No. _____

In the Supreme Court of the United States

EDWARD BROWN,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Benjamin L. Falkner, Esq.
Counsel of Record
Krasnoo, Klehm & Falkner LLP
28 Andover Street, Suite 240
Andover, MA 01810
bfalkner@kkf-attorneys.com
(978) 475-9955

QUESTION PRESENTED

1. Since the petitioner has been continuously in custody since October 4, 2007, he completely served the sentences of imprisonment imposed by the district court as to all other convictions (besides the now-vacated Count Three) before his resentencing, thereby satisfying the judgment imposing those terms of imprisonment. Resentencing the petitioner violated the Fifth Amendment's Double Jeopardy prohibition against multiple punishments for an offense because the district court was not permitted to impose a new sentence or impose a sentence greater than that already imposed. Did the district court violate the petitioner's rights under the Double Jeopardy Clause of the Fifth Amendment?

2. A lawful sentence must be sufficient but not greater than necessary to achieve the sentencing goals set forth at 18 U.S.C. § 3553(a). A district court may not impose a sentence based upon a defendant's held or expressed political views and may not impose a sentence that creates unwarranted disparities with sentences imposed on similarly situated defendants. Here, the district court on resentencing expressly relied upon the petitioner's political beliefs to impose an extremely disproportionate sentence to that of his similarly situated co-conspirators, who were released at the time of their resentencing. Was the sentence procedurally or substantively unreasonable?

PARTIES TO THE PROCEEDING

Petitioner is Edward Brown, who was appellant in the court of appeals. Respondent is the United States of America, which was appellee in the court of appeals.

DIRECTLY RELATED PROCEEDINGS

United States v. Edward Brown, U.S. District Court, D.N.H., Case No. 1:09-cr-00030-01-GZS, Amended Judgment entered on September 29, 2020. *Edward Lewis Brown v. United States*, U.S. Court of Appeals, Case No. 09-8018, Judgment entered on June 4, 2009. *United States v. Edward Brown*, U.S. Court of Appeals, 1st Cir., Case No. 10-1081, Judgment entered on January 19, 2012. *Edward Lewis Brown v. United States, U.S. District Court*, D.N.H., Case No. 16-cv-00083-GZS, Judgment entered on February 6, 2020. *Edward Lewis Brown v. United States*, U.S. Court of Appeals, 1st Cir., Case No. 16-1764, Judgment entered on October 10, 2019. *In re: Edward Lewis Brown*, U.S. Court of Appeals, 1st Cir., Case No. 20-1263, Judgment entered on April 1, 2020.

United States v. Elaine Brown, U.S. District Court, D.N.H., Case No. 1:09-cr-00030-02-GZS, Amended Judgment entered on January 31, 2020. *United States v. Edward Brown*, U.S. Court of Appeals, 1st Cir., Case No. 09-2402, Judgment entered on January 19, 2012.

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Edward Brown respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINION BELOW

The judgment and opinion of the United States Court of Appeals for the First Circuit, Case No. 20-1959 (Appendix ("A") 1-21) is reported as *United States v. Edward Brown*, 26 F.4th 48 (1st Cir. 2022). The (amended) judgment of the district court (A 22-34) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 16, 2022. On May 10, 2022, this Court (Breyer, J.) granted Edward Brown's application (21A699) to extend the deadline to file a petition for a writ of certiorari to July 16, 2022. The

jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. I provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., Amend. V provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT

In 2006, Edward Brown and his wife, Elaine Brown, were indicted by a federal grand jury on charges arising from their failure to pay taxes. *Brown*, 26 F.4th at 53-54. Edward failed to attend the entire trial but the Browns defended on the grounds that the government lacked the legal authority to collect the taxes. *Id.*, 26 F.4th at 54. Both were convicted and, in absentia, sentenced to 63 months in prison each. *Id.* Neither surrendered to serve their sentences resulting in the issuance of warrants for their arrests. *Id.* The Browns holed up in their residence and, for about eight months thereafter, Edward made threats toward government officials. *Id.* By way of example, Edward said that "[i]f anything happens to my wife or I, then everybody associated with the case will get theirs," and that, if he was arrested, "people are

going to die. The Marshal is going to die... It's going to be a war." *Id.* The Browns made public statements about their standoff and invited supporters to help them, including Daniel Riley, Jason Gerhard, Cirino Gonzalez, and Robert Wolffe. *Id.*

Marshals tried to move clandestinely onto the property and arrest Edward at the top of his driveway where he normally got the mail. *Brown*, 26 F.4th at 54. That attempt failed when Riley, who was walking a dog, encountered officers who arrested him. *Id.* Edward heard the commotion and was seen in a tower on top of his home pointing a .50-caliber rifle toward the driveway. *Id.*

In the meantime, Riley told the Marshals that he had purchased explosives at Edward's request and that Gonzalez had brought firearms to the compound and was conducting armed patrols. *Brown*, 26 F.4th at 54-55. Riley also said that handguns and rifles were stashed strategically throughout the house. *Id.*, 26 F.4th at 55. Riley told an inmate that he had assembled spring guns and placed explosive containers around the home. *Id.* Wolffe also told the Marshals about the firearms in the home, and added that Edward and Riley had tested which firearms were best suited to make the biggest explosions when fired at the explosive devices. *Id.*

Finally, in October 2007, the Marshals made their move. *Brown*, 26 F.4th at 55. At Elaine's request, undercover Marshals delivered some property to the Browns' residence. *Id.* After the delivery, Edward brought beer out onto the porch. *Id.* The Marshals used an agreed-upon signal and grabbed Edward, tasered him, and took him into custody. *Id.* They also seized Elaine. *Id.* Searches of the property revealed

improvised explosive devices and large amounts of weapons and ammunition, among other things. *Id.*

On January 21, 2009, a Grand Jury in the United States District Court for the District of New Hampshire charged Edward Brown by Indictment, in **Count One**, with conspiracy to prevent officers of the United States from discharging their duties, in violation of 18 U.S.C. § 372, in **Count Two**, with conspiracy to commit an offense against the United States, in violation of 18 U.S.C. §§ 371 and 111, in **Count Three**, with carrying and possessing a firearm in connection with a crime of violence, in violation of 18 U.S.C. §§ 924, 921 and 2, in **Count Five**, with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922 and 924, in **Count Seven**, with obstructing justice, in violation of 18 U.S.C. § 1503, in **Count Nine**, with failing to appear for trial, in violation of 18 U.S.C. § 3146, and, in **Count Ten**, with failing to appear for sentencing, in violation of 18 U.S.C. § 3146 (R 57-81).[1] The district court had original jurisdiction pursuant to 18 U.S.C. § 3231, which gives district courts original jurisdiction over offenses against federal laws. After trial, Edward was convicted on all counts. *Brown*, 26 F.4th at 55.

At his sentencing, Edward gave a lengthy allocution before leaving the courtroom (R 171-200, 204). His allocution was largely devoted to expressing his unconventional beliefs about the United States Constitution Rangers and about the law (R 171-200).

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[1] Petitioner cites to the Record Appendix, filed in the U.S. Court of Appeals for the First Circuit, pursuant to Supreme Court Rule 12.7. "R" refers to pages of the Record Appendix. "SR" refers to the Sealed Supplemental Record Appendix.

> The district court imposed its sentence as follows:
>
> The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 444 months.
>
> This term consists of a term of 72 months on Counts One, Five, and Seven; 60 months on Count Two to run concurrent with Counts One, Five, and Seven; 12 months on Counts Nine and Ten, to be served consecutively to the terms imposed on Counts One, Two, Five, and Seven; and 360 months on Count Three to be served consecutively to the terms imposed on Counts One, Two, Five, Seven, Nine and Ten.
>
> The term of imprisonment imposed by this judgment shall run consecutively to the defendant's imprisonment under any previous state or Federal sentence.

(R 215).[2] The district court explained its original sentence as follows:

> The term of the sentence I'm imposing is sufficient but not greater than necessary to effectuate the goals of 18 USC, Section 3553(a).
>
> In setting this sentence, I've carefully considered the sentencing range set forth in the advisory lines. I of course give the guidelines no controlling weight. I've also taken into account all the factors set forth

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[2] The district court orally imposed imprisonment of "12 months on Count 9 and 10 to be **concurrent** with the terms imposed on Counts 1, 2, 5, and 7" (R 208) (emphasis supplied). This conflicted materially with the sentence in the written judgment, which imposed a sentence of imprisonment of "12 months on Counts Nine and Ten, to be served **consecutively** to the terms imposed on Counts One, Two, Five, and Seven" (R 215) (emphasis supplied). "[A]n oral sentence prevails over a written judgment if there is a material conflict between the two." *United States v. Santa-Otero*, 618 Fed. Appx. 6, 8 (1st Cir. 2015) (oral sentence of three-year term of supervised release prevailed over written judgment's five-year term of supervised release), *quoting United States v. Riccio*, 567 F.3d 39 (1st Cir. 2009); *see also United States v. Melendez-Santana*, 353 F.3d 93, 100 (1st Cir. 2003) (collecting cases), *overruled, in part, on other grounds by United States v. Padilla*, 415 F.3d 211, 215 (1st Cir. 2005). Here, the oral judgment was that the sentence of imprisonment on Counts Nine and Ten were to be served concurrently to the sentences on Counts One, Two, Five and Seven. As a result, Brown's sentence ended, **at the very latest**, on January 4, 2019. As the court of appeal recognized, however, "the discrepancy is irrelevant here because even if the sentence on Counts IX and X did run consecutively, the total on Counts I, II, V, VII, IX, and X would be 84 months. And it is undisputed that Edward had served at least that amount before resentencing." *Brown*, 26 F.4th at 60 n.9.

in 18 USC, Section 3553(a), and, in particular, the following factors: The nature and circumstances of the offense, the seriousness of the offense, the need to promote respect for the law, the need to – ... -- impose just punishment, the need for deterrence -- ... -- the need to protect the public from further crimes of this defendant, and the impact of the crime on the victims here.

...

In many ways Mr. Brown is a very lucky man to be living in this country. There are many countries in the world that if he had disobeyed a court order, he wouldn't have been sitting in his home for nine months threatening government officials who were trying to enforce a court order. Despite Mr. Brown's feelings about the government, most governments in the world today would have executed the sentence promptly and most likely have executed Mr. Brown quite promptly.

Mr. Brown is an individual who takes the benefits of the society that he lives in with regard to freedom of speech, freedom to publish, the right to due process, yet wishes to deny those freedoms to others. Mr. Brown engaged in a long period of lawlessness and endangered multiple government officials in the discharge of their duties.

It's clear to me that Mr. Brown is entirely unrepentant. His words are, quote, I will never quit, unquote. He prides himself on the fact that he could have killed a number of marshals, yet through his inherent goodness failed to do so. I have no doubt in my mind that Mr. Brown would have killed multiple marshals if they hadn't dealt with him so effectively.

So the actions of Mr. Brown are reprehensible. The seriousness of the offense is high, and I believe a severe punishment is necessary to promote respect for the law and to deter others who attempted to engage in this type of conduct.

Mr. Brown confuses the ability of people in this country to promote their views with his decision that everyone must agree with him. Mr. Brown would deny the right to others of their beliefs merely because they conflict with his. Surprisingly, or not surprisingly, that's his right in this country.

This is a very sad case in many ways. It's very sad that Mr. Brown and his beliefs caused others to be entrapped in his way. Mr. Riley who will in all likelihood never leave prison, Mr. Gonzalez who, though he received a shorter prison sentence, has apparently been irrevocably tainted by these views, and I fear for Mr. Gonzalez's future, Mr. Wolffe

> whose life has been totally disrupted because of Mr. Brown, and most pathetically Mr. Gerhard, a young student who was drawn into the beliefs espoused by Mr. Brown is serving a severe prison sentence because of his involvement with the weapons and explosives.
>
> Regardless of Mr. Brown's belief and his views, I was hoping for some indication of remorse of what occurred to these others.
>
> Mrs. Brown, who has now been sentenced to -- in all likelihood is the rest of her natural life in prison, perhaps an indication of remorse that his wife, a woman who lifted herself up by her boot straps to become a dentist, must serve most likely the rest of her life. An indication of remorse, sympathy, or sadness might have been appropriate.
>
> And what is perhaps the saddest of all in terms of Mr. Brown is an individual who throughout his life never quite garnered the stature that he believed he deserved until the media, because of his views in this case and his threats to the government, gave him the glory that he felt he deserved all along.
>
> Someone once said that everyone gets their fifteen minutes of fame, and Mr. Brown unfortunately was revelling in his during the course of his conduct. His fifteen minutes ran out.

(R 204-207).

On February 29, 2016, Edward filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 (R 224-225). On October 11, 2019, the Court of Appeals authorized Edward "to pursue in the district court a challenge to his § 924(c) conviction(s) based on *Johnson II* and related precedent" (R 49,227).[3] On December 27, 2019, the district court ordered Edward's conviction and sentence for violating 18 U.S.C. § 924(c) (Count Three) be vacated (R 227,229-230). On February 6, 2020, judgment entered regarding the motion under 28 U.S.C. § 2255 (R 228,231). Having granted Edward's

[3] *Johnson v. United States*, 576 U.S. 591 (2015).

motion under 28 U.S.C. § 2255, the district court ordered resentencing. *Brown*, 26 F.4th at 57.

