

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA, :
 :
 PLAINTIFF, : **CASE No. 2:11-CR-239**
 :
 vs. : **JUDGE EDMUND A. SARGUS JR.**
 CARLOS A. AVENDANO, :
 :
 DEFENDANT. : **SENTENCING**
 : **MEMORANDUM**

The United States hereby submits the following memorandum in aid of sentencing for the Court's consideration.

Respectfully submitted,

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MEMORANDUM

The United States agrees with the sentencing recommendations made to this Court by the U.S. Probation Department. This memorandum has been prepared, in part, to explain the United States' position that a lengthy sentence of incarceration followed by 10 years of supervised release would be an appropriate sentence in this case. Because there are no objections to the guideline calculations or the underlying facts of the case, the United States writes only to address the policy arguments regarding the seriousness of this offense and the 18 U.S.C. § 3553(a) factors.

I. THERE ARE STRONG PUBLIC POLICY AND PUBLIC SAFETY CONCERNS THAT SUPPORT CONGRESS AND THE SENTENCING COMMISSION'S DETERMINATION OF THE APPROPRIATE SENTENCING GUIDELINE RANGE FOR THE POSSESSION OF CHILD PORNOGRAPHY.

In continuing to increase the punishments and guidelines in child pornography cases, Congress has repeatedly expressed that the possession, receipt, distribution, and production of child pornography is a profound public safety issue, not a simple by-product of society's repulsion at child pornography. As explained by one court:

This continuing escalation was based on a grim set of congressional findings to the effect that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. . . . Congress has found such severe penalties necessary because child pornography is a multimillion dollar industry run by a nationwide network of individuals who openly advertis[e] their desire to exploit children and to traffic in child pornography.

United States v. Polk, 546 F.3d 74, 77 (1st Cir. 2008)(internal quotations and citations omitted).

Mr. Avendano's conduct can be labeled as that of a fairly "typical" downloading and possessing of child pornography case. However, it is precisely the type of conduct which Congress and the Sentencing Commission have targeted with significant sentences of incarceration because Congress has found that defendants such as Avendano represent a unique danger to public safety.

A. Congress Has Found That Child Pornography Is Often Used As A Tool To Entice Children Into Sexual Activity.

In addition to the common argument – discussed more fully below – that the possession and trading of child pornography by individuals such as Mr. Avendano creates a “marketplace” for the production of more child pornography and thus the abuse and exploitation of still more children, the Court should also consider that Congress found that the possession and distribution of these images and videos literally creates a present danger to children. Specifically, that it is often used to entice them into sexual abuse and exploitation.

In 1996, Congress enacted the Child Pornography Prevention Act of 1996 ("CPPA"). P.L. 104-208. At that time Congress made express findings:

SUBSECTION 1. FINDINGS.

Congress finds that—

(3) child pornography is often used as part of a method of seducing other children into sexual activity; a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children "having fun" participating in such activity;¹

* * *

(10)(A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children . . .²

* * *

(13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct . . .

P.L. 104-208, Section 121.

¹ As noted in United States v. Davenport, 519 F.3d 940 (9th Cir 2008); United States v. White, 506 F.3d 635 (8th Cir. 2007); United States v. Reaves, 253 F.3d 1201 (10th Cir. 2001).

² As noted in United States v. Weis, 487 F.3d 1148 (8th Cir. 2007) and United States v. MacEwan, 445 F.3d 237 (3rd Cir. 2007).

It is evident that quite apart from “marketplace” concerns about the production of future child pornography, Congress has clearly expressed that child pornography laws are aimed at removing an existing dangerous tool from the hands of those that may be inclined to use it to victimize children outside of the child pornography context. See United States v. Lebovitz, 401 F.3d 1263, 1271 (11th Cir. 2005) (“Law enforcement investigations have verified that pedophiles almost always collect child pornography or child erotica.”)(quoting S. Rep. No. 104-358, 104th Cong., 2d Sess., at 12-13 (1996)). There can scarcely be a more compelling public interest served by the law than the protection of a child from sexual abuse, and Congress has clearly indicated that is a predominate concern in enacting and repeatedly toughening the child pornography statutes and sentencing guidelines. Congress and the Sentencing Commission have taken those concerns into account when developing the guideline range for receipt and possession of child pornography.

