No. 12-1302

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHRISTOPHER LARANETA
Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Indiana
Case No. 2:10-CR-13
The Honorable Judge Rudy Lozano

BRIEF AND REQUIRED SHORT APPENDIX OF DEFENDANT-APPELLANT CHRISTOPHER LARANETA

ORAL ARGUMENT REQUESTED

Northern District of Indiana
Federal Community Defenders, Inc.
Viniyanka Prasad
Attorney for Defendant – Appellant
Christopher Laraneta

31 East Sibley Street
Hammond, IN 46320
Telephone:(219) 937-8020
Fax: (219) 937-8021
Email: Viniyanka_Prasad@fd.org

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Appellate Court No: 12-1302

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Viniyanka Prasad Nor. District of IN Fed. Comm. Defenders, Inc., 31 East Sibley St., Hammond, IN 46320

Ashwin Cattamanchi Nor. District of IN Fed. Comm. Defenders, Inc., 31 East Sibley St., Hammond, IN 46320

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Attorney's Signature: s/Viniyanka Prasad Date: 2/10/12

Attorney's Printed Name: Viniyanka Prasad

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes [X] No [ ]

Address: 31 East Sibley Street
Hammond, IN 46320

Phone Number: 219-937-8020 Fax Number: 219-937-8021

E-Mail Address: Viniyanka_Prasad@fd.org

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JURISDICTIONAL STATEMENT

This is a direct appeal from an order of the United States District Court for the Northern District of Indiana, Hammond Division. The jurisdiction of the District Court was invoked pursuant to 18 U.S.C. §§ 2251, 2252 and 3231.

A judgment and commitment order in Appellant Christopher Laraneta's case, imposing a criminal sentence pursuant to the Appellant's plea of guilty, was entered on February 3, 2012. (R. 96)[1]. A timely Notice of Appeal was filed on February 9, 2012. (R. 97). The judgment and commitment order was amended under Federal Rule of Criminal Procedure 35(a), pursuant to the District Court's authority to correct "technical, or other clear error" on February 13, 2012. (R. 102); (Appx. 1). Appellant Laraneta invoked Federal Rule of Appellate Procedure 4(b)(5) for application of his Notice of Appeal to the District Court's final judgment in its *Amended Judgment and Commitment Order* on February 21, 2012. (App. R. 6).

The United States Court of Appeals for the Seventh Circuit has jurisdiction in this case pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3742.

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[1]The Appellant's required short appendix is referred to as "Appx. <p. no.>".
Docket entries in the record are referred to as "R. <no.>".
Docket entries in the appellate court docket are referred to as "App. R. <no.>".
The transcript of the sentencing hearing is referred to as "SH <p. no.>". Parallel citations are also included for the corresponding short appendix pages.
The exhibits entered at the sentencing hearings are referred to as "SH *Gov. Exh.* <no.>".
The exhibits attached to the government's restitution filing (R. 52) are referred to as "<*Amy*> or <*Vicky*> *Exh*, <p. no.>".
References to the Presentence Investigation Report are referred to as "PSR <p. no.>".

ISSUES PRESENTED

I. Whether findings by the sentencing court of guilt of offenses unrelated to the offenses of conviction, which have never resulted in criminal charges, by a preponderance of the evidence can sustain the court's decision to impose additional punishment and consecutive sentencing within the Fifth and Sixth Amendments' procedural constraints.

II. Whether a restitution order imposed on a defendant convicted of possessing child pornography can be sustained without any finding of the extent of harm proximately caused by the individual defendant but instead holding the defendant jointly and severally liable with all defendants sentenced and yet to be sentenced for possession offenses for the full losses claimed.

III. Whether the 360-month sentence imposed on Mr. Laraneta can be sustained despite the district court's failure to address his arguments that such a high sentence results in unwarranted disparities and that the evidence has not established a sexual interest in minors.

STATEMENT OF THE CASE

Defendant-Appellant Christopher Laraneta was charged on January 21, 2010 with one charge of transporting child pornography in violation of 18 U.S.C. §2252(a)(1). (R. 1). A Superseding Indictment was entered on April 22, 2010. (R. 15). The charges in the Superseding Indictment are as follows: Count 1: advertising child pornography in violation of 18 U.S.C. §2251(d)(1): Counts 2 and 3: distributing child pornography in violation of 18 U.S.C. §2252(a)(2); Counts 4, 5 and 6: receipt of child pornography in violation of 18 U.S.C. §2252(a)(2); Count 7: transportation of child pornography in violation of 18 U.S.C. §2252(a)(1); Count 8: possession of child pornography in violation of §2252(a)(4); and Count 9: requesting forfeiture of property pursuant to 18 U.S.C. §2253. Mr. Laraneta entered a plea of guilty without the benefit of a plea agreement to Counts 2 through 8, the receipt, distribution, transportation and possession charges, on September 3, 2010. (R. 35). The government dismissed Count 1, the advertising charge, following Mr. Laraenta's guilty plea. (R. 37, R. 38).

To determine Mr. Laraneta's sentence and address objections to the Presentence Investigation Report ("PSR"), the district court held evidentiary hearings on August 18, 22, and 24 of 2011. (R. 62, R. 64, R. 72). On January 19, 2012 the district court held a hearing to allow argument regarding the issues raised in the defense and government's sentencing memoranda. (R. 92). The district court made an oral ruling and sentenced Mr. Laraneta to 360 months imprisonment on February 2, 2012. (R. 95). This includes 240 months on each of Counts 2 through 7, running concurrently, and 120 months on Count 8, running consecutive to the other sentences. (Appx. 2).

STATEMENT OF FACTS

On December 17, 2009 police searched Mr. Laraneta's home. (PSR, 6). Agents with the Tippecanoe County prosecutor's office had earlier been informed by the company Yahoo! that a sexually explicit image featuring a minor had been uploaded to the website www.flicker.com by a user named "play_daddy_of_3". (PSR, 6). This username and the IP address associated with the uploaded image were traced to Mr. Laraneta's residence. (PSR, 6). A forensic preview of Mr. Laraneta's computer was conducted and images of child pornography were found. (PSR, 6).

Mr. Laraneta voluntarily spoke with investigators following the search. (PSR, 6). Mr. Laraneta admitted that he used Yahoo! instant messaging to trade pictures, including child pornography, with others using that service. (PSR, 7). He did not deny placing the image investigators found on flicker.com, but stated that he must have done so by mistake. (PSR, 7). He told investigators that he began viewing these images after he injured his back in a work related accident. (PSR, 7, 17, 18). The pain associated with this injury removed Mr. Laraneta from the workforce for a period of time and also prevented him from sleeping at night. (PSR, 17, 18).Viewing a variety of nudity and sexual images filled his time. (PSR, 7); (*see* R. 85 at *Defense Attached Exhibit B*, p. 5).

1. *Content of Mr. Laraneta's computer*

Forensic review of Mr. Laraneta's computer revealed a number of images containing nudity. (R. 85 at *Defense Attached Exhibit B*, p. 5). Approximately 10% of these images and videos contained minors. (*Id.*). A number of these images were duplicates, and approximately 43% of the videos were duplicates. (R. 85 at *Defense*

Attached Exhibit A). The total number, including duplicates, was estimated at 1100 images and 40 videos. (PSR, 7). In addition, CD-ROMs belonging to Mr. Laraneta were also found to contain images including minors. (PSR, 7). A small portion, approximately 2% of all images, contained violent depictions. (R. 85 at *Defense Attached Exhibit A*).

Transcripts of instant message conversations were also found on the computer. (PSR, 7). Mr. Laraneta explained to investigators that these conversations took place to facilitate trading images. (PSR, 6); (SH *Gov. Exh.* 20). The conversations contained references to sexual conduct. (*E.g.*, SH 128-56). The conduct discussed impossible situations including children Mr. Laraneta did not actually have. (PSR, 8-9) (outlining references to non-existent daughter, non-existent children of current ages 12 and 16, and non-existent 11-year-old son); (SH 159-162). In addition, conduct involving other parties, including Mr. Laraneta's wife, was described but no evidence has suggested the reality of these descriptions. (PSR, 8); (SH 160). Instead, the discussions include sexual conversation designed to identify Mr. Laraneta as a person with whom it was safe to trade images. (*See* SH 128, 130, 132, 134, 139, 140, 141, 146, 147, 149, 153, 156) (conversations always include requests for pictures); (SH *Gov. Exh.* 20).

2. *Allegations of a "pattern of activity"*

Upon the government's allegation in its response to a draft of the PSR that United States Sentencing Guidelines (U.S.S.G.) §2G2.2(b)(5) should apply in Mr. Laraneta's case, the district court held evidentiary hearings to determine if evidence existed of a"pattern of activity" as defined in that section. (R. 62, R. 64, R. 72). Mr. Laraneta has never been arrested or charged with any offense included in the Guidelines "pattern of

activity" enhancement. (PSR, 15). Thus, prior to these hearings, Mr. Laraneta requested that he be provided with discovery regarding the sexual conduct alleged. (R. 44). He requested the names of his accusers and some indication of the substance of the allegations against him. (R. 44). The government opposed his request and the district court refused to order production of this information. (R. 48, R. 58). Mr. Laraneta was informed only through the testimony of Witness 3[2] of an allegation against him of inappropriate sexual contact. (*See* Appx. 54).

Witness 3 is a cousin of Mr. Laraneta's ex-wife. (SH 94). Testimony was heard regarding the contentious nature of Mr. Laraneta's divorce. (*E.g.*, SH 171, 194-95). Joshua Hobson, step-son of Mr. Laraneta, and Wayne Laraneta, son of Mr. Laraneta, both testified that during the divorce Mr. Laraneta's ex-wife appeared "hostile." (SH 171); (*also* SH 194-95). Ultimately Mr. Laraneta's ex-wife lost custody of her son and was ordered to pay child support to Mr. Laraneta. (SH 194-95, 267-68). It was against this family history that three close relations to Mr. Laraneta's ex-wife testified at sentencing. (*See* SH 20, 59, 94).

Witness 3 testified to an incident he alleges occurred approximately 15 to 18 years prior to the sentencing hearing. (SH 95). He stated that on one occasion, while Witness 3 was staying at the house shared by Mr. Laraneta with his ex-wife and his step-children, Mr. Laraneta "helped him go to the bathroom." (SH 98). In doing so, Witness 3, then seven-years-old, claimed Mr. Laraneta held Witness 3's genitals while Witness 3 used the toilet. (SH 98). The witness claimed that Mr. Laraneta asked if he needed help, and

[2]The witnesses names have been sealed according to the district court's order. (R. 52).

helped the witness even though the witness indicated that he did not need any help. (SH 97). Witness 3 alleges that later that evening Mr. Laraneta gave Witness 3 a pill when Witness 3 complained of having trouble sleeping. (SH 98). As Witness 3 began to fall asleep, he states that Mr. Laraneta began touching his genitals. (SH 99). The witness stated that he had not discussed this issue with anyone until a year prior to the sentencing hearing. (SH 100).

The testimony of Witness 3's mother established that while Witness 3 had never mentioned these incidents prior to Mr. Laraneta's arrest, Witness 3 had himself "act[ed] out sexually in very inappropriate ways with children and adults." (SH 287). She described an incident of sexual abuse by Witness 3 against her other son. (SH 288). Witness 3 had also been arrested on several occasions for other misbehavior. (PSR *Second Addendum*, 12). Witness 3 was treated in therapy for this inappropriate behavior, yet did not disclose the allegations against Mr. Laraneta during the pendency of his therapy. (SH 100, 287-88). The credibility of Witness 3 was questioned by Wayne Laraneta, who stated "I don't feel like he's a credible person at all." (SH 186). These allegations against Mr. Laraneta were not made until after Mr. Laraneta's ex-wife had informed all of her relatives about separate allegations of harassment being made by her sister. (SH 257, 63, 283-84).

Witness 1, Mr. Laraneta's ex-wife's sister, did not allege any inappropriate touching but did testify regarding allegations of harassing behavior. Witness 1 described an incident she alleges occurred 23 years prior to the sentencing, when Mr. Laraneta was 18-years-old. (SH 33). She stated that when she was four-years-old, a man took her from her bed while she pretended to be sleeping, keeping her eyes closed throughout the

encounter. (SH 35-36). She testified that she pretended to be asleep rather than asking that person why she was being taken out of bed. (SH 35-36). She claimed that this person took her to the living room and pulled down her underwear. (SH 20). This person did not touch her, but she testified that she felt something that may have been the heat of a lighter near her. (SH 20). When asked how she could identify this person as Mr. Laraneta, she did not state that she had recognized him during the incident but only that she awoke in the living room the next morning and Mr. Laraneta was present. (SH 54). She cannot recall whether she shared a room at the time of this incident, even though any roommate's memories would be relevant to assessing the veracity of her claims. (SH 28-30) (stating that there were multiple people in the house and not enough bedrooms for everyone to have their own). She is also not sure if other adult males, such as her mother's then boyfriend Don, were living in the house at the time. (SH 34-35).

Witness 1 also stated that she received harassing phone calls of a sexual nature when she was older. (SH 21). She stated that she recognized the voice as that of Mr. Laraneta because he spoke in a low voice with clenched teeth which he used when disciplining his children. (SH 21). However, Mr. Laraneta's son and step-son testified that neither recalls being disciplined in a low voice with clenched teeth. (*Compare* SH 21-22 *to* 175, 197). Witness 1 further admitted that she never asked her mother to pick up the phone when she claimed to receive harassing phone calls so that her mother would know they were occurring. (SH 40).

The credibility of Witness 1 was questioned by other family members. (SH 172, 195). Witness 1 is described by other family members as attention-seeking. (SH 172, 195). She claims an ongoing and overwhelming fear of Mr. Laraneta, but acknowledges

that she had many continuing interactions with him as she was growing up. (*Compare* SH 24 *to* 37). Other family members describe the interactions between Witness 1 and Mr. Laraneta as appearing normal. (SH 197). Witness 1 claims to have reported this incident only in a limited fashion to family members at the time, despite potential risks to other family members. (SH 24, 39-40).

An additional witness, Witness 2, testified to allegations of inappropriate conduct, although also nothing involving sexual contact. (SH 63). Witness 2, the daughter of Mr. Laraneta's ex-wife, alleged that several years earlier she had awoken on Mr. Laraneta's couch to find him pulling at her shirt. (SH 62). The witness interpreted this as Mr. Laraneta looking down her shirt. (SH 62). These allegations were voiced for the first time following Mr. Laraneta's arrest and following a discussion with Witness 1 regarding her claims. (SH 63). Wayne Laraneta, Witness 2's brother, testified that when Witness 2 informed him of these allegations she admitted that she "could have misinterpreted" the incident. (SH 191). Further, Witness 2's testimony that she stacked items in front of her bedroom door to keep people out, in response to Mr. Laraneta's alleged conduct, appeared to duplicate Witness 1's statements. (*Compare* SH 63 *to* 22-23). Witness 1 testified to identical behavior after her alleged encounter. (SH 22-23). Yet, Witness 2 denied having gotten the idea to stack these items from Witness 1. (SH 63).

Evidence of Mr. Laraneta's good relationships with his son Wayne and his step-son Joshua was also presented. (SH 175, 197-98). Both of these men testified that they were comfortable with Mr. Laraneta and had never experienced any inappropriate conduct. (SH 175, 197-98). Additionally, in a letter to the court, Mr. Laraneta's step-

mother described the positive relationship Mr. Laraneta had with her young daughter. (R. 59, 5).

