



P R O C E E D I N G S

1  
2 (REPORTER'S NOTE: This hearing was held during the  
3 COVID-19 pandemic stay-at-home restrictions and is subject to  
4 the limitations of technology associated with the use of  
5 technology, including but not limited to telephone and video  
6 signal interference, static, signal interruptions, and other  
7 restrictions and limitations associated with remote court  
8 reporting via telephone, speakerphone, and/or  
9 videoconferencing.)

10  
11 THE COURTROOM DEPUTY: This is Criminal Case 18-391,  
12 United States of America v. Christopher Michael Downs.

13 We have probation officer Kelli Willett. And I'm going  
14 to ask counsel to please state their appearance for the record,  
15 starting with the government.

16 MR. MIRANDA: Good afternoon, Your Honor. Nicholas  
17 Miranda for the United States.

18 THE COURT: Good afternoon.

19 MS. WEST: Good afternoon, Your Honor. It's good to  
20 see everyone. Kira Anne West for Mr. Downs.

21 THE COURTROOM DEPUTY: And Mr. Downs is present,  
22 Your Honor.

23 THE COURT: Good afternoon. And good afternoon,  
24 Mr. Downs.

25 THE DEFENDANT: Good afternoon.

THE COURT: This is a sentencing hearing -- do we  
have Mr. Miranda? Did he go off? All right. Here we are.  
Everyone is here.

This is a sentencing hearing in Criminal Case

1 No. 18-391. Mr. Downs has pled guilty in one -- to one count  
2 of distribution of child pornography in violation of 18 U.S.C.  
3 2252(a)(2). As was previously mentioned, I see that Mr. Downs  
4 is present.

5 I want to make sure that the technology is working.  
6 Mr. Downs, can you hear me?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. And I see counsel for both  
9 the defendant and the government, as well, and the probation  
10 office. It's important that we remain connected to this video  
11 feed, which is sometimes challenging. So I will try to keep an  
12 eye out to make sure that everyone remains connected on the  
13 line.

14 As an initial matter, I need to acknowledge that we are  
15 proceeding via videoconference because in light of the ongoing  
16 COVID-19 pandemic, the courthouse has been closed for in-house,  
17 in-person proceedings, and it will remain so until at least  
18 August 17th, 2020. Chief Judge Beryl Howell has issued a  
19 standing order which authorizes the court to use  
20 videoconference technology for felony sentencing proceedings  
21 during the pendency of the courthouse's closure with the  
22 consent of the defendant and when further delay would cause  
23 serious harms to the interests of justice.

24 So, first, let me just confirm, Ms. West, that Mr. Downs  
25 consents to proceed today by video teleconference.

1 MS. WEST: Yes, Your Honor. I spoke with him on the  
2 phone and explained the procedure to him, and he consents.

3 THE COURT: All right. So let me make my findings  
4 for the record. The Court finds that it is in the interests of  
5 justice to proceed with today's sentencing hearing via remote  
6 technology for a number of reasons, including the fact that  
7 Mr. Downs is currently incarcerated in Virginia and we do not  
8 know when the marshals service will resume transporting  
9 defendants to court for in-person proceedings.

10 In addition, this case has been going on for several  
11 years now, and Mr. Downs, at least as represented to me  
12 earlier, would like to be sentenced so that his case can be  
13 resolved and he can be placed in a BOP facility where he will  
14 have access to programs and services. The Court also finds  
15 that any further delay would result in serious harm to the  
16 interests of this defendant and the public.

17 All right. So turning to the mechanics of our  
18 sentencing process. The Court also received and reviewed the  
19 presentence report and sentencing recommendation from the  
20 probation office and also various documents submitted by  
21 counsel in advance of this hearing: the sentencing memorandum  
22 from the government; the sentence memorandum from the  
23 defendant, including exhibits; and a report of a psychosexual  
24 evaluation at the Bureau of Prisons conducted at the request of  
25 the probation office. It appears that the parties have engaged

1 in the process of reviewing and revising the presentence report  
2 and that that final report is complete.

3 Now, Mr. Downs, this sentencing hearing is going to  
4 proceed in four steps. The first step at today's hearing is  
5 for the Court to determine whether you have reviewed the  
6 presentence report, along with your counsel, and whether there  
7 are any outstanding objections to that report, and, if so, the  
8 Court will resolve those objections.

9 The second step is to determine which sentencing  
10 guidelines and sentencing ranges apply to your case, and the  
11 Court does this by evaluating a number of factors relating to  
12 the offense and also your characteristics, personal  
13 characteristics, including criminal history.

14 The third step is to hear from the government, from any  
15 witnesses, from your counsel, and from you, if you wish to be  
16 heard, about the sentence in this case.

17 And then the last step requires the Court to fashion a  
18 sentence in light of the factors that are set forward in a  
19 statute which is at 18 U.S.C. 3553(a). As part of this last  
20 step, the Court will actually impose the sentence, along with  
21 any other required consequences of the offense.

22 Now, I often -- in fact, always -- talk directly to a  
23 defendant at sentencing and describe the process because I  
24 realize that it is sometimes hard for nonlawyers to follow some  
25 of the more mechanical procedures that we have to go through.

1           But, Mr. Downs, as you listen, I want you to keep in  
2 mind why we're here at this moment and the gravity of this  
3 situation. We are engaged in this process because you have  
4 committed and pled guilty to conduct that constitutes a federal  
5 crime. Today's proceeding is a serious matter because it is  
6 fundamentally about the consequences that you will have to face  
7 as a result of your decision to engage in criminal behavior in  
8 violation of federal law.

