline 5G1.2. And that is -- we all know, and it's forever been the case in American jurisprudence, that the court has the ability to max out a defendant. The court has the ability to run them all consecutive.

However, when I read 5G1.2(d), which is referenced in

11:02:30 the PSIR, I cannot find any language nor can I find any language in the comments that would require this court to make a finding that the bottom end of the standard range is the statutory maximum for all counts ran consecutive to one another. That's how we get 1,560 months. That amounts to exactly 130 years. I

11:03:02 don't believe that that is required under that section.

I will tell the court that there are, there are some minor disagreements on the guideline calculation, but they're all so, I want to say, close. My calculations, along with the calculations of the author of the PSIR, we agree that Counts 1, 2, and 3 would result in a life recommendation under the guidelines. And so the other things --

THE COURT: Why don't -- well, okay. I'm gonna interrupt you. How do we get to a life recommendation on 1, 2, and 3 when the maximum is 30 years?

11:03:58 MR. SCOTT: It's a guideline range, Your Honor, and it is based entirely on the adjusted offense level.

THE COURT: Okay.

MR. SCOTT: And I think that's what the PSIR author is trying to indicate, that if this court determines that the total 11:04:17 punishment exceeds 30 years, you can run some of them consecutive in order to achieve what you have determined as the total punishment.

I disagree with -- we all know that that has always been true even before the guidelines. However, I disagree that 130 11:04:38 years is de facto the standard range. I don't believe that.

THE COURT: All right. I understand your argument. Let me just hear from Ms. Valencia. How did you get to the guideline range -- it's not really a range, but it's under that of 1,560 months?

11:04:57 THE PROBATION OFFICER: Well, I think, Your Honor, the

issue is that because of the statutory maximum in each count, there cannot be a guideline range of life because the statute doesn't require that. So when you just do the simple math of the statutory maximum in each count, that does equal mathematically 1,560 months which, yes, the argument would be life. However, that is not life pursuant to the guidelines.

11:05:11

THE COURT: Okay. The government, Mr. Murphy, do you have any comments on this particular issue?

MR. MURPHY: Your Honor, I don't have anything to add except for to note that, yes, under the guidelines, statutorily in a federal sentence, as the court's well aware, life means just that, life, and that is not available to the court. The maximum sentence available to the court is 130 years.

11:05:27

So given that that's the maximum available to the court short of the guideline recommendation, to be clear, of life, that's where it comes out to. It's the most available to the court short of what the guidelines say is appropriate.

11:05:48

THE COURT: Okay. I think I understand. It's kind of one of those esoteric distinctions that might not make a whole lot of difference.

11:06:11

But I think that probation has calculated that guideline provision accurately under the guidelines. The recommendation is not life from the government or probation. Even if the recommendation were to be 130 years -- which it's not -- technically that's not life though I don't know anybody who's

11:06:27

ever lived that long. But I think we have the appropriate calculation.

Finally, I would say it is not the court's intention -- I'm not exactly sure where I'm gonna end up, I'm gonna hear from the parties first, but the court did not intend to sentence Mr. Franklin to 1,560 months, so it's not really a factor in the court's decision.

Are those all the objections?

MR. SCOTT: Yes.

11:06:59 THE COURT: All right. I'll take the government's recommendation.

I do understand the government has a victim representative. I have their name somewhere, but I've misplaced it. There it is, Tyler Waddington. Do you want him to make

11:07:17 comments before you make your recommendation?

MR. MURPHY: Your Honor, Mr. Waddington would prefer to make his comments to the court after I have spoken. And if that's all right with the court, that's the way we'll proceed.

THE COURT: Fine.

11:07:30 MR. MURPHY: Your Honor, as the court is aware from having reviewed the materials submitted in this matter --

THE COURT: I should -- I meant to say and I didn't, so I'm sorry to interrupt.

I did review all of the letters that came to me, some of

11:07:41 them -- most of them -- well, I don't know. I didn't add it up.

All of the ones that were provided by the government I did read the other day. The ones that were provided earlier today by the defense I did read.

I meant, I read the government's earlier this week, the defendant's I read earlier today, but I have read them all.

MR. MURPHY: Thank you, Your Honor.

THE COURT: All right. Go ahead. Sorry.

MR. MURPHY: The United States would ask the court as to Counts 1, 2, and 3 to impose a sentence of 360 months' incarceration, and to run Counts 1, 2, and 3 concurrently.

I'm asking the court to impose a sentence of 60 months as to Count 4 concurrent with 1, 2, and 3. And the reason for the recommendation to the statutory minimum for Count 4 is the nature of the transportation from Mr. Franklin to himself although, arguably, in furtherance of some other scheme.

With respect to Count 5, I'm asking the court to impose a sentence of 30 months consecutive to Counts 1 through 4, for a total of 390 months' incarceration, to be followed by 10 years of supervised release.

There's a mandatory $500 special penalty assessment, as noted by the court. The United States has not received requests for restitution in this matter. We're not asking the court to impose a criminal fine given the sentence of incarceration we seek.

And when it comes to the AVAA imposition of $5,000, I

think that the court will be -- at the close of sentencing be able to make a finding of indigence in terms of Mr. Franklin's circumstances, and the United States is not going to oppose that.

11:09:46 And when it comes to the JVTAA impositions, the United States is not seeking them given Mr. Franklin's age and the requested sentence of incarceration. Should the court choose to impose a different sentence of incarceration, the United States would ask the court to consider imposing the JVTAA assessments 11:10:13 in lieu of any other fine.