To be clear, there is no evidence that Mr. Avendano, used his child pornography collection as a tool of seduction. However, the possibility of such occurrences is a compelling governmental interest which Congress has sought to deter by punishing child pornography offenses with lengthy prison sentences. The Court should consider Congress’ intent when fashioning Mr. Avendano’s sentence.

B. Congress Has Found That Possession Of Child Pornography Desensitizes Adults To The Sexual Abuse Of Children And Can Result In Creating New Victims of Abuse.

In addition to the finding that individuals bent on the sexual abuse of children will often use child pornography as a tool to entice new victims, Congress also found that child pornography’s impact on the adults who view it, make it a clear and present danger to public safety. Congress has found that:

(4) child pornography is often used by pedophiles and child sexual abusers to stimulate and whet their own sexual appetites, and as a model for sexual acting out with children; such use of child pornography can desensitize the viewer to the pathology of sexual abuse or exploitation of children, so that it can become

acceptable to and even preferred by the viewer;³

P.L. 104-208, Section 121.

The Senate Report on P.L. 104-208 also quoted the testimony of Dr. Victor Cline⁴ at the June 4, 1996, hearing before the Senate Committee on the Judiciary, that:

The best evidence to date suggests that most or all sexual deviations are learned behavior. . . . In the case of pedophiles, the overwhelming majority . . . use the child pornography and/or create it to stimulate and whet their sexual appetites which they masturbate to then use later as a model for their own acting out with children. . . . [T]he use of child pornography in time desensitizes the viewer to its pathology no matter how aberrant or disturbing. It becomes acceptable and preferred.

S.Rep. 104-358 at 13.

The 2nd Circuit observed in 2006 that “[i]n hearings before Congress, the FBI noted ‘a strong correlation between child pornography offenders and molesters of children’ and that ‘the correlation between collection of child pornography and actual child abuse is too real and too grave to ignore.’” United States v. Brand, 467 F.3d 179, 198 n.17 (2nd Cir. 2006). See also United States v. Byrd, 31 F.3d 1329, 1339 (5th Cir. 1994) (“[C]ommon sense would indicate that a person who is sexually interested in children is likely to also be inclined, i.e., predisposed, to order and receive child pornography.”).

The testimony of witnesses before Congress has strong sociological support. For example, a 2005 joint-study funded by National Center for Missing & Exploited Children and the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, surveyed 2,574 state, county, and local law-enforcement agencies concerning arrests made for the sexual victimization of a child between July 1, 2000, and June 30, 2001. The study found that in 55% of the arrests, the defendant was a “dual

³ As noted in United States v. Falso, 544 F.3d 110 (2nd Cir. 2008).

⁴ Dr. Kline is an Emeritus Professor in Psychology at the University of Utah, a research scientist with George Washington University Office, and operates a private clinical practice in Salt Lake City, Utah. http://en.wikipedia.org/wiki/Victor_Cline, website last visited on January 29, 2012.

offender” meaning that the defendant both possessed child pornography and had sexually victimized or attempted to sexually victimize a child. *See* Wolak, J., Finkelhor, D., & Mitchell, K.J., Child-Pornography Possessors Arrested in Internet Related Crimes: Findings From the National Juvenile Online Victimization Study (2005).⁵

Additionally, in “The Butner Study Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders”⁶ BOP psychiatrists set out to determine whether a group of 155 inmates who had been convicted of possessing, receiving, or distributing child pornography, but who had no known history of “hands-on” sexual abuse, were “merely” collectors of child pornography or, alternatively, whether this group actually had committed “hands-on” sexual abuse. The results were staggering. The study concluded that the collectors of child pornography were “more likely than not to have sexually abused a child via a hands-on act,” finding that found that 85% of collectors admitted to having previously abused or attempted to abuse children and that only 2% of collectors who still denied abusing children could pass a polygraph test on that question. There are, of course, additional studies on both sides of the recidivism question.⁷

All this is to say that while there is an on-going debate in the clinical and academic world, Congress has made its judgment as to the dangerousness of child pornography offenders which has been carried out legislatively and through the Sentencing Commission in the development of the

⁵ www.unh.edu/ccrc/national_juvenile_online_victimization_publications.html

⁶ Bourke, M.L, Hernandez, A.E. (2009).The ‘Butner Study’ Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders. *Journal of Family Violence*, 24(3), 183-191.