9           All right. So turning to the first step in this  
10 process. The final presentence report in this matter was filed  
11 on February 25th of 2020, and the probation office's sentencing  
12 recommendation was filed on that same day. Let me start by  
13 asking Mr. Miranda whether the government has any objection to  
14 any of the factual determinations that were laid out in the  
15 presentence report.

16           MR. MIRANDA: No, Your Honor.

17           THE COURT: All right. Before I ask the same of  
18 Ms. West, Ms. West, let me ask Mr. Downs, sir, are you fully  
19 satisfied with your attorney in this case?

20           THE DEFENDANT: Yes, ma'am.

21           THE COURT: And do you feel that you've had enough  
22 time to talk with her about the probation department's  
23 presentence report and the papers that the government has filed  
24 in connection with this sentencing?

25           THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Ms. West, have you and your  
2 client read and discussed the presentence report?

3 MS. WEST: Yes, ma'am.

4 THE COURT: And are there any disputed issues of  
5 fact; that is, does the defendant have any objection to any of  
6 the factual statements that are laid out in the presentence  
7 report?

8 MS. WEST: No, Your Honor.

9 THE COURT: All right. Hearing no objection, the  
10 Court will accept the factual recitation in the presentence  
11 report regarding the circumstances of the offense and  
12 Mr. Downs's history and characteristics, and, therefore, these  
13 facts as stated in the presentence report will be the Court's  
14 finding of fact for the purpose of this sentencing.

15 Now, the presentence report lays out the probation  
16 office's calculation of the advisory guideline range that  
17 applies in this case. This calculation was done using the  
18 2018 *Guidelines Manual*, and it is as follows: Beginning with  
19 the guideline offense level, Mr. Downs pled guilty to one count  
20 of distribution of child pornography. Therefore, the  
21 applicable guideline in this case is 2G2.2, which has a base  
22 offense level of 22 under the circumstances presented here.

23 According to the presentence report, four specific  
24 offense characteristics apply. There is a 2-level increase  
25 under subsection (b) (2) because some of the material that the

1 defendant distributed involved a prepubescent minor or a minor  
2 who had not attained the age of 4 years -- excuse me -- of  
3 12 years.

4           Second, there's a 2-level increase under  
5 subsection (3)(f) because the defendant knowingly engaged in  
6 distribution of child pornography. There's a 2-level increase  
7 under subsection (b)(6) because the offense involved the use of  
8 a computer or an interactive computer service for the  
9 possession, transmission, receipt, or distribution of the  
10 material, or for access with intent to view the material. And,  
11 finally, there's a 2-level increase under subsection (b)(7)(D)  
12 because the offense involved at least 10 but fewer than 150  
13 images.

14           The government has also represented -- and the parties  
15 agree -- that Mr. Downs has demonstrated acceptance of  
16 responsibility in a manner that entitles him to a 2-level  
17 reduction under 3E1.1(a) and that Mr. Downs timely notified  
18 the government of his intention to plead guilty in a manner  
19 that entitles him to an additional 1-level reduction under  
20 3E1.1(b).

21           Therefore, prior to the consideration of any departures  
22 or variances, Mr. Downs's total offense level as the probation  
23 office has calculated it is 27.

24           Is there any objection to the probation office's  
25 calculation of the offense level?



1 Ms. West?

2 MS. WEST: No, Your Honor.

3 THE COURT: Mr. Miranda?

4 MR. MIRANDA: No, Your Honor.

5 THE COURT: All right. Turning to the applicable  
6 criminal history category. The presentence investigation has  
7 found that Mr. Downs has no prior convictions, and that means  
8 that he receives a criminal history point subtotal of zero  
9 under the *Guidelines Manual*. This puts Mr. Downs in Criminal  
10 History Category I.

11 Are there any objections to this criminal history  
12 calculation?

13 Ms. West?

14 MS. WEST: No, Your Honor.

15 THE COURT: Mr. Miranda?

16 MR. MIRANDA: No, Your Honor.

17 THE COURT: All right. So given a criminal history  
18 calculation of I and an adjusted offense level of 27, the  
19 applicable guideline range under the *Guidelines Manual* is 70 to  
20 87 months of imprisonment.

21 Are there any objections to this guideline range  
22 calculation?

23 Mr. Miranda?

24 MR. MIRANDA: No, Your Honor.

25 THE COURT: Ms. West?

1 MS. WEST: No, Your Honor.

2 THE COURT: All right. So the Court has determined  
3 the applicable guideline range under the sentencing *Guidelines*  
4 *Manual*.

5 The next step is for the Court to consider departures.  
6 The presentence report did not include any departure grounds,  
7 and this is, of course, distinguished from variances. This is  
8 a reason that has been articulated in the *Guidelines Manual*  
9 itself for departing from the guidelines range that I  
10 previously calculated. Neither party mentioned a departure  
11 grounds in their filings, perhaps because of the nature of the  
12 plea agreement, but, in any event, the -- let me hear from you  
13 if there is any intention to -- to articulate a basis for  
14 departure.