Your Honor, in looking at this case, in my sentencing memorandum I attempted to contrast the defendant's presentation before the court. And I've heard the court say that it's frequently the worst day in someone's life to be in front of 11:10:36 Your Honor and to be facing a criminal sentence.

THE COURT: I don't think I've put it quite that way, but I understand what you're --

MR. MURPHY: I may be paraphrasing. Sorry, Your Honor.

But to contrast the images of the defendant and the 11:10:49 behavior of the defendant when all this was going on.

I take some issue with counsel's representation that the conduct at issue was only over a period of a month. While agreeing that the provable events of production took place over a little over a month, I would note that the defendant was still 11:11:15 in possession of all of these images that we have proof of on

June 30 of 2022, well over a year later -- or about a year later, I should say, when the FBI executed a search warrant after child pornography images were observed on his work computer by a technician working on it.

11:11:42 I would also note that, as related by the victim, it was the defendant's practice to take images of her and then to delete them. And clearly he did not delete all of them but certainly to tell her that they were deleted, so the range of conduct is something that we can never know.

11:12:00 I would also note that there is no clear digital path of how or from where the images and videos the defendant possessed -- other than that of Minor 1 -- were obtained apart from the defendant's statement that he used chat programs. So I will say that there was a level of sophistication with the acquiring and

11:12:26 possession of child pornography.

And in reviewing the defendant's letters of support, I note that he's characterized as a godly man; as a successful man; that multiple people stated that it was impossible to believe that he was in trouble; and the statement by Mr. Bardell

11:12:47 the defendant is more of a victim than a criminal; and the statement by Mr. Adam that he believes that the defendant has been punished for possession of child pornography adequately.

This is not a possession case before the court. This is a case of production of child pornography. The victim will not

11:13:06 know and can never know whether or not her images -- which

fortunately -- in terms of the actual child pornography images have been distributed. But there were hundreds, if not thousands of images of the child on the defendant's devices which would be normal given his relationship to the victim, but we don't know what's gone out.

11:13:31

Although the United States is making a recommendation which is substantially under the guideline in recognition of defendant's age, I will note that he was of advanced age at the time of these crimes and that the ongoing nature of the crimes and the relatively significant number of images and videos of child pornography as well as his ongoing course of conduct with a minor shows that this was not aberrant. This was a course of conduct the defendant engaged in and presumably would have continued in but for the intervention of the FBI.

11:13:52

Taking that into account, Your Honor, I would argue that for not only deterrence of the defendant but for general deterrence for this conduct -- this conduct was not only hands-on but it was a recording of hands-on activity -- a sentence of 390 months is appropriate.

11:14:16

THE COURT: I only have one question. Why are you recommending consecutive on 1, 2, 3, and 4 but -- excuse me -- concurrent on 1, 2, 3, and 4, but consecutive with Count 5?

11:14:35

MR. MURPHY: The statutory maximum for Counts 1, 2, and 3 is 360 months.

And I would point out to the court that the possession

11:14:58

charge is based upon images other than those of Minor 1, and I would argue to the court that a consecutive sentence is appropriate to recognize those other victims, those other children whose images the defendant possessed.

11:15:15 I think that a 30-month sentence for possession of child pornography is probably well within the ambit of something the court has done in other cases, and I would argue that's appropriate in this case consecutive to the production counts.

THE COURT: My one question was answered, but it

11:15:31 prompted another one. The range for 1, 2, and 3 is all 15 to 30 years. You're recommending the maximum, 30 years. Why the maximum for an individual who does not have a criminal record?

MR. MURPHY: Because while the defendant doesn't have a criminal history, I think this case through the letters to the

11:15:54 court, and recognizing that this is -- some of the conduct outlined in the letters to the court from family members is not anything that's subject to discovery, but they certainly showed indications of other activity which argues towards pedophilia or to the victimizing of underage persons.

11:16:15 Accompanied by the fact of the hands-on conduct and -- I don't really want to put it into the record, but the nature of the relationship between the defendant and the victim and the betrayal of trust that that accompanied, I would argue that a statutory maximum sentence for production is appropriate in this

11:16:32 case.

I don't really know how to characterize the abuse of that relationship to the court. I know the court sees it in other instances. But to have an --

THE COURT: I'm not arguing with you. I'm just asking you to put in words, and you have.

MR. MURPHY: Thank you, Your Honor.

THE COURT: Okay.

MR. MURPHY: Would the court like to hear from Mr. Waddington now?

THE COURT: Yes.

All right. Sir, why don't you come up, and I'd like your name and your relationship with the family, and then I'll take your comments.

MR. WADDINGTON: My name is Tyler Waddington.

THE COURT: Good morning. Tell me, tell me who you are in relation to the family.

MR. WADDINGTON: I'm LW's father.

THE COURT: And I'm sorry --

MR. WADDINGTON: I know I can't say that.

THE COURT: Okay.

MR. WADDINGTON: I'm sorry. I am Dave Franklin's son-in-law.

THE COURT: Okay.

MR. WADDINGTON: So I am married to his oldest daughter. I have known the family for 31 years. And I'm sure you've

received letters for his support, and I honestly don't know if there's anyone alive that could write a better letter than I could for Dave. I've known Dave for . . .

THE COURT: Take your time. There's some Kleenex, and we can get you some water too if that will help.

MR. WADDINGTON: I've known Dave for 30 years. I was married into the family, and we had four children before anyone else even got married. We had our fifth grandbaby for him before anyone else had any grandchildren. He was more than -- he was one of my closest friends. And so it is really hard to say the things that I know I have to say today, because I am partially the father and husband and grandfather I am today because of his influence in my life at times.