⁷ See Dr. Michael Seto’s position paper describing research indication there may be a much lower correlation between child pornography possession and “hands-on” offenses. http://www.iprc.unc.edu/G8/Seto_Position_Paper.pdf

sentencing guidelines.⁸ While there may be evidence and opinion to the contrary, there is also ample evidence to support the view that Congress' fears are not unfounded when it comes to the potential dangerousness and propensity towards recidivism of child pornography defendants.

In short, Congress has found evidence, well-supported by testimony, sociological literature and research, of a grave public safety concern: the potential correlation between the possession of child pornography and its incitement of the victimization of additional children. Thus, completely independent of the abuse already suffered by the children already victimized in the production of child pornography, Congress has found that the distribution, receipt and possession of child pornography presents distinct, potential future harm to the public.

The gravity of these Congressional concerns is manifested through the guideline ranges expressed through the Sentencing Commission, and the Court should give them strong consideration when fashioning the sentence in this case.

C. The Possession Of Child Pornography Creates A Market For The Future Abuse Of Children And Creates A Potentially Permanent Record Of Past Abuse.

i. The severity of the sentencing guidelines for child pornography offenses simply reflects the fact that consumers of child pornography creates a demand for the continued abuse of children.

As numerous courts have recognized, “the consumer of child pornography ‘creates a market’ for the abuse by providing an economic motive for creating and distributing the materials.” United States v. Goff, 501 F.3d 250, 260 (3rd Cir. 2007)(internal citations omitted). “Children are exploited,

⁸ “[T]he Guidelines reflect Congress's determination of potential punishments, as set forth in statutes, and Congress's on-going approval of Guidelines sentencing, through oversight of the Guidelines revision process Because the Guidelines reflect the collected wisdom of various institutions, they deserve careful consideration in each case. Because they have been produced at Congress's direction, they cannot be ignored.” United States v. Goff, 501 F.3d 250, 257 (3d Cir. 2007).

molested, and raped for the prurient pleasure of [the defendant] and others who support suppliers of child pornography.” *Id.* at 259. As explained by the 11th Circuit:

Young children were raped in order to enable the production of the pornography that the defendant both downloaded and uploaded -- both consumed himself and disseminated to others. The greater the customer demand for child pornography, the more that will be produced. Sentences influence behavior, or so at least Congress thought when in 18 U.S.C. § 3553(a) it made deterrence a statutory sentencing factor. The logic of deterrence suggests that the lighter the punishment for downloading and uploading child pornography, the greater the customer demand for it and so the more will be produced.

United States v. Pugh, 515 F.3d 1179, 1194 (11th Cir. 2008) (citing United States v. Goldberg, 491 F.3d 668, 672 (7th Cir. 2007)).

Simply put, the sentencing guidelines for child pornography offenses reflect the well-documented fact that defendants like Mr. Avendano create the demand for additional sexual abuse and exploitation of children. The United States urges the Court to consider this when determining the appropriate sentence in this case.

- ii. **The severity of the sentencing guidelines for child pornography offenses reflect the fact that the dissemination of the images and videos perpetuates the abuse of the victims and causes continuing harm to them.**

Courts have explained for nearly thirty years that for the victims of the sexual abuse and exploitation, the fact that the images have been disseminated perpetuates the abuse initiated by the producer of the materials. “The materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation.” New York v. Ferber, 458 U.S. 747, 759 (1982); see also Osborne v. Ohio, 495 U.S. 103, 111 (1990) (“The pornography's continued existence causes the child victims continuing harm by haunting the children for years to come.”).

Congress made those same express findings in the 1996 CPPA:

- (2) where children are used in its production, child pornography permanently records

the victim's abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years;

P.L. 104-208, Section 121.