15 Mr. Miranda?

16 MR. MIRANDA: Not from the government, Your Honor,  
17 no.

18 THE COURT: Ms. West?

19 MS. WEST: None from the defense, Your Honor.

20 THE COURT: All right. Section 3553 requires the  
21 Court to consider a variety of factors, including the  
22 sentencing range that the guidelines prescribe, which the Court  
23 has just calculated and discussed, and also the applicable  
24 penal statute. So at this point in my sentencings, I typically  
25 take a moment to describe, generally, the applicable statutory

1 and guideline penalties for the offense of conviction.

2 The charge of distribution of child pornography in  
3 violation of 22 U.S.C. § 2252(a)(2) carries a statutory maximum  
4 penalty of 20 years of imprisonment. It also carries a  
5 statutory mandatory minimum penalty of 60 months, or 5 years,  
6 of imprisonment. And because of this mandatory minimum,  
7 Mr. Downs is ineligible for probation under both the statute  
8 and guidelines.

9 Let's see. Who did we lose? Ms. Willett?

10 THE COURTROOM DEPUTY: I think we lost Ms. Willett.

11 THE COURT: All right. Are you able to contact her?

12 THE COURTROOM DEPUTY: Yeah. I sent her an email.

13 THE COURT: I will pause for a second to see if we  
14 can get her.

15 THE LAW CLERK: I'm going to look to see if we can  
16 get her cell phone number, Judge.

17 THE COURT: Thank you.

18 (Off the record.)

19 THE PROBATION OFFICER: Hello.

20 THE COURT: Ms. Willett?

21 THE PROBATION OFFICER: Yes. Yes. Hello.

22 THE COURT: All right. So we will --

23 THE PROBATION OFFICER: Sorry about that.

24 THE COURT: That's all right. We don't see you, but  
25 as long as you can hear, please let me know if probation has

1 something to say. All right?

2 THE PROBATION OFFICER: Thank you, Your Honor. Thank  
3 you.

4 THE COURT: As I was saying, this sentence has a  
5 statutory maximum penalty of 20 years, a mandatory minimum  
6 penalty of 5 years. And the statutes also provide that there  
7 is a supervised release range following imprisonment of at  
8 least 5 years, and the guidelines have that same minimum range  
9 for supervised release.

10 The statute of conviction sets a maximum fine of up to  
11 \$250,000, while the guideline fine range is between 30,000 and  
12 250,000 dollars, and Mr. Downs is obligated to pay a \$100  
13 special assessment because of the one count in this case. For  
14 any nonindigent person convicted of the instant offense,  
15 there's an additional mandatory \$5,000 assessment, and the  
16 statutory and guideline restitution provisions are applicable  
17 for offenses of this nature, and they require defendants to pay  
18 restitution for this offense. But to the Court's knowledge, no  
19 victims have been identified yet in this case.

20 Is that correct, Mr. Miranda?

21 MR. MIRANDA: Yes. That's correct, Your Honor.

22 THE COURT: All right. So let me ask counsel if I  
23 have stated accurately the statutory and guideline framework  
24 under which we are operating with respect to this matter.

25 Ms. West?

1 MS. WEST: Yes, Your Honor.

2 THE COURT: Mr. Miranda?

3 MR. MIRANDA: Yes, Your Honor.

4 THE COURT: All right. So before I go on to discuss  
5 the other sentencing factors that will bear on the Court's  
6 consideration and final decision, now we've come to the point  
7 in the hearing in which the parties have the opportunity to  
8 address the guideline calculation and the Court's  
9 considerations under 3553 and to make whatever recommendation  
10 they wish to make about the sentence in this matter.

11 Let me start with Mr. Miranda. Does the government wish  
12 to speak about the application of the factors in the statute or  
13 anything else?

14 MR. MIRANDA: Yes, Your Honor. Just briefly.

15 THE COURT: You may proceed.

16 MR. MIRANDA: Thank you, Your Honor.

17 I will not repeat what is in my sentencing memorandum.  
18 I know that Your Honor and the defense have already read and  
19 reviewed it. I just wanted to highlight a couple of things.

20 Number one is that with regard to the offense conduct in  
21 this case, the defendant's conduct did only occur over a  
22 relatively short period of time, and that was taken into  
23 account, but it also did include more than one occasion in  
24 which he distributed child pornography within the broader  
25 group and multiple occasions in which he discussed the sexual

1 abuse of children, positively encouraged others to either  
2 engage in that or to send photos and images of that and also  
3 bragged of having been sexually active with a minor in the  
4 course of the chat.

5 Countered against that is the fact that, as Your Honor  
6 has mentioned earlier in this proceeding, the defendant had no  
7 criminal history of any kind, and the government was unable to  
8 find any indication of prior similar conduct, whether charged  
9 or uncharged, regarding this defendant.

10 And with that, Your Honor, the government reached the  
11 conclusion that the low end of the applicable guideline range  
12 of 70 months would be an appropriate sentence, and we'll just  
13 otherwise rely on the points and arguments that were made  
14 within the sentencing memorandum.

15 THE COURT: Ms. West.

16 MS. WEST: Yes, Your Honor.

17 Likewise, I'm not going to repeat everything I wrote in  
18 my sentencing memo. I know the Court and the government have  
19 read it.

20 I would like to briefly respond to Mr. Miranda and  
21 highlight a couple of points that I think are important.  
22 Mr. Miranda just stated that Mr. Downs bragged that he had been  
23 sexually active with a minor, and I believe what Mr. Miranda is  
24 referencing is that he, quote/unquote, messed around with his  
25 cousin who was 13 years old. I believe that that is what he's

1       referencing.