I didn't really know what to say today. I wanted to write it out but I couldn't really collect my thoughts, and so I thought I would just start back when --

THE COURT: Well, don't start back to --

MR. WADDINGTON: No, no.

THE COURT: I'm only gonna give you a couple minutes; so --

MR. WADDINGTON: When Dave first informed my wife that the FBI had shown up at his office to confiscate, and he came out to the house and spoke to her -- and he didn't want to speak with me -- and he informed her of what was vaguely transpiring.

And he was headed on a trip out to Missouri to a Royal

Rangers, a boys' camp that he's taken all of my sons to through the years and participated in, and he let her know that he had to change his plans. TW, our youngest son, was supposed to go with him, and he said this is kind of what's happening. He said: I want to assure you I have never hurt any of your children. I would never do that.

Mom, Becky -- my mother-in-law -- Mom was gonna go up with him, and he said: TW is still more than welcome to go. I'm not staying at the camp. I'm staying separate. And TW can go with me, and I'll still take him.

And Charity and I, we discussed this, and I was all over the place on a decision because, on one hand, he had never given us anything to doubt, really, like the safety of our kids, and yet this is transpiring. And I also knew that the police don't show up for just some *Penthouse* magazines. There's something serious going on. And so we decided not to.

And the more I thought about it, why would you still go to a young boys' camp and take your young grandson with you when you knew these allegations were coming? You knew what was going on. Why would you still do that? This is what I thought later as it starts unfolding.

And after we got further into this, the FBI came. They spoke with us later. We realized the level of it. My wife, Charity, spoke with our youngest daughter. I don't know. How do I say it?

THE COURT: That's enough.

MR. WADDINGTON: The victim?

THE COURT: Okay.

MR. WADDINGTON: Is that what it is, the victim?

11:22:24 THE COURT: Okay.

MR. WADDINGTON: Okay. And we realized the extent of it. And we had to send out an email to the family, and it's in --

THE COURT: I've seen it.

11:22:34 MR. WADDINGTON: -- all the files.

And I guess the main thing that I want to point out here and that concerns me is that Dave doesn't respect boundaries. And that's been one of the things that through all the years we always just say, "Oh, it's Dad. Oh, it's just Dad. Don't worry

11:23:01 about it."

And as this has unfolded and I hear stories from my children and realize things I didn't know about, they would just tell themselves, "It's just Grandpa. It's not a big deal. It's just Grandpa," as you read in some of the letters from my

11:23:16 children.

So in this email we had to reach out and tell all of our siblings what was going on and to let them know why we were drawing the line where we were. And in this email -- I don't know if I -- this is in evidence so I can read this; right?

11:23:39 THE COURT: Yeah, but I am gonna ask you to just wrap

up --

MR. WADDINGTON: Yes.

THE COURT: -- your comments within the next 30 seconds, please.

11:23:45 MR. WADDINGTON: Thirty seconds? Man, I've --

THE COURT: I've read your statement.

MR. WADDINGTON: -- waited two years for this.

THE COURT: I know. Go ahead.

MR. WADDINGTON: Okay. We sent a detailed email. We

11:24:01 let the family know. We also let the family know that we had to draw some hard boundaries. We had a wedding coming up for my oldest son. Dave was supposed to participate and officiate part of it, and we had to nix that off. And in there we put up boundaries and said that as long as Mom was affiliated in with

11:24:21 him, she could not participate in things also. We couldn't blur these lines.

Mom respected that, but what's interesting after that, over the -- multiple times Dave would make contact. He called my son telling him, "Sorry I can't do it." My son didn't know

11:24:49 what to do.

THE COURT: How old was your son at the time?

MR. WADDINGTON: He's 26.

THE COURT: Okay.

MR. WADDINGTON: So this was -- he was 23.

11:25:02 My daughter Samantha ran into him at Fred Meyer's, and

she had to hide. And he was going up and down the aisles looking for her and she could watch him the whole time, and then he finally left the store.

THE COURT: How old was she at the time?

11:25:21 MR. WADDINGTON: She would have been 16.

Then you go on, and I'll end with this, then. This is in evidence. And it is just a couple months after he was incarcerated or what --

THE COURT: In jail.

11:25:44 MR. WADDINGTON: Yeah. In jail, yes. My wife's birthday. He had always called her on her birthday. And here she was, a witness in this, and he writes her a letter: As I prayed for you and felt as I prayed that I should send you a note -- skip down -- this letter is hard for me, and I'm sure 11:26:11 it's hard for you, but I felt that God wanted me to reach out to you today anyway.

So he found a reason to cross boundaries again. Worst birthday my wife's ever had, and I hope she'll never have one that bad again. But in his mind, he had a reason why it was 11:26:37 okay to break boundaries that had been placed not only by the government -- she was a witness -- but by us in a detailed email. We wanted no contact.

So to wrap it up, I guess I don't even know how I can say it, then. Your Honor, you have a power in your hands that I 11:27:13 wish I had for the victim, and that is that today you have the

power to guarantee that she does not have to take the stand in the state courtroom, relive her testimony to new detectives or be cross-examined by a prosecuting attorney in a state trial, and so I ask you to take that into consideration. Thank you.

11:27:45 THE COURT: Thank you for coming. I appreciate your comments.

All right. I'll take -- Mr. Scott, I'll take your recommendation.

MR. MURPHY: Your Honor, if I can step out just a

11:28:07 moment?

THE COURT: Of course.

