

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 25-cr-10472-BEM
	)	
KYLE SVARA,	)	
	)	
Defendant	)	

GOVERNMENT’S SENTENCING MEMORANDUM

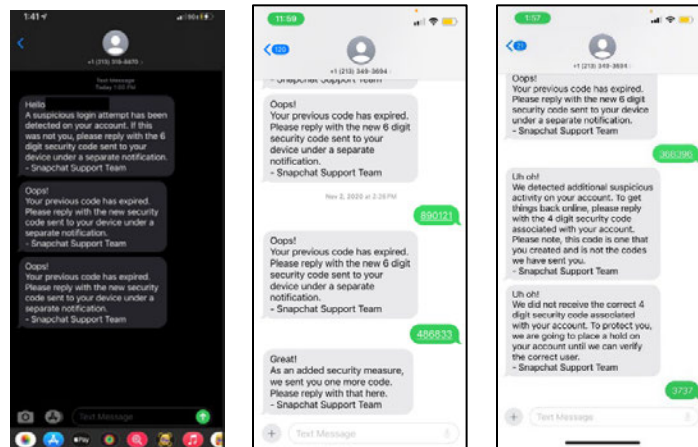
The United States respectfully submits this sentencing memorandum in connection with the sentencing of defendant Kyle Svara, which is scheduled to take place on July 21, 2026. Based on the applicable Guidelines sentencing range and the factors under 18 U.S.C. § 3553(a), the government recommends a sentence that includes 36 months of incarceration for Counts Two through Five, to be followed by the mandatory 24 months of incarceration on Count One; a fine of \$7,500; three years of supervised release; a mandatory special assessment of \$500; restitution in the amount of \$738.05; and forfeiture.¹

OFFENSE CONDUCT

The offense conduct is summarized below and set forth in greater detail in the Presentence Investigation Report (“PSR”). PSR ¶¶ 6-38.

¹ Pursuant to the Court’s Procedural Order Re: Sentencing, Dkt. No. 31, the government respectfully reports that (1) the government is not moving for any departure from the applicable guideline range but is seeking an upward variance based the Section 3553(a) factors; (2) there are no legal questions that have not been adequately addressed in the presentence report (“PSR”) and the parties’ objections to the PSR; and (3) that there are no factual issues which the government contends would require an evidentiary hearing.

From at least May 2020 to February 2021, Svava executed a phishing and hacking scheme of breathtaking magnitude. Using anonymized, internet-based phone numbers with Los Angeles, California area codes, Svava posed as the “Snapchat Support Team,” and sent more than 4,500 outgoing messages to at least 1,571 unique phone numbers. PSR ¶¶ 10-12, Addendum (“Add.”) at 44. As of the government’s last count, investigators had associated approximately 759 of those phone numbers with victims.² Of these victims, at least 557 responded to Svava’s phishing text messages with codes that would permit Svava to access the victims’ Snapchat accounts. Investigators have confirmed that Svava then successfully accessed the Snapchat accounts of at least 517 of these victims. PSR Add. at 45. Below are three examples of Svava’s phishing texts:



Notably, two of these messages depict Svava’s attempts to obtain an additional, four-digit access codes, which he could use to access the extra-private “My Eyes Only” section of a victims’ Snapchat account. *See* PSR ¶ 13.

Once Svava accessed a victim’s Snapchat account, he did two things: First, he took steps to conceal who he was, such as by using a VPN, and to lock the victim out of their account, such

² The government previously reported to Probation that this number was 738. *See* PSR Add. at 44. This number increased since the PSR was finalized, based on investigators’ processing of additional recent victim interviews, and the now-accurate number is 759.

as by enabling two-factor authentication. PSR ¶ 14. Then, Svara downloaded any nude or semi-nude images and videos that victims had stored in their accounts. *Id.* at ¶ 15.

But Svara did far more than just keep this stolen, private content for himself. Svara saw an opportunity to make money from his hacking, and to obtain more content, and he took it. Svara disseminated the stolen victim content across the internet in sales and trades, and provided his advertised his phishing and hacking services to others, as he advertised in approximately 41 separate online posts, an example of which is included below:



PSR ¶ 9. To track his efforts, Svara maintained spreadsheets and “notes” application lists on his computer and phone that contained victims’ names, contact information, and Snapchat and Instagram usernames. PSR ¶ 24. These trackers also documented Svara’s degree of hacking success with notes to himself like “priority,” “got in, couldn’t crack meo [My Eyes Only],” “got a few,” “wrong snap,” and “TONS OF HOT NUDES, TRY AGAIN,” and contained personal information about victims that appears to have been provided by individuals purchasing Snapchat hacks from Svara to help Svara guess probable passwords, such as “Likes Harry Potter, likes San Francisco, likes Buenos Aires, bday March 4.” *Id.*

One customer of Svara’s was Steve Waithe. Waithe was a former track and field coach at Northeastern University who perpetrated various schemes to obtain nude or semi-nude photos of women on the team that he coached and others. PSR ¶ 18. In one such scheme, Waithe solicited at least five co-conspirators, including Svara, to gain access to his victims’ social media accounts

through phishing and hacking.³ Svava sent over 120 phishing messages to approximately 53 of Waithe's known targets, and received access codes in response from at least 27 victims. PSR ¶ 19, Add. at 45. Svava then sold the content he stole to Waithe for \$50. PSR ¶ 19.

On July 30, 2024, investigators executed federal search warrants and seized Svava's electronic devices. PSR ¶ 22. What they found on these devices evidenced a few key facts: First, Svava's 2020 and 2021 conduct was consistent with Svava's longstanding interest in leaked or stolen nude content, which dated back to 2016 and continued through 2024. PSR ¶¶ 23, 26. Second, Svava's conduct was calculated, as evidenced by his 2019 purchase of a special application to find victims on Snapchat and his creation of an anonymous Instagram account to surveil his victims, among other things. *Id.* Third, on numerous occasions, Svava took steps to delete or otherwise hide his stolen content and efforts to obtain it, such as by wiping his devices. *Id.* at ¶¶ 22, 27. And fourth, Svava's collection of stolen, nude content did not end when he appeared to stop hacking in 2021, or in 2022 when he moved in with his wife, or at any time after that. Indeed, through the July 30, 2024 search warrant execution, Svava continued to access and download "leaked" nude content, tried to recover content he had deleted, surreptitiously recorded women wearing bikinis or tight pants, and maintained a collection of 6,100 nude "leaked" images and videos on his MacBook and more than 250 images and videos of at least 11 identified victims of his Snapchat hacking scheme on his iPhone, in addition to approximately 400 images and videos of other Snapchat-related content. *Id.* at ¶ 29.

Svava then appeared to cooperate with investigators in two voluntary interviews, but was not then and still has never been actually honest about his conduct. Svava first agreed to speak to

³ Another co-conspirator was Paul McDowell, whose recent sentencing is discussed below in the section of the government's memorandum addressing sentencing disparities.

investigators on July 30, 2024 and stated, among other false and shifting statements over the course of the interview, that he had never been paid for Snapchat hacking and did not know how to hack a Snapchat account. PSR ¶ 31. As to child pornography, he stated, “for children, no, God no, ok, I wouldn’t do that,” and “I don’t think I’ve done anything where it’s like underage where I looked at underage, I would never do that.” *Id.* Svara agreed to speak with investigators again on February 7, 2025, and again was dishonest. For example, Svara falsely stated that he had no interest in child pornography and no desire to view images of people under the age of 18. PSR ¶ 32.

Only when investigators later accessed Svara’s Mega and Instagram accounts did they find out just how untrue Svara’s statements had been. In Svara’s Mega account, for example, investigators found approximately 530 images and 600 videos depicting child pornography. PSR ¶ 34. Several of the videos had the ages three and four in their names and depicted female children of these approximate ages engaging in oral and vaginal sex acts with adult men. Additionally, investigators located evidence that Svara had distributed child pornography, including approximately 95 share links, one of which Svara described as “crazy” that contained 901 files, including two videos with the descriptive titles “2010 4yo hermanitas_y_yo ()” and “niña paraguaya de 11 anal y creampie.” *Id.* These videos both were approximately four minutes long and respectively depicted a female child approximately four years old being orally and vaginally penetrated by an adult penis and a female child approximately 10 to 12 years old being vaginally penetrated by an adult penis until the penis ejaculated in the child’s anus. *Id.*

In Svara’s Instagram account, investigators found additional evidence of Svara’s interest in and collection of child pornography. PSR ¶¶ 37-38. For example, investigators found a February 2019 exchange where Svara asked an Instagram user to provide a video of that user having sex with a thirteen-year-old female child, and other similar videos when the child was 14 and 15. PSR

¶ 37. Svava asked the user twice to “send younger” and commented “ya that’s good stuff.” *Id.* Investigators also located at least six conversations that Svava had with users who expressly identified themselves as underage in which Svava lied about his age, solicited photographs of the users, and/or sent them photographs of his penis. *Id.* at ¶ 38. At one point a user asked expressly, “[d]oes it bother you that I’m underage?” and stated “I’m not 18.” Svava replied, “Oh okay. More live pics? (:” *Id.* at 38.

SENTENCING GUIDELINES CALCULATION

In the parties’ plea agreement, Dkt. No. 10 at § 10, the government calculated Svava’s total offense level to be 14, and the breakdown of its calculation was as follows:

Base offense level, § 2B1.1(a)(1)	7
Offense involved 10 or more victims, § 2B1.1(b)(2)(A)(i)	+2
Offense involved receiving stolen property and Svava was in the business of receiving and selling stolen property, § 2B1.1(b)(4)	+2
Offense involved sophisticated means, § 2B1.1(b)(10)(C)	+2
Defendant was convicted of an offense under 18 U.S.C. § 1030, and the offense involved an intent to obtain personal information, § 2B1.1(b)(18)	+2
Defendant abused a position of public / private trust or used a special skill in a manner that significantly facilitated the commission / concealment of the offense, § 3B1.3	+2
Defendant willfully obstructed the administration of justice with respect to the investigation / prosecution / sentencing of the instant offense, and the conduct related to the offense / any relevant conduct; or a closely related offense § 3C1.1	+2
Acceptance of responsibility, § 3E1.1	-3
Zero-point offender adjustment, § 4C1.1	-2
Total Offense Level	14

Probation and the government largely agree on this Guidelines calculation, with the exception of Probation’s omission of two enhancements: the enhancement for receiving stolen property and being in the business of receiving and selling stolen property, and the enhancement for using a

special skill in a manner that significantly facilitated the commission or concealment of the offense. The government addresses both enhancements in the sections that follow.

I. Different Aspects of Defendant’s Offenses Involved Sophisticated Means and the Use of a Special Skill, Such that Both Enhancements Apply

The final PSR incorrectly removed a two-level enhancement under USSG § 3B1.3 for Svara’s use of a special skill to significantly facilitate the commission or concealment of his offenses. “‘Special skill’ refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing.” USSG § 3B1.3 cmt.4. However, “a defendant need not necessarily have formal education or training in order to be found to possess a special skill,” because “[a] special skill may also be acquired through experience or self-tutelage.” *United States v. Prochner*, 417 F.3d 54, 61 (1st Cir. 2005) (citing, e.g., *United States v. Noah*, 130 F.3d 490, 500 (1st Cir. 1997)). The First Circuit has noted that “the rationale behind the enhancement” is to address “the special danger posed by one whose training magnifies or facilitates the potential for harm.” *United States v. O’Brien*, 435 F.3d 36, 42 (1st Cir. 2006) (citing *United States v. Connell*, 960 F.2d 191, 198-99 (1st Cir. 1992)).

Svara objected to the enhancement on two bases. First, he argued that neither his computer engineering degree nor his job in Bank of America’s technology branch support the application of the enhancement. Second, Svara argued that applying the enhancement constitutes impermissible double counting of the same conduct that supports the application of the “sophisticated means” enhancement under USSG § 2B1.1(b)(10)(c).

But both arguments miss the mark because both enhancements should apply on the basis of distinct facts. Svara’s social engineering scheme involved sophisticated means. For example, Svara utilized multiple fictitious online identities to advertise his services, follow his victims’ social media accounts, and obtain victim emails, phone numbers, and/or Snapchat usernames. *See*

PSR ¶¶ 8-9, 23. Svara maintained detailed spreadsheets and lists on his electronic devices to keep track of the information he had obtained through this victim surveillance, including personal information about victims that reflected Svara’s attempts to guess passwords. PSR ¶ 24. Svara posed as a member of the “Snapchat Support Team,” and sent text messages that he drafted to sound like messages that someone in that role might send. Notably, the substance of these messages changed over time as Svara apparently experimented with phrasing to improve his success rate. This complex social engineering scheme alone supports the application of the enhancement for utilizing sophisticated means under USSG §2B1.1.(b)(10)(c).

Indeed, Probation and the Court applied the sophisticated means enhancement to Svara’s co-conspirator Steve Waithe where he engaged in no technologically sophisticated conduct but tricked women into providing him with intimate photographs through a series of social engineering schemes.⁴ For example, Waithe used the anonymous Instagram account “privacyprotector” to pose as someone who could help victims scrub revealing images from the internet using a “reverse image search” for images that he convinced victims to send him. *United States v. Waithe*, 150 F.4th 16, 19 (1st Cir. 2025). Waithe also created two fictitious online female personas that he used to convince victims to participate in “a phony ‘body development study’ for athletes,” which likewise purportedly required them to “send him nude or semi-nude photographs so that the ‘study’ could track their ‘progress.’” *Id.* There is no meaningful distinction between these schemes and Svara’s. Posing convincingly as a person to whom a victim can be convinced to provide personal information is no easy feat and requires a degree of sophistication that warranted the sophisticated means enhancement in Waithe’s case and also supports its application here.

⁴ The government no longer has access to the Waithe PSR and accordingly does not know precisely why Probation applied the enhancement to Waithe. The government is inferring the basis for the enhancement from the facts on the record in the Waithe case.

Separately and additionally from this social engineering, Svara engaged in conduct utilizing a special skill that supports the application of the additional enhancement under USSG § 3B1.3. Specifically, Svara’s use of encrypted messaging applications, VOIP text messaging applications, and two-party authentication applications in the course of his hacking, and his knowledge of how to wipe his electronic devices and hide content on offshore online storage platforms like Mega demonstrate that Svara used a special skill to facilitate and conceal his conduct. Svara had and used knowledge that “eclipses that possessed by the general public,” *Noah*, 130 F.3d at 500, and the special skill enhancement should apply as a result.

United States v. Prochner is instructive in this regard. In *Prochner*, the First Circuit considered the application of the “special skill” enhancement where a defendant “used self-taught computer skills” to ‘hack’ websites’ order logs and unlawfully obtain credit card numbers. 417 F.3d at 61. The First Circuit held that even in the absence of record evidence that the defendant had education or training in computers, the sentencing court could “reasonably infer requisite self-education from the nature and extent of the skill possessed.” *Id.* The defendant argued that even “a novice Internet surfer” could access the channels he used to check the validity of credit card numbers and said that he could easily access these channels with any computer, at any time of day. The First Circuit rejected this argument too. The court noted that “nothing in the guidelines suggests that the specialness of the faculty necessarily hinges on the complexity of the task to be performed.” *Id.* (quoting *Noah*, 130 F.3d at 500). Instead, “[t]he critical question is ‘whether the defendant’s skill set elevates him to a level of knowledge and proficiency that eclipses that possessed by the general public.’” *Id.* (quoting *Noah*, 130 F.3d at 500). And in that case, the court held that it was not clearly erroneous for the sentencing court to apply the enhancement where the defendant’s hacking of websites “exceed[ed] the knowledge of the average Internet user.” *Id.* The

Court stated that regardless of any lack of specialized training, “[w]here the record supports a finding of a skill of sufficient kind and scope at a level well beyond that of a member of the general public, [the Court will] affirm the reasonable judgment of the district court.” *Id.* at 62.

In the instant case, the record supports the finding of a skill of sufficient kind and scope at a level well beyond that of a member of the general public. While it may be true that applications like Snapchat and VPNs are widely used, it is not the case that most members of the public possess sufficient knowledge of and familiarity with these and the other internet-based applications Svara used to use them in the manner that Svara did. For example, Svara knew how to obtain multiple VOIP phone numbers that would make it appear that he was texting from the same geographical area as Snapchat’s headquarters. *See* PSR ¶¶ 10-12 & n.2. He knew how to use two-factor authentication applications to lock victims out of their own Snapchat accounts once he had unlawfully accessed them. *See* PSR ¶ 14. And he knew how to broker the sale of stolen material on encrypted messaging applications like Telegram and Kik, *see* PSR ¶¶ 9, 25, and how to store stolen material on encrypted, offshore storage platforms like Mega, *see* PSR ¶¶ 23, 29. Even assuming *arguendo* as Svara claims that a member of the general public knows how to use these applications, Svara was far from their average user. Moreover, in addition to using encrypted messaging and storage applications, Svara knew how to erase his electronic devices to further cover his tracks. *See* PSR ¶¶ 26-27. Taken together, these facts demonstrated that Svara drew on his training and experience with computer engineering and internet security, likely as well as some self-tutelage, to construct a layered structure of anonymized and encrypted applications in order

to hide on the internet both who he was and what he was doing.⁵ The “special skill” enhancement applies here to address the “special danger” that this defendant posed. *O’Brien*, 435 F.3d at 42.

As to “double counting,” courts have rejected arguments like Svara’s where, as here, there is a distinct factual basis for each of these two enhancements. *See, e.g., United States v. Farrace*, 805 F. App’x 470, 475 (9th Cir. 2020) (“The sophisticated means enhancement accounted for [Svara’s], a shell company, to obscure the fact that he was selling his homes to himself. . . . On the other hand, the abuse of trust or special skills enhancement was imposed based on [Svara’s] utilization of his skills as a real estate lawyer and former broker to conduct the fraud.”); *United States v. Minneman*, 143 F.3d 274, 283 (7th Cir. 1998) (“The special skill adjustment focuses on [defendant]’s use of his legal training. The sophisticated means enhancement arises because of the use of multiple accounts and corporate names. Thus, both enhancements could be invoked.”). Here, both enhancements should apply on the basis of separate conduct, and Svara’s total offense level should be increased by one level as a result.⁶

⁵ The PSR reflects that in his interview with Probation, Svara stated that his job involved “providing production support and investigating internal payment processing issues involving vendors and customers.” PSR ¶ 93. In his interview with investigators on July 30, 2024, Svara further explained that in his job, “when there’s issues with someone trying to Zelle, you know, they make a complaint to the call center and then we triage internally and try to understand where the issue stemmed from. We have different vendors that have streams with our applications, so we have to contact the vendors and get them on the bridge line and discuss what the issue is.” Svara explained that his computer science degree was required so that “when somebody calls and, and like some issue is described, you’re like, ‘Oh, I know, fix that.’” This description indicates that Svara’s job required him to have and use knowledge of internet-based applications and security measures like those he used in the instant offense.

⁶ As the PSR reflects, if the “special skill enhancement” is not applied, the “sophisticated means enhancements results in a three-level increase. PSR ¶ 50. If both enhancements apply, the “special skill” enhancement adds two level and the “sophisticated means” enhancement also adds two levels, for a total increase of four levels.

II. Defendant's Offense Involved the Receipt of Stolen Property and Svara Was in the Business of Receiving and Selling Stolen Property

The government objected to the PSR on the basis that an additional two-level enhancement should be included because Svara was “in the business of” receiving and selling stolen items. USSG § 2B1.1(b)(4). The government outlined its reasoning in its objection, which is included in the PSR, and incorporates that argument herein by reference. PSR Add. at 37-38. However, the government acknowledges the enhancement’s applicability is a close call based on the specific facts of this case and accepts Probation’s treatment of its objection.

SENTENCING RECOMMENDATION

The government respectfully requests a sentence that includes 36 months of incarceration for Counts Two through Five, to be followed by the mandatory 24 months of incarceration on Count One; a fine of \$7,500; three years of supervised release; a mandatory special assessment of \$500; restitution in the amount of \$738.05; and forfeiture. The government submits that this sentence represents a reasonable and just outcome that is sufficient but not greater than necessary to reflect the seriousness of Svara’s offenses, promote respect for the law, provide just punishment, and deter both Svara from re-offending and others from engaging in similar conduct.

I. Nature and Circumstances of the Offense

First, the nature and circumstances of the offense warrant a meaningful term of imprisonment. As of the latest count—which has continued to rise as victims have continued to come forward—Svara targeted likely over 1500 but definitely at least 759 people, and he successfully compromised the private Snapchat accounts of at least 517. This conduct had a devastating impact. Fourteen of Svara’s victims have shared their experiences with the Court in Victim Impact Statements, which are attached as Exhibit A, and their words reflect several core themes: The many victims who knew Svara personally note how much more difficult it is to be

violated and betrayed by someone you know. Victims describe the severe mental health consequences that they have suffered as a result of the defendant's invasion of their privacy—crippling anxiety, pain, shame, and pervasive paranoia. Victims find themselves unable to trust others as they previously had, and describe grappling with feelings of fear, vulnerability, and being unsafe. And victims describe these harms as real, lasting, and constant. Clearly, Svara took more than just these victims' most intimate and personal possessions, though he certainly took those too. He took their confidence, autonomy, and ability to trust, and such losses are not easily repaired.

Unfortunately, the gravity and magnitude of the defendant's conduct are in no way captured by the Sentencing Guidelines that are applicable to the defendant's offenses. As the Court knows, § 2B1.1 typically is used for white collar crimes and accordingly measures loss in dollars. Indeed, § 2B1.1 treats crimes impacting 10 victims as severely as it treats crimes impacting 500. *See* § 2B1.1(b)(2)(A)(i). Section 2B1.1, and the rest of the Guidelines, simply are not designed to capture the defendant's conduct—the theft, via fraud, of intimate images of women that are tremendously valuable, if not in dollars, and the irreversible dissemination of that material on the internet. Accordingly, neither the guidelines as calculated by the government nor as calculated by Probation will result in a sentence sufficient to achieve the Section 3553(a) goals of sentencing. The government submits that an above-guidelines sentence is necessary in such circumstances.

II. Need for General and Specific Deterrence

The government's recommended sentence not only reflects the serious nature of the offense but also promotes respect for the law and provides both just punishment and adequate deterrence.