It is not disputed that Mr. Avendano downloaded the images and videos he possessed from the internet, nor that he was viewing and possibly downloading child pornography from a foreign website. Thus, there is simply no question that he assisted in their dissemination. There is also no question that Congress has identified the continuing harm that these images and videos may cause to the child victims in such depictions. When viewed through the prism of Congress' findings, it is plain to see that the sentencing guidelines aptly capture Mr. Avendano's criminal conduct and reflect Congress' clear directive that child pornography offenses warrant the imposition of lengthy sentences of incarceration.

D. Four Specific Offense Characteristics Apply To Mr. Avendano Which Clearly Increase The Seriousness Of His Conduct.

- i. Mr. Avendano's use of a computer made the mass collection of images and videos easier and made his detection by law enforcement more difficult.**

Special Offense Characteristic § 2G2.2(b)(6) recommends a two-level increase for "use of a computer" possessing child pornography. The rationale and justification for this increase has been explained: "Its purpose is to punish the use of a powerful tool of child predators, a tool that both makes it more difficult for law enforcement to apprehend those who prey on children and easier for those predators to find and attract vulnerable children." United States v. Lebovitz, 401 F.3d 1263, 1271 (11th Cir. 2005).⁹ The fact that Mr. Avendano used his computer to collect, conceal, and store his child pornography collection, both increased his ability to collect it, and concealed his identity. It is conduct

⁹ See also United States v. Carter, 292 Fed. Appx. 16, 19 (11th Cir., August 27, 2008) ("This section focuses on the harms associated with the use of a computer in all aspects of child pornography crimes--the possession, transmission, receipt, and distribution--all of which are undoubtedly made easier to do, and easier to do in mass quantities, with a computer.").

which increases the seriousness of the offense to which he has plead guilty.¹⁰ While it is certainly true that this offense characteristic applies in the vast majority of child pornography possession cases, it does not follow that the increase in the advisory guideline range is undeserved. This offense characteristic simply reflects the reality that computers have made this crime infinitely more prolific and readily committed.

ii. Mr. Avendano possessed hundreds of depictions of child pornography, including a multitude of depictions of prepubescent minors.

Mr. Avendano's child pornography collection is deserving of both the five-point increase for the number of depictions he possessed and the two-point increase for possessing depictions of child victims under the age of 12. Both of these Special Offense Characteristics take Mr. Avendano's conduct more serious than the lowest level possession case. First, Congress made clear that the number of images a defendant possessed increased the severity of the possession offense when it directly amended § 2G2.2 and eliminated § 2G2.4 in the PROTECT Act of 2004. Congress created a specific offense characteristic which provided a graduated enhancement of two to five levels, depending on the number of images. See United States v. Gonzalez, 445 F.3d 815, 818 fn6 (5th Cir. 2006). Any sentence that did not take into account § 2G2.2(b)(7)(A) would be contrary to expressed Congressional intent.

Second, the fact that a number of the depictions Mr. Avendano possessed depict children that are clearly under the age of 12 being sexually abused and exploited, so self-evidently increases the seriousness of his offense as to need no additional discussion.

¹⁰ "By the mid-1980's, the trafficking of child pornography within the United States had been almost completely eradicated through a series of successful campaigns waged by law enforcement . . . Purchasing and trading such images was extremely risky. Anonymous distribution and receipt was not possible and it was difficult for pedophiles to find and interact with each other. Unfortunately, technology has changed the situation." <http://www.justice.gov/criminal/ceos/childporn.html>, site last visited on January 29, 2012.

iii. Mr. Avendano possessed depictions of prepubescent minors being vaginally and anally penetrated by adult males and in bondage.

In United States v. Groenendal, 557 F.3d 419, 425-26 (6th Cir. 2009), this circuit has joined the First, Second, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits in finding that images involving penetrative sex between a prepubescent child and an adult male are per se sadistic. See, e.g., United States v. Hoey, 508 F.3d 687, 691 (1st Cir. 2007); United States v. Delmarle, 99 F.3d 80, 83 (2d Cir. 1996); United States v. Myers, 355 F.3d 1040, 1043 (7th Cir. 2004); United States v. Belflower, 390 F.3d 560, 562 (8th Cir. 2004); United States v. Rearden, 349 F.3d 608, 616 (9th Cir. 2003); United States v. Kimler, 335 F.3d 1132, 1143 (10th Cir. 2003); United States v. Hall, 312 F.3d 1250, 1262-63 (11th Cir. 2002).