(Pause in proceedings)

MR. MURPHY: Sorry, Your Honor. I had to give Mr. Hanlon a file for a case that's going in front of Judge Dimke.

11:28:26 THE COURT: Okay.

All right. Mr. Scott, when you're ready. Oh.

MR. SCOTT: Sorry.

THE COURT: Come on, let's --

MR. SCOTT: Your Honor, I just --

11:28:38 THE COURT: No, I understand. That's fine.

Mr. Scott.

MR. SCOTT: Thank you, Your Honor.

Your Honor, what we have witnessed is very eloquent, very raw, very real feelings of the family, and there is --

11:29:20 there is no part of David Franklin that wants to discount that

or wants to disregard any of that. His heart breaks for what he has done.

Your Honor, you understand that when an investigation comes to light, the attorney tells the individual, "Don't discuss anything. Don't say a word." That's typical. It's hard for the family, particularly in a close-knit family, to understand that because they want answers. They want something.

It has been difficult because Mr. Franklin -- Mr. Franklin rejected the plea agreement that was offered, and he pled guilty. It would have required -- the plea agreement would have required dismissing some of the counts.

He rejected that and he instead stood here in your courtroom and told you, "This is what I did. I'm not proud of what I did. I'm ashamed of what I did, but I did it." He admitted it. He has taken responsibility for it. I'm not sure that he can explain why even to himself. I've met with David so often and spent so much time over the last couple of years, I'm not sure that he understands how he could allow this to happen, but he did.

He is deeply, deeply sorry. I know that many of the letters from family members and other types of communication from family has had an undertone or explicitly a feeling that Mr. Franklin has never apologized and taken responsibility for what he has done; he has never done anything to try and make amends or to better himself.

And at the same time, we have these hard boundaries, and, frankly, Mr. Franklin is very conflicted because he wants to apologize. He wants to reach out and yet -- and I think that the family wants him to reach out in this context here today. I think they want to hear him say that he is sorry. They don't want to hear it when he shows up at the door or in a letter. That's not what they want. But I think they want to hear that here in this courtroom, and I think that they will.

Mr. Franklin, I want to talk a little bit about -- before I get into some personal things, I want to talk a little bit about some other things. You know that Mr. Franklin is not just what is alleged in these charges.

The family is hurting. They're deeply wounded, and I get it. I understand that. And they have every right to be wounded and let down and -- I don't know that I can find the proper terms.

But Mr. Franklin also has other characteristics and other facets to his being, his personality. He has spent a lifetime in service to others as well doing positive things. He has served on the Civil Air Patrol, Search and Rescue. He has helped others. He has done things to try and lift others up, and he has continued to do that while he's in custody as well.

He has completed more courses than any other person in the Yakima County Jail. Those courses include things such as sexual addicts anonymous. They include things such as religion,

history, self-help. He has, he has done -- you've gotten the certificates of completion. He has not just been sitting around. He has done what he can to try and fix him and fix this problem.

11:34:55 He has led services in the jail; Christmas twice, Easter once. He's planning if he's still here to do it again for Easter. These are important things for people. People come to him, other inmates. David doesn't -- he does not know this, but I have -- over the last two years or so I have had many other

11:35:20 clients in that same tank, and several of them have come to me and said positive things about David and how he has been willing to help and listen and try and do better, encouraging others as well.

Your Honor, I had this all mapped out until I got here

11:35:49 today and heard some of the comments, and now it's all gone by the wayside.

Mr. Franklin since he's been in custody this time has read his Bible front to back at least five times. He has -- I want to get this right if I can find it now. He has read 147

11:36:16 books -- more than that, actually; 11 more on tablets. The subjects include education, faith, history, theology, a couple of fiction, reeducation, theology.

I want to talk a little bit about proportionality as well. The studies that I have been able to find from the United

11:36:56 States sentencing guideline commission indicate that there is

about 2 percent nationally of child pornography cases filed in US District Courts.

In the Eastern District of Washington, it's a little bit more. It's about 4.2 percent. The last publication that I was able to come across with indicates there are nine cases. The average -- in the Eastern District of Washington, the average is somewhere around 60 to 90 months. Obviously, that includes non-production cases, because production cases have a mandatory minimum of 180 months. Nationally, the average for production cases is less than the government is requesting here. It goes all over the place. There are some higher, some lower, but the average is less.

The average age of a person nationally being charged with this is 38 years. Mr. Franklin is 68. According to the United States Social Security Administration, his expected life term from now is about 13 years. He is -- even 180 months would be -- would exceed his life expectancy.

There are also studies that indicate -- they're published by the -- or at least referenced. I'm sorry. They're not published, but they're referenced in some of the US sentencing guideline publications that indicate that once a person is incarcerated, the age of the body accelerates due to the stress factors, due to all of the other things, so we age faster in jail than we do on the outside.

Mr. Franklin since he has been in custody has had

bladder issues that are outlined in the PSIR. He has also had prostate issues. I don't believe that that was covered in the PSIR. It might have. But these are things that also go towards his life expectancy.

11:39:39 I'm asking the court to give him 180 months on Counts 1, 2, and 3, run concurrent. I'm asking the court to -- whatever the court does on Counts 4 and 5, whether it's 60 and 30 or whatever the court does with those, also run those concurrent, for a total of 180 months.

11:40:07 One hundred eighty months is going to do everything under the 3553(a) factors. It is much more proportionate. Looking nationally, the average term, and given the -- for production and given the age of the individuals would put that individual at roughly 60 years old when they are released from

11:40:37 prison, and that's give or take. Mr. Franklin comes before the court starting at 68.

