

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 8, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JEREMY ALAN WEBER,

Defendant - Appellant.

No. 25-3201
(D.C. No. 5:24-CR-40035-TC-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **MATHESON**, and **PHILLIPS**, Circuit Judges.

Jeremy Alan Weber challenges the substantive reasonableness of the 300-month term of imprisonment the district court imposed for transportation and possession of child pornography. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. Background

Weber worked for an architectural firm as a Senior Technical Specialist providing technical support for software products. Using his work computer, Weber obtained via the internet thousands of images of child pornography. He then uploaded the images to an artificial intelligence program (Faceswapper.ai) hosted on a Hong Kong company's website and used that program to morph hundreds of those images by replacing the heads or faces of minor female victims with the heads or faces of minor and adult females. Some of those victims—11 minors and 21 adults—were family, friends, or co-workers whose pictures he obtained from sources like their social media accounts and his company's website. The images depicted the new minor and adult victims naked and/or engaged in sexually explicit conduct, and some depicted Weber's face placed onto a male body and posing or engaging in sex acts with many of the same female victims.

Weber stored the images on an encrypted external hard drive. He was caught when an individual who provided third-party information technology services to Weber's employer was remotely scanning Weber's work computer and came across the images and a video, observed Weber's conduct in real time, and contacted law enforcement.

Weber was indicted in federal court on sixteen counts of transportation of child pornography, in violation of 18 U.S.C. § 2252A(a)(1); sixteen counts of receipt of child pornography, in violation of § 2252A(a)(2); and one count of possession of child pornography, in violation of § 2252A(a)(4)(B), which included all the images

and videos of child pornography in his possession. He pleaded guilty to five of the transportation counts and the possession count. Under the applicable sentencing guideline, § 2G2.2 of the United States Sentencing Commission Guidelines Manual (Nov. 2024) (“USSG”), Weber’s base offense level was 22. The presentence investigation report (“PSR”) applied multiple § 2G2.2 enhancements to reach an adjusted offense level of 37. Of those, Weber objected only to a two-level enhancement for distribution of prohibited materials (the uploading of the images to the morphing website). With a three-level downward adjustment for acceptance of responsibility, the PSR arrived at a total offense level of 34. Based on that offense level and a criminal history category of I, the PSR calculated a Guidelines sentencing range of 151–188 months.

As permitted by the plea agreement, the government argued for an upward departure or variance to 240 months, and Weber requested a two-level downward variance and a sentence of 121 months.

At sentencing, the district court overruled Weber’s objection to the distribution enhancement. And although it declined the government’s request for a departure, the court varied upward from the Guidelines based on the sentencing factors of 18 U.S.C. § 3553(a) and imposed a sentence of 60 months of imprisonment for each of the five transportation counts, to run consecutively; and 60 months of imprisonment for the possession count, to run concurrently. The end result was a sentence of 300 months of imprisonment, which the district court said was “sufficient but not greater than necessary to reflect the seriousness of the offenses, promote respect for the rule of

law and to provide a just punishment for the offense,” and would “also afford adequate deterrence to criminal conduct and protect the public from further crimes that Mr. Weber may contemplate committing.” R. vol. II at 244.¹ In support of that sentence, the district court provided a number of rationales, including:

- “The creation of the images with adults exacerbate[d] the impact of the unlawful conduct.” R. vol. II at 173.
- The Guidelines do not “encompass the breadth of the depravity or the exacerbating circumstances.” *Id.* at 187.
- “[I]n this situation we have the means in which the crime was committed affected the person that was intimate to Mr. Weber in ways that are distinct from the ordinary case.” *Id.* at 229.
- Weber engaged in “‘creepy behavior’ that is exacerbating or maybe informing . . . the depravity.” *Id.* at 231.
- Weber’s conduct “is among the more disturbing [that the court had] seen.” *Id.*
- “[I]nstead of just child sexual abuse material, which is what we would typically see, . . . you intentionally latched onto real human beings.” *Id.* at 238.
- “[T]he exacerbation here is that [Weber] brought real people into the fold. And while it’s not a touching offense in the ordinary sense of the word, it’s akin to that.” *Id.* at 239.
- One victim “express[ed] genuine – and I would say not unrealistic – fear that at some point a colleague, competitor, or a client may come upon a photo and think that that’s a real exhibition of pornography,” *id.*, and