Edward objected to being resentenced, arguing that resentencing would violate both the Double Jeopardy and Due Process Clauses of the Fifth Amendment, *Brown*, 26 F.4th at 57, because the Fifth Amendment barred resentencing or imposition of a sentence of incarceration greater than the sentences already imposed and served (R 234-239,255,271-272). The district court overruled those objections (R 271-272). In the alternative, Edward sought a sentence of time served. *Id.*

Dr. Jill Durand, a licensed psychologist, conducted an aid in sentencing evaluation of Edward (R 245-254). Edward was 78 years old at the time of Durand's evaluation and had suffered a transient ischemic attack in October 2019 (R 247-248). Edward's childhood history was notable for "neglect, foster care and group home placement" (R 247). He has "no contact with any family members" (R 247). During the clinical interview, Edward maintained his beliefs, acknowledging that "his 'principles' and beliefs about the Government 'will never change.'" (R 251-252). Notably, Edward "indicated that he has no plans to access weapons in the future" (R 252). Edward told Dr. Durand that "if he is granted release and returns to the community he wants to be 'left alone, but I am going to have to satisfy the Court. I am going to have to do a supervised release program. I'm not crazy about it, if you make one silly mistake they send you back for all three years.'" (R 252). Dr. Durand described Edward's presentation "as an intelligent and articulate adult man, with a history of early loss and separation, exposure to parental substance use, and limited

academic success" (R 253). Edward "continues to present as somewhat pressured and disorganized, which may be secondary to stress and/or anxiety" and "with many personality traits consistent with both a Narcissistic Personality Disorder, as well as a Paranoid Personality Disorder" (R 253). According to Dr. Durand, Edward "remains convinced that he has been treated unjustly throughout most of his life. Edward possesses very fixed beliefs about the US Government and his obligation or role in upholding the Constitution. Edward's beliefs and convictions are unwavering." (R 253). Dr. Durand opined:

> From a psychological perspective, there is little concern that if released, Mr. Brown would pose a threat to others in the general community. He asserts that he has no current need or use for weapons. However, it is commonly accepted that access to weapons would raise the risk of future potential, dangerous situations. Mr. Brown has expressed his desire to focus on creating an improved educational system. Finally, given Mr. Brown's unwavering beliefs regarding his relationship with the government and tax responsibilities, there is concern that Mr. Brown would not follow conditions to manage repayment of back taxes. There is also concern that if Mr. Brown finds the US Probation Office to be infringing on his rights, that he will ignore or evade attempts to have him follow the conditions of release. He has stated that signing any "contract" for release would be under "duress."
>
> ...
>
> While he expresses no use for weapons at this time, access to firearms should be restricted. It is further recommended that any conditions of release are clearly written and presented to Mr. Brown. Any behaviors that would be considered a violation of the conditions of release should be clearly outlined. If required to meet with a probation officer, the expectations for the frequency and location of those meetings should be detailed ahead of time to reduce ambiguity in expectations.

(R 253-254).

Edward's co-conspirators who had remained in custody in 2020 were all resentenced to time served (R 259,266,340). Riley originally received a 432-month

sentence of imprisonment, Gerhard originally received a 240-month sentence of imprisonment, Gonzalez received a 96-month term of imprisonment and Wolffe received a 30-month term of imprisonment (SR 4-5). Elaine's original sentence had been about 35 years in prison. *United States v. Brown*, 669 F.3d 10, 16 (1st Cir. 2012). According to the Bureau of Prisons Inmate Locator, Wolffe was released on November 16, 2009, Gonzalez was released on August 29, 2014, Gerhard was released on January 30, 2020, Riley was released on January 31, 2020 and Elaine was released on February 28, 2020. *See* https://www.bop.gov/inmateloc/ (last visited July 11, 2022).

In his sentencing memorandum, Edward argued, among other things, that even if his conduct was more culpable than that of his coconspirators, "one must note that he was found guilty of conduct similar to his codefendants, and his criminal record is similar to theirs. As a result, notwithstanding other factors, his sentence ought to be similar to those of his codefendants in order to avoid unwarranted sentencing disparities" (R 259-260). Acknowledging that a distinction between Edward and his coconspirators was his continued belief in the ideas that got him into trouble, counsel argued that Edward was "not committed to perform any *actions* necessary to effectuate those ideas" (R 260-261). Edward argued that he "should not be punished any further based on his *words* (then or now) rather than upon his *deeds*" (R 261) (emphasis supplied). Edward also urged the district court not to impose a longer sentence based on his allocution (R 263). Edward specifically argued: "In the United States, no one, neither Brown nor anyone else, should be punished for his beliefs or for his expression of those beliefs" (R 263). Edward also urged the district

court to consider Edward's advanced age, declining health and the Covid-19 pandemic, among other things (R 255-264).

With regard to Edward's coconspirators, counsel observed that a guidelines sentence would be a "massive discrepancy between a time-served sentence," noting that several coconspirators were much younger than Edward and that Edward's life expectancy at the time of the hearing was only 9.7 years (R 280-281). Counsel argued that "more important than remorse is the fact that we have somebody who has committed to not physically resisting the government, and that's what matters. It doesn't matter what he believes in his head; what matters is what he's going to do." (R 281). Counsel argued that "if 13 years of prison essentially in your golden years, losing almost, you know, the majority of your retirement isn't enough to deter someone from doing what Mr. Brown did, then the marginal deterrence of any further sentencing is essentially meaningless and strictly punitive" (R 280-281). Finally, counsel argued that, while Edward may continue to hold his unconventional beliefs, "he's committed to raising those legal beliefs by manner of speech and not by manner of outburst, or not cooperating with an attorney, or the kinds of problems that existed all those years ago" (R 284-285).

Edward, for his part, gave a lengthy allocution similar to his original allocution (R 286-330). *See Brown*, 26 F.4th at 57-58. When the district court noted that it was troubled by Edward's beliefs that the laws were not valid, Edward did acknowledge that "I have no choice. I have to follow them, and he's correct" (R 319). Regarding the

laws he viewed as invalid, Edward added: "Well, I do commit, yeah, I do commit to following them. I will follow them. I have no choice. I have to follow the laws" (R 320).

The district court calculated the applicable guidelines range as 360 months to life imprisonment (R 336). The district court imposed a total sentence of 300 months imprisonment, broken down as follows: Count One, 72 months; Count Two, 60 months; Count Five, 60 months; Count Seven, 60 months; Count Nine, 24 months; and Count Ten, 24 months (R 342). The sentence on each count was to run consecutively (R 342).

The district court explained its sentence as follows:

> I've determined the sentence I'm imposing is sufficient but not greater than necessary to effectuate the goals of 18 U.S.C. Section 3553(a). In setting this sentence, I've carefully considered the sentencing range set forth in the advisory guidelines, though I give the guidelines no controlling weight. I have taken into account all of the factors set forth in 3553(a). I find most important the nature and circumstances of the offense, the history and personal characteristics of this defendant, the seriousness of the offense, the need to promote respect for the law, the need for just punishment, the need for specific and general deterrence, and the need to protect the public from further crimes of this defendant.
>
> Let me go into a bit more detail. Mr. Falkner in his argument indicates that he shouldn't be sentenced simply upon his beliefs. As I indicated to Mr. Falkner, we are certainly aware of his beliefs, and we were aware of his beliefs prior to his conviction on the tax charges and his beliefs following that. The problem is that he acts on his beliefs, and, by acting on his beliefs, he put in danger multiple individuals, not only law enforcement officers, but put in danger those individuals that were ensconced with him as they held off law enforcement from executing a valid arrest warrant.
>
> Mr. Falkner indicates that this individual, Mr. Brown, has been in custody in 2007, and at an earlier sentencing other people were released for time served. I'll deal with that in more detail later on. I would only indicate at this point that Mr. Brown was the leader and instigator of the entire standoff, and others were brought into that event through Mr. Brown's eloquence.

I've listened very carefully to Mr. Brown's allocution. Parts of it strike me deeply. His views as expressed during the psychological assessment were, in fact, as he indicated, true. He views the criminal law system as a farce in a sense, that it's simply run by a European cartel and is not applicable to him. He denies any accountability for his criminal activism. He feels that he did nothing wrong and that the law is wrong. He indicated that he would continue to not pay his taxes. Whether or not he had taxes is not relevant to me, particularly. An element of, "I don't intend to obey the law," is relevant to me.

I took a moment before I came down to look at the earlier events that took place around his house. Since this is a resentencing, I wanted to get a full impact of what happened.

This is the crime we're discussing. Mr. Brown and his followers, including his wife, barricaded themselves in a home built as a fortress to escape serving a valid sentence entered into by this Court for violation of the tax laws. He armed himself and his followers, daring law enforcement to come and get him. The risk of danger to himself, his followers and law enforcement was extreme.

When I say "armed himself," we're talking about the law enforcement personnel later finding 20 pipe bombs in his bedroom, improvised explosive devices with nails taped around them built in the house and ready for use. A .50-caliber sniper-type rifle with a night scope was found in his bedroom, along with other arms. Another .50-caliber rifle with a night scope was found on the third floor, also with a night scope. I see these as simply and apparently weapons designed to pick off law enforcement personnel, should they approach the house.

Also found were numerous assault rifles, improvised explosive devices, tear gas canisters, all scattered throughout the house. Also found were scattered firearms and bombs and what I have to describe as a huge amount of ammunition ready for use.

Outside the house were found multiple improvised explosive devices hanging from trees, covered -- again, these devices were covered with nails so that an explosion would drive nails into people in the immediate vicinity. Also, a propane cylinder was hung from a tree marked with a red cross so it could be hit and exploded.

Threats were made what would happen if the law enforcement personnel tried to execute a valid order of a judge of this court.

I saw in this court a short time ago Elaine Brown, Daniel Riley and Jason Gerhard. Cirino Gonzalez, another participant here, had earlier

been released and I think went home to live with his family down in Texas. Mr. Falkner is exactly right, that I released Elaine, and I released Daniel Riley, and I released Jason.

Tragically, Jason Gerhard was 21 years old when he got involved with Ed Brown. My memory is that he came up I think as a reporter. He was brainwashed by Mr. Brown in terms of his beliefs and became an active participant in the crime.

Dan Riley was another participant and Elaine Brown, who my memory was that she was an individual who pulled herself up by her own bootstraps, became educated as a dentist, and had a flourishing dental practice in New Hampshire.

Each one of these individuals was released by me for time served in opposition to suggestions by the U.S. Attorney, because I believed, in talking to them and looking at them, that they had learned something during the period of time that they were in prison. They learned that what they had done was wrong; they learned that what they had done was a mistake. They appeared broken by the period of incarceration to the extent that it was clear in my mind that there was no risk from any of them in terms of reverting back to the type of activities that they had engaged in earlier.

I don't see that in Mr. Brown. It's hard to accept that an individual won't break the law in the future if the individual indicates to this minute that these are not laws, they're not valid laws. It's hard to be confident that society will not be threatened by criminal conduct when individuals don't recognize it as criminal conduct. It's hard to accept that an individual will follow conditions of release issued by a judge of this court when the individual does not accept that the judge has the authority to issue any orders.

The last time that I sentenced Mr. Brown -- he wasn't present for all of the sentencing, because he walked out at one point -- I indicated that Mr. Brown takes the benefits bestowed by society yet refuses to allow them to others. By that I mean that the due process that was provided to him was denied by him to law enforcement personnel. At that time he was unrepentant, and now he says to the psychological examiner, "I will never quit." In my view, I believed then and I believe now that he would have killed or injured multiple law enforcement personnel, had they attempted to physically arrest him.

When asked today if he felt what he engaged in at that time was a crime, the record will be clear that he does not. His activities then and I believe

> his intent today is reprehensible, and a serious punishment is still required to promote respect for the law and to deter others.

(R 337-341).

Counsel lodged the following objection:

> [P]lease note my objection to the sentence imposed on the grounds that it violates Mr. Brown's rights under the double jeopardy and due process clauses of the Fifth Amendment and on the grounds that it is a longer sentence than necessary in order to comply with the purposes of Section 3553(a), and that, therefore, it is substantively unreasonable.

(R 344).

An amended judgment entered on September 29, 2020 (R 55,346-348). On the same day, Edward filed a timely notice of appeal (R 55,359-360). The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, which gives federal courts of appeals jurisdiction over appeals from all final decisions of the district courts.

The court of appeals rejected Edward's argument that resentencing him violated the Double Jeopardy Clause of the Fifth Amendment. *Brown*, 26 F.4th at 58-64. The court of appeals cited to *Pepper v. United States*, 562 U.S. 476, 507 (2011) for the proposition that "[a] criminal sentence is a package of sanctions that the district court utilizes to effectuate its sentencing intent." *Brown*, 26 F.4th at 59. The court of appeals then relied on its own precedent for the proposition that, "where the Guidelines contemplate an interdependent relationship between the sentence for the vacated conviction and the sentence for the remaining convictions – a sentencing package – a district court may, on a petition under 28 U.S.C. § 2255, resentence on the remaining convictions." *Id.*, *quoting United States v. Rodriguez*, 112 F.3d 26, 30-31 (1st Cir. 1997). The court of appeals also rejected Edward's

argument that he had "completed serving a valid sentence," because Edward had not completely served the "aggregate sentencing package." *Brown*, 26 F.4th at 60-61. As the court of appeals noted, every other court of appeals has agreed. *Id.*, 26 F.4th at 61, *citing United States v. Triestman*, 178 F.3d 624, 631-632 (2d Cir. 1999); *United States v. Smith*, 115 F.3d 241, 247 (4th Cir. 1997); *United States v. Benbrook*, 119 F.3d 338, 340-341 (5th Cir. 1997); *Pasquarille v. United States*, 130 F.3d 1220, 1222-1223 (6th Cir. 1997); *United States v. Smith*, 103 F.3d 531, 535 (7th Cir. 1996); *United States v. Alton*, 120 F.3d 114, 116 (8th Cir. 1997); *United States v. McClain*, 133 F.3d 1191, 1192-1194 (9th Cir. 1998); *United States v. Easterling*, 157 F.3d 1220, 1223-1224 (10th Cir. 1998); *United States v. Townsend*, 178 F.3d 558, 569-570 (D.C. Cir. 1999).

The court of appeals thus held that Edward's double-jeopardy claim "rises and falls with whether his original sentence is properly considered a package." *Brown*, 26 F.4th at 62. Finding that Edward's original 444-month sentence was "one package," the court of appeals found that he had "no legitimate expectation of finality until []he has served the entire package of interrelated sentences." *Id.*, 26 F.4th at 63-64. Thus, the court held that "Edward's rights under the Double Jeopardy Clause were not violated here, particularly where he received a new aggregate sentence substantially below the aggregate sentence initially imposed: 300 months compared to the original 444." *Id.*, 26 F.4th at 64.

The court of appeals likewise rejected Edward's claims that the district court's reliance on his beliefs in fashioning a sentence was inappropriate as a

matter of procedural or substantive reasonableness. *Brown*, 26 F.4th at 65-69. The court of appeals acknowledged that "a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge." *Id.*, 26 F.4th at 66, *quoting Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993). Nonetheless, the court of appeals determined that Edward's "beliefs about the authority of the government or the criminal laws" were "highly relevant to the [28 U.S.C.] § 3553(a) factors." *Brown*, 26 F.4th at 67. The court of appeals relied both upon the fact that the district court saw Edward's statements as "a recipe for trouble," and the district court's view that Edward did not intend to obey the law. *Id.* In the view of the court of appeals, those concerns play into relevant sentencing factors, including "the need to promote respect for the law, the need to deter Edward and others from committing the same crimes, and the need to protect the public from further crimes committed by Edward." *Id.* Thus, the court of appeals found "no procedural error in the district court's reliance on Edward's beliefs in considering these sentencing factors." *Id.*, 26 F.4th at 67-68. For the same reasons, the court of appeals rejected Edward's argument that the district court's reliance on his beliefs resulted in a substantively unreasonable sentence. *Id.*, 26 F.4th at 69.

REASONS FOR GRANTING THE PETITION

I. Resentencing in this case violated Edward Brown's rights under the Double Jeopardy Clause of the Fifth Amendment, where he served the sentences in their entirety before resentencing.

Edward Brown objected to resentencing on the grounds that the Double Jeopardy Clause of the Fifth Amendment barred resentencing or imposition of a

sentence of incarceration greater than the sentences already imposed and served (R 234-238,255,271-272). The district court overruled those objections (R 271-272). The court of appeals affirmed. *Brown*, 26 F.4th at 58-64. The opinion of the court of appeals (and every other court of appeals to consider the issue) conflicts with the opinion of this Court in *Ex parte Lange*, 85 U.S. (18 Wall.) 163 (1874).

A. Edward Brown served the entirety of his sentences before being resentenced.

Edward Brown was taken into custody on October 4, 2007 (SR 14). His 63-month tax evasion sentence thus ended no later than January 3, 2013 (SR 25). The 72-month sentence on Counts One, Five and Seven in this case therefore began running no later than January 4, 2013 and ended no later than January 3, 2019 (R 233). The 60-month sentence on Count Two in this case began running no later than January 4, 2013 and ended no later than January 3, 2018 (R 233). Assuming arguendo, *without conceding*, that the 12-month sentences on Counts Nine and Ten were consecutive to the others, as reflected in the written judgment, rather than concurrent, as reflected in the sentencing transcript, those sentences began running no later than January 4, 2019 and ended no later than January 3, 2020 (R 233). Even under this view, Brown finished serving all other sentences of imprisonment and began serving the now-vacated 360-month term of imprisonment on Count Three no later than January 4, 2020 (R 233).

B. Resentencing violated Edward's rights under the Double Jeopardy Clause of the Fifth Amendment.

Since Edward has been in custody or prison since October 4, 2007, he had served the sentences of imprisonment imposed by the district court as to all other

convictions at the time of resentencing. The judgment imposing those terms of imprisonment was fully satisfied. Resentencing Edward violated the Fifth Amendment's Double Jeopardy prohibition against multiple punishments for an offense. Therefore, the district court was barred from imposing a new sentence or a sentence greater than that already imposed.

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." The principle that a defendant may not be resentenced on a conviction after he has completed the sentence for that conviction was recognized by this Court as "settled" law nearly a century and a half ago in *Lange*, 85 U.S. at 168 ("If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offence"). In *Lange*, the statute under which the defendant was convicted provided for either incarceration or a fine. *Id.*, 85 U.S. at 174. At the first sentencing, the trial court imposed both a fine and a period of incarceration. *Id.* The defendant paid the fine in full and then sought review, with the result that the first sentence was vacated as illegal. *Id.* The trial court resentenced the defendant to only a period of incarceration. *Id.*, 85 U.S. at 175. However, this Court found that the resentencing violated the Double Jeopardy Clause of the Fifth Amendment because when the defendant paid the fine he satisfied the original sentence to the extent it was valid. *Id.*, 85 U.S. at 176.

> [W]hen the prisoner, as in this case, by reason of a valid judgment, had fully suffered one of the alternative punishments to which alone the law subjected him, the power of the court to punish further was gone. That the principle we have discussed then interposed its shield, and forbid

> that he should be punished again for that offence. The record of the court's proceedings, at the moment the second sentence was rendered, showed that in that very case, and for that very offence, the prisoner had fully performed, completed, and endured one of the alternative punishments which the law prescribed for that offence, and had suffered five days' imprisonment on account of the other. It thus showed the court that its power to punish for that offence was at an end.

Id. *Lange* remains binding law to the extent that it stands for the proposition that the Double Jeopardy Clause is violated if a defendant is resentenced after he has entirely served the sentence originally imposed for a conviction.

Sixty-nine years after *Lange* (and 79 years ago), this Court recommitted to the principle that, once a punishment has been suffered, no further punishment may be imposed. *In re Bradley*, 318 U.S. 50, 51-52 (1943). In *Bradley*, as in *Lange*, Mr. Bradley was convicted of a crime punishable by a fine or imprisonment. 318 U.S. at 51. He was sentenced to both imprisonment and the fine. *Id.* While Bradley was in custody, his attorney paid the fine. *Id.* The Court reiterated its holding in *Lange*: "As the judgment of the court was thus executed so as to be a full satisfaction of one of the alternative penalties of the law, the power of the court was at an end." *Bradley*, 310 U.S. at 52.

The court of appeals leaned upon *Jones v. Thomas*, 491 U.S. 376, 382-383 (1989) in order to evade the reach of *Lange*. *See Brown*, 26 F.4th at 62 n.10. But *Jones* did not overrule *Lange*. *Jones* involved a defendant who was sentenced to "consecutive terms of 15 years for the attempted robbery and life imprisonment for the felony murder, with the 15-year sentence to run first." 491 U.S. at 378. While Jones' case was pending, the Missouri Supreme Court held that the Missouri Legislature had not intended to authorize separate punishments under the felony murder statute. *Id.*,

491 U.S. at 378-379. Ultimately, Jones' 15-year sentence was vacated and he was made to serve the sentence for the felony murder, with credit for the time he had been serving the attempted robbery sentence. *Id.*, 491 U.S. at 379. The *Jones* Court departed from the principle "that once a defendant 'had fully suffered one of the alternative punishments to which alone the law subjected him, the power of the court to punish further was gone.'" 491 U.S. at 382, *citing Lange*, 85 U.S. at 176. Thus, the Court held that the Double Jeopardy Clause did not require that the life sentence for murder be vacated.

This case is not governed by *Jones* but instead by *Lange*. Jones was not resentenced on the satisfied attempted robbery sentence, nor was his life sentence increased. This case presents the situation of a defendant who had fully discharged his sentences on the same convictions for which he was resentenced. Edward Brown served more than the twelve years imposed for his valid counts of conviction. Resentencing him amounted to punishing him twice in violation of the Fifth Amendment's prohibition against Double Jeopardy.

The court of appeals applied the so-called "sentencing package doctrine" to find that Edward had not fully served his sentences on the convictions for which he was resentenced. *Brown*, 26 F.4th at 59-61. To be sure, in *Pepper*, this Court has stated that "[b]ecause a district court's 'original sentencing intent may be undermined by altering one portion of the calculus,' *United States v. White*, 406 F.3d 827, 832 (7th Cir. 2005), an appellate court when reversing one part of a defendant's sentence 'may vacate the entire sentence ... so that, on remand, the trial court can reconfigure the

sentencing plan ... to satisfy the sentencing factors in 18 U.S.C. § 3553(a).'" *Pepper*, 562 U.S. at 507, *quoting Greenlaw v. United States*, 554 U.S. 237, 253 (2008). However, neither *Pepper* nor *Greenlaw* involved a double-jeopardy challenge to resentencing. This Court has never held that a sentence of incarceration, fully served, may be the subject of resentencing to a longer term of incarceration.

Every other court of appeals to consider the issue has agreed with the First Circuit. *See United States v. Triestman*, 178 F.3d 624, 631 (2d Cir. 1999); *United States v. Smith*, 115 F.3d 241, 245-247 (4th Cir. 1997); *United States v. Benbrook*, 119 F.3d 338, 339-340 (5th Cir. 1997); *Pasquarille v. United States*, 130 F.3d 1220, 1222-1223 (6th Cir. 1997); *United States v. Smith*, 103 F.3d 531, 535 (7th Cir. 1996); *United States v. Alton*, 120 F.3d 114, 116 (8th Cir. 1997); *United States v. McClain*, 133 F.3d 1191, 1193-1194 (9th Cir. 1998); *United States v. Easterling*, 157 F.3d 1220, 1223-1224 (10th Cir. 1998); *United States v. Watkins*, 147 F.3d 1294, 1297-1298 (11th Cir. 1998); *United States v. Townsend*, 178 F.3d 558, 569-571 (D.C. Cir. 1999). Throughout nearly the entire country, the courts of appeals have authorized within their jurisdictions sentencing practices directly at odds with this Court's jurisprudence. This Court should intervene.

II. Edward Brown's sentence was procedurally and substantively unreasonable in that it was longer than necessary to achieve the sentencing goals, where it was based upon the expression of his political beliefs, resulting in a sentence that was extremely disproportionate to those of his coconspirators, who received time served sentences.

The district court abused its discretion by imposing a lengthy sentence, based on Brown's expression of his political beliefs, that was extremely disproportionate to

the sentences imposed upon Brown's coconspirators, who received time-served sentences on resentencing. Edward argued in his sentencing memorandum that a lengthy sentence would result in unwarranted sentence disparities with his coconspirators (R 259-260). He reiterated those arguments at sentencing (R 12-14). Likewise, Edward argued that he was "constitutionally entitled to hold and to express his beliefs" and that he should not be punished for doing so (R 263). At sentencing, Brown criticized the government for "proposing your Honor impose a sentence essentially based on his beliefs," and that "[i]t doesn't matter what he believes in his head; what matters is what he's going to do" (R 275,281). Finally, Brown objected "to the sentence imposed on the grounds ... that it is a longer sentence than necessary in order to comply with the purposes of Section 3553(a), and that, therefore, it is substantively unreasonable" (R 344).

The district court should not have punished Edward for maintaining his beliefs after almost thirteen years in prison. A "defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge." *Mitchell*, 508 U.S. at 485-486, *citing Dawson v. Delaware*, 503 U.S. 159, 167 (1992) (failure to exclude evidence that defendant was member of white supremacist prison gang violated First Amendment); *see also United States v. Lemon*, 723 F.2d 922, 938 (D.C. Cir. 1983) ("A sentence based to any degree on activity or beliefs protected by the [F]irst [A]mendment is constitutionally invalid"); *contrast Barclay v. Florida*, 463 U.S. 939, 942-944, 949 (1983) (plurality opinion) (court could consider defendant's racial animus toward victim, consistent with statutory aggravating factors, when

sentencing murder defendant). Nonetheless, Edward's political beliefs are precisely what the court relied upon when imposing this draconian sentence (R 73-74).

The district court observed that Gerhard, Riley and Elaine "learned that what they had done was wrong; they learned that what they had done was a mistake. They appeared broken by the period of incarceration..." (R 340). To be sure, "the sentencing judge properly may consider the defendant's amenability to rehabilitation and expressions of remorse for the crime committed when the judge selects an appropriate sentence." *United States v. Rosenberg*, 806 F.2d 1169, 1179 (3d Cir. 1986). But the district court here strayed beyond considerations of rehabilitation and expressions of remorse. Even though Edward had "no disciplinary records that suggest aggressive, threatening or physically assaultive behavior while incarcerated," the district court contrasted Edward with Gerhard, Riley and Elaine as follows: "[i]t's hard to accept that an individual won't break the law in the future if the individual indicates to this minute that these are not laws, they're not valid laws" (R 248,341). The district court described Edward's "intent today" as "reprehensible, and a serious punishment is still required" (R 341).

The First Circuit has held, consistent with this Court's case law, that a district court violated the First Amendment by considering a defendant's violent lyrics and music videos at sentencing. *United States v. Alvarez-Nunez*, 828 F.3d 52, 58 (1st Cir. 2016); *contrast United States v. Simkanin*, 420 F.3d 397, 417-418 (5th Cir. 2006) (no constitutional error to consider defendant's belief that tax laws are invalid, when "directly related to the crimes in question"). Here, the district court violated the First

Amendment by considering Edward's beliefs in imposing sentence. The district court, in essence, insisted, as a condition of release, that Edward be "broken" by his imprisonment and that he renounce his beliefs. No judge can or should require renunciation of one's beliefs as a condition of being released.

A federal sentence must be "sufficient, but not greater than necessary" to comply with the purposes set forth at 18 U.S.C. § 3553(a)(2). Here, the court increased Edward's sentence because his expression of his beliefs demonstrated that he had not been "broken" like his coconspirators. This increase of sentence thus violated Edward's First Amendment rights to maintain his own beliefs and to express them. It also resulted in a substantively unreasonable sentence.

The district court's reliance on Edward's beliefs resulted in a sentence that was extremely and unfairly disproportionate to that of his coconspirators resulting in a sentence which violated 18 U.S.C. § 3553(a)(6) ("the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"). "The key word is 'unwarranted' – that is, § 3553(a)(6) does not ban all disparities, just 'unwarranted' ones." *United States v. Romero*, 906 F.3d 196, 211 (1st Cir. 2018). "'[L]egitimate concerns may arise' if a judge sentences 'similarly situated coconspirators or codefendants' to 'inexplicably disparate' terms." *Id.*, *quoting United States v. Demers*, 842 F.3d 8, 15 (1st Cir. 2016). In contrast, disparity in sentencing may be legitimately explained by "things like dissimilar criminal involvement, criminal histories, or cooperation with the government,"

among other things. *Romero*, 906 F.3d at 211-212, *quoting United States v. Flores-Machicote*, 706 F.3d 16, 24 (1st Cir. 2013).