And the intent behind the other sentences, I believe, is that the punishment would be sufficient but would also allow a hope of life. He has never been convicted of anything before,

11:41:06 and to sentence him to life is so far outside of the proportionality. To give him 30 years, 32 1/2 years, which is what is requested by the government, puts him at 100 years old. The PSIR is not -- I don't know what the PSIR is recommending, but that's not appropriate, Your Honor. I ask that the court

11:41:46 not do that.

I ask that the court give him 180 months. I think that 180 months is more than enough to -- and it may be a life sentence. It's more than enough to establish respect for the law. It is more than enough to be proportionate. It is more than enough to -- taking all of the factors and considerations and Mr. Franklin's personal characteristics, holds him accountable, deters others from that conduct. It satisfies all of the factors.

Your Honor, Mr. Franklin would like to speak on his own behalf. Could I ask him up here to do that?

THE COURT: Sure. Come on up. And while you come up, Mr. Franklin, I have a question for your lawyer.

Does your client waive me going through all the conditions of supervised release?

MR. SCOTT: Yes, Your Honor, he does. We have discussed each and every one of those. Depending on what you do, they may not be necessary.

THE COURT: All right. Thank you.

All right. Mr. Franklin, you don't have to say anything if you don't want to but you do have the right to make comments now, and so I will listen to your comments if you have some.

THE DEFENDANT: I would like to say a few words, and I too have written them down, and I understand the heart of my family.

I stand here before you very humiliated and heartbroken

for my actions. I've hurt some of the most important people in my life; my wife, my family, my grandkids, and, of course, my God. And at times my behavior crossed the lines of morality and my spiritual values, and sometimes it didn't even make sense to me when I caused harm and pain to others. And I'm truly crushed, and my heart is full of remorse.

11:43:47

And I hear -- I want to say to my family that I'm truly sorry. I'm truly sorry, and I ask for forgiveness of those that I've disappointed. I've tried to make contact with family, and I have not been successful, to tell them of my sorrow and that I ask for forgiveness.

11:44:20

The apostle Paul in the scripture says this in Philippians, that he encourages us to forget what's behind and press forward to the high calling of God in Christ Jesus.

And so my prayer is that those that I've hurt can forget, can forget the events of the past and focus on the future. I can't take my actions back, but my prayer is that their hurts can heal. And if they can't forget, then hopefully they can forgive.

11:44:46

And it may seem impossible to forget and forgive, but across the page in my Bible, Paul goes on and says all things are possible. All things are possible through Christ who strengthens us. And I don't intend to minimize the harm, but my prayers are that God will use this as a stepping stone and not a stumbling block in life to my family and to those I've hurt.

11:45:13

11:45:37

And, finally, Your Honor, I would be remiss not to ask the court for gift of grace and for a miracle of mercy concerning the minimum sentencing. A decade and a half is monumental in my life at this time. And so I ask for leniency for time and for fines, something which I can attain in my life. All of my bills in my life I've paid for 50 years. I want to pay this debt.

11:46:05

My hope for the future is for healing and for restoration. And I want to say again to my family -- some are here today and others they can share -- but my heart is full of sorrow, and I ask for forgiveness. I ask forgiveness.

11:46:23

THE COURT: Look at me.

THE DEFENDANT: Pardon?

THE COURT: Look at me.

11:46:42

THE DEFENDANT: Oh, okay. I ask for forgiveness. That's it.

THE COURT: All right.

MR. SCOTT: Your Honor, I have a couple of issues that I need to address to the court, if I may. It will be brief.

11:46:54

One of the things that Mr. Franklin said is forget, hope they can forget. And he mentioned that to me earlier, and I thought that was an odd phrase. Why would you ask for to forget?

And the answer coming back was that is the most perfect

11:47:16

form of healing. There are wounds here. There are deep gouges,

and there is no way to get around that. But I think that it's Mr. Franklin's hope that they can not only heal and be reminded based on the scar tissues, but they can heal to the point where they perhaps can even forget that the injury was there. And I think that was -- it took awhile discussing that with Mr. Franklin for me to figure that out.

11:47:44

The other thing I want to address is indigency. Mr. Franklin and his wife, Becky, are currently in divorce proceedings. She had originally posted the bond. Before he could be released, she revoked that bond.

11:48:06

She has taken all of the money and assets and put them into separate accounts under her name only. It's my -- I do not represent him in the divorce. However, it is my understanding from that attorney that Ms. Franklin's attorney, Becky's attorney is asking for 100 percent of all the assets.

11:48:30

I don't know what the judge is going to do with that, but I do suspect that Mr. Franklin at the end of it is not going to have anything. What little he gets out of the divorce I expect to be seized by other family members as a prejudgment attachment for a damage complaint.

11:48:56

So no matter how we slice it, I think that Mr. Franklin is indigent and has zero opportunity, even if he ever gets out, of paying any kind of fines or anything else. I would ask that you find him indigent.

11:49:18

THE COURT: All right. We have -- the defendant I think

is owed this explanation but also the family who's here is owed this explanation, which I give in various lengths in all sentencings.

The function of the court is to sentence a defendant to something that's sufficient, but not greater than necessary, and in the end the sentence is supposed to be considered reasonable in light of all the factors the court is to consider, and I've considered them all.

That includes the criminal conduct involved, the defendant's past, the defendant's circumstances, the circumstances of everyone involved in this particular crime, the need to treat defendants the same who are charged with similar crimes, the desire to protect the public, and the need to encourage others who may be paying attention to follow the law. So that's what I'm supposed to think about, and I believe I have.

Let me specifically mention what I've thought about regarding Mr. Franklin. I do give you credit for having pled guilty, for thereby preventing the victim in this case on Counts 1, 2, 3, and 4, and perhaps other victims in Count 5, from having to testify. I give you credit for attempting to accept responsibility for your actions. I observe that you have no criminal history at the age of 68.

However, those are moderated by these concerns, that not only was this production of child pornography, not just receipt

of or possession of child pornography of other children, but this is production of child pornography involving your granddaughter who at the time was no older than 5 based on my calculations from the dates in the indictment.

11:51:32 I'm aware of the fact that this granddaughter has suffered significant trauma, including nightmares, eating disorders, and anger. None of that is surprising to the court, having seen cases like this. All of that saddens the court, but it's not at all surprising. But this is harm that you caused; 11:51:54 that you had a significant role in this person's life, given the family relationship, and you abused that.

I'm aware of the fact that what you did did involve, most likely, actual touching. Unlike many child pornography cases, there are allegations that you actually abused, 11:52:21 physically abused this same granddaughter. That will be handled by another court maybe, but those allegations are pending in that court.

I take note of the fact that you damaged this granddaughter, traumatized her as the direct victim but your 11:52:38 entire family as an indirect victim of what you've done.

I take note of the stories that your family tells me that you have apparently lived a lifetime of selfishness, deceitfulness, and harmful behavior; selfishness in that you care only what comes to you and not what's left in the wake of 11:53:03 your behavior, but that's all come crashing down upon you.

And your answer today is that you want your family to forgive you and to forget about what's happened. Nowhere in your comments did you even mention your granddaughter or mention that you have any acknowledgement of the substantial, most likely lifetime harm that you've created for her and the harm indirectly that you've created for your entire family.

Whether I give you 180 months or 390 months or something in between or something more, your family is going to not be able to forgive you and not forget. You won't be there at Easter dinner. You won't be there at Thanksgiving dinner. You won't there be at Christmas dinner. You won't be there for their birthdays. You won't be there every day for your spouse because of your behavior.

They're not gonna forgive you for that. They're not gonna forget you for that or forget about what's happened. They're gonna remember: Where's Dad? Where's Grandpa? Where's my husband?

And we can rely on these pleas from the Bible and from our faith that you have that that's perhaps a way to live, but it's just not gonna happen, and that's because of your behavior, not theirs.

You have driven a hole in this family that is not going to be forgotten certainly. Whether each of these family members is able to forgive you completely, partially, or at all is a decision they're gonna have to make.

I guess what I'm saying is your comments to me, sir, really didn't help you, in my opinion, because you did not express what I'm listening for, that you recognize that you've created a lot of harm in the wake of your life.

11:55:08 But after three years in jail and after 68 years of treating life like this, you expect that there is no wake, that people should just forgive and forget and let you continue with your life that you think is a life of accomplishment and sacrifice.

11:55:34 The government has convinced me that a sentence of 360 months for Counts 1, 2, and 3 is appropriate. That's what the court will impose, consecutive -- excuse me -- concurrent. I always get those -- I always say the wrong one, but I meant concurrent for Counts 1, 2, and 3.

11:55:54 For Count 4, 60 months concurrent to Counts 1, 2, and 3.

And to Count 5, five years but also concurrent, and I'll disagree with the government to that extent only because I think given the fact that you don't have any other convictions that you deserve that. It's not much of a concession, but it is a

11:56:18 concession to you.

So the total is 360 months, as I've described it; no fine other than the required $100 special penalty assessment for each count for a total of $500; 10 years of supervised release with all of the conditions as recommended by probation. They

11:56:44 will all be listed in the judgment and sentence and all be gone

over with you if and when you get out of custody.

I believe I've gone through all of the factors I have to go through other than the appellate issue which I'll do in just a moment, but have I forgotten anything, Mr. Murphy?

11:57:05 MR. MURPHY: No, Your Honor.

THE COURT: Have I forgotten anything, Mr. Scott?

MR. SCOTT: I don't believe so, Your Honor.

I understand that probation is whispering to Mr. Murphy about some of the specific assessments. I thought that you had --

11:57:26 THE COURT: I'll get to that. Thank you. That is a good enough reminder.

MR. SCOTT: Okay. I interpreted that to be zero but maybe I --

THE COURT: Yeah, and that's where I was headed.

11:57:34 Based on the government's recommendation and my finding of indigency that I will not make any special assessments under the -- either of the statutory acts mentioned by the government, the AVAA or the JVTA.

And I do believe that since this was a plea without a

11:57:51 plea agreement that Mr. Franklin has preserved all of his appellate rights, and so you do have the right to appeal the judgment and sentence.

If you want to appeal, you must file a notice of appeal within 14 days of the judgment and sentence which will be dated

11:58:10 either today or tomorrow, certainly by the end of the week, and

that's when the clock, the 14-day clock begins to tick. You do have the right to have an attorney assist you with an appeal if that's what you want to -- the thing that you want to do, if you want to appeal.

11:58:31 Mr. Waddington, I do appreciate you being here. I didn't mean to offend you by putting a time limit. I did get the sense of where you were headed. I was just trying to get you to wrap it up. So if I offended you, I do apologize. I know you waited a long time. I know that those comments were 11:58:46 heartfelt. I took them that way. And I did hear what you had to say, and I hope that you leave here knowing that. So I'm sorry if my 30-second time clock took you by surprise.

All right. I think I've covered everything I need to cover.

11:59:00 Mr. Murphy, anything?