First, a five-year sentence is necessary to deter Svara from reoffending upon his release from custody. This case did not result from a single lapse in judgement or fleeting mistake but rather represents the culmination of Svara's years-long pattern of conduct in service of an insatiable obsession. Svara took purposeful steps over a period of nearly one year to target over

1,500 people and successfully compromise over 500 victims' Snapchat accounts. He hid his criminal conduct from those close to him—which is an alarming feat in itself given his conduct's volume and frequency—and he engaged in a cycle of deletion and recovery to avoid detection. PSR ¶ 29. Moreover, there is reason to fear that even a criminal conviction will not deter Svara from similar going forward. For one thing, materials like Svara's own psycho-sexual evaluation reflect concerning results of a sexual addiction screening test and the need for specialized treatment related to sexual boundaries, legal consent, and child pornography. PSR ¶ 88. For another, Svara *still* has never been honest about the full extent of his conduct. He was not honest with his family and friends, he was not honest with investigators in July 2024, he was not honest with investigators in February 2025, and the information provided by his therapist and psycho-sexual evaluator suggests that he still is not being honest with his treaters. *See* PSR ¶ 86 (describing defendant's admission that he exchanged nude images and underage pornography with peers in high school); PSR ¶ 88 (describing Svara's ongoing efforts to rationalize and justify his behavior). Given the persistence of these issues in the face of this criminal case, there is no reason to expect a sudden about-face upon Svara's release from custody. Svara's demonstrated ability and willingness to hide major parts of himself from others and his persistent *inability* to take full responsibility for his conduct demonstrate that a significant sentence is necessary for specific deterrence.

Second, a significant sentence is necessary to deter others who may be tempted to live the same online double life and steal private conduct from unsuspecting victims. As the Court well knows, it is incredibly challenging for investigators to identify and investigate online predators like Svara whose technological skill is ever evolving and increasing. There is a robust and thriving online economy for the stolen content that Svara trafficked in, and participants in these marketplaces often think they can act with impunity. Where online criminal actors believe not only

that they will not be caught but also that they will not face severe punishment even if they are, there is little to deter them from continuing to target and harm vulnerable victims over the internet. The Court needs to signal that criminal conduct is not less serious because it happens online, particularly where, as here, that conduct causes tremendous suffering to victims. The Court further needs its sentence to underscore the steep cost of repeatedly lying to investigators. The government submits that its suggested sentence will send these important and necessary messages.

III. History and Characteristics of Svara

Svara's history and characteristics also support the government's sentencing recommendation. Svara is not the typical defendant who appears before this Court. He was raised in a stable household by two loving parents and as part of a close-knit family. PSR ¶¶ 70, 75. Svara grew up without any exposure to abuse of any kind, graduated from college, maintained steady employment, and bought the home where he currently lives with his wife and child. PSR ¶¶ 69, 71, 76, 79, 91-98. Svara's history reflects no challenges with poverty, addiction, or a lack of opportunity, which would not excuse his criminal conduct but could provide context for it. The government appreciates that Svara has a longstanding inflammatory bowel disease and has struggled with anxiety and depression, the latter of which worsened during the COVID pandemic. PSR ¶¶ 81, 83-86. But Svara's concerted efforts over the period of nearly a year to steal intimate images from hundreds, and hundreds, and hundreds of people cannot be explained away by "impaired judgment" or even the most "profound isolation." PSR ¶ 86. Many people suffered during the COVID pandemic, and very few made the decision to dedicate their newfound free time to a campaign of online predation. Svara should be sentenced accordingly.

IV. Need to Avoid Unwarranted Sentencing Disparities

The government's recommended sentence will avoid unwarranted sentence disparities among defendants who have been found guilty of similar conduct. The most direct comparators to

Svara are his co-conspirator, Steve Waithe, and Paul McDowell, another Snapchat hacker who, like Svara, was hired by Waithe to phish and hack victim Snapchat accounts. For their crimes, Waithe was sentenced to five years in prison in this District and McDowell was sentenced to six in the Northern District of Indiana,⁷ which sentences align with the government's five-year recommendation in the instant case.

The sentencing of Paul McDowell is most instructive because of how similarly situated McDowell and Svara are. McDowell was college educated, a first-time offender, and isolated during the COVID pandemic. Exhibit B, Court Sentencing Memo., at 5-7. McDowell also had a chronic depressive illness and a documented "decade of mental health treatment." *Id.* at 5-7. On top of that, he "shouldered from birth spina bifida, paralysis below the knees, and all that comes with his physical and mental health conditions," *id.* at 5-7; *see also id.* at 12. And he was charged with unauthorized access of a computer in violation of 18 U.S.C. § 1030(a)(2)(C) and (c)(2)(B)(i), and aggravated identity theft in violation of 18 U.S.C. 1028A(a)(1), for successfully phishing and hacking the Snapchat accounts of 22 victims, and attempting to hack another 15. *Id.* at 8.

But the Court's understanding of McDowell's complex medical situation and struggles during COVID did not excuse his behavior, just as the same factors should not excuse Svara's in the instant case. The Court fully took into account McDowell's "outstanding" character, "his true gifts when used for good, his more remarkable acceptance of responsibility, his sincere desire for and pursuit of rehabilitation and treatment, his medical and mental health conditions, [and his willingness to comply with the court's expectations of him." *Id.* at 13. And the Court weighed this

⁷ The Court imposed an additional 70 months for McDowell's possession of child pornography, to run concurrent with sentence for McDowell's computer intrusion offense. Ex. B at 14. This portion of McDowell's sentence is not relevant to the instant case because Svara is not charged with possession of child pornography offense, so the government does not rely upon portions of McDowell's sentencing or sentence that relate to child pornography.

against the nature of McDowell’s crimes and in particular the suffering of his victims, some of whom had bravely “describe[d] the psychological and physical effects of their abuse” for the Court. *Id.* at 9. It was this harm that made necessary a serious penalty above and beyond the 24-month mandatory minimum. As the Court explained, “[t]he mandatory minimum for aggravated identity theft addresses a certain harm—the use of a person’s identity during another felony—but hacking in the manner that [McDowell] did introduced a duality of harms. He not just violated the privacy and dignity of 22 girls or women, but shared this material with others, amplified the harm by risking its permanence, and facilitated stalking of these victims.” *Id.* at 9. The Court rejected McDowell’s argument, based on three medical evaluations, that McDowell’s conduct was driven by his poor impulse control, opining that “[s]omeone who can grind through the years and tasks of college, work, and therapy can eventually get it without calling the whole of his conduct mere impulse-driven.” *Id.* at 10. And the Court concluded that a sentence of 48 months for McDowell’s computer intrusion offense, to be followed by 24 months for his aggravated identify theft, was sufficient but not greater than necessary to satisfy the goals of sentencing. *Id.* at 14.

Waithe, who hired both McDowell and Svara and whose schemes depended in large part upon their talents, was sentenced to five years in prison, which was well above the upper limit of his guidelines sentencing range of 27-33 months. Exhibit C, Sentencing Transcript, at 7, 69, 71. Judge Patti B. Saris stated that she was “absolutely stunned by the number of victims that existed in [Waithe’s] case,” which included 51 successful account compromises and seventy-two attempts. *Id.* at 69-70. She noted that the victims had lost far more than “some money,” because they had “lost their privacy and their sense of safety.” *Id.* at 70. She also recognized that Waithe had committed his crimes despite being “blessed with great athletic ability,” attending “one of the finest universities in our country,” and growing up in a “good home” with parents who were “moral

and trustworthy people.” *Id.* at 70-71. Judge Saris declined to impose the 84-month sentence requested by the government because she felt “that the Guidelines are an important anchor, and it was just too high a jump,” but she was comfortable with a sentence of five years’ imprisonment, which she estimated increased his total offense level by “about six levels.” *Id.* at 70-71.

Svara’s conduct here is worse than either McDowell’s or Waithe’s. It is worse by volume: Where McDowell had 22 victims (and 17 attempts) and Waithe had 56 (and 72 attempts), Svara had at least 517 (and up to 759 including attempts). And it is worse in kind: Where McDowell targeted strangers and Waithe targeted women he knew, Svara targeted both random strangers and *also* his neighbors, family friends, grade school classmates, high school classmates, personal friends, family friends, and friends of his wife and sister. PSR ¶ 21. A sentence that includes a total term of five years in prison is eminently reasonable when considered beside Waithe’s five-year sentence and McDowell’s six-year sentence for similar conduct.

V. Restitution

The government has received two restitution requests from victims, which are attached as Exhibits D and E. [REDACTED]

[REDACTED] Victim 19 requests restitution for two security cameras she purchased for \$67 to “help ease a small portion of [her] stress, anxiety, and constant paranoia” and provide her an “ounce of safety.” *Id.* at 3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Restitution is warranted under the Victim and Witness Protection Act (VWPA), 18 U.S.C. § 3663, which permits a sentencing court to “order restitution in any criminal case to the extent

agreed to by the parties in a plea agreement.” *Id.* § 3663(a)(3). Here, the parties agreed to restitution in their plea agreement, in an amount to be determined at or within 90 days of sentencing. Dkt. No. 10 § 4(e). The government respectfully requests that the Court grant the two restitution requests described above and award restitution to Victim 19 [REDACTED] in the amount of \$67 and to Victim 94 [REDACTED] in the amount of \$671.05, for a total restitution amount of \$738.05. The government conferred with defense counsel and understands that Svara does not object to an order of restitution in this amount.

VI. Fine

The government requests that the Court impose a fine of \$7,500, which is at the low end of the guidelines range as calculated by the government in the plea agreement, *see* §5E1.2(c)(3); Dkt. No. 10 at § 4(b), and near the low end of the range as calculated by Probation. PSR ¶ 114. A modest fine is appropriate here because Svara has the means to pay, PSR ¶ 100, there is limited restitution, and a fine will help to fund the Crime Victims Fund, which finances crime victim assistance and compensation programs throughout the United States.⁸

VII. Additional Condition of Release

Svara has informed the government that the government took possession of the only copy of Svara’s wedding photographs when the government seized Svara’s electronic devices. Svara has requested that the government return the photographs, which the government is willing to do. However, because the wedding photographs include images of multiple victims who were in Svara’s wedding party, the government is unwilling to provide the photographs to Svara directly. Svara has proposed that the wedding photographs be provided to his wife, who will maintain them

⁸ *See e.g.*, https://www.congress.gov/crs-product/R42672#_Toc167283484 (describing funding for the Crime Victims Fund, which is not appropriated and instead comes from sources including criminal fines, which historically are the largest source of deposits into the Fund).

in a manner such that Svara will not have unsupervised access to them. The government requests that this be made a condition of Svara's pretrial and supervised release.

CONCLUSION

The government recognizes that its recommended sentence including a total of five years of imprisonment is significant, and does not take lightly its responsibility to recommend an appropriate sentence in this case. The government believes that its sentencing recommendation is appropriate, properly reflects the seriousness of Svara's offenses, promotes respect for the law, provides just punishment, and serves to deter Svara from re-offending and others from engaging in similar conduct. For the foregoing reasons, the government respectfully requests that the Court impose the government's requested sentence of 36 months of incarceration for Counts Two through Five, to be followed by the mandatory 24 months of incarceration on Count One; a fine of \$7,500; three years of supervised release; a mandatory special assessment of \$500; restitution in the amount of \$738.05; and forfeiture. The government believes this sentence is sufficient, but not greater than necessary, to reflect the seriousness of the offense and the history and characteristics of Svara, promote respect for the law, provide just punishment, and afford adequate deterrence.

Respectfully submitted,

LEAH B. FOLEY
United States Attorney

Date: July 14, 2026

By: /s/ Meghan C. Cleary
MEGHAN C. CLEARY
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on July 14, 2026.

/s/ Meghan C. Cleary

Meghan C. Cleary

Assistant U.S. Attorney

Your Honor,

My name is **Victim 2** and this year I found out Kyle Svava hacked into my Snapchat account to try and steal nude photos of me. When I was first contacted by the FBI I thought they had the wrong person until I saw who had done this and realized it was someone I knew. [REDACTED] and that was apparently enough for him to target me. [REDACTED]

[REDACTED] The fact that this was someone I knew and not some complete stranger has made this infinitely harder.

[REDACTED]
[REDACTED] I have trouble trusting people in the same way I did before and I question people and friends I've known for years. I've asked myself "why me?" a million times and I still can't answer it.

I also think back to what I was doing when he was hacking into my account. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] There were so many things going on in my life that were good and joyful, but now when I think about that time it all feels tainted by this horrible thing that was going on without my knowledge. I'm sad that those positive memories are now negative ones.

Having my privacy violated in this way has made me feel small and unsafe. Other people don't have a right to decide for others what should or should not be kept private. Kyle Svava stole more than just photos; he stole my privacy, my sense of safety, and my ability to trust others. He needs to be held accountable for his actions.

Your Honor,

Six years ago, Kyle Svara hacked into my private Snapchat account and accessed my personal memories, photos and videos that were never meant to be seen by anyone else. He intended to exploit and sell what he believed were intimate images of me. While I do not believe my Snapchat contained nude images of me, I cannot say that with certainty. That uncertainty alone has caused years of anxiety, fear, and emotional distress.

The most damaging part was not only the breach itself, but the lasting psychological impact. I questioned my own memories. I worried constantly about what he may have taken, shared, or attempted to sell. I felt physically sick knowing that someone had entered a private space that I could not protect. That sense of violation has followed me for six years.

During those same six years, while I have lived with the consequences of his actions, he has lived without disruption. He worked, maintained his daily life, and benefited from normalcy while I carried the fear and stress caused by his crimes. There were no immediate consequences for him, but there have been lasting consequences for me.

What is even more disturbing is that this was not an isolated lapse in judgment. He solicited and collected child sexual abuse material. That behavior demonstrates a deliberate and escalating pattern. Not a mistake, not curiosity, but intentional exploitation. The willingness to seek out and collect material involving children shows a profound disregard for the safety of minors and the wellbeing of others.

This case is not only about my privacy being violated. It is about a demonstrated willingness to exploit, harm, and profit from others. His actions caused real and lasting harm, and they reflect a pattern of conduct that poses a risk to the broader community.

I ask the Court to consider not only the invasion of my privacy, but also the intentional nature of his actions, the pattern of behavior demonstrated by his offenses, and the fact that victims have carried the burden of those actions for years while he remained free from accountability. A meaningful sentence is necessary to reflect the seriousness of these crimes, provide justice for the victims, and help protect others from future harm.

Thank you for allowing me to speak.

[Victim 18]

Your Honor,

My name is [VICTIM 19], I am writing this statement to discuss the impact this crime has had on my life. I have tried to write this statement countless times the past few months. I've come to the conclusion no words can accurately describe the emotions I have experienced since being contacted by the FBI. I never thought I would have to write a victim statement, let alone to someone I personally knew. Kyle—you are no stranger to me. [REDACTED]

[REDACTED] There was a level of familiarity there, making your choices feel even more violating. What you did to me was deliberate and inexcusable. You made a conscious decision to violate my privacy, to take something that was never yours, and use it for your personal gain. Because of you, I no longer feel safe—not in my own body, not in my friendships, not in my own life. What you took from me was not just images. You took my sense of control, my trust in others, and my ability to feel secure. That is something I live with every single day. There is a constant fear that follows me. Fear of who has seen the content or how it could resurface at any moment and retraumatize me all over again. That fear has changed how I live my life. I have had to delete the bulk of my friends list and pictures on social media accounts to feel even a small sense of control, and even now, something as simple as an email or a notification can make me anxious, wondering if it is happening all over again. I am constantly on edge and in fight/flight in a way I never was before. You were able to continue living your life—building a marriage and becoming a parent—while I was left dealing with the damage you caused. While you were building your future, I was trying to rebuild myself. [REDACTED]

[REDACTED] But what you did is something I cannot justify, explain, or find meaning in—and that is something I will continue to carry with me throughout my life. What is most disturbing is how intentional this was. You didn't just hurt one person—you made a pattern out of violating young girls. You treated human beings like pawns for financial gain and sexual gratification, otherwise known as pedophilia. That level of disregard is something I will never be able to fully understand. This has changed how I see myself. It has changed how I trust others. [REDACTED]

[REDACTED] There are moments of anger, moments of deep hurt, and moments where I feel completely overwhelmed by what was taken from me. You do not get to decide when this is over for me. The impact of what you did does not end just because time has passed or because you have chosen to move on with your life. I am doing everything I can to heal, but healing is not the same as forgetting. It does not erase the violation, and it does not restore what you took. I want the court to understand that this was not harmless, and it was not victimless. This was a violation that has permanently altered how I navigate the world. And to you, Kyle—I hope that as you continue to live your life and raise your child, you reflect on the kind of example your actions set, and the harm they caused. I pray your child does not cross paths with a predator like yourself. While this may be one chapter for you, for me, it is something I will have to battle for the rest of my life.

[Victim 19]

Hello your honor,

I picked up a phone call in August of last year from a contact I never thought I would hear from in my lifetime. When I answered the call from Boston FBI and learned about this crime, I was speechless. Hearing the words "we believe you are a victim in a case involving snapchat" left me feeling confused, angry, violated, deceived and so much more than words can explain. Most of all, what it left me with were more questions as to who could have done such a cowardly cruel act to someone they didn't even know, or so, to my belief at the time. Months had passed being in contact back and forth with the FBI awaiting more news as my stomach dropped reading the words "Kyle Svara" come across my email notifications. [REDACTED]

[REDACTED] and yet that was not enough for him to think twice about intruding on my personal device without my knowledge. [REDACTED]

[REDACTED] I feel unbelievably betrayed, disgusted and hurt. Your honor, Kyle does not deserve the satisfaction of believing he has escaped deserved time with something this large and this demeaning. This man has caused over 1000 young girls and women including myself pain, discomfort and an uneasy feeling with their own possessions and body daily since becoming aware of the crime. I will leave my statement with this, if you are thinking about all of the mitigating factors to him, are you considering the aggravating factors to me? If you are, you need to multiply it by 1000(+), because there is over 1000 young girls and women feeling the exact same way I do. Your honor, Kyle Svara deserves a true reflection of the harm he has caused behind closed doors.

Thank you.

[Victim 20]

June 2, 2026

U.S. v Kyle Svara

[REDACTED]

[REDACTED]

Court Docket Number: 25-CR-10472

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Your Honor,

My name is **Victim 31**, and I am one of the many people whose Snapchat account was hacked by Kyle Svara for sensitive photos. Amongst the 571 of us, I am one of the few victims who never knew Kyle, had any direct or consensual contact with him, nor am I aware of who hired him.

It is hard to articulate exactly how this crime has affected me, but I think this is a direct result of the type of crime Kyle chose to commit. Kyle hid behind a computer screen, presumably from the safety of his own home, violating my privacy in such an intimate and vulnerable manner, while I remained clueless. As a result, it is hard to process that this actually happened because that requires me to acknowledge how horrifically naive I was for four years. I had no idea Kyle helped someone in my life, maybe someone I considered close, to violate me. And in that moment they made a decision to treat me as an object of their sexual desires rather than a human being who deserves autonomy and respect. Not only has this eroded my ability to trust myself, but it has also destroyed my ability to trust others. I used to be outgoing, a social butterfly who loved to talk to any and everyone, but now, after learning of Kyle's crimes, everyone in my life has become a potential suspect. Every interaction I have is clouded by the idea that maybe they were the one who hired Kyle. And one thing I can say for sure is that it is a miserable existence to have my genuine love and curiosity for people be stripped away by the pervasive paranoia this crime has caused, making everyone a potential perpetrator.

However, maybe the worst part of being a victim of Kyle's crimes is that the hacking was only the beginning. Due to the nature of his crimes, I may never get closure; I may never know who hired Kyle, and I may never get relief from the paranoia and hypervigilance I have been plagued with since learning about all this. Because of Kyle's actions, I will be forced to live the rest of my life knowing that at any point someone could weaponize these photos against me and ruin the life I have worked so hard to build, despite the mental anguish Kyle has caused. As we know, the

internet is forever. I am also forced to confront the fact that this was deliberate and targeted, with the intent of hurting me and violating my trust in a way that can never be repaired. Kyle's actions weren't a one-off mistake or just the result of a bad day that led to bad decisions. He did this over and over to 571 people, and we are all forced to carry the shame associated with crimes of this nature.

My desired outcome of this trial is for Kyle to be both held accountable for his crimes and to fully and deeply understand the weight of his actions. It is my wish that he receives the maximum sentence for his crimes. While I know there isn't a direct connection between sentence length and the number of victims, with 571 victims, 5 years in prison would equate to roughly 3.2 days per victim. While I do not wish to cause more suffering, as Kyle has caused enough, I believe it is important to consider the fact that I have suffered far more than 3.2 days because of his actions, and will continue to do so for far longer than his five years.

In addition to prison time, I think real justice comes in Kyle understanding why what he did was wrong. I hope rehabilitation services can help him see that just because his crimes were committed behind a computer screen, that they weren't void of real consequences or that his victims weren't real people. I hope he can learn to humanize people, seeing that just like his child, his victims are also someone's child, sibling, friend, or loved one, all of whom deserve respect and autonomy.

Sincerely,
[Victim 31]

Good Morning Your Honor,

I stand here today, before Your Honor, not because I made a mistake or did anything shameful, but because a man [REDACTED] chose, [REDACTED] to exploit me for his own financial and sexual gratification. You see, I barely know the Defendant. [REDACTED]

You can imagine my surprise and complete shock, then, when [REDACTED] I received a notification that I was a victim of a crime that I had not known had occurred in 2020. [REDACTED]

[REDACTED] Meanwhile, the Defendant was scamming, manipulating, and taking advantage of women whose names I can only fathom he must have pulled out of a year book or his sister's contact list. We weren't friends on social media, and I had no idea his whereabouts. Even worse, I learned in the last 7 months of my life that the Defendant not only socially engineered a way to hack me when I was vulnerable, but also sold my naked photos online without my knowledge and with me having no way to control where those photos now are, who has seen them, and what the repercussions of that might be.

Let's talk about those photos. My photos were private. I had them even passcode protected so that if someone picked up my phone, they would have to type in two separate passcodes to find them. In fact, my photos were so private and personal to me, that I have never sent them to a romantic partner or anyone else for that matter. Even if I had had an urge to do that, I never did because I understood the dangers of the internet [REDACTED]. Indeed, I did everything I thought I needed to do to protect myself. They were, as the folder was titled, truly for my eyes only. They were photos I took when I felt confident so that I could remind myself that I loved my body on days when I really did not love it at all. Most importantly, they were not for strangers, including the Defendant. Now, I'm left with confusion as to why me. Why did the Defendant choose to victimize me when I barely know him? I am paranoid about being online in any capacity. [REDACTED]

[REDACTED] I have been shamed by people who know this has happened to me - people I thought I could trust who blamed me for taking photos instead of blaming him for violating me.

This violation has caused me great grief for my younger self. I feel like the Defendant has taken that version of myself away from me. He took away my autonomy over my body and its image and above all, he has made this year one of the most difficult of my life. [REDACTED]

[REDACTED]

Further disturbing is the fact that this prosecution is happening halfway across the country from where I live, and I've paid out of pocket to be here on behalf of myself and representing the other victims knowing that many of the Defendant's victims could not afford the cost of being here today or could not afford to take the time away from work. As if taking away my dignity was not enough, he has taken my time and my money.

I have taken steps to delete my Snapchat because this crime has made me distrusting and in so doing, I will lose a line of communication between me and my loved ones. I won't receive snaps [REDACTED] or photos of my best friend's travels. Somehow a crime I had no knowledge of until 6 years after it occurred, has drastically changed my every day life.

