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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 v.) Criminal No. 17-002
)
 BRIAN DENNIS HESS,)
)
 Defendant.) Washington, D.C.
)

Thursday, September 7, 2017

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE KETANJI B. JACKSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ANDREA LYNN HERTZFELD, AUSA
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Court Reporter: PATRICIA A. KANESHIRO-MILLER, RMR, CRR

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

(3:06 p.m.)

1
2
3 THE DEPUTY CLERK: Your Honor, this is Criminal
4 Matter 17-002, the United States of America versus Brian
5 Dennis Hess.

6 From the probation office, we have Crystal Lustig.

7 Will the parties please approach the podium and state
8 your appearances for the record.

9 MS. HERTZFELD: Good afternoon, Your Honor. Andrea
10 Hertzfeld for the United States.

11 MR. SPENCER: Good afternoon, Your Honor. Gregory
12 Spencer representing Mr. Hess.

13 THE COURT: Mr. Spencer and Mr. Hess.

14 We are here for the sentencing of Mr. Brian Hess, who
15 has pled guilty to the distribution of child pornography, in
16 violation of Title 18, Section 2252(a)(2) of the United
17 States Code.

18 This sentencing proceeding is now taking place after
19 a delay for a change of counsel. You have heard some of my
20 introductory remarks in the prior proceeding, Mr. Hess, but I
21 will repeat some of them now just as a reminder.

22 As you may recall, I previously explained to you that
23 my sentencing hearings proceed in several steps. There are
24 essentially four aspects to this process.

25 First, the Court will address the presentence report,

1 resolving any objections to the presentence report if there
2 are any.

3 Second, the Court decides which sentencing guideline
4 in the sentencing guidelines manual applies to your case and
5 does the calculation of the sentencing guidelines under the
6 applicable provisions, which are in the sentencing guidelines
7 manual.

8 Third, I will hear from the government, from your
9 counsel, from any witnesses that either side would like to
10 present, and from you, if you wish to be heard about the
11 appropriate sentence in this case.

12 And then finally, taking all of the information that
13 the Court has heard into account, the Court fashions a
14 sentence, a sentence that in the Court's view would be a
15 fair, just, and appropriate sentence in light of the factors
16 that are set forth by Congress in the statute
17 18 U.S.C. 3553(a). And as part of this last step, the Court
18 actually imposes the sentence, along with any other required
19 consequences for the offense.

20 As I said before, through it all and especially
21 through some of the more mechanical parts of this process, it
22 is important that you understand what's going on and also
23 that you focus on why we're here and the gravity of the
24 situation. As I say to all of the defendants who come before
25 me, this proceeding is a serious and solemn matter because

1 you have been convicted of conduct that constitutes a federal
2 crime and made the decision to engage in such conduct, and
3 this proceeding is about the consequences that you will need
4 to face as a result of that choice.

5 All right. Beginning with the presentence report,
6 the final presentence report and sentencing recommendation in
7 this matter were filed on June 28th of 2017. Let me ask
8 again whether the government has any objections to any of the
9 factual determinations that are set forth in the presentence
10 report.

11 MS. HERTZFELD: No, Your Honor.

12 THE COURT: All right. And prior to addressing
13 Mr. Spencer, let me ask you, Mr. Hess, whether you've had a
14 chance to talk to your attorney and whether you're satisfied
15 with your attorney in this case.

16 THE DEFENDANT: Yes, ma'am. I have spoke with him,
17 and he has been very good.

18 THE COURT: All right. Thank you, sir. You may have
19 a seat.

20 Mr. Spencer, let me ask you whether you and your
21 client have read and discussed the presentence report and
22 whether there are any disputed issues of fact related to the
23 factual recitation of the crime and the defendant's
24 background.

25 MR. SPENCER: Yes, Your Honor. I had an opportunity

1 to meet with Mr. Hess on several occasions and review the
2 information in his case, including the presentence report,
3 and we have no objections or corrections to make to the
4 factual information contained in the presentence report, Your
5 Honor.

6 THE COURT: All right. So hearing no objection from
7 either side, the Court will accept the factual recitation in
8 the presentence report regarding the circumstances of the
9 offense and the defendant's history and characteristics.
10 Therefore, the facts as stated in the report will be the
11 Court's findings of fact for the purpose of this sentencing.

12 Now, the presentence report lays out the probation
13 office's calculation of the advisory guideline range that
14 applies in this case, and I mentioned the guidelines. As I
15 noted, there is a manual that the Court must use to determine
16 what the sentencing guidelines are that are applicable to
17 this particular offense. The probation office does the
18 calculation as an initial matter. That calculation was done
19 using the 2016 guidelines manual, and it is as follows:

20 Beginning with the guideline offense level, the
21 applicable guideline in this case given the offense of
22 conviction is 2G2.2(a)(2), which prescribes a base offense
23 level of 22 under the circumstances presented here.

24 According to the presentence report, several specific
25 offense characteristics apply.

1 First, the pornographic material that Mr. Hess
2 possessed depicted prepubescent minors, or at least one,
3 which leads to a 2-level increase under 2G2.2(b) (2) .

4 Second, the offense involved distribution of child
5 pornography, which leads to a 2-level increase under
6 2G2.2 (b) (3) (F) .

7 Third, the offense involved material portraying
8 sadistic or masochistic conduct or other depictions of
9 violence, which leads to a 4-level increase under
10 2G2.2 (b) (4) .

11 Fourth, the offense involved the use of a computer,
12 which leads to a 2-level increase under 2G2.2 (b) (6) .

13 And fifth, the offense involved more than 600 images
14 of child pornography, which leads to a 5-level increase under
15 2G2.2 (b) (7) (D) .

16 The government has also represented that Mr. Hess has
17 demonstrated acceptance of responsibility in a manner that
18 entitles him to a 2-level reduction under 3E1.1(a); and that
19 Mr. Hess timely notified the government of his intention to
20 plead guilty in a manner that entitles him to an additional
21 1-level reduction under 3E1.1(b) .

22 So with all of those increases and deductions taken
23 into account, prior to the consideration of any departures or
24 variances, Mr. Hess' total offense level is 34.

25 Is there any objection to the calculation of the

1 offense level?

2 MS. HERTZFELD: No, Your Honor. Thank you.

3 MR. SPENCER: No, Your Honor.

4 THE COURT: All right. Turning to the applicable
5 criminal history category, the presentence report has found
6 that Mr. Hess has no prior convictions and, therefore, no
7 criminal history points from the guidelines manual, and that
8 puts Mr. Hess in criminal history category I.

