NO. _____

In The Supreme Court of the United States

AARON RICHARDSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: March 4, 2020

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QUESTION PRESENTED

I. Did an unconstitutional "objective risk of bias," *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016), or "probability of actual bias on the part of the judge," *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017), manifest itself during the sentencing hearing, in which the judge said someone like petitioner should "be eliminated from the world" and the guideline range "shock[ed] the conscience," and then imposed a sentence almost five times longer than the guideline maximum?

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption.

CASES DIRECTLY RELATED TO THE PROCEEDING

The following cases are directly related to this proceeding:

United States v. Cook, No. 17-4761, United States Court of Appeals for the Fourth Circuit. Judgment entered 12 December 2019.

United States v. Chadwick, No. 17-4770, United States Court of Appeals for the Fourth Circuit. Judgment entered 12 December 2019.

United States v. Andrews, No. 18-4023, United States Court of Appeals for the Fourth Circuit. Judgment entered 12 December 2019.

United States v. Thompson, No. 18-4024, United States Court of Appeals for the Fourth Circuit. Judgment entered 12 December 2019.

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No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term 2019

AARON RICHARDSON,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner asks this Court to issue a writ of certiorari to address whether, in finding that no due process violation occurred when the district court did not recuse itself despite objective evidence of its bias, the Fourth Circuit erroneously applied *Rippo v. Baker*, 137 S. Ct. 905 (2017) (per curiam) ("recusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable'"); *Williams v. Pennsylvania*, 136 S. Ct. 1899 (1916) (recusal mandated where "objective risk of bias" exists), in affirming the district court's failure to recuse itself where, "as an objective matter," the "probability of [its] actual bias" was "too high to be constitutionally tolerable");

Caperton v. A.T. Massey Coal Company, Inc., 556 U.S. 868, 882 (2009) (whether "average judge in [this] position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'"); *see also Mayberry v. Pennsylvania*, 400 U.S. 455, 465-66 (1971).[1] Neither of these cases involved the specter of bias during a federal sentencing hearing, and there now exists a split in the circuits regarding the appropriate application of this objective inquiry to federal sentencing.[2] Given the due process guarantee that a judge cannot harbor bias or preconceived notions about the crime or the criminal, especially at sentencing, this Court should grant review to clarify the reach of these decisions in the context of federal sentencing.

OPINION AND ORDER BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished and is reproduced in the Appendix. 1a-18a. The amended judgment of the district court, along with the order stating the reasons for the sentence imposed, are reproduced in the Appendix. 19a-26a, 27a-30a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit rejecting petitioner's appeal were entered on 12 December 2019. App. 1a-18a.

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[1] The decision in *Rippo* was per curiam, the *Williams* court divided 5-3, and the *Caperton* court divided 5-4.

[2] *See United States v. Atwood*, 941 F.3d 883, 886 (7th Cir. 2019) (finding due process required recusal at federal sentencing where district court "compromised his appearance of impartiality"); *see also Echavarria v. Filson*, 896 F.3d 1118, 1131-32 (9th Cir. 2018) (risk of judge's bias violated due process), *cert. denied*, 139 S. Ct. 2613 (2019); *United States v. Segines*, 17 F.3d 847, 852-53, 857 (6th Cir. 1994) (trial court's remarks about defense counsel; "I will take that into account on the sentencing").

19a-21a. Petitioner presented the issue raised herein below, and it was rejected on the merits. 7a-11a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Summary of procedural history

Petitioner "pleaded guilty to possessing an animal in an animal-fighting venture." App. 4a. The government sought an upward departure and/or variance from the applicable guideline range. In addressing the guideline range, the district court spontaneously observed, "[e]ither the dogs have to be eliminated from the world or the people who fight the dogs or both, but there needs to be an intervention by the law and it's going to start here . . . ." App. 55a.

The district court then specifically addressed petitioner's situation, making the following observation not tethered to the facts in the case:

> It is inhumane and there is no societal tolerance for dog fighting and, quote (sic), the dog fighting industry and the undercurrent and the criminality of it. It isn't something that is benign. It's something that is malignant and it needs to be eradicated in society. Dog fighting is not an activity. That's not like, okay, I play tennis and sometimes I jog, but I also dog fight.

App. 58a. Petitioner then addressed his criminal history, his drug activities as a teenager, his high level of family support, and his unlikelihood to recidivate. App. 59a-62a. After the government's argument, the district court varied upward and imposed a sentence of 96 months. 28a-35a. This sentence reflected an upward departure of almost eighteen (18) offense levels and was almost five and one-half times higher than the top of his advisory guideline range. It resulted from the district

court's disagreement with the advisory guidelines and its own abhorrence with dog-fighting and the people who engage in it.

The Fourth Circuit affirmed. App. 1a-18a. The court recognized that a district court's unconstitutional failure to recuse itself "is structural error." App. 9a (citing *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1909-10 (2016)). Nevertheless, the court reviewed the alleged constitutional issue only for plain error, finding petitioner "did not preserve this recusal argument." App. 7a. Petitioner had argued for *de novo* review. Although it described the district court's language as "injudicious," the court found no violation of due process. App. 11.

B. Summary of sentencing evidence

Early in the government's sentencing presentation, the district court's own words revealed its strong bias against those charged with dog fighting crimes. It announced, "Either the dogs have to be eliminated from the world *or the people who fight the dogs* or both. App. 5a (emphasis added). Later, it went further and imputed bad conduct to all who own an American Pit Bull Terrier, despite the fact that not a single appellant engaged in the conduct the district court found appalling: "[W]hen some guy is walking down Main Street with a pit bull on the leash, your suspicions automatically get engaged." App. 37a. Shortly thereafter, the district court cited "facts or folklore," that "if a child might wander into an unprotected area that sometimes a child is mauled and killed by pit bulls." App. 38a.

The prosecutor then provoked the district court by bringing up a person previously sentenced by the district court by showing a photograph of a "break stick" he had autographed. The prosecutor next showed a video of a seized dog attacking a stuffed animal resembling a Labrador, to which the district court asked: "So when you're in a city where people have dogs and don't have open fields to run in, and you take your nice pet to the dog park and your neighbor, the defendant, shows up with his pit bull, this is what happens?" App. 54a.

The prosecutor argued dog fighting took improper advantage of the breed's characteristic loyalty. "They fight for their owners to the death. And that's taking advantage of what is otherwise a good aspect of them. App. 56a. The district court responded: "There is no good aspect to them in my opinion. I think the breed needs to be reduced and eliminated...." App. 56a-57a. The prosecutor attempted to respond: "I'm sure the ASPCA would disagree Your Honor but I think that dogs –" but the district court interrupted, "Then they're nearsighted if they disagree." App. 57a.

The district court also interjected its most inflammatory comment, "[e]ither the dogs have to be eliminated from the world or the people who fight the dogs or both, but there needs to be an intervention by the law and it's going to start here." App. 5a. No evidence suggested petitioner ever walked any dog in dog parks, cities, or the like. In fact, all evidence before the district court showed he kept his dogs secured in the rural areas where he lived.

MANNER IN WHICH THE FEDERAL QUESTION WAS DECIDED BELOW

Petitioner raised this issue in his direct appeal. The Fourth Circuit rejected it on the merits. 9a-15a. This claim has been fully litigated on the merits and is properly presented to this Court.

REASONS WHY A WRIT OF CERTIORARI SHOULD ISSUE

AN UNCONSTITUTIONAL "OBJECTIVE RISK OF BIAS" OR "PROBABILITY OF ACTUAL BIAS ON THE PART OF THE JUDGE" MANIFESTED ITSELF WHEN THE SENTENCING JUDGE SAID SOMEONE LIKE PETITIONER SHOULD BE "ELIMINATED FROM THE WORLD" AND THE APPLICABLE GUIDELINE RANGE "SHOCK[ED] THE CONSCIENCE," AND THEN IMPOSED A SENTENCE ALMOST FIVE TIMES ABOVE GUIDELINE MAXIMUM.

This case presents a stark example of how, "objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (per curiam) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *see Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) ("whether, as an objective matter, . . . there is an unconstitutional potential for bias"); *Caperton v. A.T. Massey Coal Company, Inc.*, 556 U.S. 868, ___ (2009) (objective inquiry; whether "average judge in [this] position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'"). Applying a plain error standard of review, the Fourth Circuit rejected this claim. App. 7a-11a. This decision is at odds with *Rippo*, *Williams*, and *Caperton*, as well as *United States v. Atwood*, 941 F.3d 883, 885 (7th Cir. 2019) (applying *de novo* review; noting district court "compromised his appearance of impartiality" and finding unconstitutional likelihood of bias at sentencing).

The critical question here, and a question not answered in *Williams*, *Caperton*, or *Withrow*, concerns the potential for bias at sentencing where the judge harbors and expresses disdain for the crime and the criminal. As the Seventh Circuit observed, at sentencing, the most significant restriction on a judge's ample discretion is the judge's own sense of equity and good judgment. When those qualities appear to be compromised, the public has little reason to trust the integrity of the resulting sentence. *Atwood*, 941 F.3d at 886; *see Mayberry v. Pennsylvania*, 400 U.S. 455, 465-66 (1971) (from objective view, potential for bias at sentencing constitutionally intolerable if judge become "personally embroiled" with party). This Court should explicate the contours of its precedents in the sentencing context, and this case presents a compelling vehicle for this analysis.

