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 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 CHANCE BRANNON,
 TIBET ERGUL, and
 16 XAVIER BATTEN,

17 Defendants.

No. CR 8:23-00100-CJC-1

GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT CHANCE BRANNON

Hearing Date: April 15, 2024

Hearing Time: 9:00 a.m.

Location: Courtroom of the
 Hon. Cormac Carney

18
 19 Plaintiff United States of America, by and through its counsel
 20 of record, the United States Attorney for the Central District of
 21 California and Assistant United States Attorney Kathrynne N. Seiden,
 22 hereby files its Sentencing Position for Defendant Chance Brannon.

23 This Sentencing Position is based upon the attached memorandum
 24 of points and authorities, the files and records in this case, the
 25 Declaration of Jennifer Hirsch submitted concurrently herewith, and
 26 such further evidence and argument as the Court may permit. The
 27 government respectfully reserves the right to supplement this
 28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In March 2022, while enrolled as an active-duty U.S. Marine, defendant Chance Brannon ("defendant") firebombed a healthcare clinic in furtherance of his political views, deliberately hoping to scare civilians, clinic employees, and physicians. But for law enforcement's intervention, that incident would have been the first in a line of domestic terrorism incidents intended to "send a message" to groups defendant hated. Defendant's hatred knew no bounds, extending to women, racial and religious minorities, and the LGBTQ+ communities. Thus, in the months leading up to his arrest in this case, defendant took steps towards planning additional attacks on a second healthcare clinic, Jewish residences, the Orange County power grid, and Dodgers Stadium on a night celebrating LGBTQ+ pride. Defendant was arrested in June 2023, just days after discussing his imminent plans to commit some of those attacks.

In November 2023, defendant pled guilty to all counts of an indictment charging him with conspiracy, malicious destruction of property by fire and explosives, possession of an unregistered destructive device, and intentional damage to a health services facility, in violation of 18 U.S.C. §§ 844(n), 844(i), 248(a)(3), and 26 U.S.C. § 5861(d), all arising from the March 2022 firebombing. (Dkts. 26, 55, 62.) In March 2023, the United States Probation and Pretrial Services Office ("Probation") issued its Presentence Investigation Report ("PSR") and Recommendation Letter, in which it correctly calculated defendant's offense level as 21 and his criminal history category as I. (Dkt. 89 (PSR) ¶ 156.) Probation further determined that although defendant's guidelines range would

1 ordinarily be 37 to 46 months, given the mandatory statutory minimum
2 sentence of 60 months' imprisonment, defendant's guidelines term is
3 60 months. (Id.) However, Probation noted that upward departures
4 were warranted to account for charges not pursued as part of a plea
5 agreement and to account for circumstances not adequately taken into
6 account in determining the applicable guidelines range, for an
7 adjusted offense level of 28 and a guidelines range of 78 to 97
8 months' imprisonment. (PSR ¶¶ 171-175; Dkt. 88 ("Recommendation") at
9 9.) Probation recommended that defendant be sentenced to a high-end
10 sentence of 97 months' imprisonment, a three-year term of supervised
11 release, \$1,000 in restitution, and a \$400 special assessment.
12 (Recommendation at 1, 2.) The government agrees with Probation's
13 calculations and recommendation and requests that defendant be
14 sentenced accordingly, with the exception of the mandatory special
15 assessment. Anything less than a high-end sentence would not
16 adequately reflect the scope of defendant's conduct and would fall
17 critically short of protecting the public.

18 **II. STATEMENT OF FACTS**

19 **A. Defendant Attacks a Planned Parenthood to Scare Women and** 20 **Intimidate Medical Professionals**

21 Beginning around February 2022, defendant, then an active-duty
22 Marine, conspired with his codefendants, Tibet Ergul ("Ergul") and
23 Xavier Batten ("Batten"), to attack a commercial property. (Dkt. 55
24 (Plea Agreement) ¶ 18.) After considering other targets, defendant
25 chose to target a Planned Parenthood. (Id.) As he admitted in his
26 Plea Agreement and at his change of plea hearing, defendant hoped not
27 only to make a statement against abortion, but also to scare pregnant
28 women away from obtaining abortions, deter doctors, staff, and

1 employees of the clinic from providing abortions, intimidate the
2 clinic's patients, and encourage others to engage in similar acts of
3 protest. (Id.)