9 Are there any objections to the criminal history
10 calculation?

11 MS. HERTZFELD: No, Your Honor.

12 MR. SPENCER: No, Your Honor.

13 THE COURT: Okay. So given a criminal history
14 calculation of I and an adjusted offense level of 34, the
15 applicable sentencing range in this case under the guidelines
16 is 151 to 188 months of imprisonment.

17 Are there any objections to this guidelines range
18 calculation?

19 MS. HERTZFELD: No, Your Honor.

20 MR. SPENCER: No, Your Honor.

21 THE COURT: So having determined the applicable
22 guideline range under the manual, the next step is for the
23 Court to consider any departures. The presentence report
24 does not include any departure grounds, and neither party has
25 mentioned any, perhaps because of the terms of the plea

1 agreement, but at this point in my sentencings, I typically
2 ask whether or not there are any bases for a departure that
3 the Court should consider. And by that, I mean grounds for
4 departing from the guideline range under the terms that are
5 printed in the guidelines manual as distinguished from a
6 variance.

7 Ms. Hertzfeld?

8 MS. HERTZFELD: No, Your Honor.

9 THE COURT: Mr. Spencer?

10 MR. SPENCER: No, Your Honor.

11 THE COURT: All right. So Section 3553 of Title 18
12 of the United States Code requires the Court to consider a
13 variety of factors when it determines what the appropriate
14 sentence is in a particular case. One of those factors is
15 the sentencing guidelines range that the guidelines
16 prescribe, which I have just discussed. Another factor is
17 the applicable penal statutes. So, at this point in my
18 sentencings, I typically take a moment to describe generally
19 the applicable statutory and guideline penalties for the
20 offense at issue.

21 The charge of distribution of child pornography, in
22 violation of 18 U.S.C. 2252(a)(2), carries a statutory
23 maximum penalty of 20 years of imprisonment. This offense
24 also carries a statutory mandatory minimum penalty of 5 years
25 of imprisonment. The statutes provide that Mr. Hess faces a

1 supervised release range following imprisonment of at least
2 5 years and up to life, and that is also the same range that
3 the guidelines prescribe for this offense.

4 The statute of conviction sets a maximum fine of up
5 to \$250,000 while the guideline fine range is between \$35,000
6 and \$350,000.

7 Finally, the statutory and guideline restitution
8 provisions are sometimes applicable in the context of child
9 pornography cases. The government in this case has stated
10 that it provided notice to the known victims but has not
11 received any requests for restitution from any of those
12 victims. So it appears as though restitution is not
13 applicable here.

14 Let me ask counsel if I have stated accurately the
15 statutory and guideline framework under which we are
16 operating?

17 MS. HERTZFELD: Yes, Your Honor, that is correct.

18 The only caveat I would say, at this time, the
19 government has not received any requests for restitution.
20 Technically, the statute allows 90 days after sentencing for
21 victims to make that request and for the government to bring
22 that request to the Court. There is a potential that in the
23 next 90 days after entry of final judgment in this case, such
24 a request could be received. I think it is a very low
25 likelihood that is going to happen, but I wanted to let the

1 Court know that, as a matter of the statute, it is a
2 possibility.

3 THE COURT: Thank you.

4 Let me just clarify again that the pertinent notices
5 have gone out, though.

6 MS. HERTZFELD: Yes, Your Honor.

7 THE COURT: Okay. Thank you.

8 Mr. Spencer, is that an accurate depiction of the
9 guideline and statutory framework?

10 MR. SPENCER: Yes, Your Honor.

11 THE COURT: All right. Before the Court discusses
12 the sentencing factors that it has taken into account and
13 will continue to take into account as it determines the
14 appropriate sentence, now is the time for the parties to have
15 the opportunity to address the sentencing guideline
16 calculation or any of the Court's considerations under
17 3553(a).

18 Ms. Hertzfeld, does the government wish to speak
19 about the application of these factors in the context of this
20 case?

21 MS. HERTZFELD: Yes, Your Honor. Thank you. And I
22 will do so briefly. The government has already submitted a
23 sentencing memorandum that sets forth the government's
24 consideration of those factors and of the sentencing
25 guidelines analysis here. But I do want to amplify a couple

1 of things that I said there and make a few additions.

2 With respect to the restitution, I have already
3 covered what I wanted to put on the record. And with respect
4 to the victim impact statements in this case, I will just say
5 this is a case where the victims that were identified were
6 not some of the ones that have victim impact statements on
7 file, and we didn't receive any.

8 THE COURT: There are no victim impacts in this
9 particular case?

10 MS. HERTZFELD: There is not, Your Honor.

11 That being said, I always do want to put on the
12 record in a sentencing in these kinds of cases that even when
13 we don't hear directly from the victims -- and there are so
14 many of these kinds of images out there now, and sometimes we
15 get the victim impact statement and sometimes we don't -- but
16 I think it is important to remember that they exist and that
17 whether or not the Court actually gets a victim impact
18 statement from them or not that the pictures that are at
19 issue here that were sent across the internet to the
20 undercover here, those are pictures that depicted real kids.
21 And when we hear from those kids in cases where we do have
22 victim impact statements, they tend to be of a particular
23 kind. And what they tend to talk about is the fact that
24 those pictures are pictures of oftentimes the very worst
25 moment in that child's life when they're either being

1 sexually exploited or sometimes really aggressively sexually
2 abused. It's not just that they're being abused, it's at
3 that moment that's their worst moment, once it is in that
4 picture, it is frozen in time forever. And these victims
5 tend to express that every time one of those pictures get
6 sent over the internet or traded by somebody like Mr. Hess to
7 another individual, that kid feels victimized over and over
8 and over again. And they know once those pictures are on the
9 internet and they start being traded, they're going to be out
10 there forever. You really get from these victims the sense
11 of a lack of closure and that every time a case like this
12 comes up and they get a notice from our office saying that
13 somebody else is looking at those pictures for their own
14 gratification, those kids are affected by that. Even though
15 we don't have a child here to say that today or to submit a
16 letter to the Court, I think it is important that I say it on
17 those children's behalf so the Court can take that into
18 account. This is something that is really serious for those
19 kids that are involved.

20 And I think that is what makes this really disturbing
21 conduct. It is why I think the legislature has prescribed a
22 very significant mandatory minimum. The guidelines in this
23 case are very high, and I want to go back to that in a moment
24 and talk about how it plays out in this case relative to
25 other cases.