In this case, the district court continually expressed its disdain both for the crime of dog-fighting and for petitioner himself. The potential for bias was dramatically shown in the following statement the district court made at sentencing: "Either the dogs have to be eliminated from the world or the people who fight the dogs or both, but there needs to be an intervention by the law and it's going to start here . . . ." App. 5a. The district court opined that not only should pit bulls be "eliminated from the world," but also that petitioner himself should be "eliminated." Furthermore, the district court announced its intention to intervene in this process. App. 5a. Contrary to the analysis of the Fourth Circuit, this scenario represented "an extraordinary situation that constitute[d] a violation of due process." App. 11a; *see*

Atwood, 941 F.3d at 886 (finding due process required recusal where district court "compromised his appearance of impartiality").

Had the district court merely uttered this one "injudicious" comment, the specter of a due process violation might perhaps be excused or overlooked. But this egregious pronouncement was far from an isolated remark. The sentencing proceeding was littered with these expressions of revulsion. Addressing petitioner's case specifically, the district court described dog fighting as "inhumane," finding "no societal tolerance for" it, calling it "malignant," and "needs to be eradicated." App. 58a.

The district court spoke of "facts or folklore," that "if a child might wander into an unprotected area that sometimes a child is mauled and killed by pit bulls." App. 38a. It hypothesized: "So when you're in a city where people have dogs and don't have open fields to run in, and you take your nice pet to the dog park and your neighbor, the defendant, shows up with his pit bull, this is what happens?" App. 54a. The prosecutor argued dog fighting takes improper advantage of the breed's characteristic loyalty. "They fight for their owners to the death. And that's taking advantage of what is otherwise a good aspect of them. App. 56a. The district court responded: "There is no good aspect to them in my opinion. I think the breed needs to be reduced and eliminated...." App. 56a-57a. The prosecutor attempted to respond: "I'm sure the ASPCA would disagree Your Honor but I think that dogs –" but the district court interrupted, "Then they're nearsighted if they disagree." App. 57a.

Finally, the district court expressed its strong disagreement with the guideline range for this crime. The federal sentencing guidelines recommend a sentence of twelve to eighteen months for an animal fighting charge. U.S.S.G. § 2E3.1 (2014). Before November 2016, the guidelines recommended a sentence of six to twelve months for an animal fighting charge. *Id.* When the sentencing guidelines were raised—only a month before petitioner's arrest—the ASPCA commended the sentencing commission for "getting tough" on dog fighters. *See Victory for Animal Fighting Victims: The U.S. Sentencing Commission Gets Tough!*, *News*, ASPCA (Apr. 15, 2016), www.aspca.org/news/victory-animal-fighting-victims-us-sentencing-commission-gets-tough. Nevertheless, the district court made it clear that it still did not believe the guidelines were strict enough. "I think a guideline range of 12 to 18 months . . . really shocks the conscience and undermines the credibility of guideline sentencing." App. 55a. In this case, "objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker [was] too high to be constitutionally tolerable.'" *Rippo*, 137 S. Ct. at 907.

Both *Caperton* and *Williams* were decided by sharply divided courts, leaving the governing legal standard for when due process mandates judicial recusal somewhat murky. This case provides an opportunity for clarification.

In *Caperton*, Chief Justice Roberts, along with the late Justice Scalia and Justices Thomas and Alito, dissented. They feared the "new 'rule'" provided "no guidance and to judges and litigants about when recusal will be constitutionally required" and would "inevitably lead to an increase in allegations that judges are

biased, however groundless those charges may be." They predicted "[t]he end result [would] do far more to erode public confidence in judicial impartiality than an isolated failure to recuse in a particular case." *Caperton*, 556 U.S. at 890-91 (Roberts, C.J., dissenting) (judge's conduct did not "undermine" need for fair an independent judiciary "and one that appears to be such").

The Chief Justice again dissented in *Williams*. Writing for himself and Justice Alito, he appropriately recognized that the jurist whose recusal was sought "had not made up his mind about either the contested evidence or the legal issues under review [as] [n]either the contested evidence or the legal issues were ever before him . . . ." *Williams*, 136 S. Ct. at 1914 (Roberts, C.J., dissenting). Because of this fact, there could be no "risk" of bias. *Id*.

But the acts in this case dispel the Chief Justice's reservations in both *Caperton* and *Williams*. The district court's bias and lack of an open mind were readily apparent. This case presents facts that satisfy the concerns of both the majority and the dissent in *Capterton* and *Williams*.

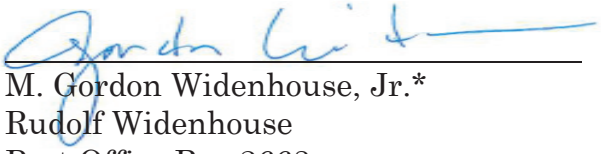
There is also a sharp split between the Fourth Circuit here and the Seventh Circuit in *Atwood*. As court in *Atwood*, the district court here "compromised his appearance of impartiality." *Atwood*, 941 F.3d at 886. To safeguard public confidence in judicial impartiality at sentencing, this Court should issue a writ of certiorari and summarily reverse the Fourth Circuit. Alternatively, it should accept this case for plenary review and resolve the tension between the Fourth and Seventh Circuits.

CONCLUSION

For the reasons stated herein, Aaron Richardson respectfully requests that the judgment be summarily reversed or, alternatively, that a writ of certiorari be granted.

This the 4th day of March, 2020.

Respectfully submitted,



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APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4760

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AARON RICHARDSON, a/k/a Jit,

Defendant - Appellant.

No. 17-4761

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CEDRIC GERARD COOK,

Defendant - Appellant.

No. 17-4770

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEO CHADWICK

Defendant - Appellant.

No. 18-4023

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEWIS EDMOND ANDREWS, JR.,

Defendant - Appellant.

No. 18-4024

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONNIE JEREMY THOMPSON

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Wilmington. Terrence W. Boyle, Chief District Judge. (7:16-cr-00122-BO-7; 7:16-cr-00122-BO-8; 7:16-cr-00122-BO-6; 7:16-cr-00122-BO-1; 7:16-cr-00122-BO-2)

Argued: September 18, 2019 Decided: December 12, 2019

Before WYNN, DIAZ, and FLOYD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Joseph Bart Gilbert, TARLTON POLK PLLC, Raleigh, North Carolina; Michael W. Patrick, LAW OFFICE OF MICHAEL W. PATRICK, Chapel Hill, North Carolina; Camden Robert Webb, WILLIAMS MULLEN, Raleigh, North Carolina; Seth Allen Neyhart, STARK LAW GROUP, PLLC, Chapel Hill, North Carolina; M. Gordon Widenhouse, Jr., RUDOLF, WIDENHOUSE & FIALKO, Winston-Salem, North Carolina, for Appellants. Kristine L. Fritz, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** G. Norman Acker III, First Assistant United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Before us is a consolidated appeal arising from the sentencings of five Defendants-Appellants: Aaron Richardson; Cedric G. Cook; Leo Chadwick; Lewis E. Andrews, Jr.; and Ronnie J. Thompson. As part of a dogfighting-related investigation in eastern North Carolina, all were charged with, and each pleaded guilty to, various federal dogfighting and drug-trafficking offenses. Throughout their sentencing hearings, the district court made several remarks related to dogs, dogfighters, and dogfighting. Eventually, the district court sentenced each save one to an above-Guidelines sentence. On appeal, Defendants-Appellants challenge the district court judge's failure to *sua sponte* recuse himself and the reasonableness of their sentences. For the following reasons, we affirm the district court's judgment as to each Defendant.

I.

In October 2015, federal and state authorities began a dogfighting investigation focused on Onslow and Cumberland Counties in North Carolina. During this investigation, authorities infiltrated that dogfighting community and so attended its various dogfights and acquainted themselves with its participants. Among these participants were Defendants, who were eventually arrested and charged with, most relevantly, violations of the Animal Welfare Act, 7 U.S.C. §§ 2131–2159.

In time, each pleaded guilty to various offenses. Andrews, Chadwick, Cook, and Thompson pleaded guilty to conspiracy to violate the Animal Welfare Act. Cook and Richardson pleaded guilty to possessing an animal in an animal-fighting venture. Cook

and Thompson pleaded guilty to sponsoring and exhibiting an animal in an animal-fighting venture. And Chadwick and Richardson pleaded guilty to possessing, training, transporting, and delivering an animal in an animal-fighting venture and aiding and abetting. Lastly, Andrews pleaded guilty to distributing a quantity of heroin and aiding and abetting, and Cook pleaded guilty to attending an animal-fighting venture.

At their sentencing hearings in the Eastern District of North Carolina, Defendants' involvement with dogfighting was described.[1] To different degrees, all had long owned, bred, and trained dogs; participated in dogfights; possessed dogfighting paraphernalia; and engaged in local and online dogfighting communities. Executing search warrants, authorities seized not only dogs but also veterinary supplies, medicine, training tools, and fighting-dog pedigrees from Defendants' properties. Particularly, sixty-four dogs were seized from Andrews's property; thirty-three dogs were seized from Chadwick's property; thirty-two dogs were seized from Richardson and Thompson's property; and twenty-three dogs were seized from Cook's property.

At Defendants' hearings, the government presented evidence of Defendants' dogfighting operations. Testimony by a government witness described Chadwick's property, which exemplified a "typical dog yard": dozens of dogs were kept about "a foot" apart, housed in "half barrels cut [out] to be homes," and chained to "large, metal pipe[s]

[1] These facts are drawn from the district court's written orders as to each Defendant; those orders, in turn, drew from the Presentence Investigation Report prepared for each Defendant. Defendants did not object to the factual information in the reports, and the district court adopted them.

or tire iron[s]" with heavy chains. J.A. 837–38. Pictures illustrated not only kennels "completely covered with feces, urine[,] and some type of worm," J.A. 852, but also the recovered dogs' injuries, like puncture wounds that "ooz[ed]" blood and scarring "on their legs, their ears, the top of their head, around their throat, [and] their muzzle," J.A. 848. Videos depicted behavioral tests in which recovered dogs bit stuffed dogs "so hard that [they] cause[d] [themselves] to bleed." J.A. 857. And reports explained how many of the recovered dogs were euthanized because they were too aggressive to rehome. Still other evidence was physical: large collars, weighted chains, and blood-covered training tools were also presented at the hearings.

The sentencing judge's remarks during these hearings form a large part of this appeal. As most relevant here, while discussing perceptions of certain dog breeds, the judge stated[2]: "We know from antidotes [sic], not part of this case but part of the facts or folklore you can take into judicial notice, that if a child might wander into an unprotected area that sometimes a child is mauled and killed by pit bulls." J.A. 842. Replying to the government witness's statement that fighting dogs are not typically taken to public places, like dog parks, the judge noted: "They're hiding them because they're criminal dogs." J.A. 858. And after the close of the government's evidence as to Chadwick—after testimonial, visual, and physical evidence was presented—and following Chadwick's counsel's argument for a sentence "around the guideline range," J.A. 891, the judge replied: "Either

[2] The sentencing judge made other similar remarks, but the ones quoted here are representative of the rest.

the dogs have to be eliminated from the world or the people who fight the dogs or both . . . I'll try to be reasonable and be proportional with the sentence, but I find . . . the guideline to grossly under-represent society's need for protection . . . ." J.A. 892. Defendants never objected to the sentencing judge's statements nor sought his recusal.

Finally, the judge sentenced each Defendant. Neither the government nor Defendants objected to the following advisory Guidelines ranges: Thompson to 24–30 months; Chadwick to 12–18 months; Cook to 15–21 months; Richardson to 12–18 months; and Andrews to 87–108 months. The judge, however, sentenced Defendants as follows: for Thompson, Chadwick, Cook, and Richardson, he imposed above-Guidelines sentences of 48, 60, 45, and 96 months, respectively; for Andrews, he imposed a within-Guidelines sentence of 108 months.

These timely appeals followed, which were consolidated for our review.

II.

First, Defendants contend that the sentencing judge's strong, personal feelings about pit bulls and dogfighting required the judge's *sua sponte* recusal from sentencing them.

Because Defendants' did not preserve this recusal argument, we review only for plain error. *See Flame S.A. v. Freight Bulk Pte. Ltd.*, 807 F.3d 572, 592 (4th Cir. 2015); *see also* Fed. R. Crim. P. 52(b). Under this standard of review, Defendants must show that an error occurred, that it was plain, and that it affected their substantial rights. *United States v. Rooks*, 596 F.3d 204, 212 (4th Cir. 2010) (citing *United States v. Olano*, 507 U.S. 725, 732 (1993)). Even if a plain error exists, we have the discretion to correct it, which

we may exercise if it "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (internal quotation marks omitted) (quoting *Olano*, 507 U.S. at 732).

As an initial matter, it is helpful to disentangle two related—but distinct—threads of law governing judicial recusal. Recusal may be required under either the Due Process Clause or federal recusal statutes. Yet Defendants apparently conflate constitutional and statutory recusal doctrine, discussing precedent pertaining to each to make a general point about the sentencing judge's purported bias. For instance, Defendants begin by quoting 28 U.S.C. § 455, a federal recusal statute. But they then cite both precedent construing that statute and precedent involving constitutional recusal doctrine in arguing that the judge was required to *sua sponte* recuse himself—without ever clearly stating whether the judge should have done so on constitutional grounds, statutory grounds, or both. This is understandable, as a judge's conduct and its appearance to others is often the crux of the inquiry under both doctrines.

But the "Due Process Clause demarks only the outer boundaries of judicial disqualifications." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009) (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986)). In fact, most recusal questions are "answered by common law, statute, or the professional standards of the bench and bar." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). So though "there may certainly be areas" where constitutional and statutory requirements overlap, a statutory violation "does not automatically mean the defendant was denied constitutional due process." *Davis v. Jones*, 506 F.3d 1325, 1336 (11th Cir. 2007).

Mindful of these principles, we consider constitutional recusal dictates first before turning to the statutory ones.[3]

A.

Under the Due Process Clause, recusal is required when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). We ask "not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) (internal quotation marks omitted) (quoting *Caperton*, 556 U.S. at 881). An unconstitutional failure to recuse is structural error and thus not amenable to harmless-error review. *Williams*, 136 S. Ct. at 1909–10.

Because "most matters relating to judicial disqualification [do] not rise to a constitutional level," *Caperton*, 556 U.S. at 876 (alteration in original) (quoting *FTC v. Cement Inst.*, 333 U.S. 683, 702 (1948)), it is the "extraordinary situation where the Constitution requires recusal," *id.* at 887. These situations may be largely categorized as instances when an extraordinary financial interest exists between a judge and a litigant,

[3] Though Defendants' recusal argument did not clearly demarcate constitutional from statutory doctrine, "we are not bound by the parties' characterization of the legal principles," and we may "recast appellate arguments . . . to more accurately reflect their nature." *United States v. Engle*, 676 F.3d 405, 415 n.5 (4th Cir. 2012). In the interest of analytical clarity, we discuss each separately here.

see, e.g., *Caperton*, 556 U.S. at 884 (requiring recusal of elected state court judge in case involving corporation whose CEO had contributed about $3 million to judge's election campaign following lower court's entry of $50 million judgment against corporation when it was likely that corporation would seek review in state supreme court), when a judge acts as a significant part of the accusatory process before presiding over the accused's trial, *see, e.g.*, *Williams*, 136 S. Ct. at 1903 (requiring recusal of judge before whom defendant appeared seeking relief from a death sentence where the judge had, as district attorney, given approval to seek death penalty against defendant); *In re Murchison*, 349 U.S. 133, 136 (1955) (requiring recusal of judge when judge acts as a "one-man grand jury" by hearing testimony qua grand jury, presiding over contempt hearing of grand jury witnesses qua judge, and holding grand jury witnesses in contempt for their conduct before judge qua grand jury), or when a judge is involved in a running, bitter controversy with a litigant, *see, e.g.*, *Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971) (requiring recusal of judge in a litigant's contempt trial when that litigant continuously, "cruelly slandered" the judge).

Simply put, an extraordinary situation is not before us. For one, no constitutional potential for bias exists. There was no actual or apparent financial interest between the parties and the sentencing judge; the sentencing judge had no financial stake in the outcomes of these cases. Nor did the judge participate in the accusatory process by, say, acting as a one-person grand jury. *Cf. In re Murchison*, 349 U.S. at 136. And, given the vivid photos, videos, and testimony about dogfighting, the judge's remarks are better characterized as "expressions of impatience, dissatisfaction, annoyance, and even anger," *see Liteky v. United States*, 510 U.S. 540, 555–56 (1994), rather than an indication that the

judge is embroiled in a running, bitter controversy with Defendants, *cf. Mayberry*, 400 U.S. at 465. Further still, the average judge in a position such as this—that is, selected to preside over a multiple-defendant sentencing, exposed to perturbing evidence in the course of so presiding, yet having no connections to Defendants otherwise—is objectively likely to be neutral. All told, the sentencing judge's conduct below—injudicious though it was—did not amount to an extraordinary situation that constitutes a violation of due process.

B.

We turn next to Defendants' argument that 28 U.S.C. § 455 required the *sua sponte* recusal of the sentencing judge.

Though "a framework of interlocking statutes" governing recusals exists, *Belue v. Leventhal*, 640 F.3d 567, 572 (4th Cir. 2011), at issue here is 28 U.S.C. § 455. Under subsection 455(a), all "judge[s] of the United States" must "disqualify [themselves] in any proceeding in which [their] impartiality might reasonably be questioned." 28 U.S.C. § 455(a); *see also Belue*, 640 F.3d at 572. And subsection 455(b), in contrast to subsection 455(a)'s general dictate, enumerates specific instances requiring recusal, the first of which is relevant here: Judges must recuse themselves when they have "a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." § 455(b)(1).

The terms "impartiality" and "bias or prejudice" connote instances of partiality or opinions that are "somehow wrongful or inappropriate." *Liteky*, 510 U.S. at 550–52 (emphases omitted). Generally, the bias or prejudice required for recusal under subsections

455(a) and 455(b)(1) originates from "a source outside the judicial proceeding at hand." *Id.* at 545. Yet the key inquiry is broader, for "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 555.

This is a "high bar for recusal." *Belue*, 640 F.3d at 574. So judicial remarks that are "critical or disapproving of, or even hostile to, counsel, the parties, or their cases," do not typically suffice. *Liteky*, 510 U.S. at 555. And judicial remarks that express "impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display" virtually never establish bias or partiality. *Id.* at 555–56; *see, e.g.*, *Sentis Grp., Inc. v. Shell Oil Co.*, 559 F.3d 888, 904–05 (8th Cir. 2009) (requiring recusal when judge "directed profanities at Plaintiffs or Plaintiffs' counsel over fifteen times" and barred plaintiffs from arguing at sanctions hearing).

Defendants have not met this high bar. For one, most of the sentencing judge's remarks were based on facts that the judge learned during the sentencing hearings, which "almost never constitute a valid basis for a bias or partiality motion." *Belue*, 640 F.3d at 573 (internal quotation marks omitted) (quoting *Liteky*, 510 U.S. at 555).

More fundamentally, however, the entire record clarifies that the sentencing judge's challenged remarks were "expressions of impatience, dissatisfaction, annoyance, and even anger." *Liteky*, 510 U.S. at 555–56. The sentencing judge's remarks made at the beginning

and throughout most of the sentencing hearings here were straightforward statements uttered in many a sentencing hearing. Yet as the hearings—and the presentation of evidence—continued, the judge's remarks became more indecorous. Indeed, the judge's most injudicious remarks—"Either the dogs have to be eliminated from the world or the people who fight the dogs or both, but there needs to be an intervention by the law and . . . I'll try to be reasonable and be proportional with the sentence . . . ." J.A. 892—were uttered some seventy-one pages into the transcript of the sentencing hearings. These remarks occurred after the presentation of perturbing testimony, photos, videos, and physical evidence. Viewed thusly, the sentencing judge's remarks are properly characterized as expressions of impatience, dissatisfaction, annoyance, or anger at Defendants and their involvement in dogfighting. *Cf. Liteky*, 510 U.S. at 550–51 ("The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice . . . .").

What is more, the entirety of the sentencing judge's conduct undermines Defendants' argument. Throughout the hearings, the judge not only stated that he would consider each Defendant's case on its own merits but also stated that he had tried to "make each sentence fit the particular characteristics of the crime and the defendant's background and criminal history." J.A. 1142. And he granted Defendants' requests to recommend they be placed in certain prisons or drug-rehabilitation programs. Further still, the judge denied the government's motion to upwardly vary Andrews's sentence "for the purposes of proportionality" and "consisten[cy]" with his co-Defendants' sentences. J.A. 1114. Taken

as a whole, the judge's conduct does not evince a deep-seated antagonism that would make fair judgment impossible.

In support of their recusal argument, Defendants chiefly rely on *Berger v. United States*, 255 U.S. 22 (1921), and *United States v. Lefsih*, 867 F.3d 459 (4th Cir. 2017). Yet those cases cannot bear the weight Defendants wish to place on them. In *Berger*, a World War I espionage case involving German-American defendants, the Supreme Court concluded that a district judge was impermissibly biased when he stated: "One must have a very judicial mind, indeed, not to be prejudiced against the German Americans in this country. Their hearts are reeking with disloyalty." 255 U.S. at 28. But that is not all he said. Immediately thereafter, he stated: "This defendant is the kind of a man that spreads this kind of propaganda, and it has been spread until it has affected practically all the Germans in this country." *Id.* at 28–29. He also said: "If anybody has said anything worse about the Germans than I have I would like to know it so I can use it," *id.* at 28, and "I know a safe-blower, he is a friend of mine, who is making a good soldier in France. He was a bank robber for nine years . . . and as between him and this defendant, I prefer the safeblower," *id.* at 29. And he said all of this *before* trial began. *Id.* at 27. The timing, vitriol, and directness of the district court judge's statements in *Berger* significantly differ from the sentencing judge's remarks here.

Nor does *Lefsih* succor Defendants' argument. There, the district court judge's "sustained, one-sided, and in the context of this short and uncomplicated trial, wholly gratuitous" questions and comments in an immigration-fraud case were plain error requiring reversal. 867 F.3d at 469. Critically, the judge in *Lefsih* uttered those remarks

before a jury; there, he not only critiqued the federal program at issue but also impugned that defendant's credibility before he even took the stand. *Id.* at 469–70. Here, no jury heard the challenged remarks, so *Lefsih* is therefore inapposite.

"Litigation is often a contentious business, and tempers often flare." *Belue*, 640 F.3d at 575. This observation may be true here—a matter involving photos of emaciated dogs with oozing wounds, videos of dogs so aggressive that they cause themselves to bleed while biting stuffed dogs, and testimony describing how scores of dogs were euthanized because they could not be rehomed safely. But this "is not to say judicial distemper is somehow admirable. It is not." *Id.* at 574. Judges are oathbound to deliver justice in every case before them. Recusal doctrine recognizes that "trial judges make some of the most difficult calls on some of the most volatile matters in our system." *Id.* at 576. Our analysis here does nothing other than recognize that fact.

III.

Our conclusion that Defendants' recusal argument lacks merit does not end this matter, however, for Defendants also argue that their sentences were unreasonable.

"We review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard." *United States v. Blue*, 877 F.3d 513, 517 (4th Cir. 2017) (internal quotation marks omitted) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)). Our inquiry is twofold: first, we review for procedural reasonableness; then, we review for substantive reasonableness. *Id.*

Procedural reasonableness concerns the process used to impose a sentence. For a sentence to be procedurally reasonable, a district court must first correctly calculate the applicable Guidelines range. *Id.* Then, it must allow the parties to argue for "whatever sentence they deem appropriate and consider those arguments in light of all the factors stated in 18 U.S.C. § 3553(a)." *Id.* at 517–18 (internal quotation marks omitted) (quoting *United States v. Hernandez*, 603 F.3d 267, 270 (4th Cir. 2010)). After that, it must individually assess each defendant's facts and arguments and impose an appropriate sentence. *Id.* at 518. Lastly, a district court "must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." *Id.* (internal quotation marks omitted) (quoting *Gall*, 552 U.S. at 50).

Substantive reasonableness, by contrast, concerns a sentence's length in light of the statutory sentencing scheme. For a sentence to be substantively reasonable, we examine "the totality of the circumstances to see whether the sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a)." *United States v. Gomez-Jimenez*, 750 F.3d 370, 383 (4th Cir. 2014) (quoting *United States v. Mendoza-Mendoza*, 597 F.3d 212, 216 (4th Cir. 2010)). We "must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify" the sentence, *Gall*, 552 U.S. at 51, and the fact that we would have reached a different sentencing result, without more, is insufficient to reverse the district court, *United States v. Pauley*, 511 F.3d 468, 474 (4th Cir. 2007).

Though Defendants raise several arguments unique to each, one common argument made is that Defendants' sentences are procedurally unreasonable because the district court

did not individually assess each Defendant's facts and arguments. In support of this argument, Defendants essentially make two claims.

First, Defendants argue that, in sentencing them, the district court's reasoning was "generic." Put differently, Defendants argue that the reasons that the district court gave in sentencing them were reasons that any court could give in sentencing any dogfighter. In support, they point to the similar language in each written order as well as *United States v. Miller*, 601 F.3d 734, 739 (7th Cir. 2010), in which the Seventh Circuit stated that an above-Guidelines sentence is more likely to be reasonable if it is based on the particulars of the case rather than "factors common to offenders with like crimes." This is wide of the mark. For one, the scale and extent of Defendants' involvement in dogfighting is unlike an average offender with a like crime—someone who had just, for instance, participated in a dogfight once. Defendants were extensively involved in dogfighting, with some breeding, raising, and training dogs for years. What is more, the district court stressed its obligation "to reach a sentence that's proportional and relevant to each particular defendant in this multi-defendant case," J.A. 924, evincing its individual consideration of each Defendant. And, perhaps most commonsensically, Defendants' sentences stem from a single dogfighting investigation. So each order's similar language strikes us less as generic reasoning and more as a consequence of a matter involving a common set of facts.

Second, Defendants argue that the district court failed to address their nonfrivolous arguments for reduced sentences, citing *United States v. Blue*, 877 F.3d 513 (4th Cir. 2017). Here, the sentencing judge's engagement with the parties and their arguments during the sentencing hearings and in the written orders convince us that this standard is satisfied. As

to the remaining procedural and substantive reasonableness challenges that Defendants bring, we have thoroughly reviewed the record and considered Defendants' contentions, and we are satisfied that each sentence imposed is procedurally and substantively reasonable.

IV.

For the foregoing reasons, the judgment of the district court as to each Defendant is *AFFIRMED*.

FILED: December 12, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4760 (L)
(7:16-cr-00122-BO-7)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

AARON RICHARDSON, a/k/a Jit

Defendant - Appellant

No. 17-4761
(7:16-cr-00122-BO-8)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CEDRIC GERARD COOK

Defendant - Appellant

No. 17-4770
(7:16-cr-00122-BO-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LEO CHADWICK

Defendant - Appellant

No. 18-4023
(7:16-cr-00122-BO-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LEWIS EDMOND ANDREWS, JR.

Defendant - Appellant

No. 18-4024
(7:16-cr-00122-BO-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RONNIE JEREMY THOMPSON

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgments of the district court are affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:16-CR-122-BO-7

UNITED STATES OF AMERICA, plaintiff,	)	
v.	)	ORDER
AARON RICHARDSON, defendant.	)	

On May 30, 2017, defendant Aaron Richardson pled guilty to count nine, conspiracy to possessing, training, transporting and delivering an animal for purposes of participating in an animal fighting venture and aiding and abetting, in violation of 7 U.S.C. § 2156(b) and 18 U.S.C §§ 49(a) and 2, and count twenty, possessing animals for the purpose of participating in an animal fighting venture, in violation of 7 U.S.C. § 2156(b) and 18 U.S.C. §49(a), of his indictment. On November 27, 2017, the government moved for an upward departure at sentencing pursuant to U.S.S.G. § 2E3.1. Defendant appeared before the Court for sentencing on December 1, 2017, and was notified that the Court contemplated the possibility of an upward departure. Defendant was sentenced to a term of 60 months' imprisonment in the Bureau of Prisons on count nine and 36 months' imprisonment on count twenty, for a total of 96 months. The Court makes the following findings in support of its upward variance sentence.

Pursuant to 18 U.S.C. § 3553(a), a sentencing court has a duty to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in the [sentencing statute]." Once the defendant's Guidelines sentencing range has been established, the sentencing

court must decide "whether a sentence within that range serves the factors set forth in § 3553(a)[1] and, if not, select a sentence within statutory limits that does serve those factors." *United States v. Tucker*, 473 F.3d 556, 560 (4th Cir. 2007) (internal quotation and citation omitted). After permitting the parties to argue with regard to sentencing, the court should "consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party." *Gall v. United States*, 552 U.S. 38, 49-50 (2007). The court must then "make an individualized assessment based on the facts presented, [and if it] decides that an outside-Guidelines sentence is warranted, [it] must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Id.* at 50. A sentence that deviates can do so on the basis of a Guidelines-sanctioned departure, in accordance with the § 3553(a) factors, or some other reason. *United States v. Evans*, 526 F.3d 155, 164 (4th Cir. 2008). The "method of deviation from the Guidelines range—whether by departure or by varying—is

[1] The factors set forth in § 3553(a) are:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) the need for the sentence imposed –
> (A) to 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 further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
> (3) the kinds of sentences available
> (4) the kinds of sentence and the sentencing range established for –
> (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines . . .
> (5) any pertinent policy statement . . .
> (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct
> (7) the need to provide restitution to any victims of the offense.

irrelevant so long as at least one rationale is justified and reasonable." *United States v. Diosdado-Star*, 630 F.3d 359, 365-66 (4th Cir. 2011).

At the sentencing hearing, the Court found that defendant's advisory Guidelines range, as calculated by the Probation Office, was 12-18 months' imprisonment, based on a total offense level of 13 and a criminal history category of I. The maximum sentence applicable on either count is five years' imprisonment. Having considered the Presentence Investigation Report ("PSR"), the arguments of counsel with regard to sentencing, and the factors enumerated in § 3553(a), the Court finds that a variance sentence is appropriate in this case.

To begin, the Court finds that a departure from the Guidelines is warranted. Such a departure is appropriate for three reasons: the scale of defendant's involvement in dog fighting, the inadequacy of accounting for defendant's criminal history, and the existence of related uncharged conduct.

The sentencing guidelines for animal fighting ventures were updated in 2016 to better account for the cruelty and violence inherent in participating in such activity. U.S.S.G. §2E3.1. But the guidelines do not distinguish between different categories of offenders. Specifically, the guidelines do not differentiate between those offenders who engage in animal fighting once or twice and those who offend repeatedly over a long period of time. Because of this, the guidelines specifically account for the possibility of an upward departure for those offenses involving extraordinary cruelty or on an exceptional scale.

The scale of defendant's involvement in dog fighting was striking. According to the ASPCA, a typical offender is someone who attends animal fights occasionally and has one or two dogs or a few roosters, who are used for fighting a few times a year. The evidence here shows that defendant is not typical. 32 pit bulls were found on defendant's property. The animals

were scarred and wounded, with worn teeth and other signs of fighting. They were malnourished and underweight. One dog was missing a leg. Many of the dogs had to be euthanized. Defendant also had large amounts of dog fighting paraphernalia and training supplies, including treadmills, break sticks, veterinary supplies, steroids, heavy collars, and training chains, some weighing more than the dogs themselves. Defendant regularly attended dog fights and was heavily involved in breeding fighting dogs, even driving a van full of dogs from a breeder in Oklahoma. It is clear that dog fighting was an enterprise in which he invested significant time and money, working to expand the reach of dog fighting in this district. Because of the scale of his involvement, an upward departure is appropriate.

Second, the criminal history calculation as determined by the sentencing guidelines is inadequate here. The Sentencing Commission was prepared for this possibility, and provided for upward departures when a defendant's criminal history category "substantially underrepresents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes." U.S.S.G. §4A1.3(a)(1).

Whether prior sentences were not used in calculating the category is relevant to this inquiry. Of defendant's 31 adult criminal convictions, only one was scored for the purposes of determining his criminal history category. This means defendant has five unscored adult felonies. The volume and regularity of his criminal activity, including the number of offenses committed while on probation, is evidence that he does not have respect for the law and is likely to continue to commit crimes. Therefore, the Court finds that his criminal history category is underrepresentative and an upward departure is warranted.

Third, defendant's uncharged conduct merits a departure. According to the Sentencing Guidelines, underlying conduct that was not used for the purpose of determining the guideline

range may be considered. § 5K2.21. Throughout the investigation that lead to defendant's arrest and guilty plea, the government discovered evidence of defendant's involvement in selling drugs. Specifically, evidence detailed that defendant was involved in large heroin deals in 2015 and 2016. This information, which was incorporated into defendant's PSR and which defendant's counsel did not challenge, was not used to charge defendant. Therefore, it is appropriate to consider defendant's history of drug dealing, which supports departing upward from defendant's guidelines range.

The § 3553(a) factors also militate in favor of an upward variance in this case. Dog fighting is a cruel enterprise, and defendant was deeply involved in it. Dog fights are brutal and drawn out: dogs sustain significant injuries and sometimes are put down after the fight. The dogs' suffering is not limited to the actual fight: dogs are trained to be aggressive and antagonistic, are kept under appalling conditions, and receive inadequate care. These offenses are serious and the sentence should match them. Additionally, defendant's character indicates that a higher sentence is warranted. He was first cited for cruelty to animals in 2004, more than twelve years ago. His lengthy criminal history and the flagrancy of his participation in dog fighting show both his lack of respect for the law and his likelihood to continue committing crimes. A variant sentence is necessary to provide adequate punishment and deterrence.

Accordingly, a sentence within the Guidelines range would be insufficient to adequately serve the § 3553(a) factors and the purposes of the sentencing statute. After considering defendant's individual circumstances and the facts of this case, the Court holds that a variance sentence of 60 months' imprisonment on count nine and 36 months' imprisonment on count twenty is appropriate and reasonable in this matter. This Court also imposes a term of three years' supervised release, on the condition that defendant not engage in any activity related in

any fashion to dog fighting, or owning, harboring, possessing or caring for any dog without the approval of the Probation Office.

SO ORDERED, this 6 day of December, 2017

Terrence Boyle

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

AO 245C (Rev. 09/17) Amended Judgment in a Criminal Case
Sheet 1

(NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
v.
Aaron Richardson

Date of Original Judgment: 12/1/2017
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☑ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 7:16-CR-122-7-BO
USM Number: 62954-056
Sean P. Vitrano
Defendant's Attorney

THE DEFENDANT:

- ☑ pleaded guilty to count(s) 9s and 20s
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses::

Title & Section	Nature of Offense	Offense Ended	Count
7 U.S.C. § 2156(b), 18 U.S.C. § 49 and 18 U.S.C. § 2	Possess, Train, Transport, and Deliver an Animal for Purposes of Participating in an Animal Fighting Venture and Aiding and Abetting.	December 6, 2016	9s

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

- ☐ The defendant has been found not guilty on count(s) _____
- ☑ Count(s) 1s, 3s and 11s ☐ is ☑ are dismissed on the motion of the United States.

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

12/18/2017
Date of Imposition of Judgment

Terrence Boyle
Signature of Judge

Name and Title of Judge

12/18/2017
Date

AO 245C (Rev. 09/17) Amended Judgment in a Criminal Case
Sheet 1A

(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
7 U.S.C. § 2156(b), 18 U.S.C. § 49(a)	Possess Animals for Purpose of Participating in an Animal Fighting Venture.	December 6, 2016	20s

AO 245C (Rev. 09/17) Amended Judgment in a Criminal Case
Sheet 2 — Imprisonment (NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :

Count 9s - 60 months
Count 20s - 36 months and shall run consecutive to Count 9s.
The defendant shall receive credit for time served while in federal custody.

☐ The court makes the following recommendations to the Bureau of Prisons:

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Count 9s and 20s - 3 years per count - concurrent.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

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

The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall support the defendant's dependent(s) and meet other family responsibilities.

The defendant shall not possess any dogs unless approved by the US Probation officer.

AO 245C (Rev. 09/17) Amended Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties (NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 200.00	$	$ 25,000.00	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

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

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☑ the interest requirement is waived for ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245C (Rev. 09/17) Amended Judgment in a Criminal Case
Sheet 6 — Schedule of Payments (NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Aaron Richardson
CASE NUMBER: 7:16-CR-122-7-BO

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Payment of the special assessment and fine shall be due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

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

Order for Forfeiture of Property filed in open court on 12/1/2017

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	
vs.	CASE NO. 7:16-CR-122-6BO
LEO CHADWICK,	
Defendant.	
UNITED STATES OF AMERICA,	
vs.	CASE NO. 7:16-CR-122-7BO
AARON RICHARDSON,	
Defendant.	
UNITED STATES OF AMERICA,	
vs.	CASE NO. 7:16-CR-122-8BO
CEDRIC GERARD COOK,	
Defendant.	

FRIDAY, DECEMBER 1, 2017
SENTENCING HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

THE COURT: And when some guy is walking down Main Street with a pit bull on the leash, your suspicions automatically get engaged.

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

A. After meeting with the informant, developing the informant, within two weeks we were at a dog fight in Onslow County involving Louis Andrews, Ronnie Thompson, Leo Chadwick, James Martin, Seth Golden and Cedric Cook. And Aaron Richardson as well, he was present. That was our first fight that we attended. It lasted roughly 50 minutes. And it was in an out building away from the road to where the public couldn't just walk up on it.

Q. (By Ms. Howard) What role did Mr. Cook play in that fight?

A. In that fight, Mr. Andrews owned the dog and Mr. Cook was the handler for the dog. The way we have seen it, the way it was explained to us and everything we know now, you have the owners of the dog who raise and train the dog or you have the trainer of the dog, and then once the fight takes place, typically there will be a handler for that fighting dog. So in the pit, which is typically 12-foot by 12-foot, there is three people in that fighting pit. It's a handler for each dog and the referee. During the first fight, Mr. Cook was the handler for Mr. Andrews' dog.

mother and father, their grandpa, this is the lineage of the dog. That's just what they're there -- I don't think that --

THE COURT: We know --

THE WITNESS: -- it bothers them, yes, but --

THE COURT: We know from antidotes, not part of this case but part of the facts or folklore you can take into judicial notice, that if a child might wander into an unprotected area that sometimes a child is mauled and killed by pit bulls.

THE WITNESS: Absolutely. That is because the child is the same size as the dog. So it's kind of the size difference. Like a grown adult can walk in there and kind of be okay, but a child, that is a big issue. As a matter of fact, we have a video we'll come to later that will demonstrate that with the dogs.

THE COURT: So they're not necessarily tame to humans, it's a little more involved than that.

THE WITNESS: They kind of look for their own size of fight. I won't say they're not aggressive towards humans because obviously they can be -- and we know they are based on certain evidence -- but typically they go after something that's their same size.

THE COURT: Okay. These drug dealers that have nothing but pit bulls hanging around their house, they're there to keep them aggressive towards humans, aren't they?

THE WITNESS: Absolutely. Yes, sir.

THE COURT: That is the whole idea. It's like you're protecting your stash by having pit bulls.

THE WITNESS: Yes. They have the pit bull and they like that for several different reasons. After talking to -- interviews and proffers of subjects involved in this case, after Michael Vick was sentenced for dog fighting, that's when they said it kind of turned and was more of a thuggish sport, in his words, and that's when it kind of came to the forefront the drug dealers would have those dogs to protect the stash because they have the stronger jaws, they have the -- where they bite and don't let go, kind of like a snapping turtle almost I describe it, but that is the reason behind why they have them.

THE COURT: Okay.

Q. (By Ms. Howard) Task Force Officer Keller, so you found the dogs on Mr. Chadwick's property. Did you also find other paraphernalia associated with dog fighting and training?

A. Yes.

Q. Such as what?

A. We found flirt poles, which as I described earlier is used to tease and train the dog at the same time. We found treadmills, which they will hook the dog to the treadmill and make the dog run for an extensive amount of

time, sometimes wearing a heavier collar, pulling a chain. We found dog medication, we found bite sticks, and just stuff of that nature.

Q. You mentioned the treadmill. I would like to show you Government's Sentencing Exhibit D. I'm sorry, I skipped one here. Let's go back to Government's Exhibit B, as in boy. Is this one of the other dogs that was found on Mr. Chadwick's property?

A. Yes. You can see this one has -- this is coming in his back door. He has two dogs stacked on top of each other on top of a crate that has newspaper underneath both of them. Both the newspaper in both cages were soiled with urine and feces. We believed that these dogs were either close to fighting stance as typically when they bring the dogs in. When they're in their training regime, the dog will come and get fed better, they'll get better food, more water and it's warm. They take better care of it when it's getting ready to fight.

Q. So I would like to show you Government's Exhibit D. Is this the treadmill you found in Mr. Chadwick's house?

A. Yes. This was in one of the bedrooms. The main thing here is that it has a makeshift shell more or less around the treadmill. That way once the dog is running -- because there's a chain that runs the length of the treadmill that they hook it kind of like a lead for the dog so it can

run on the treadmill. As the dog gets tired the dog will eventually start smacking the walls just -- it's running out of juice and steam and can't run no more.

Q. And on the floor there to the left of the treadmill in Government's Exhibit D, are there other items associated with dog fighting?

A. Yes. It looks like a whip or a flirt pole of some sort, depending on how it was used. Right there on the white part of the carpet before it turns blue.

Q. You also mentioned that there were break sticks or bite sticks found on his property?

A. Yes.

Q. What are those used for?

A. Because the pit bull has such a strong bite, they will bite and not let go. Or they get fanged, meaning the tooth goes through the lip during the fight. They will take those bite sticks, stick it in the mouth at a wide angle like such and then they'll twist the bite stick to where it pries it open and then they're able to release the dogs and pull the dogs off of each other.

Q. You found break sticks that were used on his property?

A. We found break sticks that had been used. You can tell they've been used because they're all scratched up, they have dried blood and dirt. And we also found to be like a

ceremonial break stick or trophy of some sort.

MS. HOWARD: Your Honor, may I approach the witness?

THE COURT: Yes.

Q. (By Ms. Howard) I would like to show you what's been marked as Government's Exhibit E. This physical exhibit is reflected in photograph form in the Government's motion, Exhibit 8. What is sentencing Exhibit E?

A. This is the ceremonial trophy like break stick or bite stick.

Q. Is there anything written on that?

A. Yes. It is dated August 15, 2015. It reads, big dog -- something I can't read -- good luck. And then if you flip it over it's signed by subjects that we know to be dog fighters and people that are regarded in high statue of the dog fighting community, such as Tom Garner, Harry Hargrove, Brian Lupes and there is a couple other names on the back.

MS. HOWARD: Your Honor, may I provide that to the Court for your inspection?

THE COURT: Okay.

Q. (By Ms. Howard) You mentioned that these signatures appear dated to be August 15 of 2015. Does that have a significance to you?

A. It does. Earlier that year Mr. Hargrove was released following his prison sentence to the BOP after dog

fighting.

Q. So it appears that Mr. Chadwick at some point got this break stick signed by Mr. Hargrove after he had been released from Federal prison?

A. Yes.

Q. Now in addition to all the physical evidence you all found at Mr. Chadwick's property, who took custody of the animals that were present?

A. The ASPCA.

Q. And what did they do with those dogs?

A. Right from the beginning, as soon as they arrived on scene, they photographed and documented how the dogs were when they arrived. And then they slowly started taking the dogs off their chains, evaluating them by a veterinarian, doing a quick once-over to see if there was really any urgent medical conditions that needed to be attended to. Once that was done, they placed them in a crate -- they did this at all the locations -- and then they are transported to another out of state location where a more thorough examination and behavior analysis can be conducted on the dogs.

Q. So when they were on scene at Mr. Chadwick's property, did they observe any injuries to the dogs that were indicative of dog fighting?

A. Yes. The dogs -- they noticed that the dogs were malnourished, they were thin. Several of the dogs had

scarring on their legs, their ears, the top of their head, around their throat, their muzzle. All indicative to dog fighting.

Q. I would like to show you Government's Sentencing Exhibit F. Is this one of the dogs that was taken from Mr. Chadwick's property?

A. It is.

Q. And what injuries did this dog display?

A. This dog, as you can see, on the top of the head there is scar tissue from probably punctures of fangs. Coming down the face there is the oozing blood which was probably a fresh scab; but this dog was aggressive towards humans, towards law enforcement that was there and was trying to get out of the cage and could have ripped the fresh scab off the muzzle and that's what the oozing is probably from. Also scarring on the leg, if you look up the leg.

Q. I'm showing you Government's Exhibit G. Is this another dog that was found on Mr. Chadwick's property?

A. Yes. I believe this is the dog that had the chain that we showed from the bucket. But again, the heavy chain, the crop circle right there, no adequate food. The dog standing in water up to its -- you know, a couple inches of water. That's the living condition for that dog. Hauling around the chain and living in the water.

Q. Did that dog appear to be underfed?

A. Yes. That dog also was malnourished and thin. And as the investigation went on, we learned that Mr. Chadwick could not afford to feed all his dogs so he would feed them biscuits or whatever he had handy and it was only a select few.

Q. All right. So after the dogs were seized from the property, you mentioned ASPCA conducted medical evaluations of each dog?

A. They conducted medical evaluations on each dog and then they also conducted behavior analysis on each dog in an attempt to re-home the dogs if they could.

Q. What type of behavioral tests were done?

A. They would start by bringing in a small dog and seeing if the dog was aggressive towards that dog. They would bring in a dog -- now these are stuffed dogs. So these are stuffed dogs. They bring in a small stuffed dog and see the aggression and a medium-sized stuffed dog for the aggression and a larger stuffed dog for the aggression. And they rate it and see if it's aggressive towards those sizes of dogs.

And then they would bring in a stuffed human-like child and see if the dog was aggressive towards that.

Q. Have you reviewed any of the videos of the behavior tests conducted on Mr. Chadwick's dogs?

A. I have.

Q. Were there any that stood out to you as particularly concerning?

A. There was one where the dog was turned around not facing the door and they brought in a life-like doll to see if the dog was aggressive. As soon as they turned the dog around, the dog attacked the doll so much so as it ripped the hair off the doll and had to be pulled away because it was tearing the doll up.

MS. HOWARD: Your Honor, I would ask to play Government's Exhibit H, which is the video of that behavioral test. It's a small clip portion.

MR. DONAHUE: If I just may take a look at her screen.

MS. HOWARD: Yes. Unfortunately the screens over here are not working so the defense counsel -- I've offered to let watch over my shoulder.

(Video played)

Q. (By Ms. Howard) Were there other behavioral tests besides what was shown in Government's Exhibit H that showed aggression in the dogs that were seized from Mr. Chadwick's property?

A. Yes.

Q. I would like to move on to Mr. Richardson's property. A Federal search warrant was conducted of his property as well; is that right?

A. Yes.
Q. And what was observed on Mr. Richardson's property?
A. Mr. Richardson's property was kind of set up the same way as Mr. Chadwick's property. They had the blue bin houses, they had homemade dog houses, and they were all again set up to where they're just out of reach of everybody else. The dog yard itself sat into the tree line again for the previous reasons that I stated, that they're trying to avoid law enforcement, trying to keep the dogs cool in the summer heat and so somebody else couldn't find their dogs and steal them.
Q. I'd like to show you Government's Exhibit I, the first photograph. Is this one of the dogs that was seized from Mr. Richardson's property?
A. Yes.
Q. And is that, as you were describing, typical of what was found on his land?
A. Yes. He had -- some of his houses were the blue barrels, other ones he had constructed a big bird-house type deal for the dogs or dog house.
Q. And the second page of Government's Exhibit I, is this a larger photograph of that property?
A. Yes.
Q. Were there any dogs located inside Mr. Richardson's house?

A. Yes. They had -- coming into the back door there was a medium to large-sized crate that had a mother in there along with several puppies and I believe there was eight total dogs inside this kennel. And also included in the kennel was -- the bottom was completely covered with feces, urine and some type of worm, I believe, obviously from the puppy --

Q. I would like to show you Government's Exhibit J. Is this a photograph of that crate containing the mother and puppies?

A. Yes.

Q. Now, do you know what the outcome was with regard to these puppies?

A. These puppies specifically, these puppies were only a few weeks old. They also went through the behavior analysis done as Mr. Chadwick's dogs did. These puppies were already too aggressive to re-home because it was bred into them to attack.

Q. So at least some of those dogs, those puppies, had to be euthanized due to aggression?

A. Yes.

Q. Now the dogs that were found outside, they were also chained just as Mr. Chadwick's dogs were?

A. Yes.

Q. And again, were the chains heavy themselves?

A. Yes. The same style and manner that Mr. Chadwick's chains were. They were long, heavy, logging chains, metal chains, staked to the ground with some type of large metal pole or pipe or a tire iron -- or a tire axle.

MS HOWARD: Your Honor, I would ask to show Task Force Officer Keller Government's Exhibit K, which is a physical exhibit of a chain taken from Mr. Richardson's property and ask that he step down.

THE COURT: Yes.

(Witness displaying the chain)

A. This chain is probably the high 20s with the weight, the weight on the collar, so the dog can strengthen its neck. The weight itself is probably about 10 to 11 pounds. If you look at the collar you'll see there is mold in certain spots. That's where the collar was too tight to the dog and some bacteria was seeping on to the collar from it being too tight and dragging that around.

Q. (By Ms. Howard) Thank you, Detective Keller. Is that -- Government's Exhibit K, is that typical of the chains that were found on Mr. Richardson's property?

A. Yes.

Q. Did you locate other items that were indicative of dog fighting and conditioning on his property?

A. We did.

Q. Such as what?

A. We also found more treadmills at Mr. Richardson's house, break sticks, medication, flirt poles.

Q. I would like to show you Government's Exhibit L. Is this the treadmill you referenced?

A. Yes. This is one of the homemade treadmills that we seized. It's very simple to complex. A couple of pieces of iron, some wood slats. At Mr. Andrews' residence, we found instructions on how to build this. This is -- you put the dog -- obviously hook him towards the front -- to the front chain, put a flirt pole or something in front of it and self-generated, will run itself.

Q. Did you also locate any break sticks in the house?

A. Yes.

Q. I'm showing you Government's Exhibit M. Is this one of the break sticks you found?

A. Yes. You can tell it's obviously been used. It has scrapes and mud on it, it's got blood at the top of it as well. We noticed, obviously through the investigation, that when the dogs bite, they fang one another so they get blood that way. But when they bite, they bite with such force that they make their selves bleed.

Q. Was Mr. Richardson present when law enforcement first entered his house?

A. He was.

Q. Where was he located approximately?

A. He was in the living room on the couch. And within about arm's distance from Mr. Richardson was a Smith & Wesson .40 caliber pistol.

Q. Were there any drugs located on his property?

A. There was. We found marijuana in the house and sitting on top of the microwave was a Pyrex dish that had white residue and a fork with white residue.

Q. I'm showing you Government's Exhibit N. Is this the Pyrex dish and fork you were just describing?

A. Yes. Based on my training and experience of doing narcotics work for eight years, this is typically how you manufacture crack cocaine. The cocaine, the baking soda and the powder go into the Pyrex dish. Put it in the microwave and stir it up with the fork that you see there. That's how the term crack cookie comes to fruition is when it dries out, they dump it out of the Pyrex dish and it's in the shape of a cookie.

Q. Now there was also a woman present when Mr. Richardson was arrested; is that right?

A. Yes.

Q. Did she provide any information?

A. She did. She stated that Mr. Richardson had been selling marijuana and crack from the residence and that she always sees him with a gun.

Q. Now, ASPCA again conducted medical evaluations of

each of the dogs seized from Mr. Richardson's house as well?

A. They did.

Q. What types of scarring were found on the dogs rescued from his location?

A. The same type of scarring we found on Mr. Richardson's. Their legs -- I'm sorry, Mr. Chadwick's house -- their legs were scarred up from scrapes or bites, the necks had scar tissue, tops of their heads, their ears, their muzzle, around the face. All typical with dog fighting injuries.

Q. I'm showing you Government's Exhibit O. Is this one of the injuries from a dog seized from Mr. Richardson's property?

A. Yes. Down on the leg you can obviously see the open wounds, and open cuts from either scrapes, scratches or teeth marks.

Q. Was there also a dog found there that was missing one of its legs?

A. Yes.

Q. Is that common in dog fighting from your understanding?

A. Once a dog reaches a certain stature to where it's a champion or a grand champion, they don't want to euthanize -- or they don't want to kill that dog because that dog is worth money. So they can stud that dog out or have studs

come to their females -- make babies or puppies -- and then still make a profit. So just because the dog no longer has a leg -- he may not fight that dog in a main fight anymore, but they can use it for practice fights with his upcoming dogs.

Q. Your understanding was both Mr. Thompson and Mr. Richardson were holding dogs on this property where Mr. Richardson was found?

A. Correct.

Q. And so it was unclear, based on your inspection, which dogs belonged to which defendant?

A. That's correct. They were all -- all the dogs were co-mingled. They're altogether, they're all one entity.

Q. Now were behavioral tests conducted by the ASPCA on those dogs on Mr. Richardson's property as well?

A. They were.

Q. And have you reviewed those videos?

A. I have.

Q. Was there any video in particular that was noteworthy to you?

A. One that they did the behavior analysis on, they introduced a stuffed yellow lab to the other dog. The other dog immediately attacked and was -- like I stated earlier, they bite so hard that it causes itself to bleed on a stuffed animal.

MS. HOWARD: Your Honor, I would like to play

Government's Exhibit P, which is a video -- or at least a portion of the video -- for that behavioral test.

THE COURT: This is a stuffed dog?

MS. HOWARD: Yes. What's displayed right now on the screen is the real dog and then they'll bring in the stuffed dog.

THE COURT: Okay. The real dog is the pit bull?

THE WITNESS: Yes, sir.

(Video played)

THE COURT: So when you're in a city where people have dogs and don't have open fields to run in, and you take your nice pet to the dog park and your neighbor, the defendant, shows up with his pit bull, this is what happens?

MS. HOWARD: I can let the witness answer.

THE WITNESS: Yes, sir.

Q. (By Ms. Howard) Did you find it was common that these defendants would take their dogs to a neighborhood dog run?

A. No. They typically keep all their dogs --

THE COURT: They're hiding them because they're criminal dogs.

THE WITNESS: Yes, sir.

Q. (By Ms. Howard) Now, I've only played a portion of this video. At the conclusion of this video, did the ASPCA require break sticks to separate this dog from the stuffed

Thank you.

THE COURT: Either the dogs have to be eliminated from the world or the people who fight the dogs or both, but there needs to be an intervention by the law and it's going to start here and that's -- I'll try to be reasonable and be proportional with the sentence, but I find, as a matter of fact, the guideline to grossly under-represent society's need for protection and humanity's need for assurance that this doesn't continue to happen -- and I invite scrutiny of that by any reviewing court -- that I think a guideline range of 12 to 18 months for this kind of chronic and repeated inhumane behavior really shocks the conscience and undermines the credibility of guideline sentencing. So there you have it.

MS. HOWARD: Your Honor, if I may add a few points in response to Mr. Donahue as to Mr. Chadwick.

Again, there were 33 pit bull-type dogs found on Mr. Chadwick's property, two of which were pregnant. At the end of all this, 18 of those dogs had to be euthanized, either for medical or aggression reasons.

Contrary to what Mr. Donahue would say, I believe the evidence shows that Mr. Chadwick was a very happy participant in this structure. Although we didn't play a clip here today just for purposes of brevity, I would note for the record, Your Honor, on page 5 of the Government's

As to all the defendants, I think it's worth noting that there are several layers of suffering and cruelty that go on with dogs like this. There is, of course, the fight and that's obvious on its face how cruel and awful it is. You heard from Task Force Officer Keller that the fights that our informant attended lasted between an 51 minutes and an hour and --

THE COURT: It's the antithesis of having a relationship with your pet. You have, in nature, a fiduciary obligation to things and parts of creation that are inferior to man and this is just the most shocking abuse of that. It's barbaric. It's where people were, I'm assuming, in the stone age. And here we are in the 21st century in the richest and most educated and the most civil country in the world and in the darkness of night and the hidden corners, we have conduct like this and behavior like this. If the Government doesn't stand for anything, it stands for eradicating this sort of behavior.

MS. HOWARD: I agree, Your Honor, and championing beings that are vulnerable in a situation like this. These dogs were bred for the loyalty to their owners. They fight for their owners to the death. And that's taking advantage of what is otherwise a good aspect of them.

THE COURT: There is no good aspect of them in my opinion. I think the breed needs to be reduced and

eliminated. It's a danger to society. You need to look at an animal in a benign and secure way and you can't do that with this breed because of what people have done. People took God's work and distorted it by repeatedly breeding these dogs to kill.

MS. HOWARD: I'm sure the ASPCA would disagree, Your Honor, but I think that dogs --

THE COURT: Then they're nearsighted if they disagree.

MS. HOWARD: As we saw from the behavorial test of the dog taken from Mr. Chadwick's property, the dog ripped the hair off of a fake toddler doll. If that had been an actual toddler who had been --

THE COURT: And these things happen. I mean, occasionally unfortunately you'll read in the press that some child wandered into the access of a pit bull and was killed. Murdered. And it would be murder on the head of the owner or the handler or the person that -- who claimed to be with that dog. There is no doubt about it. It's no different than firing a gun.

MS. HOWARD: Agreed, Your Honor. And I think that in addition to the actual fights here, the dogs that were found on Mr. Chadwick's property were in particularly bad shape. They were underfed. Task Force Officer Keller noted that he was feeding them sometimes scraps from the table.

this is done all throughout rural America in these dog fighting ventures.

THE COURT: That's not true.

MR. VITRANO: They house these things --

THE COURT: It is inhumane and there is no societal tolerance for dog fighting and, quote, the dog fighting industry and the undercurrent and the criminality of it. It isn't something that is benign. It's something that is malignant and it needs to be eradicated in society. Dog fighting is not an activity. That's not like, okay, I play tennis and sometimes I jog, but I also dog fight.

MR. VITRANO: I'm not arguing that it's not inhumane, that the fighting is not barbaric, but the question is whether there was some extraordinary cruelty beyond what normally accompanies a dog fighting venture for you to apply this upward departure on that basis.

THE COURT: I think there is. I think -- and I have listed it in the previous sentencing and I'll incorporate that by reference here; and I will tell you that managing somewhere between 12 and 40 or so dogs and having them chained and having them positioned where they can barely get -- reach each other and maintain their hostility. And all of the things that were demonstrated here by the Government today show that this is an antisocial personality behavior, that it's dangerous, it's criminal, it's brutal, it

lacks in any decency. Crimes are attacks on society, but some of them have sort of a perverted or warped rationale behind them like, okay, a person sells crack cocaine or they sell marijuana or they steal a car. I mean, usually there is a financial motive or reasoning involved in that. Or you could say, well, it was very bad for society, it was bad judgment. It was antisocial. But looking at it in a certain way you can say, well, maybe that's why he did it, but there is no reason or tolerance for this. There just isn't any. I mean, it's savage.

MR. VITRANO: I certainly understand the Court's position and I respect the Court's position, but I will, for the record, simply state Congress has not criminalized possession of this breed of dogs. They could do that if they wanted to eradicate this breed, they could criminalize possession of it. What Congress has done here is criminalized possession, transporting, buying and selling, delivering and receiving these dogs for purposes of having those dogs participate in an animal fighting venture. So had Mr. Richardson possessed --

THE COURT: It only applies to pit bulls. You don't have animal fights with Pekinese, you don't have animal fights with Toy Poodles.

MR. VITRANO: That may be the case --

THE COURT: It's limited to one set of

circumstances.

MR. VITRANO: I'm sorry, I don't mean to interrupt you. That may be the case, but that's not what Congress criminalized. It criminalized possession of these animals and transporting them for purposes of fighting. If he had owned 30 puppies that didn't bear signs of scarring and he stored them in exactly the same way out in his yard with heavy chains, we wouldn't be here today. It's by virtue of the fact some of these adult dogs -- it is a proportion or percentage of the dogs that he owned -- that showed this evidence. Nobody knows when these dogs sustained these injuries, of course. That's not proven. But he has 12 puppies, Your Honor. Now is it illegal for him to breed those puppies if he doesn't sell them and he doesn't intend them to fight at some point? It's not. It may be barbaric. Those dogs in the crate may have had to be euthanized because they were aggressive by instinct or by nature, but that doesn't mean that my client was doing something to create that. He pled guilty to possessing and transporting and that's what this guideline takes into account in its base offense level. We know the breakdown on this property. 12 adults, 8 young adults and 12 puppies, 7 of which had just been born. We know the conditions of the dogs, we know there was food there and they had shelters and three of them had excessively heavy chains based on the ASPCA reports. We know

the young puppies couldn't be evaluated. Seven of them were too young for the behaviorist's evaluation; and we know that not all of them bore signs of the abuse that results from fighting these dogs. So that's our argument with respect to an upward departure based on the application note in 2E3.1.

I want to briefly touch on two of the other bases the Government has argued in its motion for an upward departure for Mr. Richardson. One is the evidence of drug dealing, which was uncharged conduct. There was marijuana in the house. That shouldn't surprise Your Honor. If you have looked at his record and looked at the pre-sentence report, you know that he's used marijuana every day since he's been 15 years old. There was a beaker with some crack residue on it but interestingly, there were no other drugs in this house; and he's not observed in any way participating in controlled buys. Everything that we know about drug trafficking is anecdotal from the Government witnesses that he's never had an opportunity to confront or cross-examine.

And finally as to the criminal history, Your Honor, being under-represented, you can see there is a lengthy criminal history, but he's still scored as a level 1 offender. The Government is asking you to look at him as potentially a level 3 offender. Mr. Richardson is 42 years old. If the Court is going to depart upward on this basis, we would ask you to consider that it not be on the basis of

offenses he committed when he was 15 or 16 years old. Your Honor knows about his marijuana use so convictions related to marijuana and paraphernalia that litter his record are completely unsurprising. We would ask you to look at the convictions within the last ten years. There are two. 2010, operating a vehicle while his license was suspended and then there were a couple of unscored traffic offenses and two convictions for not having dog licenses in Florida. That, in my opinion, hardly makes him a hardened criminal in the sense that the Government is arguing you have to be concerned about the safety of the public based on his criminal record, Your Honor.

Finally, as to the non-guideline factors, the 3553(a)(2) factors. I believe based on knowing Mr. Richardson for the past year and speaking to his family members and reviewing the character letters we submitted to the Court, he poses a relatively low risk of recidivism. He has a high level of family support. He believes, despite what I wrote in the memo, that ultimately he's going to end up with the mother of his son in Florida at the end of this process. And the conditions that Your Honor is going to impose will ensure that he remains law abiding and doesn't have access to the means to commit these type of offenses again.

So at the end of the day, Your Honor, we ask you to