2               And with regard to the factors, I agree with what the  
3 government said. Mr. Downs cooperated from the very beginning.  
4 He -- upon his arrest, he gave consent to search his  
5 cell phone, written consent. He gave federal agents written  
6 consent that enumerated all of his online IDs and what those  
7 passwords were, which made their investigation much simpler.

8               And the mitigating factors I mentioned in my memo; that  
9 he is an Iraqi War veteran. He's had past physical and sexual  
10 abuse. And what I didn't mention, because I didn't really know  
11 at the time, is that he would be imprisoned in Farmville and  
12 Orange, Virginia, not exactly great places to be when you want  
13 to better yourself with programs and classes. And,  
14 unfortunately, in those two facilities, Mr. Downs was not able  
15 to avail himself of the programs that similarly situated  
16 defendants have at the facilities at the D.C. jail while  
17 they're awaiting sentence. It's unfortunate.

18              I did want to say that the fact that he has no criminal  
19 history -- I know the Court knows how important it is, and I  
20 believe going forward, having represented Mr. Downs for two  
21 years now -- little more than that -- I have to tell the Court,  
22 he's been really a pleasure to represent. He's been helpful to  
23 me; and I really believe that in the future when he's done  
24 serving his sentence that he will comply with what probation  
25 has to do on supervised release of him and that this Court will

1 not be hearing from him again.

2 That's why we've asked for a sentence, a variance  
3 sentence, of 60 months.

4 THE COURT: Thank you, Ms. West.

5 Mr. Downs, would you like to say anything that you would  
6 like for the Court to consider prior to the imposition of  
7 sentence?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: I'm sorry, sir. I just want to make sure  
10 that I'm clear. Are you saying no, you don't want to speak  
11 right now?

12 THE DEFENDANT: Yes, Your Honor. No, I do want to  
13 speak right now.

14 THE COURT: Okay. All right. Thank you.

15 So the Court has calculated the sentencing guidelines  
16 and heard the statements made by counsel. The Court must now  
17 consider the relevant factors set out by Congress in 18 U.S.C.  
18 3553(a) in order to ensure that it imposes a sentence that is  
19 sufficient but not greater than necessary to comply with the  
20 purposes of sentencing. These purposes include the need for  
21 the sentence imposed to reflect the seriousness of the offense,  
22 to promote respect for the law, and to provide just punishment  
23 for the offense. The sentence should also deter criminal  
24 conduct, protect the public from future crimes by a defendant,  
25 and promote rehabilitation.



1           In addition to the guidelines and policy statements,  
2           this Court must consider the nature and circumstances of the  
3           offense, the history and characteristics of the defendant, the  
4           types of sentences available, the need to avoid unwarranted  
5           sentencing disparities among defendants with similar records  
6           who have been found guilty of similar conduct, and the need to  
7           provide restitution to any victims of the offense.

8           This Court has considered all of these factors when  
9           deciding what the appropriate sentence is in this case, and in  
10          accordance with my ordinary practice, I won't detail my  
11          considerations with respect to each factor here orally this  
12          afternoon.

13          However, I do think it is important for me to say  
14          something for the record and for you, Mr. Downs, so that you  
15          fully understand what the law requires and this Court's  
16          considerations with respect to the sentence that it will be  
17          imposing in this case consistent with section 3553(a).

18          With respect to the nature of the offense, it is very  
19          important that you understand that distribution of child  
20          pornography is an extremely serious federal crime. It is  
21          sometimes difficult for people to recognize that. People often  
22          mistakenly believe the distribution of child pornography merely  
23          involves looking at inappropriate pictures and that a person  
24          who commits this crime really isn't doing anything wrong.

25          What I want you to understand and appreciate is that the

1 possession and distribution of child pornography is much more  
2 than just viewing and circulating something inappropriate or  
3 taboo. This crime involves people taking pictures and videos  
4 of real children while those children are being sexually abused  
5 and then not only putting those pictures on the internet for  
6 other people to see, but actually actively trading in those  
7 images.

8 In your heart of hearts, Mr. Downs, you have to know  
9 that that's what's going on. Your own collection, apparently,  
10 included scores of images and videos of real children in  
11 sexually compromised positions. And I can tell you that those  
12 children were not knowing and willing participants in the  
13 degrading conduct that was depicted. They were being forced to  
14 commit unspeakable acts of sexual violence for the pleasure of  
15 the person who was filming them and for the gratification of,  
16 unfortunately, sick people everywhere.

17 When I get cases like this one, I try to assess the  
18 extent to which the defendant really understands the damage  
19 that is being done to the young child in the photos that were  
20 so eagerly collected and traded, and I must say that the record  
21 here is somewhat ambiguous in that regard. During the  
22 evaluation that this Court ordered at the request of the  
23 probation office, you apparently failed to take full  
24 responsibility for your actions, and there was even a  
25 suggestion that your fascination with these images may have

1 contributed to your engaging in sexually deviant behaviors in  
2 other respects.

3 This is really troubling because, as the evaluator  
4 noted, knowing and understanding that you are the one who was  
5 thinking about and fantasizing about and trying to find ways to  
6 make this kind of thing happen, knowing that this is all about  
7 your culpability, is critical to learning to control these  
8 behaviors.

