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 Attorneys for Plaintiff
 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15 v.
 16 STEVE JACKSON RODRIGUEZ,
 17 Defendant.

No. ED CR 21-0188(B)-JWH-1
GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT STEVE JACKSON
RODRIGUEZ
[Exhibits Filed Concurrently Under
Seal]
SENTENCING DATE:
 January 13, 2023, at 2 P.M.

19
 20 Plaintiff United States of America, by and through its counsel
 21 of record, the United States Attorney for the Central District of
 22 California and Assistant United States Attorneys Scott M. Lara and
 23 Catharine A. Richmond, hereby files its Sentencing Position for
 24 Defendant STEVE JACKSON RODRIGUEZ.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant STEVE JACKSON RODRIGUEZ ("defendant") should spend the
4 remainder of his life in prison for recording himself mercilessly
5 raping severely disabled children entrusted to his care while he
6 worked alone as their caregiver in a group home. He thereafter
7 distributed some of those files and also offered for other people to
8 rape the children too.

9 Defendant's youngest known victim was just 6 years-old when he
10 began abusing her. When she was 8 years-old, he filmed himself
11 thrusting his penis into her small anus and forcing his penis deep
12 into her mouth towards her throat. The child could not talk due to
13 her severe disabilities, but her pain and protest were evidenced by
14 her distressed grunting and moaning.

15 He also raped her wheelchair-bound housemates with one being
16 blind, deaf, and mute and the other having cerebral palsy.

17 Defendant gained access to his victims by "volunteering" for
18 undesirable overnight shifts at the group care home to ensure he was
19 alone with unfettered access to non-verbal disabled children who had
20 neither the bodily ability to resist nor the verbal ability to report
21 his repeated rapes. Defendant knew most of these children had been
22 previously abused or neglected by their parents and therefore placed
23 in the group care home.

24 Defendant also enticed a 15-year-old victim to have sex with him
25 when he was in his mid-30s and produced child pornography of her.

26 For this conduct, the government and Probation Office both
27 recommend a guidelines sentence of life imprisonment.

1 **II. FACTS**

2 **A. Defendant Maneuvered Himself into a Position of Trust As**
3 **The Sole Nighttime Caregiver at a Group Home to Repeatedly**
4 **Film Himself Raping Numerous Disabled Children**

5 From 2014 to 2016, in March 2017, and from December 2017 to
6 January 2018 defendant was a Certified Nursing Assistant ("Nursing
7 Assistant") at the group home funded in part by County money in Chino
8 Hills, California ("Care Home") for severely mentally and physically
9 disabled children. (Dkt. 155, Amended Plea Agreement ("Plea
10 Agreement") at 15.) The children had been placed at the Care Home
11 due to abuse, neglect, or the inability of the parents to care for
12 their children. Defendant knew this. (See Exhibit ("Exh.")¹ D at
13 40:14-40:25.)

14 Defendant also knew just how disabled the children in the Care
15 Home, and in his care, were because his work was needed precisely
16 because the children's disabilities precluded them for caring for
17 their own most basic needs. For example, some of the children needed
18 wheelchairs, colostomy bags, or feeding tubes. Many were non-verbal
19 and had limited cognitive capacity. They needed 24-hour care and
20 supervision. (Dkt. 112, Presentence Report ("PSR") ¶ 15(a), (c),
21 (d).)

22 ¹ All the exhibits in this case are being filed
23 contemporaneously under seal due to their sensitive nature (as
24 described in the government's accompanying declaration to the ex
25 parte application for an under-seal filing). The child and age-
26 undetermined pornography exhibits - in addition to being filed under
27 seal - are also being filed in camera because they are contraband (or
28 possible contraband in the case of the age-undetermined pornography).
Whenever the Court is ready to view these exhibits, it can contact
the government's counsel of record who will arrange for the case
agent to bring these exhibits (and a secured viewing device) to the
Court. Typically, the Court will ask to view these exhibits either
on a day before sentencing or on the day of sentencing before the
hearing begins.

1 The Care Home was small, caring for about six children at that
2 time, and as such, defendant had intimate knowledge of each child's
3 severe limitations. In addition, as a Nursing Assistant, defendant
4 had access to the children's medical files which listed their
5 unambiguous medical diagnoses which included conditions like cerebral
6 palsy, mental retardation, and severe hip dysplasia.

7 Defendant's job was to be an overnight caregiver for disabled
8 people that lived at the Care Home. (PSR ¶ 14.) These people
9 included Minor Victim 1 (Exh. A), Minor Victim 2 (Exh. B), and Minor
10 Victim 4 (Exh. C),² (collectively the "Care Home Victims"). (PSR
11 ¶ 15.)

12 Defendant requested to work the overnight shift, also called the
13 nocturnal shift (or "noc"). (PSR ¶ 16.) Defendant knew that he
14 would be scheduled to work the noc shifts alone, as opposed to the
15 daytime shifts which tended to have additional employees present.
16 (PSR ¶ 16.)

17 Defendant therefore carefully selected his time, location, and
18 victim pool to give himself access to the most vulnerable children.
19 Defendant knew he would have sole access to prepubescent and
20 pubescent children away from all other adults, alone for most of
21 night. Defendant knew his victims had such severe disabilities they
22 could not even attempt to physically resist him or meaningfully
23 report his abuse.

24 At the time, defendant was a grown, fully able-bodied, educated
25 man in his early-to-mid thirties. This made defendant among the
26

27 ² The government refers to the victims as Minor Victims 1, 2, 3,
28 and 4 to preserve their privacy. The government provided documents
to the Court and defense counsel that identifies the Minor Victims
with their true legal names.

1 strongest and the victims among the weakest people. Defendant abused
2 this power to molest his victims with almost no risk of being caught
3 or stopped.

4 And that is exactly what happened for years.

5 But raping them alone was not enough for defendant. Defendant
6 filmed his abuse and thereby created child pornography. These
7 produced files provide insight into defendant's mind. In many of
8 them, he calls out the victims' names, pans to their faces to capture
9 their reactions (showing pain, humiliation, and degradation), and
10 excitedly and breathily narrating his sex acts ("Fucking her ass
11 right now").

12 1. Defendant's Production of Child Pornography of Him
13 Raping Minor Victim 1

14 Defendant began abusing Minor Victim 1 when she was
15 approximately 6 years-old and continued to abuse and rape her until
16 she was approximately 8 years-old. (PSR ¶ 15.)

17 According to her attorney, Minor Victim 1 has been diagnosed
18 with autism with language and intellectual impairment, seizure
19 disorder, impose control disorder, disruptive dysregulation disorder,
20 posttraumatic stress disorder, bipolar disorder - type 2, and
21 requires the use of a colostomy bag. (Exh. E). Minor Victim 1
22 communicates at the level of a much younger child; Defendant himself
23 described Minor Victim 1 as only being able to speak "little words"
24 like a 3 year-old. (Exhs. E and D at 40:03-40:15.) She is currently
25 13 years-old.