Mr. Avendano possessed such depictions in the images and videos found on his computer. Put bluntly, the depictions of adult males intentionally inflicting pain on young children via anal or vaginal penetration depicts no less than inhumane treatment of defenseless children. These extremely depraved images and videos show pain inflicted upon children solely for the prurient interest of others. The inherently sadistic nature of these depictions justifies an increased offense level for any defendant who possesses them, and Mr. Avendano possessed dozens of them.

Stated plainly, the applicability of several of § 2G2.2's Special Offense Characteristics demonstrates the immense chasm between Mr. Avendano's offense conduct and the lowest form of this offense. The United States urges the Court to sentence Mr. Avendano to a sentence which accounts for the severity of his conduct as developed by Congress and the Sentencing Commission. Stated plainly, the applicability of several of § 2G2.2's Special Offense Characteristics demonstrates that Mr. Avendano's offense conduct is not the lowest form of this offense.¹¹ For these reasons, a

¹¹ The United States points out that Mr. Avendano could have been charged with Receipt of Child Pornography under 18 U.S.C. § 2252(A)(2) which entails a mandatory minimum period of 5 years

lengthy sentence of incarceration is appropriate in this case.

The United States turns to the application of the 18 U.S.C. § 3553(a) factors to Mr. Avendano.

II. ANALYSIS OF THE SENTENCING FACTORS

Courts are directed to impose a sentence sufficient, but not greater than necessary, to meet the goals of sentencing set forth in 18 U.S.C. § 3553(a). In determining the particular sentence to be imposed in the case of any defendant, the Court is directed to consider the seven factors listed in 18 U.S.C. § 3553(a)(1)-(7). Each of those factors as they apply to this case are discussed below.

A. 18 U.S.C. § 3553(a)(1) and (2): The Nature and Circumstances of the Offense and the history and Characteristics of the Defendant.

Nature and Circumstances of Offense:

The United States represents to the court that based on the evidence known to the government, this appears to be a mill-run child pornography case.

History and Characteristics of the Defendant:

Probation has recommended, and the United States does not dispute, a Criminal History Category of I. By virtue of his placement in Category I, his lack of a criminal record has already been taken into account and a benefit has been provided to Mr. Avendano. See United States v. Borho, 485 F.3d 904, 912-13 (6th Cir. 2007) (explaining that a defendant's lack of prior criminal history does not

incarceration, a maximum of 20 years incarceration, and would result in a guideline score 4 levels higher. Thus, he has already substantially benefitted from the plea agreement in this case. See United States v. Alvarado, 615 F.3d 916, 925 (8th Cir. 2010) (holding that in determining a sentence, the district court did not consider an inappropriate or irrelevant factor by considering the benefit the defendant received from the government's charging decision); United States v. Jimenez-Gutierrez, 491 F.3d 923, 928 (8th Cir. 2007) ("[A] court may take into consideration the benefits of a plea agreement, the facts surrounding uncharged conduct, or the benefits of lenient charging decisions in fashioning a sentence . . ."). See also United States v. Mack, 452 F.3d 744, 745-46 (8th Cir. 2006) (holding that, in sentencing a defendant for his sexual abuse of a minor, the sentencing court could consider the defendant's possession of child pornography where the pornography was related to the abuse and the government had originally indicted defendant for abuse and possession, but the government had dismissed the possession charge during the plea process).

provide extraordinary circumstances justifying deviation because it was already taken into account when in calculating the applicable Guidelines range). See also United States v. Todd, 920 F.2d 399, 408 (6th Cir. 1990) (noting that the absence of a criminal record is taken into account by the sentencing guidelines and is not basis for departure below a guideline range). Thus, Mr. Avendano's lack of a criminal record does not in itself provide a basis for a departure or deviation from the applicable guideline range in this case.