9 And as I said, real children are impacted when the  
10 impulse to traffic in child pornography goes unchecked. I  
11 don't know, Mr. Downs --

12 THE COURT REPORTER: Is anybody having a hard time  
13 hearing her?

14 THE COURTROOM DEPUTY: I'm going to text her.

15 MS. WEST: She dropped.

16 THE LAW CLERK: Oh-oh. I will let you know what she  
17 says.

18 (Off the record.)

19 THE LAW CLERK: She's back.

20 THE COURT: Can you hear me now? I could see and  
21 hear all of you. So I don't know where I stopped --

22 (Requested portion of the record read.)

23 THE COURT: All right. Do we have Mr. Downs? Yes.  
24 Counsel and everyone can hear me now? Okay.

25 What I was saying is that I don't know, Mr. Downs, if

1 you've ever heard victims of child pornography talk about what  
2 this offense does to them for the rest of their lives. I have  
3 had several of these cases. I've heard these stories, and many  
4 of them are harrowing. Some of the children that you saw in  
5 the pictures that you collected and viewed and traded will  
6 never have normal adult relationships. Some of them will turn  
7 to drugs and prostitution and other dangerous conduct to try  
8 and deal with the emotional pain that results from the torture  
9 that they experienced as children.

10 And even those -- even those who manage to lead a  
11 somewhat normal adult life say that they live in constant fear  
12 of being recognized. Some of those victims are even unable to  
13 go outside of their houses because once their pictures are put  
14 out there on the internet, they are there forever. And the  
15 people in them can't do anything without worrying that every  
16 person that they ever meet has seen them in their most  
17 vulnerable state at the most horrible time in their lives.

18 So I'd like to take this opportunity to just make sure  
19 that you understand that this offense is truly horrific on many  
20 levels, and that is precisely the reason why the applicable  
21 statutes prescribe a 60-month, or 5-year, mandatory minimum  
22 sentence for this unlawful conduct.

23 Now, as you know, the sentencing guidelines prescribe a  
24 greater term of imprisonment than the 60-month term in this  
25 particular case. As I calculated it, the guideline range is

1 70 to 87 months. In her sentencing memoranda, your counsel  
2 suggests or argues that I should vary downward from this  
3 guideline range and should impose the mandatory minimum term,  
4 and she argues this for several reasons. The Court has seen  
5 these kinds of arguments before, and, really, the only one that  
6 I find somewhat compelling is the observation of the child  
7 pornography guideline itself is substantially flawed.

8 The Court is aware that this particular guideline is not  
9 the product of the commission's empirical assessments and that  
10 it includes and emphasizes certain factors that have been  
11 widely criticized, even by the Sentencing Commission itself.  
12 Your counsel's memorandum observes that many of the specific  
13 offense characteristics in the guideline are rarely  
14 case-specific or unique and that certain enhancements are  
15 applied in every case, which is entirely true.

16 As a result, this Court has long considered it  
17 appropriate to make some adjustments to the guideline  
18 calculation as it relates to child pornography crimes. I have  
19 stated in other similar cases, and will say here again today,  
20 that the guideline factors are in many ways outdated and, in  
21 general, they no longer adequately distinguish between more  
22 serious and less serious child pornography distribution  
23 offenses.

24 For example, the guidelines include a 2-level increase  
25 for the use of a computer, and they also provide for a

1 substantial tiered enhancement for the number of images that  
2 are stored on a computer's hard drive. Now, whatever the state  
3 of the law and technology was at the time that the guidelines  
4 were first adopted, neither of these circumstances are  
5 aggravating factors today. A computer is at work with respect  
6 to nearly all distribution offenses now, and it is so easy to  
7 receive, possess, and distribute child pornography  
8 electronically that the numbers of images and use of an  
9 electronic medium no longer signal an especially heinous or  
10 egregious child pornography offense.

11 The Court has taken this into account in its  
12 considerations regarding the sentence to impose in this case,  
13 and like many other federal judges who have analyzed this  
14 issue, I've decided to apply my general policy disagreement  
15 with the 2-level guideline enhancement for use of a computer  
16 under 2G2.2(b)(6). So I am going to exclude the 2 points for  
17 computer use entirely.

18 I have also in previous cases capped the enhancement for  
19 the size of the defendant's collection; that is, the subsection  
20 (b)(7)(D) enhancement. And I've capped it at 2 levels, which  
21 is what I think is appropriate in terms of giving a defendant  
22 who traffics in more than 10 images an increase. As it turns  
23 out, 2 levels is all that is applicable here. So I will impose  
24 that 2-level increase to account for the size of your  
25 collection. And as Mr. Miranda emphasized during his comments

1 here today, that enhancement is also appropriate given that you  
2 repeatedly distributed various images to the internet group  
3 that you were involved in.

4 But as I said, I am going to vary from the guideline  
5 range downward by 2 levels which, as a practical matter, means  
6 that I'm going to consider you to be at the offense level of 25  
7 rather than 27. And at Level 25, the guideline range is 57 to  
8 71 months for Criminal History Category I, which is what you  
9 are in.

10 The next factor that I want to address is your history  
11 and characteristics. The probation office has found that you  
12 have no prior criminal history, which is a significant  
13 mitigating factor, but I will say that's not really unusual for  
14 cases of this type. Your background is also not especially  
15 unusual. You had an unstable upbringing, which is unfortunate.  
16 You had a mixed history of service in the Army. There was some  
17 question about whether you yourself was -- were subjected to  
18 abuse as a child.