1 I will say one thing that really struck me when I was
2 preparing for the sentencing and looking at the presentence
3 report in this case about Mr. Hess is that the case is a
4 little unusual in the sense that it is very hard to see based
5 on what we know from the really extensive presentence report
6 and the information that we have how exactly we ended up
7 here. This is a person who by all measures it is really hard
8 to see from his background and his past why we ended up with
9 this issue. And I think it is almost impossible, even when
10 we have really extensive issues in someone's history or
11 extensive psychological evaluation pending sentencing,
12 sometimes we get reports, psychosexual reports from
13 psychologists, I don't think we really ever have the answers
14 of why someone engages in this conduct or what causes someone
15 to go down this road. But here you look at the presentence
16 report and this is a person who from what we can tell had a
17 happy childhood, doesn't appear to have suffered from any
18 trauma that is known at this point. He doesn't seem to have
19 any mental health or substance abuse issues or anything like
20 that. He appears from everything I heard from his counsel,
21 from the PSR, and from what is evident today, he has
22 extensive family support, and it sort of leaves a big
23 question mark of, you know, this isn't someone who is
24 claiming they have been abused in their own past, it leaves a
25 question mark as to why it happened. By all other measures,

1 it seems as though Mr. Hess has led an exemplary life. I
2 think it is a very perplexing question. I don't think we're
3 going to be able to answer it in this case.

4 But I think what it does tell us is that there does
5 seem to be this one moment of pretty bad judgment and really
6 serious conduct. But there are other things, a lot of things
7 that I think are really working in Mr. Hess' favor. I
8 mentioned his family support. I'm not sure I recognize
9 everybody's face from last time, but every time we've been in
10 court, there have been a lot of people here in Mr. Hess'
11 behalf. I have said this in other sentencings, I've probably
12 said it to Your Honor before: It does seem in my anecdotal
13 experience that when somebody is in the situation that
14 Mr. Hess is in, whether or not they have support from their
15 family actually ends up being one of the most important
16 variables in terms of whether they get their life back on
17 track. Most people get released eventually. They are going
18 to go back into the community and be subject to conditions,
19 but ultimately they have to rely on people to help them be
20 successful. It appears Mr. Hess, despite his bad conduct
21 that he has, has enjoyed the support of these people that
22 have shown up for him. And I hope he appreciates the value
23 of that and can use those relationships as a way when he
24 moves forward after this is over to improve his behavior and
25 to rely on if he has the urges to do this kind of thing that

1 got him here in the first place.

2 In addition to that, this is somebody who appears to
3 have had success in school, at work. He owns his own
4 company. It looks like he has ties to the community. Those
5 are all things I think that should hopefully help him at some
6 point be able to reintegrate back into the community.

7 The thing that I think is most to his credit is that
8 from the moment that Mr. Hess was arrested in this case, he
9 didn't just accept responsibility by ultimately saying, yes,
10 I will plead guilty, in this case he accepted full
11 responsibility in a way that was pretty remarkable vis-a-vis
12 other defendants. From the outset, he was fully cooperative
13 with the FBI with the case going forward. It was remarkable
14 to me that there wasn't a lot of discussion around whether or
15 not he was going to come forward and accept responsibility
16 and plead guilty. He did so right away. Basically, the
17 first call I had with his counsel was one where it was said,
18 my client is willing to take responsibility for this. That
19 is something to his credit. And I hope it is something that
20 suggests, to the extent he receives treatment and services
21 and he has the willingness that he has expressed to benefit
22 from those treatment and services, he is a likely candidate
23 for success there.

24 With respect to the guidelines in this case, they're
25 very high, and I know there has been a lot of controversy

1 around how these guidelines, especially in these possession
2 and distribution of child pornography cases, apply. The
3 argument that gets made is that these enhancements really
4 apply in all cases, almost all cases. Some of them, the use
5 of the computer is a very ubiquitous enhancement because
6 almost every case we have now involves distribution or
7 possession via computer. I understand all the reasons why
8 people argue about whether or not those enhancements should
9 apply in every case. From the Department of Justice's
10 standpoint, we believe that the guidelines are in place
11 because the legislature put them there. Despite the
12 controversy, there hasn't been a change to them and that they
13 are applicable. Really the question is: How do we look at
14 them and decide how much sense they make in one case versus
15 another?

16 I know Your Honor provided us the sentencing
17 statistics in this case. And the average sentence, the low
18 end of the average sentences in the distribution cases in the
19 last year I believe was 60 months, which is what the
20 government is asking here, which is at the mandatory minimum.
21 And it is a significant variance from the guidelines. What I
22 will say about that in terms of how the guidelines apply here
23 is that in a lot of cases where we have someone who appears
24 to be someone who has been a long-term collector of child
25 pornography, there is a lot of times where some of the

1 guidelines, people are saying, they shouldn't apply here,
2 they apply in every case.

3 Here, what we know about Mr. Hess is that he has not
4 been a lengthy collector of child pornography.

5 THE COURT: I'm sorry. He has not?

6 MS. HERTZFELD: He has not been a long-term
7 collector. It appears from the forensics that we were able
8 to discern, this appears to be relatively recent. He told us
9 that when he was arrested, and the forensics bore out what he
10 said. He did have over 600 images. I think a lot of that
11 was some mass downloads of images. And a lot of the
12 arguments I would be making if this was a case where someone
13 was a longer term collector, had really been searching for
14 the kinds of materials, that the enhancements bump up their
15 sentence. I think I'm taking a different position here than
16 I am in this case where none of those indicia really apply.
17 For those reasons, as well as all the things that Mr. Hess
18 had going to his credit in this case, the government thought
19 that a downward variance was appropriate for the acceptance
20 of responsibility to account for the conduct here, to account
21 for the other positive factors that Mr. Hess had in his
22 favor. And so it is for that reason that the government
23 recommended a sentence at the mandatory minimum, which does
24 vary downward from the guidelines at 60 months. But also we
25 believe that a lengthy period of supervised release following

1 that is appropriate in this case. The government is asking
2 for 10 years. I think that's appropriate, in order for
3 Mr. Hess' release, to ensure that he actually complies. It
4 appears, based on what I know about his past, I hope the
5 prognosis is good, but I do think it is appropriate for the
6 Court to ensure that there is monitoring of that, to make
7 sure that the conditions that are set forth, I think there is
8 cause for internet monitoring and the treatment protocol that
9 is in place to be imposed.

10 THE COURT: Let me ask you: What is your
11 recommendation, if any, related to the probation officer's
12 suggestion about nonresidential sex offender treatment while
13 incarcerated?

14 MS. HERTZFELD: I mean, my view is I normally do
15 defer to probation's recommendation. I think they know a lot
16 more about those programs than I do.