- B. 18 U.S.C. § 3553(a)(2): The need for the sentence imposed to (A) reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from future crimes of the defendant; and (D) to provide the defendant with needed training, medical care, or other correctional treatment in the most effective manner.**

The seriousness of the offense:

The statutory maximum penalty for possession of child pornography is punishable by up to 10 years incarceration, with the minimum applicable guideline range recommending 27-33 months for the possession of even *a single* image. This is therefore unquestionably a serious offense. Respect for the seriousness of the law and a just punishment are thus provided only through a sentence that takes into account the specific offense characteristics which increase the seriousness of the offense and thus call for a significant period of incarceration.

Specific and General Deterrence:

A lengthy sentence of incarceration will hopefully deter Mr. Avendano from future acts of child pornography possession as well as deter other potential defendants by sending a clear message: Individuals who engage in this criminal conduct in the Southern District of Ohio are going to face the lengthy prison sentences envisioned by Congress and anticipated by the Sentencing Commission when the child pornography guidelines were amended.

Protection of the public:

In addition to his incapacitation by the lengthy sentence of incarceration anticipated by the sentencing guidelines, as well as a minimum-mandatory period of 60 months supervised release, Mr. Avendano will also be required to continue to register as a sex offender and to allow monitoring software to be installed on any computer at the direction of the probation department. Therefore, any potential danger Mr. Avendano posed to the public will be hopefully be significantly mitigated by a lengthy period of incarceration and an extended period of supervised release with the special conditions recommended to by probation.

Training, medical care and correctional treatment:

If Mr. Avendano is willing to participate, the United States urges the Court to recommend Mr. Avendano be placed into a facility which provides sex offender treatment. There are a number of Bureau of Prison institutions which provides Sex Offender Management Program (SOMP) or Sex Offender Treatment Programs (SOTP). The only residential SOMP is located at FMC Devens in Massachusetts, and upon information and belief, is limited to 112 bed spaces. However, the BOP also has non-residential SOTPs at FCI Elkton (OH), USP Marion (IL), USP Tucson (AZ), FCI Seagoville (TX), FCI Petersburg (VA), and FCI Marianna (FL), which provide 6 month non-residential treatment programs. The United States urges the Court to recommend Mr. Avendano be placed at one of the above-listed facilities.

C. 3553(a)(3)and (4): Kinds of sentences available; the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the Guidelines

Kind of sentences available

18 U.S.C. § 2252 provides for a sentence of up to 10 years of incarceration, with no mandatory-minimum sentence. However, the base offense level of 18 U.S.C. § 2252 under U.S.S.G § 2G2.2 is 18

which corresponds to a guideline range of 27 to 33 months. Here, Mr. Avendano's final guideline score of 28 and Criminal History Category I, if accepted by the Court, corresponds to sentence of 78-97 months, which is a Zone D sentence where the Sentencing Commission recommends a period of incarceration.

The sentencing range established by for the offense:

The United States does not dispute the Probation Department's determination that the application of the sentencing guidelines results in range of 78-97 months.

D. Imposition of Period of Supervised Release

18 U.S.C. § 3583(k) provides that "the authorized term of supervised release . . . for any offense under section . . . 2252 . . . is any term of years not less than 5, or life." The United States agrees with the Probation Department's recommendation that the imposition of ten years supervised release is appropriate in this case.

E. 18 U.S.C. § 3553(a)(6) and (7): The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense.

The need to avoid unwarranted sentencing disparities.

The United States argues that a lengthy sentence of incarceration is consistent with the seriousness Congress has ascribed to the offense of possession of child pornography as reflected in the guidelines promulgated by the Sentencing Commission. Adherence to near the sentencing guidelines in these cases will avoid unwanted sentencing disparities.

Restitution

The United States does not seek restitution in this case.

CONCLUSION

The United States respectfully recommends that the Court sentence Mr. Avendano to a lengthy period of incarceration followed by a 10 year term of supervised release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served electronically on January 30, 2012, upon counsel for Mr. Avendano, Sam Shamansky, Esq.

s/Michael J. Hunter

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Assistant United States Attorney