Here, Edward Brown, whose original sentence was to 37 years in prison, is now 79 years old and will be in prison until June 9, 2034, at which time, if he were somehow to survive, he will be 91 years old. See https://www.bop.gov/inmateloc/ (last visited July 11, 2022). Elaine, whose original sentence was 35 years in prison, is now 81 years, yet the district court ordered her released on February 28, 2020. *Id.* Daniel Riley, whose original sentence was 36 years in prison, is now 54 years old, yet the district court ordered him released on January 31, 2020. *Id.* Finally, Jason Gerhard, who original sentence was 20 years in prison, is now 36 years old, yet the district court ordered him released on January 30, 2020. *Id.*

Edward's current life expectancy is 8.8 years. *See* https://www.ssa.gov/cgi-bin/longevity.cgi (last visited July 11, 2022). He is therefore currently expected to live only until May 2031, more than three years **before** his current release date. In effect, he has been sentenced to life imprisonment. A sentence longer than the life expectancy for a man in his late seventies is simply unreasonable and cannot be adequately explained by the district court's stated rationale. First, the district court explained that Edward "acts" on his beliefs (R 338). To the extent that he acted on his beliefs in 2007 – some 14 years ago – so too did Elaine, Riley and Gerhard. Second, the district court explained that Edward was the "leader and instigator of the entire standoff, and others were brought into that event through Mr. Brown's eloquence" (R 338). While Edward may have been more culpable than his other coconspirators, such

an explanation cannot adequately explain the extreme disparity between his sentence and the others – particularly where Elaine's and Riley's original sentences were roughly comparable to Edward's, indicating that based upon the facts of the offenses and criminal histories (and all of the other 18 U.S.C. § 3553(a) factors), the district court at the time of the original sentencing hearings considered each of those three defendants roughly comparable.

The true reason for the extreme discrepancy, as stated by the district court, is his view that Brown, Riley and Gerhard were "broken" by their time in prison, whereas Edward continued to believe that the laws were not valid and that he had been treated unjustly (R 340-341). This consideration was not only inappropriate and unconstitutional, as discussed *supra*, but was also woefully inadequate to explain such a cruel and extreme sentencing disparity.

While Edward Brown violated the law, he has already served a lengthy prison sentence already. He does not deserve to die in prison simply because, unlike his coconspirators, he believes that the laws are invalid and that he was treated unfairly. By sentencing Edward Brown to spend the rest of his life in prison based upon his belief system, the district court imposed a sentence which far exceeded that necessary to comply with the sentencing factors set forth in 18 U.S.C. § 3553(a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Petitioner
Edward Brown
By his Attorney,

Benjamin L. Falkner, Esq.
Counsel of Record
Krasnoo, Klehm & Falkner LLP
28 Andover Street, Suite 240
Andover, MA 01810
bfalkner@kkf-attorneys.com
(978) 475-9955

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 20-1959

UNITED STATES OF AMERICA,

Appellee,

v.

EDWARD BROWN,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

[Hon. George Z. Singal, U.S. District Judge]

Before

Thompson and Kayatta, Circuit Judges,
and Katzmann,* Judge.

Benjamin L. Falkner, with whom Krasnoo, Klehm & Falkner LLP was on brief, for appellant.

Seth R. Aframe, Assistant United States Attorney, with whom John L. Farley, Acting United States Attorney, was on brief, for appellee.

February 16, 2022

* Of the United States Court of International Trade, sitting by designation.

THOMPSON, Circuit Judge. Before us a second time, Edward Brown, who has been in prison for the last thirteen years for tax fraud and his role in a well-publicized armed standoff with the U.S. Marshals Service, appeals from his lengthy, but shorter-than-original, sentence of 300 months in prison. Lodging claims of both constitutional and sentencing error, he seeks to have his new sentence tossed in exchange for a sentence of time served. After careful review, we disagree, and so affirm.

BACKGROUND

I. The Crimes

The story of this case begins back in 2006.[1] Then, Edward Brown and his wife, Elaine Brown, were indicted by a federal grand jury on charges related to their failure to pay taxes.[2] They went to trial, although Edward attended only a few days before he decided to stop showing up. Their defense was that the government had no legal authority to collect the taxes. Eventually, a jury convicted both Edward and Elaine. But neither showed up for sentencing. They were each sentenced, in absentia, to 63 months

[1] In considering the defendant's challenge to his sentence, we take the facts from the trial record, the undisputed portions of the presentence investigation report, and the transcript of the sentencing hearing. See United States v. Rivera-Morales, 961 F.3d 1, 5 (1st Cir. 2020).

[2] Because these individuals both play a key role in this case and share the same surname, we will refer to them by their given names and mean no disrespect in doing so.

in prison. Neither Edward nor Elaine surrendered to the federal authorities to serve their sentences.

It is that failure to surrender which leads us to the crimes of conviction at issue in Edward's appeal today.[3] Warrants for the Browns' arrest issued. Meanwhile, Edward was holed up at his New Hampshire residence along with Elaine. Though the U.S. Marshals Service knew where the Browns were, getting them into custody proved less than straightforward (to say the least). For about eight months, Edward made violent threats toward the government officials attempting to arrest them, such as (as one of the Marshals recalled at trial): "If anything happens to my wife or I, then everybody associated with this case will get theirs." As another Marshal recalled at trial, Edward said he thought the police were afraid to arrest him and that, if the authorities arrested him, "people are going to die. The Marshal is going to die. . . . It's going to be a war." The Browns also made repeated public statements about their standoff, welcoming into their fortified home a number of supporters who agreed to help them out, including Daniel Riley, Jason Gerhard, Cirino Gonzalez, and Robert Wolffe.[4]

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[3] If the reader thirsts for a more detailed account of the events, we've detailed them twice before. See United States v. Brown, 669 F.3d 10, 14–17 (1st Cir. 2012); United States v. Gerhard, 615 F.3d 7, 12–18 (1st Cir. 2010).

[4] All four of these helpers were later arrested and charged. Three went to trial, were convicted, and received considerable

Realizing that a standard arrest wouldn't do for this high-risk circumstance, the Marshals began to develop plans to try to safely arrest the Browns. In the first attempt, officers tried to move clandestinely onto the property and arrest Edward on his routine of grabbing the mail at the end of his driveway. That attempt, though, failed when Riley, who was out walking a dog, encountered hidden officers. Riley was taken into custody, and when Edward heard the commotion, he was seen ascending a tower on top of his home and brandishing a .50-caliber rifle, pointing it toward the driveway.

After that failed attempt, the Marshals backed off for a few months while they hatched a new plan. In the meantime, they began to round up some of the Browns' soon-to-be convicted co-conspirators, who Marshals, for strategic reasons, had up to that point allowed to enter and exit the compound. And those arrests yielded a wealth of information about what the Marshals were facing inside the Brown enclave.

For example, Riley told the Marshals that he purchased twelve pounds of Tannerite, an explosive amalgam, at Edward's request. Gonzalez, Riley relayed, had brought firearms to the

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sentences of imprisonment: 432 months for Riley, 240 months for Gerhard, and 96 months for Gonzalez. Gerhard, 615 F.3d at 12. Wolffe was handed a 30-month sentence after pleading guilty. Judgment, United States v. Wolffe, No. 07-cr-189-04 (D.N.H. Aug. 1, 2008), ECF No. 497.

compound and had performed armed patrols around the property with an assault rifle. Riley also told the Marshals that numerous handguns and rifles were stashed throughout strategic locations in the house. And he noted at least two black-powder explosive devices were in the home, plus he believed there were ten-to-twenty more of them in there. While detained, Riley also admitted to another inmate that he had assembled spring guns and placed explosive containers on trees around the home. Wolffe told the Marshals about the cache of firearms in the home, and that Edward and Riley had tested which firearms were best suited to make the biggest explosions when fired at the Tannerite devices.

Flash forward to October 2007, and it was time for the Marshals to test their newest game plan for seizing the Browns. The new strategy began with undercover Marshals contacting the Browns through a confidential informant. Along with the informant, three undercover Marshals retrieved some property from Elaine's dental office (which she had requested) and brought it to the Browns at their compound. After the delivery was complete, Edward brought beer onto the porch for the four retrievers and for a fourth undercover Marshal who had since arrived. After using the agreed-upon time-to-make-a-move codeword the Marshals had established, the undercover officers grabbed Edward, tasered him, and took him into custody. Other Marshals seized Elaine, and everyone walked away unscathed.

After the arrest, authorities searched the Browns' property. Numerous improvised explosive devices were scattered thereabout, which experts from the Bureau of Alcohol, Tobacco, Firearms and Explosives had to remove. Officials also found trip wires, shotgun shells from spring guns, and Tannerite bombs and plastic bags containing propane cans nailed to trees around the property. Inside the house, officials recovered eighteen firearms ranging from pistols to .50-caliber rifles. They also turned up approximately 60,000 rounds of live ammunition, including armor-piercing and incendiary rounds. In a single closet in the Browns' master bedroom, agents located twenty-two assembled and active pipe bombs. Elsewhere in the house, they found nine fully assembled spring guns, including evidence that they at one point had been mounted in the tree line. Agents also recovered cans of gun powder, some of which had nails taped to them. And, if all of that wasn't enough, even more explosive-making materials were recovered in various spots in the home.

II. The Resulting Proceedings

Following their capture, a federal grand jury indicted Edward and Elaine, charging Edward on seven counts. Count I charged conspiracy to prevent officers of the United States from discharging their duties, in violation of 18 U.S.C. § 372. Count II -- conspiracy to commit an offense against the United States, in violation of 18 U.S.C. §§ 371 and 111(a) & (b). Count III

charged him with carrying and possessing a firearm in connection with a crime of violence, in violation of 18 U.S.C. § 924(c)(1). Count V -- being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Count VII -- obstruction of justice, in violation of 18 U.S.C § 1503. Count IX charged Edward with failing to appear for his tax-fraud trial, in violation of 18 U.S.C. § 3146. And Count X -- failing to appear for sentencing in the tax-fraud case, in violation of 18 U.S.C. § 3146.[5] Edward and Elaine went to trial, and they both were convicted on all counts.

Following on from his occasional outbursts at the trial, Edward was rather combative at his original sentencing and accompanying competency proceeding. Throughout the proceedings, he often lodged his own objections, even though he was represented by counsel. He butted in to argue about a competency witness's testimony while he was still on the stand, interrupted the government's counsel (one time, for example, to call him a liar), and interrupted the judge to argue with him and call him "beautiful." At one point when he was being removed from the courtroom, Edward accused the judge of being a "criminal" and a "communist." After being returned to the courtroom following a "timeout," Edward even told the judge that the district court

[5] Counts IV, VI, and VIII charged only Elaine, but the parties often describe the counts as they are numerated in the indictment, so we will follow the same trend.

readying to sentence him was "not a court." After Edward exercised his allocution rights, the judge proceeded to explain the sentence he imposed. But interjecting himself during that process, Edward demanded to be taken out of the courtroom again, as in his telling, he had "had enough of this trash." The court obliged his request.

Speaking of his allocution, Edward went on an extended rant about what he sees as a crisis of our country. Edward revealed to the court that he is a member of a group called the United States Constitution Rangers, whose goal is to "defend[] the Constitution and the people of the United States Republic." According to Edward, one core principle of the Rangers' philosophy is that its members "will ignore . . . any laws or orders that violate" certain constitutions and their Bill of Rights. And he openly questioned the authority of the federal laws, suggesting that the United States Constitution from 1789 was illegally replaced in 1879. Edward further informed the court that he intended to "expose a [criminal] cell in the government." Addressing his crimes, Edward told the court that he "could have killed all five of those agents [who came to arrest him] easily and lawfully."

In handing down the sentence, the district court explained its rationale. Noting that Edward had "engaged in a long period of lawlessness and endangered multiple government officials in the discharge of their duties," the court found Edward

(who, recall, was no longer in the courtroom at his own request) to be "entirely unrepentant" and concluded Edward "would have killed multiple marshals if they hadn't dealt with him so effectively." The court went on to note how Edward had recruited others into his beliefs, all of whom ended up with lengthy prison sentences. And the court explained that it was imposing a "severe punishment . . . to promote respect for the law and to deter others who attempted to engage in this type of conduct."

Ultimately, and considering the severity of Edward's conduct, the judge handed down a sentence as follows: 72 months total on Counts I, V, and VII; 60 months on Count II, to run concurrently with the sentence on Counts I, V, and VII; 12 months total on Counts IX and X;[6] and then the mandatory-minimum 360 months on Count III, the charge under § 924(c), to be served consecutively to the other sentences. As the court tallied that up, it meant a "total term of 444 months[']" imprisonment." And that "term of imprisonment" was to run consecutively to the term

[6] The transcript of the sentence orally announced by the court reflects that the 12-month sentence on Counts IX and X ran concurrently to the sentences on Counts I, II, V, and VII. The written judgment, though, specified that the 12-month sentence ran consecutively -- not concurrently -- to those other counts. More on that later.

that Edward was already serving for the tax-fraud convictions, which had begun running on October 4, 2007.[7]

Flash forward to 2016, when Edward filed his second motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. We granted him leave (and his wife, too) in 2019 to file this second or successive § 2255 motion, see 28 U.S.C. § 2255(h), attacking his § 924(c) conviction based on Johnson v. United States, 576 U.S. 591 (2015). The district court granted Edward's motion with the government's assent, vacated the § 924(c) count based on United States v. Davis, 139 S. Ct. 2319 (2019), and ordered resentencing.[8]

Before resentencing, Dr. Jill Durand, a licensed psychologist retained by Edward, evaluated him and issued a report. In it, Dr. Durand described Edward as "self-confident, grandiose and strong in his convictions." Recounting her interviews with Edward, she noted that he "maintained and expressed his unchanging beliefs regarding the US Government, distrust of the Court system,

[7] The court also sentenced Edward to three years of supervised release.

[8] In Davis, the Supreme Court held that the residual clause of 18 U.S.C. § 924(c) (i.e., the clause defining a "crime of violence" as felonies "that by their nature, involve a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 139 S. Ct. at 2323–24 (cleaned up)) is unconstitutionally vague, id. at 2336. Johnson found a similarly worded provision of the Armed Career Criminal Act unconstitutionally vague. 576 U.S. at 606.

and his position that he did not have a proper hearing in Court." Edward also described the court as "unethical and immoral" and part of a criminal justice system that is a "racketeering organization with instructions from a European cartel," and stated that he views judges as unconstitutional. Regarding his crimes, he maintained that he "didn't do anything wrong" concerning his failure to pay his taxes. Edward, she noted, "believes that he has been the victim of an unjust system and that his actions were warranted, justified or not unlawful." Nonetheless, Dr. Durand opined that there is "little concern" that Edward would pose a danger to others if released. Still, she cautioned of the possibility that Edward would ignore or evade a probation officer's attempts to supervise him upon his release from prison.

Edward, represented by counsel, objected to being resentenced. He argued that it would violate the Double Jeopardy and Due Process Clauses of the Constitution to sentence him again, as, according to his math, he had already served the complete time he was sentenced on all but the § 924(c) sentence, which was vacated. We'll get into that more later, but the district judge rejected his argument. And putting that argument aside, Edward asked in the alternative that he be sentenced to time served. Conversely, the government sought a Guidelines-range sentence of between 360 months to life.

At the resentencing hearing, Edward, at the court's invitation, allocuted anew, with a couple of his recitals invoking a sense of déjà vu. He said he was investigating a "criminal element within the government" and that the U.S. government remains beholden to a European cartel. He also debuted a new claim -- the Department of Justice is a "terrorist organization." When probed about the circumstances of his standoff with the Marshals, he told the court that he was "going to defend [him]self," including with his .50-caliber rifle if he had to. When asked directly whether he thought he was violating the law with the months-long standoff, he responded "No." Nor did he violate the law when he failed to pay his taxes, proclaiming those laws invalid. And, falling back on an old refrain, he questioned the authority of the judge to pass sentence on him under the criminal laws.

Notwithstanding his views about the validity of the proceedings, Edward disavowed any intent to hurt anyone in the standoff and told the judge that he did not want or need his firearms anymore. And though he denied the validity of the laws, he conceded that he had no choice but to follow them and committed to the court to doing so.

In the end, the district judge imposed a 300-month sentence -- that is, 144 months below the prior sentence and 60 months below the Guidelines range. The court explained that sentence was warranted due to the nature and seriousness of the

crime, the characteristics of Edward, the need to deter Edward and others from committing the same crime, the need for just punishment and to promote respect for the law, and the need to protect the public from any further crimes committed by Edward. Specifically, the judge focused on the fact that Edward not only harbors his beliefs about the validity of the government and the laws, but he went further, acting on those avowals and putting others in danger. Edward, he observed, was the ringleader of the standoff, recruiting others and "brainwash[ing]" one, leading them to incur lengthy prison sentences. Finally, the judge emphasized that Edward did not appear to show remorse for his actions. Rather, he continues to believe that he never did anything wrong.

Standing at 78 years old at the time of resentencing, Edward objected to the substantive reasonableness of his sentence. His timely appeal followed.

DISCUSSION

I. The Constitutional Challenges

Edward first raises two constitutional objections to his sentence. He claims that his new sentence violated the Double Jeopardy and Due Process Clauses of the Constitution because he had already served the entirety of all sentences imposed for all counts except for the final sentence on the § 924(c) count. And, because the § 924(c) conviction was vacated, he says that the district court could not have resentenced him on the counts as to

which he had already served his sentences. We review these preserved issues of constitutional law de novo. United States v. Szpyt, 785 F.3d 31, 36 (1st Cir. 2015).

A. Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment provides that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const., amend. V. The guarantee against double jeopardy "has been said to consist of three separate constitutional protections." United States v. DiFrancesco, 449 U.S. 117, 129 (1980) (quoting North Carolina v. Pearce, 395 U.S. 711, 717 (1969), overruled on other grounds by Alabama v. Smith, 490 U.S. 794 (1989)). First, the clause "protects against a second prosecution for the same offense after acquittal." Pearce, 395 U.S. at 717. Second, it "protects against a second prosecution for the same offense after conviction." Id. And third, as particularly relevant here, "it protects against multiple punishments for the same offense." Id.

The Supreme Court has limited the application of double-jeopardy principles in some respects, concluding, for example, that a successful appeal does not, in general, bar a defendant from being retried, Bullington v. Missouri, 451 U.S. 430, 438 (1981), or from receiving a harsher sentence, Pearce, 395 U.S. at 723. Particularly with sentencing, the Court has made clear that criminal sentences do not carry the same constitutional finality

and conclusiveness as attaches with a jury's verdict of acquittal. DiFrancesco, 449 U.S. at 132-33. Thus, the touchstone for the double-jeopardy analysis is whether the defendant had a legitimate "expectation of finality in the original sentence." See id. at 139; see also Evans v. Michigan, 568 U.S. 313, 319-20 (2013) (explaining that double jeopardy does not preclude retrial after a properly granted mistrial because "no expectation of finality attaches to a properly granted mistrial"); United States v. Pimienta-Redondo, 874 F.2d 9, 16 (1st Cir. 1989) (en banc).

In conducting that analysis, we remain mindful that generally, as the Supreme Court has noted, "[a] criminal sentence is a package of sanctions that the district court utilizes to effectuate its sentencing intent." Pepper v. United States, 562 U.S. 476, 507 (2011) (quoting United States v. Stinson, 97 F.3d 466, 469 (11th Cir. 1996) (per curiam)). Indeed, the sentencing factors of 18 U.S.C. § 3553(a) "are used to set both the length of separate prison terms and an aggregate prison term comprising separate sentences for multiple counts of conviction." Dean v. United States, 137 S. Ct. 1170, 1175 (2017). Thus, the so-called sentencing-package doctrine comes into the fold in cases that "typically involve multicount indictments and a successful attack by a defendant on some but not all of the counts of conviction." Greenlaw v. United States, 554 U.S. 237, 253 (2008). And in those circumstances, "[b]ecause a district court's 'original sentencing

intent may be undermined by altering one portion of the calculus,'" Pepper, 562 U.S. at 507 (quoting United States v. White, 406 F.3d 827, 832 (7th Cir. 2005)), appeals courts "may vacate the entire sentence on all counts so that, on remand, the trial court can reconfigure the sentencing plan to assure that it remains adequate to satisfy the sentencing factors" of § 3553(a), Greenlaw, 554 U.S. at 253.

Applying that doctrine, we have held that "where the Guidelines contemplate an interdependent relationship between the sentence for the vacated conviction and the sentence for the remaining convictions -- a sentencing package -- a district court may, on a petition under 28 U.S.C. § 2255, resentence on the remaining convictions." United States v. Rodriguez, 112 F.3d 26, 30-31 (1st Cir. 1997) (footnote omitted). We, as have our judicial superiors, have recognized that "when a defendant is found guilty on a multicount indictment, there is a strong likelihood that the district court will craft a disposition in which the sentences on the various counts form part of an overall plan." Pimienta-Redondo, 874 F.2d at 14. And, "[w]hen the conviction on one or more of the component counts is vacated, common sense dictates that the judge should be free to review the efficacy of what remains in light of the original plan, and to reconstruct the sentencing architecture upon remand, within applicable constitutional and statutory limits, if that appears necessary in

order to ensure that the punishment still fits both crime and criminal." Id.; see United States v. García-Ortiz, 657 F.3d 25, 31 (1st Cir. 2011) ("When a defendant successfully challenges one of several interdependent sentences, the proper course often is to remand for resentencing on the other (non-vacated) counts.").

Further, we have previously concluded that a district court does not offend double jeopardy when it resentences, in forming a sentencing package anew, on counts surviving appeal or a § 2255 petition. See Pimienta-Redondo, 874 F.2d at 16. In Pimienta-Redondo, we faced two defendants' double-jeopardy challenge to their resentencing after one of their two counts of conviction was vacated. Id. There, the defendants were initially sentenced to consecutive terms of imprisonment on each of the two counts of conviction. Id. at 11. On appeal, we affirmed one count, vacated the other, and remanded. Id. at 11–12. On remand, the district court gave each defendant the same aggregate sentence -- just via a longer sentence on a single count. Id. at 12.

On appeal again from resentencing, the defendants contended that increasing their sentence on the surviving count of conviction violated their double-jeopardy protections. Id. at 16. Relying on the sentencing-package doctrine, we rejected their argument and concluded there is no double-jeopardy violation in the district court's resentencing a defendant to a longer sentence on counts unaffected by appeal. Id. Indeed, we recognized that

"[w]here the defendant challenges one of several interdependent sentences (or underlying convictions) he has, in effect, challenged the entire sentencing plan." Id. (quoting United States v. Shue, 825 F.2d 1111, 1115 (7th Cir. 1987)). Thus, we said, a defendant "can have no legitimate expectation of finality in any discrete portion of the sentencing package after a partially successful appeal," and thus no double-jeopardy claim. Id. (quoting Shue, 825 F.2d at 1115). Instead, the trial court may resentence a defendant on the remaining counts "to effectuate [its] original sentencing intentions." Id.

Edward says Pimienta-Redondo actually commands that his resentencing violated the Double Jeopardy Clause. He clings to our statement there that a "defendant 'has no legitimate expectation of finality in the original sentence[s] when he has placed those sentences in issue by direct appeal and has not completed serving a valid sentence.'" Id. (emphasis added) (alteration in original) (quoting United States v. Andersson, 813 F.2d 1450, 1461 (9th Cir. 1987)). According to Edward then, he, unlike the defendants in Pimienta-Redondo, has completed the valid sentences on all but the now-vacated § 924(c) conviction. Indeed, no matter how you calculate the original sentence (whether accepting that the sentence on Counts IX and X ran concurrently or consecutively to the sentences on Counts I, II, V, and VII), it is undisputed that Edward had served at least 84 months on the counts

of conviction in this case by the time he was sentenced.[9] Thus, Edward says, he completed the entirety of the constituent sentences on Counts I, II, V, VII, IX, and X -- leaving only the 360-month consecutive sentence on the § 924(c) conviction remaining to serve.

The problem with that distinction, though, is that Pimienta-Redondo does not clarify what the "valid sentence" to be served is: a string of constituent sentences or the aggregate sentencing package. And on top of that, Pimienta-Redondo itself recognized explicitly that when a vacated count tears apart the overall sentencing plan, "common sense dictates that the judge should be free to review the efficacy of what remains in light of the original plan, and to reconstruct the sentencing architecture upon remand." 874 F.3d at 14. Pimienta-Redondo thus does not control the outcome here.

And when we look to our sister circuits around the country, they are nearly uniform in their conclusion that a defendant has no legitimate expectation of finality for double-

[9] Recall that the court's oral sentence stated that 12-month sentence on Counts IX and X ran concurrently to the sentences on Counts I, II, V, and VII. The written judgment, though, specified that the 12-month sentence ran consecutively -- not concurrently -- to those other counts. As stated, the discrepancy is irrelevant here because even if the sentence on Counts IX and X did run consecutively, the total on Counts I, II, V, VII, IX, and X would be 84 months. And it is undisputed that Edward had served at least that amount before resentencing.

jeopardy purposes even where she served the entirety of a constituent sentence in a sentencing package. See United States v. Triestman, 178 F.3d 624, 631-32 (2d Cir. 1999) (Sotomayor, J.); United States v. Smith, 115 F.3d 241, 247 (4th Cir. 1997); United States v. Benbrook, 119 F.3d 338, 340-41 (5th Cir. 1997); Pasquarille v. United States, 130 F.3d 1220, 1222-23 (6th Cir. 1997); United States v. Smith, 103 F.3d 531, 535 (7th Cir. 1996); United States v. Alton, 120 F.3d 114, 116 (8th Cir. 1997); United States v. McClain, 133 F.3d 1191, 1192-94 (9th Cir. 1998); United States v. Easterling, 157 F.3d 1220, 1223-24 (10th Cir. 1998); United States v. Townsend, 178 F.3d 558, 569-70 (D.C. Cir. 1999).

In fact, the only circuit Edward points to that in theory has accepted his argument -- the Fourth Circuit -- quickly distinguished its prior holding and reached the opposite conclusion on the same issue less than a year later. Compare United States v. Silvers, 90 F.3d 95, 101 (4th Cir. 1996) ("As the government concedes, reimposition of sentence on counts upon which Silvers had fully satisfied his sentence violated the Double Jeopardy Clause."), with Smith, 115 F.3d at 247 (distinguishing Silvers where the defendant had not "fully discharged" his aggregate sentence). And subsequent panels of the Fourth Circuit have considered themselves bound by Smith -- not Silvers. See United States v. Douthit, 133 F.3d 918, at *1 n.* (4th Cir. 1998) (unpublished table decision) ("[B]ecause Smith recognized the

apparent conflict and distinguished Silvers, we are bound as a panel of the court by its holding." (citation omitted)); United States v. Butler, 122 F.3d 1063, at *1 n.* (4th Cir. 1997) (unpublished table decision) (same).

Our sister circuits have reasoned that if a sentence is properly viewed as a package -- that is, "one unified term of imprisonment," Townsend, 178 F.3d at 570 (quoting Easterling, 157 F.3d at 1224) -- then a defendant cannot have a legitimate expectation in finality where she "ha[s] not satisfied [her] sentence on the remaining counts in any meaningful sense," id.; see Pasquarille, 130 F.3d at 1223-24 ("Because the defendant has no legitimate expectation of finality in any discrete part of an interdependent sentence after a partially successful appeal or collateral attack, there is no double jeopardy bar to enhancing an unchallenged part of an interdependent sentence to fulfill the court's original intent." (quoting United States v. Harrison, 113 F.3d 135, 138 (8th Cir. 1997))). Thus, "the legal interdependence of sentences under the Guidelines permits a court to reconsider related sentences in the context of a collateral attack." Triestman, 178 F.3d at 631 (cleaned up) (quoting United States v. Mata, 133 F.3d 200, 202 (2d Cir. 1998)).

That is so because, in general, defendants do not "receive[] separate and distinct sentences" for related convictions -- they "receive[] one aggregate sentence for th[e]

interdependent offenses." Benbrook, 119 F.3d at 340. Thus, by attacking one portion of a sentencing package, a defendant "necessarily attack[s] the whole." Id. Defendants "cannot selectively craft the manner in which the court corrects th[e] judgment" to dismember the sentencing package favorably to them. Alton, 120 F.3d at 116 (quoting Gardiner v. United States, 114 F.3d 734, 736 (8th Cir. 1997)). Nor does resentencing in any real way disadvantage the defendant: Rather than enacting a double punishment for the non-§ 924(c) counts, a full resentencing to restructure the original sentencing package does "nothing more than put [the defendant] in the same position [she] would have occupied had [she] not been convicted under [§] 924(c) in the first place." Triestman, 178 F.3d at 631 (quoting Mata, 133 F.3d at 202).[10]

[10] Trying to dodge the onslaught of circuits rejecting his theory, Edward claims his view is commanded by Supreme Court precedent, citing to Ex parte Lange, 85 U.S. (18 Wall.) 163 (1873). There, the defendant was convicted on one count and erroneously sentenced to both one year in prison and a fine, though the statute only authorized either punishment, not both. Id. at 175. The defendant paid his fine and then began to serve the sentence for five days. Id. Realizing the error, the court tried to resentence the defendant to one year in prison, this time without a fine. The Supreme Court reversed, observing that the new sentence would have the prisoner pay the fine and be imprisoned for a year and five days. Id. The Court said that by the defendant's "fully suffer[ing] one of the alternative punishments . . . the power of the court to punish further was gone." Id. at 176.