4 On March 12, 2022, in Ergul's garage in Orange County,
5 defendant and Ergul put together a Molotov cocktail, consulting with
6 Batten via text message for instructions on how to do so. (Id.)
7 Around 1:00 a.m. on March 13, 2022, disguised in dark clothing,
8 hoods, masks, and gloves, defendant drove himself and Ergul to the
9 vicinity of a Planned Parenthood in Orange County. (Id.) Defendant
10 and Ergul approached the entrance of the clinic, ignited the Molotov
11 cocktail, and threw it at the clinic entrance, intentionally starting
12 a fire. (Id.) Defendant and Ergul then fled. (Id.) Within
13 minutes, defendant texted Batten to tell him their plan had been
14 successful. (Id.) Specifically, defendant and Batten exchanged the
15 following messages:

16 DEFENDANT: It's done.
17 BATTEN: 88.¹ Did you see how long it lasted?
18 DEFENDANT: Not really but it was fucking good
19 BATTEN: Just making sure it all went well.
20 DEFENDANT: Congratulations on your success brother
21 Thank you. Please pray for our shelter from the
22 investigative eyes
23 BATTEN: I will.

24 (PSR ¶ 30.)

25 Around 3:00 a.m., defendant and Ergul returned to the Planned
26 Parenthood to surveil their work. (Id. ¶ 31.) Defendant then
27 dropped Ergul off at home and returned to his parents' home. (Id.)
28 Defendant, Ergul, and Batten successfully damaged the clinic, which

29 ¹ "88" is a coded term for "Heil Hitler," often used by white
30 supremacists and neo-nazis, based on H being the eighth letter of the
31 alphabet. As described below, defendant and his acquaintances often
32 greeted each other using "88." (Hirsch Decl. ¶ 2.)

1 was forced to close temporarily and to reschedule approximately 30
2 patients' appointments. (Plea Agreement ¶ 18.)

3 **B. Defendant Plans to Attack a Second Planned Parenthood and**
4 **Repeatedly Condones Rape and Violence Towards Women**

5 In May 2022, two months after he and Ergul firebombed Planned
6 Parenthood, defendant texted with another friend to celebrate the
7 Supreme Court's leaked opinion overturning Roe v. Wade. (PSR ¶ 34.)
8 Defendant told the friend: "This is a glorious victory. But now more
9 than ever we must pray and act because women who were indecisive
10 before may decide to get one before the Court rules / Hail Christ
11 88." (Id.) Defendant's words were more than just empty threats; the
12 next month, after the Supreme Court released its decision, defendant
13 and Ergul planned to use a second Molotov cocktail, which they kept
14 in Ergul's garage, to damage or destroy a second Planned Parenthood
15 clinic. (Plea Agreement ¶ 18.) Ultimately, defendant and Ergul
16 abandoned their plan because they saw law enforcement near the clinic
17 they planned to target. (Id.)

18 Although he did not attack a second clinic, neither defendant's
19 desire to address his political grievances through violence nor his
20 animosity towards women subsided. As just a few examples, in
21 November 2022, in discussing an online post expressing support for
22 women's reproductive rights, defendant wrote to Batten: "Cultivate
23 rape of this individual . . . This person should be raped to death by
24 donkeys / Reddit faggo bugman talk." (PSR ¶ 52.) In March 2023,
25 defendant texted another friend: "There are so many annoying rape
26 victim bitches that I have a hard time having sympathy for them /
27 Because the way they act makes me think, 'you should be raped
28 again.'" (Id. ¶ 53.) Defendant later added: "The Idaho killer is

1 already getting female fanmail which isn't surprising at all / Women
2 are fucking disgusting." (Id.)

3 Defendant's violent overtures regarding women continued until
4 just before his arrest. In May 2023, a month before his arrest,
5 defendant told a friend: "I seriously considered raping a woman
6 today." (Id. ¶ 42.) Defendant continued: "This bitch gave me lip
7 in the parking lot and I had a flash of just pushing her over and
8 raping her." (Id.) Defendant then asked the friend if he was going
9 to "stalk" a female soldier stationed nearby. (Hirsch Decl. ¶ 6 & Ex
10 D at 223.) When the friend wrote that he was going to "rape her to
11 death," defendant responded: "Please do." (Id. at 231-32.) Days
12 later, the same friend asked defendant how he would "stop a bitch
13 from stealing all [his] shit" without a prenuptial agreement. (PSR
14 ¶ 53.) Defendant wrote: "By killing her." (Id.)

15 When interviewed, defendant's fellow Marines confirmed that
16 defendant would frequently make sexist and misogynistic jokes in the
17 workplace. (Id. ¶ 146.) One Marine recalled defendant making
18 comments about killing women who had abortions, observing that
19 defendant did not laugh when making those comments. (Id.)

20 **C. Defendant Advises His Codefendant on How to Get Away With**
21 **Attacking a Clinic and Other Illegal Conduct**

22 In May 2022, approximately two months after congratulating
23 defendant on having successfully firebombed a clinic, Batten
24 consulted defendant via text message about how he could "get away
25 with" destroying another reproductive health services clinic. (Plea
26 Agreement ¶ 18.) Defendant obliged, advising Batten to use various
27 protective measures to avoid detection, including putting his phone
28 in airplane mode, planning "quick escape routes," avoiding being

1 identified on camera, and obscuring his face and skin color. (Id.)
2 Defendant told Batten: "If you're gone immediately there's basically
3 zero chance of capture. The local pd will be searching for a tall
4 man who's not even around anymore." (PSR ¶ 33.) Defendant then
5 instructed Batten: "Delete these messages after you write them down
6 or memorize them." (Id.)