What's even more sickening is how it does not appear to have changed the Defendant's life very much at all. He has not been in custody and [REDACTED] and think to myself there's the pervert who stole my photos and jerked off to them without my consent or knowledge - living my life in constant fear of that potential reality. Please forgive the crude words, but know that I mean them. What has happened to me is truly perverted. There is no other explanation.

Beyond that, it makes me sick to think of how little time the Defendant is going to serve, and I want to urge Your Honor to consider the following. The sexual predator sitting at counsel's table, successfully victimized at least 570 women including myself, many of whom I know personally. If he were to be sentenced to 2 years in prison, that is just 1.28 days of time served as to each of us. He would serve one day for the lifetime of anxiety he has given me. If he gets 5 years time, that's still only 3.2 days served for what he did to me. [REDACTED]. Please let those numbers guide you and I respectfully ask Your Honor to consider a sentence above that of the prosecution's recommendation for all of the reasons I've expressed. Thank you.

[Victim 35]

Your Honor,

I would like to share how I have been heavily affected by the actions of my next-door neighbor, Kyle Svara. As we know, he hacked my Snapchat account and accessed private, personal information and photos without my consent. Not just once, but multiple times. This violation has left me feeling vulnerable, embarrassed, betrayed, and unsafe in my own home.

Kyle is someone I grew up with since 2002 and trusted. We have spent many summers together going on fun trips with our families and playing in the backyard with neighbors as children.

Fast forward, Kyle drove me to school every morning my sophomore year of high school. I would have been 15-16 years old. At this time, I cannot help but wonder if Kyle looked at me as something more sinister than his next-door neighbor.

I have experienced significant emotional distress, including anxiety, fear, and a constant worry about my privacy and safety. Simple daily activities, like using my phone or interacting online, now make me feel exposed and embarrassed. I have also felt a loss of trust not only toward Kyle, but people all around me.

This experience disrupted my life in ways that are deeply personal and will continue to be ongoing. As a teacher, I work with children every day to inspire them to be the best version of themselves. Compromising information or photos could put my job, which I love and have worked hard for, in jeopardy. I hope that by sharing this, the court understands the serious impact of these actions and considers the importance of protecting victims, especially young women, from such violations in the future.

Thank you. Gianna Mattio

Dear Judge,

My name is [VICTIM 47], [REDACTED]
[REDACTED] I'm entirely unsure how to write a victim impact statement, so I would like to take this opportunity to share my story with you. Thank you for your time and consideration.

I was first contacted about the case in April of 2025. I was boarding a plane. The FBI was calling me and I thought that it must be a scam. Of course I would come to find out that it was another scam entirely! The voice through the phone was an agent, asking me if I remember my Snapchat being hacked back in 2020. Shockingly, I did. I shared what information I had, recalling how strange it was that the IP address was in Plainfield, IL. It had stood out to me. [REDACTED]
[REDACTED]

So anyways, I finished the phone call while finding my seat on the plane. I was totally shaken up, my head was spinning and that deep feeling of anxiety settled in my stomach. For days, I felt my body on high alert. As time passed, my brain did that fancy coping thing where I shut it off, stopped thinking about the FBI, pictures of my naked teenage body on the internet, some random creep violating me, how stupid I was, blah blah blah.

In January of 2026, I was contacted again. The grand reveal of the person that cyber raped me, oh joy! When they dropped this bomb, [REDACTED]. I didn't have time to process this. The moment I was off of work, I shriveled. It's challenging to put into words, but I felt like a shell of a person. I was utterly deregulated. My body was in physical pain, my heart in agony.

Sure enough, [REDACTED] I knew the boy. They always say those are the odds, right? [REDACTED] It felt deeply violating. My sense of safety had shifted and I was sorrily reminded that the world can be a cruel place.

Now this is part of my story. I am one of the hundreds of women that he violated. This entire experience has been traumatizing. I'm not sure how else to say it. I will have to carry this for the rest of my life. I will have to [REDACTED] reconnect with my body, make peace with the fact that I was involuntarily exposed, exploited and have no control or idea where those photos went. It's sickening.

That is why I am requesting that Kyle Savara receives the greatest sentencing. Knowing that he is required to spend years in prison reflecting on the way he has disrespected and defiled hundreds of women could help to make the pit in my stomach shrink in size. And maybe, other women won't have to go what we went through.

Thanks again, [VICTIM 47]

Dear Judge Murphy,

I would like to stay anonymous but I am victim #94. [REDACTED] I was acquainted with Steve Waithe. Steve is deplorable but he would have not been able to carry out his malicious and violating crimes without Kyle Svava's assistance.

Kyle sought out criminal activity and advertised his nefarious services online. Kyle violated my right to privacy and illegally extracted my private, personal images and videos. Kyle then illegally sold and traded images online.

I first spoke with the FBI about the case [REDACTED]. This was incredibly upsetting and stressful [REDACTED].

[REDACTED] The FBI had notified me that I was most likely a victim in January 2025 but it wasn't fully confirmed that I was a victim until January 22, 2026. For over a year I lived in fear and anxiety wondering if I was indeed a victim. Now I know for sure and it is heartbreaking.

[REDACTED]

Reviewing nude images and videos of myself with an FBI agent was an experience that was incredibly uncomfortable and entirely caused by Kyle Svava. I had severe anxiety leading up to the review meeting. Originally, I was supposed to review my stolen content with a male agent, which I felt would be quite traumatizing given the nature of the material. Thankfully, I was able to request a female agent, but the experience was inherently awkward and unsettling nonetheless. There are not easy or particularly effective methods for searching for revenge porn images and videos online so there is not much I can do to reverse what Kyle has done — I have to live my life wondering what's out there on the internet. This has brought on severe anxiety because it feels like there is nothing I can do to protect myself from public humiliation. The pain and anxiety that Kyle has caused is irreversible.

Kyle's actions have forever changed my life. I live in fear that my private images are somewhere online and will never be taken down. I am terrified that someday I will be approached by a colleague, friend, or family member wondering if I'm aware that nude images of me are floating around on Reddit or other online forums. That is my nightmare and it is now very possibly my reality because of Kyle Svava.

There are hundreds of victims and Kyle made thousands of attempts at victimizing women. Kyle Svava did not appear to use automation or bots, which means that he personally carried out each attempt consciously and purposefully. Attempting to commit 4,500 acts of crime for only \$50 shows that financial gain was not a primary motivation. His actions demonstrate a deliberate and malicious intent, not a momentary lapse in judgment. I am sure Kyle will claim to have remorse

in order to get a lesser sentence, but we all know if that was true the victim count wouldn't be nearly as high as it is.

For too long sexual crime has often resulted in punishments that amount to a slap on the wrist. 2 years is not enough time or penalty for someone who victimized hundreds of women. 1 count of wire fraud alone can result in a 20 year sentence. I request that you sentence Kyle Svara to at least 10 years in prison.

[Victim 94]

Since learning about the endangerment that Kyle Svava has put myself as well as hundreds of women into, it is an understatement to say I was devastated. [REDACTED]

[REDACTED] I felt so violated by this blatant invasion of privacy and overall well-being, forced to be ashamed of what was supposed to be private, intimate moments.

On the surface, the crime itself appears surface level with only short term effects. This does not take into account the intangible consequences that he has now impeded across hundreds of women. It does not consider that hundreds of women who now have to live amongst a lasting fear that our photos are now in the hands of perversion to be used for god knows what - self pleasure without our consent, photo manipulation without our consent, further distribution. The fear that our photos could be publicly leaked and affect our image and reputations, potential job prospects, even our personal & intimate connections - current and future.

I feel helpless in the gross admission that nowhere is safe from the objectification and exploitation of women. I feel helpless that someone can commit a crime thousands of times over and still may only receive minimum punishment. It is paralyzing to be subject to this ripple effect he's now created in all the victims' lives. Kyle Svava has robbed us of our security and peace of mind, [REDACTED]. A burden that he has thrown upon us just to capitalize on disgusting intent and satisfy sick fantasies. The fact that I will never even know who in my circle reached out to him for his services to even put me in this situation and will now have to bear this distrust of those around me deepens this wound even more.

Two years doesn't feel enough when Kyle Svava's actions have affected hundreds of women. I don't know if I will ever heal from this. My only guiding light at this time is the hope that justice will be appropriately served and Kyle Svava will face a punishment that measures against the scale and longevity of the damage he's done.

[Victim 130]

To Whom it May Concern,

On June 16th, 2020, Kyle Svara hacked my Snapchat account and stole compromising photos of myself for his own disgusting personal gain. The FBI called me with the news, I immediately felt sick. It is so disturbing that this individual hacked woman's private information with such perverted intentions. I feel extremely violated and vulnerable from this. This has caused me great emotional distress and has affected my everyday life since hearing this news. Because of Kyle, I now have distrust with any online interaction. My privacy was violated and I will be forever changed from this.

It is difficult to fathom how Kyle justified his actions. Kyle needs to be held accountable for his crimes for the hundreds of women who he hurt.

Sincerely,
Victim of Kyle Svara
[Victim 134]

[REDACTED]
[REDACTED] This, to me, speaks volumes to his lack of boundaries and to his lack of care for who he hurt or affected. [REDACTED]

[REDACTED] . Either he didn't care or didn't even remember the extent of who he attacked and victimized. With these things I feel that two years is a mild slap on the wrist and I ask that the Judge consider the longest possible terms especially for his supervision after release.

To speak to my immediate impact - I have to live with knowing that I made the mistake of letting someone close to me trick me into hacking my account [REDACTED]

[REDACTED] . I second guess peoples intentions [REDACTED]

[REDACTED] . I want to make clear why I am writing. I am not writing to be vindictive and get back at him [REDACTED]

[REDACTED] Not sharing my story with you would contradict both those things.

So I just ask that Kyle be punished fairly for his heinous actions. He has no excuse. He grew up with a loving family and support around him. This is simply his own doing and he deserves the punishment that follows.

[Victim 235]

Your Honor,

I am victim 436. [REDACTED]

[REDACTED] that was until I received an email last year from the FBI. Though the case was not new news to me at this time, I was in complete shock to have been labeled as a victim. As the details of my experience came to light with the help of the FBI, the idea that it was random or done in a mass text way quickly diminished. Kyle Svava attempted to hack my account numerous times, spanning many months. It is hard not to wonder how calculated he was, having followed me on social media. [REDACTED]

To see someone out with their friends celebrating what a fun weekend for many is and to capitalize on that opportunity is not only malicious but intentional. This was not a random act; this was another attempt, knowing I was out with friends, he knew in this timeframe I would be susceptible to his texts and decided to once again target me. From the many details that we all know, Kyle targeted women he knew, his sister knew, and many [REDACTED] who had spent time around his family. Any notion that he did not know better or did not know everyone is inexcusable and blatantly pathetic. This is not the action of a kid who made a mistake; these choices were made by a grown adult, someone who was in a long-term relationship actively trying to exploit women. [REDACTED]. He deliberately chose to target me; this shows [REDACTED] he does not view relationships and friendships the way a normal person would. The greediness and perversion that he acted on have now left me and many others with questions we will most likely never get answered. A continuous feeling of betrayal that our privacy does not matter, and a lingering feeling of disgust, and for what? To have made a couple of dollars? His value of the victims he hurt is zero; he has paraded his life, marriage, kid, and big happy family for years, while women were blackmailed and images shared and sold without their knowledge or consent. I do not believe he feels remorseful or shameful about his actions, and no amount of apologies can give anyone, including myself, their peace of mind and privacy back. [REDACTED] he still chose to specifically target me when there were no issues between the two of us. This is something that will stay with me forever, and the idea he may serve less time than the amount he spent scamming these women is a disservice to all of us the victims.

Thank you.
[Victim 436]

Your Honor,

I am submitting this statement to share the lasting impact that the defendant's actions have had on my life.

When the defendant stole and distributed intimate images of me [REDACTED], they took away far more than my privacy. They took away my sense of safety, my dignity, and my ability to trust that my body and personal life were my own. Knowing that these images were shared [REDACTED]—and even sold for money—made me feel humiliated, violated, and powerless.

At an age when I should have been focused on growing up, learning, [REDACTED] [REDACTED] I instead had to carry the fear that people had seen the most private parts of my life without my consent. I worried about who had the images, who was talking about me, and whether they would continue to spread. I constantly felt judged and exposed, even in places where I should have felt safe.

The emotional effects have lasted [REDACTED]. This experience affected my self-esteem, my confidence, and my ability to trust others. It caused anxiety, embarrassment, and emotional pain that stayed with me long after the images were distributed. No amount of time can erase the fact that something so personal was taken from me without my consent.

What makes this especially painful is that someone chose to profit from my victimization. My body and my trauma were treated as something to be bought and sold. That decision showed a complete disregard for my humanity and the lifelong consequences I would face.

I want the Court to understand that this was not a harmless mistake. It changed how I viewed myself, how I interacted with others, and how safe I felt in my own community. The effects of this crime have followed me into adulthood. I ask the Court to consider the lasting emotional and psychological harm that the defendant's actions caused when determining an appropriate sentence. I hope that holding the defendant accountable will help prevent someone else from experiencing the same violation.

Thank you for allowing me to share my experience.

[Victim 572]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAUSE NO. 3:25cr67 DRL

PAUL R. MCDOWELL JR.,

Defendant.

SENTENCING MEMORANDUM

Paul McDowell Jr. hacked into Snapchat accounts to steal intimate images and videos. A search warrant confirmed his hacking activity and separately revealed he had otherwise acquired child sex abuse material. He pleaded guilty to a three-count information—unauthorized access of a computer (count 1), aggravated identity theft (count 2), and possessing child pornography (count 3). *See* 18 U.S.C. §§ 1028A(a)(1), 1030(a)(2)(C), 1030(c)(2)(B)(i), 2252A(a)(5)(B).

SENTENCING GUIDELINES

The court must calculate the guideline range correctly, then decide what sentence is right and reasonable for this defendant. *Dean v. United States*, 581 U.S. 62, 67 (2017); *United States v. Swank*, 37 F.4th 1331, 1334 (7th Cir. 2022). The 2025 guidelines apply.

A. *Distribution of Material in Exchange for any Valuable Consideration* (Paragraphs 32-34, 51, 58-60, 62, 66, 97).

The revised presentence report recommends a five-level enhancement under U.S.S.G. § 2G2.2(b)(3)(B). Mr. McDowell argues that there is insufficient evidence of an actual agreement to distribute material in exchange for something of value. The government contends that the enhancement applies because he sent child pornography to an administrator of an online

messaging group to gain admission to the group. The government bears the burden of proving that this enhancement applies by a preponderance of the evidence. *United States v. Johnson*, 743 F.3d 196, 201 (7th Cir. 2014).

When interpreting a specific guideline, the court starts with the “text of the provision and the plain meaning of the words in the text.” *United States v. Prieto*, 85 F.4th 445, 448 (7th Cir. 2023). This enhancement applies when a defendant “distributed” child pornography “in exchange for any valuable consideration, but not for pecuniary gain.” U.S.S.G. § 2G2.2(b)(3)(B). The word “exchange” means the “an act of reciprocal giving and receiving,” or “to give and receive (something) reciprocally,” and “reciprocally” presupposes the mutuality of both sides. *Exchange*, Oxford English Dictionary, (n.) senses I.1.c., (v.) II.4.a (last visited Apr. 30, 2026); *Reciprocally*, Oxford English Dictionary, sense 1 (last visited Apr. 30, 2026). The word “exchange” in a vacuum could mean many different things; friends might be said to mutually “exchange” Christmas gifts each year without need of any agreement. But words are known by the company they keep, and “consideration” speaks to a contract—indeed, the “inducement to a contract.” *Consideration*, Black’s Law Dictionary (6th ed. 1990).

From there, and for now, commentary interpreting an enhancement is also considered “authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.” *Stinson v. United States*, 508 U.S. 36, 38 (1993); *see United States v. Pugh*, 147 F.4th 801, 806 (7th Cir. 2025); *United States v. Stewart*, 148 F.4th 501, 506 (7th Cir. 2025); *United States v. White*, 97 F.4th 532, 539 (7th Cir. 2024).¹ The application note

¹ This remains the law in this circuit even if this rule could be said to be fairly under pressure. The United States Supreme Court recently—ten days ago in fact—granted a *writ of certiorari* on the question of whether *Stinson* still correctly states the rule of deference that courts must give the commentary to the sentencing guidelines. *See Beaird v. United States*, 2026 U.S. LEXIS 1723 (Apr. 20, 2026).

echoes this need for an agreement—the defendant must have “agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as. . . preferential access to child pornographic material.” U.S.S.G. § 2G2.2 app. n.1.

Case law outside this circuit requires this same showing, and particularly after the guideline’s 2016 amendment, which before that could rest merely on the “expectation” of receipt. *See United States v. Whited*, 539 F.3d 693, 699 (7th Cir. 2008) (explaining the old guideline did not “require an explicit agreement or precise bargain,” and that “reasonable anticipation” or “reasonable belief” was enough). Today the enhancement requires more than the “defendant’s unilateral belief or expectation that he will receive something of value in exchange for his distribution.” *United States v. Oliver*, 919 F.3d 393, 401 (6th Cir. 2019). There must be proof of an agreement. *See United States v. Darrah*, 132 F.4th 643, 650 (2d Cir. 2025) (court “must find an agreement”); *United States v. Morehouse*, 34 F.4th 381, 391 (4th Cir. 2022) (“enhancement can only apply to a two-sided exchange”—that “the defendant entered an agreement with a specific individual”); *Oliver*, 919 F.3d at 401 (exchange “requires an agreement or mutual understanding between two parties”); *see also United States v. Randall*, 34 F.4th 867, 872 (9th Cir. 2022) (same); *United States v. Halverson*, 897 F.3d 645, 652 (5th Cir. 2018) (same).

Mr. McDowell joined a Kik messaging group that the FBI suspected of distributing child pornography among its members. To join the group, “some users to the group would have to first proffer an image or video of child pornography to the group’s administrator.” The same day Mr. McDowell joined the group, he sent to the group’s administrator a selfie and a video depicting child pornography “as an offer of proof to gain access to the group.” The government inkles

that, after sending these items, Mr. McDowell messaged the group administrator, “Thera ya go.” The group administrator reportedly responded with a “thumbs up” emoji.

An agreement can be inferred from comments or conduct, but this record permits two reasonable conclusions—either Mr. McDowell and the administrator agreed to exchange group access for a video of child sex abuse material that day, or the administrator required a proffer to ensure Mr. McDowell’s identity and illicit interest in the group, without any promise or guarantee that admission would be granted. The first is an agreement that triggers the enhancement; the second is merely vouching he was not a cop or other troublemaker, or otherwise was like-minded to the group. There is something of the latter here—the presentence report calls this an offer of proof, and Mr. McDowell collateralized his identity by sending a selfie. Beyond that, the record is slim on any meeting of the minds, particularly from the administrator’s vantage point. Mr. McDowell’s unilateral expectation, which the government advances, isn’t enough. There must be mutuality. In the end, even if these two conclusions could be said to be in equipoise, by definition the government would not meet its burden of showing one over the other by a preponderance of the evidence. The court thus must sustain the objection to the five-level enhancement and instead apply the two-level enhancement in U.S.S.G. § 2G2.2(b)(3)(F).

B. Guideline Calculation.

The court adopts as its findings ¶¶ 1-50, 52-57, 59, 61, 63-65, 67-96, 98-116 of the revised presentence report, albeit excising the five-level enhancement from ¶ 32 and correcting the adjusted offense level for count 3 in ¶¶ 33-34 and 59 to be level 33 rather than level 36.

The guidelines assign units to two of three offenses, with count 2 (aggravated identity theft) excluded, U.S.S.G. § 3D1.1(b)(2), and with count 3 (possession of child pornography) driving the calculation, U.S.S.G. § 3D1.4. For count 3, Mr. McDowell starts at level 18. U.S.S.G.

§ 2G2.2(a)(1). He ends at level 33 after getting two levels for possessing material that involved a prepubescent minor under 12 years old, U.S.S.G. § 2G2.2(b)(2), two levels for knowingly engaging in distribution, U.S.S.G. § 2G2.2(b)(3)(F), four levels for possessing material portraying sexual exploitation of infants and toddlers, U.S.S.G. § 2G2.2(b)(4)(B), two levels for using a computer device, U.S.S.G. § 2G2.2(b)(6), and five levels because he had more than 600 images (about 228,000), U.S.S.G. § 2G2.2(b)(7)(D), *see also* U.S.S.G. § 2G2.2 app. n.6(B)(ii).

Because count 1 (unauthorized access of a computer) concludes at adjusted offense level 14, no units or additional levels are assigned. U.S.S.G. § 3D1.4(c). Instead, from his adjusted offense level 33, his clear and timely acceptance of responsibility takes him downward three levels to level 30. U.S.S.G. § 3E1.1.

The guidelines assess no criminal history points and place him in criminal history category I. There the guidelines recommend a sentencing range of 97-121 months, U.S.S.G. chap. 5A, appreciating that a separate mandatory consecutive term of 24 months applies to count 2, 18 U.S.C. §§ 1028A(a)(1), (b)(2); *see* U.S.S.G. §§ 2B1.6(a) and app. n.1, that a statutory maximum sentence of 60 months exists for count 1, 18 U.S.C. §§ 1030(a)(2)(C), (c)(2)(B)(i), and one of 20 years for count 3, *see* 18 U.S.C. §§ 2252A(a)(5)(B), (b)(2).

DISCUSSION

The court decides this sentence under 18 U.S.C. § 3553(a) and *United States v. Booker*, 543 U.S. 220 (2005). Turning to the statutory factors, the court must arrive at a reasonable sentence—one sufficient but not greater than necessary to satisfy the statute’s purposes. 18 U.S.C. § 3553(a).

Mr. McDowell is a man of gifts. *See* 18 U.S.C. § 3553(a)(1). Perhaps it strikes as odd to say it about someone who has shouldered from birth spina bifida, paralysis below the knees, and all

that comes with his physical and mental health conditions, or someone who has committed three of the ugliest felonies, but a man of gifts nonetheless he is.

Mr. McDowell graduated from Adams High School in 2014 (and played on the quiz bowl team). He earned a bachelor's degree in linguistics from Ohio State University in 2020 (though not easy and though it took a little longer). He taught himself computer programming and website development, and he obtained a certification in Python (a coding language). He designed an application for the City of South Bend's program for commuters called Commuters Trust, launched in 2019 and aided by his work since 2023, and he lent his talents in website design for a local sled hockey team and the South Bend Reparatory Justice Commission. Many times he has used his gifts for good. *See id.*

Along the way, he became fluent in not just English but French (having spent some time in France and being son to a French university professor). He learned to be a self-starter even when faced with the distressing risk of mistakes, and he learned to use his obvious intellectual gifts even when actual performance sometimes lagged. In the face of many challenges, he showed some discipline. Despite any self-professed shyness or social awkwardness or any diagnosis for chronic depressive illness, he maintained employment and volunteered at a local charity, all the while seeing to many medical needs and staying self-aware enough to engage in counseling. Rather impressively for any young adult, he was taking care of the business of life. *See id.*

With this, he had the gift of family. He received unbridled love from his parents, relatives, and family friends, even if not friends his own age and even as he yearned for greater independence. His parents, both accomplished in their own right, advocated for his needs and his success. They showed him faith. This was not always easy as his father twice faced treatment for a serious medical condition of his own and waned ever since. But for years, and even now,

Mr. McDowell has been the benefactor of a large and loving family. They stand in his corner still, as reflected by some twelve letters that recall his gifts and underscore his remorse. Even if never a silver bullet, that family support can hold a lot of evil in this world at bay. And Mr. McDowell never fell prey to drugs, alcohol, or like risks often associated with crime and never committed another crime before now. *See id.*

After leaving college in 2020 and facing profound social isolation, his vehicle to the outside world became increasingly the computer or other technology. *See id.* This record presents a decade of mental health treatment (2016-2026), and the court cannot restate the complexity of what lurked beneath his gifts in few words. By mid-2020, and despite the onset of the COVID pandemic, Mr. McDowell displayed notable improvement in certain areas of his life, with other challenges still to be confronted. But in December 2020, after years of attending treatment and taking medication, he no-showed his licensed clinical social worker with whom he had a longer relationship. His descent into the darker corners of the internet and with negative peers or influences had seemingly just begun a few months sooner.

Isolation can be disempowering, but online Mr. McDowell found some faculty, some power. Equipped with more technical savvy than the average user, he used his talents to exploit others for three years (2020 to 2023). *See* 18 U.S.C. §§ 3553(a)(1), (a)(2)(A), (a)(2)(C). In September and October 2020, fancying an online alias suggestive of a famous television hacker, he advertised services on one extortionist website to “rip nudes” off of Snapchat; and he sent images via an end-to-end encrypted cloud storage platform to buyers. He was priced to sell, and a person’s privacy was cheap to him. For a mere \$25 or less, and a no-cost guarantee, he would hack any victim’s account with little more than a name, username, number, or email.

At least eleven clients used his services, including one in Massachusetts who was eventually convicted of a scheme exploiting women with their nude or revealing images. Mr. McDowell successfully hacked 22 accounts of victims. He tried to hack another 15 accounts. In several cases, he altered emails or telephone numbers of victims to take over their accounts and block them from the means of accessing their own information. Over time, Mr. McDowell collected over 2,400 images and 400 videos of girls or women—some nude and some seminude of age, and some clothed but underage. *See* 18 U.S.C. §§ 3553(a)(1), (a)(2)(A), (a)(2)(C).

Separately at home, he got hooked on pornography, sought out more extreme material, and ultimately amassed child sex abuse material. To hear him describe it, it was less the fact that these were young children, and more the taboo nature of it that aroused him. Either way it was rather dehumanizing. *See* 18 U.S.C. §§ 3553(a)(1), (a)(2)(C).

The same devices he used to hack accounts he used to stockpile the equivalent of roughly 228,000 images—dwarfing the average and eclipsing any other offender the court has seen (save for one, and a truly astonishing outlier). This doesn't happen overnight; one doesn't just wake up one day and through mere impulse have thousands of images and videos. His archive victimized infants, toddlers, and prepubescent minors. More than that, he joined a group to engage illicitly with others—perhaps feeding both his prurient interests and his desire to belong. He proved willing and able to share, and he sent at least one video, though seemingly not more before his arrest. He has had appropriate adult relationships. Physical predation was not his interest or aim, nor was there any such history or likely risk of that; but there was still something sinister and vulturine in all that he was doing in hacking accounts and, separate from that, amassing child sex

abuse material. In scale and likely duration, this is in certain measures a more serious case of possession than the usual. *See* 18 U.S.C. §§ 3553(a)(2)(A), (a)(2)(C), (a)(6).²

Imagine the harm to victims, and perhaps to victims who cannot even be counted on this record. *See* 18 U.S.C. §§ 3553(a)(2)(A), (a)(2)(C). No one need imagine for long the suffering here because numerous victims in their bravery describe the psychological and physical effects of their abuse. The mandatory minimum for aggravated identity theft addresses a certain harm—the use of a person’s identity during another felony—but hacking in the manner that he did introduced a duality of harms. He not just violated the privacy and dignity of 22 girls or women, but shared this material with others, amplified the harm by risking its permanence, and facilitated stalking of these victims.

In addition, at least 44 statements explain the abuse, anguish, and trauma revisited by seizing or viewing child pornography. With each image of thousands, Mr. McDowell revictimized an innocent child. He understands what it means to be vulnerable, but he chose not to extend that same understanding or grace he would want to others vulnerable in our community—those who, little and young as they are, will likely experience that trauma longest of all. *See* 18 U.S.C. § 3553(a)(2)(C).

Mr. McDowell’s decisionmaking profile differs. *See* 18 U.S.C. § 3553(a)(1). Three specialists lend insights. A forensic and addiction psychiatrist (Dr. Sanya Virani) opines that his neuropsychological profile associated with his spina bifida and Chiari malformation type II

² *See also* United States Sent. Comm’n (USSC), *Federal Sentencing of Child Pornography: Non-Production Offenses* 30 (2021) (median of 4,265 images); USSC, *Federal Child Pornography Offenses* 320 (2012) (recommending consideration of the nature of the collection, volume, types of sexual conduct, ages of victims, use of sophisticated technology, the degree of the defendant’s engagement with other offenders, and history of engaging in other sexually abusive, exploitative, or predatory conduct).

diagnosis helps explain why he sought out child pornography despite knowing its illegal nature. He has a high intellect but low impulse control. He might appreciate rules and consequences abstractly but display marked deficits in applying that knowledge to regulate his behavior in real time—in short, a disassociation between knowing and doing. His current counselor (LCSW Ian Curtis) echoes something similar, emphasizing the need to shift the clinical focus to impulse control and interruption of arousal-seeking behaviors rather than solely addressing sexual preferences. A clinical Ph.D. psychologist (Dr. Marc Martinez), who was hired to evaluate Mr. McDowell's recidivism risk, reports that nothing suggests that he has an innate sexual interest in children. Accounting for his history and profile, two doctors assess Mr. McDowell as a moderate risk for reoffense. One recommends home confinement. *See id.*

Appreciating the psychology, the difference in using one's gifts for good or for ill is what lies between—choices—even when those choices might prove more difficult to reason through for some. Impulse control can only explain so much after three years, and after any number of moments along the way to take what one knows to be wrong and apply that to what he is doing. Someone who can grind through the years and tasks of college, work, and therapy can eventually get it without calling the whole of his conduct mere impulse-driven. Lest we forget, Mr. McDowell began as a sort of copycat vigilante to seek out and report this illicit material, which he did twice. This shows not only awareness but some measure of executive functioning—the ability not just to know that it was wrong, but to act—though engaging at all in this manner turned out to be shortsighted because it ultimately drew him in. *See id.*

Recidivism forecasts for sex offenses tend to be quite low, perhaps not unexpected for underreported crime of this type, and still experts assess his risk as something other than low.³ Indeed, in the same breath that these reports help to understand Mr. McDowell as a complete person they show that his proclivity tends to be more innate. This raises concerns whether he might be susceptible to repeat behavior. *See* 18 U.S.C. §§ 3553(a)(1), (a)(2)(B).

Pushing strongly against his view, he has accepted responsibility more than most—and done more than most. *See* 18 U.S.C. §§ 3553(a)(1), (a)(6). He admitted his offenses and cooperatively provided information to investigators when they executed the search warrant. He accepted responsibility when the government sent him a target letter and pleaded guilty to all three counts of an information. He spared the government and victims the burden of trial. His acknowledgement has been unequivocal. He pursued treatment without it being required of him. He spoke candidly with family and friends of the family. He self-regulated his access and use of his phone and computer without any slips since November 2023. Mr. McDowell demonstrates genuine accountability for his actions rather than merely exhibiting surface-level compliance. He exhibits real remorse, even if yet in a measure imperfect.

Reasonably uniform sentences promote fairness and respect for the law. The guidelines offer a certain assurance of this, but this can be less true with possession offenses. Mere mechanical adherence to the guidelines could create the very disparity the sentencing guidelines were in part intended to help prevent. *See* 18 U.S.C. § 3553(a)(6); *Pepper v. United States*, 562 U.S. 476, 487-88 (2011).⁴ The court has no qualms with today's enhancements, and frankly works

³ *See also* USSC, *Federal Sentencing of Child Pornography: Non-Production Offenses* 65 (2021) (28 percent overall recidivism risk for non-production offenders within three years after release from incarceration).

⁴ *See also* USSC, *Judiciary Sentencing Information Dashboard (JSIN)* (last visited Apr. 29, 2026) (for 822 defendants in the last five years, average sentence under § 2G2.2 with the same offense level in CHC I was 73 months).

outside the guidelines today anyway. True, electronic devices in this trade are ubiquitous, and not all use is equal, but Mr. McDowell used his to devastating effects in a multitude of ways. And it is hard to sneeze at an enhancement for the number of images at 228,000. Hacking computers might underpin his conviction for aggravated identity theft, but the guidelines otherwise pass over this offense (count 1) in its recommendation. The court won't lose sight of it. Nor do the guidelines capture the full measure of Mr. McDowell's acceptance and rehabilitation to date. As examples, the guidelines sometimes leave important factors on the table.

To this point, no one can doubt Mr. McDowell's significant medical and mental health conditions, Mr. McDowell has spina bifida, Chiari malformation type II, paralysis, neurogenic bladder and bowel dysfunction, chronic kidney disease, implanted shunt, and other conditions. He has had ten surgeries over his young life; he uses crutches or a wheelchair for mobility; and his medical condition requires a host of daily tasks for his care. Mr. McDowell is fully independent in most all activities of daily living. But his medical conditions are serious and taxing—not so debilitating as to halt his successes or to prevent these crimes, but more extraordinary than the usual defendant. Interruptions in his care could result in serious or even dire complications, including infections and others. *See* 18 U.S.C. § 3553(a)(1).

Punishment cannot inadvertently become grave risk. A loved one calls Mr. McDowell five-foot nothing at 80 pounds. A traditional carceral setting where serious and brute offenders go would not just be overly harsh but inhumane, and Mr. McDowell would not survive his need for care or those who would prey on him. But at last count, at least seven care level 3 campuses exist across the country that can address his needs, with at least one facility having both medical capabilities and offering the treatment program identified by one of his experts (likely to occur toward the tail-end of his sentence). In short, provision of medical care in the most effective

manner can be addressed by his placement, and the court will not prejudge all these options because of the experience of certain inmates or holistic concerns about the system. There are remedies, constitutional or otherwise, to address concerns that manifest.

Mr. McDowell proposes home confinement alone as a just punishment—but returning to the comfort, even if isolating comfort, of the very home or armchair in his room where he committed these atrocious crimes would not be that.⁵ He has not been in jail his entire life, but his life has never had the same freedom either—even so, it takes merely a computer and his smarts for him to wreak havoc. He is a first-time offender—but not a first-time actor after several years of criminal conduct. He faces more challenges than most—but so have these many victims. Today’s sentence might interfere with treatment for a time—but these offenses effectively did that too for the healing of victims. Too much sympathy for the guilty would be cruelty for the innocent.

Today’s sentence promotes justice, deterrence (both specific and general), and public protection, with the seriousness of these three felonies and the harm to victims ever front of mind; and it weighs Mr. McDowell’s otherwise outstanding character, his true gifts when used for good, his more remarkable acceptance of responsibility, his sincere desire for and pursuit of rehabilitation and treatment, his medical and mental health conditions, willingness to comply with the court’s expectations of him, and required consecutive sentence. The new awareness and

⁵ A person convicted under 18 U.S.C. § 1028A(a)(1) “shall... be sentenced to a term of imprisonment of 2 years.” This means that “[e]very conviction under [§ 1028A] is punished by exactly two years in prison.” *United States v. Dooley*, 688 F.3d 318, 319 (7th Cir. 2012); *see also United States v. Muresanu*, 951 F.3d 833, 837 (7th Cir. 2020) (“Section 1028A(a)(1) mandates a 24-month consecutive prison sentence”); *United States v. Williams*, 742 F.3d 304, 306 (7th Cir. 2014) (“mandatory penalty for aggravated identity theft is a two-year prison term”). The court has not been offered, by the government or defendant, an off-ramp. The court can consider the application of the mandatory consecutive sentence when determining the appropriate sentence for 18 U.S.C. § 2252A, but not 18 U.S.C. § 1030(a)(2)(C). *See* 18 U.S.C. § 1028A(b)(3); *see also Dean*, 581 U.S. at 67.

oversight of family will likely help moderate risk in the future, even as physical and cognitive challenges affect more than just Mr. McDowell.

Based on all § 3553(a) factors, an aggregate sentence of 94 months is sufficient but not greater than necessary to satisfy federal sentencing goals—namely, 48 months on count 1 and 70 months on count 3, to run concurrently to each other, with 24 months on count 2 to run consecutively to these other two counts.

The court may impose a term of supervised release of up to 3 years on count 1, *see* 18 U.S.C. § 3583(b)(2); U.S.S.G. § 5D1.2(a)(2), not more than 1 year on count 2, 18 U.S.C. § 3583(b)(3); U.S.S.G. § 5D1.2(a)(3), and 5 years to life on count 3, *see* 18 U.S.C. § 3583(k). For a first-time offender of three serious felonies, returning to the scene of the crime as it were, Mr. McDowell will need structure to ensure his proper use of electronic devices and the public's associated protection, all the while he reengages with family and treatment that may attend his needs at that time. Concurrent terms of 3 years, 1 year, and 5 years are appropriate. His release will be governed by the recommended conditions for the reasons stated here and in the revised presentence report.

Restitution to a victim is mandatory under 18 U.S.C. §§ 2259, 2259A(a)(1). As part of his plea agreement, Mr. McDowell agreed to pay restitution to the victims of his offenses. The government advises that 22 victims submitted requests for restitution [33]. Each victim, through counsel, agreed to accept \$3,000 as payment of restitution. In turn, Mr. McDowell has agreed to make a restitution payment of \$3,000 to each victim, for a total of \$66,000.00.

The Justice for Victims of Trafficking Act, 18 U.S.C. § 3014(a), requires a mandatory assessment of \$5,000 for any non-indigent person convicted of possession. The statute does not define indigency. The court may consider the defendant's financial circumstances now and in the

future. *United States v. Otradovec*, 72 F.4th 794, 797 (7th Cir. 2023). Mr. McDowell has a total net worth of \$14,809. He works modest hours at this point, which will be less upon release. His tax records reflect modest income. His parents assist with monthly expenses. Accordingly, the court finds him indigent for this assessment.

Mr. McDowell is still subject to a mandatory assessment of up to \$17,000 under the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (AVAA). *See* 18 U.S.C. § 2259A(a)(1); *United States v. Johnson*, 131 F.4th 811, 814 (7th Cir. 2025). The amount must account for the factors in 18 U.S.C. §§ 3553(a) and 3572. *See* 18 U.S.C. § 2259A(c). The court cannot waive this assessment and thereby seemingly make it zero, but it can exercise discretion in setting the amount. *Johnson*, 131 F.4th at 814. Considering the sentencing factors, appreciating the real harm he caused his victims and the number of victims, but noting that today's sentence will not likely achieve any more deterrence or public protection through financial penalty, particularly when scaled by his personal financial limitations, the court imposes \$100.00. More than this would be a penalty on his parents, more than addressing the sentencing factors for him.

Beyond this, Mr. McDowell can't pay the fines recommended by the guidelines even if afforded the most generous of installment payment schedules, so the court imposes no fine. A special assessment of \$100.00 on each count is mandatory. 18 U.S.C. § 3013(a)(2)(A).

SENTENCE

Accordingly, now accepting the guilty plea, it is the court's judgment that the defendant, Paul McDowell, Jr., is hereby committed to the custody of the Bureau of Prisons to be imprisoned for an aggregate term of 94 months—namely, 48 months on count 1 and 70 months on count 3, these terms to run concurrently to each other, with 24 months on count 2 to run consecutively to these other two counts.

The court recommends that the Bureau of Prisons designate as the place of the defendant's confinement, consistent with his security classification as determined by the Bureau of Prisons, a care level 3 facility or other appropriate medical facility to see to his significant medical and mental health needs and where he can receive proper counseling or other treatment.

The court grants the defendant the privilege to self-report. The defendant is ordered to report to the facility designated by the United States Marshal Service on July 29, 2026 at 9:00 a.m. If no facility has been designated by then, the court directs the defendant to file a motion, or the government may do so, concerning the current status of the defendant's placement. His conditions of release will continue to apply until he reports.

Upon release from prison, the defendant will be placed on supervised release for concurrent terms of 3 years on count 1, 1 year on count 2, and 5 years on count 3. While on supervised release, he must comply with the terms of supervision set forth in ¶ 117-135 of the revised presentence report, as amended here to reword the first sentence of ¶ 121 to read, "You must be lawfully employed. . . ." and to complete the restitution obligation outlined in ¶ 135, all of which paragraphs the court incorporates as part of this sentence having made an individualized judgment that they should be imposed. The defendant expressly waived reading of these supervisory conditions. The court directs the probation officer to provide the defendant with a written statement of all conditions.

The defendant must pay restitution to the victims identified as "Sloane," "Lily," "SV," "April," "Alex," "Aster," "Candice," "Julie," "Chelsea," "Cara," "Skylar," "Nicoletta," "Pia," "Maureen," "8kids5," "Eliza," "Sierra," "Maria," "Sarah," "Taylor," "Aaron," and "Ali" in the amount of \$3,000.00 per victim for a total restitution amount of \$66,000. Restitution is due in full immediately. The defendant must make restitution payments to the United States District

Court Clerk, 102 Robert A. Grant Federal Building, 204 South Main Street, South Bend, Indiana 46601, for disbursement. Any payment that is not paid in full must be divided proportionately among the persons named. The defendant must make restitution payments from any wages he may earn in prison in accordance with the Bureau of Prisons Financial Responsibility Program. The defendant must notify the United States Attorney for this district within 30 days of any change in mailing or residence address that occurs while any portion of restitution remains unpaid. While on supervision and thereafter, the defendant must make restitution payments at a minimum rate of \$100.00 per month commencing 30 days after placement on supervision until the total amount is paid in full. The imposed payment schedule will remain in effect until such time as the court is notified by the defendant, a victim, or the government that there has been a material change in the defendant's ability to pay. Failure to pay according to this condition will not be grounds for imprisonment unless the failure is willful.

The court imposes no fine. The defendant must pay to the United States a special assessment of \$300.00 and an AVAA assessment of \$100.00, which are due immediately.

The court makes the preliminary order of forfeiture [29] final as to the defendant, includes it as part of the judgment today, and will await the government's motion for a final order as to third-party interests. The court grants the government's motion to seal [32].

SO ORDERED.

May 1, 2026

s/ *Damon R. Leichty*
Judge, United States District Court

cc: Mr. Paul McDowell Jr.

Defendant

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LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210

P R O C E E D I N G S

THE CLERK: Court calls Criminal Action 21-10342, United States v. Steve Waithe. Could counsel and Probation please identify themselves

MR. DEITCH: Adam Deitch on behalf of the United States. Good morning, your Honor.

THE COURT: Good morning.

MS. PEACHY: Good morning. Jane Peachy. I represent Steve Waithe.

THE COURT: Right.

MS. PEACHY: And he's here.

MS. VICTORIA: Good morning, your Honor. Martha Victoria on behalf of U.S. Probation.

THE COURT: Thank you very much. You may all be seated. Today we are addressing the sentencing of the defendant, Steve Waithe. In order to do that, I will be calculating the United States Sentencing Guidelines, which is by law, governed by this manual, the starting point but not the ending point for any sentence; and then I will, as I understand it, hear from a number of people, the prosecutor, of course, but also a number of victims.

How many, sir?

MR. DEITCH: I believe five or six today, your Honor.

THE COURT: Okay, fine. And then I will give, of course, defense an opportunity. I thought I'd wait for you

1 till after the victims spoke, and then of course Mr. Waithe
2 could provide a statement to the Court.

3 I received multiple victim impact statements. They
4 kept coming in. I hope you, Ms. Peachy, got all of them. I
5 think I got the last one this morning.

6 So have you double-checked, Mr. Deitch, to make sure
7 she has them all?

8 MR. DEITCH: She should. I think there are fourteen
9 total, your Honor.

10 THE COURT: Fourteen in total, right. And they kept
11 coming in, so I'm not sure -- one was this morning, as I
12 mentioned. And I also received two letters from the defense.
13 One was from Mr. Waithe himself, and one was from his family, I
14 think his mom and dad. I don't know if they're here but
15 letters from them.

16 So why don't we get going. There is an objection by
17 the government to the Sentencing Guideline range. The way that
18 the Probation Department calculated it was the total offense
19 level of 18, Criminal History Category I. That means a 27- to
20 33-month range of incarceration, one to three years of
21 supervised release, and a fine range of \$10,000 to \$100,000.

22 The primary objection from the government had to do
23 with whether or not an increase for organizer or supervisor
24 should attach, and then, if it does, then the adjustment
25 wouldn't come into play. But let me ask you this: Were you

1 planning on putting on any evidence about the role of this
2 unknown person?

3 MR. DEITCH: No, not today, your Honor. I was going
4 to expand just on the argument we have and the facts, in light
5 of Probation's response --

6 THE COURT: But there's no additional evidence --

7 MR. DEITCH: No.

8 THE COURT: -- either live or documentary? Nothing?

9 MR. DEITCH: That's correct, your Honor.

10 THE COURT: Okay, go ahead.

11 MR. DEITCH: So the objection here is only to
12 Probation's decision not to apply the organizer, leader, or
13 supervisor enhancement, which directs us to Sentencing
14 Guideline Section 3B1.1. And there are three subsections under
15 3B1.1 that apply to organizers or leaders. Subsection (a) and
16 Subsection (b) actually include enhancements greater than two
17 levels, and I think there's a good-faith argument that
18 Mr. Waithe's conduct here could actually get him into the
19 category of 3B1.1(a) or (b).

20 Here, the government submits that only 3B1.1(c) is
21 appropriate, and that's a two-level enhancement. And I direct
22 the Court to four different factors in 3B1.1(c) in the
23 Application Notes that cover what type of conduct qualifies for
24 the organizer/leader enhancement. One is exercise of
25 decision-making authority; one is the nature of the defendant's

1 participation in the offense; one is the recruitment of
2 accomplices; and one is the degree of control or authority
3 exercised over others. Here, your Honor, the government
4 submits the defendant checked every one of these boxes. He
5 initiated contact with his coconspirator to enlist his
6 assistance into hacking.

7 THE COURT: Well, is it still the case, we have no
8 idea who this person is?

9 MR. DEITCH: Well, it isn't public yet, your Honor. I
10 can tell you the case team has been investigating both this
11 and --

12 THE COURT: At least I don't know who the person is?

13 MR. DEITCH: You do not, correct.

14 THE COURT: And I have no evidence from that person,
15 obviously. So what is all this based on? In other words, what
16 Probation says is, yeah, there's some evidence, but there's no
17 evidence that he did anything other than purchase the services
18 of this person; and that's the guy, the hack basically. The
19 Snapchats, was that it?

20 MR. DEITCH: That's exactly right, your Honor.

21 THE COURT: There is a difference between --
22 purchasing the services of somebody is not necessarily the same
23 as supervising someone, other than you say what you want.

24 MR. DEITCH: That's a hundred percent true, your
25 Honor, and that's not what happened here. What happened here

1 was that the defendant solicited the assistance of this and
2 other coconspirators. He directed that coconspirator's
3 conduct. He provided the usernames --

4 THE COURT: Well, how do I know that? In other words,
5 how do I know it's anything other than, "Hey, you're a great
6 hacker. Go in and hack"?

7 MR. DEITCH: I think the facts here are not necessarily
8 in dispute, but it's true, your Honor, we're not planning to
9 put on evidence today. And so we'd submit the uncontested
10 facts, as agreed to by the defendant in the PSR, are sufficient
11 to apply this enhancement.

12 THE COURT: Thank you.

13 Ms. Peachy, do you want to say anything?

14 MS. PEACHY: I just -- I don't want to belabor the
15 point too much because it's been addressed by Probation, and I
16 touched upon it briefly in my memo, but I don't think it -- I
17 think, as your Honor has noted, it's a purchaser/seller type of
18 arrangement. The hackers were putting themselves out there as
19 hackers, and Mr. Waithe paid them for their services, and I
20 don't think that rises to the level of a criminal organizer or
21 leader for purposes of the Guideline enhancement.

22 THE COURT: Okay, thank you. I --

23 MR. DEITCH: Your Honor, could I just add one more
24 thing? I'm sorry.

25 THE COURT: Yes.

1 MR. DEITCH: I'd say -- and this is something that was
2 in the memos and again is uncontested, I think -- the
3 conspiracy here relates to fifteen attempted hacks and at least
4 one successful hack of victims in this case. This is not a
5 conspiracy where the hacker, who probably tried to hack hundreds
6 of accounts, was the leader of a conspiracy to hack hundreds of
7 accounts. This conspiracy deals with fifteen specific
8 attempted victims and one specific successful victim. Without
9 this defendant, without his direction, those victims would
10 never have been subjected to this conduct.

11 THE COURT: All right, thank you. I always find this
12 a difficult enhancement to address without evidence. And there
13 is some evidence to support the government's position, but I
14 ultimately agree that the government has not met its burden. I
15 agree with the Probation Department that it does not apply. So
16 the sentencing range is 27 to 33. That takes into account also
17 the adjustment provided for first-time offenders.

18 So, now, I am, just to put everyone on notice,
19 seriously considering an upward variance or departure, so I
20 think I'd like counsel to focus on that issue. I didn't know,
21 Mr. Deitch, whether you wanted to first put on your victims or
22 you wanted to argue first.

23 MR. DEITCH: I think if I have the choice, your Honor,
24 I'll ask the victims to speak first.

25 THE COURT: Yes. And this is a public record, let me

1 just say. Your names have been blacked out of the statements.
2 I leave it up to you as to whether or not you want to identify
3 yourself for the record. I could also, I guess, one other way
4 to do it is, you could identify yourself, and I will ask my
5 Court Reporter to black it out. I leave it up to you.

6 I don't know if you've talked to them about that,
7 Mr. Deitch?

8 MR. DEITCH: I think, if it's okay with the Court, it
9 can be up to each victim whether to identify herself by name.
10 If she does, I will ask that the Court redact from the
11 transcript.

12 THE COURT: Fair enough, fair enough. Your choice.
13 Now, I've got to make sure I can hear you, so do you have a
14 microphone up there?

15 A VICTIM: Yes.

16 MR. DEITCH: And, sorry, your Honor. Before we start,
17 I just got word that there might be people waiting to get into
18 the Zoom.

19 THE COURT: Oh, no.

20 THE CLERK: I don't have anyone out there. Right now
21 there's not anybody out there. I can see the waiting room.

22 MR. DEITCH: Understood. Thank you.

23 THE CLERK: I've let everybody in. There's about five
24 people right now.

25 THE COURT: Thank you. Can I ask you this: I mean, I

1 know we're horrible about expropriating people's phones. Does
2 your victim witness advocate have a phone here?

3 MR. DEITCH: She does.

4 THE COURT: So if she gets a call and somehow someone
5 is being blocked, just let us know, okay?

6 MR. DEITCH: Okay, will do, your Honor.

7 THE CLERK: Yes, let me know. I don't see anyone in
8 the waiting room, but --

9 THE COURT: Okay? All right, thank you.

10 A VICTIM: I'm [REDACTED] and -- sorry. Dear Judge: I'm
11 a 31-year-old mother and wife, and now I add victim of
12 cybercrimes to that list. I'm still discovering all the
13 ways --

14 THE COURT: Can I start here, that it's really -- I
15 know this is deep and personal. I just have to hear you. And
16 it's upsetting, et cetera, but if you could speak up a little
17 bit, it would be really wonderful. Thank you.

18 A VICTIM: I'm a 31-year-old mother and wife. Now I
19 add victim of cyber crimes to that list. I'm still discovering
20 all the ways that this exploitation has hurt me and my family;
21 but to understand how it has affected me now, you need to know
22 who was lost in all of this.

23 I was a trusting and dependable friend. I support my
24 friends in every way possible. Some say I even go out of my
25 way too often. For example, I would drive to multiple states

1 to go support Steve at his track meets. I'd fly to Chicago to
2 see him and meet his new girlfriend and support his new job as
3 a coach. I would drop all plans to see Steve and his family
4 when he was in town. You see, Steve had been my friend since
5 sophomore year of high school. We played sports together. We
6 helped each other through breakups and makeups. His mother
7 would consider me one of the family, and I would have
8 considered her to be a second mother and track mom as well. We
9 have supported each other through different colleges, and he
10 was there for me on my wedding day. He was so excited to be
11 Uncle Steve to my daughter, [REDACTED], planning all the
12 soccer jerseys he was going to buy for her. He held her and
13 laughed with her. Everything seemed perfect. I had an amazing
14 best friend for fourteen years, or so I thought.

15 Until one day he texted me about pictures being found
16 online and how he wanted to "help" me get rid of them. I was
17 in disbelief that had happened. After a long conversation with
18 him, I did not send him any more. Then I received an anonymous
19 message from Instagram blackmailing me with pictures I have no
20 idea how they would have gotten ahold of. I contacted the
21 police cyber unit where I was directed to the FBI. I was then
22 informed that all the workout plans and progress pictures were
23 a scam. I thought I was supporting his training career and
24 being a good friend. I was wrong. For years he was taking my
25 photos and using them on the dark web.

1 I was shocked, and I didn't want to believe the friend
2 that I had for fourteen years would betray my trust, respect,
3 and privacy, among others. I not only lost a best friend, but
4 I also lost the privilege of being able to trust friends or
5 people in general. I go through my day with anxiety that
6 emails that notify me of activity is someone breaking into my
7 account and every new message is going to be someone
8 blackmailing me or trying to get something from me. I am
9 scared about my online accounts. The horrifying truth is that
10 digital is the future, and now I feel like I cannot be a part
11 of that and I'm being left behind.

12 I've been affected not only emotionally and mentally
13 but financially as well. I have been going to therapy since
14 Steve was released with his ankle monitor. I go to therapy
15 twice a week and discuss this trauma way more than I wish I had
16 to. I needed to go because I have so much anxiety I would run
17 into him or he would reach out. It was affecting my day to
18 day, having panic attacks that would make me almost pass out.
19 This is not only affecting me but my ability to parent my three
20 children. It was crippling at times where I wouldn't even want
21 to leave the house because I was afraid to see him. So for two
22 hours a week I talk to a therapist. That is 1,920 hours I've
23 lost, 1,920 hours I was away from my children, 1,920 hours away
24 from my husband, 1,920 hours I cannot get back.

25 My hope is that by sharing my story, I can give a

1 voice to the countless silent victims left in the wake of his
2 crime. I'm not seeking revenge. I'm seeking justice, closure,
3 and peace. Thank you.

4 THE COURT: Thank you.

5 (Discussion off the record.)

6 THE COURT: Thank you. We think everyone is in. This
7 is not a perfect technology, but if for some reason that's not
8 the case, I'll order a transcript. How does that sound?

9 MR. DEITCH: That would be great, your Honor. Thank
10 you.

11 THE COURT: All right, thank you.

12 All right, go ahead. I'm sorry for the interruption.

13 A VICTIM: Your Honor, I would like to take this
14 opportunity to shed light on Steve's character, where the law
15 falls short due to the lack of relevant legislation in this
16 matter. For reference, I will paint the picture of how myself
17 and my teammates found ourselves in this situation. In
18 Division 1 collegiate track and field, you are ruthlessly
19 judged on your individual ability to perform and produce points
20 for your team. Therefore, most athletes find themselves in a
21 very vulnerable place, trying to prove themselves as a valuable
22 member of the team and get the attention from coaching needed
23 to do well.

24 Steve started coaching during my senior season.
25 Initially I was actually relieved when he was hired because I

1 felt I finally had an energetic coach that would have my best
2 interest in mind and help me to be my best, a stark contrast
3 from reality.

4 Unfortunately, I quickly learned this was only a
5 facade, a scheme to use his power and our vulnerability to
6 create a dynamic where he could manipulate us. He groomed the
7 specific group of us, some of us clearly craving a supportive
8 coach. He saw we felt lost and in need of guidance, so he took
9 advantage. He pretended to be our friend and frequently
10 crossed the line of what was appropriate for a coach/athlete
11 relationship. He would text most of us using the same lines to
12 invoke confusion in the relationship. He would ask us, "When
13 are you making me dinner?" and would often tell us to meet him
14 out at the bar he was at on the weekends. While these
15 behaviors made us all very uncomfortable and we never obliged,
16 we looked beyond it all because he told us that he was going to
17 make us better athletes.

18 There were several occasions during practice when
19 Steve made me feel his desire to cause suffering and feel power
20 over me. I remember feeling the need to challenge him in order
21 to feel some control, which would only be returned by punishment
22 on his part. Sometimes at practice Steve would ask us to use
23 our own phones to record our jumps for later review instead of
24 his own iPad. One day I saw him scrolling and doing things on
25 our phones while we were getting ready to complete a drill. I

1 confronted him about it at that moment, and he brushed it off.
2 Later at practice, he made me do a drill that was clearly too
3 difficult...

4 (Pause.)

5 THE COURT: Can I say that I received, I think, all of
6 the victim impact letters, so some of these are familiar to me.
7 So I know some of what you're going to say, if you lost a page
8 in there.

9 A VICTIM: Okay. Basically he made me do a drill
10 until I cried, and it was just a reality that I knew that I
11 couldn't challenge him anymore because it would be returned
12 with punishment.

13 Unfortunately, the abuse did not stop when Steve left
14 Northeastern's campus. His hunger to torment only took on a
15 new form. I was on vacation traveling up the East Coast with
16 my boyfriend when my boyfriend received a direct message from
17 an Instagram account with pictures of myself I had never sent
18 to anyone. Steve went as far as inserting himself into my
19 relationship to torment me years after he left Northeastern.
20 What is the point of him doing that other than to cause me
21 emotional harm? Steve is not dangerous because he steals
22 pictures that don't belong to him. He's dangerous because he
23 seeks to hurt and will not stop, even if the federal law
24 enforcement tells him to.

25 It has been nothing short of a nightmare since Steve

1 walked into my life. The day he stepped foot on campus my life
2 was changed forever. I will forever live in fear of the trail
3 that follows me because of his actions, a trail that not even
4 the FBI can sufficiently erase because the Internet contains so
5 much uncharted territory. Such personal and intimate pieces of
6 myself and some of the most vulnerable times of my life have
7 been disbursed among strangers and perverted individuals. I
8 have to wonder where these pieces of me have gone and how they
9 could potentially hurt me in the future. Just yesterday my
10 husband received a phone call from an anonymous caller telling
11 him he found several pictures of me on a salacious website and
12 wanted him to know. I thank God for my ability to
13 compartmentalize all this from the rest of my life, but these
14 reminders continue to haunt me to this day. Every time these
15 memories and fears of the future occupy my thoughts, I'm
16 plagued with a feeling of helplessness and nausea. A therapist
17 once told me that I should use this experience as a lesson to
18 teach other women in my life to never send pictures of themselves
19 because you never know where they will go. It didn't sit right
20 with me because I never chose to send any of these photos to
21 anyone. They were literally taken from me without my consent
22 behind my back by someone I had trusted.

23 Steve has been given the opportunity to do this to so
24 many young women. Each time there have been no real
25 consequences, so he would go to a new place and start all over

1 again. I am one of hundreds of women. My hope is that you
2 will utilize your jurisdiction and stop this. We have been
3 told in the past that we will be protected and Steve will leave
4 us alone. Northeastern and other institutions have failed to
5 stop the cycle. We are relying on you to protect us and future
6 victims. He will continue to be a predator if not properly
7 restricted and rehabilitated. They say justice can be achieved
8 when change is made to prevent a cycle from continuing. I ask
9 that you use your power to do just that. Thank you.

10 THE COURT: Thank you.

11 A VICTIM: Dear Judge Saris: My name is [REDACTED]. I
12 am 23 years old and a former pole vaulter on the Northeastern
13 track and field team. Today I stand before you as a victim of
14 both Steve's federal crimes and his misconduct during his time
15 as my coach at Northeastern University in 2018 and 2019. I
16 appreciate the opportunity to share my account of the
17 defendant's actions and the lasting impact it has had on myself
18 as well as my fellow victims.

19 My experience with the defendant first began in the
20 fall of 2018. I was a young 18-year-old beginning my freshman
21 year at Northeastern University. I entered the year eager to
22 continue pole vaulting at the collegiate level. Steve was
23 hired a few weeks into the start of preseason. I remember
24 getting a chance to meet Steve during the interview process,
25 and the first thing I noticed about him was his inability to

1 maintain eye contact with myself or my fellow teammates he
2 spoke to. This continued throughout his time as my coach.

3 At my first practice with Steve as our new coach, I
4 distinctly remember him expressing how much he enjoyed seeing
5 us in pain. It struck me as strange for a coach to express
6 these thoughts on the first day working with us, but I brushed
7 it off as him trying to establish himself as a tough coach.

8 Steve required all of his athletes to download the app
9 Hudl on their phones. He insisted that videos taken of our
10 jumps should be taken directly from the app, as opposed to
11 being uploaded later from our camera rolls. He would often
12 tell us he forgot his iPad and needed to borrow our unlocked
13 phones at practice to record our jumps, as to allow him to use
14 the Hudl app directly. There were many practices where Steve
15 asked to use my phone to record jumps. Unbeknownst to me, I
16 was granting him direct access to my camera roll.

17 The situation escalated over my freshman Thanksgiving
18 break. I received text messages from Steve in the middle of
19 the night asking if I received the extra Northeastern gear he
20 had collected for my pole vault teammate and myself, which he
21 was not allowed to do. I later realized that this was part of
22 his grooming process.

23 He also asked for a favor. This "favor" involved
24 sending Steve photos of myself as part of a purported muscle
25 development study to determine where we required additional

1 strength training, particularly of the, quote/unquote,
2 "hamstrings and glutes." He repeated his inquiry over a phone
3 call in which he said that bikini bottoms or underwear would be
4 best despite being, quote/unquote, "unorthodox." He emphasized
5 that the gear distribution and his "research" should stay
6 between us.

7 Despite my discomfort, I initially complied with
8 photos in athletic wear, which he deemed insufficient and
9 requested more photos in bikini bottoms. I lied, stating that
10 all my bottoms were at school. Steve again asked for photos in
11 underwear. I declined sending additional photos.

12 This experience was incredibly violating. Despite
13 knowing that this behavior was inappropriate, I managed to
14 convince myself it was good-intentioned. I remained overall
15 silent about the ordeal, confiding only in my involved teammate
16 and significant other at that time.

17 In the next few months, it came out that Steve had
18 participated in this conduct with multiple other female
19 teammates. I felt humiliated. How could I fall for it? Why
20 did I not tell anyone? My own roommate received similar texts
21 from Steve. Living together in a tiny freshman dorm and
22 neither of us spoke a word of his conduct. We heard whispers
23 from the men's team, "Why couldn't the girls just keep this to
24 themselves? We finally have a good coach and they're going to
25 ruin it for us."

1 I was a freshman who wanted nothing more than to
2 impress her new coach. Steve knew this and preyed on my
3 vulnerability. During his time at Northeastern, he used
4 manipulation and his position of power to lean into his deviant
5 inclinations.

6 As we know, this was not the end of Steve's conduct.
7 He resurfaced about one year later, reaching out to us under an
8 anonymous guise on Instagram with his scheme to trick us into
9 sending more photos. When he began reaching out to my
10 teammates in 2020, I spent months in a state of anxiety and
11 paranoia. I knew that he had access to my phone on countless
12 occasions during practices, and I anticipated that my turn
13 would come eventually.

14 Despite what the headlines read, we were not tricked.
15 It was quite obvious who was behind this conduct, and I am
16 proud of my fellow teammates and I for having the courage to
17 pursue legal action in response.

18 Steve's conduct has followed me from its start in
19 2018. His actions tainted my college athletic experience. I
20 struggle with trusting authority figures -- coaches, coworkers,
21 bosses. I struggle to accept that I'll never know the true
22 dissemination of my compromised privacy. I find myself reading
23 comments from ignorant individuals on social media sites
24 stating that Steve "tricked us" into sending nude photos.
25 Despite knowing that I'm not at fault, the public's

1 misinterpretation of the events that have unfolded is
2 disheartening. Even coming here today, I could not bring
3 myself to disclose the true nature of my absence due to the
4 stigma and assumptions people make when they find out what the
5 case entails.

6 Steve's actions are not my fault. Steve's manipulation
7 and abuse of power reflect on his character and his deeply
8 flawed persona. Steve has nothing to lose. A quick Google
9 search reveals his perversions. He has proven that even a
10 federal arrest and release under strict terms cannot stop him
11 from continuing his conduct, which he has partaken since at
12 least 2018. I ask that you please consider sentencing to the
13 full extent to allow myself and my fellow victims to heal from
14 his conduct and find closure in his actions.

15 Thank you, your Honor.

16 THE COURT: Thank you.

17 A VICTIM: Dear your Honor: "I just didn't think it
18 would bother you." Eight words, eight simple words that when
19 put together can make you feel deeply guilty and embarrassed
20 when you have absolutely no reason to. If someone asks you to
21 do something and you don't feel comfortable doing it, you have
22 every right to say that you do not want to do it. Your
23 feelings are valid.

24 But are they? Maybe you're overreacting or expecting
25 the worst of someone for no reason. In fact, are you sure you

1 weren't the problem?

2 As soon as someone utters these eight words, these are
3 the thoughts that flood my mind. It makes me question myself
4 and my intuition. That's why it's a beloved phrase in a
5 manipulator's bag of tricks.

6 It was December 2018, and I was finally going home for
7 winter break after my first semester at college. The semester
8 had been less than ideal. It was my first time being away from
9 home for an extended period of time, and to add salt to the
10 wound, home was over 2,000 miles away. I knew no one around me
11 and had never felt more alone. I expected my track team to
12 feel like an instant family, but that was far from the truth.
13 Anxiety overtook me, and I felt like I didn't belong on the
14 team. On the bright side, a new coach had just been hired. He
15 had been hired as a pole vault coach despite not knowing a
16 thing about pole vault. His true expertise was in triple jump.
17 He had been a highly decorated triple jumper, and as a triple
18 jumper myself, I was eager to get some jumping tips from him,
19 even if he wasn't my direct coach. I felt like not all hope
20 was lost. Maybe the social part of college wasn't going too
21 well, but at least I could work with an amazing triple jumper
22 and redeem myself athletically.

23 On December 16, just three days after going home for
24 winter break, I received a text from this new coach. He said
25 he needed my help with something. I was ecstatic. I was

1 important enough to this coach that he wanted my help with
2 something? Once I had agreed to help him, he went on to tell
3 me I was his favorite. I couldn't stop smiling. I felt so
4 special. He also mentioned that he wanted to have the
5 conversation to stay between us, but I brushed it off,
6 suspecting that he just didn't want other athletes to get
7 jealous, since I'd been deemed his favorite. I didn't realize
8 at the time how much a hold that comment had over me.

9 He told me he was doing some research for a personal
10 project and wanted to use me as his subject. He first asked me
11 some basic questions: my personal records, what my training
12 program looked like in high school, my height, my weight,
13 et cetera, et cetera. With each answer I gave, he boosted my
14 ego more and more, telling me, "We are gonna change those PRs
15 this year" and "You're gonna be really good."

16 Next came his main request. He asked me for progress
17 photos, photos from high school and photos from then in 2018.
18 I sent him a photo of me from a high school track meet, but he
19 responded and told me that the photo wasn't what he was looking
20 for. He said he wanted "muscle development photos" and that
21 they didn't "have to be athletic at all." I felt a little
22 confused but decided to go digging through my camera roll again
23 looking for non-track-related photos where you could see my
24 muscles. However, this isn't what he was looking for either.
25 After again reassuring me that this conversation was just

1 between us, he told me exactly what he was looking for. In his
2 words, the photos he wanted were "more of like an underwear run
3 type of thing." My stomach sank and I froze. There was simply
4 no way my coach was asking for photos of me in my underwear. I
5 stopped responding at that moment, and he began to panic. He
6 sent me another message a minute later, then three minutes
7 later, and again twelve minutes later. I was in a state of
8 shock. He went on to further assure that these photos were
9 just for research purposes and attempted to butter me up again
10 by telling me that he believed I was our team's most talented
11 jumper. I told him I was uncomfortable taking and sending a
12 photo like that, but he was persistent: "Ha-ha, why? Don't
13 you do it all the time? And this is actually beneficial. Obviously
14 I don't want you to be uncomfortable. I just didn't think it
15 would bother you."

16 There they were, those eight words that had me
17 questioning if I had just entirely misread the situation, if I
18 was being crazy and overthinking things. Nonetheless, I stuck
19 to my gut and politely ended the conversation.

20 I never sent him the photos he asked for, but I still
21 didn't tell anyone about the conversation. After all, he said
22 I was his favorite on the team and that he was going to help me
23 fulfill the potential that he claimed he saw in me. Why would
24 I jeopardize that by speaking up and losing his trust?

25 In the end, nearly ten girls ended up coming forward

1 with similar experiences to mine, one of them being my own
2 roommate. Imagine that. We lived in a shoebox of a room
3 together for months and did not utter one syllable of our
4 experiences to each other. That's how strong the hold that he
5 had over us was.