Mr. Laraneta argued that these allegations were inappropriately presented and there was insufficient proof of a "pattern of activity." (R. 85, 15-18, 19-21). The district court ruled that the evidence was sufficient under a preponderance of the evidence standard. (Appx. 27 [SH 442]). The district court found that the testimony of Witness 3 established two separate "sexual acts" with a minor, defined under 18 U.S.C. §2246 to "include intentional touching, not through the clothing, of the genitalia of another person who has not yet attained the age of 16 years with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person."(Appx. 28 [SH 443]). Additionally, the district court found that Witness 1's testimony established an attempt to commit a sexual act with a minor. (Appx. 30 [SH 445]). Accordingly, the district court calculated Mr. Laraneta's Guideline sentencing range to include the "pattern of activity" enhancement. (Appx. 31 [SH 446]).

3. *Restitution requests by "Amy" and "Vicky"*

The government submitted requests for restitution on behalf of two individuals using the pseudonyms "Amy" and "Vicky". (R. 52). These two individuals were depicted in images possessed by Mr. Laraneta, consisting of the two women performing sexual acts when they were minors. (PSR, 21). Mr. Laraneta objected to restitution, arguing that the victims had not established harms proximately caused by Mr. Laraneta's possession of their images. (R. 84).

a. *"Vicky's" request*

Vicky was sexually abused multiple times at the age of 10-years-old by her biological father. (*Vicky Exh*, *Mother's Impact Statement*). After videotaping these violent interactions, her father introduced the pictures into circulation on the internet. (*Id.*).

She learned at age 17 that these images remain available online. (*Vicky Exh*, *Victim Impact Statement*). She has been contacted by individuals over the internet regarding the photographs. (*Id.*). One individual also created a slideshow of her images and placed it on YouTube. (*Id.*). She was featured in a television program about her abuse, which ultimately led her to quit her job because it generated "questions from coworkers that she found very stressful and difficult to answer." (*Vicky Exh*, *Reports of Randall Green* at 15). Vicky originally received notifications from the government regarding prosecutions for possession of her images, but has since chosen to stop receiving them. (*Vicky Exh*, *Victim Impact Statement*; *Step-Father Impact Statement*).

A psychologist evaluating Vicky for purposes of this restitution request, but not providing treatment, noted that Vicky currently suffers from various emotional disorders including chronic post-traumatic stress disorder, dissociative disorders, and personality disorders. (*Vicky Exh*, *Reports of Randall Green* at 5). As a result, she has suffered from poor academic performance, has had minimal and transient earnings, and will need to continue therapy for a lengthy period. (*Id.* at 2-4). These disorders result from her "father's victimization" of her as a child and knowledge that her images can be downloaded. (*Id.* at 2). She displays a "hypervigilance" and has fears that "everybody would know about her." (*Id.* at 4, 25). Dr. Green outlines her medical and emotional

history, which include struggles with alcohol beginning in middle school, migraines and panic attacks in early high school, eating disorders, depression and post-traumatic stress. (*Id*. at 15, 30-31). Vicky learned about the availability of her pictures on the internet after many of these emotional disorders had apparently manifested. (*Id*. 24-25).

b. *"Amy's" request*

Amy was repeatedly sexually abused by her uncle when she was very young. (*Amy Exh*, *Victim Impact Statement*). Her uncle photographed the abuse and sold the images on the internet. (*Amy Exh*, *Nov. 21 Report of Joyanna Silberg* at 2).

Amy entered therapy to address her emotional trauma after the abuse. (*Id*.). At that time she had "difficulty concentrating in school, fearfulness, anxiety, depression, hypervigilance, feelings of guilt, difficulties with trust and intimacy and confusion about her attachment to her abuser." (*Id*.).

Dr. Silberg evaluated Amy for purposes of this restitution request, but did not provide any treatment. (*Id*. at 1). In her initial evaluation, she assessed that Amy suffered from trauma and continues to react negatively to things she associates with her uncle. (*Id*. at 5, 9). She notes that "ongoing awareness that the pictures are out there interferes significantly with the therapeutic resolution" of the trauma stemming from her initial abuse. (*Id*. at 10).

In follow-up interviews, Dr. Silberg spoke with Amy about ongoing issues, and Amy displayed "poor interpersonal decision-making", "struggle[d] with making academic and vocational progress" and was "paralyzed by shame and struggles with feelings of victimization." (*Amy Exh*, *Oct. 21, 2010 Report of Joyanna Silberg* at 4). These later interviews did not seem to include discussion of the images on the internet,

but Amy did note her "fear that [her uncle] w[ould] be released from prison soon" and described it as "one of the things holding her back in life." (*Amy Exh*, *Jan. 23, 2011 Report of Joyanna Silberg* at 3).

Amy seeks compensation for lost earnings, therapy costs and loss of enjoyment of life. (*Amy Exh*, *Smith Economics Group Ltr* at 1).

c. *The district court's ruling*

The district court found that Mr. Laraneta's possession offense "confirm[s] that th[e] harm [to Vicky and Amy] is continuing widespread and [is] likely to continue." (Appx. 23 [SH 438]). The court rejected attempts to calculate the extent of such harm as "arbitrary." (Appx. 26 [SH 441]). The court stated that "when weighing the interests of ensuring Vicky and Amy receive the restitution to which they are entitled against the risk that one defendant may pay more than is fair, this Court finds that the victim's interests are more compelling." (Appx. 25 [SH 440]). Accordingly, the court ordered Mr. Laraneta to pay $965,827.64 to Vicky and $3,367,854 to Amy, in joint and several liability with other defendants possessing their images. (Appx. 26-27 [SH 441-42]).

4. *The sentence imposed by the district court*

Mr. Laraneta presented various arguments in mitigation of a harsh sentence. (R. 85). Among these arguments, he noted his lack of criminal history, his lack of intent in relation to many of the Guidelines enhancements imposed on a strict liability basis, his motivation to begin viewing these images and his strong relationship with his sons. (*See generally* R. 85).

The district court ordered Mr. Laraneta imprisoned for a total of 30 years. (Appx.

2). In doing so, the district court sentenced Mr. Laraneta at the statutory maximum level for his receipt, distribution and transportation offenses, and additionally ordered a sentence at the statutory maximum for his possession offense to run consecutively to the remaining charges. (Appx. 2); 18 U.S.C. §2252. Mr. Laraneta is currently incarcerated pursuant to this order.

SUMMARY OF THE ARGUMENT

The sentence imposed on Mr. Laraneta was calculated to punish offenses separate from the offenses of conviction. (*See* Appx. 27-32 [SH 442-46]). The additional ten year punishment required the district court to order that the punishment for Count 8 run consecutively to the punishment imposed on all other charges. (Appx. 2). Without reference to the separate "pattern of activity" offenses, established not through the Sixth Amendment's jury trial guarantees but instead only through a preponderance of the evidence finding by the sentencing judge, no reasoning exists in the record to support the consecutive sentencing order. (*See* Appx. 38-39 [SH 517-18]). The judge's fact-finding and decision to impose additional punishment violated the guarantees of the Fifth and Sixth Amendments by imposing punishment not authorized by the finding of guilt on the offenses of conviction. *See Blakely v. Washington*, 542 U.S. 296, 305-306 (2004); *McMillan v. Pennsylvania*, 477 U.S. 79, 83-84 (1986).

The district court's restitution order erroneously places the burden of repayment on Mr. Laraneta for harms he did not cause. (*See* Appx. 25-26 [SH 440-42]); *see* 18 U.S.C. §2259. The district court failed to determine the extent of harms to "Vicky" and "Amy" proximately caused by Mr. Laraneta's offense of illegally possessing images of these two women. (*See* Appx. 26 [SH 441]). The district court further erred in setting the restitution order for the full amount requested by "Vicky" and "Amy" to be repaid in joint and several liability with defendants around the nation also possessing these images. *See, e.g., United States v. Kennedy*, 643 F.2d 1251, 1265 (9th Cir. 2011); (Appx. 26-27 [SH 441-42]).

The sentence imposed is further procedurally unsustainable based on the district

court's failure to examine and address Mr. Laraneta's principle sentencing arguments. (Appx. 34-42 [SH 513-21]); *United States v. Bradley*, 675 F.3d 1021, 1025 (7th Cir. 2012). The argument that Mr. Laraneta's significant punishment resulted in sentencing disparities by punishing him to a greater extent than other defendants found guilty of similar offenses and more harshly than defendants found guilty of violent offenses was not addressed. (*See* SH 469-82); (Appx. 34-42 [SH 513-21]). The district court additionally refused to consider Mr. Laraneta's argument that evidence of his possession and distribution of child pornography did not establish any sexual interest in minors. (Appx. 14-16 [SH 418-20]). The district court's failure to consider this argument tainted factual findings made throughout the sentencing proceedings. (*See* Appx. 31 [SH 446]).

ARGUMENT

I. Standards of Review

The procedural rights of a defendant under the Fifth and Sixth Amendments of the Constitution are reviewed *de novo* by this Court. *See United States v. Edwards*, 115 F.3d 1322, 1325 (7th Cir. 1997) (questions of law are reviewed *de novo*).

The scope of compensable losses under the Mandatory Victim's Restitution Act, 18 U.S.C. §2259, and the district court's ability to order restitution under a joint and several liability theory are issues of law reviewed *de novo*. *See United States v. Swanson*, 394 F.3d 520, 528 (7th Cir. 2005). The district court's factual findings regarding the amount of loss is reviewed for clear error. *United States v. Ali*, 619 F.3d 713, 720 (7th Cir. 2010).

This Court reviews sentences imposed for federal crimes in two parts. *United States v. Scott*, 555 F.3d 605, 608 (7th Cir. 2009). First, the sentence is evaluated for procedural error. *Id.* This includes "failing to consider the [section] 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Id.* The sentence is then examined for substantive reasonableness under an abuse of discretion standard. *Id.*

II. Mr. Laraneta's due process and jury trial rights were violated by the sentence imposed to punish offenses separate from the offense of conviction.

"No person shall be . . . deprived of life, liberty or property without due process of law." U.S. Constit. Amend. V. Mr. Laraneta has been deprived of an additional ten years of his life, a 50% addition to the deprivation imposed by his criminal sentence, without sufficient process under the Fifth Amendment's protections. (Appx. 2). This punishment

is predicated upon judicial fact-finding of distinct criminal offenses, not part of the course of conduct underlying the offense of conviction, that have never been charged or tested under the Sixth Amendment's protections. (Appx. 27-32 [SH 442-46]); (PSR, 15). The imposition of consecutive sentencing to reach a cumulative sentence above the statutory maximum penalty for any single offense of conviction is supported only by reference to these separate uncharged offenses. (*See* Appx. 34-42 [SH 513-21]). This additional punishment that dominates Mr. Laraneta's final sentence cannot be sustained upon findings by a sentencing judge by a preponderance of the evidence.

a. U.S.S.G. §2G2.2(b)(5): the pattern of activity enhancement

The judicial fact-finding in Mr. Laraneta's case was made pursuant to United States Sentencing Guidelines (U.S.S.G.) §2G2.2(b)(5). (Appx. 27 [SH 442]). The required procedure for determining Mr. Laraneta's sentence includes calculating the range of punishment suggested by the Guidelines. 18 U.S.C. §3553(a)(4), (a)(5). The Guidelines normally suggest a range based on the offense of conviction and various facts specific to that offense. *See generally* U.S.S.G. §2G2.2.

Section 2G2.2(b)(5) increases a defendant's guideline punishment range by five offense levels if the court finds evidence of a defined "pattern of activity involving the sexual abuse or exploitation of a minor." U.S.S.G. §2G2.2(b)(5), §2G2.2 app. n. 1 para. 9, 11. Application of this provision increased Mr. Laraneta's suggested punishment from a range of 235-293 months to a suggested life imprisonment. (*See* PSR, 13-14); *compare* U.S.S.G. Sentencing Table at Offense Level 38 *to* Offense Level 43. Proof of independent crimes is required to establish a "pattern of activity." U.S.S.G. §2G2.2 app. n. 1 para. 11

(conduct defined by the elements of the listed criminal statutes establishes this enhancement). No limitation requiring a relationship between these separate "pattern of activity" offenses and the offense of conviction is applicable. U.S.S.G. §2G2.2 app. n. 1 para. 9 (enhancement applies "whether or not the abuse or exploitation (A) occurred during the course of the offense; [or] (B) involved the same minor"). Thus, a sentencing court need not find any proximity or correlation between the "pattern of activity" alleged and the offense of conviction to increase the punishment imposed for the offense of conviction. *See United States v. Lovaas*, 241 F.3d 900, 903-904 (7th Cir. 2001) (explaining that the "'pattern of activity' enhancement is broader than the scope of relevant conduct typically considered under §1B1.3", since relevant conduct is established only by facts underlying the offense of conviction).

A prior conviction is not necessary for application of §2G2.2(b)(5). U.S.S.G. §2G2.2 app. n. 1 para. 9. The "separate instances" underlying this enhancement are not necessarily established by facts charged in an indictment and submitted to a jury for testing under the Sixth Amendment. *Id*. No heightened standard of proof is required where no prior conviction exists and the factual background has never been submitted to a jury. *See id*. The sentencing judge alone determines whether these separate criminal offenses occurred. *See id*.

Based on the enhancement's broad reach, the sentencing court focused on allegations of unrelated conduct occurring in the range of 15 to 25 years prior to Mr. Laraneta's offense of conviction. (SH 33, 95).

b. Judicial fact-finding violates the Fifth and Sixth Amendments if it results in punishment for a separate offense that was not submitted to a jury.

The Supreme Court has consistently shown concern that judicial fact-finding at sentencing hearings may exceed its appropriate limits and encroach on areas traditionally reserved to juries by the Sixth Amendment. *Apprendi v. New Jersey*, 530 U.S. 466, 484-85 (2000); *Blakely v. Washington*, 542 U.S. 296, 305-306 (2004) ("The right [to a jury trial] is no mere procedural formality, but a fundamental reservation of power in our constitutional structure."). A balance between a judge's traditional role of considering a broad range of evidence relevant to set punishment and a jury's role of establishing the offense that may be punished is at the core of the Court's rulings. *Southern Union Co. v. United States*, No. 11-94, 2012 WL 2344465 at *5 (June 21, 2012) ("*Apprendi*'s core concern is to reserve to the jury the determination of facts that warrant punishment for a specific statutory offense") (internal quotations removed).

A judge may punish only the specific offense established by a jury. *E.g., id.*; *Blakely*, 542 U.S. at 302-303 (sentencing court could not punish a greater crime of acting with deliberate cruelty based on judicial findings alone). When a sentencing court breaches the confines of the specific offense found by the jury, the court violates the Sixth Amendment. *Blakely*, 542 U.S. at 302-303. The Supreme Court has recognized one bright-line rule that a separate offense is being punished when judicial fact-finding is used to exceed the statutory maximum penalty for an offense. *Id.* Punishment for this separate offense requires that the offense be first subject to the rights guaranteed by the Sixth Amendment. *Id.*

In contrast, to determine the severity of a single offense, a sentencing judge

enjoys greater discretion which is permissible under the Sixth Amendment. *McMillan v. Pennsylvania*, 477 U.S. 79, 83-84 (1986). After a finding of guilt beyond a reasonable doubt, a defendant's "liberty interest . . . has been substantially diminished by [the] guilty verdict." *Id.* at 84. As *Apprendi* and its progeny make clear, liberty interests are diminished only in relation to the crime of conviction. *Apprendi*, 530 U.S. at 485-86 *citing McMillan*, 477 U.S. at 87-88. After all the essential facts have been determined by a jury, fact-finding of further details upon a preponderance of the evidence standard is generally sufficient to guarantee a defendant due process. *Blakely*, 542 U.S. at 301-302; *McMillan*, 477 U.S. at 83-84. The distinction is that this judicial fact-finding is complementary to and cabined by the jury's decisions. *Compare Blakely*, 542 U.S. at 302-303 *to Apprendi*, 530 U.S. at 485-86.