17 THE COURT: All right.

18 MS. HERTZFELD: I would agree. I accept their
19 recommendation, Your Honor.

20 THE COURT: Okay.

21 MS. HERTZFELD: Thank you.

22 THE COURT: Thank you.

23 Mr. Spencer.

24 MR. SPENCER: Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 MR. SPENCER: Your Honor, as has already been stated
2 to the Court, Mr. Hess appears before this Court completely
3 remorseful and shamed for his conduct in this case. He has
4 never denied it from the very beginning when he was initially
5 arrested and contacted by law enforcement officials. He
6 readily admitted his involvement in this case, understanding
7 that what he had done was wrong, and he knows that. As he
8 stands before this Court, he is at the point where he has to
9 accept what is about to be imposed upon him as a sentence,
10 and it is his desire to accept that sentence and to do his
11 best to complete that sentence so that he can return to the
12 bosom of his family and get on with his life.

13 Your Honor, I agree with what the government has
14 indicated in terms of Mr. Hess' background and the unusual
15 circumstances that bring him before this Court based on his
16 background. As indicated, it is not like there is any
17 evidence that he was involved in this long-term. It was a
18 very short-term participation by him in these offenses. It
19 is a complete aberration from his background, his upbringing,
20 his present lifestyle at the time that he was committing
21 these offenses. And to a certain degree, Your Honor, we
22 would submit to the Court that his curiosity led him to seek
23 certain information on the internet, and because of the I
24 guess ease of being able to follow certain paths and gather
25 certain information on the internet, his curiosity just

1 completely to a certain degree took over and led him to so to
2 speak seek more and more damaging information, which he did
3 not view as a way of I guess accepting any type of particular
4 gratification for it. There has been no indication that he
5 has any particular desires or needs to view this particular
6 information in circumstances other than it's there, that he
7 was led to it. His involvement in this offense I think is
8 based upon his just not understanding the complete
9 ramifications of where that curiosity will lead him. And I
10 think that based upon his background, his upbringing, that
11 this offense, his limited involvement in this offense, is an
12 aberration from the character that he actually possesses.

13 Your Honor, as indicated, Mr. Hess has the complete
14 support and understanding of not only the family members that
15 are present in Court but the family members that are unable
16 to appear at this proceeding. They are here knowing the
17 complete facts of what this case involves. He is from a
18 relatively close-knit small community, not just a close-knit
19 small family, and he did not attempt to hide his involvement
20 in this offense from them to try and change the nature of the
21 offense to somehow lessen his involvement in this offense and
22 what this particular offense involves and what the actual I
23 guess terms of this offense involves, and that he would now
24 be labeled as a sex offender. He did not try to lessen that
25 in terms of discussing this case with his family and friends,

1 and I think that that goes a long way in indicating that
2 Mr. Hess accepted complete responsibility, hopes to return to
3 his family as a person that they knew and loved from the very
4 beginning.

5 Mr. Hess also has to face the shame of returning to
6 his community as a result of being convicted of this offense.
7 In particular, Your Honor, in Mr. Hess' case, as indicated,
8 his employment is as a home improvement worker. In terms of
9 his ability to I guess get work in that area is probably
10 lessened to a certain extent in his community where the facts
11 of this conviction are known because it will I guess be a
12 factor in individuals deciding whether or not they want him
13 in their household doing work at their house.

14 He, as a result of this offense, has a lot to
15 overcome. He is prepared to face those challenges and do his
16 best to overcome those challenges and return to his community
17 and his family knowing what he has been convicted of and
18 sentenced of and served time in prison for, as the person
19 that they know him to be, law abiding, hard working, bill
20 paying, friend of the family and friends.

21 Your Honor, we would submit that based upon all the
22 information presented in the presentence report, even
23 presented by the government, that Mr. Hess should not be
24 sentenced to any more than the Court is required to sentence
25 him to, and that would be 60 months, followed by any other

1 supervision or conditions that the Court wishes to impose.

2 Your Honor, with respect to the recommendation of the
3 probation office concerning the particular program that is
4 mentioned in 104A of the presentence report, I've discussed
5 that with Mr. Hess, and he has no objection to the Court
6 making that recommendation if the Court is of a mind to. In
7 addition, Your Honor, we would ask the Court that if that is
8 to be a recommendation as part of the Court's sentence that
9 the Court would also recommend -- that paragraph identifies
10 certain facilities in the Bureau of Prisons system that offer
11 this particular program. We would ask the Court to recommend
12 that Mr. Hess be designated to the FCI in Elkton, Ohio. Your
13 Honor, that facility not only offers the program but it is
14 the closest facility to Mr. Hess' home that would still
15 permit him to benefit from the support of his family. That
16 facility is approximately a two-and-a-half-hour drive from
17 the area which Mr. Hess was raised in and where his family
18 lives. So in terms of the facilities indicated in that
19 paragraph, paragraph 104A of the presentence report that
20 offered that particular program, that would be the closest
21 one to his home and would permit him to not only participate
22 in the program but also to still benefit from the support of
23 his family.

24 We would ask the Court to impose a sentence of no
25 more than 60 months with whatever other conditions that the

1 Court wishes to impose.

2 I do know that Mr. Hess wishes to address the Court
3 briefly, Your Honor, and I think maybe one other member of
4 his family wishes to address the Court if that is
5 permissible.

6 THE COURT: That is. Why don't we have the family
7 member approach first.

8 MR. SPENCER: Yes, Your Honor.

9 THE COURT: Thank you.

10 Good afternoon, ma'am. You may come right up to the
11 podium, and if you wouldn't mind starting by giving us your
12 name.

13 MS. HESS: If I cry, I'm sorry.

14 THE COURT: That's all right.

15 MS. HESS: I'm Patricia K. Hess, Brian's mom.

16 THE COURT: Yes, ma'am.

17 MS. HESS: I want to start out by thanking you for
18 one thing. You have been very understanding through this,
19 with helping us get a different attorney that we actually
20 care for. I mean he has been very honest with us and been
21 there when he said he would and everything. So thank you
22 very much for that.

23 I'm so glad to hear that other people see what a good
24 guy Brian is. From the time he was little, he has always
25 been a very caring person. We do live in a small town. When

1 Brian was in high school, he wanted a truck, and he was 16,
2 and he wanted his own truck, and I'm a hard mom, maybe
3 because I'm a nurse, I don't know, but I said to him -- he
4 came to me and he said: I found a truck, Mom. I'd really
5 like to get it. Will you sign with me? I can't get a loan
6 myself."