6 In 2018, I was in a deeply vulnerable state, and Steve
7 Waithe exploited that vulnerability in an attempt to manipulate
8 me for his own gratification. This experience has profoundly
9 altered me, stripping away the innocence and trust I once had.
10 Now I approach interactions with male figures of authority, and
11 men in general, with much more caution, always questioning
12 their intentions behind kind gestures. What has affected me
13 most of all, however, is that I have lost trust in my own
14 judgment. I constantly replay the situation, wondering how I
15 could have been so easily deceived, but I have to remind myself
16 that Steve's actions are those of a man who preys on vulnerable
17 young women and betrays their trust. This experience has left
18 me with a lingering sense of doubt, not only in others but in
19 myself. It's a harsh reality, but I've come to accept that
20 I'll never fully regain the person I was before Steve Waithe
21 came into my life. It's a burden I must bear and a truth I
22 must learn to live with. I cannot overstate the mental and
23 emotional toll this whole ordeal has taken on me and my fellow
24 victims. Given the nature of the offenses and his demonstrated
25 propensity to repeat his actions, I urge you to impose the

1 maximum sentence allowed by law. Thank you.

2 THE COURT: Thank you.

3 A VICTIM: Your Honor, I want to first start by saying
4 that whatever time Mr. Waithe receives here today for his
5 sentence will never compare to the years we already spent with
6 this taking space in our lives, and it will follow us for the
7 rest of our lives. It is extremely difficult to look back and
8 realize that someone that was put in a position of power,
9 someone you were supposed to trust and was supposed to mentor
10 us, ended up taking the utmost advantage and abuse of that
11 power. He took it upon himself to go into our personal devices
12 and steal the most personal images, and go even a step further
13 and distribute them. How are we meant to trust anyone moving
14 forward when this was someone who we were told to trust and
15 listen to and who was supposed to have our best interests at
16 heart?

17 I still remember the manipulation at practices and
18 inappropriate messages that we had to endure in order to
19 continue doing the sport that we loved, for fear that we would
20 be mistreated, lose out on team opportunities, or given even
21 harsher practices if we didn't go along with it. I remember
22 like yesterday sitting in the locker room with one of my
23 teammates who spoke here today questioning what we could do
24 moving forward. Should we tell anybody? Is that going to ruin
25 it for the rest of the team? Who was supposed to protect us?

1 We didn't know what to do. We felt helpless. It deeply
2 saddens me that the sport that I loved has been sadly tainted
3 by this experience. He clearly is unable to control himself,
4 nor does he want to stop these behaviors, as he reached out to
5 us and continued these actions even after being fired from the
6 university, and then even after his arrest. I remember the
7 fear and disgust and the sinking feeling in my stomach the
8 first time we were told that we would never know where he has
9 the photos of us because of his actions.

10 I'm a therapist. I have clients who I'm meant to
11 support and help every day, and one of the most important
12 pieces of my work is the therapeutic relationship. I can't
13 imagine how those relationships would be altered, and quite
14 possibly destroyed, if they were ever to come across the
15 private images that Mr. Waithe stole from me and distributed
16 without my consent. I know all the other women involved are
17 successful and passionate about their careers, and, more
18 importantly, kind and amazing human beings, and none of us
19 deserve to carry that stress, unease and fear of the unknown
20 with us every day. When you make your decision today, I hope
21 you consider the years behind us we can never erase and the
22 years ahead of us we can never control, and maybe more
23 importantly, the future of all women who deserve to be
24 protected. Thank you.

25 THE COURT: Thank you.

1 A VICTIM: Good morning.

2 THE COURT: Good morning.

3 A VICTIM: Sorry.

4 THE COURT: Do you need a glass of water? Take your
5 time.

6 A VICTIM: It was important for me to come here today
7 because I wanted you to see that we are people (Unclear speech)
8 that have been affected by this for almost six years. In those
9 six years, we have been numbered victims and the most affected
10 parties, and I felt like nothing but a body of things, used by
11 perfect strangers on the Internet, traded as a baseball card.

12 I wish to give you some insight into the damage that
13 Steve Waithe has caused in my life and the danger that he poses
14 to the community. Despite being nameless and a numbered
15 victim, I've never been a stranger to Steve Waithe. He was my
16 track coach from 2018 to 2019. Like other people said, he came
17 on strong and promised to take my collegiate career to new
18 heights, and he promised that he was going to make me a star,
19 but, instead, Steve Waithe abused his position of power in
20 order to abuse us. Instead of being coached that year, I was
21 targeted, groomed, preyed on, and repeatedly violated. He
22 stole my phone and my photos and my alleged privacy. Instead
23 of being a star on the track, he made me a star on the
24 Internet. Despite once being a collegiate runner, I now have
25 panic attacks with exercise as I remember the video, his hands

1 running down my body, the punishments we endured for being
2 uncooperative, and his final promise that he would always be
3 watching me.

4 Understandably, Steve Waithe as our coach is not the
5 center point of this hearing, but I believe understanding this
6 context is critical. Steve Waithe's entire adult life and his
7 career has been centered around his access to young women and
8 girls to feed his gross addiction in a position of power where
9 we were forced to trust him. He has coached women's track and
10 field teams at four universities, and, to my understanding, at
11 the time of his arrest in April of 2021, he was coaching at a
12 high school.

13 Being punished for his actions in the past has not
14 stopped his conduct. He's proven repeatedly that he's unable
15 to control his behavior, follow his simple no-contact orders,
16 or even adhere to the boundaries of his conditional release.
17 We as his victims deserve to see Steve Waithe brought to
18 justice for his crimes, and, more importantly, the future of
19 young girls needs to be protected. There's an obvious
20 disconnect between Steve Waithe's conduct and the charges he's
21 facing. Because of the modern age of the Internet, predators
22 like Steve Waithe have the opportunities for exploitation that
23 isn't well reflected in our justice system, but I think there's
24 no denying that his actions and intentions are the definition
25 of sex crimes. The platforms where you can now find our names,

1 photos, and other identifying information are sorted by hash
2 tags like 18busteens, NCAAtrackandfield, and others.

3 I've had the misfortune of being exposed to the
4 (Unclear speech) Internet and know firsthand the goal of his
5 theft was to buy, sell, trade and exploit our compromising
6 photos for his own pleasure and benefit. The additional
7 component of harassing us online, taunting us with his stolen
8 possessions, further proves the sexual nature of his conduct
9 and his intention to harm us.

10 I think that one day someone like Steve Waithe might
11 be required to register as a sex offender, and something like
12 this that would insure the protection of children and young
13 girls in schools on sports teams that might have the
14 possibility of being coached by Steve Waithe like I was, and I
15 think this case presents a unique opportunity to set a
16 precedent for how these crimes would be viewed in the court.

17 The pain and emotional damage that we've endured over
18 the past several years is immeasurable. It has haunted me
19 through every new phase of my life, and it always exists like a
20 black cloud of plotting his next storm. I feel constantly
21 violated, used, and fearful, always awaiting his next move.
22 When I first received the first wave of Steve Waithe's
23 anonymous harassment a year after he left as our coach in 2020,
24 I talked to my remaining coaches that he's going to ruin my
25 life, and the sentiment still feels very true. I worry

1 constantly about the possible consequences this situation might
2 have on my professional life and for how long the justice
3 system would be able to protect me.

4 Next week is supposed to be the happiest week of my
5 life, and without Steve Waithe, I'd be finishing my bachelor's
6 degree and finishing my premed requirements and applying to
7 medical school. Since I'm all finished, I graduate this
8 spring, and next week is my match week. I am still here
9 dealing with this while all my friends are welcoming their
10 family and friends into town to celebrate. Every stage of my
11 life I fear how this could affect me: Would my medical school
12 find out and would my admissions be denied? Would my residency
13 program (Unclear speech) and my admissions be denied? Because,
14 as we know, this is still an "old boys' club," and I need to go
15 through this next phase in my training without this. I need to
16 focus on my education and my training and my patients and be
17 able to move on for just one part of this without him.

18 I know I'm a victim of his crimes, but we all know all
19 too well that women are held to a different societal standard
20 than men. We are told that we deserve these things, that we
21 should have been smarter and more careful, and that boys will
22 be boys. Because of Steve Waithe, I will fear this information
23 will become public for the rest of my life. Please don't hold
24 this man to a lower standard. Please set a precedent that
25 predators cannot evade the law in this modern age, and please

1 punish him for longer than he has been punishing us for the
2 last six years. Please hold him fully accountable for his
3 actions. Thank you.

4 THE COURT: Thank you. Anyone else?

5 A VICTIM: Hello. My name is [REDACTED]. Honestly, I
6 wasn't going to say anything because this has taken up a lot of
7 time in my life, but I want to touch on the ripple effect that
8 these disgusting actions have caused.

9 After this, we were labeled. We were kept a secret
10 within our own university, within our own athletic program. We
11 were looked at as a stain from a place that we were recruited
12 to be at, and all of a sudden the life that you're preparing
13 for, that you're training for, your educating yourself for,
14 will not ever be available to you because someone has given you
15 a digital footprint that you didn't want, and we all know how
16 important a digital footprint is.

17 After all of this behavior, he never stopped, no
18 matter what he was told to do. And we've seen this. There are
19 precedents for this. He was willing to violate university
20 rules. He was willing to violate his conditional release, and,
21 honestly, throw his own family under the bus for it too. So I
22 don't believe that even after he gets out, he's going to stop
23 because the damage that he's caused, he'll probably sit in his
24 release and think about what else he's going to add to it.

25 So I'm honestly begging that you give us as much time

1 as possible to prepare for what we can do to protect ourselves
2 from these damages that are soon to come because we never had
3 time to protect ourselves before. Thank you.

4 THE COURT: Thank you. All right, thank you. I
5 should ask, is there anyone on Zoom who wants to say something?
6 Do we know?

7 MR. DEITCH: I don't believe so, your Honor.

8 THE COURT: All right, thank you.

9 All right, Mr. Deitch.

10 MR. DEITCH: It's going to be awfully hard to follow
11 that, your Honor.

12 THE COURT: I thought it was important to hear, so I
13 thank everyone who came in. It was brave.

14 Go ahead.

15 MR. DEITCH: Steve Waithe was supposed to be a track
16 and field coach. He was supposed to better the lives of the
17 young women who competed on his team. He was supposed to
18 support, inspire, and lead. Instead, through methodical
19 deception and exploitation, he stole their most personal and
20 private photos for his own sexual gratification and to
21 distribute them on the Internet.

22 Your Honor, I want to address just three things today.
23 First, I want to address head on what makes this case unique
24 enough to warrant the substantial deviation from the Sentencing
25 Guidelines that the government is requesting. Second, I want

1 to address why the nature and circumstances of these offenses
2 warrant a sentence of 84 months, seven years of incarceration.
3 And, third, I want to talk briefly about specific deterrence
4 and why an 84-month sentence is necessary to prevent this
5 defendant from re-engaging in criminal conduct, and to protect
6 both his victims and the public from him.

7 First, as a threshold matter, the government
8 acknowledges that its request, a sentence of more than double
9 the high end of the Guidelines, is highly unusual. That's
10 something that the government recognizes and does not take
11 lightly. It's a recommendation that comes from a huge amount
12 of thought and research regarding other cases around the
13 country, and, most of all, consideration of what the victims in
14 this case have gone through, are continuing to go through, and,
15 as you just heard, will be dealing with for the rest of their
16 lives. But at the end of the day here --

17 THE COURT: Can I stop you. Is anybody asking for
18 restitution of any kind?

19 MR. DEITCH: We don't have any restitution requests,
20 your Honor.

21 THE COURT: All right, thank you.

22 MR. DEITCH: At the end of the day here, your Honor,
23 what this defendant did in each of four different buckets of
24 crimes does not fit into the box of wire fraud or computer
25 fraud or the traditional white-collar fraud that this Court

1 sees so frequently. In preparing for today, your Honor, I came
2 across remarks that you made a number of years ago when you
3 were Chair of the U.S. Sentencing Commission, and in which you
4 talked about how the Commission was then working to address
5 certain concerns about the fraud Guideline in particular, in
6 part due to the diversity of types of cases that get routed to
7 that Guideline, and including with respect to how effectively
8 that Guideline reflects harm to victims. You listed in your
9 remarks a number of different kinds of fraud. You listed
10 identity theft, Medicare fraud, mortgage fraud, wire fraud and
11 many others, and I respectfully submit the Guideline today does
12 a good job reflecting harm to victims in most cases. But, your
13 Honor, this case today shatters the conventional notion of what
14 the fraud Guideline was designed to address. Here, the crimes
15 that this defendant perpetrated against fifty-six women, and
16 attempted to perpetrate against seventy-two more, are deeply
17 personal, sexual, and, at their heart, exploitation crimes that
18 will have profound lifelong consequences for the victims. A
19 fraud Guideline --

20 THE COURT: Can I ask you, so there were fifty-six
21 women whose pictures were actually posted on the Internet; is
22 that right?

23 MR. DEITCH: There were fifty-one women who the
24 defendant successfully obtained photos from, an additional five
25 whose conduct was aggressive enough to, in the government's

1 view, transition the victim from an attempt to an actual victim
2 of his crime, and then seventy-two others who never responded
3 to his attempts.

4 THE COURT: Attempts?

5 MR. DEITCH: Correct.

6 THE COURT: Okay, thank you.

7 MR. DEITCH: Your Honor, a fraud Guideline in which
8 sentences are driven by pecuniary or monetary loss is just not
9 equipped to adequately capture the shocking conduct committed
10 by this defendant. The Guideline sentencing range as calculated
11 by Probation, 27 to 33 months, or even if the Court had adopted
12 the government's requested enhancement, would have raised the
13 Guidelines to 37 to 46 months. Those ranges seem minuscule in
14 the face of what this defendant actually did, and the Guidelines
15 have carveouts precisely for the rare situation where the
16 Guidelines calculation fails to adequately take into account
17 the true scope of a defendant's conduct. This is such a case,
18 whether it be by variance or departure, where the Guidelines do
19 not take into account this defendant's conduct.

20 As to why 84 months is appropriate, your Honor, it is
21 simply not possible to overstate either the scope of this
22 defendant's conduct or the depth of the consequences for his
23 victims. Starting in 2018 when he physically took the phones
24 of young women on the team he coached at Northeastern to scroll
25 through their photo albums and surreptitiously steal photos

1 that interested him, and continuing right up until the day of
2 his arrest in April, 2021, this defendant viewed every woman he
3 met as a target for exploitation. During his scheme, using
4 dummy Instagram accounts, the defendant targeted both his
5 former student athletes and others, pretending to be an online
6 Good Samaritan who had randomly come across explicit photos of
7 prospective victims. He had the audacity to tell them that if
8 he could help just one person remove those photos from the
9 Internet, he was making the world a better place. That's rich,
10 your Honor, and as the Court is well aware, he was talking
11 about photos that he had personally stolen from the victims,
12 that he had not randomly found online, and that in some cases
13 he himself would later distribute on the Internet.

14 After he spent weeks and months Googling how to hack
15 Snapchat accounts but realized he couldn't figure out how to do
16 it himself, he enlisted a variety of coconspirators online,
17 getting them to agree to help him, providing him with usernames
18 and phone numbers of young women he coached, young women he
19 knew through work, women he grew up with, and directing them to
20 hack into the accounts to mine them for more explicit photos.
21 He used some of the photos he got through the Snapchat hacks in
22 future efforts to attempt to extort them for more photos, and
23 in one case to cyberstalk a victim.

24 In total, the defendant posted or messaged others
25 regarding Snapchat hacks on at least 164 individual occasions,

1 and, in the end, the defendant conspired with the person named
2 in the indictment as CC-1 as well as at least four other
3 coconspirators to attempt to hack into no fewer than
4 sixty-eight women's Snapchat accounts, resulting in over a
5 dozen, quote/unquote, "successful hacks" involving the theft of
6 images or videos of victims.

7 In what in some ways might be the most egregious of
8 his wire fraud schemes, the defendant convinced young women he
9 knew in real life that a friend of his, Katie Janovich or
10 Kathryn Svoboda, was conducting, quote/unquote, "body
11 development research" specifically focused on women who had
12 competed in collegiate athletics and who were making the
13 transition to post-college and post-competition life. To be
14 clear, Katie Janovich and Kathryn Svoboda did not exist; the
15 defendant made them up. And then, after the defendant put
16 unsuspecting women in touch with Katie or Kathryn, the
17 defendant would pretend to be these female researchers, with
18 Gmail accounts to match, emailing and LOL-ing as he groomed and
19 persuaded his victims to take and send nude and semi-nude
20 photos.

21 In this body development scheme, the defendant
22 specifically targeted victims he knew based on his work as a
23 track and field coach, victims he knew might have insecurities
24 relating to their bodies. In short, he preyed on women by
25 taking advantage of his position as a coach and by leveraging

1 what he knew about his prospective victims' potential
2 insecurities.

3 Beyond his own sexual gratification, we now know that
4 the defendant distributed some of those stolen images on
5 websites that attract people who, like the defendant, are
6 interested in these so-called "leaked," but in reality stolen,
7 photos and videos of innocent women. On these sites, these
8 types of images are points of pride for people like the
9 defendant, and also a sort of currency among individuals who
10 find gratification in such material. On these sites, the
11 defendant advertised the images he'd illicitly obtained,
12 offering to trade sets of images with other users of these
13 sites. "Does anyone want to trade nudes?" one post read. "I'm
14 talking girls you actually know. It could be ex's or whatever.
15 I have quite a few, and I'm down to trade over Snapchat or
16 something." In another post, he bragged to someone on
17 Instagram: "Bro, my collection crazy right now." When asked
18 for an explanation for how he got some of the images, the
19 defendant said, "Oh, these were from her progress pictures from
20 when I used to write her workout plan for her."

21 We now know that Waithe, the defendant, posted or
22 otherwise offered to trade images of victims no fewer than
23 fifty-five times and ultimately distributed explicit photos of
24 at least eleven different victims.

25 But we're actually here, your Honor, today for two

1 reasons: The first is the defendant and everything the
2 defendant has done and the incredibly personal crimes he's
3 committed, but the second is the courage of the victims in this
4 case which was on display a few minutes ago, young women who
5 had the courage to stand up and talk about what had happened to
6 them, to talk about the compromising photos they had taken and
7 stored on their phones, to talk about in some cases having been
8 duped into taking and sending photos to a man they thought they
9 could trust.

10 The original six victims from Northeastern were first
11 interviewed by the FBI during COVID, before vaccines even, and
12 they were asked difficult personal questions. It was awfully
13 hard to watch and to listen to what they had to say, but it was
14 a heck of a lot harder for them to say it and for them to live
15 it.

16 These crimes committed by this defendant are personal,
17 your Honor; and like the severity of the conduct, the
18 consequences for the victims are hard to overstate. The photos
19 the defendant stole for his own personal use are one thing,
20 repugnant as that is, but at least we can effectively seize the
21 defendant's devices and shut down his accounts. The part that's
22 much harder to track, impossible in some ways, are the images
23 the defendant has already posted or distributed to others.
24 While the FBI case team has taken truly Herculean steps to run
25 down every lead, the reality is that we'll never know just how

1 many people have these photos, where they've been sent, or
2 where they've been posted. The victims will be dealing with
3 this reality and the constant fear associated with it on and
4 off, perhaps in waves, for the rest of their lives. You saw it
5 in their impact statements, both in writing and here today.
6 When they apply to grad school, when they apply to new jobs,
7 when anyone does a search for their name on the Internet, there
8 is the fear that something could come up.

9 Equally horrifying is the fact that the defendant
10 shared victim contact information with his coconspirator and
11 with others, posting it online, and victims, as you heard
12 today, are still experiencing the repercussions and harassment
13 to this very day.

14 THE COURT: Can I stop you there. That wasn't clear.
15 So with each picture, he said what their full name was?

16 MR. DEITCH: Not in every case, your Honor. As an
17 example, in the Snapchat hacking scheme, he shared usernames
18 and in some cases full real names and phone numbers, and
19 through that information and the resharing of that information,
20 the defendant, his coconspirators, and untold others have
21 access to that information now.

22 THE COURT: Thank you.

23 MR. DEITCH: And, as you heard, literally two days ago
24 on Monday, the husband of a victim was called by an anonymous
25 number about the photos that the defendant stole from her and

1 posted online. The nature and circumstances of this offense
2 call out for the sentence the government is asking.

3 Third and briefly, specific deterrence. Now, general
4 deterrence which I addressed in my memo is certainly a factor
5 here. Given the uptick in the types of crimes that the defendant
6 committed, the Court should be sending a message with a
7 significant sentence, signaling to others that they should not
8 do this, but I'll focus for a moment today on specific
9 deterrence.

10 The argument is made in the defendant's sentencing
11 memo that he spent countless hours reflecting on his conduct
12 and that a sentence at the low end of the Guidelines is surely
13 to deter him in the future. It is true that in most cases
14 where a defendant is convicted of a fraud-related crime and
15 does not have a prior criminal history, specific deterrence is
16 not necessarily a front-and-center consideration. Here,
17 however, the defendant's conduct cries out for specific
18 deterrence.

19 First, his criminal conduct in this case is not a
20 onetime thing. He didn't make a mistake one day and get
21 caught. This case did not involve a momentary lapse in
22 judgment. Rather, he engaged in methodical, painstaking
23 behavior on virtually a daily basis to fuel and improve his
24 ever-evolving schemes. Over and over again he created new
25 Instagram accounts, and researched how to hack into Snapchat

1 accounts, and contacted new prospective victims, and harassed
2 old victims, and pretended to be a woman named Katie, and
3 communicated with coconspirators, and bragged online about the
4 sets of photos he had; twenty-two different online accounts
5 across at least seven different platforms, over 1,000 total
6 images of victims.

7 But second on specific deterrence this: When the
8 defendant was first arrested, the government moved for
9 detention, but in part because of his lack of previous criminal
10 history, he was released on conditions. One condition was that
11 he not commit further crimes. Another was that he not access
12 the Internet outside of certain strict parameters. One,
13 quote/unquote, "benefit" of his release, if that's not too dark
14 a way to look at it, is that we got to see just how the defendant
15 would behave in the face of his arrest and ultimately in the
16 face of a fifteen-count federal indictment.

17 So what did the defendant do? Well, it turned out
18 that just a few months after he was charged in this case, he
19 began regularly and repeatedly violating the terms of his
20 pretrial supervision by using Instagram to view photos of young
21 women -- that is, new prospective victims -- and to send
22 messages to them requesting that they send him photographs of
23 themselves. It turned out that he had logged into his primary
24 Instagram account while on release, and in blatant violation of
25 his bail conditions, on no fewer than 135 separate occasions.

1 A significant sentence here is warranted because when given the
2 chance to prove his ability to comply with the Court's rules
3 and to not reengage in the exact same type of conduct, this
4 defendant showed us exactly what he would do.

5 Before I finish, just a quick word about comparable
6 cases. There really aren't any. The defendant's sentencing
7 memo lists nine cases where they say similar charges were
8 brought, but in reality, each of those defendants, the
9 defendants in those cases engaged in only a fraction of the
10 conduct that this defendant did. In seven of the nine cases,
11 for example, the defendant was charged with only computer fraud
12 or computer fraud plus identity theft.