26 Defendant was aware of Minor Victim 1's disabilities when he
27 began raping her because he saw her on a weekly basis and had access
28 to her medical file for work. (PSR ¶ 15(b).)

1 a. *Defendant's Rapes of Minor Victim 1*

2 Defendant's first documented child abuse of Minor Victim 1 was a
3 photograph of Minor Victim 1 sitting on a urination pad, with
4 defendant's penis about two inches from her vagina. (PSR ¶ 22.)
5 This image was charged in Count 1 in the Indictment. She was then
6 about 6 years-old. (PSR ¶ 15.)

7 On at least four occasions, defendant also filmed himself
8 putting his penis into Minor Victim 1's mouth. The government played
9 two of these videos during co-defendants' trial as Government's
10 Exhibits 23 and 24.³ In this section, the government discusses
11 Exhibits 23 and 24, a video charged in the Indictment in Count 6 but
12 not shown at co-defendants' trial, and an additional video discovered
13 in defendant's Google account which was not charged.

14 In one video (charged in Count 6 of the Indictment), Minor
15 Victim 1 is on her knees on the floor. Defendant's hand is placed on
16 the back of her head to maximize his ability to put his penis in her
17 mouth. The viewer can hear Minor Victim 1 struggle in response. She
18 gags in discomfort. With his penis in her mouth, he instructs her to
19 "suck that shit." Defendant's penis comes out of her mouth but
20 remains in the vicinity of her mouth. He then says, "suck on that
21 shit." Because Minor Victim 1 was a small child at the time, her
22 mouth was not fully developed. Defendant, however, had an adult

25 ³ The government played only those videos that defendant
26 distributed to co-defendants at co-defendants' trial, that is
27 Government's Trial Exhibits 23 and 24. Because the Court has already
28 seen these videos during co-defendants' trial, the government is not
attaching them hereto as exhibits. If the Court would like to view
these videos again, however, the government will provide them to the
Court when the Court views the under seal and in camera child
pornography exhibits attached hereto (described further below).

1 sized penis, and when he forced his adult penis into her small mouth,
2 his penis filled the entirety of her mouth cavity.

3 In another video (Exhibit 23 shown at trial), defendant thrusts
4 his penis deep into Minor Victim 1's mouth toward her throat causing
5 her to gag. Defendant's penis comes out of her mouth. Moments
6 later, she cries out and shouts, "no, baby!"

7 In another video (Exhibit 24 shown at trial), victim remains
8 essentially motionless as defendant holds her head in position as he
9 moves his penis continuously around in her mouth.

10 In another video (the uncharged video found in defendant's
11 Google account), defendant attempts to force Minor Victim 1's mouth
12 open with the head of his penis. Minor Victim 1 begins to cry out
13 and defendant "shushes" her as the camera pans away. The camera pans
14 back to Minor Victim 1's face and the viewer sees that defendant has
15 succeeded in forcing his penis into her mouth. He then removes his
16 penis and begins tapping his penis on her mouth and cheek.

17 Defendant also filmed himself with his head pushed between Minor
18 Victim 1's legs as she laid on a bed with his mouth on her vagina.
19 This video is charged as Count 9 in the Indictment. At the beginning
20 of the video, defendant pans up to capture Minor Victim 1's face.
21 Defendant used his tongue to lick the folds of her genitals and force
22 his tongue in between her pubis mons into her labia majora and
23 minora. Demonstrating his sheer lack of sympathy, defendant gives
24 the camera the "okay" sign while molesting the girl. At the end of
25 the video, defendant zooms in on her vagina and attempts to spread
26 open her pubis mons to expose her labia. Minor Victim 1 can be heard
27 vocalizing in response. The Court viewed stills from this video
28 during co-defendants' trial as Government's Exhibits 13, 14, and 15

1 and the government will provide those to the Court again, if
2 requested. If the Court would like to see the full video, the
3 government will provide it to Court.

4 Defendant also filmed himself attempting to put his erect penis
5 into Minor Victim 1's anus while she laid on her back on a bed. This
6 video was charged in Count 9 in the Indictment. Minor Victim 1 was
7 about 8 years-old at the time and therefore her anus was much smaller
8 than an adult's anus. Defendant placed his penis's head into the
9 opening of her anus. Victim vocalized in response. The Court also
10 viewed this video during co-defendants' trial as Government's Exhibit
11 27 and the government will provide it to the Court again, if
12 requested.

13 Defendant also filmed another video depicting his attempt to
14 thrust his erect penis into Minor Victim 1's anus.⁴ This video was
15 also charged in Count 9 in the Indictment. The video begins with him
16 placing his penis's head on the outside of her anus. Defendant
17 begins to attempt to penetrate her anus by pushing his penis's head
18 against the opening of her anus. Defendant, however, has great
19 difficulty due to the aforementioned size difference. He pushed so
20 hard his penis compressed like an accordion. While attempting to
21 fully force his penis into her anus, defendant pans up to Minor
22 Victim 1's face to capture her reaction. Unlike in adult pornography
23 where the recipient often displays pleasure, Minor Victim 1 instead

24
25
26 ⁴ Defendant agreed in his plea agreement that he touched his
27 penis to Minor Victim 1's anus. This is true. Touching includes
28 penetration. Penetration, in turn, includes entry of a penile organ
into an orifice, no matter how slight the entry. Thus, the
government agrees with defendant that he touched his penis to Minor
Victim 1's anus, but the government characterizes that touching as
penetration.

1 displays passivity. Defendant then pans back down to his attempts to
2 force his whole engorged penis into her small anus. The Court viewed
3 this video during co-defendants' trial as Government's Exhibit 25 and
4 the government will provide it to the Court again, if requested.

5 In his plea agreement, defendant admitted what is apparent from
6 the videos charged in Count 9 themselves: that they displayed
7 sadistic conduct. (Plea Agreement at 26, Count 9.)

8 Defendant also filmed a video of him preparing to abuse Minor
9 Victim 1 in her bedroom. Minor Victim 1 is standing by her bed.
10 Defendant calls her name and grabs her by the arm to pull her closer.
11 She makes a noise and he "shushes" her. Minor Victim 1 is dressed in
12 a leotard which defendant begins to pull off her small frame. While
13 he undresses her, she asks, "wee wee?" He tells her to turn around.
14 He begins to remove the leotard and as her buttocks are revealed, he
15 breathily whispers his excitement, "look at that, look at that,
16 fuuuck." Minor Victim 1 covers her exposed buttocks with her hands.
17 Defendant breathes heavily, "Oooo fuck." Defendant then slaps Minor
18 Victim's 1 buttocks twice causing them to shake in response. She
19 tightly clenches her buttocks and vocalizes her discomfort in
20 response. Defendant brags, "I'm gonna fuck her right now" while he
21 continues to grope her buttocks. As he slaps and grabs her buttocks
22 he says, "hear that? I'm gonna fuck this ass right now. Right baby?
23 Right?" Minor Victim 1 emits a high-pitched squeal in response.
24 Defendant says, "[MINOR VICTIM 1'S FIRST NAME], look." The Court has
25 not seen this video, but the government will provide it to the Court,
26 if requested.