Yet the Supreme Court has since cabined Lange's reach only to "the uncontested proposition that the Double Jeopardy Clause prohibits punishment in excess of that authorized by the legislature," and clarified that it does not stand "for the broader

So it follows, we echo our sister circuits in concluding that "[w]hen a defendant elects to challenge one part of a sentencing package whose constituent parts are truly interdependent," reconstituting "the entire sentencing package does not constitute a double jeopardy violation." Id. (internal quotation marks omitted) (quoting Mata, 133 F.3d at 202); see also United States v. Cain, 837 F. App'x 853, 856 (2d Cir. 2021) (continuing to apply this rule post-Davis).

Edward's double-jeopardy claim thus rises and falls with whether his original sentence is properly considered a package. We have acknowledged that a total aggregate sentence on multiple counts does not always mean there is a true sentencing package. See Rodriguez, 112 F.3d at 30 n.1. To determine whether a true sentencing package exists, we look to whether "the guidelines establish an interdependent relationship between the sentence vacated or subject to amendment and the sentence for the remaining convictions." United States v. Jordan, 162 F.3d 1, 6 (1st Cir.

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rule suggested by its dictum," referring specifically to the quoted language Edward harps on. Jones v. Thomas, 491 U.S. 376, 382-83 (1989). Moreover, even accepting Lange's dictum, it does not change the analysis here because the "punishment" to be "fully suffered" by Edward is not any single sentence (as it was in Lange), but the total sentencing package. See Townsend, 178 F.3d at 570 (recognizing that distinction). And that's particularly so where, as here, some of the defendant's original constituent sentences were reduced in light of the now-vacated portion of the package. The defendant can have no legitimate expectation of finality in those constituent sentences when she seeks to upset other portions of the package.

1998). And we search for whether "the same basic course of conduct underlies both the vacated count and the count on which the conviction is affirmed." Rodriguez, 112 F.3d at 30; see also United States v. Lassiter, 1 F.4th 25, 30 (D.C. Cir. 2021) (noting that "[o]ne indicator of the sentencing judge's intent [regarding a sentencing package] is the substantive relationship between the various counts").

Applying this framework, we are quite confident that Edward's original 444-month sentence was one package. For one, all the counts of conviction arise out of the same events: Edward's failure to appear for his trial and sentencing in the tax-fraud case, his subsequent walling off in his booby-trapped New Hampshire property with a host of firearms and explosives, and his threats against the law-enforcement agents trying to wrangle him out of his fortress to serve his sentence on the tax-fraud counts. See also Townsend, 178 F.3d at 567 ("Sentences which include § 924(c) counts are particularly well suited to be treated as a package.").

For another, it is quite clear that the mandatory-minimum sentence on the § 924(c) count substantially influenced the judge's initial sentence on the remaining counts. Under the 2008 Sentencing Guidelines in effect at Edward's original sentencing, he faced an effective Guidelines range of 570 to 622 months. See U.S.S.G. §§ 3D1.1(a), 3D1.1(b)(1), 3D1.3(a), 5G1.2(a)

(2008) (providing that the offense level is determined by taking the highest offense level of the counts in the group of charges, and then adding it consecutively to the mandatory-minimum sentence). Edward's sentence was substantially lower than the government's suggested Guidelines sentence of 570 to 622 months. And although Edward received statutory-maximum sentences on Counts I and II, see 18 U.S.C. § 372; id. § 371, he received sentences well below the maximums on the remaining counts, see id. § 924(a)(2) (maximum ten years' imprisonment for Count V); id. § 1503(b)(3) (same for Count VII); id. § 3146(b)(1)(A)(ii) (maximum five years' imprisonment for Counts IX and X). Had the district court thought the mandatory-minimum sentence on the § 924(c) count too harsh, it could have always departed even lower than it did and sentenced Edward to a single day on the remaining counts. See Dean, 137 S. Ct. at 1177; United States v. Sanders, 197 F.3d 568, 573 (1st Cir. 1999) (noting that a mandatory-minimum consecutive sentence does not break apart a sentencing package; rather, the mandatory minimum requires the sentencing court to "consider[] how far it want[s] to go above" that mandatory minimum). The court's decision in the first go-round to sentence Edward to a prison term at least 126 months less than the Guidelines range -- even when the judge emphasized that Edward was "entirely unrepentant," that his actions were "reprehensible," and that the judge "had no doubt in [his] mind that Mr. Brown would

have killed multiple marshals" -- further reveals that the initial sentence operates as one package. See Lassiter, 1 F.4th at 31 (noting that it is "especially" appropriate to presume a sentencing package "when the judge imposed a below-guidelines sentence for the violent felony").

On top of that, the Guidelines range Edward faced on the non-§ 924(c) counts was lower than it would have been had he not been charged under § 924(c). The § 924(c) conviction helped keep certain Specific Offense Characteristic enhancements off the non-§ 924(c) charges. See U.S.S.G. § 2k2.4 app. note 4 (2008). And that further bespeaks the interrelatedness of the sentences in the package. See Rodriguez, 112 F.3d at 28, 30-31 (noting that sentences were interrelated where the § 924(c) count prohibited adding certain enhancements to other counts).

To cinch things, Edward has made no attempt to rebut the interrelatedness of the various sentences making up his original 444-month total term of imprisonment. Rather, he put all his eggs in the basket of the contention that the completion of a constituent sentence gave him a legitimate expectation of finality in the original sentence on that particular count, and thus "the 'sentencing package doctrine' does not apply to him." Concluding, as we do, that a defendant has no legitimate expectation of finality until she has served the entire package of interrelated sentences, his argument thus founders. Edward's rights under the

Double Jeopardy Clause were not violated here, particularly where he received a new aggregate sentence substantially below the aggregate sentence initially imposed: 300 months compared to the original 444. See Triestman, 178 F.3d at 632 (noting the defendant "could not legitimately have expected a better result" where he received a "significantly reduced" aggregate sentence on resentencing).

B. Due Process

Given that conclusion, Edward's due-process claim fares no better. Edward contends that his due-process rights were violated because he "had a right to rely on the validity of the original sentences and to expect that when he had served his time behind bars, those sentences were complete." Notwithstanding the fact that his formulation of this claim is nearly identical to how he portrayed his double-jeopardy claim, Edward contends the due-process claim is entirely separate. But see United States v. Davis, 112 F.3d 118, 123-24 (3d Cir. 1997) (characterizing the due-process inquiry, too, as whether the defendant had a legitimate expectation of finality).

To make out his claim, Edward points to our discussion in Breest v. Helgemoe, 579 F.2d 95 (1st Cir. 1978). There, addressing a due-process challenge to a resentencing, we acknowledged the "real and psychologically critical importance" a prospective date of release may play for a defendant. Id. at 101.

Thus, we said that "[a]fter a substantial period of time . . . , it might be fundamentally unfair, and thus violative of due process for a court to alter even an illegal sentence in a way which frustrates a prisoner's expectations by postponing his parole eligibility or release date far beyond that originally set." Id.; see also Rodriguez, 112 F.3d at 31 & n.4 (acknowledging there could be due-process concerns with resentencing a defendant after, for example, long delay or actual release from custody). And we've since clarified:

> [T]here may be limits on the right to correct an erroneous sentence in cases "with extreme facts: a long delay, actual release of the defendant from custody based on the shorter sentence, singling out of the defendant for a belated increase apparently because of his commission of another offense for which parole revocation would have been available, and other troubling characteristics."

Rodriguez, 112 F.3d at 31 n.4 (quoting United States v. Goldman, 41 F.3d 785, 789 (1st Cir. 1994)).

Edward reminds us that he had served over seven years of his standoff-related convictions in prison at the time of resentencing (and about thirteen years in total including the tax-fraud convictions). Thus, his argument goes, he has served a "substantial period of time" -- including actually "complet[ing] sentences of incarceration" -- resulting in his having a right to rely on the original length of the sentences on the non-§ 924(c) counts.

The problem for Edward, though, is that his argument presumes that he can have a legitimate right to rely on the length of constituent sentences in a sentencing package -- which we just rejected in his double-jeopardy argument. And, to boot, he cannot identify any other court that has accepted his argument. Instead, the courts of appeals have rejected his argument in short order. See, e.g., Townsend, 178 F.3d at 570 (rejecting due-process claim "[b]ecause [the defendant] could not expect finality of his sentence on some counts even while he challenged others, [and thus] resentencing was not fundamentally unfair"); Easterling, 157 F.3d at 1223-24 (rejecting due-process argument for the same reason as the double-jeopardy claim). Indeed, the Fourth Circuit has described this argument as "merely a rehash" of the double-jeopardy argument and concluded that, since the defendant did not receive separate sentences but rather one package, he could have no right to rely on those sentences where he challenged one piece of the sentencing puzzle. Smith, 115 F.3d at 248.

We similarly reject Edward's contention that he had a right to rely on the length of his non-§ 924(c) sentences that built part of his sentencing package. Since Edward was sentenced to "a total term of 444 months[']' imprisonment," he could have no reliance interest in the length of those constituent sentences. We think that particularly so where, as here, Edward had served just about a fifth of that total sentence by the time of

resentencing. See Rodriguez, 112 F.3d at 27–28, 31 (finding no fundamental unfairness where the defendant had served more than three years of an about 10-year sentence and he received a 45-month reduction at resentencing). And it was Edward -- not the government -- who petitioned to have his § 924(c) conviction vacated. What's more, in the end, Edward's new sentence was 144 months shorter than his original sentence.[11] Thus, Edward effectively received the same sentence as he would have had the § 924(c) count never been charged in the first place. See Pasquarille, 130 F.3d at 1223 (finding no due-process violation where "the defendant's total sentence ha[d] been reduced and he was resentenced according to the court's original sentencing plan," thus "put[ting] him back in the position he would have faced" without the § 924(c) conviction). That was not fundamentally unfair.

II. Sentencing Reasonableness

Constitutional concerns quenched, we turn to review the sentence's reasonableness. To do so, we engage in our familiar bifurcated inquiry. United States v. Maldonado-Peña, 4 F.4th 1, 55 (1st Cir. 2021). We start by checking the procedural reasonableness of the sentence. Id. After we do so, we then turn

[11] We acknowledge that, even with this reduced sentence, Edward will be 91 years old by the time he is slated for release.

to evaluate a defendant's arguments that his sentence is also substantively unreasonable. Id.

A. Procedural Reasonableness

So we begin with Edward's procedural-reasonableness challenge. "A sentence is procedurally unreasonable when the district court commits a procedural error such as 'failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence -- including an explanation for any deviation from the Guidelines range.'" United States v. Pupo, 995 F.3d 23, 28 (1st Cir. 2021) (quoting United States v. Díaz-Rivera, 957 F.3d 20, 25 (1st Cir. 2020)).

In assessing preserved claims of procedural reasonableness, we apply a "multifaceted abuse-of-discretion standard whereby we afford de novo review to the sentencing court's interpretation and application of the sentencing guidelines, examine the court's factfinding for clear error, and evaluate its judgment calls for abuse of discretion." Maldonado-Peña, 4 F.4th at 55–56 (cleaned up) (quoting United States v. Arsenault, 833 F.3d 24, 28 (1st Cir. 2016)). For judgment calls, we chalk the district court's decision up to an abuse of discretion only when we're "left with a definite conviction that 'no reasonable person

could agree with the judge's decision.'" Id. (quoting United States v. McCullock, 991 F.3d 313, 317 (1st Cir. 2021)). If a defendant fails to preserve his procedural-reasonableness claim, though, we then apply the "quite formidable" plain-error standard. McCullock, 991 F.3d at 317.

Edward lodges a single attack on the procedural reasonableness of his sentence. He contends the district court violated his First Amendment rights to maintain and express his beliefs when it relied on those beliefs to increase Edward's sentence. Specifically, Edward takes issue with the district court's emphasis of the fact that, even after his time already served in prison, he continues to believe that the criminal laws are not valid and denies any wrongdoing.

Edward's counsel argued to the district court that it was inappropriate for the court to rely on Edward's beliefs in fashioning a sentence. Edward's counsel did not, however, lodge any formal objection to the procedural reasonableness of the sentence on that ground.[12] Nonetheless, even assuming favorably to Edward that he preserved his claim of procedural reasonableness,

[12] We have also seemed to imply that this particular ground of sentencing error is related to substantive -- not procedural -- reasonableness. See United States v. Alvarez-Núñez, 828 F.3d 52, 55 (1st Cir. 2016); but see United States v. Williamson, 903 F.3d 124, 136 (D.C. Cir. 2018) (lumping this ground in as a procedural error). We assume without deciding that a sentencing judge's improper reliance on a defendant's protected First Amendment activity can make out a claim of procedural unreasonableness.

his claim fails under even the more-defendant-friendly abuse-of-discretion framework.

In determining how best to fashion a criminal sentence, "the sentencing authority has always been free to consider a wide range of relevant material." United States v. Alvarez-Núñez, 828 F.3d 52, 55 (1st Cir. 2016) (quoting Payne v. Tennessee, 501 U.S. 808, 820–21 (1991)). This gives the sentencing judge room to conduct "an inquiry broad in scope, largely unlimited either as to the kind of information [it] may consider, or the source from which it may come." Id. (quoting United States v. Tucker, 404 U.S. 443, 446 (1972)).

There are limits to that general rule, though. As relevant here, one of those limits is that "a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge." Wisconsin v. Mitchell, 508 U.S. 476, 485 (1993). However, as with most legal propositions, context is key. "[T]he Constitution does not erect a per se barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." Dawson v. Delaware, 503 U.S. 159, 165 (1992). Accordingly, though the Supremes have found First Amendment error in a sentencing court's review of merely "abstract beliefs," see Dawson, 503 U.S. at 167, the Court has also readily permitted consideration of a defendant's

beliefs when they are "relevant to the issues involved," id. at 164; see Alvarez-Núñez, 828 F.3d at 55 ("The upshot is that conduct protected by the First Amendment may be considered in imposing sentence only to the extent that it is relevant to the issues in a sentencing proceeding."). For example, the Court has found no error where a sentencing judge considered "the elements of racial hatred" in the defendant's crime as well as the defendant's "desire to start a race war" when relevant to the sentencing metrics. Barclay v. Florida, 463 U.S. 939, 949 (1983) (plurality opinion); see id. at 970 & n.18 (Stevens, J., concurring in the judgment). But it has assigned error to the consideration of a defendant's membership in the Aryan Brotherhood when it had no relevance to the crimes at issue. Dawson, 503 U.S. at 166–67.