13 Now, to be sure, some of those defendants were guilty
14 of conduct remarkably similar to this defendant's scheme to
15 hack Snapchat accounts. Some of them, like this defendant,
16 hacked or attempted to hack dozens and dozens of accounts. And
17 if that were the only conduct in this case, I would agree that
18 those cases are comparable; but this defendant, and I won't
19 belabor this point, this defendant did that and so much more.

20 I'd submit that this case is far different from those
21 cited in the defendant's memo, also because this case did not
22 involve the completely random hacking of accounts of victims
23 the defendant didn't know. This case involved people the
24 defendant knew personally, and much of the conduct required him
25 in person many times to warm them up, to groom them, and to get

1 to know their insecurities. That makes the conduct in this
2 case far worse.

3 So how do you come up with a sentence in a case
4 without comparables and where the Guidelines seem far too low?
5 Surely he deserves more time than a defendant sentenced in this
6 courthouse last week who defrauded his employer for a couple
7 hundred thousand dollars. That guy got 42 months.

8 In reality, this defendant's conduct much more closely
9 tracks the conduct you see in child exploitation cases, much
10 more like child exploitation than white-collar fraud, and there
11 we'd be talking about mandatory minimum sentences of 10 years
12 or 15 years for the distribution, or, in the body development
13 scheme, the production of child pornography. But in this case
14 the victims were adults, in many cases barely adults, so child
15 exploitation isn't a perfect fit either.

16 How much time should this defendant get for each of
17 his fifty-plus victims? One month for each victim? Two
18 months? How about for the seventy-two victims subjected to
19 similar conduct but who didn't send him photos?

20 In closing, your Honor, the defendant is, plain and
21 simple, a predator. He leveraged his position of trust as a
22 track and field coach. He conned his female friends into
23 thinking he was caring and helpful. He exploited women time
24 and time again. In the end, this defendant victimized or
25 attempted to victimize no fewer than 128 young women across the

1 country, and he successfully inflicted virtually immeasurable
2 harm on literally dozens of them. That's not an exaggeration
3 or an overstatement; that is the stark and dreadful reality of
4 this situation.

5 It's for all those reasons, your Honor, that the
6 government requests that the Court impose a sentence of
7 84 months of incarceration, plus three years of supervised,
8 release, and the requested special conditions. In this case,
9 an 84-month sentence would be sufficient but absolutely not
10 greater than necessary to satisfy the sentencing objectives of
11 Section 3553(a).

12 Thank you, your Honor.

13 THE COURT: Thank you. Before you go, I'd like to
14 talk about the recommended conditions of supervised release,
15 since so many of the women who spoke expressed concern about
16 having to ever deal with him again. So one of them is a
17 no-contact order; is that right?

18 MR. DEITCH: That's correct, your Honor.

19 THE COURT: And what are the other ones? Because I
20 want to make sure we have it all on the table so that defense
21 counsel can address them.

22 MR. DEITCH: So the special conditions recommended by
23 Probation are, first, "You must not knowingly have any contact,
24 direct or indirect, with the victims," and the government
25 submitted in its papers and asks -- I don't know if it will be

1 contested, and I think Probation will agree -- that the
2 attempted victims should be included in that no-contact order.

3 THE COURT: All right.

4 MR. DEITCH: The second special condition in the PSR
5 is that "The defendant must participate in a mental health
6 treatment program as directed by the Probation Office."

7 THE COURT: So the no-contact order should also
8 include probably -- like you said, one of the husbands was
9 contacted -- "or their families"?

10 MR. DEITCH: I agree, your Honor.

11 THE COURT: Okay, all right. So, all right, mental
12 health treatment.

13 MR. DEITCH: The third special condition in the PSR is
14 that "The defendant must use his true name and is prohibited
15 from the use of any false identifying information, which
16 includes but is not limited to any aliases, false dates of
17 birth, false Social Security numbers, and incorrect places of
18 birth."

19 The fourth and final of the special conditions in the
20 PSR is that "The defendant shall be required to contribute to
21 the cost of evaluation, treatment, programming, and/or
22 monitoring based on the ability to pay or availability of
23 third-party payment."

24 And there were three additional special conditions
25 that the government is requesting. The first was attempted

1 victims, and I agree with the Court about families of both
2 victims and attempted victims. The second is that his Internet
3 use be restricted to only under the monitoring or supervision
4 of Probation, and I've confirmed with Probation that that is
5 possible.

6 THE COURT: Yes. We do that in other contexts.

7 MR. DEITCH: The third special condition the government
8 is requesting beyond the PSR is no use of any social media
9 whatsoever. And the fourth -- and in some ways, this shouldn't
10 need to be asked but I'm asking -- that the defendant be
11 prohibited from making any requests for photos, images, videos,
12 or any other media from anyone all throughout, obviously,
13 the duration of supervised release.

14 THE COURT: What I was thinking of in addition, you
15 know, having listened to the victims -- and I do want to hear
16 from defense on this -- is not to take any jobs or other
17 volunteer responsibilities that involve young women.

18 MR. DEITCH: Agreed one hundred percent, your Honor.

19 THE COURT: Or I guess with children, female. I don't
20 see any issue with guys, but basically anything having to do
21 with coaching, teaching, mentoring, that sort of thing.

22 MR. DEITCH: Agreed.

23 THE COURT: I'm not quite sure how to word it, but I
24 wanted to get that concept out there, and maybe Probation can
25 help me word that correctly, and maybe an employment

1 notification once he's out, some such.

2 Okay, thank you very much.

3 MR. DEITCH: Thank you, your Honor.

4 THE COURT: Okay, thanks. Ms. Peachy.

5 MS. PEACHY: Thank you, your Honor. As you know from
6 our sentencing memo, we are asking the Court to impose a
7 Guideline sentence in this case, followed by the maximum term,
8 three years of supervised release, with special conditions,
9 including a community service component.

10 I will address the special conditions just raised by
11 the Court and the government now. We have no objection to a
12 no-contact order, victims, victims' families, attempted
13 victims. That's fine, of course. No objection to mental
14 health treatment. That is certainly necessary and appropriate
15 here. And no objection to the other two special conditions
16 proposed by Probation, including the condition that requires
17 Mr. Waithe to only use his true name.

18 With regard to the Internet use being restricted to
19 use that is monitored by Probation, I think there has to be
20 some parameters set there. In the child pornography context,
21 for example, the use of the monitoring software is not to just
22 monitor everything the person is doing online ever. It's
23 designed to alert Probation the person is viewing sexually
24 explicit materials, and it has that limitation to it.

25 THE COURT: So what would you suggest? That's why I

1 wanted him to list it first before you got up to speak. So how
2 would you limit it -- and maybe I could hear from Probation on
3 this -- limit it to requests for photographs or solicitations
4 of women?

5 MS. PEACHY: I don't know if the monitoring software,
6 how much wiggle room they have with the monitoring software,
7 but, again, my concern is that it not sweep so broadly that
8 Probation is just monitoring all of his Internet usage across
9 the board.

10 THE COURT: I agree it needs to be limited, but I'm
11 trying to come up with a --

12 MS. VICTORIA: Your Honor, the way that we word the
13 condition when it's applied in other scenarios is, "You must
14 allow the installation of computer Internet monitoring software
15 on approved Internet-capable devices, but may still use a
16 computer for work purposes that's been previously approved by
17 Probation. The program will be used and designed to identify
18 for the Probation Office the viewing, downloading, uploading,
19 transmitting, or otherwise using any images or contents of a
20 sexual or otherwise inappropriate nature. You must not attempt
21 to remove or defeat the systems and must allow the probation
22 officer to examine such computer and received data from it in
23 any reasonable time."

24 Now, there's a couple other conditions that follow
25 with that such as, "You must advise anyone using the monitoring

1 Internet-capable devices that those devices are being monitored
2 by Probation. You must not possess or use any computer or
3 Internet-capable device without prior approval from Probation."

4 THE COURT: That includes smartphones, right?

5 MS. VICTORIA: Exactly. "Any such device shall not be
6 used to knowingly access or view sexually explicit materials,
7 as defined in 18 U.S.C. --"

8 THE COURT: Well, see, I'm not sure we need that so
9 much because that's really primarily geared towards treatment
10 for child pornography. I mean, if something is appropriately
11 online, I don't know if I need to do that.

12 MS. VICTORIA: I think at least the first part of that
13 last one, that he not possess or use any computers or Internet
14 devices without approval by Probation.

15 THE COURT: Yes.

16 MS. VICTORIA: That should be in there.

17 THE COURT: Yes, I agree. All right. All right, so
18 I'm sorry, I interrupted you.

19 MS. PEACHY: There's no objection to that type of a
20 condition requiring monitoring software and that Mr. Waithe
21 disclose any Internet-capable devices to Probation, as long as,
22 like I said, it's limited to a specific purpose and specific,
23 you know, carefully tailored monitoring, not just carte blanche
24 monitoring.

25 THE COURT: Sure. I mean, if he's ordering clothes on

1 the Internet --

2 MS. PEACHY: Correct, right.

3 THE COURT: But anything involving women and girls and
4 inappropriate pictures should be monitored.

5 MS. PEACHY: I think the government requested a
6 prohibition from basically receiving media from anybody, but I
7 would object to that. I think it's overly broad, and I think
8 the use of the monitoring software --

9 THE COURT: Why wouldn't the monitoring just capture
10 that?

11 MR. DEITCH: I think it's more about -- it wasn't
12 about receiving. It was about requesting: He should not be
13 requesting photos, videos, media from anybody.

14 THE COURT: Right, but I don't think, like --

15 MR. DEITCH: Including in person.

16 THE COURT: That's fine, but I don't know that I want
17 to ban him entirely from social media. I don't know enough
18 about -- that's how a lot of people -- I don't know enough
19 about it to know if the monitoring will capture what he does on
20 social media, so perhaps I should ask. In other words, could
21 he possibly go onto social media and find these pictures
22 without your knowing it? I admit my ignorance. I don't know
23 whether the monitoring will do that.

24 MS. VICTORIA: I will say, the monitoring software is
25 not perfect. The monitoring software works off of certain buzz

1 words, works off of certain images. Would he be able to do
2 something perhaps that the monitoring software would not
3 capture? It's possible, your Honor. I don't think in this
4 case the government's request that he not request photos,
5 images, videos, or other media is inappropriate.

6 THE COURT: No. I thought you asked for a total ban
7 on social media.

8 MR. DEITCH: I think, your Honor, we're talking about
9 two restrictions. The first is that he not request any images,
10 videos, media from anyone.

11 THE COURT: I agree.

12 MR. DEITCH: Not request.

13 THE COURT: I see.

14 MR. DEITCH: And then, second, that he not have social
15 media. And there's a big difference between using the Internet
16 to find a job or do a job and using the Internet to use social
17 media apps.

18 THE COURT: That's right. I understood there was a
19 distinction. That's what I'm asking about. Would your
20 monitoring software pick up social media?

21 MS. VICTORIA: I'm not sure that it would specifically
22 identify social --

23 THE COURT: Do you know?

24 MS. PEACHY: Yes. I've had clients whose probation
25 officers have alerted me about conduct going on on, like,

1 Facebook, so I know the monitoring software picks up activity
2 on social media sites and social media apps.

3 MR. DEITCH: Your Honor, I think, given that one of
4 the primary purposes of social media is to view other people's
5 photos, in this case he should not be --

6 THE COURT: Well, can I just say, I understand that
7 I'm older than most of the generations who are sitting here on
8 this, so I don't really know what you can do or not do. Why
9 don't I say "monitoring of all Internet and social media
10 sites," and if Probation decides that that's not sufficient to
11 stop photo sharing -- we'll have the additional limitation on
12 asking for photos -- they can ban social media.

13 MR. DEITCH: I hate to press --

14 THE COURT: You know, I'm sorry, I haven't even gotten
15 to her main argument yet, but I don't want to overdo it so that
16 when he comes out he can't function at all -- that's not in the
17 public interest -- but I do want him monitored for all the
18 horrible things that happened with these women.

19 So perhaps let's finish the argument, and I'll say how
20 I'm going to word it. And there's always a possibility of
21 motion to modify conditions of release if it turns out not to
22 be correct, okay, because I'm not prepared to -- I don't know
23 what the monitoring does.

24 MR. DEITCH: Understood, your Honor.

25 THE COURT: Okay, I don't. All right, so, Ms. Peachy,

1 let's get -- I forget, the other one was the --

2 MS. PEACHY: The employment restriction, and again my
3 concern is that it be narrowly tailored and specific to the
4 concerns in this case. I think the best way to handle that is
5 that any employment be subject to Probation's approval first,
6 and that Probation be the ones to decide whether or not
7 disclosure to the employment of Mr. Waithe's past conduct is
8 necessary, whether or not that employment is appropriate for
9 him, but to leave that to Probation. I know that's a condition
10 that we see in other types of cases, that Probation has the
11 discretion to approve employment before any job is accepted.

12 THE COURT: I think what I will do is say "No
13 employment during supervised release with any job that involves
14 situations of intimacy or trust with women and girls for the
15 three years. With respect to other employment, he should check
16 and get it approved by Probation."

17 MS. PEACHY: Okay. So getting into my argument, your
18 Honor --

19 THE COURT: Yes, let's get into it. I know we did
20 this a little backwards.

21 MS. PEACHY: -- a Guideline sentence of imprisonment
22 is appropriate here, followed by a maximum term of supervised
23 release with the conditions that we were just talking about,
24 which are carefully tailored to this case and serve a lot of
25 legitimate purposes. The Guidelines, as you know, are always

1 the starting point in any case, and an upward variance is
2 really only appropriate in cases where the Guidelines do not
3 already fully capture the conduct at issue in the case. Here,
4 the Guidelines account for everything Mr. Deitch raised in his
5 argument: There's an enhancement for number of victims.
6 There's an enhancement for abuse of position of trust. There
7 is an enhancement for obtaining personal information, here the
8 photos. There is an enhancement for the sophisticated nature
9 in which these crimes were committed, the use of anonymized or
10 fake social media accounts; and there's a Guideline for the
11 cyberstalking conduct as it relates to one of the victims.

12 The government's argument focuses on the 2B1.1
13 Guideline. As I pointed out in my memo, though, it is the
14 cyberstalking Guideline that's driving the Guideline range
15 here. It's not the 2B1.1 Guideline. The 2B1.1 Guideline, if
16 we were looking at that by itself --

17 THE COURT: Just so people understand, that's the
18 general fraud Guideline which covers, as the prosecution
19 pointed out, a broad variety of crimes.

20 MS. PEACHY: And I agree that because that Guideline
21 looks to monetary loss, that it does not capture the loss in
22 this case. I agree with that. However, what I disagree with
23 is what that means in terms of the sentence that the Court
24 should impose. The 2B1.1 Guideline here, if it was just a
25 2B1.1 case, would result in a Guideline sentencing range of

1 only 8 to 14 months. So, yes, that's inadequate, I agree. But
2 to get to the point where we are with the cyberstalking
3 Guideline controlling, you would have to add an enhancement for
4 a monetary loss of between \$40,000 and \$95,000, and I think
5 that's enough. I mean, it's impossible to equate the value of
6 these photos in terms of a dollar amount, I understand that,
7 but that's a six-point upward departure from what the 2B1.1
8 Guideline is in this case. It gets you to this 27- to 33-month
9 Guideline, and I think that's adequate here in terms of an
10 upward variance under the 2B1.1 Guideline.

11 The other grounds for departure under the Guidelines
12 that the government cites also have been rejected by Probation
13 already and also just do not apply in this case. Those were
14 upward departure provisions under Chapter 5K.

15 The government cites no cases to support their request
16 for a sentence that's three times higher than the applicable
17 Guideline sentencing range. That type of upward variance is
18 basically unheard of, and, like I said, they cite no law to
19 support that type of an upward variance.

20 There was a recent upward-variance case that went to
21 the First Circuit, *United States v. Gary Leach*. It was decided
22 in December. The cite is 89 F. 4th 189. Now, Mr. Leach was
23 charged with cyberstalking two victims and one count of
24 extortion as to one of the victims. Every case is
25 distinguishable, but what Mr. Leach did was, he surreptitiously

1 videotaped online sexual video chats with women; then used
2 those recordings to make these women basically engage in
3 further sexual activity on the video chats, kind of held them
4 hostage for a long period of time with the threat of releasing
5 these videos that he had taken of them engaging in sexual
6 conduct in an effort to get them -- and he did successfully --
7 to get them to engage in sexual acts online at his direction.

8 It was Judge Angel Kelley who sentenced Mr. Leach.
9 There was a 30- to 37-month Guideline sentencing range in that
10 case, a little bit higher than the one here, and she imposed a
11 sentence of 42 months, so five months higher than the Guideline
12 sentencing range. So, again, an upward variance case -- it was
13 upheld by the First Circuit -- but nowhere near the type of
14 upward variance that the government is asking for here. And,
15 again, what the First Circuit said about upward variances is
16 that "A sentencing court must indicate why the defendant's
17 situation differs from the mine run of cases when basing an
18 upward variance on a factor generally accounted for by the
19 Guidelines."

20 THE COURT: Well, can I ask you, the two things I was
21 thinking about that I found deeply troubling, which might
22 support -- that's why I started off saying I'm seriously
23 considering an upward variance -- first of all, there are over
24 fifty victims, which is five times the amount of victims that
25 were accounted for in the Guidelines, which is ten, so it's a

1 huge number, and that doesn't even deal with the attempts. And
2 the second is that he did it again when he was released. Just
3 I was struck by that. It's as if it didn't matter that he was
4 caught. It's not like he sort of acknowledged the harm by,
5 "Oh, my God, how did I do this? I've ruined not just my life
6 but their lives," but he did it again, and those two things
7 struck me as so salient to me.

8 MS. PEACHY: So I'll address each, your Honor. So,
9 again, I did cite some comparable cases. I tried my best to
10 find cases that were cases that were similar. And I understand
11 every case is different. Again, the government has provided no
12 comparable cases, so I did the best to come up with what I
13 could. And I will note that many of those cases involved more
14 victims, more images than what we have here. None of them, I
15 believe, involved a sentence anywhere close to what the
16 government is requesting and certainly did not involve any
17 upward variances either. And even in fraud cases, 2B1.1 cases,
18 there are often many more than ten victims; but that's what the
19 Guidelines have said, that's what the Sentencing Commission has
20 said is the aggravating point, when there are ten or more.

21 As far as his conduct while on release and his use of
22 Instagram to communicate with women and get to the point where
23 he began asking for photographs from these women, I get it,
24 that is disturbing, and that is why we're not here saying that
25 no further incarceration is necessary because there does have

1 to be some incarceration. It's just a matter of how much
2 incarceration. At that point Mr. Waithe had not been
3 incarcerated for very long at all, so, yes, a month and a half
4 in jail was not enough, and maybe we do need better monitoring
5 in place when he is out of jail, but it doesn't mean we have to
6 go up, again, three times the Sentencing Guidelines? No. It's
7 hard to predict -- the Court doesn't have a crystal ball --
8 what amount of time is going to be enough to specifically deter
9 somebody, but, again, we can be grounded in the Sentencing
10 Guidelines, and we can fashion specific conditions of
11 supervised release to address those concerns and keep him on
12 supervised release for the maximum amount of time, here, three
13 years.

14 I really don't understand what the government's
15 sentencing recommendation is tethered to at all. It's not,
16 again, tethered to the Guidelines. It's not tethered to any
17 comparable cases. I don't understand the logic to it.

18 If the government disagrees with the laws that apply
19 to the sentencing in this case or the Guidelines in this case,
20 then the way to address that is through Congress or the
21 Sentencing Commission. It is not by asking the Court to step
22 outside of the law, to step outside of the Guidelines entirely,
23 to basically ignore 3553(a) factors, which include consideration
24 of the Sentencing Guidelines, which is basically what their
25 request amounts to.

1 Now, I want to make clear that nothing about our
2 sentencing recommendation is meant to minimize the crimes
3 committed by Mr. Waithe. It is instead a recommendation that
4 rests on that foundation called for by the Sentencing
5 Guidelines and sentencing laws. That is why we're asking for
6 this sentence. It is not a free pass. It is not condoning the
7 behavior in any way. It is not excusing it because he is a
8 male and these are female victims. It is instead the sentence
9 that the law calls for, and that's why we're asking for it,
10 your Honor.

11 I understand and appreciate that there will be
12 lifelong consequences for some of the victims of Mr. Waithe's
13 conduct, that these women's private photographs were stolen and
14 are now out on the Internet and we don't know where they are,
15 if they've been disseminated or what's happened to them, and
16 unfortunately that is part of the price of living in a digital
17 age. But the harm to them, is that going to be repaired by
18 sending him to prison for a really long time? Does that do
19 anything except satiate their anger? Will it give them the
20 closure and peace that they really want?

21 As you know from Restorative Justice and your work on
22 the RISE Committee, one of the shortcomings of our criminal
23 legal system is that it does not provide an opportunity for
24 real healing or for one to repair harms. So, yes, you must
25 punish him, but you also have to realize that he is a member of

1 our community, and Mr. Waithe will be returning to that
2 community once again. He has a brother. His three siblings
3 with whom he is very close are all here.

4 THE COURT: Are some of his family members here?

5 MS. PEACHY: They are, your Honor. They traveled a
6 long way to be here today.

7 THE COURT: Thank you.

8 MS. PEACHY: All three of his siblings. They're a
9 very close family. His father is also here. His mother, who
10 has MS, was not up to making it to court. His parents are good
11 people. They're immigrants. His father has worked all his
12 life as a manager at Walmart, still works there even though his
13 wife is now unable to work.

14 Mr. Waithe is eager to get home to his family. He is
15 lucky to enjoy the support of his family. He plans to live
16 with his parents when he is released to help care for his
17 mother while his father has to continue to work to financially
18 support the family. Of course, he has other things that he
19 wants to do with his life to try to move on, but that is one
20 thing that he looks forward to.

21 Mr. Waithe's family has had to sit here and listen.
22 Actually from day one, they've been present at court
23 proceedings, and they've listened to what people have said
24 about their loved one, about their family member, and it hurts.
25 I don't think it's very useful to just call him names, throw

1 labels on him and things like that because, like I said, he is
2 a loved member of his family, and he is a member of our
3 community, and we have to figure out what to do with him
4 because he is going to be part of the community once again.

5 Sentencing under our system of justice is a balancing
6 act. We don't stone people in the public square anymore. Like
7 I said, calling him names, using every superlative in the
8 thesaurus is not helpful in finding that balance that 3553(a)
9 requires of the Court.

10 His punishment goes well beyond the number of months
11 you'll sentence him to prison. As a young man with a bright
12 future, he now will forever bear the mark of being a federal
13 felon. That is something that will follow him for the rest of
14 his life. In addition, this case has gotten much publicity.
15 If you type in his name on the Internet, this is the first
16 thing that shows up, numerous articles with his name reporting
17 on this case and his conduct here.

18 His life going forward will be quite different, and he
19 knows that, but there are real consequences here. There is not
20 only a federal prison term ahead of him, but there are these
21 lasting consequences that will follow him for the rest of his
22 life.

23 Part of this prosecution has also been that Mr. Waithe
24 has heard time and time again, including today, about the
25 extent of the damage he has done to these young women. And I

1 admire these young women for coming forward and speaking here
2 in court today. I know that wasn't easy to do. And to the
3 extent that their comments were directed at Mr. Waithe, I can
4 tell you that he hears, he hears them, he has heard them; and
5 he has taken time, the time in jail, to do a lot of thinking
6 and reflecting and reading and writing about what he has done
7 and about the harm he has caused these women. And I expect him
8 to speak for himself when I'm done speaking, and I think you'll
9 be able to hear that from him. He has already written a letter
10 of apology that I provided the government to the victims. He's
11 read about Restorative Justice.

12 THE COURT: Stop there. Is it different than the
13 letter I have?

14 MS. PEACHY: Yes, it is different. I didn't submit it
15 to the Court. It was for the -- I gave it to the government so
16 that the government could provide it to the victims, but
17 Mr. Waithe is going to speak, and that will be different than
18 what he submitted to the Court.

19 He's accepted responsibility for these crimes in a
20 very real way. It's not just by pleading guilty because he
21 thinks he'll get a lesser sentence. Like I said, he's done a
22 lot of thinking, reading, writing, learning about his past, the
23 damage he has done, and what he can do going forward. He's
24 agreed to forfeiture of all the social media accounts, and he's
25 willing to abide by the conditions of supervised release that

1 we just went over.

2 Punishment is just one aspect of sentencing. A
3 Guideline sentence is the appropriate sentence here. A lengthy
4 term of supervised release will continue to protect the public,
5 it will continue to deter Mr. Waithe from engaging in this type
6 of behavior in the future, but it will also provide him with
7 necessary treatment, and it will help guide him as he
8 reintegrates into society.

9 The Court must fashion a sentence that is sufficient
10 but not greater than necessary, a sentence that is minimally
11 sufficient, as some courts have said. That sentence here is a
12 Guideline sentence.

13 THE COURT: Thank you.

14 I would almost -- nature calls -- like to finish the
15 sentencing before a break. So I don't want in any way to limit
16 Mr. Waithe's opportunity. How long do you estimate that we
17 would probably be going?

18 MS. PEACHY: I don't think his statement is terribly
19 long, your Honor.

20 THE COURT: Okay, let's try and power through it.

21 MS. PEACHY: Yes, that's fine.

22 THE COURT: All right, thank you.

23 THE DEFENDANT: First and foremost, I would like to
24 apologize to the victims. I know obviously my words today will
25 not do justice in terms of reversing the damage that I've

1 caused, but since I've been incarcerated, you know -- and to
2 make clear, I'm not a victim of any case -- but since I've been
3 incarcerated, I've had so much time to think about what I've
4 done, and hearing your statements today has impacted me further
5 than any incarceration sentence could because at the end of the
6 day, incarceration is just time to think and, you know, pass
7 time, but, you know, there's no way for me to put into words
8 just how impactful my actions were on your lives and will
9 continue to be on your lives. So I want to formally apologize
10 for that. And, like I said, I've been thinking since April 7,
11 since the day I was arrested, how to turn from my actions, and
12 I know that words will not play -- will not play enough of a
13 role to what needs to be done.

14 Like I said, and Jane said it, since I've been arrested,
15 you know, I know -- the first thing I told Jane when I talked
16 to her was that I have a problem. And I have addressed that
17 with my family, I've addressed that with anybody who I love,
18 because I understand the life that I had and I understand the
19 life that I threw away, and, more importantly, I understand the
20 severity of my actions.

21 And so every day I've been incarcerated, I haven't been
22 thinking about the life I've lost. I've been thinking about
23 the effect that I've had on the victims because I've never been
24 the type of person to want to harm anybody in this type of way.
25 And through the process, like I said, I do not want to make it

1 seem like I'm diminishing anything, but through the process for
2 me, especially the first few months of incarceration were to
3 the point where, you know, living was -- was -- was hard. And
4 even before I even got to the job at Northeastern, living for
5 me was hard. And like I said, when you're in a space of
6 depression and anxiety and suicidal thoughts, when you become
7 suicidal, you also become so harmful to others because you
8 don't care for your own life. So my pattern of behavior became
9 a path of destruction that so many women were brought into and
10 my vices and my depression, and it all just started to mix into
11 a cocktail that obviously brought me here. And it wasn't
12 until, you know, my life was stripped away from me, it wasn't
13 until I was taken away from my family, it wasn't until I hurt
14 the people that loved me most that I've realized how much
15 damage I've caused from just being away from the person that I
16 know I can be.

17 And so to agree with everything you've said -- and I
18 told Jane this -- I don't feel as though I deserve to go home
19 right away. I don't deserve that. I want to get better.
20 That's been my priority from the beginning. Unfortunately in
21 the system, there's not enough resources for me to work on
22 myself, so I've had to do it through reading and writing; but
23 from day one, I've always wanted to get better. I've always
24 wanted to come back to the person I know I can be. So like I
25 said, I do -- I do appreciate the victims speaking because it's

1 even more impactful for me now, and it tells me how long I have
2 to go and how far I have to go in my recovery.

3 I know addiction, and it looks different, and
4 depression, it looks different for different vices; but for me,
5 you know, from 2016 on, from my point as being an athlete and
6 moving on, I didn't prioritize my own mental health and my own
7 things I need to prioritize. And, like I say, I swept so many
8 people into my path of destruction, and it could have looked
9 different for me. I could have not even been standing here.

10 I'm not saying that to, you know, diminish what I've done or to
11 say that the victims were collateral damage; but what I'm
12 saying is that, you know, I understand fully the severity of my
13 actions, and I agree with everything that the Court has to do
14 in order for me to get better. I do not necessarily think I
15 will be getting much better while I'm incarcerated, but I do
16 want to spend the time to work on myself, and that's what I've
17 been doing since the first day I was incarcerated.

18 So this is -- this is as much as I can take
19 accountability for my actions. Like I said, my words only can
20 go so far. I know the rest of my life will have to show that
21 I've changed, but, you know, there's not more to be said about --
22 I mean, my sister is my best friend, and to think about the
23 fact that I can treat women that way and all of this is just
24 so -- it's not who I am. It's not who I've ever been. I've
25 allowed myself to get to a point where I've just been so

1 destructive, and obviously you've seen that.

2 So basically what I'm trying to say is -- and I'm
3 going around in circles -- what I'm trying to say is that I
4 respect the Court's decision, whatever decision that you are to
5 make. I would obviously like to ask for a fair decision, but I
6 have not shied away from being incarcerated because it's a part
7 of the justice system that needs to happen. But, you know, I
8 would love to get back to my family as well and start to work
9 on myself. I have no desire to move back to my old life,
10 anything in my old life, anything on social -- I've lost
11 everything, and that's fine with me because now I can get a
12 fresh start and be a better person and be a better man.

13 So once again I would like to apologize formally, and
14 I hope -- I hope my words has at least done enough to know that
15 when I'm sitting in a jail and I'm sitting in the federal
16 prison, you can know that I'm working on myself; I'm not just
17 taking this time to spend, you know, counting the days till I
18 get home. It is about me getting better. I do believe that I
19 have a purpose in this world, and it is to make the world a
20 better place, and I'm going to do it better and right this
21 time. So that's all I can say.

22 Thank you, your Honor.

23 THE COURT: Thank you. So it's a very important day
24 listening to everybody this morning. I'm very impressed with
25 how brave the people are coming forward. A lot of that was

1 extremely personal, and it was disclosed in a very personal way
2 about what was happening when you were very young and very
3 vulnerable. Now, you're still very young, I should say from my
4 vantage, but it was when you were just right out of your home
5 and onto a college campus, and you're very brave in coming
6 forward today.

7 I also say about you, Mr. Waithe, I didn't like your
8 letter that much that you sent me because it was all about the
9 books you're writing and the foundation you're going to found,
10 and I didn't feel like you owned at all the harm that you did
11 to these women, and I thought your statement just now came a
12 lot closer to doing that.

13 So let me go through the way you have to sentence
14 under the Federal Guidelines. As I mentioned before, the
15 sentencing range under the Guidelines, in the way I've
16 calculated it and the way Probation has calculated it, is 27 to
17 33 months. I am going to upwardly depart from that Guideline
18 range because of the factors set forth in 3553(a) that I
19 consider.

20 First is, in this case, the nature and seriousness of
21 the offense. I was absolutely stunned by the number of victims
22 that existed in this case, far beyond the seven who were brave
23 enough to come here and speak. I'm not saying that the others
24 weren't brave enough. I'm simply saying that as I saw the
25 numbers -- and the government was very specific here -- there

1 were fifty-one women for whom there was successful -- I don't
2 know if you use the word "theft" or unconsented taking of
3 photographs and redistribution on social media or the Internet,
4 five where there was aggressive conduct, and seventy-two
5 attempts. That's really much broader than most of the cases
6 that were cited to me and really a dramatic increase in the
7 number of victims than the Guidelines contemplated at ten.

8 And these weren't just victims who lost some money.
9 These were people who lost their privacy and their sense of
10 safety, and really a destruction of trust. Many of them really
11 cared for you, Mr. Waithe. They really cared for you, and you
12 just broke some of their hearts, and you could see that in the
13 kinds of statements that were made here. So it was very much a
14 breach of trust, a very serious offense.

15 And as I said before, beyond the number of women
16 affected, the fact that you did it so soon after getting out?
17 What was that about? I mean, I very rarely see something like
18 that. It must show some sort of mental health issue, like an
19 obsessiveness or something that you couldn't stop doing it, and
20 I'm hoping you do work on that mental health.

21 With respect to who you are as a person, which is
22 another important factor, you've been blessed with great
23 athletic ability, and you were blessed in the ability to work
24 with women who have great athletic ability. You went into one
25 of the finest universities in our country. You were at a

1 top-notch track and field team. I mean, that's a blessing that
2 you have skills and they have skills, and you just trampled on
3 that opportunity. I'm hoping at some point, you know, your
4 natural gifts, athletic gifts that most people don't have, can
5 be used again, but it sure can't be used in coaching, and I
6 think that's part of who you are.

7 I was impressed with the letter from your parents, who
8 care and seem to be moral and trustworthy people. You were
9 raised in a good home. You had a college education. You've
10 had so much actually, so much, and I don't know where this came
11 from. I think you maybe disclosed the clue here, which is
12 depression, maybe, you disclosed that to me. I notice that
13 you've written two books about, I don't know, helping
14 incarcerated prisoners get a better view of the world that's
15 open to them, and you talk about maybe helping people with
16 their mental health. That's a laudable goal, but you've got to
17 start with you. Before anyone would ever trust you on a
18 foundation, you have to deal with your own mental health issues
19 because something led you down this path as somebody who had so
20 much.

21 I did not go as high as the government requested
22 because I do think that the Guidelines are an important anchor,
23 and it was just too high a jump, I felt, it was
24 disproportionate, but I do think five years is an appropriate
25 sentence. It basically increases the Guideline levels by about

1 six levels, I think.

2 I am going to impose quite a few conditions, the full
3 length of the supervised release. I'm going to require that
4 you not contact any of the victims, either who spoke here or
5 whose information you gathered or whose pictures you
6 redistributed. You cannot contact any of them or their families
7 or their employers. It's a complete wall between you and them.

8 And I'm hoping that -- you're sitting here, and the
9 victim witness advocate will tell the ones who aren't here that
10 if there's any attempted contact at all, that they are to get
11 in touch with the Probation Department.

12 MR. DEITCH: And, your Honor, just to be clear, that
13 includes attempted victims as well?

14 THE COURT: Yes, yes, of course. The second is that
15 you get mental health treatment. You obviously need it.
16 Whether it's for your depression or some sort of sexual
17 obsession, you just need it.

18 The third is you use your true name and true
19 identifying information; that you pay the costs of any
20 monitoring of the Internet; that your Internet and social media
21 be monitored. If in fact you can't monitor social media by the
22 time you get out, Probation can move for a more extreme
23 sanction, which is no social media, but I think the better
24 course is for you to monitor it. So you install all equipment
25 to monitor. You inform Probation all about social media that

1 you have -- excuse me -- everything from smartphones to iPads
2 to Internet, that you inform Probation about all of your --
3 what would you call it? How do you refer to it?

4 MS. VICTORIA: Computers and Internet-capable devices.

5 THE COURT: Thank you. That you take no jobs
6 whatsoever in those three years having anything to do with
7 women and girls; that you get clearance from Probation about
8 any jobs that you do get. You're strong, you're healthy; I'm
9 sure you will be able to get some jobs other than in coaching
10 and that sort of thing. And I'll let Probation decide whether
11 there's a need for contact in advance. So, for example, if
12 it's manual labor, I'm not sure that there is, but, for
13 example, if it was McDonald's, maybe there is. I mean, I don't
14 know. I leave that up to the discretion of the Probation
15 Department.

16 So I think it's not necessary to impose community
17 service. I will be imposing a \$1,000 fine to be paid for each
18 year of supervised release. That can be paid off at the end,
19 or it could be paid off as you go. You'll be issuing a --

20 MS. VICTORIA: Did you say a fine or the special
21 assessment?

22 THE COURT: Well, the special assessment is -- is --

23 MS. VICTORIA: Is \$1,500.

24 THE COURT: Oh, I forgot about that. That's quite a
25 bit, isn't it? He has no financial assets?

1 MS. VICTORIA: He doesn't.

2 THE COURT: So you're not recommending a fine at this
3 point?

4 MS. VICTORIA: I'm not sure that he has the ability to
5 pay a fine.

6 THE COURT: Given the assessment is so high, I'll just
7 go with the special assessment. Is there anything I have
8 forgotten other than the notice of appeal rights?

9 MR. DEITCH: I think just one special condition the
10 government is requesting, and that was the no requests in any
11 form for photos, images, or other media from other people.

12 THE COURT: Yes, yes, no requests at all for any
13 photographs from anyone.

14 So anything else?

15 MS. PEACHY: I just want to put on the record that I
16 think the sentence is unreasonable, that the variance is not
17 warranted, especially to that degree in this particular case.

18 I also object to some of these special conditions of
19 supervised release that I think are too broad and too vague in
20 this particular case.

21 THE COURT: Well, let me put it this way: I don't
22 think you've articulated why it's too broad, so help me on that
23 one. That's why I went through it first. I tried to tailor
24 it.

25 MS. PEACHY: So I was trying to catch the language,

1 but you said no job with women or girls?

2 THE COURT: No job that exposes him as a mentor,
3 coach, teacher, intimate relationships, trust relationships
4 with women or girls.

5 MS. PEACHY: I think something like that would be more
6 appropriate.

7 THE COURT: That's fine. That's a good suggestion.
8 In other words, I don't care if there's a woman who's a cashier
9 right next to his, for example. Fair enough, fair enough.

10 MS. PEACHY: And then the condition that the
11 government asked for that no soliciting or receiving of any
12 kind of photographs or any -- I mean, that could be, like,
13 anything. That could be a picture of a house or vacation
14 photos from his sister or --

15 THE COURT: How would you phrase it? That's why I
16 asked you about all these.

17 MS. PEACHY: Well, I think that the monitoring
18 software that Probation will have will cover it because it will
19 alert if there are images that he's receiving, looking at, if
20 there's even language that he's using in communications where
21 he's looking for photographs from women. I think that the
22 monitoring software is sufficient.

23 THE COURT: No, but I also have to ban it. I agree.
24 He apparently loves his sister. She's here. I mean, I don't
25 care if he gets a picture of his sister on vacation. Any

1 suggestions on how to word it, like "of a sexual nature"?

2 MR. DEITCH: I mean, I think "of nonfamily members."
3 I cannot think of a scenario where it would be okay for him to
4 be requesting a photo from anybody who's not a family member
5 for the three years of supervised release. And also I believe
6 the monitoring software --

7 THE COURT: Well, I don't care if he asks for pictures
8 of guys. I mean, that's not where he's going with this. Why
9 don't I just say "pictures of women and girls of a sexual or
10 inappropriate nature" is I think how I'll word it.

11 MR. DEITCH: I think that's fair, your Honor. I was
12 going to just note, I think the monitoring software that we're
13 talking about was installed on the device that he was using
14 when he was on pretrial release, so obviously there are flaws
15 in that system.

16 THE COURT: Well, isn't that how they caught him? Is
17 that how they caught him, with the monitoring?

18 MR. DEITCH: It was a search warrant of his Instagram
19 account.

20 MS. PEACHY: It wasn't the -- he didn't have
21 monitoring software at that time.

22 THE COURT: Oh, I see, okay. Okay, because that's why
23 I'm flagging all these. I don't want them to be too broad. So
24 if in fact some of these turn out to be unmanageable or too
25 broad, someone can move to amend them on supervised release.

1 I'm trying to be as narrow as possible, given the circumstances
2 of the crime, so I'm open to suggestions.

3 I'm going to have Maryellen work with Probation as to
4 how to word it, and maybe I'll circulate it to you first to get
5 the exact right wording. I think that would be helpful. We
6 can share that.

7 So do you want to read the notice of appeal rights.

8 THE CLERK: Sure. The Court hereby notifies you of
9 your right to appeal this sentence. If you cannot afford the
10 cost of an appeal, you may move to proceed in forma pauperis.
11 Any appeal from this sentence must be filed with fourteen days
12 of entry of judgment on the docket.

13 Do you understand these rights?

14 THE DEFENDANT: Yes.

15 THE COURT: And a recommendation to?

16 MS. PEACHY: As close to family in Baltimore as
17 possible.

18 THE COURT: As close as possible to Baltimore?

19 MS. PEACHY: Yes, please.

20 THE COURT: Is there any particular training program?

21 MS. PEACHY: I don't think so, your Honor. I think
22 the biggest need is the mental health treatment.

23 THE COURT: I agree with that.

24 MS. PEACHY: There really hasn't been any available.
25 There's really no counseling type of treatment at Wyatt. They

1 just offer medication, so mental health treatment would be the
2 most productive.

3 THE COURT: And maybe we'll add there "with a mental
4 health program."

5 Okay, this transcript may well be public. In fact,
6 it's likely to be public, but I'm hoping that we will -- I
7 think nobody mentioned their full names. I think only one
8 person mentioned a first name, and so all the victim letters
9 will be anonymous; but the letter from the defendant and his
10 family, those will be public. Thank you.

11 MR. DEITCH: Thank you, your Honor.

12 THE COURT: Thank you.

13 THE CLERK: All rise.

14 (Adjourned, 11:36 a.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 78 inclusive, was recorded by me stenographically at
the time and place aforesaid in Criminal No. 21-10342-PBS,
United States of America v. Steve Waithe, and thereafter by me
reduced to typewriting and is a true and accurate record of the
proceedings.

Dated this 14th day of April, 2024.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER

United States v. Kyle Svara

This questionnaire is being requested to aid the nited States Attorney's Office and the Federal Bureau of Investigations in determining correct loss amounts for individuals identified as victims of a matter being investigated against Kyle Svara

NAME:

[REDACTED]

HOME RESS :

[REDACTED]

TELEPHONE NUMBER:

[REDACTED]

MAIL RESS:

[REDACTED]

-
1. Did you experience any out of pocket expenses which directly relates to the crime.

—

Date(s) 3-31-2026

Location

[REDACTED]

2. Please itemize your total costs

Grand total: \$67.00, email of reciept is attached

United States v. Kyle Svara

This questionnaire is being requested to aid the United States Attorney's Office and the Federal Bureau of Investigations in determining correct loss amounts for individuals identified as victims of a matter being investigated against Kyle Svara.

Please explain the direct causation to these costs and the crime.

[REDACTED]

[REDACTED] given the nature of Kyle's crimes, I do not trust for a moment he will not once again be motivated by money or sexual gratification prompting him to re-offend.

[REDACTED] I know all too well the chances of recidivism. Kyle will claim he was a young adult who made a mistake and has since accepted accountability for his wrongdoings. However, let no one forget Kyle did not come forward, he did not report his co-conspirator; no, he LIED to the FBI when questioned and only chose to plead guilty when he had no other choice considering he was in Possession of Child Pornography. Since this incident I have experienced significant distrust in others, abrupt bouts of paranoia, and most importantly, a lack of personal security. It is not just an unfortunate situation or a mistake, this is a violation of my intrinsic safety that continues to impact my thoughts on a daily basis. One of the challenges I continue to face having gone through this is trusting others. [REDACTED] but yet he chose to invade my privacy, humiliate me, victimize me. This was a decision he intentionally made and I do not subscribe to the theory, that this was a "one time thing" or a "mistake."



Please check this box to confirm your understanding this is not a guarantee for restitution, but rather a preliminary request.



Please check this box to confirm all receipts that are available have been attached to this request form.

** Additional documentation for your losses may be requested at a later date. The case agent or a member of the United States Attorney's Office will be in contact if documentation is needed.**

United States v. Kyle Svava

This questionnaire is being requested to aid the United States Attorney's Office and the Federal Bureau of Investigations in determining correct loss amounts for individuals identified as victims of a matter being investigated against Kyle Svava.

—
Is there any additional information that you feel is important for the government to know.

He chose to invade my privacy and the privacy of hundreds of girls to obtain sexual photographs for sexual gratification of himself and the gratification of others.

Although I believe Kyle should be paying for more than just two security cameras, I believe the purchase of the cameras will help ease a small portion of my stress, anxiety and constant paranoia. I have no doubt that Kyle is capable of more heinous acts and his lack of remorse is telling. I request you strongly consider the simple restitution of the two cameras to contribute to the ounce of safety I can still grasp onto.

Thank you for your efforts in the case and I appreciate your consideration.

Send your completed questionnaire to:

[REDACTED]

If you would prefer to mail your return, please send to:

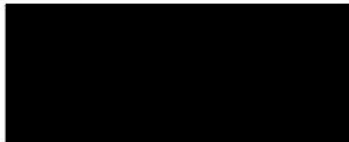
United States Attorney's Office

[REDACTED]

**1 Courthouse Way, Suite 9200
Boston, MA 02210**

Order Summary

Order placed March 31, 2026

Ship to**Payment method****Order Summary**

Item(s) Subtotal:	\$69.58
Shipping & Handling:	\$0.00
Promotion Applied:	-\$6.96
Total before tax:	\$62.62
Estimated tax to be collected:	\$4.38
Grand Total:	\$67.00

Arriving Thursday

ARCCTV Floodlight Camera with Solar Panel, 4MP Battery Powered
Security Cameras for Home Security, 2 Way Audio, PIR Motion Sensor,
2.4G/5G Dual Band WiFi, SD/Cloud Storage(2 Pack)

Sold by: [Slink shop](#)

Supplied by: Other

\$69.58

Exhibit E - Victim 94 Restitution Request

Filed Under Seal