MR. MURPHY: Your Honor, the court has -- I will note that there was a preliminary order of forfeiture at ECF 75 and that today documents have been submitted regarding a stipulation as to an item of real property.

11:59:17 That's just to say that, as I recommended to the court, there's no request for restitution and that the issue of forfeiture will be subject to some further little bit of litigation before the court.

THE COURT: Right. And I did read that stipulation and 11:59:31 so that's why I didn't ask about the final order because I think

that's still being discussed with the government.

MR. MURPHY: Thank you, Your Honor.

THE COURT: Anything else from the defense?

MR. SCOTT: Yes, Your Honor. Mr. Franklin would like for the court to recommend placement for BOP at Englewood, Colorado.

THE COURT: Do you have a reason to offer?

MR. SCOTT: I'm sorry?

That is a special --

THE COURT: For treatment?

MR. SCOTT: -- facility that is for sex offenders and also provides medical care that we anticipate he's gonna need over the next 30 years.

THE COURT: Okay. I will make that recommendation for purposes of the treatment and medical care options that are available there.

MR. SCOTT: Thank you.

THE COURT: All right.

All right. Thank you. Court's in recess.

I realize we have -- we're a little bit behind. For those of you here for the 11:00 o'clock matter, I'll come back in just a few minutes.

THE COURTROOM DEPUTY: All rise.

Court is in recess.

(Hearing concluded at 12:00 pm)

C E R T I F I C A T E

I, MARILYNN S. McMARTIN, Registered Diplomate Reporter and Certified Realtime Reporter, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Yakima, Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction, to the best of my ability. Conversion of text to initials was done pursuant to Federal Rules of Criminal Procedure 49.1.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 9th day of April, 2025.



Marilynn S. McMartin, RDR, CRR
Washington CCR #2515
Official Court Reporter
Yakima, Washington

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 21, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

Eastern District of Washington

UNITED STATES OF AMERICA
v.
DAVID ROGER FRANKLIN

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:23-CR-02026-SAB-1

USM Number: 59636-510

Gregory Lee Scott
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 2, 3, 4, and 5 of the Indictment

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18 U.S.C. § 2251(a),(e) - PRODUCTION OF CHILD PORNOGRAPHY	06/30/2022	1
18 U.S.C. § 2251(a),(e) - PRODUCTION OF CHILD PORNOGRAPHY	06/30/2022	2
18 U.S.C. § 2251(a),(e) - PRODUCTION OF CHILD PORNOGRAPHY	06/30/2022	3
18 U.S.C. § 2252A(a),(1), (b)(1) - TRANSPORTATION OF CHILD PORNOGRAPHY	06/30/2022	4
18 U.S.C. § 2252A(a),(5)(B), (b)(2) - POSSESSION OF CHILD PORNOGRAPHY	06/30/2022	5

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

☐ 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.

2/18/2025
Date of Imposition of Judgment



Signature of Judge

The Honorable Stanley A. Bastian Chief Judge, U.S. District Court
Name and Title of Judge

2/21/2025
Date

DEFENDANT: DAVID ROGER FRANKLIN
Case Number: 1:23-CR-02026-SAB-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: 360 months as to Counts 1, 2 and 3 to run concurrent. 60 months as to Count 4 to run concurrent to Counts 1, 2 and 3. 60 months as to Count 5 to run concurrent to Counts 1, 2, 3 and 4.

Total sentence of 360 months. Defendant shall receive credit for time served.

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

The Court recommends defendant serve his sentence at FCI Englewood to allow an opportunity for sex offender treatment and medical care options.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DAVID ROGER FRANKLIN
Case Number: 1:23-CR-02026-SAB-1

SUPERVISED RELEASE

Upon release from imprisonment, you shall be on supervised release for a term of: 10 years.

MANDATORY CONDITIONS

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

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

DEFENDANT: DAVID ROGER FRANKLIN
Case Number: 1:23-CR-02026-SAB-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 be truthful when responding to 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 this judgment imposes restitution, a fine, or special assessment, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment. You shall notify the probation officer of any material change in your economic circumstances that might affect your ability to pay any unpaid amount of restitution, fine, or special assessments.
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: DAVID ROGER FRANKLIN
Case Number: 1:23-CR-02026-SAB-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must not communicate, or otherwise interact, with L.W., either directly or through someone else, without first obtaining the permission of the probation officer. You must not enter the premises or loiter within 1000 feet of the victim's residence or place of employment.

2. You must not have direct contact with any child you know or reasonably should know to be under the age of 18, not including your own children, 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, not including your own children, 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.

3. You must not be employed in any occupation, business, or profession, or participate in any volunteer activity which provides access to children under the age of 18, unless authorized by the supervising officer.

4. You must not act as a consultant or advisor to individuals or groups engaged in any computer-related activity.

5. You must not be employed in, directly or indirectly, or perform services for, any entity engaged in a computer, computer software, or telecommunications business. You must not be employed in any capacity wherein you have access to computers or computer related equipment or software without the approval of your supervising officer.

6. You must not use any software program or device designed to hide, alter or delete records/logs of your computer usage, Internet activities, or the files stored on the assigned computer. This includes the use of encryption, steganography (the art and science of hiding a message in a medium, such as a digital picture or audio file, so as to defy detection), and cache/cookie removal software.

7. You must only use your true name and identifiers (such as date of birth, social security number, driver's license number) for purposes of establishing credit, screen names, utility services, including any services related to computer or electronic equipment or contracts, and registration related to computer-related activities.