27

28

1 Defendant admitted that he sexually assaulted Minor Victim 1
2 while Minor Victim 2 was in the same room. (See Exh. D at 26:26-
3 27:17.)

4 Defendant produced at least 10-20 videos of his sexual assault
5 of Minor Victim 1. He sent some of those files to co-defendants.
6 (PSR ¶ 19.) Some files of child pornography depicting Minor Victim 1
7 were found in defendant's LG G6 phone in a folder titled with a
8 misspelling of Minor Victim 1's name. (Declaration of Paul J.
9 Radlinski ("Radlinski Decl.") ¶ 9.)

10 According to Minor Victim 1's current caregiver and her
11 attorney, she has started exhibiting frequent hypersexual behavioral
12 outbursts, which they attribute to defendant's conduct. (Exh. E;
13 Exh. F.) Specifically,

14 ... this includes but is not limited to: constant
15 masturbation until her skin is raw or bleeds, in both
16 public areas and in private; undressing in public; touching
17 and pinching her breasts; humping the floor; and making
18 verbal or physical sexual advances towards group home staff
19 and peers. She is reported to have become more physical
20 with herself and in addition would attempt to gain male
attention in her group home. [MINOR VICTIM 1's FIRST NAME]
also exhibits physical aggression towards others and
towards herself. [MINOR VICTIM 1's FIRST NAME] also
experiences sleep disturbances. She does not like to sleep
alone and prefers to sleep on a couch surrounded by group
home staff.

21 [MINOR VICTIM 1]'s behaviors have become so extreme that
22 she now requires placement where there is one to one
23 staffing, with noted recommendations for placement in a
locked facility.

24 Exh. E.

25 *b. Defendant's Distribution of Child Pornography*
Depicting Minor Victim 1

26 Defendant admitted that he distributed child pornography to
27 others on the internet, sometimes in a quid pro quo exchange for
28

1 others child pornography. (Exh. D at 34:40-34:59 & 35:30-35:53).
2 Defendant also distributed child pornography of Minor Victim 1 to co-
3 defendants. (See Exh. G;⁵ Exh. H.) He was distributing child
4 pornography of Minor Victim 1 up until the day before he was
5 arrested. (PSR ¶ 21; Exh. G at 15-17; Exh. H at 11.)

6 *c. Defendant's Creation of GIFS of Child Pornography*
7 *Depicting Minor Victim 1*

8 Law enforcement found an extensive array of different clips made
9 from videos of defendant sexually assaulting Minor Victim 1. Law
10 enforcement found these clips in defendant's Google Account.

11 For example, defendant made a still image GIF⁶ depicting Minor
12 Victim 1's legs spread with her face, vagina, and colostomy bag
13 visible, in which defendant added the caption, "This forever will be
14 my PUSSY!!! I don't care what anybody thinks this belongs to me and
15 only me! I will KILL for this PUSSY!!! Anybody trying to take it
16 away from me I will kill you!!!" (PSR ¶ 29(a), fn. 1.)

17 Defendant made a short video GIF of defendant forcing Minor
18 Victim 1 to orally copulate defendant's penis wherein he added a
19 song, a waving American flag, and a caption which read "sucking my
20 cock!! Hahaha soo illegal and soo wrong and very disturbing!!!"
21 (PSR ¶ 29(a), fn. 1.) Defendant also made a still image GIF that
22 depicted Minor Victim 1 being forced to orally copulate defendant's
23 penis with the added caption "...Soo illegal and soo wrong and very
24 disturbing!!!" (PSR ¶ 29(a), fn. 1.) He made another still image

26 ⁵ Exhibit G is redacted and does not contain the child
27 pornography, which remains in the agent's possession.

28 ⁶ Static or animated file often played on a loop with
accompanying words. (PSR ¶ 29.a, fn. 1.) A user can add
backgrounds, music, or words to the video or static image.

1 depicting Minor Victim 1 holding the base of an adult male's penis
2 with the added caption "The face you make when you know your pictures
3 are gonna end up on the deep web." (Radlinski Decl. ¶ 4.)

4 2. Defendant's Production of Child Pornography of Him
5 Raping Minor Victim 2

6 Minor Victim 2 was approximately 12 years old when defendant
7 created the first documented child pornography of her at the Care
8 Home. Minor Victim 2 became the responsibility of the government
9 after she was physically and sexual abused when she was 3 years-old.
10 (PSR ¶ 89.) Minor Victim 2 has been diagnosed with shaken baby
11 syndrome, traumatic brain injury, cerebral palsy, and severe hip
12 dysplasia. (PSR ¶ 89.) She requires the use of a feeding tube,
13 wheelchair, and diapers. (PSR ¶ 89.) Defendant knew her medical
14 conditions and age as he saw her on a regular basis and had access to
15 her medical file. (Id. ¶ 15(c).)

16 a. *Defendant's Rapes of Minor Victim 2*

17 Defendant produced child pornography of Minor Victim 2 in a file
18 titled "20180101_014805.mp4" (the "805 video"). (Plea Agreement at
19 21). This video was charged as Count 7 in the Indictment. The
20 government is attaching this video as an exhibit, Exhibit S, hereto
21 under seal and in camera. (Exhibit S.)⁷

22 In this video, Minor Victim 2 is laying on her side on a bed.
23 Defendant appears defendant is penetrating Minor Victim 2 with his
24 penis, but it is unclear whether he is penetrating her anus or vagina
25 given the way the video was filmed. Defendant removes his penis and
26

27 ⁷ The government is providing two child pornography videos in
28 camera for the Court's review. The Court has not seen these videos.
All the child pornography referenced, however, is available for the
Court or defense counsel to review.

1 places a blue condom on it. Defendant pulls apart Minor Victim 2's
2 buttocks and focuses on her anus. Defendant puts the phone down, and
3 the viewer can hear only audio. Minor Victim 2 is vocalizing her
4 discomfort and defendant instructs her, "relax, relax, relax." He
5 asks, "you like it?" Minor Victim 2 does not respond. He instructs
6 her, "turn around, I'm going to fuck you more." Minor Victim 2
7 groans "ow" and then groans again. The viewer can hear rhythmic
8 pounding and squeaking sounds consistent with penetrative sex.
9 Defendant picks the camera back up and films Minor Victim 2's face.
10 Defendant pans down to where he is penetrating her with his penis.
11 He takes his penis out of her and again puts the camera down. He
12 asks, "okay?" and then seems to ask something about Minor Victim 2's
13 "pussy now?" to which Minor Victim 2 responds something to the effect
14 of "I don't like."⁸ Defendant asks, "huh?" to which Minor Victim 2
15 repeats (what sounds like), "I don't like." He then instructs her to
16 turn around again.