7 I looked at him, and I said, "Yes, I will, but if you
8 are late with a payment, if you miss a payment, that truck is
9 mine, you don't get it." So through high school, he worked
10 almost full-time hours, never was late or missed a payment so
11 he could have that truck. That's the type of person he is.
12 He has also had his own business, which had to be let go
13 right now because of him being incarcerated. So the business
14 had to stop.

15 Brian is one that no matter who calls him and says,
16 will you help me, or I need help, he is there for everyone.
17 My mom and my stepdad are back here, and if they need snow
18 removed, if they need a tractor fixed, if they need whatever,
19 they call, and he's there. He does it not just for family,
20 he has gone through and plowed people's snow for nothing.
21 Even though they are trying to offer him money, he didn't
22 want it. He just wanted to help them out. He was brought up
23 that way. You don't go through life just to see what you can
24 get from it. You don't get paid for everything. Your
25 payment is the joy you feel from blessing that person. And

1 that's how he has been brought up.

2 We have talked extensively about what he has done,
3 and he is very sorry. He has no idea what made him click on
4 anything. We have talked about it. And he said, mom, you
5 know, I would never harm a child. And I said I honestly do
6 know that. He has a niece and a nephew, and I know that he
7 would never harm them or anyone else. We have a friend back
8 here that said, I would trust him with my girls because I
9 know he would never harm them, and that's the type of person
10 he is, and we all know that.

11 The only good that has come out of all of this is
12 Brian got back with God. So out of all of this, I am so
13 thankful that he is back, him and God, and he talks to him,
14 he prays, he does his Bible study, and we talk on the phone
15 together about what we're studying and stuff. So it's been
16 awesome to have him close again, which he knows he wasn't
17 this close before but he is now. He talks to me about, mom,
18 I'm telling you, I will never ever do anything again, I never
19 want to end up in a place like this. The people that are
20 here are spoiled. They think everybody owes them everything.
21 He said, mom, they did wrong, that's why they're here. So he
22 knows that. He knows why he's in jail. He is very
23 remorseful about everything.

24 And I just ask that you listen to the kind of person
25 he is, to give him the minimum of what you can. I also ask

1 that you try to have him as close to us as possible, because
2 with me being a nurse, I work very long strange hours, and it
3 is hard for me to get off work. It's been hard for me even
4 to come to Court, but I have made it here each time, but if
5 he was close to home, maybe we could see him more. Because I
6 haven't been able to get off a Thursday to see him, that's
7 the only visiting day he has right now. So when you're doing
8 all this, I just ask that you think of us, too, as his
9 family, that we can stay close, and he will continue to call,
10 and I know that, and will write and stuff, but I just want to
11 put that out there, and I thank you.

12 THE COURT: Thank you.

13 We have somebody else who would like to say
14 something.

15 MR. WITMER: My name is Sheldon Witmer. I am Brian's
16 brother-in-law.

17 I'm still thinking about what you said about victims
18 of this crime, and I have two young children, and it is just
19 very painful to think about the situations, but I wanted to
20 let the Court know that I, too, believe that this situation
21 was very out of character for Brian. I have a 12-year old
22 son and a 9-year-old daughter, and I would absolutely
23 100 percent trust him with them. He is more than welcome in
24 my house anytime. My children were around him the entire
25 time that he was on house arrest. We were there, obviously,

1 but they were with him. And I just really want you to be
2 aware of that and to just know that he really truly does care
3 about our kids, which is why I truly believe this is just
4 kind of an out-of-character item for him.

5 I also think it has been shared a lot, but Brian has
6 really been looking to the good in all this. I thought it
7 was just worth you knowing that. Even early on when he
8 originally entered the plea and you had mentioned that he
9 would be taken into custody immediately and he hadn't been
10 made aware of that and you were extremely gracious and
11 allowed him some time to finalize and get his affairs in
12 order and come back, and during that time, I was able to meet
13 and talk with him, and he repeatedly stressed how gracious
14 you had been and how you really didn't need to do that and
15 how amazing that was. He could very easily have focused on
16 the fact that he hadn't been made aware of that by his
17 attorney and the down sides of all that, but he didn't. He
18 didn't want to talk about that. He has always accepted
19 responsibility for what he has done, and he wants to take
20 that responsibility and move on with his life.

21 My family, we will be there to support him through
22 this, as well.

23 THE COURT: Thank you.

24 Mr. Spencer, I did want to ask you a question, and it
25 is whether in your experience the sex offender treatment

1 program that occurs in BOP is kind of like -- Ms. Hertzfeld
2 can speak to this, as well -- kind of like the 500-hour drug
3 program insofar as if you complete it you get time off your
4 sentence. You don't know.

5 I will talk to probation, as well. No, you don't?

6 THE PROBATION OFFICER: No, Your Honor. And the
7 program is completely voluntary.

8 THE COURT: I see.

9 MR. SPENCER: Yes, Your Honor. That is my
10 understanding of it, also. I think in the Bureau of Prisons
11 system there is the ability to do things in the facility to
12 earn extra good time, and I don't know if participation in
13 this program is considered one of those things. It's not
14 like the 500-hour program, that if you complete the program,
15 you are awarded the additional good time credit, but I do
16 know in some BOP facilities if you take an extra effort to
17 get involved in programs or to do extra work that there is
18 the possibility, based upon the individual facility and the
19 wardens running the facility, to earn good time.

20 THE COURT: All right. Ms. Hertzfeld, I don't know
21 if you have anything to add.

22 MS. HERTZFELD: No, Your Honor. I don't know how the
23 drug program works. I can't make a comparison.

24 THE COURT: Anyone else other than Mr. Hess?

25 MR. SPENCER: Yes, Your Honor. I think Mr. Hess'

1 grandfather.

2 THE COURT: All right. Good afternoon, sir.

3 MR. MARCUS: Good afternoon, Judge. My name is
4 Martin Marcus. I'm Brian's grandfather.

5 Brian is a humble person. He has helped everybody in
6 our community. If we ever needed help, Brian was there to
7 help us.

8 I don't think there was one person in our community
9 that would say anything bad about Brian. And I'm sure that
10 his record, his background check here, would not divulge
11 anything bad about Brian. He was always kind and humble.

12 He made a mistake. He looked in the den of hell.
13 After he got caught, Brian called us. He admitted he made a
14 mistake, and we forgave him. It is like Mary Magdelene. We
15 forgive him. We know he is here to be judged, but we ask for
16 forgiveness. We are not here to throw rocks at him. We love
17 him. And we know that he has found God. He is praying, and
18 we forgive him.

19 Thank you.

20 THE COURT: Thank you, sir.

21 MR. SPENCER: I think that is it, Your Honor.

22 THE COURT: All right. Mr. Hess, if there is
23 something that you would like the Court to consider before
24 imposing sentence, now would be the time to come forward.

25 THE DEFENDANT: I do want to thank you myself for

1 everything that you have helped, you know, with my new
2 attorney and giving me extra time. And I do thank you.

3 I don't have a good answer for why I did what I did.
4 I did come across stuff by accident, and it led to this,
5 which I had no idea it would ever lead to this. I wish I
6 could take it all back and change it because it has caused
7 nothing but hurt and just disappointment and shame for me and
8 my family. So I'm not sexually attracted to children. I
9 just came across things that I shouldn't have been looking
10 at, and I have no good excuse, ma'am. But I wish I could
11 take it all back. I just want to try to make things as right
12 as I can now so that I can write the next chapter of my life.

13 Thank you.

14 THE COURT: Thank you, sir.

15 You may have a seat.

16 The Court has calculated the sentencing guidelines,
17 heard the statements made by counsel, by the various family
18 members who have approached, and by Mr. Hess. And it must
19 now consider the relevant factors that are set out by
20 Congress in 18 U.S.C. 3553(a) in order to ensure that it
21 imposes a sentence that is sufficient but not greater than
22 necessary to comply with the purposes of sentencing. These
23 purposes include the need for the sentence imposed to reflect
24 the seriousness of the offense, to promote respect for the
25 law, and to provide just punishment for the offense.

1 Congress says that the sentence should also deter criminal
2 conduct, protect the public from future crimes of a defendant
3 and promote rehabilitation.

4 In addition to the guidelines and policy statements,
5 the Court is required to consider the nature and
6 circumstances of the offense, the history and characteristics
7 of the defendant, the types of sentences available, the need
8 to avoid unwarranted sentencing disparities among defendants
9 with similar records who have been convicted of similar
10 conduct, and the need to provide restitution to victims of
11 the offense.

12 I have considered all of these factors when deciding
13 the appropriate sentence in this case. And in accordance
14 with my ordinary practice, I won't march through a discussion
15 of each of those factors orally here this afternoon. But I
16 do want to take a moment to address certain aspects of my
17 decision, including the nature of the offense, your history
18 and characteristics as an offender, and the need to avoid
19 unwarranted sentencing disparities.

20 With respect to the nature of this offense, it is
21 very important that you, Mr. Hess, and those who care for you
22 understand that distribution of child pornography is an
23 extremely serious federal crime. It is one of the types of
24 crimes that on its face doesn't evoke seriousness such as
25 other types of violent crimes -- the drugs, the guns -- and

1 so it is sometimes difficult for people to recognize its
2 seriousness. And when looking at some of the letters and the
3 background materials that were submitted on your behalf in
4 this case, I got a sense that that might be happening here.
5 I reviewed many nice character letters that people had
6 written for you and submitted on your behalf. And some of
7 them suggested that you were merely looking at inappropriate
8 pictures and really hadn't done anything wrong. And so in
9 this moment, what I would like to do is to help you to
10 understand and appreciate that the possession and
11 distribution of child pornography is much more than just
12 viewing something that is inappropriate or taboo.

13 As Ms. Hertzfeld explained, this crime involves
14 people who are taking pictures and videos of real children
15 while those children are being sexually abused, and then not
16 only putting those pictures on the internet for other people
17 to see, but actively trading in them.

18 Now, in your heart of hearts, even though you
19 stumbled across this activity, I'm sure you know that,
20 whether you want to admit it or not, and in fact, your
21 collection as far as was described to the Court apparently
22 included hundreds -- hundreds -- of images of children in
23 sexually compromised positions, some of them engaged in
24 sadomasochistic acts, and most importantly, the children in
25 those pictures were not knowing and willing participants in

1 the degrading conduct that was being depicted. They were
2 being forced, forced by someone off screen, to commit
3 unspeakable acts of sexual violence for the pleasure of the
4 people filming them and for the gratification of people
5 everywhere. And what concerns me is that many of those
6 people have absolutely no shred of empathy for what that
7 conduct does to the children who were being abused in this
8 way.

9 When I get cases like this one -- and I have had
10 several of these cases -- I really try to assess the extent
11 to which the defendant understands the damage that is being
12 done to the young children in the photos that were being so
13 eagerly traded and collected. Ms. Hertzfeld talked about
14 hearing from the victims. I don't know if you have ever
15 heard from victims of child pornography offenses. We didn't
16 get a victim impact statement in this case. But I have heard
17 from them. I have had victims testify about what this kind
18 of offense does to them for the rest of their lives. Some of
19 the children that you saw in the pictures will never have
20 normal adult relationships. Some of them will turn to drugs
21 and prostitution and other dangerous conduct to try to deal
22 with the emotional pain that results from the torture that
23 they have experienced. And even those who manage to lead a
24 somewhat normal adult life often say that they live in
25 constant fear of being recognized. Some of them develop

1 phobias because they're unable to go outside of their homes
2 thinking that their pictures, which are on the internet
3 forever, are out there and everyone has seen them and they
4 can't do anything without fear of being recognized from this
5 period of time when they were in their most vulnerable state
6 at the most horrible time in their lives. So I want to make
7 that clear because Congress has imposed very serious
8 penalties, and that is why.

9 I have to say that what I found particularly
10 disturbing about your offense -- and I will talk about all of
11 the mitigating factors, Ms. Hertzfeld and your counsel
12 brought them up, and they relate to your personal
13 character -- but focusing on the offense, what I found
14 particularly disturbing about the offense is the fact that
15 you apparently concocted a story about having photographed
16 your own daughter who you purportedly were willing to take
17 pictures of to trade with other people. I know from your
18 comments and from those who know you that you are unlikely to
19 ever harm a child. But in the context of this crime, you
20 represented that you would. That in and of itself is
21 astonishing. That is unusual for people who are convicted of
22 this kind of crime, and I have to say it is very disturbing.

23 Ms. Hertzfeld talked about the mysteries in this
24 case, why did you engage in this kind of behavior. I have to
25 say, in looking at the record, there is some mystery about

1 your relationship to a particular girl in one of the pictures
2 and the way in which you talked to the officer about this
3 girl in the several pictures that you forwarded, that remains
4 to me a mystery and also very disturbing. So these facts and
5 circumstances and the nature of this case I think justify a
6 substantial period of incarceration.

7 Now, I want to be clear, the record is not sufficient
8 to support any inference that you ever abused a child. I
9 heard from and appreciate and believe the people who say that
10 you would never do anything like that. But again, the case
11 is still serious even without that kind of conduct. And
12 again, here is why: Because the market, the market for
13 producing pictures of children being molested and raped is
14 driven by those who want to see those pictures. If the
15 lookers weren't there, if the interest wasn't there, then
16 there would be fewer child victims. And that's why I believe
17 Congress was motivated to make distribution of child
18 pornography a federal offense and to require judges to impose
19 a statutory mandatory minimum penalty when that offense is
20 charged.

21 Ms. Hertzfeld talked a little bit about the
22 guidelines, and I did, too. The statutory mandatory minimum
23 penalty, that is, the statutes require the Court to impose a
24 penalty of at least 60 months. And under the sentencing
25 guidelines that we calculated, you heard a much greater

1 term -- much greater -- is prescribed. I believe and agree
2 that there are factors that are taken into account with
3 respect to the sentencing guideline calculation that make
4 that calculation much greater than it need be in most cases.
5 I'm not going to make any findings or express general policy
6 disagreements with the guidelines, but I do think it is
7 appropriate to have an adjustment to the calculation as it
8 relates to child pornography crimes because the factors, use
9 of a computer and to some extent number of images, is no
10 longer really adequately distinguishing of more serious child
11 pornography offenders from less serious child pornography
12 offenders. Those factors really don't make much sense and,
13 in this Court's view, shouldn't be used to aggravate the
14 penalty.

15 Let me say a few words about your history and
16 characteristics. You have no prior criminal history, and I
17 have to say for offenses of this type that is actually not
18 unusual. What is somewhat unusual is the fact, as
19 Ms. Hertzfeld alluded to, that there doesn't appear to be any
20 sexual abuse of any kind in your own past. It should not
21 surprise you that in child pornography cases and similar
22 cases, cases of this nature, one often sees some factor in
23 the past of the defendant that can help to explain at least
24 why we are here. The presentence report relates various
25 facts about your upbringing, and there is nothing to suggest

1 that you were necessarily predisposed to engage in this
2 behavior, nor do I see anything, any sort of substance abuse
3 or mental health issues that would mitigate your decision to
4 do so.

5 I have also reviewed and considered the many letters
6 that have been submitted on your behalf. I mentioned reading
7 those letters before. The Court always appreciates getting
8 letters from a defendant's friends and family because the
9 people who know you can attest to your true character. To a
10 person, they have told me about who you are as a person.
11 That is important. And they have talked about your many
12 virtuous characteristics.

13 Like Ms. Hertzfeld, I also acknowledge that you have
14 a large and supportive group of family members and friends,
15 many of whom are here today. That is unusual, Mr. Hess, and
16 it is a significant testament to your essential goodness
17 because you have a wide variety of people, from prosecutors
18 to people of the cloth, coming forward to speak about your
19 kindness and dependability. Let me say that you should be
20 very proud that you have developed such a following. And
21 also, as you expressed, very sad, very sad about what your
22 criminal conduct must be doing to the people who know you and
23 trust you and care about you. They obviously did not know
24 about the deviant behavior that caused you to amass a trove
25 of sickening pictures of child sex abuse.

1 Your counsel explained that you were honest with
2 them. Several of your family members talked about talking
3 with you about this crime, and you took full responsibility,
4 and that's very good. I hope that you will be honest with
5 them moving forward, as well. Because in addition to needing
6 some treatment, you're going to need their help, not only
7 during your period of incarceration, but also afterwards when
8 you return to the community. There will be a lot of
9 restrictions that the law requires because now you are a
10 convicted sex offender, and you are going to need the support
11 of these people to get through the next phase of your life
12 and beyond. The Court has taken into account what appears
13 substantial and significant family support as it has
14 considered the appropriate penalty in this case.

15 The third and final consideration I want to discuss
16 is the need to avoid unwarranted sentencing disparities,
17 which is a factor that I often find to be very important in
18 my consideration of how to sentence the defendant.
19 Ms. Hertzfeld mentioned I provided notice to both parties of
20 my consideration of sentencing statistics. I did my
21 research, and I notified you all that the relevant statistics
22 that the sentencing commission pointed out demonstrated
23 certain things. First of all, there are no cases -- no
24 cases -- in the District of Columbia in years 2012 to 2016
25 that involve the exact same guideline calculation.

1 Furthermore, it looks as though the national statistics for
2 similarly situated defendants are all over the map. The
3 average sentence imposed in any given year appears to depend
4 on whether a judge sentences within the sentencing range or
5 varies and whether any variance is government sponsored.

6 As pertinent to this case, the Commission looked at
7 the data and has clarified that the average sentence
8 nationally for similarly situated defendants was 81 months of
9 imprisonment in 2016, and that average included sentences
10 that ranged from 60 months to 120 months.

11 Taking into account all of the relevant criteria,
12 including the need for the sentence imposed to avoid
13 unwarranted disparities, this Court agrees with counsel from
14 both sides that a sentence within the guideline range or one
15 that reflects the straight average of the national sentences
16 would be greater than necessary to comply with the purposes
17 of punishment and that, instead, the appropriate penalty, all
18 things considered, is a sentence at the mandatory minimum.

19 I have taken into account the statements of counsel
20 and defendant, the letters submitted on the defendant's
21 behalf, the probation office's recommendation, the nature of
22 this crime, and all of the various mitigating factors that
23 counsel have discussed, including -- including and
24 importantly -- your acceptance of responsibility. I agree
25 that a variance is warranted and that a penalty of 60 months

1 of imprisonment is sufficient but not greater than necessary
2 to reflect the seriousness of the instant offense, to promote
3 deterrence, to protect the public from future crimes that
4 might be committed by you, and to avoid unwarranted
5 disparities among defendants convicted of similar crimes.

6 The Court will impose a period of 120 months of
7 supervised release in order to permit you to rehabilitate
8 yourself fully and integrate yourself back into society.
9 Therefore, based on my considerations of all of the 3553(a)
10 factors, I will now state the sentence to be imposed.

11 Mr. Hess, please stand.

12 It is the judgment of this Court that you, Brian
13 Hess, are committed to the custody of the Bureau of Prisons
14 for a term of 60 months on count one, with credit for time
15 already served since your detention on April 7, 2017, on the
16 charge in this case.

17 You are further sentenced to serve a term of
18 120 months of supervised release on count one and to pay a
19 \$100 special assessment.

20 The Court finds that you do not have the ability to
21 pay a fine and, therefore, waives imposition of a fine in
22 this case. The Court also finds that you do not have the
23 ability to pay the \$5,000 assessment pursuant to the Justice
24 For Victims of Trafficking Act of 2015 and, therefore, waives
25 imposition of this assessment.

1 The \$100 special assessment is immediately payable to
2 the Clerk of the Court for the U.S. District Court for the
3 District of Columbia. Within 30 days of any change of
4 address, you shall notify the Clerk of Court of the change
5 until such time as the financial obligation is paid in full.
6 The Court waives any interest or penalties that may accrue on
7 unpaid balance.

8 The Court will recommend to the Bureau of Prisons
9 that you be housed at a facility that has a nonresidential
10 sex offender treatment program and that you be placed in such
11 a program during your term of imprisonment. And specifically
12 based on the probation officer's report and your counsel's
13 recommendation, the Court will recommend that you be housed
14 at FCI Elkton in Ohio.

15 Within 72 hours from release of custody, you shall
16 report in person to the probation office in the district to
17 which you are released.

18 While on supervision, you shall submit to the
19 collection of DNA. You shall not possess a firearm or other
20 dangerous weapon. You shall not possess an illegal
21 controlled substance. And you shall not commit another
22 federal, state, or local crime.

23 You shall also abide by the general conditions of
24 supervision adopted by the U.S. Probation Office, as well as
25 the following special conditions, which I will state and

1 describe the reasons for, as the D.C. Circuit requires:

2 Sex offender registration. You shall comply with the
3 sex offender registration requirements for convicted sex
4 offenders in any state or jurisdiction where you reside, are
5 employed, carry on a vocation, or are a student. Imposing
6 registration as a condition of supervised release is the
7 least restrictive means of protecting the public from further
8 sex crimes.

9 Sex offender assessment. You must participate in a
10 sex offense specific assessment. This condition is imposed
11 because it is the least restrictive means of providing you
12 with treatment to rehabilitate yourself so you can move
13 forward from the underlying offense, and it will also deter
14 future conduct involving sex offenses.

15 Sex offender treatment. You must participate in a
16 sex offense specific treatment program and follow the rules
17 and regulations of that program. The probation officer will
18 supervise your participation in that program. This condition
19 is imposed because it is the least restrictive means of
20 providing you with treatment to rehabilitate yourself so you
21 can move forward from the underlying offense, and it will
22 also deter future conduct involving sex offense testing.

23 You must submit to periodic polygraph testing, as the
24 probation officer directs, as a means of ensuring that you
25 are in compliance with the requirements of your supervision

1 treatment program. This is the least restrictive means of
2 protecting the public from further sex crimes, ensuring that
3 you rehabilitate yourself and move forward from the
4 underlying offense.

5 Contact restriction. You shall have no intentional
6 direct or unsupervised contact with any child you know, or
7 reasonably should know, to be under the age of 18 without the
8 permission of the probation officer. If you do have any
9 direct contact with a child you know, or reasonably should
10 know, to be under the age of 18 without the permission of the
11 probation officer, you must report this contact to the
12 probation officer within 24 hours. Direct contact includes
13 written communication, in-person communication, or physical
14 contact, but does not include incidental contact during
15 ordinary daily activities in public places. Given the nature
16 of your crime, distribution of child pornography, this is the
17 least restrictive means necessary of protecting the public
18 from future sex crimes against minors, of deterring future
19 offenses, and encouraging registration.

20 Computer search. You must, under the law, submit
21 your computers, as defined in 18 U.S.C. 1030(e)(1) or other
22 electronic communications or data storage devices or media to
23 a search. You must warn any other people who use these
24 computers or devices capable of accessing the internet that
25 the devices may be subject to searches pursuant to this

1 condition. A probation officer may conduct a search pursuant
2 to this condition only when reasonable suspicion exists that
3 there is a violation of a condition of supervision and that
4 the computer or device contains evidence of this violation.
5 Any search must be conducted at a reasonable time and in a
6 reasonable manner. Given that you used your cellular
7 telephone to distribute the child pornography in this case,
8 this condition is the least restrictive means of protecting
9 the public from future offenses and deterring you from
10 committing future offenses.

11 Computer monitoring. You must allow the probation
12 officer to install computer monitoring software on any
13 computer that you use. Again, in light of the fact that you
14 used your cellular telephone to distribute the child
15 pornography in this case, this condition is the least
16 restrictive means of protecting the public from future
17 offenses and deterring you from committing future offenses.

18 Premises and effects search. Pursuant to the Adam
19 Walsh Child Protection and Safety Act of 2006, you must
20 submit your person, property, house, residence, vehicles,
21 papers, computer, or other electronic communication or
22 storage devices or media or office to a search conducted by a
23 United States probation officer. Failure to submit to a
24 search may be grounds for revocation of release. You must
25 warn any other occupants that the premises may be subject to

1 searches pursuant to this condition. The probation office
2 may conduct a search under this condition only when
3 reasonable suspicion exists that you have violated a
4 condition of supervision and that the areas to be searched
5 contain evidence of this violation. Any search must be
6 conducted at a reasonable time and in a reasonable manner.
7 This condition is expressly authorized by statute,
8 18 U.S.C. 3583(d). The Court finds that this condition is
9 reasonably related to the nature and circumstances of your
10 offense, the need to deter criminal conduct, protection of
11 the public, and treatment of your correctional needs because
12 the nature of your offense indicates some degree of risk or
13 recidivism and because any repeated criminal conduct of this
14 nature could well be carried out in a residence. Permitting
15 searches upon reasonable suspicion will help deter future
16 criminal conduct, protect the public, and aid in your
17 rehabilitation.

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

23 Also, pursuant to your plea agreement, you are hereby
24 ordered to forfeit the Kyocera black cellphone.

25 Mr. Hess, you have a right to appeal the sentence

1 imposed by this Court under limited circumstances laid out in
2 your plea agreement. If you choose to appeal, you must file
3 an appeal within 14 days after the court enters judgment. If
4 you are unable to afford the cost of an appeal, you may
5 request permission from the Court to file an appeal without
6 cost to you.

7 Are there any objections to the sentence imposed that
8 are not already noted on the record?

9 MS. HERTZFELD: No, Your Honor. Thank you.

10 MR. SPENCER: No, Your Honor.

11 THE COURT: Is there anything else that we need to
12 address in this matter before the Court concludes its
13 judgment?

14 MS. HERTZFELD: No, Your Honor.

15 MR. SPENCER: No, Your Honor.

16 THE COURT: All right. This concludes the Court's
17 judgment in this case.

18 Mr. Hess, good luck.

19 (Proceedings adjourned at 4:23 p.m.)
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Patricia A. Kaneshiro-Miller, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 21st day of March, 2022

/s/ Patricia A. Kaneshiro Miller

Patricia A. Kaneshiro-Miller, RMR-CRR
Official Court Reporter