19 The probation office's report does not suggest any  
20 particular physical or mental difficulties, but as I mentioned  
21 before, it does indicate by quoting and recognizing the  
22 psychosexual report that there's a reluctance on your part to  
23 take full responsibility for your actions. And that,  
24 unfortunately, contributed to the psychosexual evaluator's  
25 opinions that you are at moderate risk of reoffending without

1 getting counseling and treatment. Now, the Court is able to  
2 fashion a sentence that requires you to get treatment both  
3 during and after your term of imprisonment, and I will do that.

4 And I've also taken your personal characteristics into  
5 account, as I've discussed them, when deciding what the  
6 appropriate sentence is in this case. I also want to mention  
7 that I did review the letters that were submitted on your  
8 behalf from your wife and your mother-in-law, who appear to be  
9 fully supportive of you, and let me tell you, Mr. Downs, that  
10 is important. Not every defendant has someone who is willing  
11 to stand by them, especially under these circumstances. They  
12 describe you as caring and respectful and compassionate.

13 And your wife, in particular, makes it clear that she  
14 will welcome you home when you're released and that she's  
15 prepared to stick with you through this period of  
16 incarceration. You are lucky to have that support, Mr. Downs,  
17 and I encourage you to maintain these connections because  
18 you're going to need their assistance when you get out of  
19 prison.

20 The third and final consideration that I will discuss is  
21 the need to avoid unwarranted sentencing disparities. This is  
22 a factor that is often very important in my consideration of  
23 how to sentence a defendant. I did research last year in  
24 connection with another similar case, and I looked into the  
25 relevant statistics regarding how other defendants who've



1 convicted of distribution of child pornography have been  
2 sentenced. According to the Sentencing Commission, which often  
3 provides this important and significant historical perspective,  
4 between 2012 and 2016, there were no cases in the District of  
5 Columbia that involved the exact same guideline calculation as  
6 yours; that is, the same base offense level and same specific  
7 offense characteristics.

8 And the national statistics for similarly situated  
9 defendants were all over the map. The average sentence imposed  
10 in any given year appears to depend on whether a judge -- a  
11 judge sentences within the sentencing guideline range or  
12 varies, and whether any variance is government-sponsored or  
13 not.

14 The commission looked at the data at my request in this  
15 previous case, and they clarified the average sentence  
16 nationally for similarly situated defendants was 81 months of  
17 imprisonment in 2016, and that that average included sentences  
18 that ranged from 60 months to 120 months.

19 The Court has also reviewed its own cases. I went back  
20 to my files, and I found three cases that are comparable to  
21 this one. In one case the defendant was convicted of  
22 possession of child pornography, but he was sentenced under the  
23 same guideline. In the second, the defendant was convicted of  
24 distribution of child pornography with respect to facts that  
25 are strikingly similar to the ones that are at issue today. In

1 the third, the defendant was also convicted of distribution of  
2 child pornography, but the facts included acts that indicated  
3 that the defendant had access to his own prepubescent child and  
4 a willingness to distribute images of her.

5 In the possession case, which had no mandatory minimum,  
6 the Court weighed all of the relevant factors, including the  
7 guideline range that had been adjusted downward regarding use  
8 of computer and number of images, and determined that a  
9 57-month sentence was sufficient but not greater than necessary  
10 to promote the purposes of punishment.

11 In the case that was most similar to yours, the Court  
12 found that the mandatory minimum of 60 months, which was within  
13 the adjusted guideline range of 57 to 71 months, was  
14 sufficient. And in the last case I mentioned, the Court  
15 determined that the defendant had engaged in distribution  
16 conduct that was more egregious than most because it involved  
17 distribution of pictures of his own child, albeit not  
18 pornographic images, at least not any that the government could  
19 find.

20 Due to that defendant's recklessness and potentially  
21 directly harmful conduct to a known child, the Court in that  
22 case determined that the mandatory minimum sentence of  
23 60 months was not sufficient to promote the purposes of  
24 punishment, and it imposed a sentence of 71 months of  
25 imprisonment, which was at the top of that defendant's adjusted

1 guideline range.

2 Just as with the second case that I mentioned, the Court  
3 does not see any aggravating circumstances here that would  
4 warrant a sentence above the mandatory minimum term of  
5 imprisonment in this case.

6 So consistent with the need to avoid unwarranted  
7 sentencing disparities, I will impose a 60-month term of  
8 imprisonment as the law requires. I will also impose a period  
9 of 120 months of supervised release, as I did in that second  
10 case, in order to ensure that you get the treatment that will  
11 be necessary for you to rehabilitate yourself fully and  
12 integrate yourself back into society.

13 The Court believes that a penalty of 60 months of  
14 imprisonment to be followed by a 120-month term of supervised  
15 release is sufficient but not greater than necessary to reflect  
16 the seriousness of the instant offense, to promote deterrence,  
17 to protect the public from future crimes that may be committed  
18 by you, to avoid unwarranted sentencing disparities among  
19 defendants convicted of similar crimes, and to give you the  
20 best opportunity for rehabilitation under the circumstances  
21 presented in this case.

22 Therefore, based on the Court's consideration of the  
23 3553(a) factors, I will now state officially and formally the  
24 sentence to be imposed.

25 It is the judgment of the Court that you, Mr. Downs,

1 Christopher Downs, are committed to the custody of the Bureau  
2 of Prisons for a term of 60 months on Count 1, with credit for  
3 time already served since your detention on the charges in this  
4 case. You are further sentenced to serve a term of  
5 imprisonment of -- excuse me. You're further sentenced to  
6 serve a term of 120 months of supervised release on Count 1 and  
7 to pay a \$100 special assessment.

8 The Court finds that you do not have the ability to pay  
9 a fine, and, therefore, it waives imposition of a fine in this  
10 case. The Court also finds that you do not have the ability to  
11 pay the \$5,000 assessment pursuant to the Justice for Victims  
12 of Trafficking Act of 2015 and, therefore, waives imposition of  
13 that assessment.

14 The \$100 special assessment and any restitution are  
15 immediately payable to the Clerk of the Court for the  
16 U.S. District Court for the District of Columbia. Within  
17 30 days of any change of address, you shall notify the Clerk of  
18 the Court of the change until such time as that financial  
19 obligation is paid in full. The Court waives any interest or  
20 penalties that may accrue on unpaid balances.

21 Within 72 hours of release from custody, you shall  
22 report in person to the probation office in the district to  
23 which you are released. While on supervision, you shall submit  
24 to the collection of DNA; you should not possess a firearm or  
25 other dangerous weapon; you shall not use or possess an illegal

1 controlled substance; and you shall not commit another federal,  
2 state, or local crime.

3 You shall also abide by the general conditions of  
4 supervision adopted by the U.S. Probation Office, as well as  
5 the following special conditions, which you are subjected to  
6 because of your offense as -- offense of conviction, which is a  
7 sex offense. I will state these special conditions and  
8 describe the reasons that I'm imposing each of them as the  
9 D.C. Circuit requires.

10 Sex offender registration. You shall comply with the  
11 sex offender registration requirements for convicted sex  
12 offenders in any state or jurisdiction where you reside, are  
13 employed, carry on a vocation, or are a student. Imposing  
14 registration as a condition of supervised release is the least  
15 restrictive means of protecting the public from further sex  
16 crimes.

17 Contact restrictions. You must not have direct contact  
18 with any child you know or reasonably should know to be under  
19 the age of 18 without the permission of the probation office.  
20 If you do have any direct contact with a child you know or  
21 reasonably should know to be under the age of 18 without  
22 permission of the probation office, you must report this  
23 contact to the probation officer within 24 hours. Direct  
24 contact includes written communication, in-person  
25 communication, or physical contact. Direct contact does not

1 include incidental contact during ordinary daily activities in  
2 public places. This restriction includes work in any facility  
3 for the care of or education of children. And it is the least  
4 restrictive means necessary of protecting the public from  
5 future sex crimes against minors, of deterring future offenses,  
6 and of encouraging registration.

7 Search and seizure. Pursuant to the Adam Walsh Child  
8 Protection and Safety Act of 2006, you shall submit to a search  
9 of your person, property, house, residence, vehicle, papers,  
10 computer, other electronic communication or data storage  
11 devices or media, and effects at any time with or without a  
12 warrant and -- excuse me -- by any law enforcement or probation  
13 officer with reasonable suspicion concerning unlawful conduct  
14 or a violation of a condition of supervision. This condition  
15 is expressly authorized by a statute, 18 U.S.C. 3583(d) (3).

16 The Court finds that this condition is reasonably  
17 related to the nature and circumstances of your offense, the  
18 need to deter criminal conduct, protection of the public, and  
19 treatment of your correctional needs because the nature of your  
20 offenses indicate some degree of risk of recidivism and because  
21 any repeated criminal conduct of this nature could well be  
22 carried out in your home. Permitting searches upon reasonable  
23 suspicion will help to deter future criminal conduct, protect  
24 the public, and aid in your rehabilitation.

25 Sex offender assessment and treatment. You shall

1 participate in a program of sex offender assessment and  
2 treatment as directed by the United States Probation Office.  
3 At the direction of the U.S. Probation Office, you shall pay  
4 for all or a portion of any treatment program. You shall waive  
5 your right of confidentiality in treatment and sign any  
6 necessary releases for any records imposed as a consequence of  
7 this judgment to allow the U.S. Probation Office to review your  
8 course of treatment and progress with the treatment providers.  
9 This condition is imposed because it is the least restrictive  
10 means of providing you with treatment to rehabilitate yourself  
11 so you can move forward from the underlying offense, and it  
12 will also deter future conduct involving sex offenses.

13 Sex offense testing. You shall submit to periodic  
14 polygraph testing at the discretion of the probation office.  
15 This condition is imposed because it is the least restrictive  
16 means to ensure that you are in compliance with the  
17 requirements of your supervision or treatment program.

18 Computer internet search monitoring. You shall identify  
19 all computer systems, internet-capable devices, and similar  
20 memory and electronic devices to which you have access, permit  
21 the installation of a computer and internet monitoring program  
22 on all search devices, and submit any and all such devices to a  
23 search. A probation officer may conduct a search pursuant to  
24 this condition only when reasonable suspicion exists that there  
25 is a violation of a condition of supervision and that the

1 computer or device contains evidence of this violation.

2 Any search will be conducted at a reasonable time and in  
3 a reasonable manner, and you must warn any other people who use  
4 these computers or devices capable of accessing the internet  
5 that the devices may be subject to searches pursuant to this  
6 condition. Given that you initiated and planned the offense of  
7 conviction -- of conviction online via an electronic device and  
8 the fact that your conduct included possession of child  
9 pornography, this condition is the least restrictive means of  
10 protecting the public from future offenses, deterring you from  
11 committing future offenses, and aiding in treating your  
12 correctional needs.