17 3. Defendant's Production of Child Pornography of Him
18 Raping Minor Victim 4

19 Minor Victim 4 has severe mental disabilities, including severe
20 mental retardation and cerebral palsy, is non-verbal and is deaf and
21 blind. (PSR ¶ 15(d).) She is confined to a wheelchair and typically
22 wears a diaper. (PSR ¶ 15(d).) Despite being in a wheelchair, can
23 be brought out of her wheelchair and physically manipulated without
24

25
26 ⁸ Due to Minor Victim 2's disabilities, it is difficult to
27 understand her speech. The agent working on this matter and
28 government counsel reviewed this video multiple times, however, and
agree as to the substance of what they believe Minor Victim 2 is
attempting to communicate. Because the Court will view this video
for itself, however, the government defers to the Court's factual
findings as to what Minor Victim 2 communicates.

1 being seriously injured. Minor Victim 4 was 17 years old in March
2 2017, when defendant created videos of sexual abuse depicting her.
3 (PSR ¶ 15(d).) Defendant admitted that he knew she was a minor when
4 he raped her in March 2017 because he reviewed her medical files for
5 his job. (Plea Agreement at 18.)

6 *a. Defendant's Rapes of Minor Victim 4*

7 Defendant created two videos of child pornography which appeared
8 to depict one continual rape of Minor Victim 4 in March 2017. These
9 videos were charged in Count 4 of the Indictment. One of these
10 videos is titled 20170315_014555.mp4 (the "555 Video"), which the
11 government is attaching under seal and in camera hereto as an
12 exhibit, Exhibit T. (Exh. T.)

13 In the 555 video, Minor Victim 4 is in a bathroom, bent over
14 with her face resting on the tile floor. What appears to be her
15 diaper is around her knees. Defendant anally penetrates Minor Victim
16 4 with his penis. He brags, "I'm fucking [MINOR VICTIM 4'S FIRST
17 NAME] right now, fucking her in the ass." Then he groans, "oh yeah."
18 He again says, "I'm fucking her ass right there." Then he slaps her
19 buttocks three times while his penis is still inserted in her anus.
20 He breathes heavily and groans, "oooo fuck." He says, "I'm gonna
21 cum, I'm gonna cum fucking [inaudible]." (Exh. T.) A second video
22 which is not attached to this filing appears to be a continuation of
23 defendant anally raping Minor Victim 4.

24 Defendant also created two pornography files depicting Minor
25 Victim 4 on January 1, 2018. Minor Victim 4 was 18 years old at the
26 time. Therefore, these videos do not meet the statutory definition
27 of child pornography and the government is not presenting them to the
28 Court as child pornography. Regardless, defendant's continued sexual

1 abuse of a blind, deaf, and mentally disabled person in his care -
2 which began when the person was a child - is an aggravating factor.

3 The government is not attaching these videos hereto as exhibits.
4 If the Court wishes to view these videos, however, the government
5 will provide them.

6 In the first video, Minor Victim 4 (who was then an adult) is on
7 what appears to be a bed. What appears to be her diaper is pulled
8 down revealing her buttocks. Defendant is penetrating her anus with
9 his penis and slapping her buttocks. He says, "that ass." It sounds
10 like he also says, "look at that ass crack." He breathes heavily and
11 as he removes his penis he says, "damn . . . fuck, oh fuck." He
12 breathes heavily again.

13 In the second video, Minor Victim 4's diaper is down and her
14 buttocks are exposed. Defendant zooms in on her anus where there is
15 a red substance that is consistent with the appearance of blood.
16 Defendant pans out to reveal his penis, which is covered in a blue
17 condom. It appears he uses the head of his penis to penetrate her
18 anus, but given the way the video is filmed it is not entirely clear
19 if the attempted penetration is successful. He removes his penis and
20 then zooms in again on her anus and ends the video.

21 4. Defendant's January 2018 Conduct

22 Approximately nine months after leaving the Care Home for a new
23 job, defendant asked the managers for overnight shifts at the Care
24 Home. Defendant was able to secure shifts watching the Minor Victims
25 in the Care Home in the early morning hours of January 1, and January
26 27, 2018. (PSR ¶¶ 27-28.) Defendant admitted that one of his
27 primary and predominate purposes in regaining this employment was to
28 gain custody/control over the minors of the Care Home to create child

1 pornography depicting Minor Victim 1 and Minor Victim 2 engaged in
2 sex acts with defendant. (PSR ¶ 27; Plea Agreement at 20.)

3 After defendant obtained custody over the minors at the Care
4 Home on January 1, 2018 and January 27, 2018, he proceeded to rape
5 his victims repeatedly, and produced multiple files of child
6 pornography as planned. (PSR ¶¶ 27-28.)

7 Specifically, on January 1, 2018, defendant arrived shortly
8 after 12:00 a.m., created over a dozen unique child pornography
9 videos, and defendant also created images depicting his sexual
10 assaults of Minor Victim 1 and Minor Victim 2 starting at 12:52 a.m.
11 and his last film was made at approximately 4:11 a.m. (Plea
12 Agreement at 20.)

13 On January 27, 2018, defendant arrived shortly after 12:00 a.m.
14 for his 12:00 to 6:00 a.m. shift. (PSR ¶ 33.) After he arrived,
15 defendant produced at least four different videos of defendant
16 sexually abusing Minor Victim 1. Shortly after sexually assaulting
17 Minor Victim 1, defendant abandoned the Care Home at approximately
18 2:00 a.m., leaving the disabled children at the Care Home without any
19 medical care or supervision for approximately four hours. (PSR ¶ 33;
20 Plea Agreement at 21-22.)

21 5. Defendant's Admissions at Arrest

22 Shortly after being confronted with, and admitting, that he
23 tried to engage in sexual acts with an 8-year-old disabled girl,
24 defendant characterized his conduct in a matter of fact manner as "I
25 didn't do nothing to her, I didn't kill her, nothing." "I know you
26 are... if she's hurt or not, she's not hurt, I'm not a killer." (See
27 Exh. D at 21:45-22:00).

28

1 Shortly thereafter, defendant lied about his conduct saying he
2 only tried to have sex with Minor Victim 1 once, and "I wouldn't go
3 all the way, because I didn't want to hurt her." (Exh. D at 24:27-
4 25:00.)

5 **B. Defendant Produced Child Pornography of Himself Having Sex**
6 **With a Teenage Girl He Enticed to Engage in Criminal Sexual**
7 **Conduct With Him**

8 When defendant was about 35 years-old, he enticed Minor Victim
9 3, then a 15-year-old girl, into engaging in criminal sexual acts
10 with him and in filming some of those sex acts with him. (PSR ¶ 36;
11 Exh. I.) Defendant knew she was approximately 15 years old when he
12 engaged in this conduct. (PSR ¶ 37.) Defendant admitted that he
13 first reached out to her. (Exh. D at 30:30-31:05.) He described
14 their relationship as primarily sexual. (Exh. D at 31:50-32:04.)

15 Defendant engaged in and saved screen shots of chats between him
16 and Minor Victim 3 where defendant encouraged her to engage in sexual
17 activity with him. On November 25, 2018, defendant told Minor Victim
18 3 that he wanted to have sex with her without a condom and that he
19 would "pull out," meaning not ejaculate inside her. (PSR ¶ 39;
20 Exhibit J.) On June 24, 2020, they made plans to engage in sexual
21 conduct that Friday. (PSR ¶ 40; Exhibit K.) Defendant also made
22 multiple child pornography videos with Minor Victim 3. (PSR ¶ 41.)
23 Some files depicting Minor Victim 3 were saved in defendant's Google
24 folder titled: "13 year old from work." (Radlinski Decl. ¶ 3).

25 **C. Defendant's Additional Sexual Misconduct**

26 Defendant also appears to have engaged in a significant amount
27 of additional sexual misconduct further demonstrating that a life
28 sentence is needed to protect the public.

1 1. Sexual Assault of an Unconscious Adult⁹

2 In defendant's Google Account, law enforcement discovered a
3 video which appears to depict defendant shining a flashlight into an
4 unconscious victim's eyes to confirm the person is non-responsive.
5 Defendant reaches down to move what appears to be a medical gown,
6 exposing the person's buttocks. (PSR ¶ 44; Exh. L.) The victim
7 appears to be a patient in a medical facility because the victim was
8 wearing what appears to be a medical gown and laying in a twin bed in
9 a plain and somewhat sterile room where there is another bed a short
10 distance away occupied by a different individual. (Exh. L.) In
11 another video (not filed here), what appears to be the same
12 unconscious individual is laying prone on the bed. Defendant appears
13 to place his face in between the person's buttocks. A third video
14 depicts a person who appears to be defendant with his mouth in
15 between the buttocks of a person who appears to be wearing the same
16 type of medical gown as the individual depicted in the aforementioned
17 videos. Defendant is moving his head. Defendant removes his face
18 from between the buttocks, spreads apart the buttocks, and displays
19 the person's anus which appears to have a substance consistent with
20 saliva around the anus. (Exh. M.)

21 Defendant has worked at multiple mental health facilities as a
22 mental health worker. (PSR ¶¶ 182-185.) Law enforcement has been
23

24
25 ⁹ It is difficult to determine the person's exact age from the
26 video. Based on some secondary sex and physical characteristics
27 somewhat visible in the video, it appears the person is an adult.
28 Because the government cannot confirm with certainty that this
individual is an adult, however, for the purposes of providing these
videos to the Court, the government is treating the individual as
age-difficult - and therefore the exhibits where this individual is
depicted as possible contraband - and filing those exhibits where
both under seal and in camera.

1 unable to identify this victim (or perhaps victims) or the location
2 where this abuse occurred, but the investigation continues.

3 2. Contemporaneous¹⁰ Offers to Abuse Children

4 Defendant offered "the 8 year old" to co-defendant Bocardo for
5 sexual activity such as a "blowjob." (See Exh. H at 1-2, 6, 9.) The
6 Court saw much of this evidence for itself during co-defendants'
7 trial.

8 On May 18, 2021, defendant sent co-defendant Bocardo a file to
9 masturbate to, then said, "You should do that to the 8 year old."
10 (Exh. H at 1.) Defendant then appeared to send a second video, which
11 prompted defendant to ask co-defendant Bocardo if he would like "a
12 blowjob from her?" (Exh. H at 2.) When co-defendant Bocardo
13 appeared to accept that offer, defendant enthused, "Fuckin bomb!!!"
14 "U ready for that??" (Exh. H at 2.)

15 On June 29, 2021, defendant again offered to let co-defendant
16 Bocardo join him "in that group home" on Friday. (Exh. H at 6.) On
17 June 30, 2021, defendant shared videos of defendant sexually abusing
18 Minor Victim 1, shortly thereafter defendant told co-defendant
19 Bocardo "U can do that to that 8 year old and I'll record it" "It can
20 fit in the 8 year old" "In her ass tho" and asked, "Hot huh[?]" (Exh.
21 H at 9.)

22 On Friday, July 2, 2021, co-defendant Bocardo asked, "Yo for
23 tonight u down send the 200 on cash app," because "[Re]member last
24 time I record." (Exh. H at 9-10.)

25
26
27

28 ¹⁰ References to defendant's "contemporaneous" conduct refers to
conduct contemporaneous to his arrest on August 25, 2021.

1 On July 22, 2021, defendant told co-defendant Banguguilan that
2 he knew a couple that are into kids and that “[t]hey want me to bring
3 a little girl” “so she can eat her out.”¹¹ (Exh. G at 3, 5.)

4 3. Contemporaneous Attempts to Regain Access to the Care
5 Home Victims

6 These chats occurred in 2021, when defendant was attempting to
7 regain access to his known victims. Defendant offered to provide
8 children for sex around the same time when he repeatedly requested
9 shifts at the Care Home to regain access to Minor Victim 1.

10 Defendant initiated a conversation with the administrator of the
11 Care Home on ten separate days (at least once a month) over 2021
12 asking for overnight shifts at the Care Home in Chino where the Care
13 Home Victims lived. (See Exh. N at 1-7; see also Michelle Clarke
14 Victim Impact Statement, Exh. O at 1.) On four separate occasions
15 Ms. Clarke offered defendant jobs with “senior clients” or in Upland
16 (also with seniors) at other facilities she administered, because
17 Chino was fully staffed. (See Exh. N at 3-7.) Defendant declined
18 each time. (See Exh. N at 3-7.) Defendant re-iterated to her that
19 he only wanted shifts at the Chino Care Home. (See Exh. N at 1-7.)

20 Concurrently, defendant told co-defendant Bocardo that he could
21 engage in sexual acts with Minor Victim 1 and join him at Care Home
22 at various points between May 2021 and July 2021. (Exh. H at 1-2, 6,
23 9.) It appears that defendant was bragging to co-defendants that he
24 could provide access to Minor Victim 1 to them for sex, then was
25 actively trying to regain such access. Defendant’s most recent
26
27

28 ¹¹ The phrase “eat her out” in a sexual context typically refers
to orally copulating a female’s genitals.

1 attempt to regain access to Minor Victim 1 was on August 7, 2021,
2 less than three weeks before his arrest. (PSR ¶ 21.)

3 4. Contemporaneous Attempts to Find Other Night Jobs
4 Watching Other Disabled Children

5 Defendant's attempts to gain access to children was not limited
6 to trying to regain access to the Care Home in Chino. A little over
7 a month before his arrest, defendant appeared to be looking for other
8 overnight caregiver jobs with disabled children. The internet
9 search/web history in defendant's iPhone 7+ indicates that on July
10 18, 2021, includes: "group home children mental disabilities job,"
11 "child care overnight shift hiring Pomona," and "Care Provider for
12 Children With Special Needs," among other similar items. (Exh. P at
13 71-73; Radlinski Decl. ¶ 8.)

14 5. Contemporaneous Searches for Child Sex Dolls

15 The search history in Defendant's iPhone 7+ also indicated that
16 defendant was looking to purchase sex dolls of children and babies.
17 On August 4, 2021, defendant's web history includes numerous searches
18 for "sex dolls child" and "where to by [sic] silicone sex dolls
19 baby." (Exh. P at 78-79.)

20 6. Contemporaneous Attempts to Trick His Minor Live-in
21 Niece to Have Sex with Him

22 Defendant told co-defendant Banguguilan that he intended to
23 engage in sexual conduct with his co-habitant minor niece. (Exh. G
24 at 2; PSR ¶ 44.) On July 24, 2021, defendant then updated co-
25 defendant Banguguilan that he received a naked picture of his niece
26 by tricking her into thinking he was somebody else. (Exh. G at 7-8.)
27 Defendant also apparently paid her \$40 for the photo. (Exh. G at 8.)
28 Defendant was pleased with his progress. He told co-defendant

1 Banguguilan this is "progress u think ima [I'm going to] fuck her
2 just like that?" (Exh. G at 8.) Law enforcement also found a video
3 in defendant's possession showing defendant masturbating to what
4 appears to be a clothed picture of his minor niece culminating with
5 him ejaculating on her picture. (PSR ¶ 44.)

6 7. Possession of Other Child Pornography

7 Defendant was also found in possession of child pornography from
8 106 identified series of child pornography, according to the National
9 Center for Missing and Exploited Children. (Exh. Q; Radlinski Decl.
10 ¶ 10.) These identified files only account for some of the 594 files
11 of apparent child pornography in his Google Account. (PSR ¶ 45.)

12 **D. Defendant is Charged and Pleads Guilty**

13 On September 16, 2022, defendant pled guilty to eight counts
14 in the Second Superseding Indictment for his production of child
15 pornography, obtaining custody of children to produce child
16 pornography, and enticement of a minor into engaging in criminal
17 sexual conduct. (PSR ¶ 1.)

18 On October 27, 2022, the U.S. Probation Office calculated that
19 defendant's charged conduct results in a guidelines offense level
20 that is 13 levels beyond the maximum offense level contemplated by
21 the United States Sentencing Guidelines Commission. (PSR ¶¶ 140-
22 148.) This results in a guidelines sentence of lifetime
23 imprisonment. (PSR ¶ 148.) The U.S. Probation Office recommends the
24 guidelines sentence of life imprisonment. (Dkt. 111 at 2.)

25 **E. GUIDELINES CALCULATIONS**

26 In the Plea Agreement, the parties agreed to the guidelines
27 calculation by counts of conviction, and the parties reserved the
28 right to argue for additional specific offense characteristics,

1 adjustments, and departures. (Plea Agreement at 23-27.) The plea
2 agreement does not address the Multi-Count Adjustment or the Chapter
3 Four enhancement for a pattern of prohibited sexual conduct.

4 1. Multi-Count Adjustment

5 The U.S. Probation Office correctly assessed a four level
6 Multiple Count Adjustment, not explicitly enumerated in the Plea
7 Agreement. (PSR ¶¶ 137-140.)

8 2. Pattern of Prohibited Sexual Conduct

9 Furthermore, the U.S. Probation Office assessed an additional
10 five level enhancement under U.S.S.G. § 4B1.5(b), as defendant is a
11 repeat and dangerous sex offender against minors. (PSR ¶ 141-145;
12 U.S.S.G. § 4B1.5(b).) The government agrees.

13 According to U.S.S.G. § 4B1.5(b), where defendant is not a
14 career offender nor has a prior sex offense conviction, a defendant's
15 offense level must be increased by five levels if he engaged in
16 "pattern of activity involved prohibited sexual conduct."

17 A "pattern of activity" is defined as having engaged in
18 "prohibited sexual conduct" with a minor on at least two separate
19 occasions. (U.S.S.G. § 4B1.5 n.4(B).) "Prohibited sexual conduct"
20 includes *inter alia*: production of child pornography, and enticement.
21 (U.S.S.G. § 4B1.5 n.4(A); PSR ¶ 145.) Defendant pled guilty to five
22 counts of producing child pornography; and one count of enticement,
23 occurring on five different days. (PSR ¶¶ 2, 5.) This enhancement
24 applies. (See PSR ¶ 145.)

25 3. Guidelines Sentence of Lifetime Imprisonment

26 Defendant's resulting total guidelines offense level, after the
27 three-point reduction for acceptance of responsibility is level 56.
28 The United States Sentencing Table, contemplates a maximum offense

1 level of 43, meaning defendant's conduct is 13 levels more severe
2 than the maximum contemplated by the guidelines. U.S.S.G. § 5A.
3 According to the United States Sentencing Commission this
4 circumstance is "extremely rare." (U.S.S.G. § 5A n.2.) Where
5 defendant's conduct is more egregious than contemplated by the United
6 States Sentencing Commission, defendant's total offense level is
7 reduced to the maximum offense level 43. (U.S.S.G. § 5A n.2.)

8 Defendant is in Criminal History Category I. (PSR ¶ 155.) The
9 resulting guidelines sentence is lifetime imprisonment. The
10 government recommends the guidelines sentence, as does the U.S.
11 Probation Office. (Dkt. 111 at 2).

12 **III. REQUESTED SENTENCE**

13 Based on the egregious facts of this case, the guidelines
14 calculation, and the significant aggravating factors present here,
15 the government recommends a guidelines sentence of lifetime
16 imprisonment.

17 Specifically, the government and U.S. Probation Office recommend
18 that the Court issue a lifetime sentence of imprisonment on counts
19 five, eight, and twelve to be served concurrently, and a sentence of
20 30 years imprisonment on each of counts one, four, six, seven, and
21 nine to be served concurrently.

22 The government also recommends that defendant be sentenced to a
23 lifetime period of supervised release, as well as the imposition of
24 the eight mandatory \$100 special assessments totaling \$800.

25 The government also recommends the low-end guidelines fine of
26 \$50,000 and the additional \$40,000 special assessment (\$5,000 per
27 count) pursuant to 18 U.S.C. § 3014(a)(3) (assuming the statute is
28 reauthorized by sentencing), and \$50,000 as a producer of child

1 pornography pursuant to 18 U.S.C. § 2259A. The government requests a
2 deferred restitution hearing anywhere from 30 to 60 days after
3 sentencing.

4 The government requests forfeiture of the digital devices which
5 defendant used to commit the crimes charged here.

6 **A. The Sentencing Factors at 18 U.S.C. § 3553(a) Support a**
7 **Guidelines Sentence of Lifetime Imprisonment**

8 A sentence of lifetime imprisonment for defendant's conduct is
9 sufficient, but not greater than necessary, to achieve the goals of
10 sentencing set out in 18 U.S.C. § 3553(a).

11 1. The Nature and Circumstances of the Offense

12 Defendant engaged in the systematic sexual abuse of disabled
13 children in his custody and care as he worked as their nighttime
14 caregiver. After defendant was finished with his victims, he
15 abandoned them. Defendant also enticed and sexually abused a
16 fifteen-year-old victim.

17 This egregious conduct is worthy of the guidelines sentence of
18 lifetime imprisonment.

19 a. *Defendant's Guidelines Calculation*

20 The United State Sentencing Guidelines calculation quantified
21 the serious nature and circumstances of defendant's offense.

22 Here, the nature of defendant's conduct was exceptionally
23 egregious, even by the standards of this already heinous violation.
24 This is reflected in the guidelines calculation for his violation.
25 For example in one count, defendant received enhancements for:

- 26 1) Age of the victim, (PSR ¶ 121)
27 2) custody/care/supervisor control of the victims, (PSR ¶ 122)
28 3) distributed the child pornography, (PSR ¶ 123)

- 1 4) engaged in sexual conduct, (PSR ¶ 124)
- 2 5) engaged in sadistic behavior, (PSR ¶ 125)
- 3 6) vulnerable victims, (PSR ¶ 126)
- 4 7) abused a position of trust, (PSR ¶ 127)
- 5 8) engaging in a pattern of sexual abuse. (PSR ¶ 145.)

6 All these enhancements highlight how much worse defendant's
7 conduct is compared to any another defendant who produces child
8 pornography for example by taking surreptitious pictures of a minor
9 victim, or who convinces an older minor victim to self-produce child
10 pornography remotely. Defendant's guidelines enhancements are well-
11 deserved, and accurately reflect the seriousness of the offense.

12 The facts squarely support the imposition of these enhancements.
13 For example, these victims were not just a little vulnerable, they
14 were all severely mentally and physically disabled. Defendant did
15 not just have custody and control, they all relied on defendant as
16 their medical caregiver to keep them safe and alive. Defendant was
17 not merely placed in a position of trust; he was solely entrusted
18 with their medical and physical wellbeing.

19 Defendant's high guidelines calculation was not an aberration or
20 an over calculation. Defendant engaged in conduct that was the
21 result of his pre-meditated plan to film his sexual abuse of disabled
22 children. He did this by abusing the trust of others and choosing
23 victims who were so vulnerable they could do nothing to stop him. He
24 also engaged in sadistic sex acts repeatedly. (Plea Agreement at 24,
25 26.) Accordingly, the enhancements for abuse of trust, vulnerable
26 victim, sadistic conduct, and sex act all appear repeatedly, because
27 those were all key parts of the plan. (Plea Agreement at 24-27.)

28

1 Defendant's conduct which gave resulted in the guidelines
2 calculations here were not the result of incidental or isolated
3 circumstances. Therefore, the Court should give heavy weight to the
4 guidelines calculations when considering the nature of this offense.¹²

5 2. Need to Afford Adequate Deterrence and Protect the
6 Public from Further Crimes of Defendant

7 a. *Defendant's Conduct During the Offenses*

8 Defendant's conduct during the offenses demonstrate that he
9 cannot be deterred from any future crimes. In December and January
10 2018, defendant explicitly sought his job back so he could abuse the
11 Care Home Victims and create videos of it. (PSR ¶¶ 27-28.) Then when
12 he was finished, he abandoned them to their fate. (PSR ¶ 33.)
13 Defendant's lack of empathy shows that defendant cannot be deterred
14 from future crimes.

15 Leaving children with the mental capacities of a toddlers is not
16 just emotionally cruel, it can have potentially serious physical
17 consequences. Children often hurt themselves without adult
18 supervision. This is doubly true for severely disabled children with
19 the mental capacity of toddlers, some of whom have periodic seizures,
20 brain injuries, and cerebral palsy. Had there been a medical
21 emergency during the hours defendant abandoned them, there could have
22 been fatal consequences. Defendant knew all of this. Yet he and
23 abandoned them anyway. Simply because he did not care.

24 Further demonstrating his absence of empathy, defendant created
25 GIF of his sexual abuse of Minor Victim 1, such as showing her being
26 forced to orally copulate his penis to a song and a waiving American
27

28 ¹² The government has attached additional victim impact
statements for the Court to consider at Exhibit R.

1 flag, with a degrading caption. (PSR ¶ 29.a. fn. 1.) In another GIF
2 defendant included an image of Minor Victim 1's vagina and colostomy
3 bag with a caption threatening to kill anybody who tried to take away
4 "my PUSSY!!!" and ". . . this belongs to me and only me! And I will
5 KILL for this PUSSY!!!" (PSR ¶ 29(a), fn 1; supra II.A.c.)

6 Defendant's statements degrading Minor Victim 1 to nothing more
7 than "my PUSSY!!!" demonstrates that he thought of her as a prized
8 sex toy, nothing more. (PSR ¶ 29(a), fn.1.)

9 Defendant bragged about how he abused Minor Victim 1 while
10 sharing files depicting him doing so, such as statements like "in her
11 ass" and "8 year old who gave me head." (Exh. H at 8, 10.) Defendant
12 was proud of his "accomplishments" and wanted to gain status by
13 sharing her with others. Defendant invited co-defendant Bocardo to
14 abuse Minor Victim 1 at the Care Home and even offered to record
15 Bocardo raping "the 8 year old." (See Exh. H at 1-2, 6, 9.) There
16 was even discussion of payment on the Friday they previously proposed
17 going to the Care Home together. (See Exh. H at pp. 6, 10.)

18 Defendant treated disabled children he had known for years as
19 nothing more than sex toys to be shared. Defendant cannot be
20 deterred from future criminal conduct. Even worse, at times
21 defendant talked to his victims and filmed the faces of his victims
22 while he was raping them. Even worse than treating them like
23 inanimate objects, defendant appeared to take pleasure in their
24 reactions to his torture.

25 *b. Defendant's Other Contemporaneous Conduct*

26 Defendant's contemporaneous conduct and lack of remorse further
27 demonstrates that defendant cannot be deterred from future conduct.

28

1 In his recorded interview with law enforcement in August 2021,
2 defendant minimized his conduct claiming that he tried to have sex
3 with her, but flatly stated "I didn't do nothing to her, I didn't
4 kill her, nothing." "I know you are... if she's hurt or not, she's not
5 hurt, I'm not a killer." (See Exh. D at 21:45-22:00). Minor Victim
6 1's horrific abuse was far more than "nothing."

7 Then defendant tried to further minimize his conduct further by
8 saying that he only tried to have sex with her one time, and that he
9 "I wouldn't go all the way, because I didn't want to hurt her."
10 (Exh. D at 24:27-25:00.) In reality, defendant had engaged in brutal
11 sexual acts over a two year period. He had gone "all the way"
12 numerous times, all of which clearly caused Minor Victim 1 pain.
13 Defendant refuses to acknowledge the gravity of his own conduct. The
14 only way to keep the public safe from defendant is to keep defendant
15 in custody.

16 Moreover, defendant's contemporaneous conduct demonstrates that
17 the passage of time has only made defendant more dangerous. Three
18 years after the abuse at the Care Home, defendant began badgering
19 Michelle Clarke for overnight shifts at least once a month in 2021
20 until his arrest. (Exh. N.) Defendant did this to regain access to
21 the Care Home Victims so he could provide those victims to his
22 friends and make more child pornography. (PSR ¶¶ 27-28.) Defendant
23 was trying to make his Telegram boasts (occurring during that same
24 period), a reality. (See Exh. G, H.) Defendant further demonstrated
25 that his intent was access to his victims by rejecting four different
26 offers of employment that was not specifically at the facility where
27 the Care Home Victims lived. Defendant clarified that he would only
28 work in Chino. (Exh. N 3-7.)

1 Defendant's other 2021 contemporaneous conduct also demonstrates
2 that the passage of time had just made him seek out new avenues of
3 abuse. Defendant was actively seeking to trick his minor niece into
4 sex. (supra II.C.6; PSR ¶ 44.) Defendant was also seeking other
5 overnight employment with disabled children during the same period.
6 (supra II.C.4; Exh. P at 71-73). Furthermore, defendant also
7 apparently sexually assaulted an unconscious adult in a medical
8 facility like setting. (PSR ¶ 44; Exh. L; Exh. M.)

9 Defendant's goal throughout 2021 was to recreate what had worked
10 so well three years earlier, namely, gaining overnight access to
11 disabled children (or unconscious adults) who he could use as sex
12 toys for his child pornography films. The only way for the public to
13 be safe from defendant is for defendant to receive the guidelines
14 sentence of lifetime imprisonment.

15 3. Need to Reflect the Seriousness of the Offense and
16 Provide Just Punishment

17 Defendant's conduct is some of the most heinous conduct against
18 the most vulnerable victims in society, as reflected in his initial
19 offense level 56. Simply put, the most serious punishment available
20 is the only just punishment appropriate for such a repeated, heinous
21 and pre-meditated crime committed against these victims. Lifetime
22 imprisonment is the only punishment that reflects the seriousness of
23 the offense and is a just punishment for defendant's conduct.

24 4. Avoiding Unwarranted Sentencing Disparities

25 The imposition of a Guidelines sentence - here, a life sentence
26 - also avoids unwarranted sentencing disparities among similarly
27 situated defendants. 18 U.S.C. § 3553(a)(6). The best way to ensure
28 consistent sentences across courtrooms, districts, and the country is

1 strongly consider the Sentencing Guidelines when weighing the 18
2 U.S.C. § 3553(a) factors. See United States v. Saeteurn, 504 F.3d
3 1175, 1181 (9th Cir. 2007) (“Congress’s primary goal in enacting
4 § 3553(a)(6) was to promote national uniformity in sentencing[.]”)
5 (citations/quotations omitted).

6 Defendant’s guidelines calculation for this horrendous conduct
7 is 13 levels beyond the maximum offense level resulting in a
8 guidelines sentence of life. That is before even considering all the
9 aggravating factors listed above. Defendant should receive that
10 guidelines sentence.

11 5. History and Characteristics of the Defendant

12 Defendant grew up in a normal family, with a normal upbringing.
13 (PSR ¶¶ 160-168.) Defendant was able to obtain a certification as a
14 Nursing Assistant. (PSR ¶¶ 169-170.) Defendant displayed no history
15 of mental or physical health issues, nor of any substance abuse.
16 (PSR ¶¶ 174-178.) In short, there is nothing about defendant’s
17 history or characteristics that warrant a downward variance.

18 Moreover, defendant’s sexual attraction to children is not an
19 unusual characteristic for a defendant who filmed his sexual abuse
20 children. Undoubtedly, almost every defendant sentenced for
21 producing child pornography and enticing a minor into sexual activity
22 had a sexual attraction to children. The United States Sentencing
23 Commission likely took this fact into account when crafting the
24 guidelines.

25 Therefore the mere fact that defendant has a sexual attraction
26 to children is not a “mitigating circumstance of a kind or to a
27 degree, that has not been taken into consideration by the Sentencing
28 Commission” or a fact that should result in a different sentence

1 here. See 18 U.S.C. § 3553(b). Defendant should not receive a
2 downward variance.

3 **B. Supervised Release**

4 Given defendant's long-term and extensive abuse of the victims,
5 and to protect the public from further crimes, the government agrees
6 with the Probation Officer that a lifetime term of supervised release
7 is appropriate. (Dkt. No. 111, at 3.) Defendant agreed not to
8 contest the imposition of lifetime supervised release in his plea
9 agreement. (Plea Agreement at 3.)

10 **C. Restitution**

11 To date, all of the restitution claims expected have not been
12 received. The government asks for a deferred restitution hearing, 30
13 to 60 days after sentencing.

14 **D. Fine**

15 Defendant appears to have an ability to pay his financial
16 obligations stemming from his criminal conduct. Defendant is a
17 registered owner of a property in Pomona, California. According to
18 the PSR, the residence was valued at approximately \$630,000 and was
19 purchased in 2012 for \$262,000 meaning there was at least
20 approximately \$368,000 equity in the home when the U.S. Probation
21 Office last checked. (PSR ¶ 188.)

22 Thus defendant is not indigent and is able to pay a low-end
23 guideline fine of \$50,000, an additional \$5,000 per count (\$40,000)
24 pursuant to 18 U.S.C. § 3014(a)(3) assuming the statute is still
25 active, and an additional \$50,000 special assessment as a producer of
26 child pornography pursuant to the Amy, Vicky, Andy Child Pornography
27 Victim Assistance Act of 2018 (18 U.S.C. § 2259A). (See PSR ¶¶ 205-
28 207.) Thus, in addition to whatever restitution the Court orders,

1 the Court should in total fine defendant an additional \$140,000 which
2 is easily covered by the equity in his home.

3 The government disagrees with the U.S. Probation Office that
4 defendant is unable to pay and is not likely to become able to pay a
5 \$50,000 fine. Just the equity in his house alone can cover the
6 \$50,000 in addition to his other special assessments and other fines,
7 and any restitution claims to date. (See PSR ¶¶ 50, 188.)

8 **E. Forfeiture**

9 The government also requests that the Court forfeit defendant's
10 digital devices that contained child pornography, as
11 instrumentalities of defendant's offenses. These devices were an
12 iPhone 7+, Samsung Galaxy S5, Samsung SD card, and an LG G6 cellular
13 phone which were seized during the execution of the search warrants
14 on defendant, his residence, and his car on August 25, 2021.
15 Defendant admitted that the Samsung Galaxy S5 was used to produce
16 some of the child pornography and some of that child pornography was
17 transferred to the LG G6. (PSR ¶ 23.) The iPhone 7+, Samsung SD
18 card contained child pornography as well. (Radlinski Decl. ¶ 11.)
19 The Court may forfeit these devices as "any property . . . used or
20 intended to be used to commit or to promote the commission of such
21 offense . . ." in a child pornography crime. See 18 U.S.C. § 2253
22 (a) (3). The government properly noticed this forfeiture in the
23 Second Superseding Indictment, and defendant's conduct and property
24 satisfy this statute. These devices should be forfeited.

25 **IV. CONCLUSION**

26 The government respectfully recommends a life sentence, followed
27 by lifetime supervised release, imposition of the eight mandatory
28 \$100 special assessments totaling \$800, a \$50,000 fine, a \$40,000

1 special assessment pursuant to 18 U.S.C. § 3014(a)(3), assuming the
2 statue is reauthorized, and an additional \$50,000 special assessment
3 pursuant to 18 U.S.C. § 2259A.

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