8. You must maintain a complete and current inventory of the computer equipment you use and provide it to the supervising officer. You must provide a monthly record of computer usage and bills pertaining to computer access to the supervising officer. 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 and for which you have the authority to consent to installation of such software, if such computer has the capacity to access prohibited material. You shall not use a computer without computer monitoring software installed upon it unless approved of in advance by your probation officer.

9. 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).

10.You must provide a complete record of all passwords and user identifications (both past and present) to the supervising officer and must not make any changes without the prior approval of the supervising officer.

11.You must not install new hardware or effect repairs on your computer system without advance permission from the supervising officer.

12.To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches on any of the following used by you: computers, other electronic communications or data storage devices or media, that can receive, store, or otherwise possess materials with depictions of "sexually explicit conduct" (as defined by 18 U.S.C. § 2256(2)) involving children, or "actual sexually explicit conduct" (as defined by 18 U.S.C. § 2257(h)(1)) involving adults. These searches shall be conducted to determine whether the computer contains any prohibited data prior to installation of the monitoring software, whether the monitoring software is functioning effectively after its installation, and 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.

13.You must submit to search, any of the following used by you: computers, other electronic communications or data storage devices or media, that can receive, store, or otherwise possess materials with depictions of "sexually explicit conduct" (as defined by 18 U.S.C. § 2256(2)) involving children, or "actual sexually explicit conduct" (as defined by 18 U.S.C. § 2257(h)(1)) involving adults. 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.

14.You must live at an approved residence, and must not change your living situation without advance approval of the supervising officer.

15.You must not possess any type of camera or video recording device.

16.You must not reside or loiter within 500 feet of places where children congregate, which includes playgrounds, primary and secondary schools, city parks, daycare centers, and arcades.

17.You must complete a mental health evaluation and follow any treatment recommendations of the evaluating professional which do not require forced or psychotropic medication and/or inpatient confinement, absent further order of the court. You must allow reciprocal release of information between the supervising officer and treatment provider. You must contribute to the cost of treatment according to your ability to pay.

18.You must submit to periodic 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.

19.You are prohibited from possessing or manufacturing any material, including videos, magazines, photographs, computer-generated depictions, or any other media that depict sexually explicit conduct involving children or adults, as defined at 18 U.S.C. § 2256(2). You must not enter any establishment involved in the sex industry, including but not limited to adult bookstores, massage parlors, and strip clubs. You must not utilize any sex-related adult telephone numbers. The supervising officer is authorized to monitor compliance in this

area by obtaining relative records including but not limited to telephone, Internet, credit cards and bank statements.

20.The defendant shall report to the Probation Office any and all electronic communications service accounts [as defined in 18 U.S.C. § 2510(15)] used for user communications, dissemination and/or storage of digital media files (i.e. audio, video, images). This includes, but is not limited to, email accounts, social media accounts, and cloud storage accounts. The defendant shall provide each account identifier and password, and shall report the creation of new accounts, changes in identifiers and/or passwords, transfer, suspension and/or deletion of any account within 5 days of such action. Failure to provide accurate account information may be grounds for revocation. The Probation Office is permitted to access and search any account(s) using the defendant's credentials pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the account(s) to be searched contain evidence of this violation.

21.You must submit your person, residence, office, or vehicle and belongings to a search, conducted by a probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search may be grounds for revocation. You must warn persons with whom you share a residence that the premises may be subject to search.

22.You must complete a sex offender evaluation, which may include psychological and polygraph testing. You must pay according to your ability and allow the reciprocal release of information between the evaluator and supervising officer.

23.You must actively participate and successfully complete an approved state-certified sex offender treatment program. You must follow all lifestyle restrictions and treatment requirements of the program. You must participate in special testing in the form of polygraphs, in order to measure compliance with the treatment program requirements. You must allow reciprocal release of information between the supervising officer and the treatment provider. You must pay for treatment and testing according to your ability.

24.You must undergo a substance abuse evaluation and, if indicated by a licensed/certified treatment provider, enter into and successfully complete an approved substance abuse treatment program, which could include inpatient treatment and aftercare upon further order of the court. You must contribute to the cost of treatment according to your ability to pay. You must allow full reciprocal disclosure between the supervising officer and treatment provider.

25.You must not enter into or remain in any establishment where alcohol is the primary item of sale. You must abstain from alcohol and must submit to urinalysis and Breathalyzer testing as directed by the supervising officer, but no more than 6 tests per month, in order to confirm continued abstinence from this substance.

DEFENDANT: DAVID ROGER FRANKLIN
Case Number: 1:23-CR-02026-SAB-1

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$500.00	$.00	$.00	$.00	$.00

☐ The special assessment imposed pursuant to 18 U.S.C. § 3013 is hereby remitted pursuant to 18 U.S.C. § 3573(1) because reasonable efforts to collect this assessment are not likely to be effective and in the interests of justice.

☐ 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement $ _____

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

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

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

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

* 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: DAVID ROGER FRANKLIN
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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 with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

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

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

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

Defendant shall participate in the BOP Inmate Financial Responsibility Program. During the time of incarceration, monetary penalties are payable on a quarterly basis of not less than $25.00 per quarter.

While on supervised release, monetary penalties are payable on a monthly basis of not less than $25.00 per month or 10% of the defendant's net household income, whichever is larger, commencing 30 days after the defendant is released from imprisonment.

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 online at www.waed.uscourts.gov/payments or mailed to the following address until monetary penalties are paid in full: Clerk, U.S. District Court, Attention: Finance, P.O. Box 1493, Spokane, WA 99210-1493.

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

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

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

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.