¹ This document was filed under seal. The court has determined that the public’s right of access to the information quoted or summarized in this order and judgment outweighs any confidentiality or privacy interests, given the need to provide a proper, publicly available explanation of the court’s decision. *See Eugene S. v. Horizon Blue Cross Blue Shield of N.J.*, 663 F.3d 1124, 1135–36 (10th Cir. 2011).

those concerns were not “different from what each of [the victims] face, *id.* at 240.²

- “As I look at the [§] 3553(a) factors, things that are concerning to me include, for lack of a better word, the depraved mens rea, the manner in which you conducted it, [and] the victim impact, which is significant.” *Id.*
- “[P]art of the exacerbation in this case is kind of the potpourri of your worlds and your exploiting of them. Not only co-workers, not only church people but family, and sometimes all three categories. And . . . that is disturbing and that gives me great pause relative to what you could do or what you might have done.” *Id.* at 240–41.
- Any sentencing disparity between contact and non-contact offenders was “more than ably warranted” by “all of the factors that [the court] discussed.” *Id.* at 241.

In its statement of reasons, the district court said that its upward variance was justified by “the volume of the images, the breadth of the conduct, the breach of trust, and the significant impact on a number of individual victims and family members of the victims not only of the crime of conviction but the related relevant conduct.” *Id.* at 255.

II. Standard of review

Weber raises one issue on appeal—whether his sentence is substantively unreasonable. “Substantive reasonableness considers whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a).” *United States v. Guevara-Lopez*, 147 F.4th 1174, 1183 (10th Cir. 2025) (internal quotation marks omitted).

² According to testimony at sentencing, the morphing technology creates fake images that are “relatively indistinguishable from” real images. R. vol. II at 132.

“We review a district court’s sentencing decision for substantive reasonableness under an abuse-of-discretion standard, looking at the totality of the circumstances. A district court abuses its discretion when it renders a judgment that is arbitrary, capricious, whimsical, or manifestly unreasonable.” *Id.* at 1183–84 (citation and internal quotation marks omitted). “For that reason, we uphold even substantial variances when the district court properly weighs the § 3553(a) factors and offers valid reasons for the chosen sentence.” *United States v. Gross*, 44 F.4th 1298, 1304 (10th Cir. 2022) (internal quotation marks omitted).

“But we also cannot just provide a rubber stamp of approval to the lower court’s sentence.” *Guevara-Lopez*, 147 F.4th at 1184 (internal quotation marks omitted). Thus, in assessing an upward variance, we “consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Id.* (internal quotation marks omitted). “A major variance should have a more significant justification than a minor one.” *Id.* (internal quotation marks omitted). “And a district court properly engages in this inquiry when it bases its decision on specific, articulable facts supporting the variance and does not employ an impermissible methodology or rely on facts that would make the decision out of bounds.” *Id.* (internal quotation marks omitted).

In conducting this review, we do not reweigh the § 3553(a) factors. *United States v. Blair*, 933 F.3d 1271, 1274 (10th Cir. 2019). Instead, we “ask whether the sentence fell within the range of rationally available choices that facts and the law at issue can fairly support.” *Id.* (internal quotation marks omitted).

III. Discussion

Weber first argues that his sentence is substantively unreasonable because, despite morphing some of the images, he did nothing more than merely possess child pornography—he did not send the images to anyone else or post them on the internet.³ He also takes issue with what he terms the district court’s “single-minded and misguided focus on the nature of [his] offending behavior and its impact on the victims of his crime, the subjects of the morphed images.” Aplt. Opening Br. at 18. He claims that “[w]hat he did with the images did not make the victims any more victimized than if they had previously been the subject of morphed images that might be found on the internet,” *id.* at 20–21; and that “[n]obody ever saw what [he] had done, saw any of the morphed images, or was victimized by any of those images prior to them being discovered,” Aplt. Reply Br. at 9.

These arguments fail to persuade us that the district court abused its discretion.

First, Weber’s contention that the district court placed too much weight on the nature and circumstances of his offense is essentially a request that this court reweigh the § 3553(a) factors, which we may not do. *See Blair*, 933 F.3d at 1274.

³ Weber concedes that, for purposes of the two-level distribution enhancement, he technically distributed images of child pornography when he used the Faceswapper program to create the morphed images. But he claims that was not distribution “in any meaningful or impactful way.” Aplt. Opening Br. at 16. The district court appears to have agreed with that view because, despite overruling Weber’s objection to the enhancement, the court did not base its upward variance on distribution.

Second, his conduct is not akin to merely possessing child pornography. Instead, he obtained child pornography from the internet and, using the morphing technology, replaced heads or faces with the heads and faces of minors and adults who were his family, friends, and co-workers, creating morphed images virtually indistinguishable from real images. In doing that, *he* created a new sphere of victims, not someone else who might have created the morphed images and placed them on the internet where he could find and then possess them. And these new victims were people close to him. So, contrary to his argument, these victims were in a sense *more* victimized because he did the morphing rather than someone without the same relationship to them. In other words, as the district court said in its statement of reasons, Weber breached the trust of these victims. And it is of no consequence that these victims did not know they were victims until he was caught and they or their adult family members were notified.⁴ The fact is that he was caught and the victims were notified of his conduct.

Third, by creating the morphed images, Weber created a risk that the images could find their way onto the internet or in some other manner come into public view. At sentencing, a detective testified that he did not know who controls the Faceswapper service or how it operates, and thus could not determine whether other

⁴ The government pointed out at sentencing that the families of the 11 minor victims “had to be notified of Mr. Weber’s conduct,” and that regardless of whether the minor victims’ parents elected to tell their children what had happened, the National Center for Missing and Exploited Children notifies them when they turn 18 that they are “an identified victim.” R. vol. II at 176.

individuals had access to the images Weber created. *See* R. vol. II at 164–66. And as the government stated in its sentencing memorandum, because Weber “used this new technology, it is unknown how the files were stored or destroyed, and the victims must live with the constant fear that the manufactured images are available on the internet.” R. vol. I at 55. As noted above, the district court based its sentence in part upon this aspect of the victimization.

Weber advances a second line of argument based on two child-pornography cases, *United States v. Dorvee*, 616 F.3d 174 (2d Cir. 2010), and *United States v. Jenkins*, 854 F.3d 181 (2d Cir. 2017). In these cases, the Second Circuit concluded that long, but within-Guidelines, sentences—240 months in *Dorvee* for distribution of child pornography and 225 months in *Jenkins* for possession of child pornography—that were based on the same sentencing guideline applied in Weber’s case, USSG § 2G2.2, were substantively unreasonable. Weber argues that although *Dorvee* and *Jenkins* addressed sentencing issues involving § 2G2.2, which he does not raise here, both cases recognized that § 3553(a)’s parsimony clause—that a sentence must be “sufficient, but not greater than necessary” to achieve the goals of sentencing, § 3553(a)—ultimately controls federal sentencing. Weber posits that his sentence violates this clause because, similar to the defendants in *Dorvee* and *Jenkins*, he was sentenced for mere possession of child pornography “as if he were a repeat trafficker, a real distributor, [or] an actual physical/sexual abuser of children.” Aplt. Opening Br. at 23.

We reject this line of argument. The sentencing courts in *Dorvee* and *Jenkins* adhered to the § 2G2.2 guidelines sentencing ranges, but the Second Circuit concluded that their reasons for doing so did not justify treating the defendants the same as offenders who engaged in much worse conduct. *See Dorvee*, 616 F.3d at 183–84; *Jenkins*, 854 F.3d at 188–93. In reaching that conclusion, the Second Circuit in *Dorvee* reasoned that because the Sentencing “Commission did not use [its typical] empirical approach in formulating the Guidelines for child pornography,” 616 F.3d at 184, § 2G2.2 has serious flaws—certain enhancements almost always apply to first-time non-contact offenders and raise the Guidelines range near or in excess of statutory maximum sentences. *Id.* at 184–186. Therefore, the court explained, “adherence to the Guidelines results in virtually no distinction between the sentences for [first-time offenders] like *Dorvee*, and the sentences for the most dangerous offenders who, for example, distribute child pornography for pecuniary gain and who fall in higher criminal history categories.” *Id.* at 187. And that, the court said, “is fundamentally incompatible with § 3553(a)” because, “[b]y concentrating all offenders at or near the [20-year⁵] statutory maximum, § 2G2.2 eviscerates the fundamental statutory requirement in § 3553(a) that district courts consider ‘the nature and circumstances of the offense and the history and

⁵ The statutory maximum term of imprisonment for Weber’s six counts of conviction was 20 years per count. *See* 18 U.S.C. § 2252(A)(b)(1); *see also* R. vol. II at 24 (PSR identifying maximum terms of imprisonment).

characteristics of the defendant.” *Id.* The Second Circuit applied this same logic in *Jenkins*. See 854 F.3d at 188–93.

As we read the two cases, the bottom line in the Second Circuit’s approach is that § 3553(a) requires sentencing courts “to take seriously the broad discretion they possess in fashioning sentences under § 2G2.2” because it is “an eccentric Guideline of highly unusual provenance which, unless carefully applied, can easily generate unreasonable results.” *Dorvee*, 616 F.3d at 188; see also *Jenkins*, 854 F.3d at 192–93 (“District courts should generally reserve sentences at or near the statutory maximum for the worst offenders. Treating *Jenkins* as the worst of the worst has no grounding in the record we are reviewing and is inconsistent with the parsimony clause.”); *United States v. Lawrence*, 139 F.4th 115, 122 (2d Cir. 2025) (“*Dorvee* merely held that straightforward application of § 2G2.2 can lead to unreasonable sentences for the least culpable subset of eligible defendants—*i.e.*, first-time offenders who were not involved in production of child pornography and had no contact with children.” (internal quotation marks omitted)). In essence, the Second Circuit concluded that the sentencing courts in *Dorvee* and *Jenkins* had not carefully applied § 2G2.2, which resulted in substantively unreasonable sentences for possession (in *Jenkins*) and distribution (in *Dorvee*).

In contrast here, the district court gave serious consideration to, and adequately justified, its upward variance from the § 2G2.2 sentencing range, thus satisfying the parsimony clause and the § 3553(a) factors. *Dorvee* and *Jenkins* are further distinguishable because neither one involved conduct similar to Weber’s.

And Weber does not argue that because § 2G2.2 is inherently flawed, the district court erred in using the § 2G2.2 sentencing range as a baseline, perhaps because we have rejected empirically-based challenges to § 2G2.2, *see United States v. Franklin*, 785 F.3d 1365, 1370 (10th Cir. 2015).⁶

IV. Conclusion

The district court did not abuse its discretion. The court considered the applicable Guidelines sentence and provided a cogent, reasonable, significant, and valid justification for varying upward from the Guidelines range. *See*

⁶ In footnote two of his reply brief, Weber advances a new argument based on the district court's statement that, although Weber had not "physically touched" any of the victims and "may have had no desires to do so, . . . there are legitimate concerns that that's not too far afield from that which can happen." R. vol. II at 241. Weber argues that this statement amounts to impermissible speculation regarding future conduct and, consequently, an abuse of discretion under *United States v. Delgado-Lopez*, 974 F.3d 1188, 1193 (10th Cir. 2020) (explaining that sentencing findings "must be based on evidence before the court, and thus in the record, and not on speculation or hypothesis" (internal quotation marks omitted)). But "[w]e generally do not consider arguments raised for the first time in a reply brief." *Sierra Club v. Okla. Gas & Elec. Co.*, 816 F.3d 666, 676 n.9 (10th Cir. 2016). However, even if we considered this argument, we would reject it. Viewed against all of the other reasons the district court provided to justify the upward variance, this comment is much too attenuated to be taken as a sentencing finding based on impermissible speculation that Weber is likely to commit a contact offense in the future. Rather, we read it as a general observation that non-contact child-pornography conduct can lead to a contact offense.

Guevara-Lopez, 147 F.4th at 1184. We therefore conclude that Weber’s sentence is substantively reasonable, and we affirm his sentence.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge