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

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 ROBERT RUNDO,

18 Defendant.

No. CR 2:18-759 (A)-JLS-1

GOVERNMENT'S RESPONSE TO DEFENDANT
ROBERT RUNDO'S SENTENCING
MEMORANDUM

Hearing Date: December 13, 2024
 Hearing Time: 9:30 a.m.
 Location: Courtroom of the
 Hon. Josephine L.
 Staton

21 Plaintiff United States of America, by and through its counsel
 22 of record, the United States Attorney for the Central District of
 23 California and Assistant United States Attorneys Kathrynne N. Seiden
 24 and Anna P. Boylan, hereby files its response to defendant Robert
 25 Rundo's Sentencing Memorandum.

26 This Response is based upon the attached memorandum of points
 27 //

1 and authorities, the exhibit attached hereto, the files and records
2 in this case, and such further evidence and argument as the Court may
3 permit.

4 Dated: December 10, 2024

Respectfully submitted,

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6 DAVID T. RYAN
7 Assistant United States Attorney
8 Chief, National Security Division

9 /s/

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As set forth in the government's sentencing position, based on defendant's criminal conduct and personal history, a 24-month sentence is necessary but not greater than necessary to accomplish the purposes set forth in 18 U.S.C. § 3553(a). Relying on mischaracterizations of the factual and procedural records in this and other cases, defendant raises various unpersuasive arguments for why he should be afforded a downward variance. He should not.

First, defendant points to certain individuals who were either not charged or received lesser sentences, but those individuals are readily distinguishable from defendant, a previously convicted violent felon who led a criminal conspiracy for which several co-conspirators have now been convicted and sentenced to between 27 and 37 months imprisonment. Defendant is not entitled to a lower sentence based on those imposed for defendants with dissimilar records convicted for dissimilar conduct.

Second, defendant argues that the duration of these proceedings and the time he spent in custody abroad warrant a downward variance. But defendant was detained in Serbia for unrelated violations of Serbian law, and he was detained in Romania because he chose to hide there under a false identity, bragging about evading the charges he now complains have taken years to resolve.

Finally, defendant argues that his re-arrest earlier this year somehow entitles him to a downward variance. The government already addressed before the Ninth Circuit the arguments defendant raises in his sentencing position, and the Ninth Circuit responded by ordering defendant re-arrested, finding the district court's release order was

1 clear error, and ordering defendant detained pending appeal.
2 Defendant's disagreement with the Ninth Circuit's ruling that his
3 arrest and detention pending appeal was proper simply has no bearing
4 on the appropriate sentence in this case.

5 Consistent with the plea agreement, the government respectfully
6 requests that the Court sentence defendant to a low-end Guidelines
7 sentence of 24 months' imprisonment, two years' supervised release,
8 and a \$100 special assessment.

9 **II. THE RECOMMENDED SENTENCE WOULD NOT CREATE UNWARRANTED SENTENCING**
10 **DISPARITIES AMONG SIMILAR DEFENDANTS**

11 Under 18 U.S.C. § 3553(a)(6), the Court should consider the need
12 to avoid unwarranted sentence disparities among defendants with
13 similar records who have been found guilty of similar conduct.
14 Ignoring the sentences imposed for his own co-conspirators, which
15 were in line with or higher than the government's proposed sentence
16 here, defendant argues that his sentence should be measured instead
17 against the outcome of "similar cases" against three individuals --
18 J.M.A., J.F., and J.A. -- who were arrested at Huntington Beach.
19 (Def't Position at 12.) But in rejecting defendant's selective
20 prosecution argument, the Ninth Circuit already explained why these
21 three individuals were not comparable to defendant. United States v.
22 Rundo, 108 F.4th 792, 800-04 (9th Cir. 2024). First, there is no
23 indication that any of these individuals have violent records similar
24 to defendant's. Second, as defendant acknowledges, none of them were
25 federally charged -- let alone found guilty -- for any conduct, let
26 alone conduct similar to defendant's. And third, none of them
27 engaged in similar conduct to that of defendant. To the contrary,
28 the Ninth Circuit held that "J.A., J.M.A., and J.F. are not similarly

1 situated to defendants when the nature of their conduct is compared”
2 because unlike defendant, none of the three individuals attended
3 numerous rallies, “gloated” about their attacks on the internet, or
4 “behaved like leaders of an organized crime group.” Id. at 801.