7 In September 2022, the FBI visited Batten because he was posting
8 guides on creating destructive devices on a gaming platform. (Id.
9 ¶ 36.) After the FBI interviewed Batten, defendant texted him: "HEY
10 DUMBASS STOP TALKING TO THE FEDS." (Id.) Later, Batten told
11 defendant about the warnings FBI had given him about continuing to
12 disseminate the guides. (Id.) Defendant responded: "That's actual
13 horseshit you cannot be indicted on conspiracy unless it was someone
14 you knew / Like me." (Id.) Defendant then advised Batten that any
15 admissions would make it difficult to later disavow responsibility,
16 including by claiming that he had been hacked. (Id.) Defendant
17 advised Batten: "that's reasonable doubt, and reasonable doubt is an
18 acquittal." (Id.)

19 **D. Defendant Plans Additional Hate Crimes in Furtherance of**
20 **His Extremist Ideologies**

21 1. Defendant Plans Attacks on the Jewish Community in
22 Furtherance of His Neo-Nazi Ideology

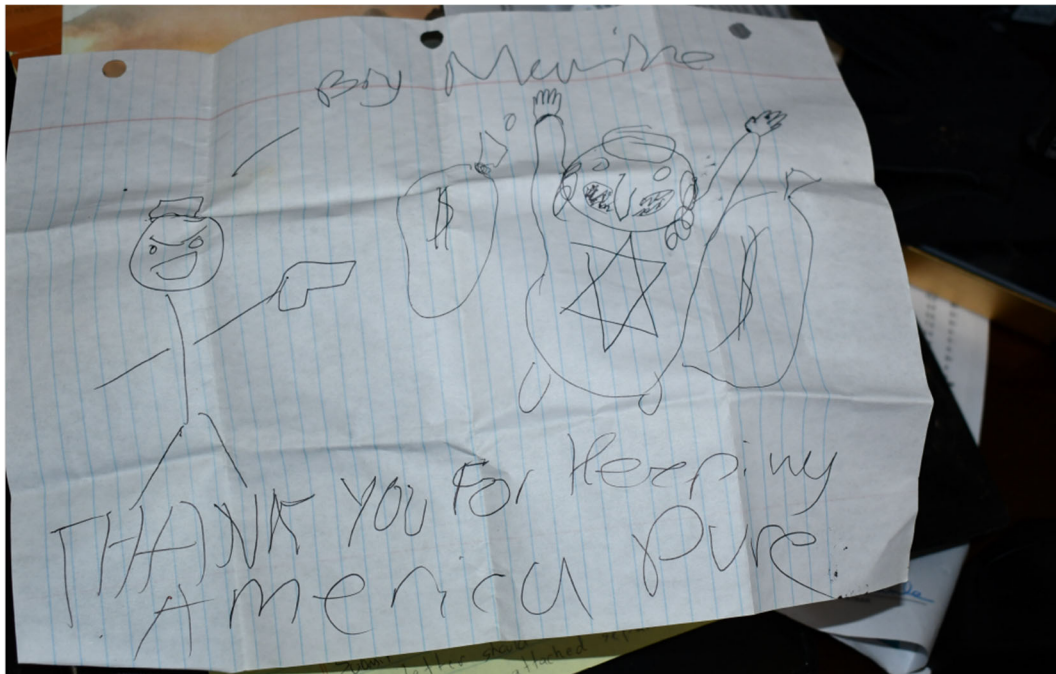
23 Defendant's vitriol was not reserved for women; rather, his
24 communications reflect that defendant also subscribed to a neo-Nazi
25 ideology. For example, Defendant frequently greeted his friends and
26 online associates with "88," coded language for "Heil Hitler." (PSR
27 ¶¶ 30, 34; Hirsch Decl. ¶ 2.) At one point, defendant sent one
28 friend a video in which a man counts on his fingers while dubbed
audio states: "Massacre jews, destroy freemasons, burn protestants,

1 rape their women.” (PSR ¶ 54.) Approximately six months before his
2 arrest, defendant messaged the same friend that the “gay nigger
3 feminization of America at the hands of the jews is almost complete.”
4 (Id.) Approximately three months before his arrest, defendant texted
5 another friend: “You don’t have to like every single decision Hitler
6 made to see he was a great man who loved his people and tried to save
7 us all from the jews.” (Hirsch Decl. ¶ 6 & Ex. D at 66.) And
8 approximately two months before his arrest, defendant texted another
9 friend that “benching while listening to [National Socialist Black
10 Metal] makes me want to get like a swastika tattoo.” (PSR ¶ 54.)

11 Photographs recovered from defendant’s and his associates’
12 devices provide additional insight into defendant’s antisemitic
13 views. For example, a photograph on Ergul’s phone shows defendant
14 smiling with a Nazi swastika armband superimposed on his arm. (PSR
15 ¶ 25 n. 2.) Another photograph recovered from Ergul’s phone shows
16 defendant, Ergul, and another associate standing in the “Heil Hitler”
17 stance while a second associate kneels with a large rifle. (PSR ¶ 25
18 n. 2; Hirsch Decl. ¶ 3 & Ex. A.)



1 Materials found in defendant's home further reflect defendant's
2 neo-nazi ideology. Specifically, in his bedroom, defendant kept
3 books espousing Jewish conspiracy theories and letters from his
4 codefendant containing violent and antisemitic writings and drawings,
5 including, for example, a drawing depicting a "Boy Marine" shooting
6 an antisemitic portrayal of a Jewish person with the caption: "THANK
7 YOU FOR KEEPING AMERICA PURE." (Hirsch Decl. ¶ 4 & Ex. B.)



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19 Defendant did not save his antisemitic views for his private
20 consumption or closest confidantes. Rather, defendant's fellow
21 Marines noted that he would say things like: "All jews deserve to
22 die;" "Jews control show business;" "Hitler didn't finish the job;"
23 and Jews "manipulate the black community." (PSR ¶ 146.)

24 Critically, defendant's antisemitism directly motivated his
25 criminal proclivities. For example, before attacking the Planned
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1 Parenthood, defendant considered attacking the San Diego office of
2 the Anti-Defamation League.² (Plea Agreement ¶ 18.)

3 As another more recent example, just days before his arrest in
4 this case, defendant texted with a friend about robbing a bank to
5 “steal[] from the jews.” (PSR ¶ 44.) Defendant opined that “a
6 better way to rob jews would be [] home invasions in the hollywood
7 hills,” where “every other house would be a child sex dungeon.”
8 (Id.) But what began as a seemingly theoretical discussion evolved
9 into actual planning, as defendant named specific potential targets
10 and discussed wanting to “post up outside the target house and
11 surveil for like 2 weeks then plan it out, rehearse, and hit.” (Id.)
12 Defendant then confirmed that he had friends, including Ergul, who
13 would “be down,” and offered that he could “find at least one other
14 person . . . to wait outside with a radio on lookout.” (Id.)
15 Defendant then instructed his friend to “research potential targets”
16 and to “take leave to California” so they could carry out the attack.
17 (Id.) Fortunately, defendant was arrested three days later. (Id.)

18 2. Defendant Plans an Attack on the Power Grid to Start a
19 Race War

20 Defendant’s violent extremism was also fueled by intense racism,
21 which he expressed freely to his codefendants. For example, in a
22 conversation with Batten in February 2022, defendant questioned
23 whether it would be okay in the eyes of the Church to “kill niggas
24 who are malicious.” (PSR ¶ 51.) January 2023, defendant texted
25 Batten: “How far are you from hollywood florida . . . I need you to

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27 ² The Anti-Defamation League is a non-governmental organization
28 and advocacy group founded with the mission to “stop the defamation
of the Jewish people, and to secure justice and fair treatment to
all.” (See [adl.org/about/mission-and-history](https://www.adl.org/about/mission-and-history) (last accessed April 1,
2024).)

1 drive there and lynch a nigger and his two children named [W.M]."
2 (Hirsch Decl. ¶ 5 & Ex. C at 133-34.) Two months later, defendant
3 asked Batten if it was "a sin to steal what has already been stolen /
4 i.e. to steal from criminals" and then stated: "Steal from niggers
5 and then kill them." (Id. at 147-48.)

6 Defendant espoused his racist views to other acquaintances, as
7 well. For example, in March 2023, defendant wrote to another friend:
8 "Just watched the body of lies scene where they throw the nigger out
9 of the airplane and laughed my ass off." (Hirsch Decl. ¶ 6 & Ex. D
10 at 1-2.) In another conversation with that same person, defendant
11 wrote: "The western US was always mostly Mexican ethnically which is
12 why it needs to be cleansed of them." (Id. at 142.) When the friend
13 told defendant he saw "0 niggers and Mexicans" at his church,
14 defendant wrote: "God is in control. 1488." (Id. at 150.)

15 Defendant's racism extended beyond his text messages with
16 friends. Defendant's fellow Marines noted that he made hateful
17 comments towards all non-white individuals, including Jewish,
18 Hispanic, African American, and Muslim acquaintances, including, for
19 example, openly using a racial slur to refer to one fellow Marine's
20 spouse. (PSR ¶ 46.) And just a few months before his arrest, in the
21 Notes application of his phone, defendant wrote himself a note that
22 read:

23 Kill niggers. Behead niggers. Roundhouse kick a nigger into
24 the concrete. Slam dunk a nigger baby into the trashcan.
25 Crucify filthy blacks. Defecate in a niggers food. Launch
26 niggers into the sun. Stir fry niggers in a wok. Toss niggers
27 into active volcanoes. Urinate into a niggers gas tank. Judo
28 throw niggers into a wood chipper. Twist niggers heads off.
Report niggers to the IRS. Karate chop niggers in half. Curb
stomp pregnant black niggers. Trap niggers in quicksand. Crush
niggers in the trash compactor. Liquefy niggers in a vat of
acid. Eat niggers. Dissect niggers. Exterminate niggers in the

1 gas chamber. Stomp nigger skulls with steel toed boots.
2 Cremate niggers in the oven. Lobotomize niggers. Mandatory
3 abortions for niggers. Grind nigger fetuses in the garbage
4 disposal. Drown niggers in fried chicken grease. Vaporize
niggers with a ray gun. Kick old niggers down the stairs. Fed
niggers to alligators. Slice niggers with a katana.

(PSR ¶55.)

5 Defendant sought to channel his white supremacist ideology into
6 criminal conduct. Beginning sometime in 2022 and continuing through
7 approximately the time of their arrest, defendant and Ergul discussed
8 starting a race war by attacking an electrical substation with the
9 goal of damaging the substation and disrupting the functioning of the
10 power grid in Orange County. (Plea Agreement ¶ 18.) As he later
11 explained to a friend during a conversation about how to effectively
12 commit "domestic terrorism," defendant noted: "we need to create food
13 insecurity." (PSR ¶ 38.) On a thumb drive disguised as a military-
14 style dog tag necklace bearing "Semper Fidelis," the motto for the
15 U.S. Marines, defendant kept a .txt file titled: "Delete after
16 reading." (Plea Agreement ¶ 18.) The file contained an operation
17 plan and gear list for targeting a Southern California Edison
18 substation. Defendant possessed several of the items on the gear
19 list, including but not limited to a Zastava ZPap M70 rifle with a
20 handwritten Cyrillic message on the folding stock which roughly
21 translates to "Total Nigger Death." (Id.) The thumb drive also
22 contained recordings of the 2019 Christchurch Mosque shooting, a mass
23 shooting in which a white supremacist, using firearms bearing white
24 supremacist writings similar to that on defendant's firearm, murdered
25 51 people and injured 40 others. (Id.)
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1 3. Defendant Plans an Attack on Dodger Stadium on a Night
2 Celebrating LGBTQ+ Pride

3 Defendant's communications with others reflect a pattern of
4 using homophobic slurs. As just one example, in messages with a
5 friend, defendant wrote: "The jews have to fag up everything
6 including the last white sport / It's not enough to tolerate faggotry
7 you must endorse it." (Hirsch Decl. ¶ 6 & Ex. D at 95.) As another,
8 defendant texted another friend months before his arrest, complaining
9 that the "gay nigger feminization of America at the hands of the jews
10 is almost complete." (PSR ¶ 54.) In furtherance of his intolerance,
11 in early summer 2023, defendant and Ergul discussed and researched
12 how to attack the parking lot or electrical room of Dodger Stadium on
13 a night celebrating LGBTQ+ pride, including by using a remote-
14 detonated device. (Plea Agreement ¶ 18.) As part of their
15 conversations about the attack, defendant shared with Ergul a "WW2
16 sabotage manual" and discussed doing "dry runs" to "case" the
17 stadium. (Id.) Defendant also conducted research on Unabomber Ted
18 Kaczynski, an infamous domestic terrorist who killed multiple
19 Americans and injured many more during his campaign of terror. (Id.)
20 As defendant explained to Ergul in discussing their plans, defendant
21 wanted to "send a message" and noted "God will not be mocked." (PSR
22 ¶ 46.) Defendant reassured Ergul: "Our desire to fight is a gift as
23 long as we use it right. God makes men warlike for a reason." (Id.)

24 Defendant and Ergul were arrested two days before Pride Night.
25 (Id. ¶ 47.)

26 **E. Defendant's Violent Proclivities Escalate Just Before His**
27 **Arrest**

28 Concerningly, leading up to defendant's arrest, his apparent
inclination towards violence seems to have escalated. That

1 escalation is reflected not only in defendant's plans to rob a Jewish
2 neighborhood and attack Dodger stadium, both expressed within days of
3 his arrest, but also in his communications with friends in the
4 preceding months. For example, in March 2023, defendant texted a
5 friend that he had a "long night" and was feeling "like murdering
6 some niggas in particular." (PSR ¶ 41.) Days later, defendant told
7 the same friend: "women want you to cut their heads off /
8 expeditiously." (Id.) A week after that, in discussing U.S.
9 Congresswoman Gabrielle Giffords, defendant opined that "Politicians
10 should be killed with knives so they can't use it as an excuse for
11 gun control." (Id.)

12 At the end of March, defendant told the same friend he had
13 "thought about infiltrating the local [Socialist Rifle Association]
14 and assembling target dossiers on the members," but got "lazy." (Id.)
15 He then wrote: "I need to get back into domestic terrorism." (Id.)
16 Days later, in texting about a grievance related to his job,
17 defendant wrote: "I think I'm going to kill a congressman over this."
18 (Id.) Defendant later reiterated: "Dude if something seriously bad
19 happens to me because of this i'm just gonna start assassinating
20 niggas." (Id.)

21 In May 2023, defendant texted his friend a meme that read "I
22 HATE NIGGERS" and wrote: "Why are the writers on strike also I just
23 realized they're in LA I can go kill them with my car." (Id. ¶ 42.)
24 Ten days before his arrest, defendant texted the same friend: "it
25 takes incredible restraint for me not to take my suppressed rifle and
26 go kill specific people in LA." (Id.)

27 On June 1, 2023, less than two weeks before his arrest,
28 defendant texted: "Can we just be done with elections and have the

1 race war already.” (Id.) Days before his arrest, he lamented: “I
2 really don’t know if a race war is coming, man. People will never do
3 anything if everyone keeps waiting for it to start on its own.”

4 (Id.)

5 **F. Defendant is Arrested Possessing Multiple Illegal Firearms**

6 When defendant was arrested in June 2023, law enforcement
7 located numerous illegal firearms in his house, including multiple
8 firearm silencers and an unmarked short-barreled rifle without a
9 serial number, none of which defendant had registered. (Plea
10 Agreement ¶ 18.) Defendant also possessed various California-
11 noncompliant firearms, including a handgun with a threaded barrel, a
12 handgun with an un-serialized lower receiver and a threaded barrel,
13 and the semi-automatic rifle mentioned above. (PSR ¶ 48.)

14 **III. UPWARD DEPARTURES ARE WARRANTED TO REFLECT ADDITIONAL FACTS NOT
FACTORED INTO DEFENDANT’S GUIDELINES RANGE**

15 As set forth in the Plea Agreement, the parties agree that
16 defendant’s base offense level is 24 under U.S.S.G. § 2K1.4. (Plea
17 Agreement ¶ 20.) The government further agrees that pursuant to
18 U.S.S.G. § 3E1.1, defendant is entitled to a three-level reduction
19 for acceptance of responsibility. (PSR ¶¶ 80-81.) However, the
20 government respectfully asks the Court to apply two upward departures
21 to reflect facts not taken into account in determining defendant’s
22 guidelines range.

23 **A. A Five-Level Upward Departure is Warranted Under U.S.S.G.
24 § 5K2.0(a)(2)(A) to Account For Defendant’s Attempt to
25 Intimidate and Scare Civilians**

26 Under U.S.S.G. § 5K2.0(a)(2)(A), a court may depart from the
27 otherwise applicable guideline range if there are circumstances that
28 were not adequately taken into consideration in determining that

1 range. Here, the applicable Guideline, U.S.S.G. § 2K1.4, accounts
2 for defendant's conduct in throwing a Molotov cocktail at a place of
3 public use. But the Guideline does not take into account the
4 pernicious motive for defendant's conduct, which was to commit, as he
5 described it, "domestic terrorism" and intimidate civilians by making
6 a violent political statement. Rather, defendant's guidelines range
7 would be the same if he were merely acting on a juvenile whim.

8 Notably, were the court to apply the terrorism enhancement under
9 U.S.S.G. § 3A1.4, defendant's offense level would rise to level 32
10 and his criminal history would increase to category VI, for a
11 guidelines range of 210 to 262 months' imprisonment. That
12 enhancement applies where a defendant commits a felony that involves
13 or is intended to promote a "federal crime of terrorism," which
14 includes arson that is "calculated to influence or affect the conduct
15 of the government by intimidation or coercion, or to retaliate
16 against government conduct." See U.S.S.G. § 3A1.4; 18 U.S.C.
17 § 2332b(g)(5). Obviously, defendant firebombed a Planned Parenthood
18 just three months before the Supreme Court was set to issue a
19 landmark ruling about abortion; thus, one could certainly question
20 whether defendant's conduct was calculated to influence or affect
21 government conduct, as would warrant application of the terrorism
22 enhancement. Nonetheless, the government is not seeking the
23 terrorism enhancement, instead taking defendant at his word that his
24 motive was to intimidate civilians.

25 However, Comment 4 to U.S.S.G. § 3A1.4 provides that "an upward
26 departure [is] warranted" in a situation where "the offense involved,
27 or was intended to promote, one of the offenses specifically
28 enumerated in 18 U.S.C. § 2332b(g)(5)(B)," including arson under 18

1 U.S.C. § 844(i), "but the terrorist motive was to intimidate or
2 coerce a civilian population." That is precisely what transpired
3 here. As defendant admitted in his plea agreement and at his change
4 of plea, he targeted Planned Parenthood because he wanted to "make a
5 statement against abortion, scare pregnant women away from obtaining
6 abortions, deter doctors, staff, and employees of the clinic from
7 providing abortions, intimidate and interfere with patients of the
8 clinic, and encourage others to engage in similar acts." (Plea
9 Agreement ¶ 18.)

10 Because defendant's offense conduct is not adequately captured
11 by the applicable guideline and a distinct provision of the
12 guidelines specifically contemplate that the circumstances present
13 here warrant an upward departure, the government respectfully submits
14 that a conservative, five-level upward departure is warranted. See
15 United States v. Tankersley, 537 F.3d 1100, 1116-17 (9th Cir. 2008)
16 (affirming application of 12-level upward departure under § 3A1.4,
17 cmt. 4 and § 5K2.0 where a defendant who committed arson and
18 conspired to damage an energy facility intended to influence the
19 conduct of a private entity, rather than the government, and thus
20 fell short of qualifying for the full terrorism enhancement under
21 § 3A1.4).

22 **B. A Two-Level Upward Departure is Warranted Under U.S.S.G.**
23 **§ 5K2.21 to Account For Uncharged Conduct**

24 While an upward departure is warranted under U.S.S.G.
25 § 5K2.0(a)(2)(A) to account for defendant's insidious motive, an
26 additional upward departure is warranted under U.S.S.G. § 5K2.21 to
27 account for uncharged conduct. Specifically, U.S.S.G. § 5K2.21
28 contemplates that an upward departure is warranted to reflect the

1 actual seriousness of an offense based on conduct underlying a
2 potential charge not pursued in the case as part of a plea agreement.
3 Here, as part of the plea agreement, the government agreed not to
4 pursue additional charges, most notably for the silencer, short-
5 barreled rifle, and second Molotov cocktail defendant possessed, all
6 in violation of 26 U.S.C. § 5861. (Plea Agreement ¶ 3.) The
7 government therefore submits that a two-level upward departure is
8 warranted to reflect the collection of illegal firearms which are
9 otherwise unrepresented in defendant's guidelines calculations.

10 Factoring in a five-level upward departure under U.S.S.G.
11 § 5K2.0 and a two-level upward departure under U.S.S.G. § 5K2.21,
12 defendant's new offense level would be 28, for a guidelines range of
13 78 to 97 months' imprisonment.

14 **IV. A 97-MONTH SENTENCE IS NO GREATER THAN NECESSARY TO ACCOUNT FOR**
15 **THE RELEVANT FACTORS UNDER 18 U.S.C. § 3553(A)**

16 **A. The Nature and Circumstances of the Offense**

17 The nature and circumstances of the offense warrant a 97-month
18 sentence. Even in a vacuum, defendant's crime -- building a homemade
19 incendiary device and throwing it at the entrance of a building --
20 would have been egregious. But defendant did far more than throw an
21 incendiary device at a building; he targeted a healthcare clinic
22 providing medical appointments, procedures, and counseling services,
23 including to vulnerable patients. Even more disturbing, defendant
24 was far from apathetic to the impact his conduct might have on his
25 victims. To the contrary, defendant intentionally sought to
26 terrorize them through his conduct, deliberately interfering with and
27 intimidating healthcare professionals and their staff and
28 intentionally scaring women seeking medical treatment and counseling.

1 Defendant's conduct was also far from a one-off act of
2 recklessness; rather, defendant admitted that he not only wanted to
3 encourage others to engage in similar conduct, but also sought to
4 repeat his conduct by attacking a second Planned Parenthood shortly
5 after the Supreme Court issued its decision overturning Roe v. Wade.
6 (Plea Agreement ¶ 18.) In defendant's own parlance, he wanted to
7 "act" to prevent women "who were indecisive" from rushing to obtain
8 abortions. (PSR ¶ 34.) Put differently, rather than allow the
9 judicial and legislative systems to unfold, defendant took matters
10 into his own hands, weaponizing fear and intimidation to achieve his
11 political ends.

12 Perhaps most egregiously, at the time of his crimes, defendant
13 was an active-duty Marine who had taken an oath to protect the
14 national security of the United States. Defendant not only shirked
15 that duty, but actively counteracted it by deliberately subjecting
16 civilians to violent acts of terror. In short, defendant had
17 available to him various legal avenues to effectuate his political
18 views, including freely exercising his First Amendment rights and
19 engaging in the political process. Instead, defendant chose domestic
20 terrorism, masquerading his violent extremism as religious
21 commitment. The government respectfully submits that a high-end
22 sentence is warranted.

23 **B. Defendant's History and Characteristics**

24 Defendant's history and characteristics also warrant a high-end
25 sentence. Defendant espoused an indescribable level of vitriol for
26 various minority groups, seemingly sparing no one. Defendant's
27 cavalier use of racial and homophobic slurs, casual expressions of
28 misogyny, and persistent expressions of violent intent went far

1 beyond empty words; rather, defendant intended -- and in many
2 instances planned -- to take overt action that would at the very
3 least scare and intimidate women, racial minorities, and the Jewish
4 and LGBTQ+ communities, and would at worst harm or even kill real
5 victims.

6 Moreover, defendant's guidelines calculations do not account for
7 any of defendant's plans outside of the March 2022 firebombing,
8 including his plans to firebomb a second Planned Parenthood, attack
9 Dodger Stadium, rob Jewish homes, or instigate a race war by
10 attacking the power grid. By applying the requested upward
11 departures, the Court can account for defendant's possession of
12 illegal firearms and his insidious motive for attacking Planned
13 Parenthood. But defendant's sentence should also reflect his recent
14 history of plotting repeatedly against the United States and its
15 citizens, particularly while enlisted as a U.S. Marine. Only a high-
16 end, 97-month sentence is sufficient to account for defendant's
17 characteristics and the entirety of his recent history.

18 Moreover, while a defendant's military service may be mitigating
19 in some instances, here it is not. The evidence reflects that
20 defendant actively sabotaged the institution he was charged with
21 serving, both by infecting the atmosphere with intolerance and
22 hostility and by actively interfering with its missions.
23 Specifically, defendant's colleagues and supervisors described him as
24 "lazy," "aloof," and "disinterested in working the mission,"
25 routinely turning in work that was "sloppy or incomplete." (PSR
26 ¶ 145.) Ten days before defendant's arrest, he confessed to a
27 friend: "During the last year of my contract I was on the verge of
28 like actively sabotaging operations as much as possible." (Id.

1 ¶ 45.) Defendants' colleagues consistently described him as someone
2 who exhibited a lack of respect and made misogynistic, antisemitic,
3 and hateful comments towards all non-white individuals, including
4 using racial slurs to refer to one colleague's spouse and friends and
5 insisting that "all Jews deserve to die," as do many women. (Id.
6 ¶ 46.) And, of extreme concern, in 2022 defendant placed calls to
7 not one, but two foreign adversaries, hoping to offer himself up as a
8 "mole" by providing U.S. intelligence. (Id. ¶ 37.)

9 In sum, defendant is an intelligent person who grew up with more
10 resources and comforts than most. To use Probation's words,
11 defendant has "superior intelligence" and was afforded "a privileged
12 upbringing," setting him apart from many defendants who appear before
13 this Court. (Recommendation at 10.) But rather than put his
14 opportunities and skills to good use, defendant focused his energy on
15 nefarious, violent methods of perpetuating his white supremacist
16 ideology, excusing his own behavior by insisting that "God makes men
17 warlike for a reason." (PSR ¶ 46.) A high-end sentence is warranted
18 to account for his history and characteristics.

19 **C. The Need to Protect the Public and Promote Respect for the**
20 **Law**

21 Critically, a 97-month sentence is necessary to protect the
22 public from defendant's apparent insistence on perpetrating violent
23 acts in furtherance of his deeply held beliefs. Though difficult to
24 capture the pervasiveness of those beliefs within the confines of
25 this sentencing position, defendant's digital communications, conduct
26 at work, and, most importantly, repeated willingness to act on those
27 beliefs reflects that they are extreme and persistent. Moreover, as
28 detailed above, in the months leading up to defendant's arrest, his

1 violent proclivities seemingly escalated, as defendant expressed a
2 desire to kill or rape seemingly anyone in his path and studied other
3 notorious figures who committed acts of extreme violence. The
4 government sincerely hopes that defendant will be rehabilitated in
5 custody, but that risk should not be borne by the public. A high-end
6 sentence is necessary to protect the public from defendant acting in
7 furtherance of his violent aims.

8 Moreover, a high-end sentence is warranted to promote respect
9 for the law, which defendant appears to lack entirely. Though well
10 versed in criminal law and operation security, (see e.g. PSR ¶¶ 36,
11 39, 44), defendant has used those skills to evade law enforcement and
12 to counsel others in doing so. (Id. ¶¶ 33, 36.) That defendant
13 willingly engaged in multiple plots or acts of domestic terrorism
14 while enlisted as a U.S. Marine further suggests that defendant lacks
15 any respect whatsoever for this nation, its laws, or its security. A
16 high-end sentence is warranted.

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1 **V. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests
3 that this Court sentence defendant to 97 months' imprisonment, a
4 three-year term of supervised release, \$1,000 in restitution, and a
5 \$325³ special assessment.

6
7 Dated: April 1, 2024

Respectfully submitted,

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12 /s/

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15 UNITED STATES OF AMERICA
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27 ³ Although Probation recommended a \$400 special assessment, (PSR
28 ¶ 165), one of the counts to which defendant pled guilty is a Class A
misdemeanor, and thus warrants a \$25 special assessment. See 18
U.S.C. § 3013(a)(1)(A)(iii).