13 Forfeiture. Pursuant to the terms of your plea  
14 agreement, you, Christopher Downs, forfeit one Samsung  
15 cell phone. The model number is listed in the plea agreement  
16 paperwork and will be listed in the judgment. This phone was  
17 seized on August 29th, 2018, as a result of its involvement in  
18 or use in a violation of federal law.

19 The probation office shall release the presentence  
20 investigation report to all appropriate agencies in order to  
21 execute the sentence of this Court. Treatment agencies shall  
22 return the presentence report to the probation office upon this  
23 defendant's completion or termination from treatment.

24 Mr. Downs, you have the right to appeal the sentence  
25 imposed by this Court under the limited circumstances laid out



1 in your plea agreement. If you choose to appeal, you must file  
2 an appeal within 14 days after the Court enters its judgment.  
3 If you are unable to afford the cost of an appeal, you may  
4 request permission from the Court to file an appeal without  
5 cost to you.

6 Let me turn to the parties and ask if there are any  
7 objections to the sentence imposed that are not already noted  
8 on the record.

9 Mr. Miranda?

10 MR. MIRANDA: No, Your Honor.

11 THE COURT: Ms. West?

12 MS. WEST: No, Your Honor.

13 THE COURT: All right. Is there a recommendation for  
14 an incarceration facility, Ms. West?

15 MS. WEST: Yes, Your Honor. Mr. Downs's wife lives  
16 in Arizona, and any facility that treats his condition that is  
17 closest to the state of Arizona would be our -- is what we  
18 would ask the Court to recommend.

19 THE COURT: Okay. You're not aware of any such  
20 facility, however?

21 MS. WEST: I think the only one I'm aware of is  
22 the -- the government may know better than I, but it's  
23 Seagoville, Texas, has the program, and that is in the  
24 southeast. I'm not aware of any facility in Arizona.

25 THE COURT: Well, let me ask it this way, Ms. West:

1 Is your client -- first of all, you understand this is a BOP  
2 determination, not the Court? I'm happy --

3 MS. WEST: Yes, Your Honor.

4 THE COURT: I'm happy to ask them or make a  
5 recommendation that he be placed in a certain place, but I  
6 guess my question is: Are you preferencing Arizona over the  
7 programs? Which one would be Mr. Downs's preference? So if  
8 it's Texas but they have the programs, is that better than a  
9 facility in Arizona without the programs?

10 MS. WEST: I -- I think that in -- and Mr. Downs can  
11 correct me if I'm wrong, but we spoke about this previously.  
12 He would like to be at any BOP as close to Arizona as possible.

13 THE COURT: Even if they don't have the particular  
14 programming that he would otherwise need or be interested in?

15 MS. WEST: Well, I think the Court -- I mean, I think  
16 the Court just ordered it. So I don't think he has the option  
17 that we talked about before.

18 THE COURT: The Court's orders have related to his  
19 period of supervised release. Those specifics that I'm talking  
20 about are -- are the conditions of his supervised release.

21 BOP --

22 MS. WEST: Okay.

23 THE COURT: -- determines where he's placed, and we  
24 can ask them to place him in a facility that has programming.

25 You know, under the First Step Act, there are some

1 benefits from being in a facility with programming, or we can  
2 say even if there is no programming, he'd like to be in  
3 Arizona.

4 MS. WEST: He'd like to -- he'd like to be in  
5 Arizona.

6 THE COURT: All right. That's what we'll say.

7 Is there anything else that we should address today?

8 MR. MIRANDA: Not from the government, Your Honor.

9 MS. WEST: No, Your Honor.

10 I wanted the Court to know that before you got on the, I  
11 guess, bench, I spoke with Mr. Downs and asked your courtroom  
12 deputy, Ms. Franklin, to allow me to speak with Mr. Downs after  
13 you-all drop off the hearing.

14 THE COURT: I see. So you'll continue on this feed  
15 so that you can speak with your client?

16 MS. WEST: Yes, Your Honor. I've had difficulty  
17 trying to speak with him at the facility in Orange, Virginia,  
18 and I would just appreciate a few minutes to speak with him.

19 THE COURT: All right. That is fine with the Court.

20 This does conclude my judgment. We will get that  
21 document out as soon as we can. And I've spoken to Mr. Downs  
22 about his appellate rights, which are triggered based on the  
23 timing of the judgment.

24 So we will end, and I will also -- Ms. Franklin, are you  
25 still on?

1 THE COURTROOM DEPUTY: Yes, Judge.

2 THE COURT: So can you make sure that -- a technical  
3 matter -- that the public line is disconnected so Ms. West can  
4 speak with her client privately?

5 THE COURTROOM DEPUTY: I will send John a text  
6 message and ask him to disconnect it.

7 MR. KRAMER: Gwen, I'm still here. I'll do that  
8 right now.

9 THE COURT: That would be great. All right. Thank  
10 you very much.

11 Mr. Downs, good luck.

12 (The proceedings were concluded at 4:05 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter,  
Certified Realtime Reporter, do hereby certify that the above  
and foregoing constitutes a true and accurate transcript of my  
stenograph notes and is a full, true, and complete transcript  
of the proceedings to the best of my ability.

Dated this 25th day of March, 2022.

/s/ Nancy J. Meyer  
Nancy J. Meyer  
Official Court Reporter  
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