A statute cannot, however, circumvent these procedural protections by labeling as a sentencing factor "a separate offense calling for a separate penalty." *Apprendi*, 530 U.S. at 485-86 *citing McMillan*, 477 U.S. at 87-88. The Supreme Court has noted the lack of exact boundaries of the due process clause, stating its inclination not to "define precisely the constitutional limits . . . [and] the extent to which due process forbids reallocation or reduction of burdens of proof in criminal cases." *McMillan,* 477 U.S. at 86. Concerns relating to individual provisions must be tested to prevent the erosion of required process. *See id.* at 85 ("there are obviously constitutional limits beyond which the States may not go").

c. The court relied on §2G2.2(b)(5) to unconstitutionally justify punishment for an entirely separate offense despite the fact that this provision did not inform the court about any offense conduct or recidivism.

The sentencing court's use of the "pattern of activity" allegations in Mr. Laraneta's case resulted in additional punishment solely to punish these alleged separate offenses rather than to address the nature and severity of the offenses of conviction. Punishing these separate offenses exceeds the authority imparted on the sentencing court by the finding of guilt for the offenses of conviction. *See Apprendi*, 530 U.S. at 485-86 (a sentencing factor cannot penalize a "separate offense"). Neither the authority to consider broad evidence to determine the length of a sentence nor the authority to impose consecutive sentencing to address the gravity of various offenses of conviction allow a court to augment a sentence to punish a separate offense.

Mr. Laraneta has never been charged with any predicate offense for the "pattern of activity" enhancement. (PSR, 15). The allegations underlying this enhancement include separate crimes that could be charged and punished on their own. U.S.S.G. §2G2.2 app. n. 1 para. 9, 11. If the crimes were separately charged Mr. Laraneta would be afforded full rights under the Fifth and Sixth Amendments, including notice and a jury whose fact-finding would require proof beyond a reasonable doubt. *See* U.S. Constit. Amend. V, VI; *Blakely*, 542 U.S. at 305.

Instead, the sentencing court used abridged procedures to determine Mr. Laraneta's need for punishment for these "pattern of activity" offenses. (*See* Appx. 54). Mr. Laraneta was not afforded any indictment right regarding the "pattern of activity" allegations. (R. 1, 15). He received no notice at the time of his sentencing that allegations

not supported by prior convictions would affect his sentence. His discovery rights at sentencing were limited. (Appx. 54); *see also* Fed. R. Crim. P. 16(a) (discovery only guaranteed for evidence "the government intends to use . . . at trial"). Mr. Laraneta was not afforded even the names of his accusers prior to his sentencing hearing, much less any reports related to the government's investigation or any impeachment material. (Appx. 54). The findings of fact were made by a single party, the sentencing judge, rather than by unanimous agreement of a jury of Mr. Laraneta's peers. (Appx. 27-31 [SH 442-46]). Further, the sentencing judge evaluated the allegations against a background of character information that would have been inadmissible at a trial regarding the pattern allegations—Mr. Laraneta's guilty plea to possession, receipt and distribution of child pornography. *See* Fed. R. Evid. 404(a) ("Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."). The judge refused to employ a clear and convincing standard and rejected numerous concerns noted by the defense relating to the reliability of the evidence, finding Mr. Laraneta's guilt of these allegations by a mere preponderance of the evidence. (Appx. 31 [SH 446]).

This truncated procedure was not justified by a jury rendering Mr. Laraneta guilty of the "pattern of activity" offenses alleged. *Compare McMillan*, 477 U.S. at 83-84 *to* (PSR, 15). Mr. Laraneta's "liberty interest . . . has been substantially diminished" by his plea of guilty only as to setting punishment for the charged offenses. *See McMillan*, 477 U.S. at 84. His plea of guilty to one offense does not forfeit his right to due process prior to deprivation of liberty for a separate offense.

It is clear from the sentencing court's reasoning and adoption of evidence

promoted by U.S.S.G. §2G2.2(b)(5) that the court used the relaxed standards relevant at sentencing as a vehicle for finding guilt and imposing punishment for these separate alleged offenses. First, relying on the broad reach of U.S.S.G. §2G2.2(b)(5), the court failed to establish any link between the "pattern" allegations and the need for additional punishment for the offenses of conviction. (*See* Appx. 31, 38-39 [SH 446, 517-18]). The Guidelines "pattern of activity" enhancement starkly contrasts other Guidelines provisions calculated to reflect the gravity of a defendant's conviction offense. *See generally* U.S.S.G. §2G2.2. Findings under this Guideline provision do not inform a court about the specifics of the convicted offenses to "determine, and to base punishment on, the *real conduct* that underlies the crime of conviction." *United States v. Booker*, 543 U.S. 220, 250 (2005) (emphasis in original). The Guidelines do not require any finding of a link between the alleged "pattern" and the offense of conviction. U.S.S.G. §2G2.2 app. n. 1 para. 9, 11; *see also Lovaas*, 241 F.3d at 903-904. In Mr. Laraneta's case, the allegations involved activity alleged to have happened 15 to 25 years prior to offense of conviction and did not include any minor involved in the offense of conviction. (Appx. 27-31 [SH 442-46]). The sentencing court offered no additional analysis of how conduct occurring so far in the past and not alleged to have been repeated at any time proximate to sentencing affected any factor relevant to sentencing Mr. Laraneta for the offenses of conviction. (*See* Appx. 31, 38-39 [SH 446, 517-18]); *see* 18 U.S.C. §3553(a)(2). The lack of explanation of how these allegations of past conduct reflect Mr. Laraneta's current need for punishment and deterrence reveal that the court increased Mr. Laraneta's sentence to punish the past conduct.

The sentencing court also made no findings distinguishing the various offenses of

conviction to suggest a need for consecutive sentences of the various offenses. (*See* Appx. 33-41 [SH 512-20]). The nature and scope of Mr. Laraneta's various offenses was addressed by enhancements aside from §2G2.2(b)(5). *See generally* U.S.S.G. §2G2.2. The Guidelines aggravating factors include "all acts and omissions . . . that were part of the same course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. §1B1.3(a)(2) (directions for calculating the base offense level and specific offense characteristics through "relevant conduct"). By doing so, the Guidelines seek to address the impact of repeated activity and activity causing distinct harms. *See generally* U.S.S.G. §2G2.2. Mr. Laraneta received several increases from the "base offense level" based on these aggravating factors to reflect various aspects of his offense. (PSR, 13). None of these considerations resulted in a guideline range contemplating solely consecutive sentencing to reflect the seriousness of the combined offenses. *Compare* U.S.S.G. Sentencing Table at Offense Level 38 (5 level decrease to Offense Level 38 yields a low-end punishment of 235 months, less than the maximum 240 months applicable to Counts 2 through 7). The sentencing court made no findings in supplement to the Guidelines distinguishing the various offenses, but instead recognized all counts as occurring within the same course of conduct. (PSR, 7, 12-13) (treating all images possessed, received, or distributed as part of "relevant conduct" occurring in a single course of conduct).

The court offered no explanation of why this single course of conduct was not most appropriately punished within the 5 to 20 year punishment range established for receipt and distribution offenses. (*See* Appx. 33-41 [SH 512-20]). Mr. Laraneta argued that evidence of Congressional intent limiting punishment in this manner is apparent

from the statutory scheme. *See* 18 U.S.C. §2252(a)-(c); (R. 91, 12-13). He first noted that the statute creates an affirmative defense for individuals "possess[ing] less than three matters containing any visual depiction proscribed by that paragraph." 18 U.S.C. §2252(c). The statute links these three discrete instances of receipt, creating one defense to what is anticipated to be charged as one offense. *See id*. Additionally, any reading that arbitrarily separates discrete instances of receipt or distribution leaves the statutory maximum meaningless. If each separate internet download or upload of prohibited material is subject to the statutory maximum and charges can be stacked upon each other, almost no defendants would truly face a maximum of 20 years. Only a defendant who received a single image could be certain to be limited to the 20 year maximum. The judge made no findings explaining why the six charged offenses should be viewed as discrete requiring punishment outside of this 5 to 20 year range. (*See* Appx. 33-41 [SH 512-20]). Instead, the Guideline range calculated to include the "pattern of activity" enhancement was the sole impetus for consecutive sentencing. The five-levels added to the Guideline range to reflect the uncharged, non-conviction conduct increased the recommended sentence for Mr. Laraneta above 20 years, prompting consecutive sentencing. (PSR, 13, 15).

The "pattern of activity" enhancement does not align with traditional authority to impose consecutive punishment to address the nature of multiple offenses. *See Oregon v. Ice*, 555 U.S. 160, 165 (2009). In federal criminal sentencing, "[m]ultiple terms of imprisonment imposed at the same time run concurrently *unless* the court orders or the statute mandates that the terms are to run consecutively." 18 U.S.C. §3584(a) (emphasis added). The sentencing judge is authorized to consider if factors "as to each offense"

demonstrate a need for consecutive sentencing. 18 U.S.C. §3584(b). The Supreme Court has upheld a judge's discretion to choose consecutive sentencing based on findings that separate offenses of conviction "caus[ed] greater or quantitatively different loss." *Ice*, 555 U.S. at 165. Fact-finding for consecutive sentencing aligns with the Sixth Amendment's protections because facts differentiating various offenses are similar to factual details used to determine "the gravity of the offense" when choosing punishment within a statutory range. *Id.* at 171. Both involve detailed findings related to the elements of the offense as found by a jury. *See id.* at 165. In this case, Mr. Laraneta was not punished additionally for "multiple offenses [found to be] different in character or committed at different times." *Id.* at 167. The judge's factual findings were not related to Mr. Laraneta's offenses of conviction or used to distinguish among them. (Appx. 27-31 [SH 442-46]). The sentencing judge abused his authority by ordering consecutive sentencing to punish allegations of separate offenses.

Use of the "pattern of activity" findings to elevate Mr. Laraneta's sentence is also not justified as evidence of recidivism. *See Jones v. United States*, 526 U.S. 227, 249 (1999). Unlike a prior conviction, which may be used to increase a defendant's sentence based on information about a defendant's prior conduct even beyond an otherwise existing statutory maximum penalty, the offenses alleged by a §2G2.2(b)(5) enhancement were never subject to Sixth Amendment procedures. *Compare* 2G2.2(b)(5) *to Jones*, 526 U.S. at 249. "A prior conviction must itself have been established through procedures satisfying fair notice, reasonable doubt and jury trial guarantees." *Jones*, 526 U.S. at 249. If a prior conviction was obtained in contravention of a defendant's constitutional rights, a judge is prohibited from considering that

conviction at a later sentencing. *United States v. Tucker*, 404 U.S. 443, 446 (1972) (upholding appellate court's remand for resentencing ordering the district court not to consider prior convictions achieved in violation of the defendant's right to counsel). The factual findings underlying the pattern of activity enhancement bear none of these indications of reliability. (*See, e.g.*, Appx. 27-31 [SH 442-46]; Appx. 54).

A judge's discretion to consider or disregard a guideline and provide a reasonable sentence must "work *within* the Sixth Amendment['s] constraints. . . not as a substitute for those constraints." *Cunningham v. California*, 549 U.S. 270, 292-93 (2007) (emphasis in original). It is true that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. §3661. However, the Supreme Court has "cautioned . . . that broad discretion to decide what facts may support an enhanced sentence" does not insulate sentencing decisions from procedural constraints. *Cunningham*, 549 U.S. at 290. A judge's broad discretion to consider the background of an individual does not authorize the court to sentence a defendant outside of a permitted range or for a separate offense. *Id.*

The district court faced virtually no ceiling for sentencing Mr. Laraneta if all sentences were imposed consecutively, based on the prosecutor's decision to charge various instances of receipt and distribution committed in same course of conduct as separate offenses. *See* 18 U.S.C. §2252(a)(1), (a)(2) (setting a statutory maximum punishment of 20 years for transportation, receipt and distribution offenses); (R. 15) (charging five separate counts of receipt and distribution and one count of

transportation); (PSR, 7, 12-13)(treating all offenses as a single course of conduct). This broad discretion does not authorize any possible punishment: it must be exercised within the procedural constraints of setting punishment only for the offenses of conviction. *See Cunningham*, 549 U.S. at 292.

Placement of these allegations within the Guidelines has impermissibly added importance to allegations of separate offenses and also insulates these findings from more probing review. A judge must calculate the Guidelines according to the Guidelines manual, and is required to consider the Guideline as a starting point in its determination of punishment. *Gall v. United States*, 552 U.S. 38, 49 (2007). Inclusion of the "pattern of activity" enhancement gives greater credibility to findings of non-convicted conduct based on a preponderance of the evidence, because the guidelines highlight those allegations and urge a judge to give them weight. *See* U.S.S.G. §2G2.2(b)(5). A court cannot simply disregard a Guideline provision: to decline to follow a provision in the Guidelines, a court is required to state specific reasons for rejecting that provision. *United States v. Brown*, 610 F.3d 395, 398 (7th Cir. 2010) ("A major departure [from the guidelines] should be supported by a more significant justification than a minor one") (internal quotations omitted). Further, if a judge simply follows a guideline, his sentence is presumed reasonable during appellate review. *Rita v. United States*, 551 U.S. 338, 347 (2007); *United States v. Gama-Gonzales*, 469 F.3d 1109, 1110 (7th Cir. 2006). This presumption, the Supreme Court has acknowledged, "may . . . encourage sentencing judges to impose Guidelines sentences." *Rita*, 551 U.S. at 354.

A sentencing judge cannot be permitted to punish offenses separate from the offense of conviction based on his simple reliance on the Guideline's recommended

range. If the pattern of activity provision had not been a part of the guidelines calculation, the judge would have been required to link the information regarding this 15-year-old uncharged conduct to the need for such drastic additional punishment for the current offense. *See* 18 U.S.C. §3553(a); 18 U.S.C. §3584(b); *Brown*, 610 F.3d at 398. The judge would have needed to provide significant justification for varying upward from the guideline to impose an additional ten years imprisonment upon Mr. Laraneta. *Brown*, 610 F.3d at 398; *United States v. Bradley*, 675 F.3d 1021, 1025 (7th Cir. 2012) (noting that "[t]he greater the departure [from the guidelines range], the more searching our review will be"). As the sentencing judge made no findings regarding the need to treat Mr. Laraneta's various counts of conviction with consecutive sentencing or the link between these allegations and any additional risk currently posed, the additional punishment would not be sufficiently explained. (*See* Appx. 28-39 [SH 517-18]).

The totality of the concerns raised by this provision reveal that this 50% increase to Mr. Laraneta's sentence beyond the statutory maximum for any single offense and requiring consecutive sentencing cannot be based on such truncated procedures. Mr. Laraneta has never been charged with and has not been found guilty of the separate criminal offenses referenced in 2G2.2(b)(5). (PSR, 15). He should not be subject to a curtailed procedure for finding guilt and punishment for those separate offenses based on his conviction for an unrelated crime. *See McMillan*, 477 U.S. at 86-88. Due process requires that a judge's discretion at sentencing not impede constitutional protections against punishment without a finding of guilt beyond a reasonable doubt. *Id.* This limitation prevents a sentencing factor from becoming "the tail that wags the dog of the substantive offense," by punishing a defendant for an offense other than the offense of

conviction. *Id.* at 88. The pattern of activity enhancement as applied in Mr. Laraneta's case exceeds the confines of a sentencing judge's discretion and exposed Mr. Laraneta to greater additional punishment, in the form of consecutive sentencing, to punish offenses other than the offense of conviction. Greater process and a higher burden of proof must be required to employ the pattern of activity enhancement, which drastically increases a defendant's sentence without relating punishment to the offense of conviction. The judge's findings in Mr. Laraneta's case were insufficient to meet the guarantees of the Fifth and Sixth Amendments.

III. The district court erroneously ordered restitution under a joint and several liability theory, holding Mr. Laraneta responsible for losses he did not proximately cause.

The district court erred when ordering restitution for the full amount of losses claimed by the victims Amy and Vicky without determining the amount of loss proximately caused by Mr. Laraneta's offense. (Appx. 25-27 [SH 440-42]). The district court exceeded its powers as defined by 18 U.S.C. §2259 by holding Mr. Laraneta jointly and severally responsible for repayment of harms he did not proximately cause. *See* 18 U.S.C. §2259(b)(3)(F); (Appx. 27 [SH 442]).

Amy and Vicky requested restitution as victims of Mr. Laraneta's offense. (R. 52). A victim, defined as "the individual harmed as a result of a commission of a crime" under 18 U.S.C. §2259, is granted restitution after the court makes appropriate findings regarding her loss. §2259(c). It is the government's burden to establish the loss proximately resulting from the defendant's actions. 18 U.S.C. §3664(e).

The Seventh Circuit has not yet addressed the scope of losses compensable under the Mandatory Victim's Restitution Act, 18 U.S.C. §2259. Several other circuits have

addressed this issue and hold that a victim's loss is limited to harms proximately caused by the defendant's offense. *United States v. Kearney,* 672 F.3d 81, 95-96 (1st Cir. 2012); *United States v. Aumais,* 656 F.3d 147, 153-54 (2d Cir. 2011); *United States v. Crandon,* 173 F.3d 122, 126 (3d Cir. 1999); *United States v. Burgess*, No. 09-4584, 2012 WL 2821069 at *1 (4th Cir. July 11, 2012); *United States v. Kennedy*, 643 F.2d 1251, 1262-63 (9th Cir. 2011); *United States v. Evers*, 669 F.3d 645, 658-59 (6th Cir. 2012); *United States v. McGarity*, 669 F.3d 1218, 1267 (11th Cir. 2012); *United States v. Monzel*, 641 F.3d 528, 536-37 (D. C. Cir. 2011); *also* §2259(b)(3)(F); *but see In re Amy Unknown*, 636 F.3d 190, 198 (5th Cir. 2011)*, opinion withdrawn and rehearing granted by* 668 F.3d 776 (5th Cir. 2012). The statute is presumed to have been written to "incorporate the traditional requirement of proximate cause unless there is good reason to think Congress intended the requirement not to apply." *Monzel*, 641 F.3d at 536. The statute itself makes clear that Congress intended a proximate cause requirement, as it includes a reference to proximate cause. 18 U.S.C. §2259(b)(3)(F). "When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *United States v. McDaniel*, 631 F.3d 1204, 1209 (11th Cir. 2011) quoting *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920). The natural construction of §2259 is that all losses described in part (b) must be proximately caused by the defendant's actions. *McDaniel*, 631 F.3d at 1209.

The district court erred by failing to establish the extent of harms, if any, proximately caused by Mr. Laraneta's individual possession offense. (*See* Appx. 23-24 [SH 238-39]). Both Amy and Vicky seek restitution for emotional damage that began

before Mr. Laraneta ever viewed their pictures. Vicky suffered from emotional disorders and posttraumatic stress before she ever learned that her pictures were being circulated on the internet. (*Vicky Exh, Reports of Randall Green* at 15, 30-31). Amy's emotional disturbances are described by the evaluator as caused by her uncle; knowledge of the availability of her pictures on the internet "interferes" with her treatment for those harms. (*Amy Exh, Nov. 21, 2008 Report of Joyanna Silberg* at 5, 9-10). These women describe anxiety that stems from a general fear that their images are being viewed and that they will be recognized. (E.g., *Vicky Exh, Reports of Randall Green* at 15, *Amy Exh, Nov. 21, 2008 Report of Joyanna Silberg* at 10). The district court established only that Mr. Laraneta's possession offense was one of those offenses relating to Amy's and Vicky's generalized fears. (Appx. 24 [SH 439]).

Appellate courts in other circuits have reviewed Vicky's and Amy's restitution awards and found that Vicky's and Amy's harms were not sufficiently related to a single defendant's possession to require repayment for their losses by these defendants. *Aumais*, 656 F.3d at 155-56; *Kennedy*, 643 F.3d at 1263-64; *see also McGarity*, 669 F.3d at 1268-69 (vacating and remanding restitution order because the district court failed to establish any specific causal connection between the defendant and the victim Amy); *but see McDaniel*, 631 F.3d at 1209 (upholding restitution order and finding proximate cause); *Kearney*, 672 F.3d at (holding that a loss of $3,800 was reasonably foreseeable at the time of the defendant's offense). These other courts have considered identical claims by Vicky and Amy. *See Aumais,* 656 F.3d at 149-50; *Kennedy*, 643 F.3d at 1263-64; *McGarity*, 669 F.3d at 1264. Like the defendants in those cases these two women "had no direct contact with [Mr. Laraneta] nor even knew of his existence."

Aumais, 656 F.3d at 154. Instead, "the government's evidence show[s] only that the defendant participated in the audience of persons who viewed the images of Amy [and Vicky].... While this may be sufficient to establish that the defendant's actions were one cause of the generalized harm Amy [and Vicky]... suffered due to the circulation of [their] images on the internet, it is not sufficient to show that they were a proximate cause of any particular losses." *Id.* at 154-55 (internal citation omitted) *quoting Kennedy*, 643 F.3d at 1264.

No evidence was offered at sentencing establishing that either victim has any knowledge of Mr. Laraneta's offense; a link between Mr. Laraneta's individual offense and any harm that was created or exacerbated was not explored. Without a specific link between Mr. Laraneta's actions and Amy's and Vicky's harms, orders of restitution "would turn restitution for possession of child pornography into strict liability." *McGarity*, 669 F.3d at 1269.

Accordingly, the district court's order of restitution in the full amounts claimed by the victims fails for two reasons: 1) Mr. Laraneta did not cause all of the harms claimed by Vicky and Amy and 2) a defendant cannot be ordered to pay restitution jointly and severally with defendants in separate cases. *See Aumais*, 656 F.3d at 155-56; *Monzel*, 641 F.3d at 538; *Kennedy*, 643 F.3d at 1265.

A defendant can only be ordered restitution in the amount of loss he actually caused. *United States v. Rhodes*, 330 F.3d 949, 953 (7th Cir. 2003); *United States v. Neal*, 36 F.3d 1190, 1200 (7th Cir. 1994) (holding that a defendant found to be an accessory after the fact could not be held responsible for all the losses caused by the principle). The sentencing court did not identify the loss actually caused by Mr.

Laraneta, stating that no calculation for the specific effect of Mr. Laraneta's actions was available. (Appx. 25-26 [SH 440-41]). Yet, it is clear that Mr. Laraneta is not responsible for all of the losses described by Vicky and Amy. Much of the emotional damage described is attributable solely to their original abusers. Neither of their evaluations separates the financial loss stemming from the original abuse from any loss stemming from the circulation of their pictures. (*See Vicky Exh, Reports of Randall Green* at 2, *Amy Exh, Nov. 21, 2008 Report of Joyanna Silberg* at 10); *compare Neal*, 36 F.3d at 1200.

"If Amy's [and Vicky's] future counseling costs are . . . partly caused by [their original] abuse, then [a defendant possessing their pictures] cannot be responsible for all of those losses." *Aumais*, 656 F.3d at 155. The sentencing court adopted the full amounts of loss requested by the victims in an attempt to "cure a failure of proof on the causal relationship between a defendant's conduct and the victim's losses." *Kennedy*, 643 F.3d at 1265; (Appx. 25-27 [SH 440-42]). The court's failure to undertake the difficult task of isolating the harms from a single defendant's possession offense resulted in an unsupportable restitution order; the order does not comply with the mandate that only losses "*caused by the specific conduct* that is the basis for the offense" should be repaid by the defendant. *Neal*, 36 F.3d at 1200 (emphasis in original); §2259(c) (requiring losses to be the "proximate result of the offense"). If Mr. Laraneta's contribution to a generalized harm requires compensation, a speculative restitution order cannot be entered in place of a finding of the amount of loss caused by Mr. Laraneta. *See Rhodes*, 330 F.3d at 953; *Monzel*, 641 F.3d at 537-38 (remanding restitution order calculated by mere speculation as to amount of loss).

Additionally, "the law does not contemplate apportionment of liability among defendants in different cases, before different judges, in different jurisdictions around the country." *Aumais*, 656 F.3d at 156. The restitution statutes "impl[y] that joint and several liability may be imposed only when a single district judge is dealing with multiple defendants in a single case." *Id.*; *also Monzel*, 641 F.3d at 539 ("it is unclear . . . whether joint and several liability may be imposed upon defendants in separate cases"); *Burgess*, *supra* at *11; 18 U.S.C. §3664(h). Placing the full burden of the loss caused by the general circulation of these pictures on any single defendant goes beyond the goals of the restitution statutes which contemplate that a victim will recover no more than her actual losses. No court has knowledge of how many defendants will be ordered to pay for the same losses and how much these women will ultimately be able to recover. *See, e.g.*, §2259(b); *Kennedy*, 643 F.3d at 1265.

The restitution statute does not establish a duty of any agency to track the restitution orders of various courts.18 U.S.C. §2259. As a result, "it is not entirely clear what government body, if any, is responsible for tracking payments that may involve defendants in numerous jurisdictions across the country. In addition, determining what amount Amy [or Vicky] has received would entail collecting data about hundreds of cases, ascertaining what money has actually been paid, and determining what losses that money was intended to cover." *Aumais*, 656 F.3d at 156. Requiring Mr. Laraneta to take responsibility for all losses stemming from circulation of these pictures neither limits the restitution to harms caused by his actions nor limits the victim's recovery as required by statute. *See Monzel*, 641 F.3d at 539.

The restitution order against Mr. Laraneta cannot stand because it holds him

responsible for losses greater than he actually caused. *Rhodes*, 330 F.3d at 953. No amount of restitution can be sustained based on the sentencing court's failure to identify Mr. Laraneta's contribution to the generalized harm stemming from Amy's and Vicky's knowledge that their images are being viewed. (*See* Appx. 25-27 [SH 440-42]).

IV. The sentence imposed on Mr. Laraneta is not supported by reasoning for rejecting Mr. Laraneta's principle arguments and therefore is not supported by the record.

"A sentencing court . . . must address all of a defendant's principal arguments that are not so weak as to not merit discussion." *Bradley*, 675 F.3d at 1025 (internal citation omitted). Doing so ensures that the court has considered and incorporated the various purposes of sentencing into the punishment ordered. *See id.*; 18 U.S.C. §3553(a). Two principle arguments by Mr. Laraneta counseling for a lower sentence were not addressed by the sentencing court: 1) that a sentence above the 5 to 20 year statutory range for receipt and distribution offenses results in unwarranted disparities because it punishes Mr. Laraneta more harshly than other similar offenses or even serious violent offenses; and 2) that viewing child pornography does not itself establish a sexual interest in children, limiting any presumption regarding Mr. Laraneta's past or future conduct. (*See* Appx. 34-42 [SH 513-21]). The district court's sentence of 360 months imprisonment cannot be sustained without some explanation for the rejection of these two arguments. *See Scott*, 555 F.3d at 608 (reviewing for procedural error including "failing to consider the [section] 3553(a) factors . . . or failing to adequately explain the chosen sentence").

a. The sentencing court failed to address Mr. Laraneta's argument that his sentence is disproportionately high.

The 30-year sentence imposed exceeds punishment for any offense analyzed in a multi-level comparison by Mr. Laraneta, but is unaccompanied by any rationale for harsher treatment. The sentencing court first failed to distinguish the various levels of child pornography offenses that are each punished within the statutory range of 5 to 20 years incarceration, as noted by the defense. (R. 91, 8-10); (SH 478-82). More egregious offenses, including offenses involving the sale of pornography, resulting in placement of new images of child abuse into circulation or involving large-scale file-servers to allow mass distribution of images, are subject to charges under 18 U.S.C. §2252, and therefore subject to punishment within the 5 to 20 year range. 18 U.S.C. §2252(b). Mr. Laraneta argued that his offense, which consisted of sharing only images already in circulation through one-on-one trades, must be punished with regard to its relative gravity. (R. 91, 8-10); (SH 478-82); *see also* 18 U.S.C. §3553(a)(1). Further, the court's sentencing discretion should account for differences in prosecutors' charging decisions that do not uniformly charge a single course of conduct as multiple offenses. (*See* PSR, 7, 12-13) (grouping all offenses and treating all as a single course of conduct); (R. 91, 12-13); (SH 476-77). The district court offered no explanation of how punishing Mr. Laraneta's offense by a sentence of 10 years greater than the statutory maximum for individual receipt and distribution offenses appropriately addressed the nature of his offense. (*See* Appx. 34-42 [SH 513-21]); 18 U.S.C. §3553(a)(1).

Mr. Laraneta's offense was also compared to child pornography cases around the nation and within the district. (R. 91, 4-6); (SH 476-78). The defense noted that while

defendants around the nation receive most of the same guideline enhancements applicable to Mr. Laraneta, the national median sentence for a child pornography offense is 82 months. (R. 85, 3-4); (SH 469-73); United States Sentencing Commission ("USSC"), *Statistical Information Packet for Fiscal Year 2010 for Seventh Circuit*, 10. Mr. Laraneta's sentence is notably greater than the national median, and also exceeds any in-district case analyzed at sentencing. (R. 85, 4); (R. 91, 4-6). Three in-district cases involving receipt and distribution of child pornography subject to sentences of 17.5 years, 11 years, and 10 years respectively were considered. *United States v. Wilson*, 2:10 CR 28 (N. D. Ind. 2011), docket entry 51, 2, *United States v. Ontiveros*, 2:08 CR 81 (N. D. Ind. 2011), docket entry 151, 3, and *United States v. Castillo-Rendon*, 2:10 CR 95 (N. D. Ind. 2011), docket entry 36, 2; (SH 476-78, *citing to* R. 89). Another receipt and distribution of child pornography case in the district involved the "pattern of activity" enhancement used in Mr. Laraneta's case, yet concluded with a sentence of 14 years imprisonment. *United States v. Mayes*, 2:10 CR 150 (N. D. Ind. 2011), docket entry 48, 2.; (SH 477, *citing to* R. 91 at 6). Finally an in-district case in which the defendant actually produced child pornography, rather than being involved only in viewing it, resulted in a sentence of 20 years incarceration. *United States v. Kern*, 2:08 CR 198 (N. D. Ind. 2010), docket entry 53, 2; (SH 477, *citing to* R. 91 at 5-6). Production of child pornography required the defendant to "employ, use, persuade, induce, entice, and coerce a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct." *Kern*, 2:08 CR 198, at docket entry 5, 1. In contrast, a receipt and distribution offense does not involve contact with any child. 18 U.S.C. §2252. Mr. Laraneta's sentence of 30 years incarceration is far greater than any of these other

punishments. Nothing in the court's statement explains what justifies sentencing Mr. Laraneta to 16 years greater than another defendant found to have engaged in a "pattern of activity" and 10 years greater than a defendant actually producing child pornography. (*See* Appx. 34-42 [SH 513-21]).

Mr. Laraneta's final prong of comparison to crimes of violence was also not addressed. Mr. Laraneta noted that his offense involved no physical contact or risk of additional physical harm to any other person. 18 U.S.C. §2252; (PSR, 6-8). The offense of conviction does not include any sexual contact or assault. 18 U.S.C. §2252. He argued harsher punishment than given to violent offenses is therefore unjustified. (R. 85, 4); (R. 91, 7-8); (SH 482). For example, the national median sentence for federal sexual abuse crimes is 108 months incarceration. USSC*, Statistical Information Packet for Fiscal Year 2010 for Seventh Circuit*, 10; (R. 91, 7); (SH 482). Federal kidnapping offenses carry a national median sentence of 147.5 months incarceration, arson a median of 60 months and murder a median of 262 months. USSC*, Statistical Information Packet for Fiscal Year 2010 for Seventh Circuit*, 10; (R. 91, 7); (SH 482). Further, the maximum penalty for production of child pornography, which involves an individual who sexually exploits a child for the purpose of memorializing that abuse in images that would later be distributed, is 30 years imprisonment. 18 U.S.C. §2251(c); (R. 91, 7); (SH 478).

The court's only statement regarding sentencing disparities is that the "Defendant was not a typical first-time offender when you view the entire body of the evidence presented and look at all of the individual factors." (Appx. 39 [SH 518]). This reasoning does not explain why it is appropriate to sentence Mr. Laraneta at a level higher than crimes of violence and at the maximum punishment for offenses involving abuse to

create pornography, when his offense involved only viewing and trading images. (*See* Appx. 34-42 [SH 513-21]).

b. The court failed to consider any motive aside from sexual interest for Mr. Laraneta's receipt and distribution offense.

Mr. Laraneta's admission to viewing child pornography did not alone establish a sexual interest in minors, and Mr. Laraneta asked that the court not presume any such interest. (R. 85, 13-14, 18-19); (R. 91, 16-17); (Appx. 14-16 [SH 418-20]). The court failed to address this argument or consider it when addressing the weight of evidence presented by the government to establish a "pattern of activity". The court instead employed a presumption without any basis in the record. (Appx. 15-16 [SH 419-20]).

Mr. Laraneta noted that scientific studies are not conclusive that viewing child pornography has a direct connection with child abuse. (R. 85, 18-19); (R. 91, 16-19). The government should be required to establish any individual risk, argued Mr. Laraneta. (Appx. 14 [SH 418]). He noted that his individual characteristics did not suggest such a risk. (R. 85, 13-14). He noted that child pornography was among a great variety of sexual images he had viewed and downloaded from the internet. (R. 85, 13). Over 90% of the nudity images on his computer contained legal adult pornography rather than any images of children. (R. 85, 13). He also noted the connection between his pornography use and his struggle with lack of sleep, anxiety and depression related to an injury to his back. (R. 85, 12-13); (PSR, 7, 17, 18). This injury had removed Mr. Laraneta from the workforce for a significant period of time and also prevented him from sleeping at night due to the pain. (PSR, 18). He explained that he had filled this idle time by downloading various items from the internet, some of which included child pornography. (R. 85, 12-

13); (PSR, 7); (SH *Gov. Exh* 20). He cited psychological testimony noting that addictions of pornography may stem from feelings of depression and isolation. (R. 85, 12-13); *e.g., United States v. Stall*, 581 F.3d 276, 279 (6th Cir. 2009). Specifically, the progression from viewing legal pornography to viewing illegal material was discussed to explain how Mr. Laraneta similarly began to view material other than the adult nudity on his computer in relation to his isolation and depression. (R. 85, 13).

Despite these explanations and citations, the district court stated that it believes that child pornography offenders must have a sexual interest in children. (Appx. 15 [SH 419]). Without any reference to legislative history, the court stated its belief that Congress expressly recognized this interest when criminalizing possession of child pornography. (Appx. 15 [SH 419]). The court acknowledged that the defense "cited a bunch of journals, a bunch of, you know, different things" but stated "I didn't have them. And, again, if I had gone through every case and everything that both of you cited, I would have been here for two years." (Appx. 15 [SH 419]). Despite the court's lack of inspection on the subject, the court concluded "I'll go this far. I don't believe that's what normal people do." (Appx. 15-16 [SH 419-20]).

Failure to examine Mr. Laraneta's argument and consider his authority tainted the sentencing judge's assessment of both Mr. Laraneta's risk of future dangerousness and the credibility of the allegations of past sexual conduct. The court found by a preponderance of the evidence that Mr. Laraneta had engaged in "pattern of activity" based on the testimony of two witnesses whose credibility and memory were questioned. (Appx. 31 [SH 446]); (*E.g.,* R. 85, 15-18) (noting questions relating to the witnesses' credibility). The judge's assumption that Mr. Laraneta must have a sexual interest in

minors inherently colored the court's willingness to accept the testimony of witnesses claiming that Mr. Laraneta exhibited that interest. The court was required to analyze Mr. Laraneta's argument to ensure that it weighed the evidence without any bias against Mr. Laraneta. The court's failure to do so requires reversal.

CONCLUSION

For the above stated reasons, Mr. Laraneta respectfully requests that this Court address the repeated procedural failures plaguing his sentencing proceedings and remand his case for resentencing.

Dated 7/20/2012

Northern District of Indiana
Federal Community Defenders, Inc.

s/Viniyanka Prasad
Viniyanka Prasad, Attorney for
Defendant-Appellant Christopher Laraneta

31 East Sibley Street
Hammond, IN 46320
Telephone:(219) 937-8020
Fax: (219) 937-8021
EMail: Viniyanka_Prasad@fd.org

CERTIFICATE OF COMPLIANCE WITH FRAP RULE 32(a)(7)

The undersigned, counsel of record for the Defendant-Appellant, Christopher Laraneta, furnishes the following in compliance with F.R.A.P Rule 32(a)(7):

I hereby certify that this brief conforms to the rules contained in F.R.A.P Rule 32(a)(7) for a brief produced with a proportionally spaced font. The length of this brief is 11,821 words.

Dated 7/20/2012

Northern District of Indiana
Federal Community Defenders, Inc.

s/Viniyanka Prasad
Viniyanka Prasad, Attorney for
Defendant-Appellant Christopher Laraneta

31 East Sibley Street
Hammond, IN 46320
Telephone:(219) 937-8020
Fax: (219) 937-8021
EMail: Viniyanka_Prasad@fd.org

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the Appendix.

Dated 7/20/2012

Northern District of Indiana
Federal Community Defenders, Inc.

s/Viniyanka Prasad
Viniyanka Prasad, Attorney for
Defendant-Appellant Christopher Laraneta

31 East Sibley Street
Hammond, IN 46320
Telephone:(219) 937-8020
Fax: (219) 937-8021
EMail: Viniyanka_Prasad@fd.org
-

No. 12-1302

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHRISTOPHER LARANETA
Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Indiana
Case No. 2:10-CR-13
The Honorable Judge Rudy Lozano

ATTACHED REQUIRED SHORT APPENDIX OF DEFENDANT – APPELLANT CHRISTOPHER LARANETA

Northern District of Indiana
Federal Community Defenders, Inc.
Viniyanka Prasad
Attorney for Defendant – Appellant
Christopher Laraneta

31 East Sibley Street
Hammond, IN 46320
Telephone:(219) 937-8020
Fax: (219) 937-8021
EMail: Viniyanka_Prasad@fd.org

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No. 12-1302

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHRISTOPHER LARANETA
Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Indiana
Case No. 2:10 CR 13
The Honorable Judge Rudy Lozano

SUPPLEMENTARY APPENDIX
OF DEFENDANT – APPELLANT CHRISTOPHER LARANETA

Northern District of Indiana Federal
Community Defenders, Inc.
Viniyanka Prasad
Attorney for Defendant – Appellant
Christopher Laraneta

31 East Sibley Street
Hammond, IN 46320
Telephone:(219) 937-8020
Fax: (219) 937-8021
EMail: Viniyanka_Prasad@fd.org

INDEX TO TRANSCRIPTS OF PROCEEDINGS CONTAINED IN APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA
Plaintiff

v.

Case Number 2:10cr13-001

USM Number 10593-027

CHRISTOPHER L LARANETA
Defendant

ASHWIN CATTAMANCHI - FCD
Defendant's Attorney

AMENDED JUDGMENT IN A CRIMINAL CASE

Date of Original Judgment: 2/3/12
(Or Date of Last Amended Judgment)

Reason for Amendment:

Modification of Restitution Order (18 U.S.C. § 3664)
Addition of Recommendations to the Bureau of Prisons

THE DEFENDANT pleaded guilty to counts 2, 3, 4, 5, 6, 7 and 8 of the Superseding Indictment on 9/3/2010.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title, Section & Nature of Offense	Date Offense Ended	Count Numbers
18:2252(a)(2) - Distribution of Child Pornography	December 2009	2s-3s
18:2252(a)(2) - Receipt of Child Pornography	December 2009	4s-6s
18:2252(a)(1) - Transportation of Child Pornography	December 2009	7s
18:2252(a)(4) - Possession of Child Pornography	December 2009	8s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of any material change in economic circumstances.

February 2, 2012
Date of Imposition of Judgment

/s/ Rudy Lozano
Signature of Judge

Rudy Lozano, United States District Judge
Name and Title of Judge

February 13, 2012
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **360 months**.

This sentence consists of a term of 240 months on each of Counts 2, 3, 4, 5, 6 and 7 to be served concurrently, and a term of 120 months on Count 8, to be served consecutively.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be given credit for time served.
That the defendant be allowed to participate in the UNICOR job skills program while incarcerated. In the event this program is not available, the court recommends that the defendant be allowed to participate in a similar job skills/vocational training program in which he may be eligible for.

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

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____ at _____ _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By:_____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Life.**

The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and two (2) periodic drug tests thereafter, as determined by the Court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq), as directed by the probation officer, the Bureau of Prisons, and any state sex offender registration agency in which resides, works, or is a student, or was convicted of a qualifying offense.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the Court or probation officer.
2. The defendant shall report to the probation officer in the manner and as frequently as directed by the Court or probation officer.
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4. The defendant shall support her dependents and meet other family responsibilities.
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. The defendant shall notify the probation officer within ten (10) days of any change in residence or employment.
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. The defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment.
15. The defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay any unpaid amount of restitution, fines, or special assessments.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall pay any financial penalty that is imposed by this judgment, and that remains unpaid at the commencement of the term of supervised release.

The defendant shall provide the probation officer with access to any requested financial information.

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant shall notify the United States Attorney's Office for this district within 30 days of any change of mailing or residence address that occurs while any portion of the restitution remains unpaid.

The defendant shall participate in a substance abuse treatment program and shall abide by all program requirements and restrictions, which may include testing for the detection of alcohol or drugs of abuse at the direction and discretion of the probation officer. While under supervision, the defendant shall not consume alcoholic beverages or any mood altering substances, which overrides the "no excessive use of alcohol" language in Standard Condition #7. The defendant shall not be allowed to work at a tavern or to patronize taverns or any establishments where alcohol is the principal item of sale. The defendant shall pay all or part of the costs for participation in the program not to exceed the sliding fee scale as established by the Department of Health and Human Services adopted by this court.

The defendant shall participate in sex offender testing and evaluation to include psychological, behavioral assessment and/or polygraph examinations as a means to ensure compliance with program requirements and restrictions. The defendant shall pay all or part of the costs for participation in the program not to exceed the sliding fee scale as established by the Department of Health and Human Services and adopted by this Court.

The defendant shall enter and attend sex-offender-specific group and individual counseling at an approved outpatient treatment program, if warranted from the testing, evaluation and assessments and shall abide by all program requirements and restrictions. The defendant shall pay all or part of the costs for participation in the program not to exceed the sliding fee scale as established by the Department of Health and Human Services and adopted by this Court.

The defendant shall neither possess nor have under his control any matter that is pornographic or that depicts or describes sexually explicit conduct as defined by 18 U.S.C. §2256, or any matter depicting sexual activity including any person under the age of eighteen.

The defendant may only have personal access to computer internet services that are approved by the probation officer. The probation officer shall have access to the defendant's personal computer to verify the same.

The defendant shall submit her person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects, to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervision or unlawful conduct by the defendant.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

Total Assessment	Total Fine	Total Restitution
$700.00	**NONE**	**$4,333,681.64**

The defendant shall make the special assessment payment payable to Clerk, U.S. District Court, 5400 Federal Plaza, Suite 2300, Hammond, IN 46320. The special assessment payment shall be due immediately.

FINE

No fine imposed.

RESTITUTION

Restitution in the amount of $4,333,681.64 is hereby imposed.

The defendant shall make restitution payments (including community restitution, if applicable) payable to Clerk, U.S. District Court, 5400 Federal Plaza, Suite 2300, Hammond, IN 46320, for the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	**Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
"Vicky"	$965,827.64	$965,827.64	
Amy ("Misty")	$3,367,854.00	$3,367,854.00	
Totals	$4,333,681.64	$4,333,681.64	

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

FORFEITURE

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

Any and all property used or intended to use to commit or to promote the commission of these offenses, or any property traceable thereto.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

Lump sum payment of $4,334,381.64 due immediately.

Special instructions regarding the payment of criminal monetary penalties:

In the event restitution cannot be paid in full immediately, the restitution shall be paid at a minimum rate of $50 per month, commencing 30 days after placement on supervision until said amount is paid in full.

The restitution obligation shall be paid in a joint and several liability with any other defendant, in any district, convicted of viewing the victim's pictures and/or videos.

The defendant may also make payments for her financial obligations imposed herein from any wages she may earn in prison in accordance with the Bureau of Prisons Financial Responsibility Program, although participation in that program is voluntary. The defendant should note that failure to participate in the Financial Responsibility Program while incarcerated may result in the denial of certain privileges to which she might otherwise be entitled while imprisoned, and that the Bureau of Prisons has the discretion to make such a determination. Any portion of the defendant's financial obligations not paid in full at the time of the defendant's release from imprisonment shall become a condition of supervision.

The defendant is further Ordered to notify the Court within thirty days of any material change in his economic status that might affect his ability to pay the restitution obligation.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Name: CHRISTOPHER L LARANETA

Docket No.: 2:10cr13-001

ACKNOWLEDGMENT OF SUPERVISION CONDITIONS

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I have reviewed the Judgment and Commitment Order in my case and the supervision conditions therein. These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

_____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 2:10-CR-13
	)	
CHRISTOPHER L. LARANETA,	)	
	)	
Defendant.	)	

ORDER

On February 2, 2012, this Court sentenced Christopher L. Laraneta ("Defendant") to a total term of 360 months incarceration, to be followed by a lifetime term of supervised release. An oral ruling regarding restitution was made by this Court at a previous hearing held on January 19, 2012, where, after considering the arguments made by the parties at the hearing and via the written Motion for Victim Restitution and subsequent responses, the Court orally ordered Defendant to pay Vicky restitution in the requested amount of $965,827.64 and Amy restitution in the requested amount of $3,367,854.00. In each instance, the award of restitution was ordered jointly and severally with other defendants responsible for Vicky and Amy's claimed losses. However, at that time, the Court requested further briefing by the parties regarding the repayment schedule of the restitution amounts. The Court has reviewed the

briefs and has issued a Judgment and Commitment Order on February 3, 2012, in accordance with its oral ruling and its findings; however, for purposes of clarity in the record and to correct an omission, the Court will now issue the instant Order as well as an Amended Judgment and Commitment Order.

In his brief, Defendant claims that he does not have the financial ability to pay the restitution ordered, and he argues that making periodic in-kind, partial, or nominal payments is consistent with his financial situation. He also requests that the repayment schedule begin upon his release from the Bureau of Prisons, as any restitution order during his incarceration would be unmanageable. Defendant claims that payments of $10.00 per month, as a condition of supervision, would be appropriate. The Government, on the other hand, asserts that Defendant should be ordered to pay the victims half of any earnings he receives through the UNICOR job skills program while incarcerated. The Government argues that Defendant "should feel the financial pain" of the Court's restitution order during each month of his incarceration and that he should be required to pay monthly payments of no less than $200.00 upon his release. The Government also requests that Defendant be ordered to notify the Court within thirty days of any material change in his economic status that might affect his ability to pay.

When a defendant has the ability to pay toward a restitution

award, the court has an obligation to order that it be paid immediately. The Seventh Circuit has stated:

> If the restitution debt exceeds a felon's wealth, then the Mandatory Victim Restitution Act of 1996, 18 U.S.C. §§ 3663A, 3664, demands that this wealth be handed over immediately; a schedule of payments covers only how much the convict must pay from earnings (and any lump sums such as inheritances) in the future.

United States v. Sawyer, 521 F.3d 792, 795 (7th Cir. 2008). It appears from the record that Defendant does not currently have assets available to pay restitution. However, even when a defendant appears incapable of paying any restitution as a lump sum, this Court prefers to order restitution due immediately. "A statement along the lines of 'fulfill your legal obligations' does not undermine anyone's rights; instead it honors legal entitlements-including the victims' entitlement to restitution. All that a 'due immediately' statement in a judgment does is command the defendant to discharge his obligations as quickly as possible." *Sawyer*, 521 F.3d at 796. While not likely, occasionally circumstances change such that a defendant becomes capable of paying restitution as a lump sum, and in those circumstances, a defendant should be required to do so.

As for deferring payments while incarcerated, this Court is not authorized to order that a particular payment schedule be followed during a defendant's period of incarceration. In *Sawyer,* the Seventh Circuit stated the following with regard to restitution

payments from an inmate's prison account during incarceration:

> Courts are not authorized to override the Bureau's discretion about such matters, any more than a judge could dictate particulars about a prisoner's meal schedule or recreation (all constitutional problems to the side).

Sawyer, 521 F.3d at 794. The court further noted that:

> [t]he statute requires the judge to set a schedule if the defendant cannot pay in full at once, see 18 U.S.C. § 3664(f)(2), but it does not say when the schedule must begin. We hold today that it need not, and as a rule should not, begin until after the defendant's release from prison. Payments until release should be handled through the Inmate Financial Responsibility Program rather than the court's auspices.

Sawyer, 521 F.3d at 796.

Accordingly, this Court orders that restitution is payable as a lump sum due immediately, but in the event that it cannot be paid in full immediately, restitution shall be paid at a minimum rate of $50 per month[1], commencing 30 days after placement on supervision until the amount is paid in full. Restitution shall be paid in a joint and several liability with any other defendant, in any district, convicted of viewing the victim's pictures and/or videos.

To the extent that the Government requests that Defendant be ordered to notify the Court within thirty days of any material change in his economic status that might affect his ability to pay,

[1] The Court has arrived at this amount by reviewing the financial history and resources of Defendant as described in the Presentence Investigation Report and after considering his likely age upon release from incarceration.

the Court does so order and notes that the Judgment and Commitment has been amended to reflect this addition.[2]

DATED: February 13, 2012

/s/RUDY LOZANO, Judge
United States District Court

[2] The Amended Judgment and Commitment Order also includes recommendations that Defendant receive credit for time served and that he be able to participate in a job skills program while incarcerated.

MS. KOSTER: Let me be --

THE COURT: However, the conclusion is not there, Ms. Prasad, that the injury caused the correlation to his going to child pornography. You make that conclusion. You make that jump.

MS. PRASAD: Yes, Your Honor, but there is no other --

THE COURT: I didn't see a doctor. I didn't see anybody say they looked at him, they examined what his problems were and his history, and they came up with an expert conclusion.

MS. PRASAD: Again, Your Honor, it would be -- there's no background assumption that because the defendant has child pornography images that he then has a sexual interest in children. That would be the government's burden to show. And there are a number of -- there is a quite extensive analysis showing first -- as I think both the government and the defense has gone through very thoroughly and shown the Court what is out there as far as research on the link between viewing child pornography and sexual interest in children, which is very inconclusive. But on top of that, there have been a number of cases in which a defendant's depression and anxiety is related to his pornography collection.

THE COURT: Ms. Prasad, I have no evidence of that for this defendant.

MS. PRASAD: Your Honor --

THE COURT: You cited a bunch of journals, a bunch of, you know, different things. I didn't have them. And, again, if I had gone through every case and everything that both of you cited, I would have been here for two years. I'm willing to look at what you gave me. I'm willing to listen to your arguments. But, you know, I have to have some evidence, not your conclusion, not your speculation.

MS. PRASAD: Your Honor, then I would -- I would point out that we also cannot speculate that his child pornography collection is based on a sexual interest. There's no evidence of that either. And that's my point, that there are other explanations and that this Court does not have the evidence to ascertain which one of those explanations is correct.

Now, moving on to the restitution, Your Honor, I would very briefly --

THE COURT: I think Congress passed a law that says that that's not something normal people do, and they make it against the law.

MS. PRASAD: Your Honor, I don't think that's what the law says that it's not what normal people do. It's something that we don't want to be done because of the impact it has on people in those pictures. I don't think that there's any analysis within that law as to anyone's psychological state of mind.

THE COURT: Ms. Prasad, I'll tell you, I'll go this

far. I don't believe that's what normal people do, okay. I'm really bothered. Now, there could be some medical reason, but I haven't gotten that. But aside from that, you know, I don't think people go out collecting child pornography unless something is wrong. And they have treatment for that.

MS. PRASAD: Yes, Your Honor.

THE COURT: The Bureau of Prisons send people to treatment for that.

MS. PRASAD: Yes, Your Honor. I do think that there is an explanation, and that's the one that I have offered. That's certainly a possible explanation, is that in relation to his feelings of isolation and anxiety, this has led to his downloading of a variety of images. There's not simply child pornography. In fact, it was less than 10 percent of all of the images on his computer were of child pornography, Your Honor. Obviously there's an explanation for why he has this entire library of images that probably neither you or I would ever be interested in viewing, but not all of that is related to children, Your Honor, and there's a reason for that. And there has been evidence that based on individuals' psychological state of mind, depression, anxiety, as we see in this case, that that may lead to behavior such as this, to downloading and collecting images that we otherwise would not be interested in viewing.

THE COURT: I'm not saying that there is or there is

objection, the Court finds that A.D.'s testimony is credible and relevant pursuant to Section 1B1.3 and 2G2.2(b)(5). This finding is supported by the sworn testimony from witnesses Nos. 2 and 3 and by the chat logs which have been entered into evidence, all of which are also relevant pursuant to Section 1B1.3 and 2G2.2(b)(5). Defendant's objection is thus denied.

Two, victim statements regarding paragraphs 50 to 52 and restitution, paragraphs 119 through 121. In the presentence investigation report, defendant argues that there are no victims in this case and that the victim statements provided are not relevant. While defendant is correct in pointing out that this case does not involve the original abuse of the children sworn in the child pornography -- I'm sorry -- shown in the child pornography images, they are nonetheless victims under Section 2259 and under Supreme Court and Seventh Circuit case law. The objection is denied as to the relevancy of the statements.

Defendant also argues that in the presentence investigation report that restitution is not applicable in this case because there are no victims with compensable harm. The government has filed a motion for victim restitution. The defendant has filed a response and the government has filed a reply. The Court finds the following:

Vicky's father sexually abused her when she was a small

child and photographed and videotaped the abuse. He then put the photographs on the Internet to trade with other collectors of child pornography. The photographs continued to be circulated and traded on the Internet. Defendant possessed, among other pieces of child pornography, images of Vicky at the time of his arrest.

Amy, the victim in the Misty child pornography series, was raped and sexually exploited by her uncle when she was 8 and 9 years old in order to produce child sex abuse images on demand for a pedophile in Seattle. The images continued to be distributed on the Internet. Defendant possessed, among other pieces of child pornography, images of Amy at the time of his arrest.

The victim restitution statute, Title 18, United States Code, Section 2259(a) provides that the Court shall order restitution for any offense under this chapter, including defendant's offenses. Additionally, the statute provides that restitution is mandatory. Title 18, United States Code, Section 2259(b)(3) provides that a criminal defendant in a child pornography case must pay his or her victim the full amount of her losses, including any losses incurred for, A, medical services related to physical, psychiatric or psychological care; B, physical and occupational therapy or rehabilitation; C, necessary transportation, temporary housing and child care expenses; D, lost income; E, attorney fees as

well as other costs incurred; and, F, any other losses suffered by the victim as a proximate result of the offense.

According to the government's counsel, counsel for Vicky has requested that it pursue a claim for restitution from the defendant in the amount of $965,827.64. Counsel, I have new glasses so I'm having a problem focusing for a minute.

Her total losses are documented at $1,224,697.04 but that she has collected restitution from a number of defendants and is accordingly seeking the lesser amount of $965,827.64 in restitution at this time. Her total damages of $1,224,697.04 includes the following: One, $108,975 in future counseling expenses; two, $147,830 in educational and vocational counseling needs; three, $722,511.04 in lost earnings; four, $42,241.04 in expenses paid in out-of-pocket costs for the evaluation supporting records and her attorney travel expenses; and, five, $203,140 in attorney fees.

Amy's request for restitution. According to the government's counsel for Amy -- according to the government, counsel for Amy has requested that it pursue a claim for restitution requested -- strike that.

Counsel for Amy has requested that it pursue a claim for restitution from defendant in the amount of $3,367,854. Her requested damages of $3,367,854 includes the following: One, $512,681 in future counseling expenses; and, two, $2,885,173 in lost earnings.

Vicky and Amy are victims -- strike that.

In determining whether Vicky and Amy are entitled to restitution and if Vicky -- how much -- this Court must first address whether Vicky and Amy are victims within the meaning of Title 18, United States Code, Section 2259(c) -- do me a favor. Can you get me my glasses from my desk? These have a line on them and I'm having a hard time focusing on that.

Let me start over with this paragraph.

Vicky and Amy are victims. In determining whether Vicky and Amy are entitled to restitution, and if so, how much, this Court must first address whether Vicky and Amy are victims within the meaning of Title 18, United States Code, Section 2259(c). Title 18, United States Code, Section 2259(c) provides that the term "victim" means the individual harmed as a result of a commission of a crime under this chapter. Defendant has pled guilty to two counts of distributing child pornography in violation of Title 18, United States Code, Section 2252(a)(2); three counts of receiving child pornography in violation of Title 18, United States Code, Section 2252(a)(2); one count of transporting child pornography in violation of Title 18, United States Code, Section 2252(a)(1) and one count of possessing child pornography in violation of Title 18, United States Code, Section 2252(a)(4), offenses under the same chapter as Title 18, United States Code, Section 2259. Furthermore, the

United States Supreme Court has explained in *New York v. Ferber*, 458 U.S. 747 at 759, 1982 case, that child pornography is intrinsically related to the sexual abuse of children because the materials produced in child pornography are a permanent record of the children's past -- strike that -- of the children's participation, and the harm to the child is exacerbated by their circulation. Child pornography haunts children long after the original deed took place. It is well established that end users of child pornography harm the victims seen in the images and videos they collect. There can be no question that Vicky and Amy are victims within the meaning of this statute. Vicky and Amy are entitled to restitution.

Defendant argues that Vicky and Amy are not entitled to any restitution because his individual possession did not proximately cause the harms described by Vicky and Amy. Defendant points out that neither Vicky nor Amy had any direct contact with defendant or even knew of his existence. Defendant acknowledges that his actions may have been one cause of the generalized harm Amy and Vicky suffered due to the circulation of their images on the Internet, but he states that it is not sufficient to show that there was a proximate cause of any particular losses.

The government agrees that there must be a showing of a proximate cause but contends that the requirement is satisfied

by the showing that the economic harm suffered by the victims were a reasonably foreseeable consequence of defendant's criminal conduct. Both sides have cited to cases to support their positions. This is currently a question on which there is much division among the courts. Unfortunately, the Seventh Circuit has not yet provided guidance on this issue. After reviewing the available cases, this Court adopts the government's position as set forth in its motion for victim restitution. Therefore, the use of the phrase "proximate result" means that the victim -- victims are only entitled to those losses proximately caused by defendant. However, with regards to this particular statute, proximate cause is best defined as a flexible concept and does not equate to a but/for cause. This proximate cause limitation will serve to ensure that a defendant is not answerable for anything beyond the natural, ordinary and reasonable consequences of his conduct; *Anza v. Ideal Steel Supply Company*, 547 U.S. 451 at 469, 2006 case.

Accordingly, this Court believes that the proper standard of causation under the mandatory restitution statute requires each victim to establish that the harm for which they seek remuneration was a reasonably foreseeable consequence of defendant's criminal conduct of possessing, transporting, receiving and/or distributing images of her sexual, physical and emotional abuse. The materials contained in the

government's filings have satisfied that burden. The filings show that both women suffered understandable trauma both from the original abuse and from the fact that the images are constantly circulating -- strike that -- are constantly circulating on the Internet with no end in sight. This circulation itself causes both women to be degraded and humiliated again and again. Defendant's possession and viewing of the images confirm that this harm is continuing widespread and likely to continue. There is no doubt that this harm was a reasonable foreseeable consequence of defendant's actions.

Damages. The government has submitted information which establishes that Vicky's damages are approximately $1,224,697.04 and that due to payments made by other defendants, her current claim to restitution has been reduced to 965,927 -- strike that -- $965,827.64. The government has submitted information which establishes that Amy's damages are approximately $3,367,854.

Although defendant argues that he should not be required to pay any restitution to Vicky or Amy because the losses were caused primarily by the original abuser and -- abusers and only aggravated in a general manner by the continued availability of those images on the Internet, he does not challenge that the women have suffered damages related to the abuses and child pornography in the amount claimed. Indeed,

both Vicky and Amy's claims of damages are well supported by thorough and persuasive documentation developed by their respective attorneys. Accordingly, this Court finds that $965,827.64 is a valid approximation of Vicky's overall damages and $3,367,854 is a valid approximation of Amy's overall damages.

Amount of restitution awards. Title 18, United States Code, Section 2259 requires that an order of restitution be issued in accordance with Title 18, United States Code, Section 3664. Of note, Title 18, United States Code, Section 3664(h) provides if the Court finds that more than one defendant has contributed to the loss of the victim, the Court may make each defendant liable for payment of the full amount of the restitution or may support or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

Here defendant essentially argues that because the government has not established the approximation -- strike that -- has not argued the appropriate causation, the Court award a restitution -- is zero. The Court has already rejected this argument. Defendant further argues that even if this Court finds evidence that some loss was proximately caused, any grant of restitution is unsupported -- strike that -- any grant of restitution in this case would be

speculative and therefore unsupportable because the loss resulting from defendant's individual action has not been established. The Court is therefore faced with a decision between according Vicky and Amy the full amounts requested or attempting to apportion the loss as the statute allows.

It is clear that defendant's economic circumstances do not play a part in this analysis; see Title 18, United States Code, Section 2259(b). The Court finds that an award of nominal damages is also inappropriate. The government urges the Court to award the full amount of Vicky and Amy's requested restitution jointly and severally, noting that it is difficult to precisely apportion a victim's harm among the users of child pornography because the total number of individuals is constantly changing. The government also notes that in the event one defendant pays more than his share of the victim's losses, there are legal mechanisms for the defendant to seek contribution from the other defendants who have possessed Vicky and Amy's images.

When weighing the interests of ensuring Vicky and Amy receive the restitution to which they are entitled against the risk that one defendant may pay more than is fair, this Court finds that the victims' interests are more compelling. Additionally, neither party has provided this Court with any rational -- strike that.

Neither party has provided this Court with any rationale

for picking the amount -- strike that -- for picking an amount less than the requested amount other than an argument for an award of no restitution, which, again, this Court has rejected. Other courts have attempted to come up with their own calculation and formulas as to how to apportion this harm, but the Court finds these calculations arbitrary. Likewise, awarding no restitution at all is similarly arbitrary and unreasonable and not supported by the law.

Thus, having considered all of the arguments and evidence presented by -- presented in this case, the Court finds that the government has proved to a reasonable degree of certainty that the restitution in the amounts requested as outlined above and in the government's motion for victim restitution is warranted. There is no doubt that Vicky and Amy have been injured by defendant's actions and that this harm was reasonably foreseeable because the images of Vicky and Amy in their most vulnerable state have been and continue to be traded on the Internet. The victims' injuries are continuing, and it is evident that both Vicky and Amy will require a lifetime of therapy and other psychological services.

Accordingly, the Court grants the government's motion for victim restitution, overrules defendant's objections to the award of restitution and orders defendant to pay Vicky restitution in the requested amount of $965,827.64, and Amy restitution in the requested amount of $3,367,854. In each

instance, the award of restitution is ordered jointly and severally with other defendants responsible for Vicky and Amy's claimed losses. The Court will address repayment schedule of restitution after further briefing by the parties.

Counsel, I would suggest that -- and I don't know whether you want to give me briefs simultaneous or you want to do them separately, but I would like to have something within 30 days. And I'm trying to give you enough time to give me a good brief, at the same time have enough time for me to be able to research it to get an opinion. Can both of you give me a brief within 30 days?

MS. PRASAD: Yes, Your Honor.

MS. KOSTER: Yes, Your Honor.

THE COURT: What's 30 days from today? February 19th?

DEPUTY CLERK: That is a Sunday, Judge. February 20th would be a Monday.

THE COURT: Like I said, 31 days, February 20th by 4:00.

Three, pattern of sexual activity enhancement pursuant to Guideline Section 2G2.2(b)(5) paragraph 45 through 49, 61, 69 and 111. The Court finds that an enhancement pursuant to Guideline Section 2G2.2(b)(5) is appropriate when government proves by a preponderance of the evidence that the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. The commentary provides that such

patterns include any combination of two or more separate instances of sexual abuse or sexual exploitation of a minor by the defendant whether or not the abuse or exploitation occurred during the course of the offense. Guideline Section 2G2.2, comment note No. 1, sexual abuse or exploitation is defined, among other things, as conduct described in Title 18, United States Code, Section 2241 or an attempt to commit an offense under this section. Title 18, United States Code, Section 2241(c) makes it a federal offense to knowingly engage in a sexual act with a person who has not yet attained the age of 12 years. Sexual act is defined in Title 18, United States Code, Section 2246, includes the intentional touching, not through the clothing, of the genitalia of another person who has not yet attained the age of 16 years with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person. Defendant claims that the defendant [verbatim] has not proved sufficient evidence to sustain this enhancement. This Court disagrees. Witness 3 credibly testified that when he was inappropriately -- strike that.

Witness 3 credibly testified that when he was approximately 7 years old, defendant touched him twice on the penis during the weekend visit at defendant's house. The Court closely observed witness 3 while he was testifying and finds his testimony extremely persuasive and credible. The

first instance witness 3 testified to occurred when defendant insisted on helping him go to the bathroom. Despite witness 3's assurances that he didn't need any help, defendant proceeded to hold witness 3's penis while he urinated. Although defendant argues that the defendant was only ensuring that he didn't pee on the floor, the Court finds that this is -- this argument -- finds this argument unpersuasive. Taking into consideration all of the facts surrounding this case, including the child pornography charges defendant pled to, the credibility -- the credible testimony of the witnesses 1, 2 and 3 and the chat logs entered into evidence, such inappropriate touching of a 7-year-old child by a distant male relative clearly fits within the definition of sexual act previously mentioned. The preponderance of the evidence shows that this touching was done by defendant with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of the defendant rather than for an allegedly innocent reason.

The second touching occurred when defendant gave witness 3 a sleeping pill, and as he was falling asleep, touched him on the top of his clothing and then directly on his penis. The Court finds that this touching also clearly fits within the definition of sexual act. The credible testimony from witness 3 describing these incidents makes the five-level enhancement for engaging in a pattern of activity

involving the sexual abuse or exploitation of a minor applicable to this case.

In addition, although not needed to justify the enhancement, the Court finds that witness No. 1's testimony and statement further support the application of this enhancement. Witness 1 credibly testified that when she was 4 or 5 years old, defendant picked her up from her bed, carried her out to the living room, laid her down on the floor, spread her legs apart and pulled her underwear down and lit a lighter near her vagina. Although she pretended to be asleep, witness No. 1 testified that she was able to recognize that it was the defendant. While the government argues that this fits within the definition of an attempted sexual act, this Court does not find the issue so cut and dry. The defendant points out witness No. 1 did not testify that the act was interpreted or -- strike that -- that the act was interrupted or disturbed in any way. Rather, she described a completed act which is disturbing in and of itself. However, this credible testimony tends to support the testimony of witness No. 3, as it shows defendant's sexual interest in minors and the inappropriate conduct toward them. This is also true of witness No. 1's testimony that the defendant repeatedly harassed her over the phone by whispering that he wanted to perform sexual acts on her. As with witness No. 3, the Court closely observed witness No. 1 while she was

testifying and finds her testimony extremely persuasive and credible.

Similarly, the credible testimony of witness No. 2 in which she described walking up to defendant's locker -- strike that.

Similarly the credible testimony of witness No. 2 in which she describes walking [verbatim] up defendant looking down her shirt, the testimony of Detective Paul Huff and the chat logs entered into evidence support the application of this enhancement. It is clear that there is some dispute over the factual accuracy of some of the events described in the chats. However, again, this evidence is relevant in that it further supports the testimony of witness No. 3 as it shows defendant's sexual interest in minors and desire, whether real or imagined, to act inappropriate toward them.

The Court notes that relevant conduct for 2G2.2(b)(5), pattern enhancement, is more expansive than conduct sexually deemed relevant under Guideline Section 1B1.3(a); see *U.S. v. Lovaas*, 241 F.3d 900 at 904, Seventh Circuit; and *U.S. v. Nance*, 611 F.3d 409 at 413, another Seventh Circuit case, 2010. Therefore, the Court finds that based on all the credible evidence presented that the government has proved by a preponderance of the evidence that the enhancement pursuant to Guideline Section 2G2.2(b)(5) should apply. Defendant's objection is thus denied.

THE COURT: Ms. Koster, the last time that I was here, I don't know if I asked you this or not.

Are there any crime victims related to the crimes charged who are to be notified of their rights pursuant to the Justice for All Act of the year 2004, as codified in Title 18, United States Code, Section 3771?

MS. KOSTER: Yes, Your Honor.

THE COURT: Have they so been notified?

MS. KOSTER: They have.

THE COURT: And, Counsel, as I understand it, I have received the arguments from counsel with regards to their thoughts on sentencing; is that correct?

MS. PRASAD: Yes, Your Honor.

MS. KOSTER: Yes, Your Honor.

THE COURT: And from the defendant?

MS. PRASAD: Yes, Your Honor.

THE COURT: Okay.

Mr. Laraneta, in -- before deciding a sentence for an individual, there's numerous things that the Court has to take a look at. It has to consider a sentence that is a fair sentence but no more than absolutely necessary. It has to give a sentence that reflects the seriousness of the offense, affords an adequate deterrent for the criminal conduct, protects the public from further crimes and also provides you with needed educational or vocational training, medical care

or other correctional treatment.

I have also considered the number of images involved in this case and the probation officer's comments with regards to your lack of parental guidance growing up, your substance abuse history, your employment history, your attorney's comments with regards to lack of criminal history, the strong relationships that you have with your sons.

I have also considered strongly in this case the statute itself that you have been found guilty of, as well as the sentencing guidelines in this case. They're only advisory, but they do give me some at least advice as to where the Sentencing Commission feels is fair.

I've had a very difficult time in going through this case, Mr. Laraneta. These are probably the hardest cases that as a judge I have to decide.

To summarize, the Court has concluded that the offense level in this case is 43, with a criminal history category of 1. Now that the Court has calculated the guideline range, which calls for a life sentence, it turns to the -- considering factors enunciated in Title 18, United States Code, Section 3553(a) to decide the defendant's sentence which should be sufficient but not greater than necessary.

Section 3553(a) directs the sentencing judge to consider: One, the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the

sentence imposed to reflect the seriousness of the offense; to afford adequate deterrence to criminal conduct; to protect the defendant with needed education or vocational training or other correctional treatment; the kinds of sentence available; the sentencing guidelines; any pertinent policy statements by the Sentencing Commission; the need to avoid unwarranted disparities; and the need for restitution.

With regards to restitution, Counsel, I think both of you have given me memorandums with regards to the restitution. In all fairness, I have not had an opportunity to go through those. It's unfortunate I had another matter set today and I have this case. I will be giving you that order with regards to restitution shortly. Is that agreeable?

MS. PRASAD: Yes, Your Honor.

MS. KOSTER: Yes, Your Honor.

THE COURT: Okay.

I have considered the nature and circumstances of these offenses to be extremely serious. The Court has thought long and hard about the sentencing guidelines and related policy statements and how they apply to the particular facts in this case.

The evidence has shown the following: In this case, the content of the images and videos found on defendant's computer is extremely disturbing. The Court has reviewed the images and videos and finds them to be horrific, degrading and

demeaning. They contain sexually explicit conduct, bondage, sadomasochistic acts and many depict minors under the age of 12. Those are the types of images that destroy the lives of children portrayed forever and that harm is perpetrated again and again with no end in sight. Each time such an image is viewed, these images damage the most vulnerable members of our society, our children.

The high number of such images and the videos found on defendant's computer is also extremely disturbing. According to forensic reports, approximately 40 videos and over 1,100 images of child pornography were found on defendant's computer. While defendant points out that many of these images were duplicates, the Court finds that each image created the harm which Congress sought to prevent, whether they were duplicative or not. Defendant's own expert reported 29 unique child pornography movies existing in a nondeleted state on the active portion of the hard drive (DE No. 85-2). The Court does not find that the Sentencing Commission's directive to count each video as 75 images is arbitrary because well over 75 images can be captured from five minutes of video. Therefore, these unique videos alone amount to approximately 2,175 images which is a large number by itself.

Defendant argues that the additional 655 images and 24 videos found on a CD must be duplicative of some of those found on the defendant's computer, and therefore, this should

somehow lessen the defendant's offense. The Court, however, finds that the fact that the defendant took extra precautions to safeguard his child pornography collection by saying -- by saving it to a CD even more disturbing, and this adds to the seriousness of the offense.

As to the 18 images and two videos which were extraordinarily violent, defendant argues that he was not purposely seeking such violent images. He bases this assertion on the fact that only a small percentage of those types of images were found on his computer. Having a computer with 18 images and two videos showing violent sadomasochistic conduct against children on it is occurrent, whether the defendant intended to have such material or not.

Furthermore, based on the evidence presented, the Court is not convinced that the defendant did not intend to have such images. This enhancement was appropriately considered and has added to the seriousness of the defendant's offense in this Court's view.

The defendant goes to great lengths to point out that the percentage of child pornography to adult pornography found on his computer is low. However, this Court does not find this fact mitigating.

Defendant argues that the trading enhancement irrationally punishes him alongside large scale distributors because his conduct was more limited in nature and consisted

of a small scale trading of pictures in private one-on-one online conversations. The Court, however, does not find the trading enhancement irrational in this particular case. The Court finds this method of trading to be insidious, sneaky and designed to stay under the radar of law enforcement in order to continue sharing and receiving child pornography images for a long period of time without getting caught. According to defendant's own statement, he has been viewing child pornography since at least 2001 or 2002. This wasn't a short-term or one-time offense. It continued for years and years. He admitted to receiving at least 200 to 300 images and sending out 500 images this way throughout the years. By his own admission, he received and distributed child pornography over and over and over again. The Court finds that this conduct adds to the seriousness of the defendant's offense rather than detracts from it.

The Court is not troubled by the computer enhancements in this case, nor is it troubled by its frequency of use in other cases.

The chat logs in this case are beyond horrific. This Court has never before read such disgusting acts being described toward children and infants. These chat logs were used in direct conjunction with defendant's desire to receive and distribute child pornography. In several of the chats, he discourages others to molest children -- strike that.

In several of the chats, he encourages other to molest children and/or take child pornography pictures themselves. He attempts to lure and persuade others to join him in the underworld of child pornography, and in some cases, these people indicated that they had never before seen such images. While there is some question as to the factual accuracy of the events described, the chat logs in and of themselves reveal a great deal about the state of the defendant's mind as he viewed and traded child pornography images. These chats show a perverse sexual interest in viewing and trading child pornography and describing sexual acts towards children. Defendants often refer to how sexually aroused -- defendant often refers to how sexually aroused he is during these chats. The Court is greatly troubled by this.

As previously explained in detail with regards to the defendant's objections, the Court considered the 2G2.2(b)(5) enhancement and found that by a preponderance of the evidence that the defendant engaged in a pattern of activity involving the sexual abuse and exploitation of a minor. This pattern adds to the severity of the defendant's offenses. Not only was he receiving and distributing child pornography and chatting about sexually molesting children over the Internet, the evidence has shown that he was actually performing sexual acts and engaging in inappropriate sexual behavior with the children in his life. He held and touched a young boy's penis

despite being asked not to. In addition, he pulled down a young girl's underwear and lit a lighter next to her vagina in order to view it up close and in person. He harassed this girl over the phone for years. Afterwards, the defendant peeked under the shirt of another young girl. In essence, he took additional steps beyond the already horrific acts of viewing and receiving child pornography. He merged the world of child pornography images with the real world, and the Court is, again, greatly troubled by this fact.

While the defendant argues that a high penalty would create unwarranted sentencing disparities, the Court finds that in this particular case this concern is overridden by the seriousness of the offense as described above. Defendant was not a typical first-time offender when you view the entire body of the evidence presented and look at all of the individual factors. Therefore, a high sentence and any resulting disparities is not unwarranted.

As to the history and characteristics of defendant, the Court notes the following: While the defendant argues that his back injury, subsequent depression led to his first viewing of child pornography and that this somehow mitigates the offenses, the Court disagrees. Having injury and/or depression issues did not give the defendant the right to violate the most vulnerable members of our society by distributing, receiving and possessing child pornography.

However, the defendant does appear to have had a difficult childhood with divorced parents and with a mother who left him with little parental guidance. He also currently appears to have a good relationship with his sons. Defendant has a good work history and employment record and all reports indicate that he has been a hard worker throughout his life. Additionally, defendant was candid with police regarding his activities related to child pornography once he was caught. Furthermore, he had no criminal history prior to being arrested for the instant offense. These characteristics do mitigate to some extent.

Overall, I consider there to be a high need for an extremely heavy sentence to be imposed in this case to reflect the seriousness of the offense. A heavy sentence will serve as an adequate deterrent -- adequately to deter similar criminal conduct. In addition, the public will be protected from further crimes. During his lengthy sentence, defendant can provide -- can be provided with needed correctional treatment. Additionally, as described in great detail with regards to the victims' motion for restitution, restitution is necessary in this case, and this Court will be ordering it in the near future.

While I agree with the guidelines generally as related to child pornography offenses and find that there needs to be severe penalties imposed on those who harm society's most

innocent and vulnerable victims by possessing, viewing and distributing child pornography, in this particular case, based on the several mitigating factors described above, I do not believe that a full life sentence is warranted. Instead, the Court has reviewed all of the evidence presented and finds that a sentence which instead reaches very close to the expected remainder of defendant's life is more appropriate in this case. Such a sentence emphasizes the seriousness of defendant's offenses and conduct, and it underscores the great harm he has perpetrated on the many, many victims of child pornography in this case. It further recognizes his abhorrent behavior with regards to the chat logs and the victims who testified at the sentencing hearing. However, it also allows him to see the light at the end of the tunnel. Perhaps near the end of his life and as an old and repentant man, he will be able to spend a few years outside of the prison system with his sons who, by all accounts, love and support him. The Court feels that a sentence will treat the defendant more fairly than the children who have been victimized in this case.

Based on the current age and remaining life expectancy of approximately 36 years according to Social Security Administration periodic life tables, 360 months of incarceration followed by a life term of supervised release will provide a sentence which is sufficient but not greater

than necessary in this case. Therefore, the Court will sentence the defendant as follows:

Pursuant to Title 18, United States Code, Section 3551 and 3553 as modified by *U.S. v. Booker and Fanfan*, it is the judgment of the Court that the defendant, Christopher L. Laraneta, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 360 months. This sentence consists of terms of 240 months on each of Counts Two, Three, Four, Five, Six and Seven, to be served concurrently, and a term of 120 months on Count Eight, to be served consecutively. The defendant shall be placed on supervised release for a term of life years. The term consists of concurrent terms in Counts Two, Three, Four, Five, Six, Seven and Eight for life.

While the defendant is on supervised release pursuant to this judgment, the defendant shall comply with the following mandatory conditions.

The defendant shall not commit another federal, state or local crime.

The defendant must report to the probation office in the district to which the defendant is released within 12 hours of release from the custody of the Bureau of Prisons.

The defendant shall not unlawfully possess any kind of controlled substance. The defendant shall refrain from any unlawful use of a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and two periodic drug tests thereafter as determined by the Court.

The defendant shall not possess any kind of firearm, ammunition, destructive device or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall register with a state sex offender registration agency in the state to where the defendant resides, works or is a student as directed by the probation officer.

Further, the defendant shall comply with the 15 standard conditions that have been adopted by this Court. In addition, the defendant shall comply with the following special conditions.

The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release. The defendant shall provide the probation office with access to any requested financial information. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office unless the defendant is in compliance with the installment payment schedule.

The defendant shall participate in a substance abuse

treatment program and shall abide by all program requirements and restrictions which may include testing for the detection of alcohol or drugs of abuse at the direction and discretion of the probation officer.

While under supervision, the defendant shall not consume alcoholic beverages or any mood-altering substances which overrides the no excessive use of alcohol language in standard condition No. 7.

The defendant shall not be allowed to work at a tavern or patronize taverns or any other establishments where alcohol is a principal item of sale.

The defendant shall pay all or part of the costs for participation in the program not to exceed the sliding scale -- the sliding fee scale established by the Department of Health and Human Services.

The defendant shall participate in a sex offender testing and evaluation to include psychological behavior assessments and polygraph examinations and shall abide by all program requirements and restrictions. The defendant shall pay all or part of the cost of participation in the program not to exceed the sliding fee scale as established by the U.S. Department of Health and Human Services and adopted by this Court.

The defendant shall enter and attend sex offender specific and individual counseling at an approved outpatient treatment program if warranted from the testing, evaluation

and assessments and shall abide by all of the program requirements and restrictions. The defendant shall pay all or part of the cost of the -- for participation in these programs not to exceed the sliding fee scale established by the Department of Health and Human Services on a -- and adopted by this Court.

The defendant shall neither possess or have under his control any matter that is pornographic or that depicts and describes sexually explicit conduct as defined in Title 18, United States Code, Section 2256 or any matter depicting sexual activity, including any person under the age of 18. The defendant may only have personal access to computer Internet services that is approved by the probation officer. The probation officer shall have access to the defendant's personal computer to verify same.

The defendant shall submit his person and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media and effects to search at any time with or without a warrant by any law enforcement or probation officer with reasonable suspicion concerning a violation of condition of supervision or unlawful conduct by the defendant.

It is further ordered that the defendant shall pay to the United States a total special assessment of $700 which is due immediately.

It is further ordered that the defendant shall pay restitution to the United States District Clerk's Office, 5400 Federal Plaza, Hammond, Indiana, 46320, which shall be due immediately and shall be disbursed to the following victims in the following amounts: Vicky, $965,827.64; Misty, $3,367,854. The restitution obligation shall be paid in a joint and several liability with any other defendants in any district convicted of viewing the victims' pictures and/or videos.

The restitution shall be paid in full immediately. If the defendant is unable to pay this amount immediately then it shall be paid at a minimum rate of $50 per month commencing 30 days after placement on supervision until the amount is paid in full.

Counsel, I will give you a further order with regards to the restitution.

Pursuant to *U.S. v. Boyd*, Seventh Circuit, June 11, 2010, the defendant may pay any portion of his restitution from any wages earned in prison in accordance with the Bureau of Prisons Inmate Financial Responsibility Program, although participation in that program is voluntary. The defendant should note that failure to participate in the financial responsibility program while incarcerated may result in the denial of certain privileges which he might otherwise be entitled while imprisoned and that the Bureau of Prisons has the discretion to make such a determination. Any portion of

the restitution that is not paid in full at the time of the defendant's release from imprisonment shall become a condition of supervision.

The defendant shall notify the United States Attorney's Office for the district -- for this district within 30 days of any change in residence or mailing address that occurs while any portion of the restitution remains unpaid.

Counsel, there was an agreement with regards to forfeiture? With regards to the computer?

MS. PRASAD: Yes, we have agreed to forfeiture.

THE COURT: Pardon?

MS. PRASAD: Yes, we have agreed to forfeiture.

THE COURT: The property of the defendant shall forfeit the defendant's interests in the following property to the United States, the property he used and intended to use to commit and/or promote the commission of these offenses or any property traceable thereto.

(WHEREUPON, discussion was had off the record.)

THE COURT: Counsel, I think I made restitution findings here, and I think I had made them before. I stand by the ones that I had before, and I will correct that, okay, and the restitution order. I'll go through that again, okay. Part of it is because we've been doing this, you know, in portions. And I don't know. Did you talk about whether or not there was an agreement made between the defendant and the

government on this?

MS. PRASAD: There is no agreement, Your Honor.

THE COURT: Okay.

The Court finds that the following mitigating circumstances exist that are of a kind and degree not adequately taken into consideration by the Sentencing Commission and that a non-guideline sentence should be given: The statute itself; what a fair sentence would be; an adequate deterrent; the defendant's age; the number of children involved here; the defendant's background and the fact that he did cooperate. The Court has also taken into consideration that there was lack of remorse in this case.

Guideline range for fines in this case is $25,000 to $250,000. I am imposing no fine in this case because of the defendant's lack of assets and poor employment history make it unlikely that he'll be able to pay a fine, especially with regards to the restitution order.

At this time, I'll ask both counsel if you know of any reasons other than reasons already argued why the sentence should not be imposed as stated. If there are no reasons, then the Court will order that the sentence heretofore read in open court is the final sentence for this defendant with the exception of the restitution order.

MS. PRASAD: Yes, Your Honor. Other than the restitution order, there are no further objections.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CAUSE NO. 2:10-CR-13
	)	
CHRISTOPHER L. LARANETA,	)	
	)	
Defendant.	)	

ORDER

This matter is before the Court on: (1) the Motion to Compel Immediate Disclosure of Any Victim Testimony at the Sentencing Hearing (DE #44), filed by Defendant on August 1, 2011; (2) the Motion to Reset Sentencing Hearing (DE #46), filed by Defendant on August 4, 2011; and (3) the Motion for Leave to File Sentencing Memorandum After Sentencing Hearing (DE #50), filed by Defendant on August 9, 2011. For the reasons set forth below, the Motion to Compel Immediate Disclosure of Any Victim Testimony at the Sentencing Hearing (DE #44) is **DENIED AS MOOT**, the Motion to Reset Sentencing Hearing (DE #46) is **GRANTED**, and the Motion for Leave to File Sentencing Memorandum After Sentencing Hearing (DE #50) is **DENIED AS MOOT**. The sentencing hearing will be reset via separate notice at a later date. However, as discussed more fully below, this matter is set for an evidentiary hearing on August 18, 2011,

at 1:00 PM in US District Court - Hammond before the undersigned, and Defendant is **ORDERED** to be present.

BACKGROUND

Defendant, Christopher L. Laraneta ("Laraneta"), was indicted on January 21, 2010, on one count of transportation of child pornography.[1] (DE #1.) A Superseding Indictment was filed on April 22, 2010, charging Laraneta with one count of advertisement of child pornography, two counts of distribution of child pornography, three counts of receipt of child pornography, one count of transportation of child pornography, and one count of possession of child pornography.[2] (DE #15.) On September 3, 2010, Laraneta pled guilty, without the benefit of a plea agreement, as to Counts 2, 3, 4, 5, 6, 7 and 8 of the Superseding Indictment.[3] (DE #35.) After several continuances, the sentencing hearing was set for August 18, 2011.

On August 1, 2011, Laraneta filed a Motion to Compel Immediate Disclosure of Any Victim Testimony at the Sentencing Hearing (DE #44), followed three days later by a Motion to Reset Sentencing Hearing (DE #26). In these motions, citing his due process rights under the Fifth Amendment to the United States Constitution and

[1] The Indictment also contains a forfeiture count.

[2] The Superseding Indictment also contains a forfeiture count.

[3] Count 1 of the Superseding Indictment was dismissed. (DE #38.)

Rule 32 of the Federal Rules of Criminal Procedure, Laraneta argues that he is entitled to the names and statements of all victims the Government intends to call to testify at the sentencing hearing, prior to the sentencing hearing itself. (DE #44, pp. 1-2.) He further claims that "[a]bsent this information, [he] will not have the ability to rebut the evidence." (*Id*. at 3.) He requests a continuance of the sentencing hearing of at least thirty days so that he is able to review and respond to the victim impact statements and restitution request. (DE #46, pp. 1-3.) This Court held a status conference regarding Laraneta's requests on August 5, 2011 (DE #47.) The Government appeared by attorney Jill Koster, Laraneta appeared by attorney Ashwin Cattamanchi, and Janice Lawton and Paula Pramuk appeared on behalf of Probation/Pretrial Services. After discussion with all parties, the Court ordered the Government to respond to Laraneta's motions. The Government did so on August 5, 2011 (DE #48), stating that the victims' testimony is:

> relevant to the Court's determination of (1) whether the enhancement set forth in Guideline § 2G2.2(b)(5) applies; (2) whether Defendant should receive a two-level reduction for acceptance of responsibility under Guideline § 3E1.1; and (3) what sentence of incarceration is sufficient but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a) and (b)(2)(A)(I).

(*Id*. at 6.) The Government argues that, according to Rules 32(i)(2) and 26.2(a) of the Federal Rules of Criminal Procedure, there is no requirement to turn over a witness's name or statement

prior to the sentencing hearing. (*Id*.) Citing to *U.S. v. Agyemang*, 876 F.2d 1264, 1270-71 (7th Cir. 1989) and *U.S. v. Cusenza*, 749 F.2d 473, 478 (7th Cir. 1984), the Government correctly contends that due process is satisfied as long as a defendant sentenced on accurate and reliable information and has an reasonable opportunity to rebut the testimony and evidence presented. (DE #48, p. 9.) On August 9, 2011, Laraneta filed a Motion for Leave to File Sentencing Memorandum After Sentencing Hearing (DE #50), and the following day he filed his reply to the Government's response to the Motion to Reset Sentencing Hearing and Compel Disclosure of Victim Testimony. (DE #51.) In his reply, Laraneta concedes that the Government need not disclose the witnesses' statements prior to their direct examination at sentencing, but he argues that a continuance is still necessary because, according to Federal Rule of Criminal Procedure 32(g), a Presentence Investigation Report ("PSR") "containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them" must be submitted to the Court and to the parties at least seven days prior to the sentencing hearing. (DE #51, p. 2.) Hence, according to Laraneta, because there is no information even in the draft version of the Presentence Investigation Report ("PSR") regarding two of the alleged victims, there are no objections as to those victims, and a continuance is necessary to comply with the Federal Rules of Criminal Procedure.

(*Id*.) Finally, on August 10, 2011, the Government filed a response stating that:

> [t]he Government also respectfully requests that the Court reset Defendant's sentencing for a mutually agreed upon future date that will provide Probation, Defendant and the Government with ample opportunity to address application of the United States Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a). Doing so would provide Defendant with ample opportunity to motion the Court prior to his sentencing for whatever additional relief he feels he is entitled to under the Federal Rules of Criminal Procedure or the United States Constitution. Probation, in turn, would have the opportunity to revise and redistribute its calculation of Defendant's sentence under the United States Sentencing Guidelines, to which the parties could object. And finally the parties would also have time to prepare and file their sentencing memoranda with the Court in advance of Defendant's actual sentencing hearing.

(DE #54, p. 2.)

DISCUSSION

After due consideration of the motions, responses, and replies filed by the parties as well as the relevant case law, the Court finds that the interests of justice are best served by granting a continuance of the sentencing hearing to allow the Probation/Pretrial Services Department, the Government, and Laraneta additional time to prepare, respond and/or object to the PSR and to submit any necessary sentencing memorandums prior to the actual sentencing hearing. However, as a courtesy to the alleged

victims who have made travel arrangements and have waited a significant period of time to testify against Laraneta, the Court will hold an evidentiary hearing on September 18, 2011, for the purposes of submitting the victim testimony into the record. Laraneta will have full opportunity to cross-examine the witnesses at the evidentiary hearing and may, pursuant to a properly supported motion, recall such witnesses at a later date if necessary. Furthermore, Laraneta will have full opportunity to rebut the evidence presented by the Government via objections to the PSR itself or by way of a sentencing memorandum submitted prior to the actual sentencing hearing. Therefore, it is not necessary for the Government to disclose "any victim testimony" to Laraneta at this time. At the close of the evidentiary hearing and following input from all parties including the Pretrial Services/Probation Department, the Court will set the date for the sentencing hearing as well as any schedules/deadlines for objections to the PSR and sentencing memorandums.

CONCLUSION

For the reasons set forth above, the Motion to Compel Immediate Disclosure of Any Victim Testimony at the Sentencing Hearing (DE #44) is **DENIED AS MOOT**, the Motion to Reset Sentencing Hearing (DE #46) is **GRANTED**, and the Motion for Leave to File

Sentencing Memorandum After Sentencing Hearing (DE #50) is **DENIED AS MOOT**. The sentencing hearing will be reset via separate notice at a later date. However, as discussed above, this matter is set for an evidentiary hearing on August 18, 2011, at 1:00 PM in US District Court - Hammond before the undersigned, and Defendant is **ORDERED** to be present.

DATED: August 15, 2011

/s/RUDY LOZANO, Judge
United States District Court