5 Defendant similarly cites to a probationary sentence against a
6 professor charged by the state for his conduct at the Berkeley rally,
7 (Def’t Position at 12-13), but that comparison, too, is unhelpful to
8 a § 3553(a)(6) analysis; the professor was not someone with a similar
9 record found guilty of similar conduct, but rather, someone with no
10 apparent criminal record who was found guilty of a single misdemeanor
11 battery charge.¹

12 Defendant also cites to four² Anti-Riot Act cases where
13 defendants were sentenced between 0 and 12 months’ imprisonment,
14 (Def’t Position at 13-14), but those cases do not help him either, as
15 each of those defendants engaged in conduct or had criminal histories
16 easily distinguishable from defendant’s.³ Moreover, defendant’s
17

18 ¹ See Emilie Raguso, Eric Clanton Takes 3-Year Probation Deal in
19 Berkeley Rally Bike Lock Assault Case, BERKELEYSIDE (Aug. 8, 2018, 2:14
PM), <https://www.berkeleyside.org/2018/08/08/eric-clanton-takes-3-year-probation-deal-in-berkeley-rally-bike-lock-assault-case>.

20 ² Defendant claims to cite to five cases in which defendants
21 convicted for rioting were sentenced between 0 and 12 months’
22 imprisonment, but one of the cases he cites to involved a defendant
23 who was sentenced to 24 months’ imprisonment, which is the same
24 sentence the government seeks here. See United States v. Tindal, No.
25 6:21-cr-06038-CJS, Dkt. 68 (W.D.N.Y. Oct. 6, 2023) (sentencing
defendant with serious mental health issues who initially cooperated
with the government to 24 months’ imprisonment, to be served
consecutively with a parallel 60-month sentence for failing to appear
in the same case).

26 ³ See, e.g., United States v. Ruffin, No. 2:17-cr-00129-LA-1,
27 Dkt. 68 (E.D. Wis. Sept. 30, 2022) (sentencing defendant to probation
for igniting a piece of paper and placing it near the rear door of a
liquor store while heavily intoxicated); United States v. Hardy, No.
28 6:20-cr-06172-CJS-1, Dkt. 35 (W.D.N.Y. Mar. 22, 2021) (sentencing
defendant with a history of sexual abuse, learning disabilities, and
(footnote cont’d on next page)

1 cherry-picking of particular sentences arising from the 2020 protests
2 obfuscates the fact that the government's recommended sentence here
3 is roughly in line with, and in some cases even lower than, other
4 sentences imposed in cases arising from that series of protests. See
5 e.g. Tindal, No. 6:21-cr-06038-CJS-1; United States v. McFadden, No.
6 6:22-cr-06053-CJS-1, Dkt. 105 (W.D.N.Y.) (sentencing defendant
7 convicted for civil disturbance at the same protest as Mr. Tindal to
8 30 months' imprisonment); United States v. Santiago, No. 6:23-cr-
9 06178-FPG-1, Dkt. 73 (W.D.N.Y. Oct. 31, 2024) (sentencing defendant
10 convicted for civil disorder and assaulting a federal officer at two
11 different protests to 33 months' imprisonment).

12 Finally, for several reasons, defendant's generalized assertion
13 that "about 44 percent of all defendants charged with assault in
14 connection with the January 6 attacks on the U.S. Capitol have
15 received a sentence of 24 months or less" is unpersuasive. (Def't
16 Position at 14; see also id. Ex. P.) First, 24 months' imprisonment
17 is the precise sentence the government is asking for here. Second,
18 defendant's statistics mean that significantly more than half of all
19 defendants sentenced in connection with the January 6 attacks have
20 received sentences higher (and in many cases, significantly higher)

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25 no criminal history to 12 months' imprisonment for participating in a
26 single riot); United States v. Drechsler, No. 6:21-cr-06064-DGL-1,
27 Dkt. 39 (W.D.N.Y. Aug. 16, 2021) (sentencing defendant with mental
28 health disorders, a severe history of sexual abuse, and no criminal
history to 12 months' imprisonment for participating in a single riot
after she turned herself in); United States v. Sanks, No. 6:21-cr-
06065-DGL-1, Dkt. 36 (W.D.N.Y. Aug. 26, 2021) (sentencing defendant
with substance abuse and mental health issues who did not belong to
any organized group to five months' imprisonment for participating in
a single riot).

1 than the one the government seeks here.⁴ Third, the government seeks
2 a sentence that accounts not just for the violence defendant
3 inflicted at a single incident, but also for his violent criminal
4 history, his violent conduct at numerous riots, and his recruitment
5 and training of others to engage in similar violence. Defendant's
6 general statistics about the January 6 rioters as a group say nothing
7 about whether any individuals with similar criminal histories who
8 were convicted for similar conduct received sentences that were more
9 lenient than the one the government seeks here for someone who
10 "behaved like [the] leader[] of an organized crime group" over a
11 prolonged period. See Rundo, 108 F.4th at 801-02 (acknowledging that
12 "repetitive and organized nature of conduct" can "set a defendant and
13 a purported comparator apart"). Indeed, the Ninth Circuit rebuffed
14 as improper defendant's prior attempts to draw similar group-to-
15 individual comparisons. See id. at 799-800 (finding it is
16 "impossible" to analyze whether someone was similarly situated "when
17 comparing collective conduct to individual conduct").

18 In sum, defendant has not pointed to any defendant with a
19 similar record found guilty of similar conduct who was sentenced to
20 less than 24 months' imprisonment. Defendant simultaneously ignores
21 the sentences that are most useful for comparison: those imposed for
22

23 ⁴ See, eg., United States v. Nordean et al., No. 1:21-cr-00175-
24 TJK-5, Dkt. 908 (D.D.C. Sept. 15, 2023), appeal pending (former
25 national chairman of the Proud Boys sentenced to 22 years for role in
26 January 6, including establishing a chain of command, intentionally
27 recruiting others to engage in physical violence if necessary, and
28 monitoring the attack from afar while bragging and posting
encouraging messages on social media); United States v. Rhodes, III,
et al., No. 1:22-cr-00015-APM-1, Dkt. 624 (D.D.C. Jun. 5, 2023),
appeal pending (sentencing leader of Oath Keepers to 18 years for
role in January 6, including recruiting members and affiliates,
organizing trainings to teach combat tactics, bringing equipment to
the Capitol, and using force while there).

1 his co-conspirators, which ranged between 27 and 37 months'
2 imprisonment, and in particular, his RAM co-founder, Daley, who
3 received a sentence of 37 months' imprisonment. Anything lower than
4 the 24-month sentence the government seeks would create an
5 unwarranted sentencing disparity between defendant and the followers
6 he led.

7 **III. THE GOVERNMENT DID NOT VIOLATE DEFENDANT'S CONSTITUTIONAL RIGHTS**

8 Throughout his sentencing position, defendant mischaracterizes
9 the factual record and procedural history of this case to suggest
10 that it somehow entitles him to a downward variance. It does not.

11 First, defendant claims that in 2019, his case was "dismissed
12 for First Amendment violations." (Def't Position at 14.) The
13 government did not violate defendant's First Amendment rights;
14 rather, the district court held that the Anti-Riot Act was facially
15 overbroad, a ruling that was reversed by the Ninth Circuit, which
16 upheld the statute, severing certain portions not at issue here and
17 reinstating the case. United States v. Rundo, 990 F.3d 709, 721 (9th
18 Cir. 2021).

19 Second, defendant complains that in the years between the first
20 dismissal of his case and the reversal of that order, he was
21 "detained numerous times, even while no charges were pending against
22 him." (Def't Position at 14.) Initially, defendant does not
23 establish that he was detained "numerous times," as his position
24 refers to a single instance in which he says he was detained in
25 Serbia for overstaying his Visa. Furthermore, that detention had
26 nothing to do with the current charges or the U.S. government, and
27 defendant is not entitled to a windfall for getting caught violating
28 the laws of another country.

1 Third, defendant references the district court's "finding that
2 the government . . . violated due process in selectively prosecuting
3 [him] and his co-defendants," without acknowledging that the Ninth
4 Circuit unequivocally rejected that finding and forcefully held in a
5 published opinion that the government did not selectively prosecute
6 him. See Rundo, 108 F.4th at 801 (reversing and remanding the
7 district court's order and calling its reasoning "flawed," its
8 factual statements "incorrect," and its attempt to find impermissible
9 government motive "strained").

10 Fourth, defendant claims he has been "punished in unique ways"
11 because he was released "on bond, only to be arrested the next day
12 under highly unorthodox means that were condemned by two separate
13 judges within this district." (Def't Position at 15.) Defendant was
14 not released on bond; he was released forthwith on no bond when the
15 district court dismissed the case for selective prosecution and
16 declined to grant a stay of his release. (Dkt. 338.) Prior to his
17 actual release that evening, the government sought an emergency order
18 to stay defendant's release, which the Ninth Circuit granted early
19 the following morning. The government then sought and obtained an
20 arrest warrant from a magistrate judge after informing the magistrate
21 judge of the procedural posture. While the government will not
22 recount in full the intricacies of the ensuing hearings,⁵ the Ninth
23 Circuit reviewed the entirety of that history (including the same
24 complaints defendant raises here) and ruled uniformly in the
25 government's favor, staying the dismissal and release order, issuing

27 ⁵ The full extent of the procedural history is laid out in
28 pages 25-31 of the government's attached reply in support of its
motion to continue defendant's detention pending appeal and
paragraphs 1-22 of the Declaration of Bram M. Alden attached thereto.

1 two clarifying orders directing that defendant remain in custody
2 after his re-arrest and pending a bail determination hearing under
3 the Bail Reform Act, and automatically staying any resulting release
4 order for 96 hours. United States v. Rundo et al., No. 24-932, Dkts.
5 13 (9th Cir. Feb. 23, 2024) and 33 (9th Cir. Mar. 13, 2024). There
6 were no formal allegations, let alone findings, of any government
7 misconduct, and defendant is not entitled to a lower sentence because
8 he was released for approximately 24 hours before being re-arrested.

9 Moreover, after defendant was re-arrested, the district court
10 held a hearing under the Bail Reform Act and again ordered defendant
11 released, which the Ninth Circuit again reversed. United States v.
12 Rundo et al., No. 24-2814, Dkt. 19 (9th Cir. July 16, 2024) (holding
13 district court clearly erred in finding defendant did not pose a
14 danger to the safety of others and was not likely to flee if
15 released). In other words, defendant had multiple opportunities to
16 be heard on his request for pretrial release and remained detained
17 not because of any procedural irregularity, but because the Ninth
18 Circuit reviewed thorough briefing and evidence and found that he was
19 a danger and a flight risk under the appropriate legal framework.

20 **IV. THE LENGTH OF THE PROCEEDINGS DOES NOT WARRANT A DOWNWARD**
21 **VARIANCE**

22 Finally, defendant suggests he is entitled to a downward
23 variance because "the offense conduct occurred more than seven years
24 ago and has hung over [defendant] like a dark cloud ever since."
25 (Def't Position at 14.) Certainly, there are cases in which dated
26 conduct and a record of good behavior in the intervening period would
27 lessen the need for deterrence, and thus mitigate in favor of a more
28 lenient sentence. This is not one of those cases. Defendant was

1 charged in 2018 and waited until 2024 to plead guilty. While he was
2 entitled to litigate the constitutionality of his charges, he did so
3 in multiple phases, making one set of arguments in 2019 and waiting
4 until 2023 to raise an entirely new challenge that was ripe at the
5 time of his initial motions. Most critically, in the intervening
6 period, defendant, aware that his case was still on appeal and could
7 be reinstated, fled to Europe. After learning that his case had been
8 reinstated, he did not surrender, but rather went into hiding,
9 publicly gloating about evading law enforcement. He did not take
10 that time to start a new, law-abiding life, but rather continued to
11 live under false identification documents and a fake passport,
12 overstay his visas in the countries in which he hid, brag about the
13 violence for which he was charged in this case, seek and profit from
14 the publicity he gained, and publicly advocate for the same violent
15 extremist ideology that motivated his crimes in this case. Defendant
16 is entitled to speak publicly about his ideology, but he cannot
17 credibly claim that he has been victimized by the publicity he sought
18 out or by the duration of the proceedings he prolonged.

19 **V. CONCLUSION**

20 None of defendant's rationales for why he should be afforded a
21 downward variance carry weight. In accordance with the plea
22 agreement, the government respectfully requests that the Court
23 sentence defendant to 24 months' imprisonment, two years' supervised
24 release, and a \$100 special assessment.

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