As we've explained, a defendant's beliefs may become relevant at sentencing "in a multiplicity of ways." Alvarez-Núñez, 828 F.3d at 55-56. Beliefs and associations "may legitimately be used to rebut mitigating evidence proffered by the defendant." Id. at 56. Protected conduct may also become relevant to evaluate a defendant's remorse, likelihood of reoffending, or the extent of punishment needed for deterrence. Id. (collecting cases); see United States v. Williamson, 903 F.3d 124, 136 (D.C. Cir. 2018) (finding no First Amendment violation in considering protected activity that bore on "the seriousness of [the] offense and on the need to protect the public generally . . . from harm").

Given that framework, Edward's claim readily fails. Though Edward thinks the district court could not fashion a sentence relying on his beliefs about the authority of the government or the criminal laws, those beliefs are highly relevant to the § 3553(a) factors. See Alvarez-Nunez, 828 F.3d at 55-56. Regarding his crimes, Edward maintained that he "didn't do anything wrong" concerning his failure to pay taxes, and he said that "the law is wrong." When asked directly whether he thought he was violating the law with the months-long standoff, he said no. He told the judge that the laws are not valid. He also questioned the authority of the judge to pass sentence on him under the criminal laws. And Dr. Durand noted in her evaluation that Edward "believes that he has been the victim of an unjust system and that his actions were warranted, justified or not unlawful."

As the district court amply explained, Edward's statements go "beyond simply his beliefs." Rather, the judge saw Edward's statements as "a recipe for trouble," suggesting that Edward may be dangerous when released from prison. Those beliefs also, in the judge's view, reflected that Edward did not intend to obey the law. And, as the district judge put it, the problem is not that Edward holds these abstract beliefs: "The problem is that he acts on his beliefs, and, by acting on his beliefs, he put in danger multiple individuals." And those concerns played into the court's consideration of the relevant sentencing factors,

which it said included (among others) the need to promote respect for the law, the need to deter Edward and others from committing the same crimes, and the need to protect the public from further crimes committed by Edward. See 18 U.S.C. § 3553(a)(2).

We find no procedural error in the district court's reliance on Edward's beliefs in considering these sentencing factors. See, e.g., United States v. Schmidt, 930 F.3d 858, 868 (7th Cir. 2019) ("[T]he court properly considered Mr. Schmidt's white supremacist ideas and hatred for the United States as evidence that he presents a threat of future dangerousness to the community." (cleaned up)); United States v. DeChristopher, 695 F.3d 1082, 1098 (10th Cir. 2012) ("Defendant's statements that he would 'continue to fight' and his view that it was 'fine to break the law' were highly relevant to the[] sentencing factors."); United States v. Smith, 424 F.3d 992, 1016–17 (9th Cir. 2005) (no error in considering the defendant's allocution statements, including about the district court's "lack of jurisdiction," because they were relevant to the defendant's remorse and threat to the public on release); United States v. Simkanin, 420 F.3d 397, 417–18 (5th Cir. 2005) (finding no constitutional error where the district court relied on the defendant's "specific beliefs that the tax laws are invalid and do not require him to withhold taxes or file returns . . . [because they] are directly related to

the crimes in question and demonstrate a likelihood of recidivism").

Edward further contends that the district court erred in relying on these personal, strongly held beliefs because he, at other points, appeared to show that there should be no concern that he would follow the law upon release. For example, Edward told the court that he "will follow" the criminal laws even though "they're not valid" because he has "no choice." And he emphasized his good behavior in prison as showing that he has submitted to the government's authority notwithstanding his beliefs.

We will not second-guess the sentencing judge's determination of the sincerity of Edward's statements absent a finding of clear error. See United States v. Ubiles-Rosario, 867 F.3d 277, 292 n.15 (1st Cir. 2017); United States v. Cortés-Medina, 819 F.3d 566, 573 (1st Cir. 2016) ("[T]he district court is in the best position to weigh the credibility of a claim of rehabilitation and to balance the sentencing scales in light of such a claim."). Edward has made no effort to demonstrate that standard here, and we at any rate find no error in the district court's assessment.

The district court considered Edward's statements and rejected them. Though the judge acknowledged Edward's seemingly good behavior in prison, he suggested that it was not very applicable to determining Edward's potential behavior after release to society because prison is "designed to eliminate

resistance." And the judge also acknowledged Edward's statements that he "will follow" the law, but emphasized that it was "hard to accept" that Edward wouldn't break the law again or would follow conditions of release since Edward "indicate[d] to this minute that . . . they're not valid laws" and that he does not accept the authority of the court. From our vantage, that appraisal was not clearly erroneous.

B. Substantive Reasonableness

Satisfying the procedural-reasonableness probe, we turn now to test the sentence's substantive reasonableness.

"A sentence is substantively reasonable if the 'sentencing court has provided a plausible sentencing rationale and reached a defensible result.'" Pupo, 995 F.3d at 29 (quoting United States v. Flores-Quiñones, 985 F.3d 128, 133 (1st Cir. 2021)). This review is highly deferential. United States v. Fuentes-Moreno, 954 F.3d 383, 396 (1st Cir. 2020). We evaluate the reasonability of the overall sentence "in light of the totality of the circumstances." United States v. Flores-Machicote, 706 F.3d 16, 20 (1st Cir. 2013). And we recognize that we owe deference to the sentencing court's informed discretion in fashioning an appropriate sentence, ever cognizant of the fact that "[t]here is more than one reasonable sentence in virtually any case." Fuentes-Moreno, 954 F.3d at 396 (quoting United States v. Matos-de-Jesús, 856 F.3d 174, 179 (1st Cir. 2017)). Thus, we will find a sentence

substantively unreasonable "only if it falls beyond the expansive universe of reasonable sentencing outcomes." United States v. Benoit, 975 F.3d 20, 24 (1st Cir. 2020) (quoting United States v. Rodríguez-Torres, 939 F.3d 16, 43 (1st Cir. 2019)). In other words, "we do not reverse simply because we would have sentenced the defendant differently." Id.

Edward submits four reasons his sentence was unreasonable: (1) the district court's reliance on Edward's beliefs; (2) the total sentence as compared to the sentences given his co-defendants; (3) the total sentence considering his advanced age; and (4) the total sentence, taking everything into account, was longer than necessary to achieve the sentencing goals of § 3553(a). We take each in turn, though mindful that a sentence's substantive reasonableness must be eyeballed in light of the totality of the circumstances. See Flores-Machicote, 706 F.3d at 20.

1. Belief system

First, Edward contends, tacking on to his procedural-reasonableness argument, that the district court's reliance on his beliefs resulted in a substantively unreasonable sentence. But, for the same reasons this failed as a procedural-reasonableness argument, it fails as a substantive-reasonableness argument, too. Onward.

2. Co-defendant disparity

Next, Edward contends that there was an unwarranted disparity between the sentence he received and the sentences his co-conspirators received on resentencing. In imposing sentence, a district court must consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Though that is typically concerned with national disparities, we have also considered claims that a sentence is substantively unreasonable because of a disparity relative to a co-defendant's sentence. See United States v. Grullon, 996 F.3d 21, 35 (1st Cir. 2021).

Not all co-defendant disparities in sentencing yield a substantively unreasonable sentence. As we've explained, "[t]he key word is 'unwarranted' -- that is, § 3553(a)(6) does not ban all disparities, just 'unwarranted' ones." United States v. Romero, 906 F.3d 196, 211 (1st Cir. 2018). A defendant "is not entitled to a lighter sentence merely because his co-defendants received lighter sentences." United States v. Dávila-González, 595 F.3d 42, 50 (1st Cir. 2010) (quoting United States v. Wallace, 573 F.3d 82, 97 (1st Cir. 2009)). To make out a well-founded claim of sentencing disparity, a defendant must compare apples to apples. United States v. Mateo-Espejo, 426 F.3d 508, 514 (1st Cir. 2005). Among other things that may throw off a direct comparison, we have

looked at a co-defendant's cooperation, the nature of her cooperation, and her choice to plead guilty instead of going to trial, see United States v. Reyes-Santiago, 804 F.3d 453, 467 (1st Cir. 2015) (collecting cases), as well as her relative culpability or role in the crime, see United States v. Reverol-Rivera, 778 F.3d 363, 366 (1st Cir. 2015). In the end, cases of identically situated defendants "are unusual to say the least." Grullon, 996 F.3d at 35-36.

Applying those principles here, Edward's challenge fails. Edward clamors that his co-defendants each received sentences of time served on resentencing even though their original sentences were substantially higher than what they had to that point served.[13] Yet Edward fails to grapple with the reasons the sentencing judge gave for the disparity.

First, the judge explained that Elaine, Riley, and Gerhard each showed that they had "learned" during their prison terms that what they had done was wrong. As the judge put it, "[t]hey appeared broken by the period of incarceration," leaving

[13] At the time of resentencing, Elaine had served 85 months of her 420-month sentence. Mot. on Resentencing at 1 & n.2, United States v. Brown, No. 09-cr-30 (D.N.H. Jan. 16, 2020), ECF No. 311. Riley had served, as best we can tell, around 12 years of his 36-year sentence. And Gerhard, too, had served over 12 years of his original 20-year prison sentence. Def.'s Obj. to Resentencing & Sentencing Mem. at 3, United States v. Gerhard, No. 07-cr-189 (D.N.H. Jan. 20, 2020), ECF No. 713.

the judge with no doubt that there was "no risk" that any of them would engage in the same behavior. Edward, though, didn't give the judge the same confidence given his comments that he still thinks he did nothing wrong, and about the authority of the law and the courts.

Second, Edward acknowledges that he "may have been more culpable" than his co-defendants but suggests he wasn't more-culpable enough to justify serving almost double time in prison. Yet the district court disagreed. It noted that Edward was "the leader and instigator of the entire standoff." It also emphasized that Edward dragged others into his crime to support his standoff, "brainwash[ing]" one of the co-defendants. Both rationales were supported by the record.

Ultimately, the sentencing judge assessed Edward's greater culpability, combined with all the other factors relevant to his sentencing (including his continued belief he did nothing wrong), and concluded that he merited a substantially higher sentence than his co-defendants. He gave a plausible rationale and reached a defensible result relative to Edward's co-defendants, so we find no abuse of discretion. See Grullon, 996 F.3d at 36; Reverol-Rivera, 778 F.3d at 367.

3. Age

Finally, Edward appears to contend that the district court failed to consider his advanced age and the fact that, under

the average life-expectancy, he has received "[i]n effect" a life sentence. This argument, too, fails.

True, a sentencing court is required to consider a defendant's age as a potential mitigating factor. See 18 U.S.C. § 3553(a)(1) (identifying as a sentencing factor "the history and characteristics of the defendant"). Also true, "in general, '[t]he propensity to engage in criminal activity declines with age,' and so persons convicted of a crime late in life may be unlikely to recidivate." United States v. Pacheco-Martinez, 791 F.3d 171, 180 (1st Cir. 2015) (alteration in original) (quoting United States v. Johnson, 685 F.3d 660, 661–62 (7th Cir. 2012)).

But even accepting that, a defendant's age is but one of many factors a sentencing court must consider. See United States v. Rivera-Morales, 961 F.3d 1, 21 (1st Cir. 2020); see also 18 U.S.C. § 3553(a). The judge here surveyed all the relevant factors (including the seriousness of the crime, Edward's continued lack of remorse, and his continued rejection of the authority of the laws and the court) and concluded they outweighed this mitigating factor. Indeed, even considering Edward's advanced age, this could well be a case where Edward's crimes (committed when he was already 64 years old), as well as his continued rejection of the authority of the criminal laws, revealed that he "may be one of the few oldsters who will continue to engage in criminal activity until he

drops." Pacheco-Martinez, 791 F.3d at 180 (cleaned up) (quoting Johnson, 685 F.3d at 662).

As we have explained time and again, a sentence is not rendered unreasonable simply because the sentencing court didn't apply as much emphasis to some mitigating factors as the defendant hoped. See, e.g., Pupo, 995 F.3d at 32; United States v. Dávila-Bonilla, 968 F.3d 1, 12 (1st Cir. 2020). And as we've explained specifically in the context of a nearly identical argument, a weighty sentence given to a defendant of advanced age is not substantively unreasonable where the sentencing judge, considering all the relevant factors, offers a plausible rationale and delivers a defensible result. See Pacheco-Martinez, 791 F.3d at 180 (finding no substantive unreasonableness in spite of the defendant's age because, in part, he "ha[d] shown no sign of changing his ways" and, at sentencing, expressed no remorse but instead "assert[ed] that the court lacked jurisdiction over him"); United States v. Angulo-Hernández, 565 F.3d 2, 13 (1st Cir. 2009) (no substantive unreasonableness where the defendant's advanced age "was outweighed by the severity of [his] current offense and history of drug crimes"). The judge did so here.

4. Zooming out

All told, the district court, in light of all the circumstances here, provided a plausible rationale and delivered a defensible result. In fact, the result it delivered was a

sentence substantially below the Guidelines range. See United States v. Cameron, 835 F.3d 46, 52 (1st Cir. 2016) ("It is a rare below-the-range sentence that will prove vulnerable to a defendant's claim of substantive unreasonableness." (quoting United States v. King, 741 F.3d 305, 310 (1st Cir. 2014)). Considering all of Edward's arguments as a whole, we spy no error.

CONCLUSION

Our work complete, the judgment below is **affirmed.**

AO 245C (Rev. 09/19) Amended Judgment in a Criminal Case Sheet 1

APPENDIX B

(NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

District of New Hampshire

UNITED STATES OF AMERICA
v.
EDWARD BROWN

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 09-cr-30-01 GZS
USM Number: 03923-049

Date of Original Judgment: 1/11/2010 *(Or Date of Last Amended Judgment)*

Benjamin L. Falkner
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) 1, 2, 3*, 5, 7, 9, 10 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 372	Conspiracy to Prevent Officers of the United States from Discharging Their Duties	10/4/2007	1
18 U.S.C. §§ 371 and 111 (a)(1)&(b)	Conspiracy to Commit Offense Against the United States	10/4/2007	2

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) _____ ☐ 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.

9/29/2020
Date of Imposition of Judgment

Signature of Judge
George Z. Singal, United States District Judge
Name and Title of Judge

9/29/2020
Date

*Count 3 vacated after challenge to § 924(c) conviction(s) based on Johnson II and related precedent.

DEFENDANT: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C § § 922(g)(1) and 924(a)(2)	Felon in Possession	10/4/2007	5
18 U.S.C § 1503	Obstruction of Justice	10/4/2007	7
18 U.S.C. § 3146(a)(1)& (b)(1)(A)(ii)	Failure to Appear for Trial	01/18/2007	9
18 U.S.C. § 3146(a)(1) & (b) (1)(A)(ii)	Failure to Appear for Sentencing	10/4/2007	10

DEFENDANT: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

IMPRISONMENT

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

☐ 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: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

SUPERVISED RELEASE

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

A total term of 3 years.

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 (34 U.S.C. § 20901, *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: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

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: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

SPECIAL CONDITIONS OF SUPERVISION

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 600.00	$	$	$	$

☐ 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:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** 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.

DEFENDANT: EDWARD BROWN
CASE NUMBER: 09-cr-30-01 GZS

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 $ 600.00 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:

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

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES OF AMERICA
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	CRIMINAL NO. 09-CR-30-GZS
EDWARD BROWN,	)	
	)	
Defendant	)	

FINDINGS AFFECTING SENTENCE

I FIND as follows:

1. The facts as set forth in the Presentence Report, as amended by the Addendum and Supplemental Presentence Report, except as set forth in response to objections.

Count One – Conspiracy to Prevent Officers of the United States from Discharging Their Duties.

2. United States Sentencing Commission Guideline 2X1.1 for violation of 18 U.S.C. § 372 instructs to apply the base offense level from the guideline for the substantive offense plus any adjustments from the guideline for any intended conduct that can be established with reasonable certainty. The substantive offense is obstruction of justice; therefore, pursuant to 2J1.2 the resulting base offense level is 14.

3. The instant offense involved threatening physical injury to a person in order to obstruct justice; therefore, pursuant to 2J1.2(b)(1)(B), the base offense level is increased by 8 for a total of 22.

4. The instant offense resulted in substantial interference with the administration of justice; therefore, pursuant to 2J1.2(b)(2), the base offense level is increased by 3 for a total of 25.

5. Pursuant to USSG §3B1.1(a), the offense level is increased four levels for his role in the offense for a total of 29.

6. Defendant committed the instant offense while on release for the federal tax offenses in Docket 06-cr-71-02-SM; therefore, pursuant to 3C1.3 there is an increase of three levels for a total of 32.

Count Two – Conspiracy to Commit Offenses Against the United States.

7. United States Sentencing Commission Guideline 2A2.4 for violation of 18 U.S.C. §§ 371 and 111(a)(1) calls for a base offense level of 10.

8. Pursuant to U.S.S.G. § 2A2.4(b)(1)(B), the offense level is increased by three levels because a dangerous weapon was possessed and its use was threatened for a total of 13.

9. Pursuant to U.S.S.G. § 3B1.1(c), the offense is increased four levels for his role in the offense for a total of 17.

10. Defendant committed the instant offense while on release for the federal tax offenses in Docket 06-cr-71-02-SM; therefore, pursuant to U.S.S.G. § 3C1.3 there is an increase of three levels for a total of 20.

Count Five - Felon in Possession

11. The instant offense involved a semiautomatic firearm that was capable of accepting a large capacity magazine; therefore, pursuant to 2K2.1 for violation of 18 U.S.C. § 922(g) the base offense calls for a level of 20.

12. The instant offense involved between eight and twenty-four firearms; therefore, pursuant to 2K2.1(b)(1)(B), four levels are added for a total offense level of 24.

13. The offense involved a destructive device; therefore, pursuant to U.S.S.G. § 2K2.1(b)(3)(B), two levels are added for a total offense level of 26.

14. One of the firearms had an obliterated serial number; therefore, pursuant to U.S.S.G. § 2K2.1(b)(4)(B), there is an additional four level increase for a total offense level of 30.

15. Defendant possessed the firearm in connection with another felony offense; therefore, pursuant to U.S.S.G. §2K2.1(b)(6), an additional four levels are added for a total offense level of 34.

16. Pursuant to U.S.S.G. §3B1.1(c), the offense is increased four levels for his role in the offense for a total of 38.

17. Defendant committed the instant offense while on release for the federal tax offenses in Docket 06-cr-71-02-SM; therefore, pursuant to U.S.S.G. § 3C1.3 there is an increase of three levels for a total of 41.

Count Seven – Obstruction of Justice

18. USSG 2J1.2 for violation of 18 U.S.C. § 1503 calls for a base offense level of 14.

19. The instant offense involved threatening physical injury to a person in order to obstruct the administration of justice; therefore, pursuant to 2J1.2(b)(1)(B), the base offense level is increased by 8 for a total of 22.

20. The instant offense resulted in substantial interference with the administration of justice; therefore, pursuant to 2J1.2(b)(2), the base offense level is increased by 3 for a total of 25.

21. Pursuant to 3B1.1(c), the offense is increased four levels for his role in the offense to 29.

22. Defendant committed the instant offense while on release for the federal tax offenses in Docket 06-cr-71-02-SM; therefore, pursuant to 3C1.3 there is an increase of three levels for a total of 32.

Count Nine – Failure to Appear for Trial.

23. USSG 2J1.6(a)(2) for violation of 18 U.S.C. § 3146 calls for a base offense level of 6.

24. There is a six level increase because the underlying offense is punishable for five years or more, but less than fifteen years for an offense level of 12.

Count Ten – Failure to Appear for Sentencing.

25. USSG 2J1.6(a)(2) for violation of 18 U.S.C. § 1346 calls for a base offense level of 6.

26. There is a six level increase because the underlying offense is punishable for five years or more, but less than fifteen years for an offense level of 12.

27. The counts are grouped together pursuant to 3D1.2(c); therefore, the combined offense level is determined by using the highest offense level of the counts, which in this case is Count Five, Felon in Possession, and results in a combined offense level of 41.

28. Defendant's Criminal History Category is Category III.

29. For a Total Offense Level of 41 and a Criminal History Category of III, the applicable Guideline range is 360 months to life.

30. The Defendant is not eligible for probation. Guideline 5B1.1(b)(1).

31. Pursuant to U.S.S.G. § 5D1.2(b)(2), the term for supervised release for Count 5 is one year to three years.

32. Pursuant to U.S.S.G. § 5E1.2(c)(4), the fine range for the instant offense is from $20,000 to $200,000.

33. A total special assessment fee of $600 is mandatory, pursuant to 18 U.S.C. § 3013.

SO ORDERED.

George Z. Singal
United States District Judge

Dated this 29th day of September, 2020.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA	
v.	No. 1:09-cr-00030-01-GZS September 29, 2020 11:05 a.m.
EDWARD BROWN,	
Defendant.	

TRANSCRIPT OF RESENTENCING HEARING

BEFORE THE HONORABLE GEORGE Z. SINGAL

APPEARANCES:

For the Government:	AUSA Seth R. Aframe United States Attorney's Office
For the Defendant:	Benjamin L. Falkner, Esq. Krasnoo Klehm & Falkner LLP
U.S. Probation:	Sean Buckley
Court Reporter:	Brenda K. Hancock, RMR, CRR Official Court Reporter United States District Court 55 Pleasant Street Concord, NH 03301 (603) 225-1454

forward. Thank you. The Court will indicate the reasons for its sentence.

I've determined the sentence I'm imposing is sufficient but not greater than necessary to effectuate the goals of 18 U.S.C. Section 3553(a). In setting this sentence, I've carefully considered the sentencing range set forth in the advisory guidelines, though I give the guidelines no controlling weight. I have taken into account all of the factors set forth in 3553(a). I find most important the nature and circumstances of the offense, the history and personal characteristics of this defendant, the seriousness of the offense, the need to promote respect for the law, the need for just punishment, the need for specific and general deterrence, and the need to protect the public from further crimes of this defendant.

Let me go into a bit more detail. Mr. Falkner in his argument indicates that he shouldn't be sentenced simply upon his beliefs. As I indicated to Mr. Falkner, we are certainly aware of his beliefs, and we were aware of his beliefs prior to his conviction on the tax charges and his beliefs following that. The problem is that he acts on his beliefs, and, by acting on his beliefs, he put in danger multiple individuals, not only law enforcement officers, but put in danger those individuals that were ensconced with him as they held off law enforcement from executing a valid arrest warrant.

Mr. Falkner indicates that this individual, Mr. Brown, has been in custody in 2007, and at an earlier sentencing other people were released for time served. I'll deal with that in more detail later on. I would only indicate at this point that Mr. Brown was the leader and instigator of the entire standoff, and others were brought into that event through Mr. Brown's eloquence.

I've listened very carefully to Mr. Brown's allocution. Parts of it strike me deeply. His views as expressed during the psychological assessment were, in fact, as he indicated, true. He views the criminal law system as a farce in a sense, that it's simply run by a European cartel and is not applicable to him. He denies any accountability for his criminal activism. He feels that he did nothing wrong and that the law is wrong. He indicated that he would continue to not pay his taxes. Whether or not he had taxes is not relevant to me, particularly. An element of, "I don't intend to obey the law," is relevant to me.

I took a moment before I came down to look at the earlier events that took place around his house. Since this is a resentencing, I wanted to get a full impact of what happened.

This is the crime we're discussing. Mr. Brown and his followers, including his wife, barricaded themselves in a home built as a fortress to escape serving a valid sentence entered into by this Court for violation of the tax laws. He armed

himself and his followers, daring law enforcement to come and get him. The risk of danger to himself, his followers and law enforcement was extreme.

When I say "armed himself," we're talking about the law enforcement personnel later finding 20 pipe bombs in his bedroom, improvised explosive devices with nails taped around them built in the house and ready for use. A .50-caliber sniper-type rifle with a night scope was found in his bedroom, along with other arms. Another .50-caliber rifle with a night scope was found on the third floor, also with a night scope. I see these as simply and apparently weapons designed to pick off law enforcement personnel, should they approach the house.

Also found were numerous assault rifles, improvised explosive devices, tear gas canisters, all scattered throughout the house. Also found were scattered firearms and bombs and what I have to describe as a huge amount of ammunition ready for use.

Outside the house were found multiple improvised explosive devices hanging from trees, covered -- again, these devices were covered with nails so that an explosion would drive nails into people in the immediate vicinity. Also, a propane cylinder was hung from a tree marked with a red cross so it could be hit and exploded.

Threats were made what would happen if the law enforcement personnel tried to execute a valid order of a judge

of this court.

I saw in this court a short time ago Elaine Brown, Daniel Riley and Jason Gerhard. Cirino Gonzalez, another participant here, had earlier been released and I think went home to live with his family down in Texas. Mr. Falkner is exactly right, that I released Elaine, and I released Daniel Riley, and I released Jason.

Tragically, Jason Gerhard was 21 years old when he got involved with Ed Brown. My memory is that he came up I think as a reporter. He was brainwashed by Mr. Brown in terms of his beliefs and became an active participant in the crime.

Dan Riley was another participant and Elaine Brown, who my memory was that she was an individual who pulled herself up by her own bootstraps, became educated as a dentist, and had a flourishing dental practice in New Hampshire.

Each one of these individuals was released by me for time served in opposition to suggestions by the U.S. Attorney, because I believed, in talking to them and looking at them, that they had learned something during the period of time that they were in prison. They learned that what they had done was wrong; they learned that what they had done was a mistake. They appeared broken by the period of incarceration to the extent that it was clear in my mind that there was no risk from any of them in terms of reverting back to the type of activities that they had engaged in earlier.

I don't see that in Mr. Brown. It's hard to accept that an individual won't break the law in the future if the individual indicates to this minute that these are not laws, they're not valid laws. It's hard to be confident that society will not be threatened by criminal conduct when individuals don't recognize it as criminal conduct. It's hard to accept that an individual will follow conditions of release issued by a judge of this court when the individual does not accept that the judge has the authority to issue any orders.

The last time that I sentenced Mr. Brown -- he wasn't present for all of the sentencing, because he walked out at one point -- I indicated that Mr. Brown takes the benefits bestowed by society yet refuses to allow them to others. By that I mean that the due process that was provided to him was denied by him to law enforcement personnel. At that time he was unrepentant, and now he says to the psychological examiner, "I will never quit." In my view, I believed then and I believe now that he would have killed or injured multiple law enforcement personnel, had they attempted to physically arrest him.

When asked today if he felt what he engaged in at that time was a crime, the record will be clear that he does not. His activities then and I believe his intent today is reprehensible, and a serious punishment is still required to promote respect for the law and to deter others.

The defendant is hereby committed to the custody of

the United States Bureau of Prisons to be imprisoned as follows: On Count One, 72 months. On Count Two -- Count One is conspiracy. On Count Two, 60 months consecutive to the sentence imposed on Count One. On Count Five, 60 months consecutive to those sentences imposed on Counts One and Two. On Count Seven, 60 months consecutive to those sentences imposed on Counts One, Two and Five. On Count Nine, 24 months consecutive to those sentences imposed on Counts One, Two, Five, and Seven. On Count Ten, 24 months consecutive to those sentences I've imposed on Counts One, Two, Five, Seven and Nine, for a total of 300 months.

Upon release from imprisonment, he shall be on supervised release for a term of 3 years on each count, to be concurrent. He shall not commit any other federal, state or local crime. He shall not unlawfully possess a controlled substance. He shall refrain from any unlawful use of a controlled substance. He shall submit to one drug test within 15 days of release from prison and at least two additional drug tests during the term of supervised release but not more than 120 drug tests per year thereafter, as directed by the officer. He shall cooperate in the collection of DNA, as directed by the supervising officer.

He shall comply with the standard conditions previously adopted by the District of New Hampshire as well as the following additional special conditions: