No._____

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHEN R. PATTISON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

APPENDIX

Marianne Mariano
Federal Public Defender

Timothy P. Murphy
Assistant Federal Public Defender
Counsel of Record

Federal Public Defender's Office
300 Pearl Street, Suite 200
Buffalo, New York 14202
Telephone: (716) 551-3341

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24-2580
United States v. Pattison

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of May, two thousand twenty-six.

Present:

GUIDO CALABRESI,
MICHAEL H. PARK,
MARIA ARAÚJO KAHN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v.

24-2580

STEPHEN REED PATTISON,

Defendant-Appellant.

FOR DEFENDANT-APPELLANT: TIMOTHY P. MURPHY, Federal Public Defender's Office, Buffalo, NY

FOR APPELLEE: BRETT A. HARVEY, Assistant United States Attorney of Counsel, *for* Michael DiGiacomo, United States Attorney for the Western District of New York, Buffalo, NY

Appeal from a judgment of the United States District Court for the Western District of New York (Larimer, *J.*).

CERTIFIED COPY ISSUED ON 05/11/2026

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the district court's judgment is **AFFIRMED in part and VACATED and REMANDED in part.**

Defendant-Appellant Stephen Reed Pattison appeals from a judgment of the United States District Court for the Western District of New York sentencing him to a term of nine years' imprisonment for possessing a firearm and ammunition as a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On appeal, Pattison argues that the district court's sentence was procedurally and substantively unreasonable and that the district court failed to pronounce orally the standard conditions of his supervised release. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision.

I. Procedural Reasonableness

Pattison argues that the district court made three procedural errors when it sentenced him. We review the district court's sentence "under a deferential abuse-of-discretion standard." *United States v. Moses*, 109 F.4th 107, 118 (2d Cir. 2024) (cleaned up).

First, Pattison argues that the district court abused its discretion when it imposed an upwards departure on his criminal history category under U.S.S.G. § 4A1.3 (repealed 2025). Section 4A1.3 of the Guidelines authorized district courts to impose an upwards departure on a defendant's criminal history category if "reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes." *Id.* § 4A1.3(a)(1). That "reliable information" "may include . . . [p]rior similar adult criminal conduct not resulting in a criminal conviction." *Id.* § 4A1.3(a)(2)(E). Here, the district court imposed an upwards

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departure on Pattison's criminal history category primarily because, before Pattison's sentencing, he slashed another inmate across the face with a contraband weapon made from razor blades. Because this conduct also involved the illicit possession of a weapon, it was "similar" to Pattison's conviction for unlawful possession of weapons, so the district court did not abuse its discretion in imposing an upwards departure on Pattison's criminal history category.

Second, Pattison argues that the district court abused its discretion because it failed to compare Pattison's criminal history category and his sentence to those of similar defendants, as required by U.S.S.G. § 4A1.3(a)(4)(A) and 18 U.S.C. § 3553(a)(6). We disagree. When the district court imposed an upwards departure on Pattison's criminal history category, it stated that it was considering "what Criminal History Category accurately represents Mr. Pattison's criminal history as compared to others," so the district court complied with its obligation under § 4A1.3(a)(4)(A). Joint App'x at 290; *see also United States v. Vogler*, 763 F. App'x 18, 20 (2d Cir. 2019) (summary order) (this Guidelines procedure "admit[s] some flexibility"). Likewise, "[b]y carefully calculating and reviewing [Pattison's] Guidelines range, the district court necessarily gave significant weight and consideration to the need to avoid unwarranted disparities" under § 3553(a)(6). *Moses*, 109 F.4th at 119 (cleaned up). And while Pattison cites nationwide sentencing statistics to argue that his sentence was too high, he has "failed to provide sufficient information to compel the district court to find that these other defendants were so similarly situated to himself that any disparity in sentence would be unwarranted." *United States v. Zukerman*, 897 F.3d 423, 430 (2d Cir. 2018) (cleaned up).

Third, Pattison argues that the district court abused its discretion because it relied on information in the Presentence Report that Pattison characterizes as "irrelevant, unreliable and subjective." Appellant's Br. at 28. But district courts may consider any "information

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concerning the background, character, and conduct of a person convicted of an offense" at sentencing. 18 U.S.C. § 3661. And here, the district court carefully observed Rule 32 of the Federal Rules of Criminal Procedure by either ruling on Pattison's objections or by expressly stating that it would not rely on the disputed information in sentencing. *See* Fed. R. Crim. P. 32(i)(3)(B). Indeed, the district court stated that it was not relying on most of the information in the Presentence Report which Pattison challenges on appeal. Accordingly, the district court did not procedurally err in relying on other portions of the Report.

II. Substantive Reasonableness

Pattison argues that his sentence was substantively unreasonable because it was longer than necessary to comply with the purposes of sentencing and the district court did not consider certain mitigating factors. But "the weight to be afforded any § 3553(a) factor is a matter firmly committed to the discretion of the sentencing judge and is beyond our review, as long as the sentence ultimately imposed is reasonable." *United States v. Verkhoglyad*, 516 F.3d 122, 131 (2d Cir. 2008) (internal quotation marks omitted). The district court concluded that a nine-year sentence was reasonable in light of the nature and circumstances of Pattison's offense; the need for deterrence; and—"important[ly] here"—the need "to protect the public from further crimes by [Pattison]." Joint App'x at 289. On this record, the district court did not abuse its discretion in imposing a nine-year sentence.

III. Standard Conditions of Supervised Release

In *United States v. Maiorana*, 153 F.4th 306 (2d Cir. 2025) (en banc), we held that "a sentencing court intending to impose non-mandatory conditions of supervised release, including the 'standard' conditions described in [U.S.S.G.] § 5D1.3[(b)(2)], must notify the defendant during the sentencing proceeding; if the conditions are not pronounced, they may not later be added to

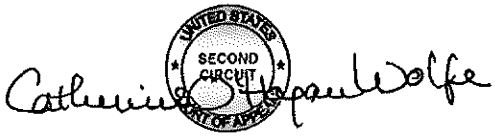
1E

the written judgment." *Id.* at 314. Here, "the district court neither pronounced [Pattison's] standard conditions of supervised release listed in the judgment at sentencing, nor specifically incorporated by reference particular conditions that had been set forth in writing and made available to [Pattison]." *United States v. Shelton*, No. 24-2101, 2025 WL 3687777, at *5 (2d Cir. Dec. 19, 2025) (summary order) (cleaned up). The parties agree that, under *Maiorana*, vacatur of the "standard" conditions and remand are appropriate.[1] We agree with the parties' assessment and vacate that part of the district court's judgment. If the district court intends to reimpose the "standard" conditions of supervised release on remand, "it must convene a hearing in the presence of the defendant and must advise the defendant that those conditions will be imposed." *Maiorana*, 153 F.4th at 315.

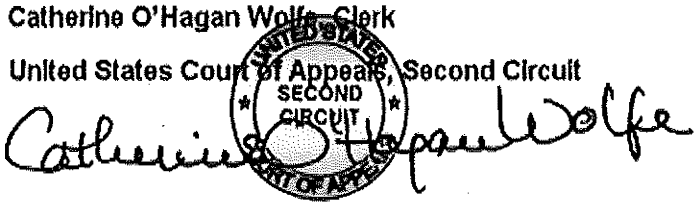
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We have considered Pattison's remaining arguments and find them to be without merit. For the foregoing reasons, the district court's judgment is **AFFIRMED in part and VACATED and REMANDED in part.** All pending motions are **DENIED** as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



[1] *Maiorana* established a "new rule of criminal procedure" that applies to "cases currently on direct review," like Pattison's. 153 F.4th at 314 n.11.

APPEAL,CASREF

U.S. DISTRICT COURT
U.S. District Court, Western District of New York (Rochester)
CRIMINAL DOCKET FOR CASE #: 6:21-cr-06097-DGL-MWP-1

Case title: USA v. Pattison

Date Filed: 06/10/2021

Magistrate judge case number: 6:20-mj-04223-MWP

Date Terminated: 05/27/2022

Assigned to: Hon. David G. Larimer
Referred to: Hon. Marian W. Payson

Defendant (1)

Stephen Reed Pattison
TERMINATED: 05/27/2022

represented by **Sonya A. Zoghlin**
Federal Public Defender
28 East Main Street
Suite 400
Rochester, NY 14614
585-263-6201
Fax: 585-263-5871
Email: sonya_zoghlin@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender Appointment

Steven G. Slawinski
Federal Public Defender Western District of North Carolina
129 W. Trade St.
Suite 300
Charlotte, NC 28202
704-374-0720
Fax: 704-375-2287
Email: steven_slawinski@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender Appointment

Timothy Patrick Murphy
Federal Public Defender
300 Pearl Street
Suite 200
Buffalo, NY 14202
716-845-1925
Fax: 716-551-3346
Email: timothy_murphy@fd.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Public Defender Appointment

Pending Counts	**Disposition**
UNLAWFUL TRANSPORT OF FIREARMS, ETC. (1)	Re-sentenced to 108 months in the custody of Bureau of Prisons. Supervised Release for 3 years. See judgment for conditions of supervision and special conditions. $500 fine imposed. $100 SPA due immediately (previously paid).

Highest Offense Level (Opening)

Felony

Terminated Counts	**Disposition**
None	

Highest Offense Level (Terminated)

None

Complaints	**Disposition**
18:922G.F, 18:924A.F - unlawfully did knowingly possess, in and affecting commerce, firearms	

Plaintiff

USA

represented by **Brett A. Harvey**
U.S. Attorney's Office - Rochester
100 State Street
Suite 500
Rochester, NY 14614
585-263-6760
Fax: 585-263-6226
Email: brett.harvey@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: government attorney

Date Filed	#	Docket Text
11/25/2020	1	COMPLAINT as to Stephen Reed Pattison (1). (CAM) [6:20-mj-04223-MWP] (Entered: 11/25/2020)
11/25/2020	2	ORDER sealing the complaint and affidavit until the defendant is brought before this Court for an initial appearance, or until further order of the Court, but in any event, no later than six months from today's date, unless before that time further application is made and the Court extends the time for sealing. Signed by Hon. Marian W. Payson on 11/25/20.(CAM) [6:20-mj-04223-MWP] (Entered: 11/25/2020)
11/25/2020	3	MOTION by USA to seal the complaint and affidavit. (CAM) [6:20-mj-04223-MWP] (Entered: 11/25/2020)

12/03/2020		Case unsealed as to Stephen Reed Pattison (CAM) [6:20-mj-04223-MWP] (Entered: 12/04/2020)
12/03/2020	4	Minute Entry for proceedings held before Hon. Marian W. Payson:Initial Appearance as to Stephen Reed Pattison held on 12/3/2020.Initial Appearance held. Defendant consents to appearing by video. The government moves to unseal the complaint. Request granted. Defendant advised of rights. The government summarizes the charges. Defendant requests court-appointed counsel. Federal Public Defender appointed subject to the submission of a financial affidavit. Pursuant to Fed. R. Crim. P 5(f), the Court ordered the government to produce all exculpatory evidence pursuant to Brady v. Maryland and its progeny, and advised that failure to do so could result in consequences, including sanctions and contempt proceedings. The government moves for detention on risk of flight and dangerousness. Defendant is being held on a parole warrant from Missouri. Defendant consents to the entry of a Coonan Order. Video Status Conference/Set PH Date: 1/26/21 at 10:30 a.m. TIME FROM 12/3/20 THROUGH 1/26/21 EXCLUDED IN THE INTEREST OF JUSTICE.Appearances: Brett Harvey, AUSA, Steven Slawinski, AFPD, Stephen Reed Pattison from jail, Sarah Whitcomb, USPO(Zoomgov.com Recording)(CAM) The 1/26/21 status conference will be held via Zoom for Government. Public access can be obtained by contacting Judge Payson's chambers at 585-613-4084. [6:20-mj-04223-MWP] (Entered: 12/08/2020)
12/03/2020	5	ORDER as to Stephen Reed Pattison regarding use of video or teleconferencing. Signed by Hon. Marian W. Payson on 12/3/20.(CAM) [6:20-mj-04223-MWP] (Entered: 12/08/2020)
12/03/2020	6	ORDER as to Stephen Reed Pattison re: Brady vs Maryland. Signed by Hon. Marian W. Payson on 12/3/20.(CAM) [6:20-mj-04223-MWP] (Entered: 12/08/2020)
12/03/2020	7	COONAN ORDER as to Stephen Reed Pattison. Signed by Hon. Marian W. Payson on 12/3/20.(CAM) [6:20-mj-04223-MWP] (Entered: 12/08/2020)
01/26/2021	8	Minute Entry for proceedings held before Hon. Marian W. Payson:Status Conference as to Stephen Reed Pattison held on 1/26/2021. The basis for the Coonan Order remains in effect. Defendant requests an adjournment to review discovery. Video Status Conference/Set PH Date/Set Detention Hearing Date: 2/24/21 at 2:00 p.m. TIME FROM 1/26/21 THROUGH 2/24/21 EXCLUDED IN THE INTEREST OF JUSTICE. Appearances: Brett Harvey, AUSA, Steven Slawinski, AFPD, Stephen Reed Pattison from jail(Zoomgov.com Recording)(CAM) The 2/24/21 status conference will be held via Zoom for Government. Public access can be obtained by contacting Judge Payson's chambers at 585-613-4084. [6:20-mj-04223-MWP] (Entered: 01/28/2021)
02/24/2021	9	Minute Entry for proceedings held before Hon. Marian W. Payson:Status Conference as to Stephen Reed Pattison held on 2/24/2021.The basis for the Coonan Order remains in effect as the Missouri hold is in place until May. Defendant requests an adjournment to review discovery and pursue a possible resolution. Video Status Conference/Set PH Date: 3/25/21 at 12:00 p.m. TIME FROM 2/24/21 THROUGH 3/25/21 EXCLUDED IN THE INTEREST OF JUSTICE. Appearances: Meghan McGuire, AUSA for Brett Harvey, AUSA, Steven Slawinski, AFPD, Stephen Reed Pattison from jail(Zoomgov.com Recording)(CAM) The 3/25/21 status conference will be held via Zoom for Government. Public access can be obtained by contacting Judge Payson's chambers at 585-613-4084. [6:20-mj-04223-MWP] (Entered: 02/26/2021)

03/25/2021	10	Minute Entry for proceedings held before Hon. Marian W. Payson:Status Conference as to Stephen Reed Pattison held on 3/25/2021.The basis for the Coonan Order remains in effect. Defendant requests an adjournment to review cell phone extractions. Video Status Conference/Set PH Date: 4/28/21 at 12:00 p.m. TIME FROM 3/25/21 THROUGH 4/28/21 EXCLUDED IN THE INTEREST OF JUSTICE.Appearances: Brett Harvey, AUSA, Steven Slawinski, AFPD, Stephen Ree Pattison from jail(Zoomgov.com Recording)(CAM) The 4/28/21 appearance will be held by Zoom for Government. Public access can be obtained by contacting Judge Payson's chambers at 585-613-4084. [6:20-mj-04223-MWP] (Entered: 03/31/2021)
04/28/2021	11	Minute Entry for proceedings held before Hon. Marian W. Payson:Status Conference as to Stephen Reed Pattison held on 4/28/2021. The separate hold will possibly expire on 5/26/21. The government is in the process of gathering telephone forensics. Defendant requests an adjournment. Video Status Conference/Set PH Date: 5/26/21 at 3:00 p.m. TIME FROM 4/28/21 THROUGH 5/26/21 EXCLUDED IN THE INTEREST OF JUSTICE.Appearances: Brett Harvey, AUSA, Steven Slawinski, AFPD, Stephen Reed Pattison from jail(Zoomgov.com Recording) (CAM) The 5/26/21 status conference will be held via Zoom for Government. Public access can be obtained by contacting Judge Payson's chambers at 585-613-4084. [6:20-mj-04223-MWP] (Entered: 05/05/2021)
05/26/2021	12	Minute Entry for proceedings held before Hon. Marian W. Payson:Status Conference as to Stephen Reed Pattison held on 5/26/2021.The state hold has been lifted. In Person Detention Hearing/Set PH Date: 6/2/21 at 10:30 a.m. TIME FROM 5/26/21 THROUGH 6/2/21 EXCLUDED IN THE INTEREST OF JUSTICE.Appearances: Brett Harvey, AUSA, Steven Slawinski, AFPd, Stephen Reed pattison from jail(Zoomgov.com Recording) (CAM) [6:20-mj-04223-MWP] (Entered: 05/27/2021)
06/02/2021	13	Minute Entry for proceedings held before Hon. Marian W. Payson:Detention Hearing as to Stephen Reed Pattison held on 6/2/2021. Government proffers. Defendant proffers. The motion for detention is reserved. Preliminary Hearing set for 6/16/2021 02:00 PM before Hon. Marian W. Payson.Appearances: Brett Harvey, AUSA, Defendant with Steven Slawinski, AFPD, Sarah Whitcomb, USPO(Digital Recording) (CAM) [6:20-mj-04223-MWP] (Entered: 06/04/2021)
06/10/2021	14	INDICTMENT as to Stephen Reed Pattison (1) count(s) 1. (LMD) (Entered: 06/17/2021)
06/10/2021	15	Sealed Unredacted Document as to Stephen Reed Pattison filed pursuant to FRCrP 49.1. (LMD) (Entered: 06/17/2021)
06/10/2021	16	TEXT ORDER OF REFERRAL Hon. Marian W. Payson, United States Magistrate Judge, is hereby designated to act in this case as follows:All pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including all pre-trial matters that a Magistrate Judge may hear and determine pursuant to 28 U.S.C. Section 636(b)(1)(A), and those which a Magistrate Judge may hear and thereafter file a report and recommendation for disposition pursuant to Section 636(b)(1)(B).All procedural aspects of matters properly before the Magistrate Judge under this Order, including scheduling and the filing of briefs or other supporting material, shall be determined by the Magistrate Judge.All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 6/10/2021. (LMD) (Entered: 06/17/2021)
06/16/2021	17	Minute Entry for proceedings held before Hon. Marian W. Payson:Arraignment as to Stephen Reed Pattison (1) Count 1 held on 6/16/2021.Arraignment held. Defendant advised of his rights. The government summarizes the charges. Defendant pleads not guilty

		and requests a jury trial. The parties will pursue a possible resolution. Scheduling deadlines are set. Discovery to be completed by 6/30/21. Motions to be filed by 8/16/21. Responses to be filed by 8/30/21. Argument set for 9/7/21 at 10:00 a.m. TIME FROM 6/16/21 THROUGH 8/16/21 EXCLUDED IN THE INTEREST OF JUSTICE. Continuation of Detention Hearing held. The governments motion to detain is granted on risk of flight and dangerousness. Appearances: Brett Harvey, AUSA, Defendant with Steven Slawinski, AFPD, Sarah Whitcomb, USPO(CAM) (Entered: 06/17/2021)
06/16/2021	18	ORDER OF DETENTION as to Stephen Reed Pattison Signed by Hon. Marian W. Payson on 6/16/21.(CAM) (Entered: 06/17/2021)
06/16/2021	19	ORDER as to Stephen Reed Pattison.. Discovery completed by 6/30/2021. Motions due by 8/16/2021., Responses due by 8/30/2021. Oral Argument set for 9/7/2021 10:00 AM before Hon. Marian W. Payson. ORDER TO CONTINUE - Ends of Justice as to Stephen Reed Pattison Time excluded from 6/16/21 until 8/16/21. Signed by Hon. Marian W. Payson on 6/16/21.(CAM) (Entered: 06/17/2021)
06/17/2021		Remark: This case had an error merging with the magistrate case. The Clerk has removed the errors, recreated the case, will re-enter the Indictment. (LB) (Entered: 06/17/2021)
09/01/2021	20	MOTION by Stephen Reed Pattison to extend the scheduling deadlines and exclude time. (CAM) (Entered: 09/01/2021)
09/01/2021	21	ORDER granting 20 Motionas to as to Stephen Reed Pattison to adjourn the scheduling deadlines and exclude time. Motions to be filed by 9/20/21. The government's response shall be filed by 10/4/21. Argument is set for 10/13/21 at 10:00 a.m. Time from 9/1/21 through 9/20/21 is excluded in the interest of justice. Signed by Hon. Marian W. Payson on 9/1/21.(CAM) (Entered: 09/01/2021)
09/30/2021	22	MOTION to Set a Date for Trial or Change of Plea *and Affidavit in Support* by USA as to Stephen Reed Pattison. (Harvey, Brett) (Entered: 09/30/2021)
10/01/2021		Set/Reset Deadlines re Motion in case as to Stephen Reed Pattison 22 MOTION to Set a Date for Trial. Motion Hearing set for 10/6/2021 02:00 PM before Hon. David G. Larimer. (PR) (Entered: 10/01/2021)
10/06/2021	23	Minute Entry for proceedings held before Hon. David G. Larimer:Motion Hearing as to Stephen Reed Pattison held on 10/6/2021 re 22 MOTION to Set a Date for Trial or Change of Plea. The Court sets a plea hearing for 11/8/2021 03:00 PM before Hon. David G. Larimer. The Court excludes the time from 10/6/21 to 11/8/21 in the interests of justice pursuant to 18:3161(h)(7). Defendant remains detained. Brett Harvey, AUSA; Steve Slawinski, AFPD. (Court Reporter Diane Martens.)(PR) (Entered: 10/06/2021)
11/03/2021		Set/Reset Hearings as to Stephen Reed Pattison: Plea Agreement Hearing reset for 11/8/2021 02:00 PM before Hon. David G. Larimer. **TIME CHANGE ONLY**(PR) (Entered: 11/03/2021)
11/08/2021	24	PLEA AGREEMENT as to Stephen Reed Pattison. (KAH) (Entered: 11/10/2021)
11/08/2021	25	Minute Entry for proceedings held before Hon. David G. Larimer: Plea Hearing as to Stephen Reed Pattison held on 11/8/2021. Plea entered by Stephen Reed Pattison (1) Guilty Count 1. Defendant admits for forfeiture allegation. Defendant to file his sentencing submissions by 1/12/2022. The Government to file its sentencing submissions by 1/14/2022. Sentencing set for 1/19/2022 at 3:30 PM before Hon. David G. Larimer. - PROBATION NOTIFIED OF PLEA- Appearances: Brett A. Harvey, AUSA; Steven G. Slawinski, AFPD with defendant. (Court Reporter Karen Clark.) (KAH) (Entered: 11/10/2021)

12/10/2021	26	PRELIMINARY ORDER OF FORFEITURE as to Stephen Reed Pattison. Signed by Hon. David G. Larimer on 12/9/2021. (LMD) (Entered: 12/10/2021)
12/15/2021	27	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Reed Pattison. (Bezenah, Jennifer) (Entered: 12/15/2021)
12/17/2021	28	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Reed Pattison. (Bezenah, Jennifer) (Entered: 12/17/2021)
01/11/2022	29	RECOMMENDATION (Sealed) as to Stephen Reed Pattison. (Bezenah, Jennifer) (Entered: 01/11/2022)
01/11/2022		Set/Reset Hearings as to Stephen Reed Pattison: Sentencing reset for 1/19/2021 11:00 AM before Hon. David G. Larimer. **TIME CHANGE ONLY** This appearance will be by Zoom. Public access can be obtained by calling chambers at 613-4044. (PR) (Entered: 01/11/2022)
01/13/2022	30	STATEMENT WITH RESPECT TO SENTENCING FACTORS by Stephen Reed Pattison (Slawinski, Steven) (Entered: 01/13/2022)
01/18/2022	31	TEXT ORDER as to Stephen Reed Pattison. Sentencing reset for 1/28/2022 10:00 AM before Hon. David G. Larimer. Government's sentencing statement is due by 1/19/22; Defendant's response due 1/24/22. This appearance will be by Zoom. Public access can be obtained by calling 585-614-4044. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 1/18/22.(PR) (Entered: 01/18/2022)
01/20/2022	32	STATEMENT WITH RESPECT TO SENTENCING FACTORS by USA as to Stephen Reed Pattison (Harvey, Brett) (Entered: 01/20/2022)
01/20/2022	33	SENTENCING MEMORANDUM by USA as to Stephen Reed Pattison (Harvey, Brett) (Entered: 01/20/2022)
01/21/2022	34	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Reed Pattison. (Bezenah, Jennifer) (Entered: 01/21/2022)
01/28/2022	35	TEXT ORDER as to Stephen Reed Pattison. Defendant's request for additional time to file a response to the Government's 33 Sentencing Memorandum and to adjourn sentencing to a time when defendant can appear in person is granted. Sentencing set for 5/23/2022 02:00 PM before Hon. David G. Larimer. Defendant's response to the Government's sentencing memorandum is due by 3/2/22; Government's reply, if any, is due by 3/16/22. All sentencing submissions are due by 5/16/22. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 1/28/22.(PR) (Entered: 01/28/2022)
03/02/2022	36	DECLARATION by USA as to Stephen Reed Pattison *Declaration of Publication* (Carducci, Grace) (Entered: 03/02/2022)
04/06/2022	37	SENTENCING MEMORANDUM by Stephen Reed Pattison (Slawinski, Steven) (Entered: 04/06/2022)
04/26/2022	38	FINAL ORDER OF FORFEITURE as to Stephen Reed Pattison.. Signed by Hon. David G. Larimer on 4/26/2022.(LMD) (Entered: 04/26/2022)
05/23/2022	39	Minute Entry for proceedings held before Hon. David G. Larimer: Appearances: Def. w/Steve Slawinski, AFPD; Brett Harvey, AUSA and Jennifer Fish, USPO. Sentencing held on 5/23/2022 for Stephen Reed Pattison (1), Count(s) 1, Court denies defendants objections to the PSR. Court grants in part and denies in part the governments motion for departure from the guidelines. Sentenced to 96 months in the custody of Bureau of Prisons. Supervised Release for 3 years. See judgment for conditions of supervision and special

		conditions. Fine waived. $100 SPA due immediately. (Court Reporter Brandi Wilkins.) (LMD) (Entered: 05/24/2022)
05/27/2022	40	JUDGMENT as to Stephen Reed Pattison (1), Count(s) 1, Sentenced to 96 months in the custody of Bureau of Prisons. Supervised Release for 3 years. See judgment for conditions of supervision and special conditions. Fine waived. $100 SPA due immediately. Additional certified copies forwarded to FPD, USPO, USM, US Attorney, Debt Collection and Financial Department. Signed by Hon. David G. Larimer on 5/26/22.(RE) (Entered: 05/27/2022)
05/27/2022	41	Sealed Document (Statement of Reasons) as to Stephen Reed Pattison. (RE) (Entered: 05/27/2022)
06/01/2022	42	NOTICE OF APPEAL. (Ovsiovitch, Jay) (Entered: 06/01/2022)
06/01/2022	43	DESIGNATION OF RECORD ON APPEAL by Stephen Reed Pattison re 42 Notice of Appeal CLERK TO FOLLOW UP (Ovsiovitch, Jay) (Entered: 06/01/2022)
06/01/2022	44	TRANSCRIPT REQUEST by Stephen Reed Pattison (Ovsiovitch, Jay) (Entered: 06/01/2022)
06/01/2022	45	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Stephen Reed Pattison held on 5/23/2022 before Judge Hon. David G. Larimer. Court Reporter/Transcriber Brandi Wilkins, scalisba@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/22/2022. Redacted Transcript Deadline set for 7/5/2022. Release of Transcript Restriction set for 8/30/2022. (Wilkins, Brandi) Modified docket text on 6/2/2022 (LB). (Entered: 06/01/2022)
06/02/2022		E-Filing Notification: 42 NOTICE OF APPEAL. A Notice of Appearance is required for filing attorney pursuant to Local Rules. (RE) (Entered: 06/02/2022)
06/02/2022		E-Filing Notification regarding 45 NOTICE OF FILING OF OFFICIAL TRANSCRIPT: docket text modified to reflect correct judge, Hon. David G. Larimer, presiding. (LB) (Entered: 06/02/2022)
06/02/2022	46	CLERK'S CERTIFICATE as to Stephen Reed Pattison filed and electronically sent to Court of Appeals. (Attachments: # 1 Index)(RE) (Entered: 06/02/2022)
06/15/2022	47	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings (PLEA HEARING) as to Stephen Reed Pattison held on 11/08.2021 before HONORABLE DAVID G. LARIMER. Court Reporter Karen J. Clark, RPR, KarenClark1013@AOL.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/6/2022. Redacted Transcript Deadline set for 7/18/2022. Release of Transcript Restriction set for 9/13/2022. (KJC) (Entered: 06/15/2022)
01/18/2024	48	TEXT ORDER as to Stephen Reed Pattison. Status Conference set for 1/22/2024 01:00 PM before Hon. David G. Larimer. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 1/18/24.(PR) (Entered: 01/18/2024)
01/22/2024	49	Minute Entry for proceedings held before Hon. David G. Larimer:Status Conference as to Stephen Reed Pattison held on 1/22/2024. The Court sets a schedule for dealing with the remand. The Court will issue a notice re: the guidelines; 30 days thereafter the defendant shall respond; 14 days for the Government to reply. Sentencing set for 5/15/2024 02:00 PM before Hon. David G. Larimer. The Court grants defense counsel's request to amend the PSR, the PSR should be amended within 30 days. Defendant's presence is waived. Brett

		Harvey, AUSA; Steven Slawinski, AFPD; Jennifer Fish, USPO.(Court Reporter Brandi Wilkins.)(PR) (Entered: 01/22/2024)
02/21/2024	50	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Reed Pattison. (Toal, Carolyn) (Entered: 02/21/2024)
02/21/2024	51	RECOMMENDATION (Sealed) as to Stephen Reed Pattison. (Toal, Carolyn) (Entered: 02/21/2024)
02/22/2024	52	ORDER as to Stephen Reed Pattison. The defendant is given thirty (30) days from the filing of this Order and notice to submit material concerning the contents of this notice and other matters relative to sentencing. The Government may file a reply within fourteen (14) days after defendant's filing. The sentencing is hereby scheduled for **May 15, 2024**, at **2:00 p.m.** Signed by Hon. David G. Larimer on 2/22/2024. (KAH) (Entered: 02/22/2024)
03/12/2024	53	MANDATE of USCA (certified copy) as to Stephen Reed Pattison re 42 Notice of Appeal. The appeal has been vacated and remanded the judgment of the district court. (DMK) (Entered: 03/13/2024)
04/04/2024	54	NOTICE OF ATTORNEY APPEARANCE: Sonya A. Zoghlin appearing for Stephen Reed Pattison (Zoghlin, Sonya) (Entered: 04/04/2024)
05/07/2024	55	TEXT ORDER as to Stephen Reed Pattison granting defendant's request to adjourn sentencing in part. The Court will grant defendant a 30-day adjournment. Sentencing reset for 6/12/2024 10:00 AM before Hon. David G. Larimer. All sentencing submissions are due by 6/5/24. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 5/7/24.(PR) (Entered: 05/07/2024)
05/31/2024	56	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Reed Pattison. (Toal, Carolyn) (Entered: 05/31/2024)
06/04/2024	57	MOTION to Adjourn Sentencing Hearing by Stephen Reed Pattison. (Zoghlin, Sonya) (Entered: 06/04/2024)
06/07/2024	58	TEXT ORDER as to Stephen Reed Pattison. Sentencing reset for 8/12/2024 03:00 PM before Hon. David G. Larimer. Sentencing submissions are due by 7/29/24. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 6/7/24.(PR) (Entered: 06/07/2024)
06/25/2024	59	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Stephen Reed Pattison held on 1/22/24 before Judge Hon. David G. Larimer. Court Reporter/Transcriber Brandi Wilkins, scalisba@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/16/2024. Redacted Transcript Deadline set for 7/26/2024. Release of Transcript Restriction set for 9/23/2024. (Wilkins, Brandi) (Entered: 06/25/2024)
07/29/2024	60	STATEMENT WITH RESPECT TO SENTENCING FACTORS by USA as to Stephen Reed Pattison (Harvey, Brett) (Entered: 07/29/2024)
08/04/2024	61	STATEMENT WITH RESPECT TO SENTENCING FACTORS by Stephen Reed Pattison (Zoghlin, Sonya) (Entered: 08/04/2024)
08/13/2024	62	TEXT ORDER as to Stephen Reed Pattison. Sentencing reset for 9/5/2024 01:00 PM before Hon. David G. Larimer. Sentencing submissions are due by 8/29/24. IT IS SO ORDERED. Signed by Hon. David G. Larimer on 8/13/24.(PR) (Entered: 08/13/2024)
08/29/2024	63	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Stephen Reed Pattison. (Toal, Carolyn) (Entered: 08/29/2024)

08/29/2024	64	RECOMMENDATION (Sealed) as to Stephen Reed Pattison. (Toal, Carolyn) (Entered: 08/29/2024)
08/29/2024	65	STATEMENT WITH RESPECT TO SENTENCING FACTORS by USA as to Stephen Reed Pattison (Harvey, Brett) (Entered: 08/29/2024)
08/29/2024	66	SENTENCING MEMORANDUM by USA as to Stephen Reed Pattison (Harvey, Brett) (Entered: 08/29/2024)
08/30/2024	67	SENTENCING MEMORANDUM by Stephen Reed Pattison (Attachments: # 1 Exhibit A) (Zoghlin, Sonya) (Entered: 08/30/2024)
09/05/2024	68	Minute Entry for proceedings held before Hon. David G. Larimer:Re-Sentencing held on 9/5/2024 for Stephen Reed Pattison (1). Appearances: Sonya A. Zoghlin, AFPD; Brett A. Harvey, AUSA; Jennifer Lotz, USPO; Maria Meck, USPO. Parties address the objections to the Pre-Sentence Report. Sentence imposed. Count(s) 1, Re-sentenced to 108 months in the custody of Bureau of Prisons. Supervised Release for 3 years. See judgment for conditions of supervision and special conditions. $500 fine imposed. $100 SPA due immediately (previously paid). (Court Reporter Diane Martens.)(JB) (Entered: 09/05/2024)
09/09/2024	69	Court Exhibits as to Stephen Reed Pattison *presented during re-sentencing on 9/5/2024, filed under seal*. (JB) (Entered: 09/09/2024)
09/10/2024	70	AMENDED Court Exhibits as to Stephen Reed Pattison *presented during re-sentencing on 9/5/2024, filed under seal. (JB) (Entered: 09/10/2024)*
09/16/2024	71	NOTICE OF ATTORNEY APPEARANCE: Timothy Patrick Murphy appearing for Stephen Reed Pattison (Murphy, Timothy) (Entered: 09/16/2024)
09/17/2024	72	AMENDED JUDGMENT as to Stephen Reed Pattison (1). Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department. Signed by Hon. David G. Larimer on 9/16/24. (JHF) (Entered: 09/17/2024)
09/17/2024	73	Sealed Document (Statement of Reasons) as to Stephen Reed Pattison. (JHF) (Entered: 09/17/2024)
09/17/2024	74	Sealed Document as to Stephen Reed Pattison. (JHF) (Entered: 09/17/2024)
09/27/2024	75	NOTICE OF APPEAL. (Murphy, Timothy) (Entered: 09/27/2024)
09/30/2024		E-Filing Notification: 75 NOTICE OF APPEAL. Within 14 days of filing the Notice of Appeal, the appellant is required to electronically file with the District Court an index of filed documents it wishes the Court of Appeals to consider, called Designation of Record on Appeal. After receipt, the Clerks Office will certify and transmit the index to the Circuit. Pursuant to Local Rule 12.2 of the US Court of Appeals for the Second Circuit, Form B must be completed within 14 days after the filing of a notice of appeal. Form B can be obtained at www.ca2.uscourts.gov (Murphy, Timothy) (DMK) (Entered: 09/30/2024)
10/11/2024	76	DESIGNATION OF RECORD ON APPEAL by Stephen Reed Pattison re 75 Notice of Appeal CLERK TO FOLLOW UP (Murphy, Timothy) (Entered: 10/11/2024)
10/11/2024	77	TRANSCRIPT REQUEST by Stephen Reed Pattison for proceedings held on 12-03-2020, 01-26-2021, 02-24-2021, 03-25-2021, 04-28-2021, 05-26-2021, 06-02-2021, 06-16-2021, 10-06-2021, 01-22-2024 and 09-05-2024 before Judge Hon. Marian W. Payson & Hon. David G. Larimer, (Murphy, Timothy) (Entered: 10/11/2024)
10/15/2024	78	CLERKS CERTIFICATE/INDEX as to Stephen Reed Pattison filed and electronically sent to Court of Appeals. (Attachments: # 1 Index)(DMK) (Entered: 10/15/2024)

PACER Service Center			
Transaction Receipt			
06/02/2025 12:29:31			
PACER Login:	tmurphy1	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	6:21-cr-06097-DGL-MWP
Billable Pages:	9	**Cost:**	0.90
Exempt flag:	Exempt	**Exempt reason:**	Always

IN THE DISTRICT COURT OF THE UNITED STATES
For the Western District of New York

April 2021 GRAND JURY
(Impaneled April 14, 2021)

THE UNITED STATES OF AMERICA **INDICTMENT**

-vs-

Violation:
18 U.S.C. § 922(g)(1) and 2

STEPHEN REED PATTISON

(1 Count and Forfeiture Allegation)

COUNT 1

(Felon in Possession of Firearms and Ammunition)

The Grand Jury Charges That:

Between on or about October 24, 2020, and on or about November 12, 2020, in the Western District of New York, the defendant, **STEPHEN REED PATTISON**, knowing that he had previously been convicted on or about December 16, 2016, in the Thirteenth Judicial Circuit Court, Boone County, Missouri, of a crime punishable by imprisonment for a term exceeding one year, unlawfully did knowingly possess, in and affecting commerce, firearms, namely, one (1) Smith and Wesson ITC, Model Compass, 30-06 rifle, bearing serial number U231831, and one (1) Winchester Ranger, Model 120, 12 gauge shotgun, bearing serial number L1929872; and ammunition, namely, 25 rounds of 12 gauge shotgun ammunition (Winchester).

All in violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 2.

FORFEITURE ALLEGATION

The Grand Jury Alleges That:

Upon conviction of the offense alleged in Count 1 of this Indictment, the defendant, **STEPHEN REED PATTISON**, shall forfeit to the United States all of his right, title and interest in any firearms and ammunition involved or used in the commission of the offense, or found in the possession or under the immediate control of the defendant at the time of arrest including, but not limited to:

a. one (1) Smith and Wesson ITC, Model Compass, 30-06 rifle, bearing serial number U231831;

b. one (1) Winchester Ranger, Model 120, 12 gauge shotgun, bearing serial number L1929872; and

c. ammunition, namely, 25 rounds of 12 gauge shotgun ammunition (Winchester).

All pursuant to the provisions of Title 18, United States Code, Sections 924(d) and 3665, and Title 28, United States Code, Section 2461(c).

DATED: Rochester, New York, June 10, 2021.

JAMES P. KENNEDY, JR.
United States Attorney

By: s/BRETT A. HARVEY
Assistant U.S. Attorney
United States Attorney's Office
Western District of New York
100 State Street, Room 500
Rochester, New York 14614
(585) 399-3949
brett.harvey@usdoj.gov

TRUE BILL:

s/FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. 21-CR-6097-DGL

STEPHEN REED PATTISON,

Defendant.

PLEA AGREEMENT

The defendant, STEPHEN REED PATTISON, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to plead guilty to Count 1 of the Indictment which charges a violation of Title 18, United States Code, Section 922(g)(1) (possession of firearms and ammunition by a convicted felon), for which the maximum possible sentence is a term of imprisonment of 10 years, a fine of $250,000, a mandatory $100 special assessment, and a term of supervised release of 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant will also admit the Forfeiture Allegation of the Indictment which alleges that two firearms and 25 rounds of ammunition are subject to forfeiture pursuant to Title 18, United States Code, Sections 924(d) and 3665, and Title 28, United States Code, Section 2461(c).

3. The defendant understands that, if it is determined that he has violated any of the terms and conditions of his term of supervised release, he may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in ¶ 1 of this agreement.

II. ELEMENTS AND FACTUAL BASIS

4. The defendant understands the nature of the offense set forth in ¶ 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

First, that the defendant knowingly possessed firearms and/or ammunition, as charged in the Indictment;

Second, at the time the defendant possessed the firearms and/or ammunition, the defendant had previously been convicted of a crime punishable by imprisonment for a term exceeding one year;

Third, at the time the defendant possessed the firearms and/or ammunition, the defendant knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year; and

Fourth, that the possession of the firearms and/or ammunition was in or affecting commerce.

FACTUAL BASIS

5. The defendant and the government agree to the following facts which form the basis for the defendant's guilty plea including relevant conduct:

POSSESSION OF FIREARMS AND AMMUNITION

a. Between on or about October 24, 2020, and on or about November 12, 2020, in Western District of New York, the defendant, **STEPHEN REED PATTISON**, knowing that he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, unlawfully did knowingly possess, in and affecting commerce, firearms, namely, one (1) Smith and Wesson ITC, Model Compass, 30-06 rifle, bearing serial number U231831, and one (1) Winchester Ranger, Model 120, 12 gauge shotgun, bearing serial number L1929872; and ammunition, namely, 25 rounds of 12 gauge shotgun ammunition (Winchester).

b. On or about October 24, 2020, a female with the initials C.B., knowing that the defendant was a convicted felon, gave the 30-06 rifle to the defendant. Subsequently, on or about October 27, 2020, an individual named Donald P. Oshier a/k/a Bam, knowing that the defendant was a convicted felon, gave the defendant the 12 gauge shotgun and a box containing 25 rounds of Winchester 12 gauge shotgun ammunition. The defendant stored and possessed the 30-06 rifle, the 12 gauge shotgun and the ammunition in the bedroom that he shared with his girlfriend, Rochelle Pfenninger, at 552 Church Road, Hilton, New York, which was the defendant's residence.

c. On October 30, 2020, the defendant was arrested and detained on a parole absconder warrant from Missouri. After his arrest and during his detention at the Monroe County Jail, the defendant continued to exercise dominion and control over the 30-06 rifle, the 12 gauge shotgun and the ammunition.

d. On November 12, 2020, deputies from the Monroe County Sheriff's Office, assisted by members of other local and federal law enforcement agencies, executed a state search warrant at 552 Church Road. At that time, they recovered, among other things, the 30-06 rifle, the 12 gauge shotgun, and the box of ammunition in the defendant's bedroom.

e. The defendant was convicted of Domestic Assault 2° (MO. ANN. STAT. § 565.073), a class D felony offense, in the Thirteenth Judicial Circuit in Boone County, Missouri, on December 16, 2016. That offense was punishable by a term of imprisonment exceeding one year, the

defendant receiving an actual sentence of three years in prison. The defendant admits that he knew of this prior felony conviction – and the fact that the conviction was punishable by a term of imprisonment exceeding one year – at the time he possessed the firearms and ammunition described in ¶¶ 5(a) through 5(d), above.

f. Neither the State of New York, nor any other government authority has restored the rights of the defendant to lawfully possess a firearm or ammunition.

g. The 30-06 rifle, the 12 gauge shotgun and the ammunition were not manufactured in the State of New York, and thus had traveled in interstate commerce at some time before the defendant possessed them.

DEFENDANT'S ATTEMPTS TO OBSTRUCT JUSTICE

h. Before and after he was charged in federal court, the defendant attempted to obstruct and impede the administration of justice with respect to the investigation and prosecution of this case. In the days after the search warrant at 552 Church Road, the defendant, who was detained at the Monroe County Jail, made several telephone calls to Rochelle Pfenninger. During those calls, the defendant told Pfenninger, in sum and substance, to lie to law enforcement authorities and falsely testify that the 30-06 rifle and the 12 gauge shotgun did not belong to him and that they were just holding the firearms for C.B.

i. On November 25, 2020, the Honorable Marian W. Payson, United States Magistrate Judge, Western District of New York, issued Criminal Complaint No. 20-MJ-4223, which charged the defendant with possession of firearms by a convicted felon. In the months that followed, the defendant, among other things, sought to obtain a false affidavit from Donald P. Oshier a/k/a Bam stating that Oshier gave the 12 gauge shotgun and box of ammunition to Pfenninger after the defendant was arrested and detained on the parole absconder warrant on October 30, 2020. The defendant also sought a similar false affidavit from C.B. with respect to the 30-06 rifle.

j. In or about April 2021, the defendant sent a letter from jail to Oshier, stating, in relevant part,

> Everybody moved on and forgot about me its killing me because I can beat this case. Rochelle friend is a notery I need you to make a statement of where ever you got the 12 G saying they gave it to you, you gave it to Rochelle when I went to jail for home protection Nobodys gunna get in trouble you guys are not felons you cant get in trouble none

> of you are felons only I am and thees guns were not at Rochelles when I was there did I know you guys were bringing them there (yes) and I thank you for doing what you said you were gunna so Rochelle would be safe!! Have the Feds come to speak to you? Or anybody? But anyway I will not have you guys say or do anything to get you in trouble I will go away and do the time but there is a lot of flaws in this case and if you and Crystal be honest and write a statement telling them that yes I asked you for you guys to bring them there after I was arrested so she had protection because this world is crazy!! Anyway I hope to here from you I really need you guys to get this done so I can meet my daughter and be the father I was trying to be and goto work[.]

k. At the defendant's direction, Pfenninger sought to obtain the false affidavits from C.B. and Oshier. On or about May 27, 2021, Oshier signed a false affidavit stating, in sum and substance, that he brought the 12 gauge shotgun and box of ammunition to 552 Church Road on October 31, 2020. Oshier sent a copy of the false affidavit to Pfenninger over Facebook, and the original false affidavit to Pfenninger through the mail. The defendant's purpose in seeking to obtain the false affidavit from Oshier, and a similar false affidavit from C.B., was to obstruct and impede the investigation and prosecution of this case by trying to establish that he did not actually or constructively possess the 30-06 rifle, the 12 gauge shotgun, or the 12 gauge shotgun ammunition, as charged in the Criminal Complaint and the Indictment.

III. SENTENCING GUIDELINES

6. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

BASE OFFENSE LEVEL

7. The government maintains that Guidelines § 2K2.1(a)(4)(A) applies to the offense of conviction and provides for a base offense level of 20.

U.S.S.G. CHAPTER 3 ADJUSTMENTS

8. The government and the defendant agree that the following adjustment to the base offense level does apply:

a. the two-level increase of Guidelines § 3C1.1 (obstruction of justice).

ADJUSTED OFFENSE LEVEL

9. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 22.

ACCEPTANCE OF RESPONSIBILITY

10. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility) and further agrees to move the Court to apply the additional one (1) level downward adjustment of Guidelines § 3E1.1(b), which would result in a total offense level of 19.

CRIMINAL HISTORY CATEGORY

11. It is the understanding of the government and the defendant that the defendant's criminal history category is IV. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

12. It is the understanding of the government and the defendant that with a total offense level of 19 and criminal history category of IV, the defendant's sentencing range would be a term of imprisonment of **46 to 57 months, a fine of $10,000 to $100,000, and a period of supervised release of 1 to 3 years**. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in ¶ 1 of this agreement.

13. The government and the defendant agree to the correctness of the calculation of the Sentencing Guidelines range set forth above. The government and the defendant, however, reserve the right to recommend a sentence outside the Sentencing Guidelines range. This paragraph reserves the right to the government and the defendant to bring to the attention of the Court all information deemed relevant to a determination of the proper sentence in this action.

14. The defendant understands that the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

15. In the event that the Court contemplates any Guidelines adjustments, departures, or calculations different from those agreed to by the parties above, the parties reserve the right to answer any inquiries by the Court concerning the same.

IV. STATUTE OF LIMITATIONS

16. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any federal criminal offense which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

V. REMOVAL

17. The defendant represents that he is a citizen of the United States. However, if the defendant is not a citizen of the United States, the defendant understands that, if convicted, the defendant may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

VI. GOVERNMENT RIGHTS AND RESERVATIONS

18. The defendant understands that the government has reserved the right to:

a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

c. advocate for a specific sentence consistent with the terms of this agreement, including the amount of a fine and the method of payment;

d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information, including conduct and statements by the defendant subsequent to this agreement, regarding the recommendation or factor; and

e. oppose any application for a downward departure and/or sentence outside the Guidelines range made by the defendant.

19. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

VII. APPEAL RIGHTS

20. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 12, above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence.

21. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

22. The defendant understands that, pursuant to this plea agreement, the government has agreed not to charge the defendant with violations of Title, 18, United States Code, Sections 875(c) (interstate threats) and 1512(k) (conspiracy to obstruct official proceedings), committed up to the date of this agreement and about which the government is aware. The maximum penalty for both of those offenses is a term of imprisonment of 20 years, a term of supervised release of 3 years, and a $250,000 fine.

23. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 12, above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

VIII. FORFEITURE PROVISION

FIREARMS AND AMMUNITION FORFEITURE

24. The defendant acknowledges that the defendant is the owner and/or exercised dominion and control of the firearms and ammunition described below and agrees to immediately criminally forfeit all of the defendant's right, title and interest to any and all property which is subject to forfeiture pursuant to Title 18, United States Code, Sections 924(d) and 3665, and Title 28, United States Code, Section 2461(c), which is in the possession and control of the defendant or the defendant's nominees, including but not limited to:

a. one (1) Smith and Wesson ITC, Model Compass, 30-06 rifle, bearing serial number U231831;

b. one (1) Winchester Ranger, Model 120, 12 gauge shotgun, bearing serial number L1929872; and

c. ammunition, namely, 25 rounds of 12 gauge shotgun ammunition (Winchester).

25. After the acceptance of the defendant's guilty plea, and pursuant to Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the Court will issue a Preliminary Order of Forfeiture for the items listed above. The defendant hereby waives any right to notice of such Preliminary Order of Forfeiture. The defendant further consents and agrees that the Preliminary Order of Forfeiture and a Final Order of Forfeiture shall issue and become final as to the defendant prior to sentencing and agrees that it shall be made part of the defendant's sentence and included in the judgment pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure. The defendant further agrees to waive any time restrictions or requirements as provided in Title 18, United States Code, Section 983, any notice provisions in Rules 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant acknowledges that the defendant understands that the forfeiture of property is part of the sentence that may be imposed in this case and waives any failure by the Court to advise the defendant of this, pursuant to Rule 11(b)(1)(J), at the time the guilty plea is accepted. Forfeiture of the defendant's property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

26. The defendant knowingly, intelligently, and voluntarily waives his right to a jury trial on the forfeiture of the assets. The defendant knowingly, intelligently, and voluntarily waives all constitutional, legal and equitable defenses to the forfeiture of these

assets in any proceeding, including any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, as to this criminal proceeding or any related civil or administrative proceeding. The defendant further agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine regarding the forfeiture of assets by the United States.

27. The defendant agrees that the above-described property is subject to forfeiture and waives any and all statutory and constitutional rights, including but not limited to time restrictions and notice provisions with respect to the final disposition or forfeiture of the above property. The defendant further agrees to the destruction of the above referenced property.

28. The defendant agrees that in the event this plea agreement is voided for any reason, the agreement for forfeiture, abandonment and disposition of the firearms and shells survives and shall be given full be given full force and effect.

IX. TOTAL AGREEMENT AND AFFIRMATIONS

29. This plea agreement represents the total agreement between the defendant, STEPHEN REED PATTISON, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

TRINI E. ROSS
United States Attorney
Western District of New York

By: _____
BRETT A. HARVEY
Assistant U.S. Attorney

Dated: November 8, 2021

I have read this agreement, which consists of pages 1 through 13. I have had a full opportunity to discuss this agreement with my attorney, Steven G. Slawinski, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.

STEPHEN REED PATTISON
Defendant

Dated: November 8, 2021

STEVEN G. SLAWINSKI, ESQ.
Attorney for the Defendant

Dated: November 8, 2021

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - X
UNITED STATES OF AMERICA) 21CR6097
)
vs.
Rochester, New York
STEPHEN REED PATTISON, November 8, 2021
Defendant. 2:30 p.m.
- - - - - - - - - - - - - - - - X

PLEA HEARING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

JAMES P. KENNEDY, JR., ESQ.
United States Attorney
BY: BRETT A. HARVEY, ESQ.
100 State Street
Rochester, NY 14614

MARIANNE MARIANO, ESQ.
United States Federal Public Defender
BY: STEVEN G. SLAWINSKI, ESQ.
28 East Main Street, Suite 400
Rochester, New York 14614

COURT REPORTER: Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com
100 State Street
Rochester, New York 14614

USA VS. S. PATTISON

P R O C E E D I N G

* * *

08:55:01 THE COURT: All right. Good afternoon,
15:21:05 counsel.
15:21:06 This is Mr. Pattison?
15:21:07 THE DEFENDANT: Yes, sir.
15:21:08 THE COURT: Good afternoon.
15:21:09 The matter is on my calendar today because I
15:21:13 was advised you're prepared to plead guilty to a
15:21:18 firearms offense and to admit forfeiture of those two
15:21:25 firearms. Is that your understanding as to why we're
15:21:29 here today?
15:21:30 THE DEFENDANT: Yes, sir.
15:21:31 THE COURT: All right. Because you're
15:21:34 wearing masks, it's hard to hear, and I don't hear
15:21:38 anyway. So really speak into the mike and keep your
15:21:41 voice up.
15:21:46 All right, counsel. Ready to proceed?
15:21:47 MR. SLAWINSKI: Yes, Judge.
15:21:48 MR. HARVEY: Yes, Judge.
15:21:48 THE COURT: All right. Mr. Pattison, we
15:21:52 take a few minutes to go through this, and we try and

15:21:57 accomplish three things. First of all, we want to make
15:22:00 sure you understand what is in this plea agreement. And
15:22:03 we want to make sure you understand the potential
15:22:06 penalty, especially jail penalty, that could result if
15:22:10 you plead guilty. We want to make sure you understand
15:22:13 all of your legal and constitutional rights. So it
15:22:18 takes a few minutes, but it's an important proceeding
15:22:22 for you, certainly, and for the Court. If you don't
15:22:24 understand anything as we go through this, you could ask
15:22:27 me a question or you could ask to talk to your lawyer,
15:22:30 Mr. Slawinski, over to the side there in private.
15:22:35 You're going be asked questions by me as to
15:22:38 your understanding, and, also, there is a section of the
15:22:41 plea agreement where it describes what you did. And I'm
15:22:44 going to be asking you if you did what is set forth
15:22:47 there. And you have to speak the truth. So, to impress
15:22:52 that upon you, I want to take your statements here under
15:22:55 oath. If you raise your right hand so to be sworn.
15:22:58 Do you solemnly swear the statements you're
15:23:00 about to make here this afternoon will be the truth, the
15:23:03 whole truth, and nothing but the truth so help you God?
15:23:06 THE DEFENDANT: Yes, sir.
15:23:06 THE COURT: Okay. Thank you. You can put
15:23:08 your hand down. Tell me how old are you?

15:23:10 THE DEFENDANT: Thirty-two, sir.
15:23:12 THE COURT: And how far did you get in school?
15:23:14 THE DEFENDANT: Eleventh grade.
15:23:15 THE COURT: Are you taking any medicines or drugs in the jail that you think affect your mental understanding?
15:23:21 THE DEFENDANT: No, sir.
15:23:22 THE COURT: Okay. I have received a copy of a plea agreement. There has been some changes over time, but we delayed our proceeding here today because your lawyer asked to have some more time to go over the plea agreement with you. Did you, in fact, go over the plea agreement here this afternoon?
15:23:43 THE DEFENDANT: Yes, sir.
15:23:44 THE COURT: And did you think you had enough time to discuss it with your lawyer?
15:23:48 THE DEFENDANT: Yes, sir.
15:23:50 THE COURT: Did anybody from the government's side or the police threaten you or force you in any way to come in here and plead?
15:23:57 THE DEFENDANT: No, sir.
15:23:59 THE COURT: All right. We're going to go through most of the paragraphs, but, certainly, the most

important ones, but before I even do that, do you think you understand what the plea agreement is in this case?

THE DEFENDANT: I do.

THE COURT: All right. Well, what we do is I ask the prosecutor, in this case, Mr. Harvey, to start us off section one, paragraph one, and describe the charge and then we go from there.

So listen carefully and Mr. Harvey will start us off.

MR. HARVEY: Thank you, Judge. Your Honor, pursuant to the plea agreement, the defendant agrees to plead guilty to Count 1 of the indictment. It's the sole count of the indictment, which charges a violation of Title 18 U.S.C. Section 922(g)(1) relating to the possession of firearms and ammunition by a convicted felon. The maximum possible sentence for that offense is a term of imprisonment of 10 years. A fine of $250,000. A mandatory $100 special assessment. And a term of supervised release of three years.

THE COURT: All right. Mr. Pattison, Mr. Harvey just mentioned the maximum penalty that could be imposed, and that is 10 years. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: We're going to talk in a minute

about something called the Sentencing Guidelines, which sets forth a range of sentences that the Court must consider, although the Court is not required to sentence within that range. The Court does have the ability to sentence higher than the range, or lower than the range. That is something that I would decide at sentencing. But you need to understand the maximum, which is 10 years. And I think you indicated that you do understand that is the potential maximum sentence that any judge could impose?

THE DEFENDANT: I do.

THE COURT: You understand that? Okay.

The forfeiture allegations, Mr. Harvey.

MR. HARVEY: Yes, defendant will also admit the forfeiture allegation of the indictment, which alleges the two firearms, which are listed in the factual basis, and 25 rounds of 12-gauge shotgun ammunition are subject to forfeiture under Title 18 U.S.C. Section 924(d) and 3665 and Title 28 U.S.C. Section 2461(c).

THE COURT: All right. That forfeiture provision, sir, means those items will not be returned to you. They will be forfeited to the government. Do you understand?

15:26:35 THE DEFENDANT: Yes.

15:26:36 THE COURT: It's possibly not a surprise to you, but that is what it is. In every criminal proceeding, there are certain things called elements and those are the things that make activity or actions criminal. And the elements here are set forth on page two, paragraph four, and I assume you have the original agreement in front of you, so I would ask you to read along as Mr. Harvey trips through those.

15:27:04 MR. HARVEY: Thank you, Judge. Paragraph four states: The defendant understands the nature of the offense set forth in paragraph one, and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following four elements of the crime. First, that the defendant knowingly possessed firearms and/or ammunition as alleged or as charged in the indictment. Second, at the time the defendant possessed the firearms and/or ammunition, the defendant had previously been convicted of a crime punishable by imprisonment for a term exceeding one year. Third, at the time, the defendant possessed the firearms and/or ammunition, the defendant knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one

year. And, fourth, that the possession of the firearms and/or ammunition was in or affecting commerce.

THE COURT: All right. Mr. Pattison, those are the elements. Do you think you understand them?

THE DEFENDANT: Yes, sir.

THE COURT: The government would have to prove, and you will be asked to admit, that you possessed certain firearms, and we'll talk about that. At the time you possessed them, the government would have to establish that you had, prior to that possession, been convicted of a felony offense. I think the suggestion is that occurred back in 2016 in the state of Missouri. Were you, in fact, convicted in the state of Missouri of a domestic assault in the second degree?

THE DEFENDANT: Yes, I was.

THE COURT: And that the factual basis is represented to be a felony. And, importantly, at the time you possessed the firearms in, I guess, October or November of 2020, at that time, one of the elements is that you knew you had been previously convicted of a felony. When you possessed these guns last year and in 2020, did you know at that time that you had been convicted before that of a felony?

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15:29:21 THE DEFENDANT: Yes, sir.

15:29:22 THE COURT: Okay. Let's talk about the factual basis. They relate to the firearms possession and also what is described as attempt to obstruct justice. And I guess we'll -- there is a lot of language here, but I guess I'll start with this. They cover pages three, four, and some of page five. Did you read over these paragraphs?

15:29:56 THE DEFENDANT: Yes.

15:29:59 THE COURT: All right. And they describe many activities. I guess I'll start with this. Is there anything in that recitation of those three pages that you dispute, you want to change, modify, or is it all true and accurate?

15:30:21 THE DEFENDANT: It's all true and accurate.

15:30:23 THE COURT: All right.

15:30:28 MR. SLAWINSKI: Judge, I faxed a copy of the plea agreement to Mr. Pattison last week, which contained the factual basis. We've reviewed the factual basis. There has been changes to other parts of the plea agreement and I think one minor change to the factual basis, which we went over in the Marshal's office, and I believe that he understands the factual basis and it represents what he is pleading guilty here

to today.

THE COURT: So, I understand there were some modest changes made today, but the original agreement was sent over to Mr. Pattison in the jail?

MR. SLAWINSKI: No, the original was sent to the jail with the factual basis, correct, Judge. It was modified once over the weekend and then once right before court. But the factual basis was the same, pretty much, except for some wording in all three.

THE COURT: So, Mr. Pattison, you had time to review the factual basis in the jail. Is that right?

THE DEFENDANT: Yes, sir.

THE COURT: Are you in Yates or Steuben?

THE DEFENDANT: Yates.

THE COURT: Okay. Well, paragraph 5 B describes that a female with the initials CB, and a male by the name of Donald Osier, one gave you a 36 rifle and the other a 12-gauge shotgun. And that you stored them at a home you shared with Rochelle Pfenninger in Hilton, New York, which was your residence, 552 Church Road. Did you do that?

THE DEFENDANT: Yes, sir.

THE COURT: And at some point in the end of August, or, excuse me, October, it says that you got

15:32:52 arrested on a parole warrant out of Missouri. Did that
15:32:57 relate to that domestic abuse conviction or something
15:33:00 else?
15:33:00 THE DEFENDANT: Yes, sir.
15:33:01 THE COURT: Okay. So, it says that,
15:33:05 although you're in the Monroe County Jail, you continued
15:33:08 to exercise dominion and control over those weapons. To
15:33:13 me that means that you continued to treat them as your
15:33:17 weapons, even though they were not in your physical
15:33:20 control. Is that correct?
15:33:21 THE DEFENDANT: Yes, sir.
15:33:23 THE COURT: Okay. And it does also cite you
15:33:35 had been convicted of domestic assault second degree
15:33:40 back in 2016, which is felony, punishable by a term
15:33:49 exceeding one year. And, in fact, you got a sentence of
15:33:53 three years.
15:33:56 THE DEFENDANT: Yes.
15:33:56 THE COURT: All right. That is accurate.
15:34:01 All right. The next thing, there was some enhancements
15:34:05 to the Guidelines here and they had to do with
15:34:08 obstruction. And, I guess, I guess I reiterate or ask
15:34:14 you, under the paragraphs relating to your attempts to
15:34:16 obstruct justice, do you agree that the facts set forth
15:34:24 there as to what you did and what you asked people to do

are true and accurate?

THE DEFENDANT: Yes, sir.

THE COURT: All right. But, in essence, you asked people to lie or submit a false affidavit, essentially claiming that the guns belonged to other people and not you. Is that, in essence, what you attempted to do?

THE DEFENDANT: Yes.

THE COURT: All right. Mr. Harvey, are you satisfied with the proffer here? It seems sufficient to be me.

MR. HARVEY: Yes, Judge. I think that is accurate. Since he has attested to the accuracy of the factual basis, I would just note, for the record, the female referred to by the initials CB in the factual basis is a woman named Crystal Brown. I want to state that for the record. We don't put uncharged defendants or individuals in the factual basis, so I want to say it in open court and have the defendant confirm in open court that that is the individual he knows as "CB."

THE COURT: CB, Crystal Brown?

THE DEFENDANT: Yes, sir.

THE COURT: And, well, I think the factual basis here is sufficient to support the plea.

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15:35:35 MR. SLAWINSKI: Judge, and one other note, I'll note that the affidavit that was obtained was never submitted to law enforcement, but it was notarized.

15:35:45 THE COURT: It was what?

15:35:47 MR. SLAWINSKI: It was never submitted to law enforcement or the U.S. Attorney's Office.

15:35:51 THE COURT: But the point is, he asked people to lie or make a false affidavit.

15:35:56 MR. SLAWINSKI: Yes.

15:35:56 THE COURT: Do you agree with that, Mr. Pattison?

15:35:58 THE DEFENDANT: Yes, sir.

15:35:59 THE COURT: Let's talk about the Sentencing Guidelines. Since 1987, there has been something in effect in the Federal Court called the Sentencing Guidelines. And every person that has pled or has been found guilty has some Guidelines, and they are determined to be found guilty in the nature of the crime. For instance, in drug cases, if you sell a kilogram of heroin, that is one Guideline. And if you sell 10 kilos, the Guideline is much higher. And there can be certain adjustments that affect the Guidelines one way or the other. And the Court is required to determine what Guideline are and then decide whether a

15:36:41 sentence within the Guideline is sufficient or whether
15:36:46 another sentence would be appropriate.
15:36:50 In this case, there are -- there are two
15:36:55 adjustments. There is a base level and there is a two
15:36:59 point adjustment to your detriment because of the
15:37:04 obstruction. And according to the plea agreement, the
15:37:11 government and your lawyer agree to that two-point
15:37:15 enhancement. Do you understand that? That is in
15:37:17 paragraph nine.
15:37:18 THE DEFENDANT: Yes, sir.
15:37:20 THE COURT: But there is an adjustment that
15:37:23 benefits you. There is a three-point reduction based on
15:37:28 what is called your acceptance of responsibility. That
15:37:31 is your determination to plead guilty and accept
15:37:36 responsibility here. So that reduces your base offense
15:37:40 level by three. Bottom line, I guess in the Guidelines
15:37:47 is the parties agree that you do have a prior record and
15:37:50 your criminal history is a IV, which is at the upper end
15:37:55 of the range. And the offense level is 19, so the
15:37:59 parties believe your Guideline range here is 46 to 57
15:38:03 months. A fine of -- let's see, I don't have the -- did
15:38:13 the fine change?
15:38:16 MR. HARVEY: I believe it's $10,000.
15:38:18 THE COURT: Ten thousand to 100,000. And a

period of supervised release of one to three years. Do you understand those are the Guidelines, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Your lawyer and the government agree that those are the Guidelines. But your lawyer has put in a provision where he reserves the right to ask me to sentence you below the Guidelines. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And that is something we don't decide today. That is something we decide at sentence, whether I do that or not. The government has a right to react to that. But that is what we do at sentencing, which will take place probably about two months from now.

MR. HARVEY: And, Judge, I would note as well, we reserve the right to ask for an above Guideline sentence as well.

THE COURT: That's fair. Duly noted.

I probably have already emphasized this, Mr. Pattison, but you need to understand that the Guidelines are Guidelines. They are not mandatory. They don't mean that I have to sentence you to that. I have some discretion. I can't just sentence you higher than the

15:39:38 Guidelines just because I feel like it. There has to be
15:39:41 some reason. But, you understand that I have what is
15:39:45 called discretion. I have a lot of discretion to decide
15:39:48 whether I should do more or less than the Guidelines.
15:39:51 THE DEFENDANT: Yes, sir.
15:39:51 THE COURT: Okay. And part of the
15:39:54 sentencing process is that I receive input from your
15:39:57 lawyer, from you, from the government, and we decide
15:40:01 what the appropriate sentence should be. If, in fact,
15:40:10 the Court sentences you within the 46 to 70-month range,
15:40:14 there is a provision here on page nine talks about
15:40:16 appeal rights, but it basically means giving up appeal.
15:40:23 Because if I do sentence you to 46 to 57 months or
15:40:28 something lower, then you agree to give up the right to
15:40:31 appeal that sentence whatever it might be. Do you
15:40:34 understand that?
15:40:35 THE DEFENDANT: Yes.
15:40:37 THE COURT: And by appeal, I mean a direct
15:40:39 appeal or filing a later lawsuit, sometimes called
15:40:44 habeas corpus or collateral attack. That is precluded,
15:40:48 also. If I chose to sentence you above the 57 months,
15:40:52 then you do have a right to appeal, although, generally,
15:40:57 it's a limited right. But, so do you understand that
15:41:01 distinction here?

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15:41:02 THE DEFENDANT: Yes.

15:41:05 THE COURT: I'd like to remind people that this is an important proceeding. I call it D day often. 15:41:07 That is decision day. That you can't come to me next week or next month and say, you know, Judge, I change my 15:41:11 mind. I really don't want to plead guilty. Do you understand that? 15:41:16 15:41:19 15:41:22

15:41:22 THE DEFENDANT: Yes.

15:41:23 THE COURT: Okay. Gentlemen, am I correct that this is relatively early on and there have been no motions filed? 15:41:28 15:41:32

15:41:33 MR. HARVEY: That's correct, Judge, no motions have been filed. 15:41:34

15:41:35 MR. SLAWINSKI: That's correct, but there is an indictment, so we are not waiving that right. 15:41:36

15:41:40 THE COURT: Right. Because if there were motions, I would advise Mr. Pattison that they are not going to be decided. This plea trumps that. 15:41:43 15:41:46

15:41:51 Any state charges pending here on this matter? 15:41:53

15:41:54 MR. HARVEY: No, your Honor.

15:41:55 THE COURT: Okay.

15:41:56 MR. HARVEY: But I would note, as set forth in paragraph 22, the government is agreeing not to 15:41:58

pursue other charges against the defendant dealing with violations of Title 18 U.S.C. Section 875(c) and 1512(k).

THE COURT: Yes, I noted that. So, Mr. Pattison, that is something that benefits you as well. The government is not going to go down that road.

All right. Paragraph 24 just discuss the forfeiture of the rifle and the shotgun and some ammo. And you understand those will be forfeited to the government and then will not be returned to you or anyone else. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I think that covers the contract or the agreement.

Mr. Pattison, do you have any questions about anything we've talked about so far?

THE DEFENDANT: No, sir, I do not.

THE COURT: Any questions you want to ask your lawyer?

THE DEFENDANT: No, sir.

THE COURT: All right. Well, before we sign some documents, I need to ask you some questions about your legal rights. You have a criminal history IV. Start with that. And you do have this conviction of

15:43:13 domestic assault. Was that a plea or a trial?
15:43:15 THE DEFENDANT: A plea.
15:43:17 THE COURT: Have you ever gone to trial on
15:43:19 anything?
15:43:20 THE DEFENDANT: No.
15:43:20 THE COURT: All right. Have there been
15:43:23 other pleas in your life to stuff?
15:43:24 THE DEFENDANT: No, that is the only one, I
15:43:27 believe.
15:43:27 THE COURT: He has a criminal history
15:43:29 category IV.
15:43:30 MR. SLAWINSKI: He was under a criminal
15:43:32 justice sentence when that happened, Judge, when the
15:43:37 instant offense happened, so I think that boosted him up
15:43:41 and there might be --
15:43:42 MR. HARVEY: He has prior misdemeanor
15:43:43 convictions as well. Just one felony, but other
15:43:47 misdemeanors.
15:43:48 THE COURT: But that is what I was asking
15:43:49 about any crime, felony or misdemeanor.
15:43:52 THE DEFENDANT: Okay, yes.
15:43:53 THE COURT: But they have all been pleas.
15:43:55 THE DEFENDANT: Yes.
15:43:56 THE COURT: Okay. You know the difference

15:43:59 between a plea and a trial?

15:44:00 THE DEFENDANT: Yes, I do.

15:44:01 THE COURT: And, well, I just need to make
15:44:04 sure you understand that whatever was the case in state
15:44:07 court, you been charged in this indictment. And anybody
15:44:12 who is charged like that, there is no rule that you have
15:44:15 to come forward and plead guilty. That is another way
15:44:19 of my just reminding you that, in this indictment, you
15:44:23 have a right to have a trial and have a jury decide
15:44:27 whether you are guilty of possessing these firearms or
15:44:31 not. Do you understand that?

15:44:32 THE DEFENDANT: Yes.

15:44:33 THE COURT: And that is an important thing,
15:44:34 a trial, because at the trial, the government has to
15:44:39 prove all of those elements by proof beyond a reasonable
15:44:44 doubt, which is the highest burden there is of the law.
15:44:47 And the government would have to convince each of the 12
15:44:50 jurors of your guilt. Do you understand that is part of
15:44:54 a trial?

15:44:54 THE DEFENDANT: Yes.

15:44:55 THE COURT: If there were a trial, you would
15:44:57 not be doing it alone. You would have the able help of
15:45:01 Mr. Slawinski and his office. You would have to be
15:45:05 present here. You get to review all of the evidence.

15:45:08 Your lawyer could question any of the police witnesses
15:45:11 or any of the other witnesses that are mentioned in this
15:45:16 plea agreement. You could use the subpoena power of the
15:45:20 court to bring in evidence at the trial. And you also
15:45:25 have the right to take that witness stand and testify,
15:45:30 talk to the jury and tell them your version. All of
15:45:33 those important trial rights. First question, do you
15:45:37 understand those are rights that you have at a trial?
15:45:39 THE DEFENDANT: Yes.
15:45:41 THE COURT: And next you understand that if
15:45:42 you plead guilty, you lose or give up those rights
15:45:48 because if you plead guilty, we're not having a trial.
15:45:51 THE DEFENDANT: Yes.
15:45:51 THE COURT: And, okay. If you plead guilty,
15:45:53 the next thing for you and me after we've reviewed all
15:45:57 of the sentencing documents, is to get together and
15:45:59 decide what the sentence should be. Do you understand
15:46:01 that?
15:46:01 THE DEFENDANT: Yes.
15:46:05 THE COURT: Mr. Slawinski has aided you in
15:46:08 this matter. Are you satisfied with the help and advice
15:46:10 he has given you up to this point?
15:46:12 THE DEFENDANT: Yes.
15:46:13 THE COURT: Okay. Well, we are at the stage

15:46:18 where we sign some papers. Before we do that, do you
15:46:21 have any last minute questions of me or your lawyer?
15:46:23 THE DEFENDANT: No, sir.
15:46:24 THE COURT: I guess we only have one
15:46:26 document to sign, the plea agreement that you and I have
15:46:29 discussed. And if you're prepared, I ask to you sign
15:46:32 that document, it will be filed. And by signing it,
15:46:35 you're bound by all of the terms of that agreement. All
15:46:45 right.
15:46:45 The agreement has been signed in my presence
15:46:47 by Mr. Pattison, and by both lawyers on the 8th day of
15:46:53 November 2021. I'll direct that be filed.
15:46:58 And then I'm going to read the charge to
15:47:02 you, unless you want me to waive a full reading, Mr.
15:47:05 Slawinski, I guess. I mean, in essence, it charges you,
15:47:08 sir, that on or about October 24 and November 12 of 2020
15:47:16 in this federal district, you, knowing that you had been
15:47:20 previously convicted in December of 2016 in Boone
15:47:23 County, Missouri, of a crime punishable by imprisonment
15:47:28 for a term exceeding one year, that you did knowingly
15:47:32 possess these two firearms, Smith & Wesson, model
15:47:38 Compass, 30-06 rifle, and the Winchester 12-gauge
15:47:43 shotgun and some ammo. As to that single charge, sir,
15:47:49 pursuant to the plea agreement, how do you plead, guilty

or not guilty?

THE DEFENDANT: Guilty.

THE COURT: There is also a forfeiture allegation in which you admit and affirm the forfeiture of the firearms and ammo that was discussed. Do you admit and acknowledge that forfeiture provision?

THE DEFENDANT: Yes.

THE COURT: All right. I find that Mr. Pattison is certainly competent and capable of entering a plea. The plea does appear to be knowing and voluntary. There are certainly facts to support the plea. And so I will accept the plea, order a full presentence report.

MR. HARVEY: Judge, can I trouble you to ask another one or two questions of the defendant. I don't know that you asked if there are any other promises other than what is contained in the plea agreement that have been made to the defendant. I ask the Court to confirm that.

THE COURT: I don't think I did ask that, but anybody promise you anything about the sentence?

THE DEFENDANT: No.

THE COURT: All right. I don't know how they could have, because I don't know what I'm going to

do, either. We have to dot our Is and cross our Ts.

MR. HARVEY: I don't mean just with respect to the sentence, but any other promises made by or representations made by the government.

THE COURT: Anything at all, Mr. Pattison?

THE DEFENDANT: No, sir.

THE COURT: Anything else, Mr. Harvey?

MR. HARVEY: Judge, I think the defendant did indicate that he was on some medications. I would just ask the Court to confirm what those are and just confirm they don't interfere with his ability to understand.

THE COURT: I guess that I missed he did indicate some.

MR. SLAWINSKI: Judge, he is on Prozac for depression and Sublocade, which is Suboxone, and they don't affect his mental abilities or his thought process.

THE COURT: Is this a medication that you've taken over a period of time?

THE DEFENDANT: Yes.

THE COURT: All right. All right. I'm satisfied. I'd like to see if we can do this in January.

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15:49:54 MR. SLAWINSKI: That's fine, Judge.

15:49:58 THE COURT: Because I'm going to be away after that. So I think probation should be able to put a report together in about two months. So, why don't we shoot for maybe the week of January 17th. I'll just pick a date arbitrarily. How about January 19th, that is a Wednesday.

15:50:22 MR. SLAWINSKI: That works for me, Judge.

15:50:24 THE COURT: Pardon me?

15:50:25 MR. SLAWINSKI: That's fine.

15:50:26 THE COURT: In the afternoon.

15:50:30 THE CLERK: You have a 2 and 2:30, already.

15:50:32 THE COURT: Busy boy. Two and 2:30. How about 3:30?

15:50:38 MR. SLAWINSKI: That's fine, Judge.

15:50:39 MR. HARVEY: Fine with me, Judge. Thank you.

15:50:41 THE COURT: January 19th, 2022 at 3:30 for sentencing. If there are any filings, I guess I would like them, I guess for you, Mr. Slawinski, how about a week before, about January 12th you could get something in.

15:51:07 MR. SLAWINSKI: I usually do it a week before sentencing, that's fine.

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15:51:12 THE COURT: And, Mr. Harvey, I guess if you
15:51:15 have anything, would you get it by that Friday the 14th?
15:51:19 MR. HARVEY: Yes, sir, Judge.
15:51:20 THE COURT: Okay. The sooner I get them,
15:51:24 the sooner I can read them and make a good decision.
15:51:30 All right. Is Mr. Pattison held on parole warrant as
15:51:37 well?
15:51:37 MR. SLAWINSKI: Not anymore, Judge. He
15:51:39 finished his state sentence and he is only held
15:51:42 federally in Yates County.
15:51:45 THE COURT: Okay. So that is something that
15:51:48 I sometimes cover that he owes nothing more to the state
15:51:54 and there is no state charges pending.
15:51:55 MR. SLAWINSKI: That's correct, Judge.
15:52:00 THE COURT: The time he has been in custody,
15:52:02 has that been federal time or some of it?
15:52:05 MR. SLAWINSKI: Some of it has been state
15:52:06 time, Judge. His state time finished and he lapsed into
15:52:11 federal custody.
15:52:12 THE COURT: So he was writted over.
15:52:16 MR. HARVEY: Today.
15:52:17 THE COURT: Yeah.
15:52:17 MR. HARVEY: No, he is done with state
15:52:20 custody. And there was no need for a writ. I think in

May of this year he lapsed into federal custody.

THE COURT: So he will have some federal time against whatever sentence that I impose.

MR. SLAWINSKI: I know he was charged before that and there was a federal hold and we would ask the Court to consider that at sentencing.

THE COURT: I'll read what you have to submit. All right. Well, I'll continue Mr. Pattison detained then and we'll see you at sentencing in January.

MR. SLAWINSKI: Thank you, Judge.

MR. HARVEY: Thank you, your Honor.

THE DEFENDANT: Thank you.

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

S/ Karen J. Clark, RPR

Official Court Reporter

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - X
UNITED STATES OF AMERICA, Plaintiff

Vs.

STEPHEN REED PATTISON Defendant

21-CR-6097

Rochester, New York
May 23, 2022
2:30 p.m.

- - - - - - - - - - - - - - - X

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABNLE DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

U.S. ATTORNEY'S OFFICE
BY: BRETT A. HARVEY ESQ.
100 State Street
Rochester, New York 14614
Appearing on behalf of the Plaintiff

FEDERAL PUBLIC DEFENDER.
BY: STEVEN G. SLAWINSKI ESQ.
28 East Main Street
Suite 400
Rochester, New York 14614
Appearing on behalf of the Defendant

CLERK: Lisa Duque

COURT REPORTER: Brandi A. Wilkins
scalisba@gmail.com
Kenneth B. Keating Federal Building
100 State Street, Room 2120
Rochester, New York 14614

P R O C E E D I N G S

* * *

THE CLERK: The Honorable David G. Larimer presiding. You may be seated. United States of America versus Stephen Reed Pattinson, 21-cr-6097.

THE COURT: Good afternoon all.

MR. SLAWINSKI: Good afternoon, Judge.

MR. HARVEY: Good afternoon, Your Honor.

(There was a discussion off the record.)

THE COURT: Okay. So Mr. Slawinski, Mr. Harvey, Mr. Pattinson, good afternoon. This matter is on for sentencing today. Based on Mr. Pattinson's plea back on November 8 to Count One of the indictment charging a firearms offense, possession of a firearm by a prohibited person, involved two firearms a .30-06 rifle and a 12 Gauge shotgun. These will be discussed in a minute. These were found after a search warrant in a bedroom of your home in Hilton, New York. By statute such an offense carries a potential sentence of up to ten years in prison.

There was a thorough presentence -- excuse me, plea agreement. A plea was entered pursuant to the plea agreement, and the factual basis in this case unlike some others took two and a half pages of the plea agreement, and I've reviewed the plea agreement

but it sets forth clearly that Mr. Pattinson was convicted of a crime called domestic assault in the second degree in Missouri. He received a three year jail term there, was on parole; in fact, was a parole absconder when this event occurred. So that's the felony conviction that makes this possession of a firearm illegal.

As I mentioned, he possessed the two firearms at his home in Hilton. Appears from the factual basis that the firearms at his request were delivered to him by Mr. Oshier and another individual. The factual basis indicates the several efforts Mr. Pattinson made to obstruct justice by attempting to make it look like others possessed the firearms. He approached Ms. Pfenninger and Mr. Oshier to give false statements, create false affidavits, and this was an attempt to obstruct justice. Part of this scheme which is set forth in the factual basis was that Mr. Pattinson acknowledged that as a convicted felon he could not possess firearms but that the other two who had not been convicted felons would not get into trouble for possessing the guns.

The Court did order a full presentence report and I've received one, a very thorough report which was revised on January 21 of this year. There

are no surprises relative to the guideline calculation. The probation officer determined that the base offense level for this possession of weapons under 2K2.1a4A provides for a higher offense level because the felony involved that prohibited Mr. Pattinson from possessing weapons was a crime of violence. So that base offense level was 20 and the plea agreement the parties agreed under 3C1.1 of the guidelines there should be a two point enhancement for obstruction of justice. Mr. Pattinson did get the benefit of a three point reduction because he accepted responsibility and pleaded guilty. So the net is that the guideline calculation for the criminal history for there are of course six sentencing ranges, one through six. Mr. Pattinson is at not the mid range but just above the mid range at a level four. Therefore the sentencing guidelines are 46 to 57 months. That's the same range that as I say was anticipated by the parties in the plea agreement, so there's no surprise in that respect.

Of course, as the parties know, the Government has moved for the Court to impose a sentence higher than the guidelines. That motion was filed December 20, Docket Number 33. Mr. Slawinski has filed a response to that motion recently on April

6. I've reviewed them all carefully, but before we deal with discussion about that, Mr. Slawinski also filed back in early January objections to the items in the presentence report, and I think we should deal with that first.

I guess in the Government's motion for an upward departure, the Government responded to that -- those objections as well. So I think, Mr. Slawinski, as you know that the rules seem to require me to make sure on the record the obvious, that you and your client have received the presentence report.

MR. SLAWINSKI: Yes, Judge.

THE COURT: All right. And Mr. Pattinson, I must ask you directly, did you receive the report and review it with your lawyer?

MR. PATTINSON: Yes, sir.

THE COURT: All right. I think at the risk of over -- well, the objections are really two in number. Mr. Slawinski, you've objected basically to all of the Facebook postings which were Paragraphs 38 to 77 as well as Paragraph 20. You also objected to Paragraphs 88, 90 to 93 which talks about what I'll call the obstruction of justice conduct on the part of Mr. Oshier and Ms. Pfenninger, and then you do specifically make a sentencing recommendation and that

is that the Court stick to the 46 to 57 month guideline range.

So in reviewing your motion, it seems that the -- really the singular basis for the objection was that all of the Facebook stuff, and there are multiple paragraphs, that in your view it's all irrelevant to the crime that Mr. Pattinson pleaded to, that is possession of these two guns. Is that the essence of it?

MR. SLAWINSKI: Correct, Judge.

THE COURT: All right. And we'll deal with the matter relating to the activities of Mr. Oshier and Ms. Pfenninger in a minute but -- so there are no other objections?

MR. SLAWINSKI: That's correct, Judge. It's --

THE COURT: Keep your voice up a little bit.

MR. SLAWINSKI: Oh, sorry.

THE COURT: That mic seems -- okay.

MR. SLAWINSKI: The postings by Mr. Pattinson were done at least two weeks before his arrest and -- or I'm sorry. At least two weeks before the finding of the firearms. It's our position that the postings and the messages do not relate to his actual crime of being a felon in possession of two

firearms.

THE COURT: Okay. Well, I just was trying to determine what the objection is and then I was going to let you -- give you a chance to argue it. You've already argued it. Anything else you wish -- your papers thoroughly set forth your argument, but you certainly have an opportunity to say anything more you'd like about that.

MR. SLAWINSKI: No, and that is my argument, Judge.

THE COURT: Okay.

MR. SLAWINSKI: I'll note that the initial presentence report that was prepared did not have the paragraphs relating to the Facebook posts or the social media posts and then the second one did. I think it came on a day or two later, and it increased the PSR I think by double. The first one I think was about 17 pages and this one is 39 pages. So the bulk of the PSR are Mr. Pattinson's Facebook posts and his messaging on social media.

THE COURT: All right. Well, I acknowledge the new presentence report is some 39 pages long.

Mr. Harvey, do you wish to be heard in response to the argument that essentially I guess that the Court should strike or at least not consider all

those Facebook comments or rants?

MR. HARVEY: Sure. Judge, just very briefly. I did lay out in my original sentencing memorandum the rational for the Court's consideration of those Facebook posts as it relates to sentencing. Our position is that those posts are relevant to issues that are present before this Court in this proceeding. Specifically, they show the defendant's motive and intent in acquiring and possessing the firearms, and they also show his -- and illustrate his future dangerousness and his potential for recidivism which are all permissible purposes for such evidence to be presented at sentencing.

I will note that with respect to the Facebook posts both in the PSR and the Facebook posts and messages that are in my sentencing memorandum which supplement the PSR all of those posts or messages occurred during the three or four months leading up to the defendant's acquisition of the two firearms. So they weren't remote in time in relation to when he actually took possession of the .30-06 rifle and the shotgun, and in fact, the one audio message that is referenced in I think Paragraph 77 of the PSR as included in full and the Government's sentencing memorandum on Page 9 I believe where the

defendant refers to killing at a genocidal rate and makes a reference to Josef Mengele. That conversation between the defendant and Mr. Oshier occurred on the day he took possession of the shotgun and the ammunition. So there's temporal proximity to all of these communications as they relate to the defendant's motive in taking possession of those firearms and ammunition.

THE COURT: All right.

MR. HARVEY: And I think with respect to the future dangerousness and potential recidivism, I think those are all bases for the court to consider those because if you look at the defendant's criminal history he has prior convictions which involve in some cases racial animus, in other cases actual violence and in other cases threats to kill. So I think this is all part of what this Court should be able to consider in determining those issues.

THE COURT: Mr. Slawinski, do you want to speak further about the paragraphs relating to Mr. Oshier and Ms. Pfenninger?

MR. SLAWINSKI: Yeah, Judge. Just to state, you know, we're not objecting to the attempted obstruction as it relates and as it's stated in the presentence report but we don't have any information

-- personal information of what Ms. Pfenninger and Mr. Oshier did after they talked to Mr. Pattinson. It's my understanding that there was an affidavit that was procured by Ms. Pfenninger and Mr. Oshier, but that was never submitted to the police.

MR. HARVEY: Judge, I'm going --

THE COURT: Mr. Harvey?

MR. HARVEY: Just on that note, Judge, I would note that Paragraph 5K of the plea agreement does include some of the facts that are set forth in the paragraphs from the PSR, so the defendant has effectively already admitted to some of the conduct by Ms. Pfenninger and Mr. Oshier as it relates to the obstruction. So there's probably a mootness argument there as well. So he's really already admitted the essential facts for finding that enhancement applies.

THE COURT: Yes. Doesn't seem to be anything new about the paragraphs in the plea agreement -- or on the presentence report since it was covered in the plea agreement.

MR. HARVEY: Right, in large part.

THE COURT: Well, Mr. Slawinski, I'm going to deny your motion to strike these paragraphs. I think they are relevant in several respects. First of all, the well known statute Section 3661 which covers

sentencing does provide that no limitation shall be placed on the information concerning the background character and conduct of a person convicted in the United States and may be received and considered for the purpose of imposing an appropriate sentence. That's sort of a baseline principle. In fact, much of it doesn't have to be technically admissible if it has to have some indicia of reliability, but I think these Facebook statements are relevant for several purposes. There's many references to getting firearms. I counted about seven; Paragraph 51, 58, 59, 62, 65, 74 were references by Mr. Pattinson with others to get guns and for sort of a particular purpose. It wasn't to go duck hunting either. It was to be prepared in references to this holy war. So I think to the extent there are two firearms offenses here, you know, if someone were charged as a felon of possessing firearms but he said to me, "Judge, I was just going to use them to go duck hunting with my nephew, "that seems to me to be far different from why these weapons were procured.

Second, there were admission on some of these Facebook statements or rants, in Paragraph 56 specifically where he admits that he can't possess a firearm. One of his cohorts asked him that and he

said no, I can't. Also, there's a reference in the Facebook Paragraph 57 which suggests Mr. Pattinson didn't care much about the law or he was talking about if he shot someone he didn't care about the law was important.

As to the information about Mr. Oshier and Ms. Pfenninger, Paragraphs 88 to 93, I think these just corroborate and really duplicate information that Mr. Pattinson agreed to in the plea agreement. It's really nothing new. And I think finally all of these Facebook matters, or many of them, they do express a certain I would say white supremacist, racist philosophy, but it references other things that I think are truly germane to sentencing. I understand a person can have white supremacist views and support Nazi philosophy and use racist language. That's not what Mr. Pattinson is being sentenced for even though those statements are offensive and repugnant.

So I think these statements in the Facebook pages they refer to many things that I think are germane in the Court's ultimate decision. They refer to firearms, assaults or potential assaults on the protestors that were protesting during the Summer of 2020. They relate to the use of violence, all of which I think may be factors for this Court to

determine in terms of the ultimate sentence. I mean, the Facebook postings talk about shooting Antifa people, Paragraphs 45 and 57, some reference to Mr. Pattinson beating up such a person, Paragraph 48, statements that we should slaughter anybody bringing communism into the country, threats to kill people if they came into his neighborhood presumably in Hilton and statements that this just doesn't mean to fight them but to shoot them, pump shells through their head.

So I deny your request to strike those because for the reason that I stated I think they're relevant and within the broad scope of information the Court can determine whether the sentence should be within the guidelines, less than the guidelines or more than the guidelines. The rules require that I first off make a determination as to what the sentencing guidelines are, and the plea agreement the parties opined what it should be. The presentence report has determined that, and I make a determination that the appropriate sentencing guidelines with the criminal history category four is the 46 to 51 months.

MR. HARVEY: Judge, I think it's 46 to 57.

THE COURT: What did I say?

MR. HARVEY: I think you said 46 to 51.

THE COURT: No, no. Yup. You're right. 46 to 57. I misspoke.

MR. HARVEY: Thank you.

THE COURT: Let me just find one other note here before we proceed. As I indicated at the outset, Mr. Harvey on behalf of the Government has requested that the Court impose a sentence greater than the 46 to 57. I would just note that the plea agreement I believe it was Paragraph 13 the parties agree to the correctness of the guideline calculation but both reserve the right to seek a sentence outside the guidelines, and the plea agreement also referenced the well known fact that regardless of what the guidelines are the Court is not bound to accept them but the Court has to make its own determination.

So let's get to the decision itself here. I've indicated what the guidelines are. I should indicate that attached to your objection to Mr. Harvey's request for an upward departure you also included a statement written by Mr. Pattinson, a two page statement which I acknowledge receipt of. So I think it's time for counsel to speak to the matter. Mr. Pattinson, you also have a right to address me, the sentencing judge. I have carefully reviewed your letter. You don't have to make a statement, but if

you wish to, you can. I guess, counsel, in your remarks and you both know this since you've appeared before me scores of time but I think that there's a statute that affects the Court's sentence and that's the so-called sentencing statute, Section 3353A. Mr. Harvey sort of tripped through that on his discussion. And I think those sections and there are seven or eight are crucial in every sentence but they certainly are here. The Court is directed to look at the nature and circumstances of the crime. The Court is directed to look at the history including the prior record and characteristics of this defendant. The Court is directed to consider the need for this sentence to reflect the seriousness of the offense, to promote respect for law, to provide just punishment, importantly to provide adequate deterrence and also importantly to protect the public from further crimes by the defendant. So I think that certainly tryst for counsel's discussion.

In addition to those factors, the sentencing statute also says the Court should consider and avert to the policy statements of the guidelines, and that suggests at least one and maybe two of the guideline sections may be germane here. First is 4A1.3 of the guidelines which talks about under 4A1.3A1 a standard

for considering an upper departure and that teaches and I quote if reliable information indicates that the defendant's criminal history category substantially under represents the seriousness of his criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted. So I think this has often been used and must be used. 5K2.0 talks about whether there should be some departure or reasons not sufficiently considered by the framers of the guidelines. But I think my focus has been on the statute, Section 3553E -- A rather and 4A1.3 which talks about the standard for the upward departure and there's also some guidances to how the Court might examine that.

So I guess I would turn it over to counsel at this point. Mr. Harvey, since you made the motion I guess I will let you go first. Trust me, I have read your paper numerous times and Mr. Slawinski's response so it's not necessary to repeat everything in there but you may proceed.

MR. HARVEY: Thank you, Judge. As Your Honor noted, the Government has requested an above guideline sentence of 120 months imprisonment which is the statutory maximum. The Government understands that that's a significant above guideline sentence,

basically double the range, but I think it's warranted in this case, and it is not greater than necessary to achieve the objective of sentencing set forth in Section 3553A. As I've detailed in my sentencing memorandum, that sentence from my perspective is justified by the nature and circumstances of this offense, this defendant's criminal history and characteristics and the defendant's awful performance while under supervision for previous criminal convictions. We've touched upon some of that already in the argument on the Facebook post, Judge, but I think it's fair to say that this is a serious case. It involves the illegal possession of firearms and ammunition by a convicted violent felon. The history of racial animus and the history of adherence to white supremacist ideology. For those -- the reasons that I've stated earlier the Facebook posts are important in this case, although not the only thing that's important but they are importantly in this case because they tell this Court why the defendant took position of the rifle and the shoot gun and the ammunition, and as Your Honor knows, I've gone through chapter and verse both in my sentencing memorandum and also the PSR about the various racialized threats that this defendant made over Facebook during the three or

four months leading up to his possession of these weapons and I'm not going to repeat them here in court because Your Honor is well aware of them and they obviously show an aberrant ideology by this defendant, but it's not for his ideology or his political beliefs or racial beliefs I'm asking the Court to consider those posts. It's to show why he possessed the gun and to show that purpose was not defensive but was offensive, and I think the best illustration of that is the last Facebook message that is summarized in my sentencing memorandum which is on Page 9 at the bottom of Page 9, and I'm just reading a pertinent part only, Judge. The part that's highlighted for the Court in the memorandum, it reads as follows: "Go ahead, nigger. Defund the police so I can just start fucking murdering you all in a genocidal rate by fucking myself. They'll be calling me the angel of death. They'll be calling me the new Josef Mengele." I think that shows, Judge, that this defendant contrary to what was set forth in his sentencing memorandum did not possess these guns or ammunition for a defensive purpose only. A fair reading of that transcript, of that audio message indicates that he possessed them in an offensive posture and if anybody either African American or Antifa related came onto his street in his

neighborhood he was going to kill them all. So I think it's something the Court should consider very strongly in determining the nature and seriousness of the offense that he's pled guilty to.

With respect to his criminal history, as I alluded to earlier, he has four prior criminal convictions, one felony from 2016 and three prior misdemeanors. All of them -- or excuse me, some of them include aggravating factors such as the following. Threats to strike and choke his girlfriend and drown her to death and have someone shoot her in the face. Threats to kill everyone in a house and to kill himself before he goes back to prison. Others involve yelling white supremacy and racial slurs and ripping down a Mexican flag from somebody's personal property, and another involves calling a victim a racial slur and then damaging and menacing a person after doing so. These convictions taken together especially with the Facebook posts and messages that we've discussed show this defendant's capacity for violence and his willingness to commit racially motivated criminal conduct, and I think it really colors the background here as to why he possessed these two weapons in this case illegally. And I think as I mentioned earlier I think that really illustrates

a couple of things as it relates to the 3353A factors. It illustrates this defendant's disregard for the law. He shows no respect for the law in anything he does. He has all of those convictions but keeps coming back to the same thing, continues to espouse this ideology, continues to commit criminal conduct, ignores orders of the court whether it relates to parole or probation in his cases. So it really shows a high level of disregard for the law and a significant chance of recidivism by this defendant in the future, and I think that does tie into not only the 3553A factors but also as Your Honor referenced Section 4a 1.3 relating to unrepresenting criminal history category. This defendant has a criminal history category four which is not the highest category, but those convictions taken together with his statements about his disregard for the law show that has had no intention of living a law abiding life regardless of what this court does. So I think it's necessary for this Court to send a message to this defendant that this conduct will not be tolerated going forward and to impose a maximum sentence to prevent him from engaging in this type of conduct in the future.

I will note a couple of other things, Judge. In addition to the possession of a weapon and the

Facebook posts and messages, I think it shouldn't be lost on this Court that the defendant did try to obstruct justice in this case and in doing so involved his girlfriend and the mother of his children in the process and has put her in legal jeopardy because she's charged here in federal court with offenses relating to that obstruction. I think the sentencing memo and PSR speak for themselves on that issue, but that's an aggravating factor that should not be lost on this court in determining an appropriate sentence. With respect to one of the other arguments made by defense counsel in their sentencing memo they tried to draw parallels between this defendant and Mr. Oshier who pleaded guilty to transferring a firearm to a convicted felon and is facing a different sentencing range for this defendant. I just wanted to clarify a few things for the Court with respect to those differences between the plea agreements. Mr. Oshier is not similarly situated to this defendant. They're completely different. Mr. Oshier has no criminal history category. This defendant has a criminal history category four with a high likelihood of recidivism. There are differences in their guidelines calculations. For example, Mr. Oshier was a base offense level of 14 because that is the base offense

level for transferring a firearm to a convicted felon while this defendant is a base level 20 due to his prior violent felony conviction. In addition, Mr. Oshier's plea agreement provided for a five level upward departure for him based on the danger to the community presented by him giving the shotgun and the ammunition to the defendant knowing that the defendant intended -- or wanted the firearm for the purpose of among other things shooting minorities and Antifa protestors.

And finally this defendant is getting an upper adjustment for obstruction of justice based on his plan to give the false affidavits to frustrate this prosecution and Mr. Oshier did not qualify for such an enhancement. So there is no fair comparison between Mr. Oshier's plea agreement and the plea agreement entered by this defendant. So Judge, unless you have any further questions about my submissions or my arguments I believe that the sentence we've requested complies with the objectives of Section 3553A and is a just and appropriate sentence in this case.

THE COURT: All right. Thank you. Mr. Slawinski, as you know, you can also make a statement if you wish. I have read your thorough written

report. Mr. Pattinson may also speak. I'll turn it over to you and you can decide who goes first, I guess.

MR. SLAWINSKI: Thank you, Judge. Judge, I think first and foremost the Court needs to consider the crime in this case and that crime is that Mr. Pattinson possessed both a rifle and a shotgun in his home in Hilton, New York. The shotgun and rifle were retrieved while Mr. Pattinson had already been in jail for two weeks after he was arrested for his Missouri warrant and for coming back here to be with his fiancé and the mother of his child who has since been born since he's been in custody.

THE COURT: Since what? I didn't hear you.

MR. SLAWINSKI: Oh. The mother of his child. He had a child born while he has been in custody.

THE COURT: Okay.

MR. SLAWINSKI: The child is now a year and a half -- almost a year and a half old. So the Court should consider the crime in this case, and this is a fairly common crime that you see in federal courts that being a 922G. The firearms involved did not have a large capacity. They were not machine guns. They were not semi automatics. They were simply a rifle

and a shotgun.

The reason that Mr. Pattinson had these firearms is that he knew that he was going back to jail sooner or later. He knew that the Missouri warrant was going to catch up with him, and he wanted his fiancé, his girlfriend and their children to be safe when he did that. So he did procure the weapons, he admitted to that, for their safety, and he did this in the Summer of 2020. As the Court will recall in the Summer of 2020 there were a lot of protests in Rochester about Black Lives Matter, and there were people on both sides protesting and counter protesting. Now, Mr. Pattinson was paying attention to the protests, took part in some of the counter protests and was very concerned that the violence would spill over to his neighborhood in Hilton. Now, whether that concerns --

THE COURT: Which is a long way from Rochester.

MR. SLAWINSKI: It is. Correct, Judge. There's no evidence that he went into Rochester with any weapons to cause a may lay, to cause violence. He was concerned about himself and his family. Now, you know, his beliefs, you know, notwithstanding, you know, that was his main concern, and the Court, you

know, could find his beliefs, his racial briefs repugnant and disgusting, but still, they're protected by the first amendment and should not play any part in his sentence. So the text and the Facebook messages and the social media posts were in themselves defensive. They were not offensive, and he was worried that his family was at risk while he was going to be in jail.

The reason that he has a criminal history Category Four was that -- Mr. Harvey did detail his prior criminal history but he did escape. He walked away from custody in Missouri to come up here because he was not being given the opportunity to come up here and be with his family. He had no ties in Missouri. He had asked them several times so he came up here to Hilton to be with his family. He put two requests in and they were both denied, so he did take it upon himself to come up here. He admits that and he stepped responsibility for that just like he's accepting responsibility for possessing the firearms.

Again, the firearms were found two weeks after he had been arrested for the Missouri warrant, and there was never any allegation that Mr. Pattinson was violent during the Black Lives Matter protests, that he assaulted anyone, and I think the Government

even state that's in their sentencing memo. There was also an issue of Mr. Pattinson's address being on the internet so people knew where they lived. That's where Ms. Pfenninger lived with their two children.

So a lot of this, you know, bloomed or blossomed from the racial protests and the Black Lives Matter protests in 2020. It's correct that Mr. Pattinson does have a criminal history category of four. That is the middle of the road here. I don't think that criminal history category is too low for somebody like Mr. Pattinson. The Government is well aware that the Court sees people with far more violent crimes and priors in their past and they don't object to their criminal history being too low. I think that if the Court were to which we're obviously arguing against it would pour gasoline on this fire on the internet. It would say, you know, we're punishing Mr. Pattinson for his views, for his racial views, and the people who harbor those views I think would be ignited by a sentence that will go above and beyond. I think that they will say it will be unfair that Mr. Pattinson is being sentenced that way just because of his beliefs. SO the Court should consider that. The Court should also consider the fact that, you know, if you send Mr. Pattinson to prison and believe that he

is a white supremacist, that's just going to fester. The longer he's in prison the more he's got to be indoctrinated and he's going to come out at some point even worse, and the Government hasn't offered any solution as to how to deal with that because at some point he will be released from prison. We think that because of the 3553A factors that should be sooner rather than later. I'll note that the Government is asking for double what the high end of the guideline sentence is here. I think that that's truly uncalled for in this case, and I think a lot of it has to do with Mr. Pattinson's racial animus here and not the crime for the person himself. I think, you know, obviously Mr. Pattinson does have a criminal history but if he's placed on supervision if he were to screw up or violate, you know, that would be appropriate and he would receive appropriate punishment at that time, but I don't think that an upward departure of double the guideline -- of double the guideline range here is called for.

I did say that Mr. Pattinson is the father of two children. His newborn, who is a year and four months, he just got to see recently. Ms. Pfenninger the codefendant in the obstruction issue gave birth shortly after Mr. Pattinson went into prison and he

only saw -- he's only had the opportunity to see her one time. I don't think the Court should treat this like any other 922G1 case. The guns at issue were not being used in drug trafficking. They weren't being used in a robbery. They weren't being used in a crime of violence. They were simply being used to protect Mr. Pattinson's girlfriend and their children. Now, whether it was reasonable or not, you know, that's another question, but there's no evidence to show that Mr. Pattinson had any offensive -- had any offensive motive in possessing these firearms.

So for all of those reasons, Judge, and for the reasons I stated in my sentencing memo and response to the Government's memo, I would ask for a guideline sentence in this case. Thank you.

THE COURT: All right. Thank you. Mr. Pattinson, you also as I've said several times have a right to speak to me if you wish. You don't have to because you have written a letter that I have already mentioned but anything you would like to say before the Court pronounces the sentence? And just keep your voice up because I don't hear too well.

MR. PATTINSON: I would just like to apologize for bringing this all in play here. I think a lot of things got taken a lot further than they

should have and I definitely accept my responsibility and stupidity for what I have done, and I apologize to the Court for that.

THE COURT: All right. Thank you. As I mentioned several times, the courts no longer can just impose the sentence in their heart that they think is right. Back when I started being a judge over 35 years ago that was the case. But now we have sentencing guidelines that are supposed to grade some uniformity and consistency in sentencing both for those who are offenders and for the community, but there are vehicles and ways that a court can either adhere to the guidelines or sentence below or above the guidelines. And I think the place to start as both parties seem to recognize is the factors, and I must say, Mr. Pattinson, in looking at those factors you don't come out too well in any of them in terms of the nature of the offense, the history and characteristics of your background, the need to provide deterrence and frankly to protect the public.

Dealing first with the nature of the offense, a convicted felon possessing firearms is a danger. Congress has said it's so dangerous that it subjects you to up to ten years in prison. Your lawyer and you have suggested that you obtained those

weapons for protection of your family. As far as I know, there's no evidence that your family was threatened in Hilton which is many, many, many miles from where the protest occurred downtown, but if you carefully look at the Facebook references that have been cited by the Government and I referenced, a lot of the references are to getting guns for you if necessary to use and you talk about shooting people and threatening to shoot people. You know, your views about white supremacy and Nazi views, racist language, they sort of factor in too when one considers the purpose for possessing the guns. Reading the Facebook, possessing those guns and obtaining them seemed to relate pretty closely with objections and disagreement with the protestors that were protesting in various parts of the city.

But the next area is the history and characteristics of you and that forces us to look at your criminal history category which is a four, and except for one prior conviction, all of them seem to have demonstrated aspects of the use of violence and many with the racial undertone or animus. The crime that does not seem to involve that is your crime of driving while intoxicated. According to the presentence report, police tried to pull you over.

You ignored them, led them on a high speed 80 mile an hour chase. Now, that might not relate to racial animus, but it certainly seems to show a lack of respect for the law and putting others in danger.

But look at some of your other records. Admittedly, this was some time ago back in 2009 you pleaded guilty to menacing, criminal mischief and a hate crime. You received three years probation but then this seems so typical of many of the things you've said and done. You know, a neighbor who happened to be African American complained at the residence you and others were in the music was too loud, and in addition to calling him nigger, you and others broke his lawn furniture, throw it at his house. Uncalled for. Reprehensible. You're on probation and the allegations are numerous that you engaged in additional conduct, in threats, engaged in a threat to kill another person, failed to pay restitution, failed to complete drug and alcohol treatment. So that's where we start.

A few years later you were -- pleaded guilty to criminal mischief in the fourth degree, received a very modest jail time. Records there indicate that you and another were walking through the Town of East Rochester yelling statements about white supremacy and

then you approached a woman who happened to be Hispanic. In addition to calling her a spic, you ripped down the Mexican flag she had on her porch and punched her or pushed her in the face and told her "to go back to Clinton" which I assume maybe had some reference to President Clinton.

Next, the very serious felony assault conviction, domestic assault where you received a three year sentence, and I almost lost count of the times the violation of parole was issued, at least three times, and you eventually absconded, but the facts of that case also demonstrate a terrible propensity for violence. Now you grabbed this described as your girlfriend, choked her so that she stopped breathing, threatened to drown her and then when arrested yelled that he was going to have someone come and shoot her in the face.

You didn't do too well when you were sent to the Missouri facilities either. There were at least eight disciplinary infractions there, many of them seemed to involve fights and violence, engaging in physical structure -- struggle three or four times, threats, failing to comply with an order. Last conviction 2019 pled guilty to menacing in the second degree, a weapons charge, received a modest jail

sentence, but there too you were enjoying yourself as well as with others at a pub in Buffalo, began using racial slurs, kicked out of the pub and while outside proceeded to destroy parts of an individual's -- presumably a friend's truck, grabbed jewelry from one of the women's neck, pulled out a knife and said, you know, I'm going to kill everybody in this house if I go back to jail. You know, you receive points under the guidelines. You know, you commit a felony, you get three points. You get misdemeanor, you get one. You received points for all of those except maybe the earliest one, but where I think maybe the record here, your criminal record of four doesn't adequately reflect the seriousness of the offense is that, you know, these were crimes of violence. Many of them tinges of racial animus. That's different from another misdemeanor, petty larceny. You know, you stole ten dollars worth of food from a store, you get one point, but these offenses you also get a point but they seem to involve much more serious conduct and frankly the likelihood that you might do something again like that. There did not appear to be any willingness or ability on your part to stop this conduct. You know, there's a pattern here. Respect for the law is another thing the Court must consider,

and I don't know how I can find that in your case. You've been repeat violations of probation, numerous violations of parole. You skipped out on parole in Missouri. You did what you wanted to do. You wanted to come here. 80 mile an hour flight from the officers on a DWI clearly doesn't demonstrate much respect for law. Statements on Facebook that you knew you couldn't possess a gun but you did it anyway. You know, you didn't care if it violated the law. I think this sentence has to demonstrate that there must be some respect for law.

I carefully reviewed your statement and you expressed some remorse. I quote you said "I couldn't believe some of the stupid crap I was saying." Well, I might agree with you that it was stupid, but you've done it numerous times. You claim you were just talking a big game and really didn't mean any of this, but you know, it's easy now that you stand before a sentencing judge to have remorse and to say you're not going to do it again and there was some justification. Someone brought to my attention a quote which I think applies to some extent here. You may not be familiar with the African American -- famous African American poet and play writ, author, civil rights activist who actually spoke at President Clinton's inauguration.

My guess is that's not someone whose works you follow very closely, but she's often quoted as saying the following which I think applies here, especially in light of your statement, and she said and I quote "When somebody shows you who they are, believe them the first time." When someone shows you who they are, believe them the first time. And Mr. Pattinson, I think you have shown us repeatedly who you are, what you're capable of based on your prior record and your numerous statements and rantings on Facebook. So your letter on the eve of sentencing does not mitigate that in my view very much at all. Violence seems to be your middle name. In fact, the presentence report reflects that you have a tattoo on your hand that says that word, violence. So that seems to be your creed. So I'm not convinced that your online threats of violence against people and property were idle ones. Your history includes crimes of violence, menacing, hate speech, race based harassment, trespass, using racial slurs, threatening to have people killed. The defendant's online embrace of Nazi ideologies, threats to engage in violent attacks, connection with a race war, claims actually that you did assault several protestors involved in the 2020 protests, strongly suggest to me the likelihood that you would and could

offend again.

Certainly, the first amendment protects your right to engage in such in the Court's view repugnant statements that are incompatible with a democratic society. They relate frankly to the likelihood you might commit offenses again. Admission of your beliefs may then properly be considered to the extent they indicate future dangers in this courtroom that mitigating evidence. In my view, sir, the factors that I've discussed here they do warrant a sentence above the 46 to 57 month guideline range. The Government seeks the maximum sentence here. The Court believes it must follow the policy statement under 4A1.3. There have been numerous shootings around this country in the past years and many times people ask the question, you know, were there any warning signs or were there any red flags? I must say, sir, fortunately you did not engage in such conduct, but if so, the warning flags just jump out at you here in terms of racial animus and prior violence. In my view under 4A1.3, I think your criminal history four does under represent the seriousness of your prior record and the likelihood that you could commit other crimes. I mentioned already, as Mr. Harvey has, your criminal record which involves racially tinged violence but

violence -- numerous violence -- acts of violence. It just seems to me, Mr. Pattinson, when things don't go your way especially in view of your world view, you react violently. You don't just disagree with people. You call them names. You engage in violence. You get upset at your girlfriend, you choke her and threaten to kill her. You get upset when somebody asks you to lower music, you destroy his property. You see a Spanish person you don't like in East Rochester, you assault her and call her names. You know, I don't know why the Court and the community has to accept this. You have shown who you are. You have been and I think are a danger, sir. You repeatedly engaged in behavior frankly of a thug. You've obtained weapons illegally. I think you obtained them as part of a racist agenda. You've been convicted of violent crimes in the past, not just non violent crimes. You failed to follow directive of courts in terms of probation and supervised release. You threatened to kill and shoot others, and you just don't -- you just don't get a pass here, Mr. Pattinson.

So for all these factors, I've tried to follow the policy statement which teaches you to look sort of sequentially at the criminal history category. Mr. Pattinson has a criminal history category four.

The courts also say you don't have to go through a mechanistic formula, but you should say well, would criminal history five better reflect the criminal history or a six, and I believe in this case criminal history at the top which is six is applicable, and I've gone up two offense levels too from a 19 to a 21. All this means is that range would be 77 to 96 months. The Government has asked for a greater departure, but the Court hereby after all these factors which I've tried to articulate an upward departure of 96 months, and that is the sentence I hereby impose upon you. This is over three years more than the top of the guideline range, but I think it's absolutely justified in this case, sir. I mentioned Maya Angelou. You might actually learn something by reading some of what she has written. You claim in your letter to me that you're going to take classes in jail, and I think you've got a lot of things to deal with, anger management frankly being one of them. So for the reasons I said as I tried to articulate my feeling here, I hereby commit the Stephen Pattinson to the custody of the Bureau of Prisons and the Attorney General for a period of 96 months. I depart -- I grant the Government's motion and depart. When you finish your bid, finish your sentence, I place you on

supervised release for a period of three years, and these are most crucial, sir. If you show the same disregard for these conditions, you're going to be back in front of me or some other judge and you could continue your stay in jail and your children will be much, much older. While on supervised release in part you can't possess, use, distribute any illegal drugs. You can't possess a firearm or even a bullet. You must submit to random drug testing and you must cooperate in the collection of a DNA sample for the probation office, and the presentence investigation report listed several recommended special conditions. I adopt most of them, specifically recommendation number one that while on supervised release you participate in a program for substance abuse including testing and treatment according to the exact language in that recommendation. I also direct recommendation number two that you participate in a mental health treatment program including a mental health evaluation and treatment and comply with any program directed by your probation officer according to the specific language of this recommendation. You also -- I order you to submit to a search of your person, property, vehicle, place of residence to make sure you're complying with these conditions and not possessing

guns or weapons. You must notify probation of any opiate based pain medication before the prescription is filled. Looking at the presentence report, you've had history of drug abuse and use in your past, not so much recently but in your past. Next, you must comply -- and that's listed in paragraph 148 of the presentence report. Next, you must comply with all orders of protection issued against you and there have been several. I've reviewed your financial circumstances and I declined to impose a fine in this case. I do -- I must order a $100 special assessment which is due immediately and will be withdrawn from any monies you receive according to the Bureau of Prisons financial responsibility program. There was the firearms. There was a provision in the plea agreement that they would be forfeited, and I ordered that forfeiture. Those firearms will not be returned to you or anyone else. Two --

MR. HARVEY: Your Honor, I'm sorry to interrupt, but that forfeiture includes the shotgun ammunition as well.

THE COURT: I thought I said that, but yes. The shotgun and ammunition.

MR. HARVEY: Thank you.

THE COURT: Two other things. I don't think

there was another count on the indictment.

MR. HARVEY: There was not, Judge.

THE COURT: All right. I don't know, Mr. Slawinski, if there's any recommendation that this man serve his sentence in any particular locale.

MR. SLAWINSKI: Yes, Judge. As close to Rochester as possible to maintain --

THE COURT: All right. I'll order -- or I'll ask the Bureau of Prisons to do that, and of course, it's up to the Bureau of Prisons. I should say Mr. Pattinson will get credit for the time he has been in custody. I think he lapsed in the federal custody after the parole matter was taken care of in Missouri. Next appeal on the plea agreement did provide that Mr. Pattinson gave up or waived his right to appeal if the sentence was within the guideline range. This sentence obviously is not within the guideline range, so he does have a right to appeal. Mr. Slawinski, that appeal must be filed within 14 days of the judgment which will be when I sign the document which will occur in a day or so. Can I trust you to file the notice of appeal?

MR. SLAWINSKI: Of course, Judge.

THE COURT: All right. If not, certainly if that doesn't happen and I'm sure it will, Mr.

Slawinski will do that, but if not, Mr. Pattinson, you can ask the Court to make sure the appeal gets filed and I will take care of that, but I have confidence in Mr. Slawinski.

So Mr. Pattinson, this has not been a pretty picture. You've shown yourself who you are and I don't know, prison certainly can harden one's views, but I have had some success stories where individuals go in hardened, angry and bitter but the Bureau of Prisons does have programs to make your future better. You have no high school degree, no GED. You know, your prospects for getting a job, which you don't have now, are pretty slim. So it's up to you. You could spend your time feeling sorry for yourself and in the weight room or doing something positive. That's the sentence. Thank you.

MS. FISH: Judge, if I may just clarify briefly. The Court granted an upward departure for inadequacy of criminal history from a category four to a six. We went from a total offense level of 19 to a 22. I just want to clarify that as a variance under the 3553A factors.

THE COURT: 19 to 21 is what I said.

MS. FISH: Sorry. I misread that. 19 to a 21, and that's a variance under the 3553A factors that

the Court detailed on the record.

THE COURT: That's what I did.

MS. FISH: Okay. Thanks, Judge.

(Proceeding concluded at 3:23 p.m.)

CERTIFICATE OF COURT REPORTER

I certify that this is a true and accurate record of proceedings in the United States District Court for the We stern District of New York before the Honorable David G. Larimer on May 23, 2022.

S/ Brandi A. Wilkins
Brandi A. Wilkins
Official Court Reporter

AO 245B (Rev. 10/19) Judgment in a Criminal Case Sheet 1 JLF/jlb (7207451)

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA
v.
Stephen Reed Pattison

JUDGMENT IN A CRIMINAL CASE

Case Number: 6:21CR06097-001

USM Number: 19944-509

Steven G. Slawinski
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

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

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2)	Possession of a Firearm and Ammunition by a Convicted Felon	11/12/2020	1

The defendant is sentenced as provided in pages 2 through 7 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.

May 23, 2022
Date of Imposition of Judgment

Signature of Judge

Honorable David G. Larimer, U.S. District Judge
Name and Title of Judge

May 26, 2022
Date

AO 245B (Rev. 10/19) Judgment in Criminal Case
Sheet 2 — Imprisonment

JLF/jlb (7207451)

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 96 months.

The cost of incarceration fee is waived.

☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant shall serve his sentence at a suitable Bureau of Prisons facility as close to Rochester, New York, as possible.

☒ 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: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a 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 which 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: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

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 court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against 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

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. 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 _____

U.S. Probation Officer's Signature _____ Date _____

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant is to participate in a mental health treatment program, including a mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave such treatment until completion or as ordered by the Court. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall notify the Probation Officer of any opiate based pain medication prescribed by a doctor BEFORE the prescription is filled by a pharmacist.

The defendant shall comply with all Orders of Protection.

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

	Assessment	AVAA Assessment*	JVTA Assessment**	Fine	Restitution
TOTALS	$ 100	$ 0	$ 0	$ 0	$ 0

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

☐ The defendant must 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	$ _____	$ _____

☐ 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 the ☐ 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: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $_____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ 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:

The defendant shall pay a special assessment of $100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court (WD/NY), 2 Niagara Square, Buffalo, New York 14202.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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:
One (1) Smith and Wesson ITC, Model Compass, 30-06 rifle, bearing serial number U231831; One (1) Winchester Ranger, Model 120, 12gauge shotgun, bearing serial number L1929872; and Ammunition, namely, 25 rounds of 12-gauge shotgun ammunition (Winchester).

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.

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Western District of New York

Caption:

UNITED STATES v.

STEPHEN REED PATTISON

Docket No.: 21-cr-6097-DGL

Hon. David G. Larimer
(District Court Judge)

Notice is hereby given that Stephen Reed Pattison appeals to the United States Court of Appeals for the Second Circuit from the judgment [X] other [ ] _____ (specify)

entered in this action on May 27, 2022
(date)

This appeal concerns: Conviction only [ ] Sentence only [ ] Conviction & Sentence [X] Other [ ]

Defendant found guilty by plea [X] trial [ ] N/A [ ]

Offense occurred after November 1, 1987? Yes [X] No [ ] N/A [ ]

Date of sentence: May 23, 2022 N/A [ ]

Bail/Jail Disposition: Committed [X] Not committed [ ] N/A [ ]

Appellant is represented by counsel? Yes [X] No [ ] If yes, provide the following information:

Defendant's Counsel: Jay S. Ovsiovitch

Counsel's Address: Federal Public Defender's Office, W.D.N.Y
28 E. Main St., Ste. 400, Rochester, NY 14614

Counsel's Phone: 585-263-6201

Assistant U.S. Attorney: Tiffany H. Lee

AUSA's Address: United States Attorney's Office, W.D.N.Y.
100 State Street, Rochester, NY 14614

AUSA's Phone: 585-263-6760

/s/Jay Ovsiovitch
Signature

MANDATE

22-1195-cr
United States v. Pattison

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of January, two thousand twenty-four.

PRESENT:

MICHAEL H. PARK,
EUNICE C. LEE,
SARAH A. L. MERRIAM,
Circuit Judges.

United States of America,

Appellee,

v. **22-1195-cr**

Stephen Reed Pattison,

Defendant-Appellant.

FOR APPELLEE: TIFFANY H. LEE, Assistant United States Attorney, *for* Trini E. Ross, United States Attorney, Western District of New York, Buffalo, NY.

FOR DEFENDANT-APPELLANT: JAY S. OVSIOVITCH, Federal Public Defender's Office, Western District of New York, Rochester, NY.

MANDATE ISSUED ON 03/12/2024

Appeal from a judgment of the United States District Court for the Western District of New York (Larimer, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **VACATED AND REMANDED**.

Defendant-Appellant Stephen Reed Pattison pleaded guilty to one count of being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). At sentencing, the district court calculated a Guidelines range of 46 to 57 months' imprisonment before both departing under section 4A1.3(a) of the Guidelines and varying upwards, resulting in a 96-month sentence. Pattison appeals, arguing that the district court failed to provide the notice required by Rule 32(h) of the Federal Rules of Criminal Procedure before departing and that the sentence was procedurally and substantively unreasonable. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

Pattison did not argue below that the district court failed to provide notice before departing, so we review for plain error. *See United States v. Gilmore*, 471 F.3d 64, 66 (2d Cir. 2006), *abrogated on other grounds by Irizarry v. United States*, 553 U.S. 708 (2008). But failing to provide notice under Rule 32 can be plain error. *See United States v. DeMott*, 513 F.3d 55, 58 (2d Cir. 2008) (stating that "failure to provide" the similar notice required by Federal Rule of Criminal Procedure 32(i)(1)(C) "amounts to plain error"); *United States v. Cole*, 496 F.3d 188, 191 (2d Cir. 2007) (same).

Rule 32(h) states that "[b]efore the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure." Fed. R. Crim. P. 32(h). It is undisputed that the district court did not provide advance

notice before departing. Instead, the government argues that the district court in fact did not depart, but only varied from the Guidelines range, and that Rule 32(h) applies only to departures. *See United States v. Davis*, 82 F.4th 190, 198 (2d Cir. 2023). It further argues that, in any event, the government's presentencing submission provided adequate notice to Pattison.

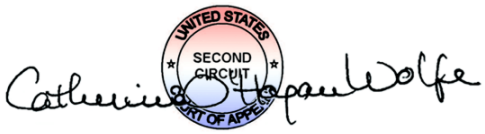
First, the district court clearly stated that it was departing, identified the specific Guidelines provision governing the departure, said it was following the policy statement for the departure, filled out the statement of reasons for a departure, and stated on the record that it arrived at its above-Guidelines sentence partly by way of "an upward departure for inadequacy of criminal history" and partly "as a variance under the 3553A factors." Joint App'x at 91-92. The district court departed.

Second, the government's presentencing submission did not provide adequate notice that it was seeking a departure under section 4A1.3(a) of the Guidelines. Nowhere does the government's submission mention section 4A1.3. Although the government did address Pattison's criminal history, it did so in the context of the 18 U.S.C. § 3553(a) factors, not the specific standard provided by section 4A1.3(a)(1) of the Guidelines for departing based on the inadequacy of Pattison's criminal history category. And finally, the district court stated in the statement of reasons that its decision to depart was *not* the result of a motion for a departure by the parties, indicating that it did not depart on a ground "identified for departure . . . in a party's prehearing submission." Fed. R. Crim. P. 32(h).

The district court's failure to notify Pattison that it was contemplating a departure under section 4A1.3(a) was error, and we cannot be sure that it did not affect Pattison's substantial rights. Accordingly, we remand and do not reach the issue whether the sentence imposed was substantively reasonable.

For the foregoing reasons, we **VACATE AND REMAND** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN REED PATTISON,

Defendant.

ORDER

21-CR-6097DGL

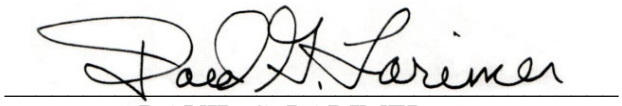
This case is before the Court on Remand pursuant to the Second Circuit's Order of January 18, 2024. This Court directed that an Amended Presentence Report be prepared. That Report (Dkt. #50) has been filed and I have reviewed it.

Consistent with the directive of the Second Circuit, I hereby give the parties notice, pursuant to Fed. R. Crim. P. 32(h), that I am contemplating a departure of the Sentencing Guidelines, specifically under Guideline § 4A1.3, that Pattison's criminal history underrepresents the seriousness of his prior record and especially the likelihood that he will offend again.

The defendant is given thirty (30) days from the filing of this Order and notice to submit material concerning the contents of this notice and other matters relative to sentencing. The Government may file a reply within fourteen (14) days after defendant's filing.

The sentencing is hereby scheduled for **May 15, 2024**, at **2:00 p.m.**

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
February 22, 2024.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. 21-CR-6097-DGL

STEPHEN REED PATTISON,

Defendant.

SUPPLEMENTAL STATEMENT OF THE GOVERNMENT WITH RESPECT TO SENTENCING FACTORS

PLEASE TAKE NOTICE that the government adopts the findings of the Pre-Sentence Investigation Report (PSR) (revised May 31, 2024) with respect to sentencing factors.

Should the defendant present any letters of support or sentencing statement to the Court, the United States will move to strike the items from the record if this office is not provided with copies at least three (3) business days prior to sentencing.

The defendant is required by 18 U.S.C. § 3013 to pay the sum of $100 at the time of sentencing. Immediately after sentencing, the defendant must pay the amount due by personal check, cashier's check or certified funds to the United States District Court Clerk.

It is requested that the Court order that all financial obligations be due immediately. In the event the defendant lacks the ability to immediately pay the financial obligations in full, it is requested that the Court set a schedule for payment of the obligations.

In the event present counsel for the defendant will continue to represent the defendant after sentencing in regard to the collection of unpaid financial obligation(s), it is requested that a letter so advising be sent to:

Asset Recovery Division
United States Attorney's Office

Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

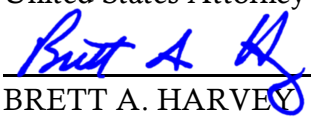
If a letter is not received within ten (10) days of sentencing, the defendant will be directly contacted regarding collection of the financial obligation(s).

Upon the ground that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, the government hereby moves the Court to apply the additional one (1) level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(b).

The government will file a supplemental sentencing memorandum asking the Court to (1) vary above the Guidelines range calculated in the PSR under 18 U.S.C. § 3553(a) and/or impose an upward departure under U.S.S.G. § 4A1.3(a) based on the inadequacy of the defendant's Criminal History Category, and (2) impose a sentence of imprisonment between 108 and 120 months.

DATED: Rochester, New York, July 29, 2024.

TRINI E. ROSS
United States Attorney

BY: 

BRETT A. HARVEY
Assistant United States Attorney
United States Attorney's Office
Western District of New York
100 State Street, Suite 500
Rochester, New York 14614
585/399-3949
brett.harvey@usdoj.gov

UNITED STATES OF AMERICA
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. **21-CR-6097 (DGL)**

STEPHEN REED PATTISON,

Defendant

DEFENDANT'S STATEMENT WITH RESPECT TO SENTENCING FACTORS

SONYA A. ZOGHLIN, Assistant Federal Public Defender for the Western District of New York affirms as follows:

I am licensed to practice law in the State of New York and the United States District Court for the Western District of New York, and I represent the defendant, Stephen Reed Pattison. I make this affirmation in accordance with the requirements of Section 6A1.2 of the Sentencing Guidelines.[1] In accordance with those Rules, I have reviewed the Fourth Revised Presentence Report dated May 31, 2024 (dkt. 56) and submitted objections to the PSR to the probation department in memoranda dated June 4, 2024, and July 18, 2024. These memoranda are attached as Exhibits A and B, respectively. After communicating with the probation officer, I believe some of these objections will be resolved. To the extent the objections set forth in Exhibit A and B are not resolved, I respectfully object to the content described in these exhibits.

As noted in Exhibit B, the objections fall primarily into three categories:

1. The assertions contained in the specified paragraphs are not based on a reliable source. *See United States v. Lee*, 653 F.3d 170, 174 (2d Cir. 2011) (defendant has a due process

[1] This is a resentencing. Mr. Pattison was originally sentenced on May 23, 2022; that sentence was subsequently vacated. In addition to the assertions, objections, and related information contained herein, I hereby incorporate by reference the Defendant's Statement with Respect to Sentencing Factors (Dkt. 30) filed on January 13, 2022, before his original sentencing hearing.

right to be sentenced based on *reliable* information). The fact that information was gleaned from the discovery provided by the government does not, on its own, make that information credible or reliable, especially where there is no source provided.

The following paragraphs (discussed in more detail in the attached exhibits) fall under this category:

54, 26, 46, 72, 74, 76

2. The information is not relevant to sentencing or any additional factors under Fed. R. Crim. Pro. 32(d), *e.g.*, even if based on reliable information, the actions of another person, not in connection with this offense or in some way endorsed or adopted by Stephen Pattison, are not relevant consideration for determining his sentence. In addition, allegations that are *solely* related to an ideology (e.g. ¶66) are not properly included.

   The following paragraphs (discussed in more detail in the attached exhibits) fall under this category:

   55, 26, 46, 54, 66, 73, 77, 78, 82

3. The conclusions or interpretations claimed about the information provided are unnecessary, entirely subjective, and/or unwarranted. In other words, the Court can draw its own conclusions from the facts presented – there's no reason for the PSR to adopt and reiterate the subjective conclusions of unnamed law enforcement officials based on unidentified sources, especially where no additional facts or unique expertise are included. (Many of these objections also fall under category 1 because the reliability or source for the information cannot be determined.)

   The following paragraphs (discussed in more detail in the attached exhibits) fall under this category:

   29, 48, 50, 52, 53, 54, 58, 59, 62, 63, 64, 65, 72, 74, 75, 76, 77, 79, 84, 86

   I also object to **¶69** (not previously addressed), which provides a subjective (and unfounded) interpretation of a conversation between Mr. Pattison and his mother ("Watkins").

The defense will file a supplemental sentencing memorandum asking this Court to impose a sentence within the guideline range of 37 to 46 months as calculated in the Fourth Revised Presentence Report. PSR at ¶134.

Finally, Mr. Pattison requests that the Court advise him about any information it will consider in imposing sentence that negatively affects him and about which he has no prior notice from the PSR, including, but not limited to *ex parte* communications with the United States Probation Department. *See United Staes v. Mueller*, 168 F.3d 186 (5th Cir. 1999); *United States v. Corace*, 146 F.3d 51 (2d Cir. 1998); *United States v. Rivera*, 96 F.3d 41 (2d Cir 1996).

Dated: Rochester, New York
August 4, 2024

Respectfully submitted,

/s/ *Sonya A. Zoghlin*
Assistant Federal Public Defender
Federal Public Defender's Office
28 East Main Street, Suite 400
Rochester, New York 14614
(585) 263-6201
Sonya_Zoghlin@fd.org

TO: Brett A. Harvey, AUSA
Jennifer L. Lotz, USPO

Exhibit A

FEDERAL PUBLIC DEFENDER'S OFFICE
WESTERN DISTRICT OF NEW YORK

INTEROFFICE MEMORANDUM

TO: USPO Jennifer Lotz
FROM: Sonya Zoghlin, Assistant Federal Public Defender
RE: Stephen Pattison, objections to Fourth Revised PSR
DATE: June 4, 2024

I may have additional objections if I get some more time, but this is what I have so far:

¶8: As we discussed, the case was remanded to the DC for resentencing, not to reach the issue of whether the sentence was substantively reasonable.

¶54: These allegations appear to be based on information from the Facebook group "585 Hatewatch." ("The administrators of the 585 Hatewatch Facebook page identified Stephen…") There's no apparent basis to find this source reliable, or even to know what/who this source is. I see this information is also contained in a search warrant application, but the source is the same, so it's no more or less reliable because it's repeated there. I'm asking that this paragraph be deleted.

If you think it's necessary to include what was posted on 585 Hatewatch's FB page, could you also include that they posted Pattison's name and address and said, "This is where his wife and kids live?" That's my understanding – unfortunately, there doesn't seem to be an active FB page for them now.

¶55: This paragraph doesn't include anything that Pattison said or did – I understand including other people's statements when there's a conversation between them and Pattison's statements are relevant, but this is entirely about what O'Shier said he did at the Caledonia protest. I don't think it should be included here.

¶117: Macedon conviction -My understanding is that Mr. Pattison received probation *and* time served for the criminal mischief conviction on the Macedon case and was in custody from the date of his arrest on 1/9/09 until he was sentenced on 4/14/09, which is 96 days. The certificate of conviction is not accurate -- take a look at the rap sheet (I have it as bates #65 in my discovery) and the PSI for that case. The rap sheet says "probation: 3-year(s) Order of Protection *Term: Time Served Concurrent*." In the PSI it says he has 96 days of jail credit, which is the time between 1/9/09 and the actual sentencing date of 4/14/09. It also says he received a "split sentence to include time served and 3 years' probation." The court records you have on that case note that he pled guilty on 2/10/09 and "remains in jail." So, I think he was sentenced on 4/14 and got time served in

addition to the 3 years of probation. Either way, he served 96 days in jail. Can you add that information?

Regarding the factual narrative, I'm asking that the following information be included (which is in the PSI):

- the P.O. spoke with FBI Agent, Eric White, who investigated the incident. He advised the P.O. that Pattison and his co-defendant, Christopher Stringer, were "not believed to be members of a larger organization such as Hells Angels or the Aryan Brotherhood and White described them as 'basically local knuckleheads.'"

- According to court records, Pattison said he was drinking at his friend's house when the neighbor knocked on the door twice, then left in a truck and returned with another man who wanted to fight them. One of the other men struck his friend with a hammer then ran into his apartment and locked the door. Pattison admitted kicking the door, but said the co-defendant picked up the furniture and threw it.

  This statement is not inconsistent with the allegations or with Pattison's admission of guilt but adds context to the "thereafter" included in the PSR narrative.

  Also, it's relevant that every conviction appears to be related to drinking, so if it's mentioned in the records, I think it should be noted in the PSR.

- Regarding the allegations in the VOP, were there any criminal charges filed? Did he admit any of these allegations? Can you clarify that the alleged criminal conduct did not result in charges or an admission? It reads as if both incidents were established, but I don't think that's the case.

¶118: Webster DWI conviction - The court records for this case say the police asked Pattison why he didn't stop and he appeared confused and said he didn't see the police behind him until he stopped at a light. The officer said he was following him for half a mile. The officer also said he was cooperative, acknowledged speeding and drinking, and was given an appearance ticket. Could you include this information? I also object to "refused to stop" considering his statement and would re-phrase as "failed to stop," which is more objective. If you think "high speed pursuit" is accurate, please include the distance in that sentence, i.e., leading law enforcement on a high-speed pursuit for approximately half a mile. I think that context is important. Along those lines, I object to the word "finally" in the sentence, "After a brief pursuit, Pattison finally pulled over." Again, it's not objective (and doesn't really fit the scenario anyway). Why not just pulled over?

¶119: East Rochester conviction – Pattison was convicted of CM4, but not Agg. Har.2 (race or religion). But the narrative doesn't distinguish between what he was convicted of, i.e., ripping the flag, and the other allegations (calling her names and pushing her in the face). Please clarify that those allegations were not established -- you could say "Pattison was accused of" or "the victim claimed," but I don't think "Pattison called her a 'spic'" or "pushed S.H. in her face…" should be stated as fact.

¶120: Boone County conviction – okay, it's a minor point considering the allegations, but it says he assaulted his girlfriend by hitting her legs "leaving marks." Doesn't the police report say the cop asked her if she was injured and she showed him a bruise on her leg, but it was not a recent bruise? Since that's based on the police officer's own observations, I think it's fair to take out "leaving marks."

The paperwork for this case also includes some other relevant information that I think should be included, maybe elsewhere. For example, it says, *"Pattison feels he started committing crimes because he grew up in an all-black neighborhood in New York and was picked on a lot. Because of this, he started hanging out with the wrong white people."* Can this be included under "personal and family data" on p. 33?

¶121: Tonawanda conviction – This one says he got 6 days, but my understanding is that he was in custody the whole time, from 11/13/18-1/28/19. Would that be noted in what you have? I don't recall seeing it, but in the Boone County records it says he pled to menacing and got 76 days/time served in Tonawanda. If that's clear, could you include it here?

Also, referring to this incident, the Boone County records include Pattison's description that he and a friend were drinking heavily together and got in a fight. The Tonawanda records confirm that they were friends, everyone was drinking, that they went back to T.B.'s house from the bar and that ultimately they calmed him down and he dropped the knife. Can you include that? I think it's relevant that they were drinking, that they were friends, and that they went together to his house. And since the narrative includes him waving a knife and threatening, it seems fair it should include the victim's account that he calmed down and dropped it.

¶125: You're familiar with this complaint: the heading "Other Criminal Conduct" should be changed to "Orders of Protection" because one is not necessarily indicative of the other. In this situation, both appear to correspond to previous convictions discussed elsewhere, so though these are apparently related to criminal conduct, they don't represent "other" criminal conduct.

¶128: If you think it's important to include the allegation that he said, "the Aryan Brotherhood up in here now," could you also include the next part, "He denied making any statement at the jail regarding the Aryan Brotherhood?"

Also, please include that he denies he was ever a member of the Hammerskin Nation or Aryan Brotherhood.

¶147: After noting that his mother has been sober since 2013, the next sentence says, "nevertheless…" as if she was sober when he reported being bounced around to various house growing up. Could you clarify that in 2013 he was 24? I don't think the "nevertheless" fits there. Also, the Boone County reports say she's been sober for four years (in 2016) and they're working on repairing their relationship. Could that be included here?

At the end of this paragraph, could you add that Pattison denies his father is a member of the Hell's Angels?

Stay tuned…

Exhibit B

FEDERAL PUBLIC DEFENDER'S OFFICE
WESTERN DISTRICT OF NEW YORK

I N T E R O F F I C E M E M O R A N D U M

TO: USPO Jennifer Lotz
FROM: Sonya Zoghlin, Assistant Federal Public Defender
RE: Stephen Pattison, additional objections to Fourth Revised PSR
DATE: July 18, 2024

In addition to the objections contained in my memo dated June 4, 2024, I also object to the information identified below being included in the Fourth Revised PSR (Doc. #56, dated 5/31/24).

My objections fall primarily into 3 categories:

1. The assertions contained in the specified paragraphs are not based on a reliable source. *See United States v. Lee*, 653 F.3d 170, 174 (2d Cir. 2011) (defendant has a due process right to be sentenced based on *reliable* information). As I noted in my previous memo, the fact that information was gleaned from the discovery provided by the government does not, on its own, make that information credible or reliable, especially where no specific source is provided.

2. The information is not relevant to sentencing or any additional factors under Fed. R. Crim. Pro. 32(d), *e.g.*, even if based on reliable information, the actions of another person, not in connection with this offense or in some way endorsed or adopted by Stephen Pattison, are not relevant consideration for determining his sentence.

3. The conclusions or interpretations claimed about the information provided are unnecessary and/or entirely subjective. In other words, the Court can draw its own conclusions from the facts presented – there's no reason for the PSR to adopt and reiterate the subjective conclusions of unnamed law enforcement officials based on unidentified sources, especially where no additional facts or unique expertise are included.

Specific objections

¶26: The actions, statements, and/or affiliations of another "counter-protester" are not relevant to Pattison's sentence and the allegations are not based on reliable information.

Specifically, the allegation about who another counter-protester was ("known as a self-proclaimed white supremacist and president of a local white supremacist group") and what he did ("attempted to assault a BLM protester, but failed to make physical contact") are not relevant to Pattison's sentencing because he is not responsible for what someone else allegedly did, and are not based on any identifiable, reliable source.

The same is true for the assertion at the end of this paragraph regarding a different protest, i.e., that "a group of approximately five counter-protesters – which included PATTISON – charged a protester and yelled 'I'll end you.'" Who made this observation and on what basis is someone else's statement attributed to him?

¶29: Ft. note #4 explains that 14 and 88 are "commonly associated with white supremacist ideology" and why that's the case. That information that may be relevant to the Court. The next sentence ("use of these numbers signifies an endorsement of white supremacist ideology") is not an objective fact; it's someone's subjective interpretation of the facts. The judge has the information he needs to draw his own conclusions. Likewise, ¶31 quotes Pattison telling his girlfriend to hold onto what agents believe to be the firearms at issue in this case "because if I'm stuck here, I would feel better if they were there." A reasonable interpretation of this conversation is that the weapons were possessed primarily for self-defense, and I will say that in my sentencing statement. I would not expect the PSR to include my interpretation.

¶46: Several of the statements included in this paragraph are both irrelevant and unreliable. I object to everything after what Pattison is alleged to have said, i.e., the statements attributed to O'Shier, Beretta, and Finocchario, because their racist and inflammatory views are not relevant to Pattison's sentencing. That is particularly true because there is no statement attributed to Pattison that follows or that needs additional context. To the extent this exchange includes what agents believe they're discussing, or what agents apparently believe Finocchario did during a BLM protest, or what Berreta may be implying "Stevie" and "John" did (which is entirely unclear), these allegations are not relevant or reliable.

¶48: I object to the last statement in this paragraph because the preceding conversation doesn't require any interpretation by law enforcement. To the extent that it does add anything, it's the subjective interpretation of what Pattison meant. I'm not aware of any objective evidence that he was taking any affirmative steps or working with anybody (let alone a "militia") to prepare for a "racial holy war." (For example, one would expect an arsenal of weapons in his home, rather than one rifle and one shotgun, if that were the case.) The Court can decide whether his comments were true or hyperbole; I believe they are the latter but would not expect my interpretation to be included in the PSR.

¶50: I object to the last sentence of this paragraph for the same reasons – the words preceding it don't require law enforcement interpretation, nor does the interpretation provide any

additional, objective information. In my view, this interpretation gives the conversation more weight than it deserves…but that's for the judge to decide.

¶52: I object to the last sentence of this paragraph for the same reasons – it adds no additional, objective information and there's no way to determine whether it's based on reliable information. If there's a concern the judge doesn't know how to interpret the conversation, for example that "IDK" means "I don't know," that information could be provided.

¶53: I object to the sentence that begins "based on the contents and context of these messages, agents believe…" and the last sentence for the same reasons expressed above. Is the last sentence new information? If so, what's the source? More likely it's someone's interpretation of the conversation that preceded it and adds no new information.

¶54: I previously objected to this paragraph because the allegations against Pattison do not appear to be based on reliable information. I do think it's relevant that a Facebook account "identified Pattison as present and among the group of counter-protesters" and posted his picture because that adds context to his concerns about his safety and is apparently based on a review of the account by law enforcement. That an unnamed administrator characterized him as a "neo-Nazi skinhead" who came to "intimidate a completely peaceful BLM rally" includes an allegation that is not based on reliable information or an identifiable source.

In addition, I object to the inclusion of what some other "counter-protester" said and did, i.e., charged a protester and yelled "I'll end you, or words to that effect" because 1) it's not relevant for purposes of determining Pattison's sentence; and 2) it's not based on reliable information. I don't know who is making this allegation.

Finally, I object to the inclusion of what law enforcement officers believe the hand gesture displayed in a photograph means, especially since this particular gesture is susceptible to many different meanings.

¶55: I included my objection to this paragraph in my previous memo.

¶57: This information was already provided (almost verbatim) in ¶27 – it doesn't seem necessary to repeat it here.

¶58: I object to the phrase "wherein Pattison issued a direct threat of violence" on the grounds expressed above – there is no reason for these words to be characterized in the PSR or by law enforcement. The same applies to the last sentence, beginning "Based on the contents and context of these messages, agents believe…" That is particularly true because the agents' subjective interpretation of his words (which speak for themselves), are that he was expressing his *actual* intent as opposed to, again, empty threats or hyperbole.

¶59: I object to the last sentence, which includes agents' subjective interpretation of the conversation, for the reasons expressed above.

¶62: I object to the last sentence ("based on the contents and context of these messages…") for the reasons expressed above.

¶63: I object to the last two sentences about what "agents believe." Regarding the last sentence, which expresses agents' belief that Pattison was discussing the same gun recovered from his bedroom 3 weeks later, there does not appear to be any basis other than it being the same type of gun. I don't object to that fact being included for what it's worth, which is for the Court to decide.

¶64: I object to the last two sentences for the same reasons discussed in the preceding paragraph.

¶65: I object to the last sentence ("agents believe") for the reasons discussed above.

¶66: I object to this paragraph because it adds nothing other than an association with an ideology, which is not relevant to the issues before the Court and is, in any case, well established in other places. In addition, ¶40 describes a photograph Mr. Pattison posted on the same date (10/25/20) in front of a "Blood and Honour" flag. I did not object to its relevance there because it apparently includes a shotgun. This paragraph doesn't add any relevant information to that one.

¶72: I object to the first sentence of this paragraph, which implies that Pattison's use of Discord was associated with criminal activity, for several reasons. First, Discord is used by literally millions of people, primarily for non-criminal related activities; many of those people prefer to communicate on a more secure/private platform for other reasons. Second, that people engaged in crime don't want to be detected by law enforcement is self-evident and does not require law enforcement interpretation. Third, the notion that Pattison was communicating on Discord for the purpose of discussing criminal activity without detection is undermined by the numerous examples of very similar communication elsewhere, like Facebook (*see, e.g.,* ¶¶ 74, 77).

¶73: I object to this paragraph because it includes only a statement from someone else, John Jacobsen, not Pattison and is not followed, apparently, by moving that conversation to Discord or "585 mil."

¶74: I object to this entire paragraph because it is the same Facebook chat (not Discord) referred to and quoted previously in paragraph 50 and not additionally relevant here.

¶75: I object to the assertion in the last sentence that that Pattison wanted to use Discord "to avoid detection by law enforcement authorities." As discussed above re: ¶72, "better, safer communication" is why millions of people use Discord and there's no question

Pattison didn't restrict this type of expression to that platform. The agents' beliefs are both irrelevant and unnecessary in this context.

¶76: I object to this paragraph because, again, it offers only agents' subjective beliefs that the Discord group was set up to provide a forum for private communications *about criminal activity*. There is no apparent, reliable basis for this claim.

¶77: I object to this paragraph because it discusses communication on Facebook, not Discord. It has no apparent connection to Discord, which is the heading of this section – to a less careful reader, it suggests that this is the kind of secure conversation about "criminal activity" Pattison intentionally moved from Facebook to Discord. I also object to the last sentence for the reasons set forth multiple times above: it appears to be a subjective interpretation based entirely on the quoted language that precedes it and adds no additional information or expertise.

¶78: I object to the last quoted statement in this paragraph from "TAPMOTO" because it is his statement, not Pattison's. It is not adopted by Pattison and does not add context to the conversation above it.

¶79: I object to this entire paragraph for the reasons expressed multiple times above – to the extent the content of ¶78 is relevant, it requires no additional interpretation. It's also just wrong to assert that "Pattison stated" or "expressed" certain things because he clearly didn't. Even if "I don't but guns on paper" (he didn't type "buy") requires translation, it is not either reasonable or necessary to add the agents' belief that Pattison doesn't "purchase guns legally *because he is a prohibited person by virtue of his prior felony conviction*." The agents are in no better position than the judge to reach that conclusion.

¶82: I object to this paragraph because it's irrelevant – the exchange between the two of them is entirely innocuous and the message sent later by TAPMOTO reflects only on him, not Pattison; apparently Pattison did not even respond to it.

¶84: I object to the last two sentences which provide unnecessary, subjective interpretation of the jail call between Pattison and Pfenninger. The conversation does not contain any unique code, or phrases only understood by trained members of law enforcement. The words used in this conversation, and the possible implications conveyed by those words, are as easily understood by the Court as they are by law enforcement.

¶85: I object to the pejorative phrase "cover story" used in the first sentence. Again, the Court can determine what to make of the conversation that follows.

¶86: I object to the last sentence for the same reasons discussed multiple times above: the agents' interpretation of Pattison's statements is no more or less reliable than the Court's and provides no additional information or expertise.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. 21-CR-6097-DGL

STEPHEN REED PATTISON,

Defendant.

SECOND SUPPLEMENTAL STATEMENT OF THE GOVERNMENT WITH RESPECT TO SENTENCING FACTORS

PLEASE TAKE NOTICE that the government adopts the findings of the Fifth Revised Pre-Sentence Investigation Report (PSR) (revised August 29, 2024) with respect to sentencing factors.

Should the defendant present any letters of support or sentencing statement to the Court, the United States will move to strike the items from the record if this office is not provided with copies at least three (3) business days prior to sentencing.

The defendant is required by 18 U.S.C. § 3013 to pay the sum of $100 at the time of sentencing. Immediately after sentencing, the defendant must pay the amount due by personal check, cashier's check or certified funds to the United States District Court Clerk.

It is requested that the Court order that all financial obligations be due immediately. In the event the defendant lacks the ability to immediately pay the financial obligations in full, it is requested that the Court set a schedule for payment of the obligations.

In the event present counsel for the defendant will continue to represent the defendant after sentencing in regard to the collection of unpaid financial obligation(s), it is requested that a letter so advising be sent to:

Asset Recovery Division
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

If a letter is not received within ten (10) days of sentencing, the defendant will be directly contacted regarding collection of the financial obligation(s).

Upon the ground that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, the government hereby moves the Court to apply the additional one (1) level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(b).

In conjunction with this sentencing statement, the government is filing a supplemental sentencing memorandum asking the Court to (1) impose an upward departure under U.S.S.G. § 4A1.3(a) based on the inadequacy of the defendant's Criminal History Category and/or vary above the Guidelines range under 18 U.S.C. § 3553(a), and (2) impose a sentence of imprisonment of 120 months.

DATED: Rochester, New York, August 29, 2024.

TRINI E. ROSS
United States Attorney

BY: _____

BRETT A. HARVEY
Assistant United States Attorney
United States Attorney's Office
Western District of New York
100 State Street, Suite 500
Rochester, New York 14614
585/399-3949
brett.harvey@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. 21-CR-6097-DGL

STEPHEN REED PATTISON,

Defendant.

GOVERNMENT'S SUPPLEMENTAL SENTENCING MEMORANDUM

The United States of America, by and through its attorneys, Trini E. Ross, United States Attorney for the Western District of New York, and Brett A. Harvey, Assistant United States Attorney, hereby makes and files its supplemental sentencing memorandum relating to the resentencing of the defendant, STEPHEN REED PATTISON.

I. INTRODUCTION

This case is back before the Court for resentencing. At the original sentencing, the government asked the Court to sentence the defendant – a convicted violent felon and avowed white supremacist – to the statutory maximum of 120 months' imprisonment. This request was based on, among other things, the defendant's possession of two firearms and ammunition; his significant criminal history involving domestic violence and racial animus; his threats to kill Black people and individuals/groups who were protesting, and in some cases rioting, over the deaths of George Floyd and Daniel Prude in 2020; and his attempts to obstruct justice. The Court imposed an upward departure based on the inadequacy of the defendant's Criminal History Category (CHC) and sentenced him to 96 months' imprisonment, more than double the low end of the Guidelines range.

While this case was pending appeal, the defendant committed another violent crime, this time at a high-security prison where he was serving his sentence. As detailed, *infra*, the defendant viciously attacked another inmate and slashed him in the face with a makeshift razor blade weapon because the inmate was selling homemade weapons to another race. The attack left the inmate with a 10- to 12-centimeter laceration across the right side of his face and caused significant bleeding. This new racially-tinged crime – taken together with the other aggravating factors highlighted by the government and the Court at the original sentencing – warrants the statutory maximum sentence of 120 months' imprisonment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. PROCEDURAL HISTORY

On November 25, 2020, the defendant was charged in Criminal Complaint No. 20-MJ-4223 with possession of firearms by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). (Dkt. 1). A federal grand jury returned Indictment No. 21-CR-6097, which charged the defendant with one count of possession of firearms and ammunition by a convicted felon, on June 10, 2021. (Dkt. 14).

On November 8, 2021, the defendant pleaded guilty, pursuant to a written plea agreement, to the sole count of the Indictment. (Dkt. 24). In the plea agreement, both parties agreed to the Guidelines calculations and reserved the right to request a non-Guidelines sentence. (*Id.* at ¶ 13). In the Second Revised Pre-Sentence Investigation Report (Second Revised PSR), the Probation Office calculated the same Guidelines calculations as those contained in the plea agreement and concluded that the defendant's CHC was IV and total offense level was 19. (Second Revised PSR at ¶¶ 99-108, 119, 131).

Before sentencing, the government filed a sentencing memorandum requesting the statutory maximum sentence of 120 months' imprisonment. (Dkt. 33).[1] In support of its request, the government relied on the defendant's significant criminal history (including his prior criminal convictions and multiple probation/parole violations), the nature and circumstances of the offense (including, *inter alia*, the defendant's possession of firearms and ammunition, his numerous white supremacist and threatening Facebook posts, and his threats to kill Black people and protesters), and the defendant's efforts to obstruct justice by telling his then-girlfriend to lie to law enforcement authorities and seeking to obtain false exculpatory affidavits from the two individuals who gave him the firearms. (*Id.* at 3-11).

On May 23, 2022, the parties appeared before the Court for sentencing. The Court found that the defendant's CHC was inadequate and imposed an upward departure under U.S.S.G. § 4A1.3(a). (T 36-38).[2] In making this finding, the Court noted, *inter alia*, that almost all of the defendant's prior criminal convictions involved "the use of violence and many with [a] racial undertone or animus" (*Id.* at 30); that the defendant engaged in a "pattern" of criminal conduct showing his lack of respect for the law (*Id.* at 33-34); that "violence seems to be [the defendant's] middle name" (*Id.* at 35); that the defendant has "repeatedly shown" who he is and "what [he's] capable of based on [his] prior record and [his] numerous statements and rantings on Facebook" (*Id.*); and the defendant's "history includes crimes of violence, menacing, hate speech, race based harassment, trespass, using racial slurs, threatening to have people killed." (*Id.*). The Court ultimately stated:

1 The government incorporates the original sentencing memorandum by reference as if fully set forth herein and relies on the facts and arguments contained in that memorandum for purposes of resentencing.

2 All references to the sentencing transcript will be denoted by the shorthand reference "T".

> It just seems to me, Mr. Pattison, when things don't go your way especially in view of your world view, you react violently. You don't just disagree with people. You call them names. You engage in violence. You get upset at your girlfriend, you choke her and threaten to kill her. You get upset when somebody asks you to lower music, you destroy his property. You see a Spanish person you don't like in East Rochester, you assault her and call her names. You know, I don't know why the Court and the community has to accept this. You have shown who you are. You have been and I think are a danger, sir. You repeatedly engaged in behavior frankly of a thug.

(*Id.* at 37). After increasing the defendant's CHC to VI and departing upward two levels to offense level 21, the Court sentenced him to 96 months' imprisonment. (*Id.* at 38).

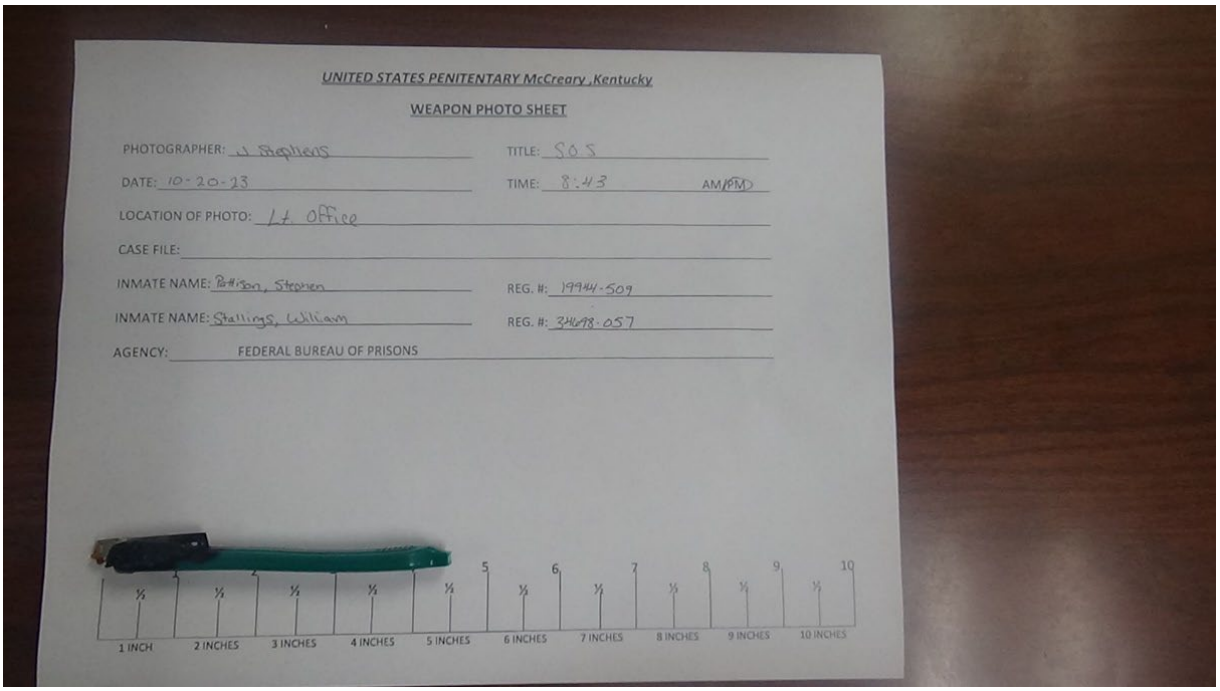
The defendant subsequently appealed his sentence to the United States Court of Appeals for the Second Circuit. In January 2024, the Second Circuit vacated the judgment, concluding that the defendant did not receive sufficient notice that the Court was considering an upward departure under U.S.S.G. § 4A1.3(a), and remanded the case for resentencing. *United States v. Pattison*, 2024 WL 191373 (2d Cir. Jan. 18, 2024).

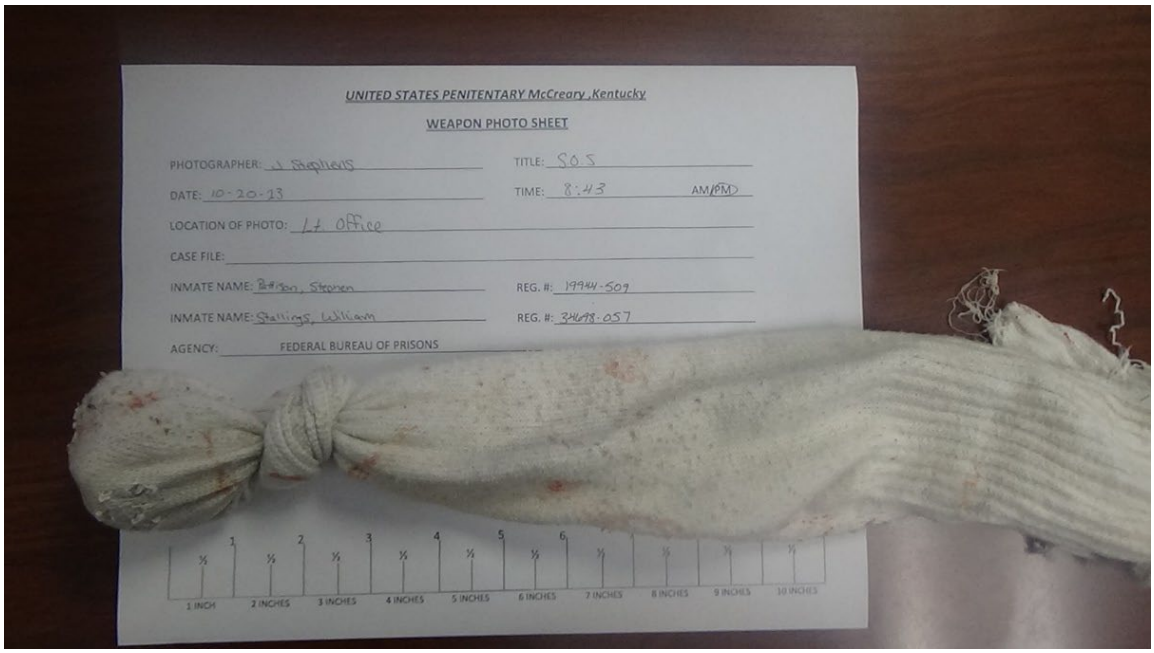
On February 22, 2024, the Court issued an order, pursuant to Fed. R. Crim. P. 32(h), informing the parties that it is "contemplating a departure of the Sentencing Guidelines, specifically under Guidelines § 4A1.3, that [the defendant's] criminal history underrepresents the seriousness of his prior record and especially the likelihood that he will reoffend again." (Dkt. 52).

In a Fifth Revised Pre-Sentence Investigation Report (Fifth Revised PSR), the Probation Office calculated different Guidelines calculations than those contained in the original plea agreement. Specifically, the defendant is now a CHC III due to an intervening amendment to U.S.S.G. § 4A1.1(e). (Fifth Revised PSR at ¶¶ 122-124, 135). The new Guidelines sentencing range is 37 to 46 months' imprisonment. (*Id.* at ¶ 134).

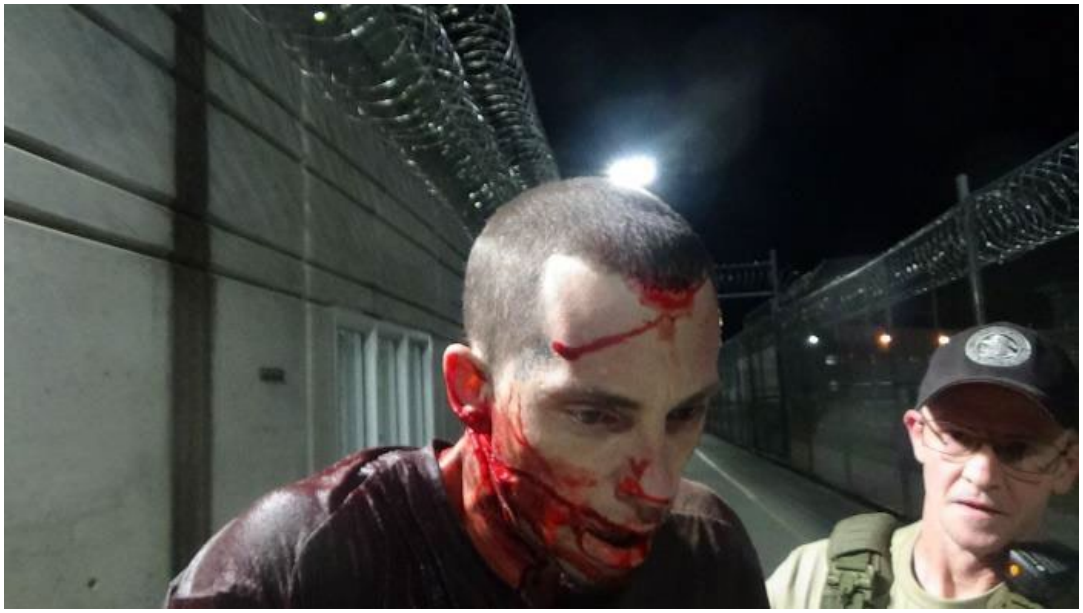
B. NEW CRIMINAL CONDUCT

While serving his sentence in federal prison, the defendant committed a vicious assault against another inmate because the inmate was selling weapons to the "another race." In October 2023, the defendant was serving his sentence at United States Penitentiary McCreary (USP McCreary), which is a high-security prison in Kentucky. On October 20, 2023, the defendant, and an inmate with the initials W.S., attacked and assaulted an inmate with the initials E.S. in their housing unit. (Fifth Revised PSR at ¶ 20). During the attack, the defendant used a "homemade razorblade" to slash E.S., while W.S. struck E.S. with a sock "filled with pieces of old locker handles." The defendant's weapon consisted of a toothbrush handle with two razorblades melted into one end. (*Id.*). A prison employee interceded and ordered the defendant and W.S. to stop. Both the defendant and W.S. complied. Below are photographs of the weapons used by the defendant and W.S.





As a result of the attack, E.S. sustained a 10- to 12-centimeter laceration along the right side of his face, stretching from the bottom of his ear to the area near his mouth. (Fifth Revised PSR at ¶ 20). The laceration was approximately two centimeters wide at its widest point and had "nicked" a vein under his ear, which caused significant bleeding. (*Id.*). E.S. was sent to a local hospital for treatment. Below are photographs of E.S. after the attack.





After the attack, a member of the prison staff interviewed the defendant. When asked what caused the assault, the defendant stated, "That guy [E.S.] was selling homemade weapons to another race. That doesn't go over well with the guys in the unit. It was my time to put in work (assault), so that's what I did." (Fifth Revised PSR at ¶ 20). A report from USP McCreary states that the defendant indicated that his peers view E.S. "as a liability and no longer welcome[ ] him in general population." (*Id.*). W.S. also told prison staff, "We had to put in work on that dude [E.S.]. He was selling stuff to another race in our unit. If you run with a group, you cannot sell or hang out with a different group, you know."

III. STATUTORY SENTENCING FACTORS

A. APPLICABLE LAW

For the reasons set forth below, the government respectfully asks this Court to impose the statutory maximum sentence of 120 months' imprisonment. Such a sentence is justified

and appropriate for this defendant – a convicted violent felon and white supremacist who illegally possessed two firearms and ammunition after stating his intention to shoot and kill protesters and Black people at a "genocidal rate," attempted to obstruct this prosecution, and committed a vicious, armed assault while in federal prison – and would not be "greater than necessary" to comply with the objectives set forth in 18 U.S.C. § 3553(a) (hereinafter, "Section 3553(a)").

Section 3553(a) requires that the Court "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2)]." In determining the appropriate sentence, the Court must consider the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; the need for the sentence to afford adequate deterrence to criminal conduct; the need for the sentence to protect the public from further crimes of the defendant; the need for the sentence to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

In executing these statutory responsibilities, the Court must first correctly calculate the applicable Guidelines range. *Gall v. United States*, 552 U.S. 38, 49 (2007). This range is "the starting point and the initial benchmark." *Id.* Although this Court must treat the Guidelines as advisory, *United States v. Ratoballi*, 452 F.3d 127, 131-32 (2d Cir. 2006), an error in

determining the applicable Guidelines range or the availability of departure authority nonetheless would be the type of procedural error that could render a sentence unreasonable on appellate review. *United States v. Selioutsky*, 409 F.3d 114, 118 (2d Cir. 2005). Further, while this Court "does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply," *Rita v. United States*, 551 U.S. 338, 351 (2007), the Second Circuit has observed that "in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be [upheld as] reasonable in the particular circumstances." *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006). *See also United States v. Eberhard*, 525 F.3d 175, 179 (2d Cir. 2008).

Next, after giving the parties an opportunity to argue for whatever sentence they deem appropriate (consistent with any limitations imposed by the plea agreement), this Court must then "consider all the § 3553(a) factors to determine whether they support the sentence requested by a party." *Gall*, 552 U.S. at 49-50. In determining whether the section 3553(a) factors support the requested sentence, the Court "must make an individualized assessment based on the facts presented." *Id.* at 50. In that regard, "[n]o limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court . . . may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661. If a non-Guidelines sentence is warranted, the Court "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Gall*, 552 U.S. at 50.

After settling on the appropriate sentence, the Court "must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of

fair sentencing." *Id.* (citing *Rita*, 551 U.S. at 351). Although this Court need not engage in "robotic incantations" with respect to its consideration of the section 3553(a) factors, *Fernandez*, 443 F.3d at 30, "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Rita*, 551 U.S. at 356.

In determining an appropriate sentence, a court may vary and/or depart from the applicable Guidelines range. A "departure refers only to non-Guidelines sentences imposed on the basis of factors *within* the framework set out in the Guidelines, whereas a variance is a modification of the applicable Guidelines sentence that a District Court may find justified under sentencing factors *extrinsic* to the Guidelines – namely, those set forth in 18 U.S.C. § 3553(a)." *United States v. Sealed Defendant One*, 49 F.4th 690, 697 (2d Cir. 2022) (alterations adopted) (internal quotation marks and citation omitted). *See also United States v. Anati*, 457 F.3d 233, 236-37 (2d Cir. 2006) ("A departure results from a circumscribed opportunity to sentence above or below the range based on specific considerations. A non-Guidelines sentence results from a somewhat broader opportunity to sentence above or below that range based on a consideration of the factors outlined in section 3553(a)."), *abrogated on other grounds by Irizarry v. United States*, 553 U.S. 708, 713 n.1 (2008). "Therefore, even if certain facts are sufficient to warrant an adjustment or departure under the Guidelines, those same facts, either in isolation or in combination with other facts, can still be used to support a variance under the applicable Section 3553(a) factors." *United States v. Jordan*, 2024 WL 2764399, at *3 (2d Cir. May 30, 2024) (citations omitted).

In this case, the Court has notified the parties that it is considering an upward departure under U.S.S.G. § 4A1.3(a)(1). Section 4A1.3(a)(1) provides that "[i]f reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted." In cases where a court finds an upward departure is appropriate, "the court shall determine the extent of a departure . . . by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's." U.S.S.G. § 4A1.3(a)(4)(A). Where a court seeks to upwardly depart beyond CHC VI, the court "should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case." U.S.S.G. § 4A1.3(a)(4)(B).

"A sentencing court considering an upward departure under [section] 4A1.3 is not required . . . to pause at each category above the applicable one to consider whether the higher category adequately reflects the seriousness of the defendant's record" before determining an appropriate sentence. *United States v. Simmons*, 343 F.3d 72, 78 (2d Cir. 2003). "[A]s long as the reasons for such a departure are fully explained, a mechanistic, step-by-step procedure is not required." *Id.* (internal quotations marks omitted).

B. LEGAL ARGUMENT

In this case, the facts and circumstances of the offense and the defendant's history and characteristics warrant an upward departure under U.S.S.G. § 4A1.3(a) and the statutory maximum sentence of 120 months' imprisonment. Alternatively, the § 3553(a) factors justify

an upward variance and the statutory maximum sentence of 120 months' imprisonment. Because the analyses for the upward departure and upward variance involve the same facts and circumstances, the government will address them together.

The offense committed by the defendant – possession of firearms and ammunition by a convicted felon – is exceptionally serious. The defendant is a convicted violent felon and avowed white supremacist. In the months preceding his acquisition of the firearms and ammunition, the defendant, *inter alia*, expressed his rage about racial minorities and Black Lives Matter (BLM)/ANTIFA, stated that he was preparing and ready for a Racial Holy War, and stated his intention to shoot and kill Black people and protesters "at a genocidal rate" in the event they came to his neighborhood.

The defendant is a CHC III. (Fifth Revised PSR at ¶¶ 122-124). His criminal history includes a domestic violence felony and three misdemeanors involving menacing conduct, threats of violence and/or property destruction. (*Id.* at ¶¶ 117, 119-121). Notably, two of his prior convictions were motivated by racial/ethnic animus, (*Id.* at ¶¶ 117, 119), and one was precipitated by him getting thrown out of a pub after screaming racial slurs. (*Id.* at ¶ 121). The defendant's domestic violence felony involved the defendant choking his then-girlfriend so hard that she was unable to breathe and threatening to drown and smother her to death. (*Id.* at ¶ 120). At the time of his arrest in that case, the defendant also threatened to have his cousin shoot the victim in the face. (*Id.*). The defendant's criminal history clearly demonstrates his capacity for violence and willingness to engage in racially motivated criminal conduct. This criminal history – taken together with the defendant's racist and threatening Facebook posts and messages – show that he represents a true threat to the community.

Additionally, the defendant violated probation and parole on several occasions over the last 15 years. In 2009, he violated probation by committing new criminal conduct (consisting of threatening to murder another individual and assaulting his then-girlfriend, Rochelle Pfenninger), failing to pay restitution, failing to complete a drug and alcohol evaluation, moving without permission of the probation office, failing to provide proof of employment, and failing to complete a mental health evaluation. (Fifth Revised PSR at ¶ 117). The defendant also violated his parole in Missouri on multiple occasions between 2018 and 2019. (*Id.* at ¶ 120). He committed the instant offense while he was wanted on a parole absconder warrant from Missouri. He also committed the Menacing 2° offense in 2018 while on parole. (*Id.* at ¶ 121). The defendant's abysmal performance while under supervision shows that he is unwilling and/or unable to follow court orders and live a law-abiding life.

Perhaps most importantly, the defendant committed yet another race-related crime while imprisoned at USP McCreary. As detailed above, the defendant and W.S. attacked E.S. because he was selling weapons to another race. During the attack, the defendant slashed E.S. with a makeshift weapon, leaving E.S. with a 10- to 12-centimeter laceration across the right of his face and causing significant bleeding. It is reasonable to infer from the defendant's statements to prison staff that the attack stemmed from the defendant's involvement with a white prison gang, and that the defendant committed the assault as retribution for E.S.'s dealing with another race. The defendant's commission of this vicious racially-tinged assault confirms the Court's assessment of the defendant at the original sentencing – that the defendant is an unrepentant violent criminal, who is motivated by racial animus, has no respect for the law, and poses a real danger to the community. Moreover, the fact that the

defendant committed this crime while in custody at a high-security prison shows that his contempt for the law knows no bounds and the near certainty that the defendant will commit more crimes in the future.

Given these facts and circumstances, the government requests that the Court either: (1) grant an upward departure under U.S.S.G. § 4A1.3(a) to CHC VI and offense level 24 and impose a sentence of 120 months' imprisonment; or (2) vary upward from the Guidelines sentencing range and impose a sentence of 120 months' imprisonment. Such a sentence would adequately account for the nature and circumstances of the offense, the criminal history and personal characteristics of the defendant, the seriousness of the offense, and the need to protect the public from further crimes by the defendant. In addition, such a sentence would promote respect for the law and deter the defendant, and others in this District and elsewhere in the United States, from illegally possessing firearms and ammunition, threatening racial violence, and committing violent crimes in federal prison.

IV. THE DEFENDANT'S OBJECTIONS TO THE FIFTH REVISED PSR

The defendant objects to certain portions of ¶¶ 26, 29, 46, 48, 50, 52-55, 58-59, 62-66, 72-79, 82, 84, and 86 of the Fifth Revised PSR, arguing that those portions should not be considered by the Court because they are not based on reliable sources, are irrelevant to sentencing, and/or contain conclusions or interpretations that are unnecessary and/or subjective. (Dkt. 61).[3] In addition, the defendant restates his original objections to the

3 In his most recent sentencing statement, the defendant lodged objections to the Fourth Revised PSR (which was in effect at the time). Today, the Probation Office issued the Fifth Revised PSR. It is my understanding that the paragraph numbers in the Fifth Revised PSR are the same as those in the Fourth Revised PSR.

inclusion of the Facebook posts and messages in the Second Revised PSR (now the Fifth Revised PSR), arguing that those posts and messages are "inflammatory" and "irrelevant." (Dkt. 30).[4] As detailed below, the disputed portions of the Fifth Revised PSR are reliable, relevant to sentencing, and comfortably within the broad scope of information the Court can rely upon in imposing sentence.

Title 18, United States Code, Section 3661 "codifies the longstanding principle that sentencing courts have broad discretion to consider various kinds of information" in imposing sentence. *United States v. Watts*, 519 U.S. 148, 151 (1997). It provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for purposes of imposing an appropriate sentence." 18 U.S.C. § 3661. To effectuate § 3661, "a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come." *Dawson v. Delaware*, 503 U.S. 159, 164 (1992) (internal quotation marks omitted).

The scope of a district court's sentencing inquiry must encompass a defendant's "history and characteristics," as required by 18 U.S.C. § 3553(a)(1). And, as the Second Circuit has explained, it is "self-evident" that "a person's history and personal characteristics can often be assessed by a sentencing court only or principally through analysis of what that person has said – in public, in private, or before the court." *United States v. Stewart*, 686 F.3d 156, 166 (2d Cir. 2012).

4 The defendant has incorporated these objections by reference in his most recent sentencing statement. (Dkt. 61).

The First Amendment imposes an outer limit on the broad authority granted to district courts in § 3661 and the nature of a court's inquiry under § 3553(a). *Stewart*, 686 F.3d at 166 (noting an "apparent tension" between § 3553(a)(1) and the First Amendment's "general[ ] assur[ance]" that the federal and state government will not encroach upon citizens' freedom of speech). As the Second Circuit has explained, "[t]he First Amendment forbids the *uncabined* reliance on a defendant's abstract beliefs at sentencing." *United States v. Fell*, 31, F.3d 197, 228 (2d Cir. 2008) (internal quotation marks omitted). But the First Amendment "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*, 503 U.S. at 165. Rather, "[a] sentencing court may consider such evidence [of a defendant's beliefs and associations] so long as it is relevant to the issues involved in the sentencing proceeding." *United States v. Kane*, 452 F.3d 140, 142 (2d Cir. 2006) (per curiam) (internal quotation marks omitted). "Among other possible uses," such evidence "may be relevant to show motive, analyze a statutory aggravating factor, illustrate future dangerousness or potential recidivism, or rebut mitigating evidence that the defendant proffers." *Id.* at 143 (citations omitted).

At the original sentencing, the Court denied the defendant's motion to strike the Facebook posts and messages from the Second Revised PSR, finding that such information was "relevant in several respects" to the offense of conviction. (T 10). First, they contain references to the defendant obtaining firearms to prepare for a "holy war." (*Id.* at 11). Second, in some of the Facebook messages, the defendant acknowledged that he could not legally possess a firearm. (*Id.* at 11-12). The Court also ultimately found:

> So I think these statements in the Facebook pages they refer to many things that I think are germane in the Court's ultimate decision. They refer to firearms, assaults or potential assaults on the protestors that were protesting during the Summer of 2020. They relate to the use of violence, all of which I think may be factors for this Court to determine in terms of the ultimate sentence. I mean, the Facebook postings talk about shooting Antifa people . . . some reference to Mr. Pattinson [sic] beating up such a person . . . statements that we should slaughter anybody bringing communism into the country, threats to kill people if they came into his neighborhood presumably in Hilton and statements that this just doesn't mean to fight them but to shoot them, pump shells through their head.
>
> So I deny your request to strike those because for the reason that I stated I think they're relevant and within the broad scope of information the Court can determine whether the sentence should be within the guidelines, less than the guidelines or more than the guidelines.

(*Id.* at 12-13).

The Court's prior rationale for considering the Facebook evidence still applies. The defendant's statements on Facebook are directly relevant to two sentencing issues: first, the defendant's motive for the possessing the firearms and ammunition, that is, to potentially kill Black people and protesters, and prepare for a Racial Holy War; and second, to demonstrate the defendant's future dangerousness and potential for recidivism. *See United States v. Miner*, 2022 WL 7214447, at *2 (2d Cir. Oct. 13, 2022) (holding, in a firearm possession case, that defendant's "racist, anti-Semitic, and violent statements online" were relevant to "motive and potential for violence to the community – two considerations [the Second Circuit] has upheld as permissible and relevant to sentencing") (citing *Stewart*, 686 F.3d at 170, and *United States v. Brown*, 479 F.2d 1170, 1174 (2d Cir. 1973)); *United States v. Schmidt*, 930 F.3d 858, 868 (7th Cir. 2019) (holding, in a firearm possession case, that a sentencing court could consider defendant's white supremacist beliefs as evidence of his future dangerousness and disrespect for the law) (internal quotation marks omitted). Here, the defendant's Facebook records –

which include multiple references to a Racial Holy War, and statements about killing Black people and protesters – establish that the defendant presents a future threat of danger to the community, especially given the defendant's recent commission of another racially-motivated violent crime while in prison. Moreover, these Facebook records, "combined with [his] record of repeated violations of law, evince[ ] a willingness to continue on a path of lawlessness in the absence of significant correction." *Schmidt*, 930 F.3d at 868.

Many of the disputed paragraphs of the Fifth Revised PSR contain informed opinions by the investigating agents about the meaning of certain Facebook posts and messages, Discord messages, and jail telephone calls involving the defendant. The underlying content of the posts, messages, and jail telephone calls are quoted and summarized in the Fifth Revised PSR. (*See*, *e.g.*, Fifth Revised PSR at ¶¶ 48, 50, 52-54, 58-59, 62-65, 69, 72, 75-77, 79, 84, 86). It is apparent from the content of the posts, messages, and jail telephone calls that the agents' opinions are fair, accurate, and reliable. Nonetheless, the Court is free to review such content to determine whether the agents' opinions are accurate and reliable and, if so, whether those opinions will impact the sentence imposed by the Court.

In any event, some of the opinions challenged by the defendant do not relate to contested issues in this case. For example, the defendant challenges a sentence in the Fifth Revised PSR, which states that use of the symbols "14" and "88" signifies an endorsement of white supremacist ideology. (Dkt. 61 at 2, 11). The evidence of the defendant's embrace of white supremacist ideology is overwhelming: the defendant's tattoos include a battle shield with the numbers "1488," the phrase "Too White For U," and the term "White Warrior" (Fifth Revised PSR at p. 3); the search of the defendant's bedroom at his residence yielded

white supremacist and Nazi paraphernalia, and depictions of white supremacist and Nazi imagery (*Id.* at ¶ 37(h)); the defendant's Facebook posts and messages are rife with white supremacist imagery (including, but not limited to, the numbers "14" and "88," "SS" lightning bolts, Nazi imagery, and references to the Racial Holy War (RAHOWA)); the defendant's cell phone case bore the numbers "14" and "88," the Nazi "SS" symbol, and a white power crosshair symbol (*Id.* at ¶ 39); the defendant's cell phone contained, *inter alia*, an image that read, "White Lives Matter More," and a photograph of the defendant posing with a firearm in front of a flag bearing the numbers "14" and "88" (Dkt. 33 at 4-6); in a Facebook message on July 12, 2020, the defendant stated, "I love it bro that's y I fight this fight I live by the 14 words . . . We must secure the existence of our people and the future for white children" (*Id.* at 7); and in a Facebook message on October 9, 2020, the defendant stated, "I was ANazi skinhead and still am at heart . . . weve been talking about RAHOWA for 30 plus years" (*Id.* at 8). This is not an exhaustive list. Rather, the government offers these examples to show only that this particular objection lacks merit.

Similarly, the defendant challenges the agents' opinions relating to certain Facebook messages and jail telephone calls wherein the defendant makes admissions about his possession of firearms and his prohibited status as a convicted felon. (*See*, *e.g.*, Fifth Revised PSR at ¶¶ 69, 79, 84, 86). As this Court is aware, the defendant pleaded guilty to possessing the 12-gauge shotgun and 30-06 rifle and, in the process, admitted that he knew he was prohibited from doing so by virtue of his prior felony conviction. (Dkt. 24 at ¶¶ 5(a)-5(e)). As a result, these objections lack merit as well.

The remaining disputed portions of the Fifth Revised PSR relate to information that provides background and context to the offense of conviction. (*See*, *e.g.*, Fifth Revised PSR at ¶¶ 26, 46, 54, 55, 66, 73, 77, 78, 82). For example, the defendant's presence as a counter-protester at a BLM protest in Rochester in July 2020 and a BLM protest in Caledonia in September 2020, and the racist statements by various individuals (including Donald Oshier, who gave the 12-gauge shotgun to the defendant) in online communications with the defendant, provide context and background for many of the defendant's Facebook posts and messages in which he described his anger and rage against Black people and BLM/ANTIFA protesters, and made statements about killing them.

V. CONCLUSION

Based on the foregoing, the government respectfully recommends that the Court impose a sentence of 120 months' imprisonment.

DATED: Rochester, New York, August 29, 2024.

Respectfully submitted,

TRINI E. ROSS
United States Attorney

BY: Brett A. Harvey

BRETT A. HARVEY
Assistant United States Attorney
United States Attorney's Office
Western District of New York
100 State Street, Suite 500
Rochester, New York 14614
585/399-3949
brett.harvey@usdoj.gov

UNITED STATES OF AMERICA
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. **21-CR-6097 (DGL)**

STEPHEN REED PATTISON,

Defendant

SENTENCING STATEMENT AND REQUEST FOR A GUIDELINE SENTENCE

SONYA A. ZOGHLIN, Assistant Federal Public Defender for the Western District of New York affirms as follows:

I am licensed to practice law in the State of New York and the United States District Court for the Western District of New York, and I represent the defendant, Stephen Reed Pattison.

The factual representations made in this Statement are based on investigations by members of my office; conversations with Stephen Reed Pattison; a review of records and other documents; a review of the Fourth Revised Presentence Investigation Report[1] (Dkt. #56, "PSR"), filed May 31, 2024, as well as the recently filed Fifth Revised PSR (Dkt. #63); conversations with experts in the field of federal corrections; and Exhibit A, the Declaration of William Andre Lee.

[1] Mr. Pattison has reviewed the contents of the PSR with counsel and filed objections in his Statement with Respect to Sentencing Factors (Dkt. 61).

INTRODUCTION

Stephen Pattison has been in custody for more than 45 months for this offense. All his time in the Bureau of Prisons ("BOP") has been served in an understaffed, maximum-security penitentiary where violence is a way of life and opportunities for rehabilitation and training are virtually non-existent. The applicable sentencing guideline range for Mr. Pattison's crime, as calculated by the probation department, is **37 to 46 months**.[2] PSR at ¶134. Mr. Pattison respectfully submits that an above-guideline sentence not only fails to promote the purposes of sentencing outlined in 18 U.S.C. §3553(a) but undermines them. This is particularly true because Mr. Pattison is not being provided with "needed educational or vocational training, medical care, or other correctional treatment in the most effective manner" (*see* §3553(a)2(D)). In fact, the circumstances of his incarceration are entirely inconsistent with this goal.

Moreover, an above-guideline sentence in the range this Court previously imposed, i.e., 96 months, let alone the maximum sentence of 120 months urged by the government, is contrary to "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." *See* §3553(a)(6). Data from the United States Sentencing Commission clearly shows that a sentence in that range is well outside the norm, even when adjusted for individuals with higher criminal history categories than Mr. Pattison's. Mr. Pattison respectfully submits that the purposes of sentencing would be better served by the imposition of a guideline sentence to be followed by the maximum period of supervision.

[2] This guideline range differs from the higher range of 46-57 months contained in the plea agreement (dkt. #24). Probation's current calculation reflects the subsequent amendments to the sentencing guidelines that eliminated so-called "status points" for most offenders, including Mr. Pattison, reducing his criminal history category from four to three. *See* PSR at ¶135; USSG at §4A1.1(e).

PROCEDURAL HISTORY

On November 8, 2021, Stephen Pattison appeared before this Court and pled guilty to the first count of the indictment, which charged him with violating 18 U.S.C. § 922(g)(1) in that he possessed a shotgun and a rifle knowing that he had previously been convicted of a felony. *See* Dkt. #24 (plea agreement). The parties stipulated that Mr. Pattison possessed these firearms between October 24, 2020, and November 12, 2020, in the home he shared with his girlfriend. *Id*. at ¶5 (a), (b). The parties further agreed that, under the Sentencing Guidelines in effect at that time, Mr. Pattison's criminal history category was IV and his total offense level was 19, resulting in a corresponding sentencing guideline range of **46 to 57 months** with a period of supervised release between one and three years. *Id.* at ¶12; PSR ¶14.

Despite the applicable sentencing guidelines, in a sentencing memorandum filed January 20, 2022, the government asked this Court to impose the *maximum sentence* of 120 months, more than double the high end of the recommended guidelines, primarily based on evidence of Mr. Pattison's history of inflammatory rhetoric and expressions of racial animus. *See* Dkt. #33. In his sentencing memorandum on behalf of Mr. Pattison, defense counsel requested a sentence within the sentencing guideline range. *See* Dkt. #37 (incorporated herein by reference). Defense counsel argued that Mr. Pattison's odious beliefs, expressed primarily through hyperbolic social media posts, were not indicative of any actual intent to use the rifle and shotgun located inside his home (the substantive crime for which he was to be sentenced) in an aggressive or offensive manner. *Id.* at 4-6. Indeed, Mr. Pattison had no history of using these or any other firearms to threaten or harm anyone else. *Id.* Defense counsel also accurately predicted that while serving a lengthy prison sentence Mr. Pattison would necessarily align himself with other, like-minded prisoners and become even more hardened and "institutionalized." *Id*. at 6. Thus, rather than an

extended term in a penitentiary, defense counsel urged that close supervision would better serve the purposes of sentencing. *Id.* at 6-7.

Mr. Pattison appeared before this Court for his initial sentencing hearing on May 23, 2022. At that time the Court determined the guideline range calculated by the parties and the department of probation to be accurate, i.e., that Mr. Pattison's guideline range at that time was 46 to 57 months. *See* Dkt. #41 (Statement of Reasons). The Court, however, imposed a significantly above-guideline sentence of 96 months, only two years below the statutory maximum sentence of 10 years. First, the Court found that Mr. Pattison's criminal history category of IV "significantly under-represented the defendant's prior conduct" and applied a two-level upward departure, to criminal history category VI, under USSG §4A1.3 *Id*. at 2. Next, the Court applied a two-level upward variance in offense level, from 19 to 21 under 18 USC §3553(a) due, in part, to the "general aggravating" factor that "[d]efendant obtained firearms which he threatened to use to commit racially motivated crimes of violence." *Id.* at 3. Using those calculations, the Court reached a guideline range of 77 to 96 months and imposed the highest term within that range.

In response to Mr. Pattison's appeal, the Second Circuit Court of Appeals issued a mandate on March 12, 2024 (dkt. #53), based on a Summary Order filed January 18, 2024 (Case 22-1195, Doc. 70-1), vacating and remanding the judgment imposed by this Court for failure to provide the parties with reasonable notice that it was contemplating a departure from the applicable sentencing range. *See* Fed. R. Crim. P. 32(h). On February 22, 2024, the Court filed an Order providing notice that it was contemplating a departure from the Sentencing Guidelines under Guideline §4A1.3, "that Pattison's criminal history underrepresents the seriousness of his

prior record and especially the likelihood that he will offend again." Dkt. 52. A sentencing hearing is scheduled for September 5, 2024.

GENERAL SENTENCING AUTHORITY

Under 18 USC § 3553(a), federal sentencing courts must impose a sentence that is *sufficient, but not greater than necessary*, to meet the purposes of sentencing.[3] This includes the nature and circumstances of the offense and the history and characteristics of the defendant, the need to avoid sentencing disparities between defendants with comparable criminal records who have been convicted of similar crimes, and the Guidelines themselves. *See United States v. Dorvee*, 616 F.3d 174, 183 (2d Cir. 2010) (quoting 18 USC § 3553(a)(1)-(6)).

The "sufficient, but not greater than necessary" language of §3553 is commonly referred to as the "parsimony clause." *See United States v. Williams*, 475 F.3d 468, 476 (2d Cir. 2007), *cert. denied*, 552 U.S. 1105 (2008). When imposing sentence, the district court must consider the factors mentioned in §3553(a), including the requirements of the parsimony clause. *Id.* Simply stated, if the district court concludes that either of two sentences would properly serve the statutory purposes of §3553(a), application of the parsimony clause compels imposition of the lesser sentence. *See United States v. Ministro-Tapia*, 470 F.3d 137, 142 (2d Cir. 2006).

[3]The purposes of sentencing are identified as:

The need for the sentence imposed –

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 USC § 3553(a) (2).

The sentencing court must also consider the advisory Sentencing Guidelines. *United States v. Booker*, 543 U.S. 220, 245-246 (2005). However, "[e]ven where a district court has properly calculated the Guidelines, it may not presume that a Guidelines sentence is reasonable for any particular defendant, and accordingly, must conduct its own independent review of the §3553(a) sentencing factors." *United States v. Dorvee*, 616 F.3d at 182 (citing *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008), *cert. denied* 129 S. Ct. 2735 (2009)).

The importance of individualized sentencing is a central theme in federal criminal law:

> It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, and sometimes magnify, the crime and the punishment to ensue.

Koon v. United States, 518 U.S. 81, 113 (1996).

In *Kimbrough v. United States*, the Supreme Court reminded the district courts that:

> The sentencing judge . . . has greater familiarity with ... the individual case and the individual defendant before him than the Commission or the appeals court…. He is therefore in a superior position to find facts and judge their import under § [3553(a)] in each particular case.

Kimbrough v. United States, 552 U.S. 85, 108 (2007) (internal quotations omitted).

In this case, Mr. Pattison respectfully submits that an above-guideline sentence would be greater than necessary to meet the purposes of sentencing under §3553(a). Rather, a guideline sentence[4] to be followed by three years of supervision is appropriate and sufficient under these unique circumstances.

[4] Mr. Pattison has already served more than 45 months in custody; 46 months is the high end of the currently applicable guideline and the low end of the guideline applicable at his initial sentencing hearing.

THE PURPOSES OF SENTENCING AS APPLIED TO THIS CASE

The need to avoid sentencing disparities between defendants with comparable criminal records who have been convicted of similar crimes under §3553(a)(6)

With an offense level of 19 and a category III criminal history, the Sentencing Guidelines recommend that the Court imprison Mr. Pattison for 37 to 46 months. Of course, the Sentencing Guidelines are not mandatory, and while fashioning an appropriate sentence, the Court must consider the factors set forth in 18 U.S.C. § 3553(a). Section 3553(a)(6) specifically requires sentencing judges to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." A sentence of 96 months, as previously imposed by this Court, creates a stark disparity with other defendants sentenced nationwide with comparable criminal records for similar crimes. *Even assuming* that Mr. Pattison's criminal history category underrepresents the seriousness of his prior record, as this Court previously found and Mr. Pattison disputes, a sentence of 96 months is well outside the norm for sentences imposed on defendants with higher criminal history categories. Re-imposing a sentence of that length creates exactly the type of unwarranted disparity the law urges Courts to consider and avoid.

A. Data from the Judiciary Sentencing Information Platform

The United States Sentencing Commission developed the Judiciary Sentencing Information platform, otherwise known as "JSIN," to provide judges with "quick and easy online access to sentencing data for similarly situated defendants." U.S. Sent'g Comm'n, *Judiciary Sentencing Information*, https://www.ussc.gov/guidelines/judiciary-sentencing-information (last visited July 22, 2024). More specifically, it "provides cumulative data based on [the most recent] five [full fiscal] years of sentencing data for offenders sentenced under the same primary guideline, and with the same Final Offense Level and Criminal History Category selected." *Id.*

For example, according to data provided on JSIN, after excluding defendants who received a §5K1.1 departure or a non-carceral sentence, individuals sentenced with a primary guideline of §2K2.1, an offense level of 19, and a criminal history category of III received an average of 35 months of imprisonment, with a median sentence of 37 months imprisonment. U.S. Sent'g Comm'n, *Judiciary Sentencing Information (JSIN)*, https://jsin.ussc.gov/analytics/saw.dll?Dashboard&PortalPath=%2Fshared%2FJSIN%2F_portal%2FJSIN&page=Sentencing%20Table (last visited July 22, 2024). Substituting a criminal history category of IV, which was the case at Mr. Pattison's earlier sentencing, with an offense level of 19, defendants sentenced under this guideline received an average of 44 months of imprisonment, with a median sentence of 46 months. *Id.*

At the previous sentencing hearing, the Court increased – by way of departure and/or variance – both Mr. Pattison's offense level and the applicable criminal history category, from 19 to 21 and from IV to VI, respectively. After enhancing the guidelines in both directions, the Court then sentenced Mr. Pattison to 96 months, the top of the enhanced guideline range.

In anticipation of the resentencing, the Court provided notice that it is again contemplating an upward departure under §4A1.3 of the sentencing guidelines on the grounds that "Pattison's criminal history underrepresents the seriousness of his prior record and especially the likelihood that he will offend again." (Dkt. #52). Considering this possibility, Mr. Pattison identified the sentencing data for defendants facing the same §2K2.1 guideline but with an offense level of 21 and a criminal history category of VI. Again, excluding for substantial assistance under §5K1.1 and non-imprisonment sentences, JSIN reveals that during the last five fiscal years, these individuals were sentenced on average to 71 months imprisonment, with a median length of 77 months imprisonment. U.S. Sent'g Comm'n, *Judiciary Sentencing*

Information (JSIN), https://jsin.ussc.gov/analytics/saw.dll?Dashboard&PortalPath=%2Fshared%2FJSIN%2F_portal%2FJSIN&page=Sentencing%20Table (last visited July 22, 2024). For reference, the Sentencing Guidelines recommend sentencing an individual with an offense level of 21 and criminal history category of VI to 77 to 96 months incarceration; this data, therefore, reveals that in practice, courts on average sentence these defendants to *less* than the guideline range minimum.

In other words, this Court's previous 96-month sentence is *52 months* above the national average of sentences imposed for the same offense level and the criminal history category (IV) applicable to Mr. Pattison at the time of the initial sentencing. It is *61 months* above the national average for the same offense level and the currently applicable criminal history category of III. And, finally, it is even higher (by 25 months) than the national average of sentences imposed for defendants with the *enhanced* offense level and criminal history category this Court applied to Mr. Pattison.

B. Data from the Interactive Data Analyzer Tool

The United States Sentencing Commission has published another tool known as the Interactive Data Analyzer, or "IDA," which can produce "more granular data" by way of filtering by fiscal year, jurisdiction, offender characteristics, and other variables. U.S. Sent'g Comm'n, Navigating IDA, https://www.ussc.gov/research/navigating-ida#:~:text=The%20Interactive%20Data%20Analyzer%20%28IDA%29%20is%20an%20online,information%20collected%2C%20received%2C%20and%20edited%20by%20the%20Commission (last visited July 22, 2024).

The data shows that nationally, over the past five fiscal years, 71.2% of defendants sentenced under sentencing guideline §2K2.1 received less than five years imprisonment. U.S.

Sent'g Comm'n, Interactive Data Analyzer, https://ida.ussc.gov/analytics/saw.dll?Dashboard&PortalPath=%2Fshared%2FIDA%2F_portal%2FIDA%20Dashboards (last visited July 22, 2024). More specifically, the average sentence was 48 months imprisonment while the median length was 37 months. *Id.* In the Western District of New York, 72.9% of defendants sentenced under §2K2.1 received less than five years imprisonment, and the average and median sentences imposed were 44 and 33 months, respectively.

When filtered for defendants with a criminal history category of III, the data reveals that 84.6% of national defendants sentenced under this guideline received less than five years of imprisonment, with an average sentence of 36 months and a median sentence of 30 months. *Id.* Of the defendants with a criminal history category IV, 71.9% of them received less than five years imprisonment, with an average sentence of 50 months and a median sentence of 42 months. *Id.* In the Western District of New York, 62% of defendants with a category III criminal history sentenced under §2K2.1 received less than five years, and the average and median sentences were 54 and 46 months, respectively. Further, 72.7% of defendants sentenced in this District with a primary guideline of §2K2.1 and category IV criminal history received less than five years, with an average sentence length of 46 months and a median sentence of 41 months. *Id.*

Even filtering for a criminal history category of VI, the national average sentence imposed under guideline §2K2.1 was 79 months incarceration, and the median sentence was 63 months, with 42.4% of defendants receiving less than five years of imprisonment. *Id.* Filtering by jurisdiction, the data reveals that defendants in the Western District of New York receive *lower* sentences than the national average. The average term of imprisonment for individuals sentenced

with a primary §2K2.1 offense and a criminal history of VI was 73 months and the median term of imprisonment was 54 months. And 53.6% of these defendants in the Western District were sentenced to less than five years. *Id.*

Thus, by any measurement, even when applying data corresponding to *three levels above* Stephen Pattison's actual criminal history category, the statutory maximum sentence of 120 months requested by the government (*see* dkt. 66 at 2) far exceeds the national average for sentences imposed under this guideline. When compared to the data for Mr. Pattison's *actual* criminal history category of III, the government's request is, at the low end, *three times* the national average for sentences imposed under §2K2.1.

The IDA also provides data on variances and departures. In fiscal year 2022, the year Mr. Pattison was originally sentenced, only .7% of defendants sentenced nationally under the §2K2.1 guideline faced an upward departure and only 4.3% received an above guideline range variance. *Id.* Filtered by criminal history category, only .6% and 4.4% of defendants in category III received an upward departure and variance, respectively, and only .5% and 4.3% of defendants with a criminal history category of IV received an upward departure and variance, respectively. *Id.* The data is similar for defendants with a category VI criminal history – only .7% received an upward departure and 4.1% received an above range variance. *Id.* Of all 56 defendants sentenced in the Western District of New York in fiscal year 2022 with a primary §2K2.1 guideline offense, *only 2* (or 3.57%) received an upward departure, and 6 received an upward variance.

Here, at Mr. Pattison's previous sentencing hearing, this Court imposed both a two-level upward departure of his then applicable criminal history category *and* a three-level upward variance in his offense level. (*See* Dkt. 41 (Statement of Reasons)). Imposing both enhancements

is, as documented above, more than unusual; it is exceedingly rare and well outside the norm for sentences imposed both nationwide and in this District.

C. The Sentencing Resource Counsel's Excel Worksheet

The United States Sentencing Commission annually distributes even more detailed data, known as "Individual Datafiles." The Individual Datafiles are large, contain many variables, and are released in a format that requires the use of specialized statistical software. The Sentencing Resource Counsel (a project of the Federal Public and Community Defenders) compiles this data and other relevant variables in a more usable Microsoft Excel worksheet, which is made available for the defender community.

This Excel worksheet can filter for cases in which the individual received a non-guideline sentence for a §2K2.1 offense, where one of the first eight reasons cited for the departure was death (under §5K2.1) or physical injury (under §5K2.2). There were eleven §2K2.1 cases between fiscal years 2018 and 2022 in which the sentencing court cited §5K2.1 as a reason for departing from the recommended guideline range. The average sentence for these defendants - *defendants whose relevant conduct involved a death* - was 94.8 months, with a median sentence of 96 months. Relatedly, there were thirteen cases in which the sentencing court cited §5K2.2 (physical injury) as a reason for departing from the recommended guideline range. The average sentence imposed in these cases was 77.9 months and the median sentence length was 60 months.

In other words, this data illustrates that even when the relevant conduct included *death or physical injury*, neither of which remotely apply to Mr. Pattison's case, the average sentence imposed under this guideline was less than the sentence requested by the government, as well as the sentence previously imposed.

D. As the Second Circuit recently cautioned, district courts must explain why the imposed sentence, "rather than a lower sentence, [i]s necessary to avoid unwarranted sentencing disparities."

The Second Circuit recently held in *United States v. Stewart*, No. 23-6330-cr, slip op. 3 (2d Cir. July 24, 2024), that a sentencing court plainly erred when it failed to "provide an explanation as to why it concluded that the [imposed] sentence . . ., rather than a lower sentence, was necessary to avoid unwarranted sentencing disparities." Although the sentencing court was operating under §2G2.2, the reasoning of the Second Circuit remains relevant here.

The Circuit explained that although the district court analyzed the other Section 3553(a) factors, its analysis of Section 3553(a)(6) was inadequate, particularly in light of nationwide sentencing data demonstrating that the imposed sentence exceeded the national average for similarly situated offenders by five years. *Id.* at 6. As the data above demonstrates, even if the Court again chooses to upwardly depart to a criminal history category of VI, and to apply an above guideline range variance – which Mr. Pattison disputes is appropriate – 96 months, not to mention the maximum sentence of 120 months the government seeks, is years above the national average.

Consistent with this data, Mr. Pattison respectfully requests that the Court impose a sentence within the sentencing guidelines applicable to his actual criminal history category and offense level. If the Court again chooses to upwardly depart from this range, Mr. Pattison submits that a sentence significantly lower than 96 months is necessary to avoid unwarranted sentencing disparities under §3553(a)(6).

The need for the sentence imposed to provide the defendant with the needed educational or vocational training, medical care, or other correctional treatment in the most effective manner under 18 USC § 3553(a)(2)(D).

This Court must, of course, impose a sentence that is *sufficient, but not greater than necessary*, to meet the purposes of sentencing. *See* 18 USC § 3553(a). The purposes of sentencing explicitly include the need for the sentence imposed to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Despite his best efforts, none of that will happen if Mr. Pattison is returned to prison. On the contrary, his incarceration in a maximum-security penitentiary prevents him from pursuing these goals, which could be supported and supervised in the community by a probation officer and the Court.

The grim reality of life in the BOP's maximum-security prisons is described in the attached declaration from William Andrew Lee, Sr., a career law-enforcement officer and 26-year veteran of the Bureau of Prisons. *See* Exhibit A. Mr. Lee's service included positions as a Core Section Chief; Correctional Services Examiner; Captain; and Special Investigative Agent ("SIA"). *Id*. at ¶1. Mr. Lee explains that, based on his security level, Mr. Pattison was "designated" to serve his sentence in a United States Penitentiary, or "USP," first at Allenwood, then at McCreary. *Id*. at ¶15. He describes these institutions as "teeming with violence." *Id*. at ¶16. This characterization is essentially confirmed by the Department of Justice Inspector General's Report from February 2024 and BOP Director Colette Peter's testimony before the House Judiciary Subcommittee on Crime and Federal Government Surveillance this past July. *Id.* at ¶¶16-17.

In his declaration, Mr. Lee explains that the is plagued by "severe and ongoing staffing shortages" which have only worsened in recent years. He describes (as did Director Peters) the

overuse of "augmentation," the practice of reassigning employees to understaffed positions without the requisite training in response to the staffing shortages. *Id*. at ¶18. As he observed:

> "The lack of staff is pervasive and affects all levels and all departments within the BOP, resulting in a cascade of negative consequences, including the rise of preventable inmate deaths by suicide and homicide. Unfortunately, Director Peters' goal of using these stop-gap measures to keep everyone safe and avoid lockdowns is more aspirational than realistic."
> *Id*. at ¶19.

This lack of adequate staff has a direct affect on both the safety and security of the facility (for both staff and inmates), and the opportunities inmates are provided to participate in vocational, educational, or substance abuse treatment programs. *Id*. at ¶¶20-22. As Mr. Lee explains, in addition to "augmentation," prison staff frequently resort to "lock downs" as a response to understaffing. *Id*. at ¶22 (noting the BOP's recognition that understaffing results in the inmates "missing educational, programming, and work opportunities.") Lock downs typically require inmates to remain in their cells for 23 to 24 hours a day, and forego basic "privileges" including recreation, family visits, and commissary purchases. *Id*. Even sufficient food is not a given. *Id*. at ¶24 (noting Mr. Pattison's unplanned loss of 50 pounds in 9 months at McCreary).

Perhaps most significantly in this context, all programming ceases. *Id*. ¶22. While Mr. Pattison was housed at USP McCreary (where he is likely to return if sentenced to additional imprisonment), the facility was "locked down" far more often than not. As a result, though he registered for every program available to him, and managed to complete some of them, many only exist in theory as he remains on the waiting list, including the opportunity to attain his GED. *Id.* at ¶¶23, 44-47. Nonetheless, Mr. Lee noted that many inmates in Mr. Pattison's position don't even attempt to better themselves; at least Mr. Pattison tried. *Id*. at ¶¶44-45. As set forth in the PSR (dkt. #63 at ¶22) and in Mr. Lee's declaration, despite the obstacles, Mr.

Pattison managed to obtain certificates for his participation in some Adult Education Classes. Exhibit A at ¶46.

Unfortunately, the reality of life in a severely understaffed and perpetually locked down penitentiary makes it virtually impossible for an extended period of imprisonment to satisfy the need for any inmate, including Mr. Pattison, to receive the education, vocational, and/or treatment opportunities contemplated under §3553(a)(2)(D).

The need for the sentence imposed to afford adequate deterrence to criminal conduct under 18 USC § 3553(a)(2)(B).

Nor would returning Mr. Pattison to a maximum-security penitentiary serve to deter him from future criminal conduct, at least any more than the 45 months he has already served. That's because, as set forth above, these facilities are "teeming with violence" and fail to provide the opportunities for rehabilitation required to encourage lawful conduct.

In an interview on the television program "60-minutes" on January 28, 2024, BOP Director Colette Peters was asked about the risk of recidivism, even for the female inmates featured who were engaged in positive programming that has been entirely unavailable to Mr. Pattison. She responded, "You know, I think we have a lot of work to do to dial down that recidivism rate. *We have to send fewer people to prison for shorter periods of time. And then when they're here do things like this*."[5] Sentencing Stephen Pattison to a lengthy prison term, well above the applicable sentencing guidelines, does exactly the opposite: it condemns him to spend more time in a dangerous and violent penitentiary with few, if any, opportunities for treatment, education, or vocational training.

[5] https://www.cbsnews.com/news/bureau-of-prisons-understaffing-abuse-disrepair-60-minutes-transcript/, last accessed 08/29/24.

STEPHEN PATTISON'S HISTORY AND CHARACTERISTICS

Mr. Pattison's criminal history category does not substantially underrepresent the seriousness of his criminal history or likelihood that he will commit other crimes.

The Sentencing Guidelines include a policy statement regarding upward departures "based on inadequacy of criminal history category." *See* USSG §4A1.3. Specifically, under §4A1.3(a)(1), an upward departure may be warranted where "reliable information indicates that the defendant's criminal history category *substantially* underrepresents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes…." (*emphasis added*). The Court relied on this section at Mr. Pattison's original sentencing hearing, noting that "The Court believes it must follow the policy statement under 4A1.3." Dkt. #45 (transcript of sentencing hearing held May 23, 2022) at p. 36.

The Guidelines Policy Statement sets forth specific types of information that may form the basis of an upward departure under this section and explicitly prohibits consideration of a defendant's prior arrest record. *See* §4A1.3(a)(2) (A-E) & (3). These categories of information include: prior sentences not used in computing the criminal history category, e.g., sentences for foreign and tribal convictions; prior sentences of substantially more than one year imposed as a result of independent crimes committed on different occasions; prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order; whether the defendant was pending trial or sentencing on another charge at the time of the instant offense; and prior similar adult criminal conduct not resulting in a criminal conviction. *Id.* Notably, *none of these categories apply to Mr. Pattison's criminal history.*

The Commentary to this section of the Sentencing Guidelines provides examples to illustrate these categories, including the following: (i) a previous foreign sentence for a serious

offense; (ii) receipt of a prior consolidated sentence of ten years for a series of serious assaults; (iii) a similar instance of large scale fraudulent misconduct established by an adjudication in a securities and exchange commission enforcement proceeding; and (iv) commission of the instant offense while on bail or pretrial release for another serious offense. §4A1.3, comment. (n.2(A)). Again, these examples only confirm that the specific categories of information contemplated by the Sentencing Guidelines as a basis for an upward departure under this section *do not* apply to Mr. Pattison.

The Court, in explaining its basis for a two-level upward departure, raising Mr. Pattison's criminal history category from IV to VI,[6] discussed several of Mr. Pattison's previous criminal convictions. *See* Dkt. #45 at 30 – 38. The Fifth Revised Presentence Report (dkt. #63, filed 08/29/24) provides additional information about some of those previous offenses that is relevant for the Court's consideration and was not available at the time the original sentence was imposed.

First, the Court addressed Mr. Pattison's prior conviction for driving while intoxicated in 2012, when Mr. Pattison was 23 years old. *Id.* at 30-31, 34. After noting that this offense was not one that involved the use of violence or racial animus, the Court highlighted the allegation that Mr. Pattison "led [the police] on a high speed 80 mile an hour chase" as evidence that this offense showed "a lack of respect for the law and putting others in danger." Dkt. 45 at 30-31. The Court reiterated this impression later in the proceeding, noting that an "80 mile an hour flight from the officers on a DWI clearly doesn't demonstrate much respect for the law." *Id*. at 34. The most recent PSR, however, provides some additional context that challenges this interpretation. As noted in the PSR, police reports regarding that incident reveal that the "high-

[6] As noted above, Mr. Pattison's criminal history category was lowered from IV to III as a result of subsequent amendments to the Sentencing Guidelines that eliminated "status points."

speed pursuit at speeds in excess of 80 mph" lasted only a short distance (approximately half a mile), after which Mr. Pattison pulled over on his own. Dkt. 63 at ¶118. Police noted that he appeared intoxicated and confused, and when asked why he didn't pull over said he didn't see the police behind him until he stopped at a light. *Id*. Finally, police reports explicitly noted that "Mr. Pattison was cooperative, acknowledged that he was speeding and drinking, and was issued an appearance ticket." *Id*. Thus, to the extent this interaction between Mr. Pattison and the police was relevant to the Court's impression that he lacked respect for the law, this interpretation appears misplaced.

Next, the Court addressed misdemeanor convictions for Menacing (as a hate crime) and Criminal Mischief that occurred in 2009 when Mr. Pattison was 19. Dkt. #45 at 31. Again, the most recent, revised PSR adds some context to this offense. The Court described the incident as one in which "a neighbor who happened to be African American complained…the music was too loud, and in addition to calling him a nigger, you and others broke his lawn furniture, throw it at the house." *Id*. Again, some context is relevant, though in no way intended to condone the conduct that resulted in these convictions.

As Mr. Pattison told police at the time, he was drinking at his friend's house (the co-defendant, Christopher Stringer) when the neighbor knocked on the door to complain about the music.[7] After knocking twice and being rebuffed by Mr. Stringer, the neighbor left in his truck. A short time later the neighbor returned to the apartment complex with another man and both approached Mr. Stringer's door while Mr. Pattison was standing outside smoking a cigarette. At that point, Mr. Stringer charged the two men and a fight ensued. After one of the men struck

[7] The PSR notes that this version of events was supplied through defense counsel "in connection with this federal presentence investigation." Dkt. 63 at ¶117. Though highlighted by counsel for inclusion in the PSR, *see* Dkt. #61 at 6, all of this information was gleaned from law enforcement reports regarding this incident that were obtained by federal probation and reviewed by defense counsel at the probation office.

Stringer with a hammer and ran into his apartment, Mr. Pattison kicked the door and Stringer threw patio furniture. Police reports note that a patio chair and table were damaged, as was a bicycle. Though police were called to the scene that night, no arrests were made until nearly a month later. As noted in the PSR, an FBI agent who investigated the incident described Pattison and Stringer as "basically local knuckleheads" who were not believed to be members of any larger organization. Dkt. #63 at ¶117.

After briefly describing this incident as it was reported in the PSR available at that time, the Court went on to note that Mr. Pattison had made a poor adjustment to probation. Among other things, the Court noted allegations that Mr. Pattison had engaged in "additional conduct, in threats, engaged in a threat to kill another person…" There are no facts included in the current PSR to substantiate those allegations or enable the Court to assess their veracity, nor was probation able to answer defense counsel's inquiries about whether any criminal charges were filed. *See* Dkt. #63 at 6. Though included in the Court's discussion of Mr. Pattison's criminal history leading to the conclusion that an upward departure was appropriate, §4A1.3 (3) explicitly prohibits consideration of a defendant's prior arrest record. Surely unsupported allegations of criminal conduct that may or may not have led to an arrest should not be considered in making this determination.

The Court also noted Mr. Pattison's misdemeanor conviction for criminal mischief in 2013, when he was 24. *See* Dkt. 45 at 31-32. As noted in the PSR, though Mr. Pattison was initially charged with both criminal mischief and aggravated harassment (based on race or religion), he was convicted only of criminal mischief for pulling down the complainant's Mexican flag, causing it to rip. Dkt. 63 at ¶119. This revised PSR appropriately modifies the initial assertion that Mr. Pattison yelled racial epithets to reflect that he was *alleged* to have done

so (but not convicted of that charge). *Id.* Again, though unquestionably offensive, unproven allegations are not the type of "information" the Sentencing Guideline Policy Statement includes in the categories appropriately considered under §4A1.3.

In its recitation of Mr. Pattison's criminal history, the Court notes his prior felony conviction for Domestic Assault in the 2nd Degree from Boone County, Missouri, for which he was sentenced to 3 years imprisonment. Dkt. #45 at 32. Though undoubtedly serious, the full magnitude of this offense was accounted for with the addition of the maximum 3 points to the calculation of Mr. Pattison's criminal history category; it is not a basis to increase his criminal history category under §4A1.3.

Finally, the Court described an incident in the Town of Tonawanda in 2018 that resulted in a misdemeanor conviction for Menacing. Dkt. #45 at 32-33. Again, while not offered as exculpatory information or to condone the conduct, additional context is appropriate. Though unclear in the PSR (Dkt. #63 at ¶121), police records reflect that the victim, T.B., and his wife, L.B., were friends of Mr. Pattison's who were "drinking heavily" with him before the incident occurred. They all returned to T.B.'s house where, according to police reports, they calmed Mr. Pattison down and he dropped the knife he was holding. This incident was appropriately accounted for in the criminal history calculation. *Id.* It is not behavior on which to base an upward departure under the Guidelines.

Mr. Pattison's conduct while incarcerated.

The government has urged this Court to consider an incident at USP McCreary on October 20, 2023, in which Mr. Pattison and another inmate attacked a third inmate, resulting in a laceration to that inmate's face. *See* Dkt. #66 at 5-7. Though undoubtedly disturbing, this

conduct, too, requires additional context. *See* Exhibit A, Declaration of William Andre Lee, at ¶¶25-31; 34-40.

This incident cannot be fully understood without an appreciation for the gang or "car" culture within the BOP, particularly in the maximum-security penitentiaries. Virtually all inmates in these facilities face tremendous pressure, under threat of violence, to align themselves with a prison "car," or "affiliation group" typically delineated by geography, crime, race, or other demographics. *Id*. at ¶¶24-25. These groups combine resources for survival, insulating and protecting their members; failing to align oneself with a "car" leaves inmates vulnerable to attack, in varying degrees of severity, by other inmates. *Id*. at ¶¶26-28. As with other types of organizations, "cars" have hierarchical structures in which "shot callers" are at the top, followed by "enforcers, runners, and mules." *Id.* at ¶27. Members demonstrate allegiance to the group by serving its interests as directed by the "shot caller," frequently through violence. Failing or refusing these directives risks severe, violent consequences. *Id.*

As Lee explains, "Some new inmates receive an 'invitation' to join a specific gang or 'car,' which, practically speaking, cannot be safely declined." *Id*. at ¶25. Mr. Pattison's "previous affiliations with race-based groups outside prison virtually required him to align himself with the 'white car' (consisting of other white, male offenders)." *Id*. at ¶28. This is the context in which the assault by two inmates (Pattison and Stallings) on a third inmate (Staley) occurred.

As reflected in the BOP reports of this incident, both inmates involved in this assault, Pattison and Stallings, questioned separately, provided the same motive: they were directed to "put in work" by the other "guys in the unit." *Id*. at ¶38. As explained in Mr. Lee's declaration, "work" is a term commonly used (in the streets and in prison) to describe an assignment issued to members of a group (or "car") by the individual who "calls the shots." *Id.* As he explained:

> Unfortunately, these types of incidents are common at the higher security prisons within the BOP. This is not an excuse for Mr. Pattison's behavior, which should never be tolerated or condoned. However, his explanation that it was time to 'put in the work' because the victim's conduct 'doesn't go over well with the guys in the unit' suggest he was directed to commit the assault by members of his 'car' in positions of greater authority than him. In these situations, Mr. Pattison's failure to follow these directions would almost certainly have subjected him to discipline, typically in the form of violence.
> *Id*. at ¶39.

Though it is certainly no consolation to Mr. Staley, who was injured, Pattison and Stallings "did the work" as instructed by the "shot caller," then immediately complied with staff directions to drop their weapons and get on the ground; no staff members were injured. *Id*. at ¶37. Perhaps in a grim reflection of how frequently these types of incidents occur and the violence that permeates the USPs, the injuries to Staley were characterized by BOP officials as "moderate." *Id.* Mr. Pattison cooperated with the disciplinary process (*id*. at ¶38) and was ultimately sanctioned for "Possessing a Dangerous Weapon" and "Assaulting Without Serious Injury." Dkt. 63 (PSR) at ¶20. These sanctions included loss of "good conduct" time, loss of email privileges, a fine, and extended periods in "disciplinary segregation" (the "SHU" or solitary confinement). *See* Dkt. 63 at ¶20; *see also* Exhibit A at ¶¶41-42 (noting the adverse conditions and harmful effects of prolonged stays in the SHU). As confirmed by the government, the local United States Attorney's Office investigated the incident and decided *not* to pursue criminal charges.

This Court will understandably be disturbed by Mr. Pattison's conduct in prison and may even consider it proof of the "likelihood that he will offend again." But the Court must also consider the violent and dangerous environment in which this conduct occurred, an environment in which his refusal to follow directions would almost certainly have resulted in Mr. Pattison

becoming the victim of an assault, rather than the perpetrator; an environment in which alternatives to violence, through education or programming – are few and far between.

THE NATURE AND CIRCUMSTANCES OF THE OFFENSE

Relative to the wide range of crimes this Court has seen over many years, Mr. Pattison's offense, while serious, is far from the most violent or severe. Understandably, the Court observed that this crime should be viewed in the context of Mr. Pattison's other conduct and threatening statements. And there is no paucity of aggressive, over-the-top, racist rhetoric noted in the PSR for the Court to consider. There are other statements, however, that reflect Mr. Pattison's sincere concern, whether justified or not, for the safety of his family which, at least in part, motivated him to maintain the rifle and shotgun in the home he shared with Rochelle Pfenninger and their teenaged son.

For example, Pattison repeatedly explained, in recorded jail calls to Pfenninger, that she should keep the weapons for protection while he's in jail. *See*, *e.g.*, Dkt. #63 (PSR) at ¶31 ("do not give any of that shit away or back or any of that. You keep that…just put it in the closet where the baseball bat is… If Crystal wants hers back, that's fine, but I want you to have the other one…I want you to have those there because if I'm stuck here, I would feel better if they were there."); ¶33 ("Don't let anybody take—I mean, if Cystal wants to come get hers, cool, but if—just tell Bam that you need that one.") Notably, despite offensive nonsense conveyed in messages with apparently like-minded friends that he was preparing for "RAHOWA" (a "racial holy war") "out in the country" (*id*. at ¶59), there were no other weapons found in Pattison's home that would substantiate this outlandish claim.

Pattison's concern that members of other, antagonistic groups had publicized his name and photograph in an effort to encourage others to retaliate against him were also sincere. *See*,

e.g., Dkt. #63 (PSR) at ¶54 (noting that the Facebook group "585 Hatewatch" posted a picture and identified Pattison as a "neo-Nazi skinhead who showed up in Caledonia, NY . . .."). Moreover, several Facebook posts contained in discovery provided by the government, including from groups like "Western New York Anti-Fascist Action," "SAVE ROCHESTER – Black Lives Matter," as well as "585 Hatewatch," included photographs of Pattison, identifying him by name. Moreover, as noted in the PSR, Donald O'Shier, who was convicted of providing Pattison with the shotgun, echoed this concern, telling Pattison he wanted him to have the shotgun because he cared about him and Pfenninger a lot: "I love you guys and I don't want to see you guys get hurt." He adds, "I was really worried about you guys and I was tearing up too because I got real nervous for y'all." Dkt. #63 at ¶67. And, despite the Court's observation that Pattison's home in Hilton was "a long way from Rochester" (dkt. #45 at 24), Black Lives Matter rallies and protests were held in Hilton the summer before Pattison's arrest. *See*, *e.g.*, https://westsidenewsny.com/news/2020-06-22/black-lives-matter-rally-and-march-held-in-hilton/, accessed August 29, 2024; https://www.rochesterfirst.com/news/local-news/protestors-gathers-at-sheriff-baxters-home-demanding-answers-after-incident-during-blm-protest/, accessed August 29, 2024.

None of this justifies either Mr. Pattison's possession of the rifle and shotgun, or his violent, threatening, and racist rhetoric. There is, however, a context in which he was sincerely concerned that his aggressive opposition to the sometimes-violent demonstrations that occurred in the summer of 2020 had put himself and his family in danger.

CONCLUSION

Stephen Pattison respectfully urges this Court to impose a sentence within the applicable sentencing guideline range of 37-46 months to be followed by a three-year period of post-release

supervision during which he will be closely supervised and required to participate in chemical dependency treatment. As the Court warned before imposing the conditions of supervision at Mr. Pattison's initial sentencing, "If you show the same disregard for these conditions, you're going to be back in front of me or some other judge and you could continue your stay in jail and your children will be much, much older." Dkt. #45 at 39. To ensure Mr. Pattison's compliance with the terms of his supervision and his successful transition to the community, this Court may also impose an initial period of home confinement at the outset of Mr. Pattison's term of supervised release.

Dated: August 29, 2024

Respectfully submitted,

/s/ *Sonya A. Zoghlin*
Assistant Federal Public Defender
Federal Public Defender's Office
28 East Main Street, Suite 400
Rochester, New York 14614
(585) 263-6201
Sonya_Zoghlin@fd.org

TO: Brett A. Harvey, AUSA
Jennifer L. Lotz, USPO

Exhibit A

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

DOCKET NO: 21-CR-6097

v.

STEPHEN REED PATTISON,
Defendant.

DECLARATION OF WILLIAM ANDRE' LEE SR.

I, William Andre' Lee Sr., declare under penalty of perjury that the foregoing is true and correct:

BACKGROUND OF DECLARANT

1. I am currently an independent prison consultant. I was employed by the Department of Justice, Federal Bureau of Prisons (BOP or FBOP) from July 1995 through March 2022. With over 26 years of experience, I have served in many capacities. Following my retirement in April 2022, I began to work as a corrections consultant in matters related to federal confinement. My previous positions with the BOP included Core Section Chief, Program Review Division, Program Review Branch; Correctional Services Examiner, Program Review Division, Program Review Branch; Captain, Federal Correctional Institution Fairton; and Special Investigative Agent (SIA), Metropolitan Correctional Center Chicago.

2. These assignments provided me with broad experience and expertise in correctional security, staff and inmate safety, and intelligence, from the moment an inmate is designated throughout the completion of his sentence. In my capacity as Captain, I was

responsible for overall security operations; the Special Investigative Supervisors Office (SIS); gang validation; Posted Picture File assignments (of individuals who posed serious security threats); the Inmate Discipline Program; Emergency Preparedness; the Use of Force Continuum; and other forms of training. Additionally, I provided oversight of all security procedures within and outside the prison.

3. One of my responsibilities was reviewing inmates' files prior to their arrival at the institution. Many of these inmates posed serious security threats to the safety and security of the institution. These threats were observed in various categories: high profile; broad publicity; compromising staff; murder; assaults against staff; former law enforcement; extensive military training; international/domestic terrorist; and leadership within a Racketeer Influenced and Corrupt Organizations Act (RICO) offense.

4. Throughout my day-to-day functions, I responded to various inmate grievances pertaining to correctional services programs, including appeals related to the Inmate Discipline policy; Inmate Personal Property; confiscation of unauthorized property or contraband; and validation of gang members and associates. Lastly, I responded to inmates housed in Restrictive Housing, both administrative and disciplinary segregation.

5. Throughout my career, I was required to assess an inmate's risk of escape, security violations, or disturbing the orderly running of the facility, formally and informally. This risk assessment was especially critical when an inmate was being considered for a lesser/greater security prison transfer or approval to participate in community programs.

6. Since my retirement from the BOP, I have maintained contact with many former colleagues. In April 2022, I began working as an independent prison consultant. I have

kept abreast of new policies; DOJ Office of Inspector General audits; statements and testimony from the Director of the Federal Bureau of Prisons; and laws that directly impact the BOP and other prisons within the United States. I am currently working under contract with Baird Perdue & Associates, Prison Consultants LLC.

7. As an SIA, some of my duties were similar to what I was asked to do in this case. When inmates were scheduled for sentence reductions or a request was received from the United States Attorney's Office regarding an inmate's adjustment, gang affiliation, or violation of rules and the Code of Federal Regulations (CFR), I was tasked with preparing an intelligence synopsis for the United States Attorney's Office. These synopses could be used for hearings at which I or a member of my staff was asked to provide expert testimony regarding various policies and procedures used by the BOP. These reports provided the Court with information regarding an inmate's overall adjustment while serving his or her sentence.

8. While employed with the BOP as an SIA and Captain, I was qualified as an expert witness in several federal courts regarding prison management, security practices, intelligence, and gang validation. A copy of my resume, which includes my relevant work experience, is attached to this report as Exhibit A.

9. This document is being filed in the United States District Court for the Western District of New York and has been prepared in connection with Stephen Reed Pattison's resentencing hearing. To prepare this report, I reviewed all the records made available by the BOP, as well as other documents regarding Mr. Pattison's incarceration and background.

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STATEMENT OF WORK

10. Baird Perdue & Associates, Prison Consultants LLC was contacted by Assistant Federal Public Defender Sonya Zoghlin regarding Mr. Pattison, an inmate currently confined at the Yates County Jail in Penn Yan, N.Y. Before being relocated to Yates County, Mr. Pattison was incarcerated at United States Penitentiary (USP) McCreary, in Pine Knot, Kentucky. I have been asked to review Mr. Pattison's BOP records and prepare a report that outlines his prison adjustment, his efforts to engage in educational programming, and the nature and consequences of gang or group affiliation within BOP penitentiaries.

11. The documents I reviewed in preparing this declaration include:

BOP Medical Records for Stephen Pattison
Fourth Revised Presentence Investigation Report (dated 05/31/24)
Inmate Profile/Quarters Assignments
Form 583 Report of Incident (BP-583) (dated 10/20/23)
Incident Report (BP-AO288) (dated 10/20/23)
Memorandum from Lt. Z. Toney re: inmate assault (dated 10/20/23)
Memorandum from Officer A. Coffey re: "1A Fight" (dated 10/20/23)
Interview of Stephen Pattison (dated 10/22/23)
Interview of Eugene Staley (dated 11/04/23)
Interview of William Stallings (dated 10/22/23)
Photo Sheets from incident of 10/20/23
Sentence Monitoring Computation Data
Inmate Disciplinary Data
Inmate Transcript
STG Assignment Memo (dated 11/30/22)
Referral of an Inmate Criminal Matter for Investigation (dated 10/23/23)
Medical Assessment, Stephen Pattison (dated 10/20/23)
Medical Assessment, Eugene Staley (dated 10/20/23)

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Medical Assessment, William Stallings (dated 10/20/23)

BACKGROUND SUMMARY

12. There are five security levels utilized by the BOP to classify federal prisons. Those security levels are minimum, low, medium, high, and administrative. Sentenced inmates are usually designated to federal prisons that are commensurate with their security levels. Pre-trial detention facilities and federal medical prisons are classified as administrative and are comprised of inmates of all security levels.

13. Following sentencing, inmates are initially classified and designated for service of their sentence by staff assigned at the Designations and Sentence Computation Center (DSCC) in Grand Prairie, Texas. The documents used by the DSCC during the initial classification are the Presentence Investigation Report, the "judgment in a criminal case," the disciplinary record from prior or current commitments, and any additional relevant documents from various law enforcement agencies.

14. Several factors are considered when an inmate is initially classified. Some factors that impact classification include age, pending charges or detainers, the seriousness of the current offense, history of violence and escape, sentence length, and voluntary surrender status. Each of these areas has a corresponding point value, which is then totaled to determine an inmate's overall security level.

15. Mr. Pattison entered the BOP with a 96-month sentence. Based on his classification, he was designated to serve his sentence at a high-security institution, also known as a United States Penitentiary or USP. Penitentiaries have the highest staff-to-inmate ratio for close control of inmate movement. Mr. Pattison was originally designated to USP Allenwood

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in Pennsylvania, arriving June 21, 2022. He was thirty-three years old. Due to a mission reorganization change at USP Allenwood, Mr. Pattison was transferred to USP McCreary, Kentucky on March 24, 2023.

16. Federal prisons in the United States, and penitentiaries in particular, are teeming with violence. The Department of Justice Office of the Inspector General (OIG) released a report in February 2024 regarding inmate deaths in BOP institutions (the February 2024 Report, or the Report). *See Department of Justice Office of the Inspector General*, Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons Institutions (Feb. 2024) available at https://oig.justice.gov/sites/default/files/reports/24-041.pdf. The Report reveals that there were 89 homicides in BOP facilities between fiscal years 2014 through 2021. *Report* at p. 80. Fifty-five of those homicides (or 62%) occurred in high security level institutions. (p. 84).

17. The BOP is severely understaffed, which only increases the level of violence and danger in these facilities. Just last month, on July 23, 2024, BOP Director Colette Peters testified before the House Judiciary Subcommittee on Crime and Federal Government Surveillance (the Subcommittee). (Her testimony is available at https://judiciary.house.gov/committee-activity/hearings/oversight-federal-bureau-prisons-3). In connection with that hearing, Director Peters provided a fact sheet regarding the staffing crisis in the BOP and its impact on programming and rehabilitation. (A copy of this document, "Facts About the FBOP'S Staffing and Facilities Crisis," is attached as Exhibit B.) Under the heading, "Staffing Crisis," this fact sheet confirms that "[u]nder-staffed institutions struggle to maintain safe and secure environments." *See* Exhibit B at 1. And the BOP's staffing shortage is significant. As of July 23, 2024, the BOP "projects

that [it] need[s] about 3,000 additional correctional officers[,]" which equates to a 21% increase from its current roster of 14,900 officers. *See* Exhibit B at 1.

18. Director Peters reported to the Subcommittee that because of understaffing, the BOP is forced to overuse "augmentation" -- the process of reassigning employees to under-staffed positions to maintain the institution's safety and security. *See* Exhibit B at 1. According to the February 2024 Report, this includes the assigning of non-correctional officer staff to correctional officer duties. *Report* at p. 64. These staff members frequently lack the training and experience to competently handle these jobs. Augmentation was originally designed as a short-term solution to staff shortages. However, this practice has become a more permanent solution as staffing shortages have gotten worse over the years. As Director Peters acknowledges "FBOP uses excessive amounts of augmentation and overtime because we must fill critical custody posts to keep everyone safe and avoid locking down housing units." Exhibit B at 2.

19. My experience is consistent with the information Director Peters provided to Congress. The current level of disfunction in the BOP is unprecedented. The severe and ongoing staffing shortages have worsened over time and persist to this day. The lack of staff is pervasive and affects all levels and all departments within the BOP, resulting in a cascade of negative consequences, including the rise of preventable inmate deaths by suicide and homicide. Unfortunately, Director Peters' goal of using these stop-gap measures to keep everyone safe and avoid lockdowns is more aspirational than realistic.

20. Staff at many federal prisons are required to work overtime, consisting of 16-hour shifts. These relentless work schedules lead to less secure prisons because staff are understandably less diligent in their duties when they are mentally and physically

exhausted. Less secure prisons are inevitably the outcome when there are not enough staff to maintain adequate supervision of the inmates. To have a secure, well-run prison facility, there can be no shortcuts. An appropriate workforce must be in place; otherwise, programming, security, and the well-being of inmates are at serious risk. In her July 23rd testimony, Director Peters acknowledged that staffing shortages have led to extra work hours and staff exhaustion: "I also want to note the human costs of overtime and augmentation which we know are incredibly difficult on our corrections professionals' physical and mental health." *See Forbes*, Bureau of Prisons Director Testifies at House Judiciary Committee (July 27, 2024) available at https://www.forbes.com/sites/walterpavlo/2024/07/24/bureau-of-prisons-director-testifies-at-house-judiciary-committee/

21. Federal prisons simply cannot operate safely when there are not enough staff to cover mission-critical posts. When the BOP does recruit new staff, they are often assigned to a post before receiving proper training, which can result in officers being "trained" by the inmates. I have been advised by former colleagues still working within the BOP that many of these new staff end up resigning within a short time because they are fearful of working in such a dangerous environment without proper training. It does not surprise me that last year the BOP was ranked as the "worst place to work in the federal government…" Exhibit B at 1. Despite the BOP's attempts to address the problem by offering hiring and staff retention incentives, the situation persists and there is no end in sight nor any quick fix to the problem. As characterized in Director Peters' fact sheet for Congress, incentives for recruitment, retention, and overtime are an "expensive spiral" that provides a short-term fix to a long-term problem." *See* Exhibit B at 1, 2.

22. In addition to augmentation, another tactic used to address understaffing is to "lock down" housing units (although lockdowns can occur for other reasons, including as a collective punishment for individual wrongdoing or violence). Lockdowns are typically 24 hours a day and inhibit all activities, such as recreation, commissary privileges, social visits, and even legal visits (with limited exceptions). Importantly, all programing ceases. *See* Exhibit B at 1 (noting that the understaffing results in the adults in custody "missing educational, programming, and work opportunities").

23. Mr. Pattison has reported that USP McCreary was locked down eight of the twelve months he was housed there, which does not surprise me. While I cannot verify the number and duration of lockdowns at USP McCreary, I am aware it is a pervasive issue plaguing the BOP due to their well-documented, crisis-level staff shortages. In addition, some wardens engage in "collective punishment" by routinely locking down entire housing units for the actions of one or only a few individuals. Despite these challenges, Mr. Pattison managed to complete several classes and has placed himself on the waiting list for additional programs.

24. During these time periods, Mr. Pattison experienced a significant, unplanned weight loss of more than 50 pounds in less than 9 months, as documented in his BOP medical records. It is not unusual for inmates to lose weight because of extended lockdowns. During lockdown operations, food quality is notoriously poor due to the satellite nature of its preparation, i.e., it is prepared to be served at individual cells rather than being prepared and served in the mess hall where additional food is available. Breakfast is often pre-packaged foods. Lunch and dinner frequently consist of a peanut butter sandwich and a piece of fruit. Moreover, inmates' ability to supplement their meals through

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commissary purchases, which is a standard practice, is either unavailable or severely limited. All these factors, along with inmates' lack of access to activities outside their cells, contribute to increased dissatisfaction, tension, and potential violence.

THE EFFECTS OF PEER GROUP VALIDATION

25. New commitments to high security prisons quickly learn they need to align themselves with a group to survive and protect themselves from being harmed or exploited. Formation of these groups are occurring at increasing frequency across BOP facilities, including at minimum security institutions, known as camps, that have a low staff-to-inmate ratio and are work- and program-oriented. As may be expected, then, virtually all inmates in medium and high security prisons (where violence is pervasive) are pressured – or even obliged – to join a gang or align with one of the many prison "cars." Some new inmates receive an "invitation" to join a specific gang or "car," which, practically speaking, cannot be safely declined.

26. Although not classified as a gang, a "car" is prison slang for an affiliation group within a prison, typically bonded by geography, i.e., inmates who come from a certain region or city; the crime; race or other demographics; and sometimes religion. We refer to this type of alignment as "riding in a car;" "riding" in any car is a protective mechanism used to insulate its members from being attacked by other inmates. These groups forge bonds and combine resources with other organizations for the survival of their own group.

27. Both gangs and cars generally have a hierarchical structure, much like corporate structures. They often have bylaws or manifestos, and although their structures vary, many have "shot callers" at the top with enforcers, runners, and mules in tow. Allegiance

to one's car must be continuously proven and loyalty is demonstrated by engaging in violent or otherwise unauthorized conduct that furthers the car's interests. For example, an inmate aligned with a specific car may be expected to assault someone who has disrespected the group, or stolen drugs or property from a member of the car, or in some other way poses a threat to the group or its members. Refusal or failure to engage in this behavior can result in severe consequences or retaliation, often through physical violence.

28. When Mr. Pattison entered this environment in the BOP, his previous affiliations with race-based groups outside prison virtually required him to align himself with the "white car" (consisting of other white, male offenders) for his personal safety. Failing to attach himself to an established group would have made him vulnerable to attack, in varying degrees of severity. At the same time, while aligning himself with a group offered protection, it also required him to follow the organization's rules and directions.

29. Mr. Pattison's story is not unlike many I have seen. It begins with a relatively young offender (the average age of a BOP inmate is 42) who commits a crime and is sentenced to a lengthy term of incarceration. He enters the BOP already associated with a particular street group or ideology and is thrust into the violent world of a high security penitentiary. Mr. Pattison was given a USP (high security) designation from the outset of his federal sentence. One must quickly adapt to cope with the unpredictable and violent gang activity in these prisons. Following the unwritten rules and prison politics established by the inmate population is, unfortunately, often more important for survival than following the rules established by the prison administration.

30. In addition to aligning oneself with a particular group for protection, inmates must also be careful not to show any weakness. Receiving incident reports for aggressive behavior

is often a coping mechanism and a signal to other offenders that you will fight and defend yourself if necessary. Should an offender back down from a challenge, he places himself at serious risk of being taken advantage of financially, sexually, or physically and will be labeled as weak. The perception of weaknesses must be avoided at all costs.

31. While inmates are expected to conduct themselves in an appropriate and orderly manner, other factors in a prison environment, especially in a high security prison environment like USP McCreary, challenge these expectations. The demographics within these prisons often include very disruptive, violent, and predatory inmates, making it difficult to maintain a positive adjustment, even for those inmates who have good intentions. In addition, as discussed below, the BOP lacks the staff to adequately monitor and control these dangerous situations.

INCIDENT REPORTS AND SERVING TIME IN THE SPECIAL HOUSING UNIT

32. While in the BOP, Mr. Pattison sustained three disciplinary infractions. Considering the context described above, this number of infractions is not unusual. First, on January 16, 2023, while housed at USP Allenwood he sustained an infraction for Using Drugs or Alcohol (Suboxone) (code 112), for which he lost 41 days of good conduct time, received 30 days disciplinary segregation (meaning, as further described below, he was confined in the Special Housing Unit or "SHU"), and lost six months of commissary and email privileges. While unfortunate, this type of incident is common for individuals, like Mr. Pattison, who enter prison with a significant drug and alcohol abuse history, have been previously diagnosed with opiate use disorder, and may not have access to the treatment they need within the BOP, including Medication-Assisted Treatment (or "MAT").

33. On November 14, 2023, while housed at USP McCreary, Mr. Pattison sustained an infraction for Destroying Property $100.00 or less (code 329), for which he lost commissary privileges for 30 days. “300 level” incident reports are not considered serious unless they become repetitive, which does not appear to be the case with Mr. Pattison. The sanctions imposed for this incident are considered very minor.

34. On October 20, 2023, while housed at USP McCreary, Mr. Pattison sustained two infractions related to the same incident: Possession of a Dangerous Weapon (code 104), for which he lost 41 days of good conduct time, received 10 days disciplinary segregation, lost three months of email privileges, and received a $50.00 monetary fine; and Assaulting Without Serious Injury (code 224), for which he lost 27 days of good conduct time, received 5 days disciplinary segregation, and lost three months of visiting privileges. While he was awaiting the resolution of this incident report and the imposition of sanctions, a period of more than 40 days, Mr. Pattison was held in disciplinary segregation.

35. Inmates in high security facilities, like USP McCreary, often have easy access to homemade weapons on their person or have them readily available due to the constant volatility and threat of unpredictable outbreaks of violence within a USP. Although this behavior is not condoned, the possession of weapons by inmates in high security environments at the BOP is the norm rather than the exception.

36. I have reviewed the BOP reports regarding the incident that occurred on October 20, 2023, in which Mr. Pattison and another inmate admitted cutting a third inmate with a homemade weapon. Again, as a former BOP official, I don’t condone or intend to

minimize this conduct. At the same time, I think it's important to put it in the context of the violent environment and group affiliations described above.

37. Some details from the reports of this incident are also worth noting. First, when Mr. Pattison and the other inmate were directed by staff to drop the weapons, get on the ground, and cease the attack, both complied without further incident. This type of compliance following a violent incident is not always the case. The reports also note that the inmate who was assaulted during this incident was bleeding and required outside medical attention but was able to walk and hold a conversation with staff and placed himself on the stretcher for transport to a hospital. Ultimately the injuries were characterized by BOP officials as "moderate." No staff were injured during this incident and, although the offense was referred to the United States Attorney's Office for their review, no criminal charges were filed.

38. Shortly after the incident, Mr. Pattison was interviewed by prison staff. He admitted his conduct and accepted the proposed sanction; this acceptance of responsibility is generally well received by prison administration. When he was asked what caused the assault, Mr. Pattison said, "That guy [the injured inmate] was selling homemade weapons to another race. That doesn't go over well with the guys in the unit. It was time to put in work, so that's what I did." He added that his peers saw the victim as a liability. The other inmate involved in the assault provided essentially the same explanation as Pattison. He told staff that the victim and he were aligned with the same peer group, but the victim was selling "stuff" to another group in the unit, which was not permitted. He also characterized the assault as putting in "work." This term ("work") is commonly used on the streets and

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within prisons for an assignment, often involving violence, issued by an individual who "calls the shots" in an organization to someone less powerful.

39. Unfortunately, these types of incidents are common at the higher security prisons within the BOP. This is not an excuse for Mr. Pattison's behavior, which should never be tolerated or condoned. However, his explanation that it was time to "put in the work" because the victim's conduct "doesn't go over well with the guys in the unit" suggests he was directed to commit the assault by members of his "car" in positions of greater authority than him. In these situations, Mr. Pattison's failure to follow these directions would almost certainly have subjected him to discipline, typically in the form of violence.

40. This example of negative behavior is a common pattern seen with inexperienced offenders serving new sentences, especially within a USP setting. There is enormous pressure to do the bidding of the gang or the car, and being vulnerable to that pressure often leads inmates to incur incident reports early on in their incarceration. Though Mr. Pattison had previously served a relatively short state prison sentence, it is unlikely his state sentence prepared him for the level of violence he encountered in a federal penitentiary.

41. In addition to the unfortunate routine violence and aggression an offender faces in a penitentiary, being caught up in this environment also leads to extended stays in the SHU, either as administrative detention or as a form of disciplinary segregation. The SHU is an extremely isolated and restrictive housing unit where inmates are locked in their cells for 23-24 hours each day. Mr. Pattison experienced at least two significant periods of confinement in the SHU. During these times, showers and one hour of recreation were permitted only on certain days of the week. When there were staffing shortages, he may

not have been afforded any out-of-cell time. As previously discussed, most facilities nationwide are experiencing severe staffing shortages.

42. Prolonged stays in SHU, or more commonly referred to as solitary confinement, have been shown to have harmful effects on inmates' mental health. The isolation and lack of engagement with others often leads to sickness, depression, and/or suicidal ideation. Mr. Pattison's weight loss could also be attributed to the time spent in the SHU, in addition to the frequent lockdowns at the prison. Being placed in administrative and disciplinary detention, in addition to enduring facility or unit wide lockdowns, with such regularity also severely hampers one's ability to engage in meaningful programming.

43. Many inmates I observed during my career with the BOP, especially those serving lengthy sentences like Mr. Pattison, slowly begin to lose their sense of identity while incarcerated, believing they are now known as simply a register number. In losing their identity, they become what we often referred to as "institutionalized." These inmates were rigid and hardened, realizing that the prison environment would be their home for the next several years and sometimes for the remainder of their natural lives. They quickly lose interest in self-improvement, rehabilitation becomes meaningless, and they lack the desire to do better, which shows in their actions. Family members and friends slowly disappear from their lives, visits are rare, and phone calls with loved ones are no longer frequent or valued. Prison life becomes an ingrained routine, and they begin to lose hope that anything good will ever happen for them or that positive change exists in their future. Many of these inmates do not pursue any type of programming to better themselves and prepare for a successful re-entry into society. Fortunately, Mr. Pattison does not appear to have fallen into that pattern.

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PROGRAM PARTICIPATION

44. The fact that Mr. Pattison has completed several programs and is working toward the completion of his GED is an indication that he does not want to continue down the path of becoming hopeless and institutionalized. His records suggest that he is trying to make the best use of his time while incarcerated with his focus on a successful reentry into society. Many inmates don't even try.

45. Mr. Pattison has attempted to use his time wisely; however, as mentioned above, due to staffing shortages throughout the BOP, including lockdowns at the high security institutions, inmate program availability is constrained. Inmates who do not possess a high school diploma are required by the BOP to participate in 240 hours of General Educational Development (GED) instruction unless they meet the GED requirements prior to reaching the required hours. Due to the upheaval and instability of Mr. Pattison's formative years (as discussed in the PSR), he did not attain his high school diploma. Mr. Pattison has not attained his GED yet either, quite possibly because of the institution's lack of staffing.

46. Mr. Pattison did manage to engage in programming when it was available to him. He received certificates for participating in Adult Continuing Educational Classes, including:

- Release Preparation Plan (RPP)
- Health and Nutrition
- Adult Continuing Education
- Career Resource Center
- Keys to Getting Hired
- You are Fired: Lose Job, 9 to 5 Beats 10 to Life
- Stop the Violence Class

- Forklift Operations

47. Mr. Pattison estimates that USP McCreary was locked down eight out of twelve months. This disruption and restraint severely limited his educational opportunities. Mr. Pattison's interest in accessing educational programs is indicative of his desire to learn and advance his personal growth. Inmates who avail themselves of diverse types of self-improvement courses and classes to further their education and knowledge are usually better equipped to succeed beyond prison walls.

MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT NEEDS

48. Mr. Pattison's ability to receive both mental health and substance abuse treatment are also severely limited, if they exist at all, because of the existing conditions and staff shortages in the BOP. DOJ Inspector General Michael E. Horowitz noted that the BOP's crisis-level staffing shortages extends to, and is particularly prevalent within, the Health Services and Psychology Departments at federal prisons. The shortages in Health Services and Psychology Services positions occur due to "the high stress [nature of the job], high workloads, and less-than-competitive pay compared to job offerings in . . . surrounding communities." Likewise, Director Peters confirmed last month that the BOP needs to fill approximately 3,000 medical positions, "which would be a 72% increase from [its] current complement of 3,600." *See* Exhibit B at 1. (p. 65).

49. To put it plainly, individuals are dying in BOP facilities with depleted Health Services and Psychology Departments, as the institutions lack the capacity "to manage and address the needs of inmates in their custody." *Department of Justice Office of the Inspector General*, Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons Institutions (Feb. 2024) at p. 65, https://oig.justice.gov/sites/default/files/reports/24-

041.pdf. The Report reveals that a disturbing 187 individuals died by suicide in BOP facilities between fiscal years 2014 and 2021. (p. 80) In addition to actual loss of life, "Staffing shortages in Psychology Services and Health Services can negatively affect the availability and quality of treatment, programming, and general medical and mental healthcare provided to inmates—including the provision of treatment and programs designed to treat substance abuse disorders and mental health illnesses that can contribute to the risk of inmate deaths." The Report at p. 66.

50. During a facility site visit in 2021 the OIG discovered there was only one clinical physician and one contract physician for an entire complex that housed 3,400 inmates. *The Report* at p. 66. The clinical director there reported that there should have been an additional four staff doctors "to adequately provide care for that inmate population." A staff psychologist working at the facility disclosed that he could not administer Medicated Assisted Treatment (MAT) to every inmate who qualified because there were not enough clinicians or medical staff to prescribe and administer the medication. The psychologist further explained that he believed MAT was highly effective in reversing opioid addiction. (p. 66).

51. Before entering the BOP and while incarcerated in the Monroe County Jail, Mr. Pattison was prescribed medication for ongoing mental health issues and engaged in counseling sessions when available to him. Mr. Pattison's medical records from the BOP also note a history of mental health issues, including anxiety disorder, depressive disorder, trauma/stressor related disorder, neurodevelopmental disorder, and disruptive/impulse control disorder. Staff noted a history of outpatient counseling and treatment with various psychotropic medications over the years, several of which continue through his

incarceration. Currently, Mr. Pattison engages in one-on-one mental health sessions with a counselor at the Yates County Jail on a weekly basis and is prescribed Buspar, fluoxetine, hydroxyzine, Amitriptyline, and Melatonin to help manage his anxiety, depression, and insomnia. The presentence report notes that Mr. Pattison has expressed his desire to continue with mental health treatment while incarcerated.

52. Mr. Pattison's medical records also disclose an extensive history of substance abuse and diagnoses of both opioid use disorder and alcohol use disorder. His substance abuse history included daily use, at various times over many years, of alcohol, heroin, fentanyl, crack cocaine, prescription opiates (e.g. Vicodin, Percocet, and Oxycodone), and Xanax. He entered the BOP as a participant in MAT, specifically being prescribed Subutex for the previous 2-3 years. As noted above, MAT can be highly effective at treating opioid-use disorder but is not always available or effectively administered due to the staffing crisis.

53. An inmate like Mr. Pattison, whose mental health needs, though apparently significant, are not pervasive and disruptive is unlikely to receive any treatment while in the BOP. For all the reasons discussed above, he is also unlikely to receive any consistent treatment or programming designed to address his long-standing substance abuse disorder.

WORK HISTORY

54. Though Mr. Pattison's records show a willingness to work, since entering the federal prison system, his employment opportunities have been limited by his transfer from USP Allenwood to USP McCreary and the numerous lock downs and other disruptions, including time spent in solitary confinement, occurring at the latter facility. By not having an institutional job assignment for much of his time in the BOP, he has not been

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afforded the opportunity to gain experience, new skills, or build good employment habits. Also, job assignments help pass the time, reduce idleness, and break up the monotony and drudgery of prison life.

CONCLUSION

55. In my professional opinion, based on the documents reviewed, it is clear Mr. Pattison has attempted to immerse himself in some viable programming opportunities since he began serving his prison sentence. The BOP's lack of staffing and frequent lockdowns has not only crippled Mr. Pattison's focus, but that of many other inmates housed within the BOP as well. Many inmates fail to take advantage of the programs offered in the BOP. They would rather spend their time in the recreation yard, involved in sports and television, or playing card games with their inmate peers. I realized early on in my career that the inmates who were serious about making positive life changes were the ones who utilized their prison time productively by participating in a variety of programs, as Mr. Pattison is attempting to do. It is also promising that he is actively addressing his mental health needs by being medication compliant and willing to pursue other forms of treatment.

56. As a former Chief of Correctional Services, I often witnessed what we referred to as the "revolving door." The term "revolving door" refers to inmates who, despite pronouncements about how they would never return to prison, failed to take the initiative and necessary steps to prepare themselves for living a law-abiding and productive life. Those were usually the inmates who spent their leisure time engaged in useless, non-meaningful activities. In contrast, Mr. Pattison has consistently expressed an interest in bettering himself through work, education, and treatment, and has taken advantage of those opportunities when they were made available. Unfortunately, the environment in

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federal penitentiaries, such as USP McCreary, combined with the staffing crisis within the BOP, makes those opportunities few and far between.

57. I am mindful of and have considered the infractions Mr. Pattison committed during his time in the BOP thus far, particularly the incident in which he and another inmate assaulted a third inmate with weapons, causing a laceration to his face. As discussed above, Mr. Pattison and his fellow inmate's explanations for the motive behind this attack (i.e., that they were directed to do the "work" by controlling members of their "car") were both consistent and credible. Of course, neither the BOP nor I condone this conduct. It is important to recognize, however, that this incident occurred in the context of a violent, maximum-security penitentiary in which inmates are routinely directed to engage in violence against specific targets or become targets themselves. It is not likely that additional time spent in this environment will curb this violent, self-protective conduct.

Executed on this 3rd day of August 2024.

Signed by:
5B6B9AC08C8144F...

William Andre' Lee Sr.

EXHIBIT A

WILLIAM A. LEE SR.

Baird Perdue & Associates, Prison Consultants LLC, Fairfield, CT
December 2023 to Present
Federal Corrections Consultant

- Provide independent consulting services regarding all aspects of the federal prison system for Federal Public Defender Offices, private attorneys, individuals who are incarcerated or facing federal prison sentences, and their families
- Offer expert witness testimony in federal courts, including in response to motions for sentence reductions, on individuals' adjustment while incarcerated and likelihood of recidivism

Creative Corrections LLC, Washington, DC
December 2022 to April 2023
Subject Matter Expert, Corrections/Detention

- Conducted intensive audits of U.S. Immigration and Customs Enforcement (ICE) detention facilities using standards developed by ICE and the Office of Professional Responsibility
- Oversaw custodial areas, emergency preparedness systems, restrictive housing units, use of force procedures, inmate discipline, physical security, and inmate operations
- Provided subject matter expertise to ICE staff regarding conflicts between policy and operations and wrote reports to ICE officials proposing corrective action about these discrepancies

Federal Bureau of Prisons, Washington, DC
February 2015 to March 2022
Core Section Chief, Program Review Division, Program Review Branch

- Directed a staff of fifty multi-disciplinary examiners assigned to the Program Review Branch (PRB)
- Oversaw the PRB annual budget of $4,500,000.00

- Conducted and oversaw audits of 122 federal and privately contracted correctional institutions to ensure compliance with Federal Bureau of Prisons (BOP) policy, Program Review Guidelines (PRG) and the Code of Federal Regulations (CFR)
- Managed the risk assessment process, during which PRGs were initiated, changed, or removed
- Distributed the Quarterly Summary Report, which provided central and regional offices and correctional institutions insight on issues observed during facility reviews
- Provided management and executive staff ongoing analysis of operational processes, and identified and resolved operational issues and constraints of the PRB
- Advised and oversaw private contract facilities on contract compliance
- Collaborated with the Health Services Division, Correctional Program Divisions, and the Reentry Services Division to oversee the COVID Response Team Guidelines used to rate institutions' compliance with Centers for Disease Control and Prevention and BOP mitigation plans

Federal Bureau of Prisons, Washington, DC
August 2012 to February 2015
Correctional Services Examiner and Evaluation Specialist, Program Review Division, Program Review Branch

- Oversaw program reviews and ensured compliance with national policy and procedures
- Ensured program review objectives were within the scope of the review plan and in accordance with Generally Accepted Government Auditing Standards (GAGAS)
- Provided findings and recommendations through written and verbal reports
- Ensured working papers and documents adequately supported review findings
- Provided guidance and supervision to team members from institutions and regional and central offices
- Ensured management officials were kept fully advised of review results
- Served as on-site liaison to and monitor of the American Correctional Association auditors during the Intensive Reaccreditation Process (IRP)

Federal Bureau of Prisons, FCI Fairton, Fairton, NJ
August 2010 to August 2012
Captain

- Served as the subject matter expert on all custodial and security concerns arising at the institution and had full and final authority when problems occurred or incidents containing inmates arose
- Supervised and ensured the safety and security of approximately 159 correctional staff and 2,000 medium/high security federal inmates
- Provided expert witness testimony in federal courts regarding prison management, security practices, intelligence, and gang validation
- Developed the institution's budget and specifically prepared departmental annual and quarterly budgets
- Managed institutional security, inmate conduct and discipline, inmate work, control of hazardous tools and material, sanitation, control and use of institution vehicles, and key control
- Served as subject matter expert for program reviews of other institutions by inspecting facilities' overall program coordination and observing personnel and inmates from the viewpoint of security, morale, and employee-inmate relations
- Developed and maintained Institution Emergency Plans regarding riots, escapes, bomb threats, hostage situations, adverse weather, fire, internal searches, institution evacuations, and food strikes. Developed and maintained emergency procedures to be implemented during periods of poor visibility due to fog, snowstorms, and other weather events; trained all employees on their responsibilities during these types of emergencies
- Analyzed custodial and security needs and determined the composition of correctional posts to maximize utilization of available resources. Eliminated, redesigned, and restructured posts which were not essential or did not provide maximum utilization of assigned employees
- Maintained all security records, disciplinary hearing reports, and requests for Building and Facilities projects, as outlined by BOP policy and the CFR

Federal Bureau of Prisons, MCC Chicago, Chicago, Illinois
February 2007 to August 2010
Special Investigative Agent

- Managed and conducted complex administrative and criminal investigations in conjunction with the Federal Bureau of Investigations and the Department of Justice Office of Inspector General regarding homicides, assaults, drug trafficking, escapes, fraud, weapons violations, threats against government officials, and similar violations of federal statutes; oversaw the institution's intelligence program, validation of gang members, and debriefing of members dropping out of gangs; collaborated with all local departments within the Chicago area
- Collaborated with the BOP intelligence officer assigned to the Joint Terrorism Task Force to exchange crucial intelligence collected within the federal prison system and information discovered by local, state, and federal law enforcement components; assisted, through this intelligence sharing, in the preparation of cases for criminal prosecution or BOP administrative disciplinary hearings
- Provided expert witness testimony in federal courts regarding prison management, security practices, intelligence, and gang validation
- Maintained all case files and records regarding staff and inmate investigations; ensured records were archived as required by the CFR

Other Relevant Positions

Lieutenant, Federal Bureau of Prisons (December 2000 to February 2007)
Senior Correctional Officer, Federal Bureau of Prisons (July 1996 to December 2000)
Correctional Officer, Federal Bureau of Prisons (July 1995 to July 1996)
Deputy Jailer, Shelby County, TN (April 1994 to July 1995)
Sergeant, United States Marine Corps (June 1984 to February 1994)

EXHIBIT B

FACTS ABOUT THE FBOP'S STAFFING AND FACILITIES CRISIS

More than 155,000 adults live, eat, work, learn, and receive medical care in 122 institutions across the United States. In 2023, FBOP ranked as worst place to work in the federal government, and GAO put FBOP on its high-risk list. OIG has repeatedly cited the risks associated with understaffing and crumbling facilities. FBOP struggles to hire and retain staff, and we have more than $3 billion in modernization and repair needs. These are known issues. We now face the task of acting to fix them.

FBOP welcomes Congressional oversight and looks forward to working with Congress to implement the bipartisan Federal Prison Oversight Act. But the current path is not sustainable, and we need Congress' funding and support to chart a new direction.

What FBOP Needs

- **Recalibrating and upgrading funding for staff, so we can realistically attract talent to long under-staffed facilities and avoid the expensive spiral of incentives for recruitment, retention, and overtime.**
- **Multi-year supplemental funding for facilities repair and modernization, so we can make headway on a decades-long backlog, rather than triaging yearly budgets to apply band-aids to the most dire and dangerous crumbling facilities.**
- **The ability to respond to oversight. We welcome oversight, but we need resources to be responsive.**

Staffing Crisis

- Under-staffed institutions struggle to maintain safe and secure environments. FBOP is forced to overuse augmentation (reassigning employees to other under-staffed posts), mandatory overtime, and sometimes even locking down housing units to address staffing shortages. This results in adults in custody missing educational, programming, and work opportunities.
- The solution, in one sense is simple—we need to hire more employees.
    - FBOP's new Automated Staffing Tool, developed in response to a GAO audit finding, projects that we need about 3,000 additional correctional officers (COs) across FBOP.
    - That would mean a 21% increase from our current corps of 14,900 COs.
    - The new tool also projects that we need about 3,000 medical positions, which would be a 72% increase from our current complement of 3,600.
- This crisis has built up because FBOP has a longstanding hiring and retention problem.
    - We cannot pay enough to attract highly qualified employees, especially in urban areas and for medical positions. In rural areas, it is difficult to attract good applicants to shift work in secure facilities.
    - COs leave positions almost as fast as we can fill them, many of whom leave for promotions and better paying jobs. In many areas we cannot compete with salaries for comparable work in state or local facilities.
- We see this issue at facilities around the country.
    - MDC Brooklyn has struggled with low staffing for years. In January 2024, a federal judge issued a lengthy opinion that harshly criticized conditions, noting the significant role that low staffing played

FACTS ABOUT THE FBOP'S STAFFING AND FACILITIES CRISIS

in creating dangerous conditions. Following that opinion, FBOP was able to secure OPM approval for a 35% retention incentive to attract applicants and retain employees. Coupled with an existing 25% recruitment incentive for all new-hire COs, MDC Brooklyn now has 66% of its CO positions filled compared with 55% filled in early 2024.

  - FCC Butner, which has a medical center, two medium security facilities and a low security facility, has been unable to hire sufficient numbers of COs and medical professionals. In 2023, we began offering a 10% group retention incentive for all eligible positions at FCC Butner. That has proved insufficient to substantially increase staffing levels which remain at 80% overall and 75% for Correctional Officers, and 70% for clinical medical positions. In order to build and grow a stable workforce, we need to be able to pay more.

- Pay incentives have taught us that when we pay more at an institution, staffing levels generally increase.
  - In 2021, FCC Florence faced significant challenges filling CO vacancies, with a filled rate of less than 80%. In mid-2021, we began to offer 25% retention incentive for CO's. This has resulted in FCC Florence increasing and maintaining its onboard levels to about 85%, as they continue to compete with Colorado state corrections.
- Recruitment and retention incentives ultimately are short-term fixes to a long-term problem. FBOP's efforts to stem the staffing crisis are proving incredibly expensive.
  - About 40% of FBOP employees are currently receiving a retention incentive. In FY 2024, FBOP paused consideration of any new incentives due to budget constraints.
  - FBOP paid employees over $128 million in incentives and more than $386 million in overtime. Combined, that represents 10% of our overall staffing expenses.
  - In FY23, employees also recorded 556,348 hours of augmentation. If we had paid those same hours in overtime (at time-and-a-half), it would have cost an additional $62.9 million—roughly half of the entire amount we spent on incentives.
- FBOP is working with DOJ and OPM to obtain approval for Special Salary Rates that would increase pay for our employees. We will not know an exact cost until the Special Salary Rates are approved by DOJ and OPM, but expect it may cost hundreds of millions more per year.
- Additional staffing would also have many positive follow-on effects on issues Congress has been tracking in recent years, including:
  - significantly reducing the use of restrictive housing;
  - improving medical care for those in custody; and
  - increase programming.
- Right now, though, FBOP uses excessive amounts of augmentation and overtime because we must fill critical custody posts to keep everyone safe and avoid locking down housing units.

Facilities Crisis

- Modernizing and repairing our facilities is also critical because they have a direct and significant impact on our ability to provide safe and secure environments and ample programming and work opportunities.

FACTS ABOUT THE FBOP'S STAFFING AND FACILITIES CRISIS

- Our infrastructure is crumbling. We have over $3 billion in modernization and repair needs that implicate life and safety.
    - FBOP has 122 facilities that occupies more than 64 million square feet.
    - Of those 122 facilities, about 33% are over 50 years old and about 57% are over 30 years old.
- Failing infrastructure also contributes to crowding because FBOP must close institutions or housing units when they reach a state of disrepair that is dangerous.
    - FBOP has temporarily closed three institutions and 13 housing units at 11 institutions due to dangerous conditions. They account for a loss of more than 4,000 beds at every security level.
- Aging infrastructure also impedes implementation of the First Step Act (FSA).
    - Most FBOP institutions were not built for rehabilitation and programming.
    - Now that FBOP has emerged fully from COVID and is actively expanding programming, we regularly encounter space limits for implementing the FSA.
    - Many institutions lack safe, dedicated space to offer vocational and other training.
- We have developed a five-year capital improvement plan focused on our most pressing M&R needs to guide our annual M&R budget requests and as requested by the Congress.

FBOP Budget

- Over the past 10 years, FBOP's budget only increased approximately 23% (which equates to about 2% per year). Over that period, budgeting resulted in a reduction of 3,473 authorized positions and 2,632 FTEs.
- Our needs have outpaced what we have received. More than $1.5 billion for critical resources over the last 10 years were needed, but not received—over $950 million was for critical base increases.
- Over the past 10 years, we did not receive a total of more than 1,900 authorized positions and 7,000 FTEs requested in the President's Budgets.

Way Forward

- Last year, FBOP announced a new strategic plan along with revision of our mission, vision, and core values. We all want "Corrections professionals who foster a humane and secure environment and ensure public safety by preparing individuals for successful reentry into our communities."
- We believe in accountability, oversight, and transparency. But we cannot do this work alone.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	21-CR-6097
vs.	
	Rochester, New York
STEPHEN REED PATTISON,	September 5, 2024
Defendant.	1:05 p.m.

SENTENCING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

TRINI E. ROSS, ESQ.
United States Attorney
BY: BRETT A. HARVEY, AUSA
100 State Street
Suite 500
Rochester, New York 14614

FOR DEFENDANT: MARIANNE MARIANO, ESQ.
Federal Public Defender
BY: SONYA A. ZOGHLIN, AFPD
28 East Main Street
Suite 400
Buffalo, New York 14614

ALSO PRESENT: JENNIFER LOTZ, U.S. PROBATION OFFICER
MARIA MECK, U.S. PROBATION OFFICER

COURT REPORTER: Diane S. Martens
dmartensreporter@gmail.com

P R O C E E D I N G S

* * *

(Open court, defendant present.)

THE COURT: All right, good afternoon.

MS. ZOGHLIN: Good afternoon, Judge.

MR. HARVEY: Good afternoon, your Honor.

THE COURT: Mr. Harvey.

Ms. Zoghlin.

Mr. Pattison.

And members of the probation staff.

Got lots of papers here. Just let me sort them out a bit. Okay.

Just let me -- so our record is clear -- just maybe set some I guess you'd call it background as to where we are. I'm sure I don't need to tell the parties that, but Mr. Pattison pleaded back in November, 2021, to one count of possession of a firearm and ammunition by a convicted felon. The maximum statute is 10 years.

It was a written plea agreement and in that plea agreement, Mr. Pattison agreed to a 2-point enhancement for obstruction of justice.

The plea agreement also indicated that either side could request a non-Guideline sentence.

On May 23rd, 2022, I imposed a 96-month sentence

departing under Guideline 4A1.3. There was, of course, numerous references by the Court and by the parties to some of the Section 3553(a) sentencing factors. And the Court specifically discussed some of them when I imposed a sentence.

Mr. Pattison duly appealed and, as we know, the Second Circuit on January 18th of this year, 2024, remanded because in its view the Court failed to give notice under Rule 32(h) that it intended to depart.

The court sought to remedy that now by sending out a notice, docket number 52, on February 22nd, 2024.

So here we are.

I received reams of papers on the case.

I just note for a minute the factual basis in the plea agreement -- which was rather lengthy, two pages -- but in that Mr. Pattison admitted between certain dates in 2020, specifically October 24 up to November 12, 2020, he possessed two firearms knowing that he had previously been convicted of a felony which made him ineligible to possess a firearm.

The factual basis described in some detail how he got the firearms, describes the execution of a search warrant at 552 Church Road in Hilton where Mr. Pattison was residing where weapons, two of them, were recovered.

The factual basis also described in some detail the efforts of Mr. Pattison and two others to obstruct justice,

to lie and to go so far as to obtain an illegal affidavit claiming the firearms did not belong to Mr. Pattison but to another, or others.

Because of that obstruction, as I say, there was a 2-point enhancement under the guidelines.

If we didn't have enough wrinkles in this case, because of the delay here, Mr. Pattison, if you will, gets the benefit of a reduced Guideline range. There were changes in the law.

Previously it was determined that Mr. Pattison had a Criminal History Category IV. And now that's changed. He now, according to the Guidelines, has Criminal History III with an offense level of 19 which results in a Guideline range of 37 to 46 months.

So that benefits Mr. Pattison, I guess, but it's about the only thing that seems to benefit him.

I just wanted to mention some general sentencing factors but I guess before I do, relative to the notice, after the Court sent out that notice -- and I did specifically mention Guideline 4A1.3 -- but I assume nobody is claiming that they do not now have notice that the Court is contemplating a departure. And also, of course, because the parties have always discussed the factors under Section 3553(a), a variance could be utilized also. Of course the plea agreement specifically mentions that the parties could seek a

non-Guideline sentence.

So I guess, Mr. Harvey and Ms. Zoghlin, I take it nobody objects to the fact -- everybody's on notice knowing what I did before and my indication that at least I'm contemplating the same type of activity.

MR. HARVEY: That's correct for the government, Judge.

MS. ZOGHLIN: We did -- I did receive the Court's notice.

THE COURT: All right. Thank you.

This is well known by counsel but I think it's wise just to repeat it because the Court has many rules it has to follow but I think I start always with the statute which I think the government references in its papers, too.

But Section 3661 of Title 18 specifically says there's no limitation for information concerning the background, character, or conduct of a defendant which the case may receive and consider. I think that's important to keep in mind.

There's another statutory provision which both parties have referenced in their filing here and that's the well-known sentencing factors under Section 3553(a) of Title 18. The preamble to that section says the Court shall impose a sentence that's sufficient but not greater than necessary to comply with the purposes of the statute.

And there are, I guess, eight factors which this Court

has considered in the scores and maybe hundreds of sentences that I've imposed over the past 40 years.

The Court should consider the nature and circumstances of the offense.

And, second, and importantly, the history and characteristics of this defendant.

The need for the sentence to reflect the seriousness of the offense.

To promote respect for the law.

To provide just punishment.

Importantly, to afford adequate deterrence.

And to protect the public from further crimes by the defendant.

And also at times, to provide the defendant with needed educational, vocational or medical care in the most effective manner.

So those are the basic sentencing parameters that every judge has to consider.

As often happens, when there are disputed facts, the Guidelines speak to that. And both the Guidelines and the Federal Rules speak to the need for the Court to resolve the disputed matters.

First of all, dealing with the Guidelines, 6A1.3. If there is a disputed matter, the Court may consider relevant information without regard to its admissibility under the

rules of evidence, provided that the information has sufficient indicia of reliability to support its probable accuracy. So, that's in essence, I think, a preponderance of the evidence standard. Pretty liberal.

And importantly, the Federal Rules at Rule 32(i)(3)(B) talks about the need for the Court to rule on objections to the presentence report with two exceptions:

The Court need not rule if the ruling is unnecessary because the matter would not affect sentencing, or;

Because the Court would not consider the matter in dispute at sentencing.

So I think these are, you know, well-established general principles that has guided me in the many hours that I've spent trying to determine what sentence is sufficient but not more than necessary.

As I say, I received reams of papers in terms of objections, statements with respect to sentencing factors, and so forth. And I'll talk to Ms. Zoghlin in a minute. She has filed objections. It was directed at the revised presentence report number four.

We now have revised presentence report number five and I think one of your filings, Ms. Zoghlin, I think you were hopeful maybe some of the things you brought to Ms. Lotz's attention might have been changed, and perhaps they were, in the revised presentence report number five.

But, interestingly, at the end of your submissions, the ultimate request by the defense is that I impose a sentence within the now Guideline range of 37 to 46 months.

And I guess there were things about the presentence report that Ms. Zoghlin took issue with but that there was never any objection to how the Guideline sentence was calculated in this case in terms of the base offense level, the 2-point enhancement for obstruction; the 3-point reduction because Mr. Pattison pleaded, which the first sentence it resulted in a Criminal History IV, now to Mr. Pattison's benefit it's a Criminal History III, offense level of 19.

The government of course takes issue with the defense filings and urges the Court to again depart and discusses many reasons under Section 3553(a) which would also constitute a variance.

The government, in fact, seeks the Court to impose a sentence well above the now Guidelines to the maximum which is 120 months or 10 years.

So there's obviously some difference of opinion as to what is appropriate here.

I have indicated that I am contemplating, once again, departing under 4A1.3 and that section sets forth sort of two general bases as to why a Court might do that.

First, if the information indicates that the defendant's

now criminal history substantially underrepresents the seriousness of his criminal history or, importantly -- and I guess that's my insert -- the likelihood that the defendant will commit other crimes.

If either of those things are determined by the Court, an upward departure may be warranted.

The Court has to determine the extent of the departure by using, as I a referenced, a Criminal History Category applicable to defendants whose criminal history are likely to recidivate most closely resembles that of the defendant. And there's sort of a procedure to go incrementally down the sentencing table, although the Court of Appeals has consistently said the Court does not necessarily have to go through the mechanical formula but there has to be some indication by court as to why it's doing what it did.

So that's my preamble, I guess. But I think all those sections that I mentioned at the beginning are very important in terms of the burden on the Court and the standard that the Court must use in deciding these things, important things.

Maybe we should turn to the objections at this point.

And I guess just for the record, I always ask defense counsel and the defendant if they both have received the presentence reports.

Ms. Zoghlin, I'll start with you.

MS. ZOGHLIN: I have.

THE COURT: And, Mr. Pattison, have you been shown the presentence reports?

THE DEFENDANT: I have.

THE COURT: Again, there has been no objection to the calculation of the Guideline; that is, the base offense level 20, the 2-point obstruction enhancement, and the 3-point reduction to Mr. Pattison's benefit.

So, once again, we have the now Guideline range of 37 to 46 months.

I guess, Ms. Zoghlin, was the presentence report five, did it eliminate some of the problems you had or is it still pretty much the same?

MS. ZOGHLIN: First, just if I could clarify for the record, Judge, of course the objections that I filed in document 61, as you mentioned, was to the fourth revised report. After that, there was a fifth revised report. So I would just for the record, clarify that the objections that I made -- the vast majority of them with the exceptions that I'll mention -- that I made in document 61 should be applied to the subsequent PSR which was filed, I believe, on August 29th.

THE COURT: August 29th.

MS. ZOGHLIN: Of 2024. Most of those objections do still apply. And the paragraph numbers are the same. Probation did keep the paragraph numbers the same. So the

objections are still accurately tied to those paragraphs.

The changes were -- the few changes that were made were essentially as to additional facts that I asked to be included, I think primarily in the description of prior offenses. And there were a couple other just factual misstatements that I asked to be changed.

The majority of my objections, though, as listed in document 61, I believe do still apply to the revised, the fifth revised report.

THE COURT: All right. Well, my first thought is this is not the first time the Court has had to deal with objections to the presentence report.

Prior counsel from your office prior to the May 23rd sentence essentially objected to all of the paragraphs in the presentence report that did not relate specifically to Mr. Pattison's obtaining and possessing the firearms. He objected to each and every one of them. I heard argument and at the sentencing date on May 23rd, I denied his objections. And I stated some reasons why.

This is at transcript document 45 that was prepared of the May 23, 2022, sentence. I'm quoting. "I deny your motion to strike these paragraphs. I think they are relevant in several respects." And I'm sort of summarizing here but I said: The well-known statute Section 3661 allows the Court to consider without limitation matters. I said that's the

"baseline principle". And I also mentioned that "information does not have to be technically admissible" as it might be at a trial but have some indicia of reliability.

I also indicated that those Facebook statements are relevant for several purposes. There's many references to getting firearms. I indicate I counted about seven: Paragraphs 51, 58, 59, 62, 63, 74, were references by Mr. Pattison with others to get guns for some sort of particular purpose. And it wasn't to go duck hunting.

Second, there were admissions in some of these Facebook statements or rants especially in Paragraph 56 where Mr. Pattison admitted that he could not possess a firearm. And there's a reference to Facebook Paragraph 57 which suggests that Mr. Pattison didn't care much about the law. There he was talking about if he shot someone he didn't care what the law was important.

There was also an objection to references to Mr. Oshier and Ms. Pfenninger who were also charged in this offense and I thought -- and said -- that those just "corroborate and really duplicate information that Mr. Pattison agreed to in the plea agreement. It's really nothing new."

And also I said "many of these do express a white supremacist racist philosophy which I think is germane at sentencing". "I understand a person can have white supremacist views and support Nazi philosophy and use racist

language. That's not what Mr. Pattison is being sentenced for even though those sentences are offensive and repugnant."

"They refer to many things that I think are germane to the Court's ultimate decision. They refer to firearms, assaults or potential assaults on the protestors that were protesting during the summer of 2020" when the so-called Black Lives Matter episodes. They relate to the use of violence which I think the Court can consider.

A Facebook posting, some of them talk about shooting Antifa supporters.

"They refer to Mr. Pattison beating such a person, paragraph 48."

Troubling statements that we should slaughter anybody bringing Communism into the country. And threats to kill people if they come into his neighborhood, presumably in Hilton. And that he would not maim people but that he would kill them.

So I denied the attorney from your office's request to strike them all and I guess why should I have to do it again? I mean -- I know this is a resentencing but do you wish to be heard on that? And if it's easier for you to come up here, you're of course welcome to do that. But just keep your voice up.

MS. ZOGHLIN: Thank you, Judge. I think it's probably easier for me to stay here.

The reason the Court should rule on my objections is, first, that it's, it's essentially an entirely new proceeding at this sentencing hearing but also because the objections are not the same. So the Court just reviewed some of the things the Court ruled on at Mr. Pattison's initial sentencing.

Many of those paragraphs I did not repeat that objection in my objections. They are -- my objections, I suggest, are very specific as to not just, you know, this whole swath of Facebook posts are all irrelevant and shouldn't be included. I did not say that. I went through each one and said what paragraph it was and why I was objecting. And the ones, for example, that did include specific threats of violence for many of the reasons the Court just explained. I didn't object to those. I objected -- certainly there's some overlap but they're not the same.

THE COURT: They what?

MS. ZOGHLIN: They're not the same.

THE COURT: They're not the same. Well, you know, you know, prior counsel just objected to them all completely which would seem to cover what you raise but.

Well, I really repeat that I'm not sure it's necessary but we can go through them. You describe them sort of being in three groups, I guess, certainly with some overlap.

But I mean, Mr. Harvey, I don't know if the government

feels strongly one way or the other. We can go through the objections.

MR. HARVEY: Judge, I do think it's advisable to go through the objections. I will note Counsel did adopt the objections of prior counsel so I think it is necessary to rule on those again as you indicated you would but also to rule on the new grounds raised by Ms. Zoghlin an this resentencing.

THE COURT: Well, okay. I mean, should the Court decide to depart, there are many things to consider. Some might be things in the Facebook statements. But there's a lot of things in the Facebook statements that would not really be something that would affect sentencing or that the Court would consider at sentencing. But why don't we go at it. We have all afternoon here.

In your so-called first group, you list about six paragraphs. The paragraphs are references to the thorough presentence report. Which I have up here.

Which ones if any would you like to talk about or highlight?

MS. ZOGHLIN: You're looking at the first category, Judge?

THE COURT: Yes, you listed Paragraphs 26, 46, 54, 72, 74 and 76. I mean Paragraph 26.

MS. ZOGHLIN: Judge, I'm sorry. What page of my

objections are you looking at?

THE COURT: Page 2.

MS. ZOGHLIN: Page 2. So it's starting with Paragraph 54? Is that what you're looking at or are we talking about in the exhibit Page 2?

THE COURT: Well, your objections, which is document 61 filed August 4th, you listed at Paragraph 1 a group of paragraphs: Paragraph 2, some others. Paragraph 3. I guess I was looking at your first group. You didn't have them chronologically. You had 54, 24, 46, so I just did them chronologically and started with Paragraph 26 but we don't have to.

MS. ZOGHLIN: Okay, now I understand, Judge, that was what threw me. I understand.

Well the general objection as I set forth in both the motion -- or the statement and the exhibits as to those paragraphs is that the information is not sufficiently reliable. I understand that the information doesn't need to meet the standard, the evidentiary standards that would be applicable to a trial, but the law is clear that it does have to have indicia of reliability. And I think the fundamental disagreement I have with probation is I believe they deem anything that is in the discovery as sufficiently reliable to be included in the PSR. And I disagree with that proposition.

THE COURT: Say that again.

MS. ZOGHLIN: They, they -- I believe, I don't want to put words in their mouth -- but I believe this is what they've said that --

THE COURT: Who's --

MS. ZOGHLIN: -- anything that is contained in the discovery material, the government provided them the discovery, they then used the discovery to include in the PSR. My position is the mere fact that it was in the discovery does not make it sufficiently reliable to be included in the PSR.

THE COURT: Well, I mean, I don't know if, in fact, everything went in but Paragraph 6, for instance, just simply relates to the fact there were protests, that Mr. Pattison was part of a group of counter-protestors. Mr. Pattison was also a part of a group of counter-protestors out in Caledonia. And that, interestingly, he said as part of that, it's alleged that he charged at a protestor and said I'll end you, which seems threatening.

MS. ZOGHLIN: Well --

THE COURT: So.

MS. ZOGHLIN: This is -- Paragraph 26, Judge?

THE COURT: Yeah.

MS. ZOGHLIN: Okay. So, it -- my objection to that is that it doesn't say -- let me just make sure. What it says

is that he was part of a group of counter-protestors. I don't know whether that's been established but there's an allegation that he was a part of a group of protestors, and that the group of approximately five counter-protestors which included Pattison charged a protestor and yelled I'll end you. It does not say that he did.

So that is certainly one of my objections to that passage is that there are statements and actions essentially attributed to him without any proof that he engaged in those actions or made those statements.

MR. HARVEY: Judge, I can clarify that.

The information that we had is not that Mr. Pattison was the one that charged the protestor. He was part of the group and one of the -- part of the group of counter protestors and one of the other counter-protestors charged at the protestor and made that statement to them. I believe it was Mr. Oshier who this Court previously --

THE COURT: Yeah.

MR. HARVEY: -- sentenced for his conviction in this case. And --

THE COURT: Well --

MR. HARVEY: And --

THE COURT: Fine. It establishes, I think, that Mr. Pattison was part of the group of counter-protestors which is developed later on but I will not treat this, then, as a

statement by Mr. Pattison.

MS. ZOGHLIN: Judge, I would just add that we, also there was a message received from a police officer in Caledonia indicating that there weren't any issues with the counter-protestors and that they all behaved appropriately. So I think that is just counterfactual what it alleges in that paragraph.

THE COURT: Well, I mean, it just establishes I think what's developed later on: That there was protests, Mr. Pattison and others objected to it.

So I'm not going to strike it but I will not attribute the statement to Mr. Pattison. Will not affect sentencing and I will not consider it.

MS. ZOGHLIN: Judge, if I could just clarify what I was just alleging. I do have the message that was sent by Jared Passamonte, the officer in charge in the Caledonia Police Department saying that he had zero negative reports regarding that group, apparently the group of counter protestors.

THE COURT: Well, I said I'm not going to consider it, so.

MS. ZOGHLIN: Well, it's not just the state -- consider that statement against him. The other issue with it is that paragraph is classic First Amendment. That is classic information that is not relevant to the sentencing. I understand when the Court tied statements or actions to

violence but that's not what this was.

THE COURT: I'm not going to consider it. I'm not going to consider it a statement of Mr. Pattison.

Paragraph 46 you also object to. Let me just review that, if we have to. Yeah. Statements by Mr. Pattison:

I'm tired of it all, referring to the protest. I want to smash them all. I have no remorse. I'm a racist.

Certainly I think that's relevant to some of the other things that are discussed in Mr. Pattison's penchant for violence and taking it out on people he disagrees with.

MS. ZOGHLIN: I didn't object to what Mr. Pattison said. I objected and I'm looking right now at it's Page 11 of document 61. Where I explain my objections. I objected to everything after what he is alleged to have said, statements that are specifically attributed to Oshier, Beretta and Finocchario, expressing their own racist inflammatory beliefs. There is no reason that other people -- to the extent that he has not adopted them, I don't think it's relevant to include other people's statements.

THE COURT: No, I --

MS. ZOGHLIN: And there's no, no statement attributed to him that follows. What I've suggested is there's his statement and then there's a whole section of other people's statements. There's nothing to suggest that he adopted them.

THE COURT: Well there's a whole group saying these

things and I don't think there's any reason to strike it. I will consider Pattison's statements against him and, otherwise, the matters will not affect the Court's sentence here.

All right. 54 I think we've already talked about, I think.

MS. ZOGHLIN: Judge, this is, I don't know if that's exactly the same. I think we were talking about 26.

54 which my objection is spelled out on Page 12 of document 61. In part, my objection, as well as the other things I lay out here, is that there is information that is attributed to the administrators of the 585 Hatewatch Facebook page. They identify Pattison as present and among the group of counter-protestors. That, I think, is classic unreliable information. This is a Facebook page also that --

THE COURT: Well, it --

MS. ZOGHLIN: -- that as far as I can tell, no longer exists. There is --

THE COURT: Well --

MS. ZOGHLIN: -- no explanation or evidence to show who are the administrator of the 585 Hatewatch Facebook page and why does what they claim -- why should what they claim be considered reliable by the Court?

THE COURT: Well but they also establish here which something that does not seem to be at all disputed by your

client is he's a "neo-Nazi skinhead".

MS. ZOGHLIN: That's really, I would submit, Judge, not relevant to the content of this paragraph which is repeating something that's based on a wholly unreliable source. It also says that he showed up in Caledonia to intimidate a completely peaceful BLM rally.

THE COURT: All right. The only part I'll consider here is he appears to be a neo-Nazi skinhead and what relevance that has may be developed further. Otherwise I won't consider anything else here in sentencing.

Paragraph 72 you seem to object to. There is a lot of other stuff you don't object to here but that's -- I appreciate that. But 72.

Well, allegations that Mr. Pattison and others used these so-called Discord account to engage in private conversations. I guess so what? I will not consider that in any way as affecting sentencing.

Paragraph 74.

MS. ZOGHLIN: There was also, I believe, Paragraph 73. I'm sorry, Judge, I don't want to interfere with the order that you're going in. That might be under a different category, that's why the Court's going through the objections that way.

THE COURT: What? I didn't hear you.

MS. ZOGHLIN: I also objected to Paragraph 72. Did we

just go -- what paragraph are you on, Judge? I'm just trying to follow?

THE COURT: I thought I dealt with 72 that I'm not going to consider anything in there, the fact they used something called a Discord account I'm not going to consider at sentencing.

So I moved right to 74. Which I think appears certainly germane. Talks about a group chat with others. Pattison says "how many people and guns you got". Pattison says "if you don't have 1500 people to slaughter them, then sit down".

MS. ZOGHLIN: My --

THE COURT: Pattison saying something, I'll be dead two minutes for nothing.

MS. ZOGHLIN: Judge, my objection to that paragraph, Paragraph 74, is that it is -- it's contained under the heading "Discord account records". It's not a dis-- it's not about a Discord account record. It's about a Facebook chat as far as I can tell, and it's quoted previously in Paragraph 50 and there's no additional relevance --

THE COURT: Well, it talks --

MS. ZOGHLIN: -- that requires it or that it would be appropriate to repeat it here.

THE COURT: Well, it specifically says it's a Facebook account. The fact that it's under the Discord account heading I don't think matters. I think it's germane and

relevant.

MS. ZOGHLIN: I also objected to the fact that -- no, withdraw that. I'm sorry. I'm talking about a different paragraph.

THE COURT: All right. The last one, Paragraph 76 in your first group here.

I don't know, they're talking about words and so forth and maybe the organization. I don't see any reason to strike it, as I told prior counsel but I also don't think there's anything in there that would affect sentencing.

MS. ZOGHLIN: My objection to that, Judge, was that the --

THE COURT: I thought I already ruled.

MS. ZOGHLIN: That the Court's not going to consider anything in that paragraph?

THE COURT: No.

MS. ZOGHLIN: Okay.

THE COURT: You won. You can only go downhill from here.

All right, you had another group. Let me just see if I can find them here. Okay. Your second group which -- there may be some overlap. I guess there is because the second group, Page 2 of your objection filed August the 4th listed nine paragraphs and some of them we've already dealt with. Paragraph 26, 46. I guess just those two.

So let's look at Paragraph 55. Pattison used his Facebook account. Admittedly it was Mr. Oshier that was objecting to someone taking a picture.

And that opinion was Mr. Oshier was saying he wanted to kill the Black Lives Matter protester. I mean, on the one hand I say, you know, these are the people that Mr. Pattison was hanging out with but, in fairness, there's no reference there that Mr. Pattison made that statement. So, it stays in but it will not affect sentencing because it's Mr. Oshier's statement and I've already sentenced Mr. Oshier.

MS. ZOGHLIN: Judge, I would just note my objection to the paragraphs being re -- that are not relevant remaining in the PSR because, of course, the PSR continues to be used for many reasons in addition to sentencing.

THE COURT: Well, I think it's not unreasonable to have this material in there because it relates to certainly background as to what was going on, the protests, Mr. Pattison's involvement. Mr. Pattison has many statements relating to his views of the protestor and what he wanted to do to them and so forth. So --

MS. ZOGHLIN: He --

THE COURT: -- no, I see no reason to strike anything from the presentence report. I deny your request.

Next it looks like we have Paragraph... Well, it doesn't really say much there. Mr. Pattison expressed

support for white supremacist ideology using certain hand signals.

MS. ZOGHLIN: What paragraph are you looking at, Judge?

THE COURT: 54.

People identify him as a neo-Nazi skinhead which there doesn't seem to be much dispute about. Mr. Pattison seems proud of that fact.

MS. ZOGHLIN: Again, Judge, my objection on Paragraph 54 is that it is -- appears to be based on information from a Facebook group, 585 Hatewatch, so there's no indicia of reliability about anything that the administrator, the anonymous administrator of that Facebook group says.

So that was my --

THE COURT: All right.

MS. ZOGHLIN: -- objection.

THE COURT: I think there is sufficient indicia of reliability but I don't think it's something that I have to rule on. It's not going to affect sentencing, that particular paragraph.

MS. ZOGHLIN: The other -- the additional thing I mentioned to probation about that was that I objected to anything from that group being included because I don't think it's reliable.

However, that group also is a group that put out his name and his face and I think that is relevant. So, what I

asked is if you're going to include things from that group, you should also include what they did to sort of publicize him and direct people's anger at him.

THE COURT: Well I've ruled. I'll leave it the way it is and my statement about no need to rule.

Next in your list is Paragraph 66. You know some of this, there are many other paragraphs and Facebook things that are not objected to and some of these things just sort of fill in the context and so forth and some were not very damning, I guess.

Paragraph 66. Pattison posted a photograph of himself posing in front of a flag which is a Nazi death skull.

MS. ZOGHLIN: What I noted, Judge, on Page 13 of document 61 is that this paragraph, and, as the Court noted, I did not object to every paragraph that contained some association with his ideology to the extent that it was linked to violence.

But when it wasn't, I did object. And that's one of the things here. I objected to the paragraph because it adds nothing other than an association with an ideology which is not relevant to the issues before the Court.

THE COURT: Well, I don't agree with that but we'll talk more about that later.

But 66 doesn't really seem to add anything more than what Mr. Pattison believes but, again, it just seems like the

ruling is unnecessary. That paragraph doesn't have anything to do directly with the sentence the Court seeks to impose. I mean, if it just relates to the fact he's a neo-Nazi and has views, white supremacist, I mean, that's established so many times, I don't know why we're spending a lot of time talking about it.

Paragraph 73.

Mr. Pattison uses Facebook. I don't know, it doesn't seem to say much of anything. Just used Facebook account that there are protestors that were occupying Rochester.

MS. ZOGHLIN: What I objected to is that the statement contained in Paragraph 73 is not a statement of Pattison's, it's not a statement he adopted, and it's sort of consistent with this theme that I don't believe is established which is that they're trying to have some secret conversation. You know, most of the conversation, unfortunately, was not secret at all and millions of people -- literally millions of people -- use Discord.

So to the extent of the interpretation that it's being used as some sort of secret criminal society or so that the police don't know what they're saying, I object to that. And specifically I object to that paragraph to the fact that it is apparently John Jacobsen who said that and not Mr. Pattison.

THE COURT: No. Because of that I will not hold

anything in that paragraph against Mr. Pattison but I still think it's background, that it's not unfair to be in the presentence report. But the Court will not use it against Mr. Pattison.

And then finally -- maybe not finally -- number 77.

Well, this talks about several things, maybe some discussion about getting a new recruit. But interestingly -- and I can't find exactly where it was -- he talks about people doing a hundred pushups a day to get ready for I guess the "holy war". But Pattison indicating that others if they got caught presumably with firearms, they would not suffer much but that Pattison would do 5 to 15 years. So I think that's one of many examples of Mr. Pattison understanding his position and use of firearms has significant consequences.

MS. ZOGHLIN: Judge, I would just draw the Court's attention to Page 14 of document 61. That's where I lay out the basis for my objections to that paragraph.

THE COURT: All right. I'll overrule.

Paragraph 78 is the next one you objected to. There's a discussion with someone named "TAPMATO" about the fact that Wal-Mart has guns. And Mr. Pattison says, interestingly, I don't -- it says but guns on paper. The clear, I think, indication is that Mr. Pattison knows he can't buy a gun legally on paper meaning going through the paperwork because he's got a prior felony. Pattison also says "keep me in mind

if there's any guns, thank you for the information, brother".

So I think that's certainly germane and relevant and I overrule the objections that --

MS. ZOGHLIN: Judge --

THE COURT: -- you made.

MS. ZOGHLIN: Judge, my objection was more specific than that. I would just draw the Court's attention to Page 14 of document 61. I did not object to the entire conversation. And this is, this is why, in part, why I brought to the Court's attention that my objections are not the same as previously filed by prior counsel.

I objected to the last quoted statement from "TAPMATO" because it is his statement not Pattison's, it is not adopted by Pattison and does not add context to the conversation above it.

THE COURT: No, I disagree. It's part of the, you know, Mr. Pattison didn't say it but it's part of the conversation relative to buying the guns and trying to avoid a paper trial. So I'll keep it in and not strike it.

Last one in this group is Paragraph 82.

Well, there doesn't seem to be much to that. I guess there was a picture sent to Mr. Pattison showing a gun.

MS. ZOGHLIN: I don't believe it says "a gun", Judge. But, again, my objection which is on Page 14 of document 61 is that the paragraph is irrelevant because the exchange

between the two of them is entirely innocuous and the message sent later by "TAPMATO" reflects only on him. There's, there's no adoption of it. There's not even any indication that Mr. Pattison responded to it. So the only thing that is in some way negative in that paragraph is a statement that someone else made that Mr. Pattison didn't even respond to about what is referred to as a rifle kit.

THE COURT: It just seems like it's background of the continuing effort to get Pattison the gun or guns. And I'm not going to consider "TAPMATO"'s statement as an admission or statement of Mr. Pattison. But I don't think it warrants striking it from the presentence report.

All right, your next group, there were multiple. Some of them I think we already considered.

MS. ZOGHLIN: The reason they're separated, Judge, just to be clear, they're grouped by the basis for the objection.

THE COURT: Well, I'm just trying to see which ones we dealt with. In this one you listed 20 separate objections which I guess we have to go through each one. We did deal with a couple of these: 54, 77. I guess that's all.

All right, let me see what I can find here. Looking at the presentence report.

MS. ZOGHLIN: The basis for these objections, Judge, specifically to these paragraphs on this basis is that the conclusions or interpretations are entirely subjective,

they're unnecessary, and not necessarily reliable. Many of them the Court can draw its own conclusions. One example of that is some description of words that were exchanged and the investigators add that this is because Mr. Pattison knew that he had a previous felony conviction and, therefore, couldn't legally own guns. Why would the Court need a law enforcement's interpretation of the language that the Court can read and interpret itself?

THE COURT: Well I don't but Paragraph 29 doesn't seem to say any of that. It very simply said he was arrested on the parole absconder warrant from the Missouri conviction, his cell phone fell out and had certain numbers on it with a Nazi symbol. I see no objection to that at all.

So I will not strike it and receive it.

And consider it against Mr. Pattison. Shows he was arrested, had a cell phone, and there was later references to the cell phone.

MS. ZOGHLIN: The footnote was my objection to Paragraph 29.

THE COURT: Oh, I see. I missed that. All right.

I won't consider that.

48.

MR. HARVEY: Judge, just to clarify. You said you will not consider that. I believe counsel's objecting just to the last sentence about use of these numbers signify an

endorsement of white supremacist ideology.

The rest of that footnote is germane and it interprets various parts in this case where the defendant displayed these symbols, the 14, the 88, the SS symbol, and what those stand for. So I think those are things that the Court should be aware and can rely on in sentencing.

THE COURT: Well there just doesn't seem to be anything that's really in dispute here.

MR. HARVEY: And I agree with that. That was the point in my filing was that it is not in dispute that he embraced white supremacist ideology. But I just ask if you want to strike any part of that footnote, just the last sentence.

THE COURT: No, I won't consider it. It's not something -- there's plenty of other information about that. So, I understand your point but...

Where are we now? 48.

MS. ZOGHLIN: My objection to 48, Judge, is set out on Page 11 of document 61, objecting to the last statement in the paragraph. I think this is --

THE COURT: Well --

MS. ZOGHLIN: -- very significant, Judge, and I believe the Court at least to some extent at the previous sentencing indicated an adoption of the notion that Mr. Pattison was preparing to engage in a holy war.

THE COURT: Well, if you take that last paragraph out,

fine. But the rest of it I think is pretty significant and I take it maybe you don't object to that although it's certainly Mr. Pattison made several admissions: "Storm is brewing", "I just hope dismantle the police", "no justice system, I be there". "Multi-cultural homo system is completely doomed. Race war is inevitable."

So all that comes in.

MR. HARVEY: So you just will not consider the last sentence, Judge, of that paragraph?

THE COURT: That's right.

MR. HARVEY: Okay.

THE COURT: Let's see. The next one you want to talk about is 50.

MS. ZOGHLIN: My objections to that are located on Pages 11 and 12 of document 61. I object to the last sentence of that paragraph. On the grounds that the words preceding the last sentence don't require law enforcement interpretation. The interpretation doesn't provide any additional objective information. That it's for the Court to decide what weight to give to that conversation.

THE COURT: I'm not sure exactly what you're referencing but Mr. Pattison talks about how many people you have. Somebody said "every revolution needs a martyr". It's "time to shoot. "Let me get the 40 caliber and I'll be out this window."

MS. ZOGHLIN: The last sentence says: "Based on the content and context of these messages, agents believed that Pattison, Selover and Ladue were discussing shooting Antifa and BLM protestors."

THE COURT: All right, I'll take that sentence out because if I look at the rest of it, I think I can make that finding that that's exactly what they were talking about. So I don't need the next paragraph. If it makes you...

MR. HARVEY: The last sentence, right, Judge?

THE COURT: Yeah.

MS. LOTZ: Judge, if I could interrupt for one quick second. As you're striking things, are you ordering probation to revise this report?

THE COURT: No, I'm not going to consider it. It stays in. I don't see any reason to change it.

MS. LOTZ: Thank you, Judge.

THE COURT: Continuing down your list. Paragraph 52.

MS. ZOGHLIN: My objection to 52 is located on Page 12 of my objections, document 61. And I object to the last sentence of the paragraph for the same reasons that I've discussed for some of the previous objections.

THE COURT: All right, so it's just the viewpoint of the agents which, frankly, we often -- I've had hundreds of presentence reports where FBI agents and others make opinions based on their expertise but.

MS. ZOGHLIN: Well, I don't know that there's any particular expertise in interpreting a conversation that the Court can read for itself. And I do think there's harm in this, in that they are -- their interpretation is suggesting to the Court that these were actually contemplated actions that people were taking steps to prepare for. I believe that's not true. So I dispute their interpretation and I don't think it's based on any particular expertise.

THE COURT: I'll rely on what Mr. Pattison said which is pretty significant and damning. But I will not consider the paragraph at the end -- or the sentence at the end that you take issue with concerning the opinions of, I guess, law enforcement.

Bending over backwards. 58.

MR. HARVEY: Judge, I think there were objections to 53 and 54, as well. In that group.

THE COURT: Oh. I guess I missed 53.

Yeah, Mr. Pattison says some very interesting violent things in there.

MS. ZOGHLIN: My objections are more specific than that, Judge. My objections to this Paragraph 53 is on Page 12 of 14 in document 61. And specifically I said I object to the sentence that begins "based on the contents and context of these messages, agents believe".

THE COURT: Well I guess you're right in the sense that

it's pretty obvious based on what went before that that's what Mr. Pattison and Mr. Seger discussed.

MS. ZOGHLIN: And I objected, as well, to the last sentence asking specifically what the source is for that information.

THE COURT: Well I think later on there is a reference to the fact that Mr. Pattison says something like I beat or I got six protestors.

So, no, I'm not going to strike that. I think it's supported by other matters and certainly the principal part of that paragraph is certainly germane to what Mr. Pattison not only believed but what he did. That's the crucial thing.

All right. So now I think we're on Paragraph 58. I'm reading along here.

This is Mr. Pattison's discussion with someone I guess he knows who was -- which referenced an Antifa associate, whatever that means. Mr. Pattison said several things about his Nazi attachments and, you know, consider this a declaration of war.

You probably object to the last sentence. I will not consider that.

MS. ZOGHLIN: I object to the -- this is Paragraph 58, Judge?

THE COURT: Yes.

MS. ZOGHLIN: My objections are set out on Page 12 of

document 61. I object to the phrase "wherein Pattison issued a direct threat of violence". There's no reason for the words to be characterized in the PSR or by law enforcement.

The same applies to the last sentence which begins "based on the contents and context of these messages, agents believe". It's a subjective interpretation of the words and their interpretation that he was expressing an actual intent as opposed to empty threats or hyperbole which is my position.

THE COURT: Empty threats, really?

MS. ZOGHLIN: Yes, Judge.

THE COURT: You know, in general, really I don't think -- agents' opinions which are accepted all the time in presentence reports. I just don't think it matters enough here to fight about it. So I'll take the last paragraph out, the last sentence where the agents opine because I think the rest of the paragraph is crystal clear to me.

All right. 59 is the next thing.

MS. ZOGHLIN: 59, I objected to the last sentence that includes the agents' subjective interpretation of the conversation for the same reasons that I've expressed elsewhere in document 61.

THE COURT: Yeah, all right. The last paragraphs, I guess the same ruling but the rest of it stays in.

MR. HARVEY: Judge, I'm sorry to keep interrupting but

you say you're going to not consider the last paragraph. I think you mean the last sentence, correct?

THE COURT: I meant the last sentence.

MR. HARVEY: Thank you.

THE COURT: 62.

MS. ZOGHLIN: My objection is also to the last sentence of that paragraph.

THE COURT: I guess wherever the agents opine something, you think it should be?

MS. ZOGHLIN: Well, that is the basis for the objections in these, in --

THE COURT: All right.

MS. ZOGHLIN: -- this section, Judge.

THE COURT: Same ruling. I will not consider it. It will not affect sentencing.

And that gets us to number 63.

I don't know what your objection is here. This seems pretty significant. Just before Mr. Pattison was arrested talking about guns and ammunition and rare bullets and so forth.

MS. ZOGHLIN: My objections are stated on Page 13 of document 61. My objections to Paragraph 63 are to the last two sentences about what agents believe.

THE COURT: All right. I don't need those. I can tell from the conversation exactly what they were talking about.

So, same ruling. But, again, it's basically that part what the agents think is not going to affect sentencing because there's plenty of other things to consider both ways.

I guess we're now up to 64.

MS. ZOGHLIN: In Paragraph 64 I object to the last two sentences.

THE COURT: All right. So anything the agents say you object to.

MS. ZOGHLIN: No, no.

THE COURT: All right, same ruling.

MS. ZOGHLIN: Respectfully, Judge, that's not accurate.

THE COURT: Pretty much is. That's the only thing you've said about most of these objections.

MS. ZOGHLIN: Judge, that's because this particular section of my objections, that is the basis for these objections.

THE COURT: All right. Well, I will not consider that last sentence, Paragraph 64. The rest of the paragraph stands. It is pretty clear to me. All right.

65. Well, here again, we've got agents opining. I assume you object to that so I'll have the same ruling.

MS. ZOGHLIN: That's correct.

THE COURT: Okay. And we're getting down to the end here.

Paragraph 72 we've already dealt with.

MS. ZOGHLIN: And the reasons for my objection under this subsection -- the reasons for my objection to Paragraph 72 are set forth on Page 13 of document 61.

THE COURT: Seems the same to me but the fact he used this Discord account is not something the Court will utilize at sentence.

74. 74 we also dealt with. I don't know why we...

MS. ZOGHLIN: This paragraph, I objected to this paragraph because it's the same Facebook chat and not Discord but it's referred to and quoted previously in Paragraph 60 and adds no additional relevance in Paragraph 74.

THE COURT: So there's no harm. It's just a duplication about what Facebook accounts showed. So I will not change anything with that. We've already talked about it at some length.

Paragraph 75. Let's see here.

MS. ZOGHLIN: Paragraph 75, Judge, my objection is contained on Page 13 of document 61. I object to the assertion in the last sentence that Pattison wanted to use Discord to avoid detection by law enforcement authorities.

More specifically, Judge, as I discussed regarding Paragraph 72, better, safer communication is why millions of people use Discord. There's no question that he, Mr. Pattison, didn't restrict this type of expression to that platform. So their belief, I believe -- I submit is both

irrelevant and unnecessary in this context.

THE COURT: Well, you consistently said these matters, opinions of agents is not something I have to resolve under Rule 32(i)(3)(B). The fact he used that account or not is not going to affect sentencing.

So I guess we're at 77 now. We've already talked about 77. Never mind.

MR. HARVEY: I think we're on 76, Judge.

THE COURT: I thought we did. It just talks about the structure and who's in charge and who's a big dog and the fact that it's used for a forum for private communications. I guess that the fact it contains a opinion of agents, out of an abundance of caution, I will not consider it as affecting the sentencing.

So now we're on 77. I think we already talked about that. Yes, we did. I already ruled on 77. That's 300 pushups a day.

Paragraph 79. There is a last sentence where the agents opine.

Ms. Zoghlin, I assume --

MS. ZOGHLIN: I don't believe it is just that, Judge. I did -- this objection to Paragraph 79 is set forth on Page 14 of my objections. I object to that entire paragraph at 79.

THE COURT: And you don't think the fact it says Pattison stated he was seeking to acquire a 12 gauge shotgun

is sort of important? I mean, I know it may not be...

MS. ZOGHLIN: Judge, what I indicated in my objections is that I'm objecting to the entire paragraph for the reasons expressed multiple times above that's on Page 14 of my objections. To the extent that the content of 78 which is what this apparently is referring to, is relevant, it requires no additional interpretation, and it is wrong to assert that Pattison stated or expressed certain things because he clearly did not state or express them.

THE COURT: No. I mean, a series of messages. Pattison stated he was seeking to acquire a 12 gauge shotgun. No, I'm keeping that in.

The last thing about the agents, if that's still of concern to you, I will not consider that. But I mean, it's obvious, if you look at all these other things, that that's what Pattison is trying to do. And he ended up being successful. That's, of course, crucial and that's what he pleaded to.

So, Paragraph 80 here. I don't know, I guess this is some talk about body armor that Pattison thought might be great to have. I'll leave that in.

MS. ZOGHLIN: Judge, were you addressing Paragraph 80?

THE COURT: 80 wasn't even objected to.

MS. ZOGHLIN: Right.

THE COURT: Sorry. There's so many I have trouble.

84 I guess you want.

MR. HARVEY: Judge, there was an objection to 82. Did we already resolve that one?

THE COURT: Yeah, we already dealt with that.

MR. HARVEY: Okay.

THE COURT: That was in the prior group.

MR. HARVEY: Okay.

THE COURT: This is the third group.

And 84 talks about conversations from jail with Miss Pfenninger talking about "they took all the stuff" and Pfenninger said "yes". Pattison replied: "I'm fucked".

MS. ZOGHLIN: Judge --

THE COURT: I take that --

MS. ZOGHLIN: I'm sorry.

THE COURT: -- as a recognition by him that they got the guns and he knew that he wasn't supposed to have the guns. But that's my interpretation.

MS. ZOGHLIN: My objection to Paragraph 84 is noted on Page 14 of document 61.

THE COURT: Which is, again, the agents' opinions.

MS. ZOGHLIN: I object to the last two sentences which provide unnecessary subjective interpretation of the jail call between Pattison and Pfenninger. The conversation does not contain any unique code or phrases that could only be understood by trained members of law enforcement.

THE COURT: Well, it just seems so obvious from what went before, that that's what happened. But I will not consider those sentences relative to sentencing here. But I'm not going to strike it.

Last is 86. Another telephone call. Yeah, this primarily goes to the obstruction of justice and the attempt to put a fraud on the case and Pattison ordering them to try to make it appear that the guns were not Pattison's but were somebody else and, you know, Mr. Pattison has pleaded to that, as has Miss Pfenninger and Mr. Oshier. So, again --

MS. ZOGHLIN: I --

THE COURT: -- if it's the last sentence about the agents opining, the statements are so obvious I don't need the agents's opinions.

MS. ZOGHLIN: That was the basis -- that is the basis for my objection to many of these, Judge. To the extent that any interpretation is necessary, Judge --

THE COURT: Yeah.

MS. ZOGHLIN: -- there's no reason --

THE COURT: I said I'm not considering it.

MS. ZOGHLIN: Okay.

THE COURT: I think that covers your lengthy list of objections.

MS. ZOGHLIN: Judge, to the extent that the Court has declined to strike the passages to which I objected in

document 61, I would just obviously note my objection to that decision.

THE COURT: All right. Noted.

I think this might be a good time to take a break. We have some more to do and we've prevailed upon our court reporter for many, many minutes. We have other court matters. We're just going to take a short break and then we will resume our discussion on the sentence of Mr. Pattison.

(WHEREUPON, recess taken.)

(Open court, defendant present:)

THE COURT: Okay, we are back on the record in *United States v. Pattison*.

And I guess the next thing I would discuss is what I call the slashing or the attempted murder that's set forth at Paragraph 20 of the presentence report. This was also referenced in a memo that I asked Officer Lotz to do, which the parties have had for the last two days but I'm not focusing on that at this point. Just on the assault with a homemade knife that occurred on October 20th of 2023 while he was serving a sentence imposed by this Court. The assault took place at the penitentiary at McCreary.

So this obviously, although the Court departed previously when I sentenced Mr. Pattison on May 23 of 2022 -- or May 23, this information obviously was not something the Court possessed. And, frankly, there's some other matters

that I might reference. So, I don't know exact -- I have the government's filing which shows in gruesome detail photographs of the inmate and it lists Mr. Pattison's statements as to why he did what he did.

So it doesn't seem to be much dispute about that. I'll let the parties speak to it if you want. But I think maybe the best way to do this is to say based on my beliefs about this assault that took place in October of 2023, and some other matters, I do believe that a departure under 4A1.3 because Mr. Pattison's Criminal History now of III underrepresents the seriousness of his record and especially the likelihood that he will commit a crime in the future.

I also believe under Section 3553(a), relative to those eight factors, they also suggest a sentence, a variance above the offense level 19. Where I end up is something counsel can certainly argue and maybe this is the time to do that.

I am required to indicate reasons for departure and the variance. Those words are often tossed up interchangeably but they are different. As to the person's sentence it probably doesn't make much difference but there are numerous rules and proceedings the Court must follow. So, having indicated that I do not think that I would sentence Mr. Pattison under the existing Guidelines with a Criminal History Category III and an offense level of 19, that I would and do intend to sentence him to a higher or more onerous or

upward range.

As I said at the beginning, the parties have indicated Ms. Zoghlin on behalf of her client seek the most lenient sentence, that is a Guideline sentence and Mr. Harvey has asked for something well above that; in fact, the statutory maximum which is 120 months.

So, maybe, maybe this is the time to hear from counsel, and I guess Mr. Pattison if he wishes to address the Court again.

I guess, Mr. Harvey, you want to take the lead.

THE CLERK: Your Honor, before we proceed.

(WHEREUPON, a discussion was held off the record.)

THE COURT: I'm sorry, folks. We are at a crucial point here but I have several other criminal matters that I'm going to talk to them at side bar for a minute.

(WHEREUPON, recess taken.)

(Open court, defendant present:)

THE COURT: All right. I think having dealt with the objections and talked about what the Guidelines are and the Court indicating its intent to not sentence within the Guidelines but to sentence above the Guidelines because I believe Mr. Pattison's criminal history substantially underrepresents his criminal history and especially does not adequately reflect the likelihood that he will commit an offense again.

Also, I think under Section 3553(a), examination of those factors also suggest that an offense level above the level 19 is warranted.

Now, exactly where all of that leads us, I guess is something that counsel should speak to, understanding that I do have your thorough briefs on the matters. Defense has filed a statement with respect to sentencing factors dealing with objections but then there was a sentencing memo. And Mr. Harvey has filed his memo as well.

Let me just say something about the memo that I asked Ms. Lotz to prepare while she was on vacation. The purpose of this really was -- understanding it's hypothetical because Mr. Pattison was not convicted in state or federal court of the what I'll call the slashing activity on October 20, 2023. But the design, I guess, was simply to set forth that one engaging in such acts, whether it's denominated assault with a dangerous weapon or assault with intent to commit murder or even attempted murder could involve significantly higher penalties. I mean, in thinking about it later, I suppose my kids' grammar school teacher could probably tell me that, that if you engage in this conduct, it's serious, and perhaps under all the sentencing parameters, it involves there's something that a judge should do faced with this situation.

So, that's all it really was designed to do. And I know Ms. Zoghlin has had some concerns about it and it's not, you

know -- it's hypothetical. So it really, it limps maybe because of that but I think that was the purpose, just to show had Mr. Pattison been charged with those things in federal court, his guideline range, offense level, criminal history would have increased. But I guess, you know, having done this for many, many years, that really was obvious to me and I -- but I did what I did.

So that's really the only purpose for that memo which I guess has not yet been filed but I can see that it gets filed. When I render my decision here as to why I intend to depart, I will give reasons, perhaps lengthy reasons, and they won't be referring to this memo that I just referenced.

So, Mr. Harvey, you have asked for the maximum penalty here which you have to understand with a Criminal History III, and you know we're in the unique situation even though we have what we have, the offense level has actually -- or the Criminal History Category has been reduced. And the Guideline range, as far as the offense level, is now 37 to 46 months. Your request for a 120-month sentence is, what, two or three times what the Guidelines are.

So, I think I understand all of your positions but you both are entitled to address the Court on the matter as to where the Court should end up or whether the Court should really reconsider whether it should impose a sentence above the Guidelines.

So, Mr. Harvey, I'm sorry for interrupting by taking that other matter but what say you.

MR. HARVEY: That's quite all right, Judge. Thank you.

Yes, you are correct, the government is seeking the maximum sentence, as we did at the original sentencing. And we submit that such a sentence is warranted and justified under both Section 4A1.3(a), as well as an upward variance under 3553(a).

As I detailed in my prior original sentencing memo and in my supplemental sentencing memo here and as the Court highlighted at sentencing, the government's arguments originally focused on the nature and circumstances of the underlying offense here which is the possession of the firearms and ammunition by a convicted felon.

The defendant's criminal history and personal characteristics including his statements -- and they're contained in the PSR and in our prior memorandum -- his statements indicating his desirer commit racial violence.

The defendant's abysmal performance while under supervision in previous cases and his obstructive conduct in this case where he sought to use his wife and two other people to take responsibility for the firearms and absolve him of any legal responsibility.

So that's where we left off last time. And based on those factors -- and I don't want to speak for the Court --

but my understanding, based on those factors, this Court saw fit to impose a well above Guideline sentence which was more than two times the low end of the range applicable at that time and sentenced the defendant to 96 months in prison.

And I will not restate all of the underlying facts relating to my prior arguments because as your Honor said, we've included that in our supplemental memo and in our original memo. So I'll focus on what has happened since his sentencing.

So, since his sentencing, BOP felt it necessary because of the defendant's connection to domestic terrorism -- that's the way they phrase it -- and his affiliation with the Skinheads, saw fit to put him in a high security prison, penitentiary in Kentucky. So that's where he was serving out his sentence as recently as last year.

While he was housed there, I think it's apparent from the paperwork -- and I don't think the defense disputes this because their submission effectively concedes this point -- the defendant became a member of I guess what could only be described as a Skinhead prison gang, Judge.

And as a member of that gang, in November of 2023, the defendant and another member of that gang assaulted another inmate.

THE COURT: I think it was October of '23.

MR. HARVEY: I'm sorry, October of 2023, excuse me

judge. They attacked another inmate who I gather from the paperwork was also a member of this gang. And they viciously attacked him. The defendant was harmed with a homemade razor blade weapon which he used to slash the victim in the face from behind his ear to almost the side of his mouth on the right side of his face while the other gang member used a sock filled with metal locker parts to also beat the victim.

The defendant admits -- and his accomplice admitted as well -- that they attacked the victim for a racial reason, that is, because he was apparently, or allegedly, selling homemade weapons to members of another race inside the facility. So those are the basic facts.

Your Honor has made reference previously to the photographs that the government included in the supplemental memo which show the injuries sustained by the victim so I won't belabor that point. But this assault is critical to the government's recommendation for a couple of reasons.

First, as we detailed previously, the defendant has been on an escalating pattern or escalating trajectory of criminal conduct for his adult life. He started out committing a criminal mischief hate crime. Turned to DWI. Turned to another criminal mischief. Turned to menacing. Invoking threats of violence. Committed a domestic violence felony in Missouri where he strangled his girlfriend and threatened to kill her.

And then he escalated from that to the charges in this case which involved him possessing a firearm illegally and ammunition for at least one purpose of which was to kill black people and protestors at a genocidal rate, to kill black children to, quote, clean the bloodlines, to prepare for a racial holy war or a cleansing -- as he referred to in one of his messages -- to kill niggers, and talked of using the weapons for hunting season against black people and protestors if the police were abolished.

That's just a sampling of the stated intent that he had when he first possessed those weapons, Judge.

So we went from that now to serving an 8-year prison sentence in a high security prison and the defendant commits another racially tinged act of violence. This time he actually followed through on the violence and inflicted it against his fellow gang member.

So it's clear to the government based on the facts before this Court, that the 8-year sentence that you previously imposed made no difference to this defendant. It did not deter him from continuing to engage in criminal activity. It did not deter him from committing crimes involving racial animus. As a matter of fact, it caused the defendant to up the ante.

And I think if you look at those photographs in the government's memo, I think it's pretty clear that if the

defendant inflicted a slashing wound maybe 1 or 2 centimeters from where he began that wound behind the victim's ear, he very easily could have caught the jugular vein and killed this particular person.

So, he has, he has moved into another higher category of danger from the government's perspective. And since it's clear that 8 years didn't do the trick the first time, I think it's a fair inference that the only sentence that would get the message across to this defendant and protect the community would be the statutory maximum.

Now, in connection with that, Judge, I do want to reference the memo that I think you will make part of the record and is at least part of the Court's consideration here.

I think the sentencing Guidelines calculations for the two different offenses based on the degree of injury, whichever one of those ranges you choose, they're all significant, the lowest is 84 to 105 months. The highest is 168 to 210 months.

I'm not asking, obviously, your Honor to just adopt those Guidelines but I think those Guidelines speak to a few things.

First of all, they speak to the gravity of the offense that the defendant committed. This is an offense that even barring the racial aspect, would get him at least 7 years in

prison. So, it speaks to the gravity of the offense.

And, also, I mean, we are in a situation where obviously Kentucky, the U.S. Attorney's Office there, had declined to prosecute this particular offense. I will state for the record that, based on my communications with them, the basis for them declining prosecution was a combination of resources and priorities from offenses occurring at the prison, as well as the fact that the FBI did not maintain and get videotaped footage of the assault before it was destroyed. And, also, this was a concern about the admissibility at a trial of the defendant's statement where he admitted his culpability.

So it was not a declination on the merits, so to speak. It was a declination based on priorities and the nature of the investigation by the FBI.

I think if you -- and I expect, as the defense has already said in their memorandum, that they are asking for a Guideline sentence. I would just note for the Court that that would effectively be time served because he has served 45 months in prison. And I know your Honor has said you're considering the upward departure anyway. But I just want to note that the defense request would effectively give this defendant a free pass for the crime that he committed at U.S.P. McCreary. And I just can't see a situation where that is a just or reasonable result. The defendant should and must be held accountable for his involvement in that offense,

especially considering that it happened while in custody, while pending appeal, and in light of the defendant's criminal history.

So I think if you look at how this Court broke down the sentence last time, I think you went up, I think, from a Criminal History Category IV to a VI and from Offense Level 19 to a 21 to get a range of the 96.

The government's asking you this time under 4A1.3(a), to go up to a Criminal History Category VI and go up to an offense level 24, and impose the statutory maximum.

Of course, as an alternative -- and I urge the Court to find on both grounds -- as an alternative, this Court could simply impose an upward variance based on the consideration of the 3553 factors and get to that 120-month number as well.

THE COURT: Thank you.

MR. HARVEY: You're welcome.

THE COURT: Ms. Zoghlin, you may proceed if you are ready.

MS. ZOGHLIN: Just a matter of housekeeping first.

I did receive recently and provide to probation a list of Mr. Pattison's current medications from the Yates County jail. I've provided it to probation, and I would just ask the Court to direct probation to include it with the materials that go to the BOP so that they will know what his most recent medications are. My understanding is probation

doesn't have any problem doing that but they would need the Court to ask them to do that.

THE COURT: I don't know how the Yates County jail feels but I understand. He should have his meds.

MS. ZOGHLIN: Thank you, Judge.

So probation will then include it with the material that goes to the BOP, Judge?

THE COURT: Usually something handled directly with the Marshals but.

PROBATION OFFICER LOTZ: Judge, when we send the presentence report to the Bureau of Prisons, we do have the ability to attach documents. So if the Court wishes, I can send that medication list with his presentence report.

THE COURT: All right. Let's do that.

MS. ZOGHLIN: Thank you, Judge.

A couple other matters at the outset.

I would ask that certain things be made part of the record perhaps as court exhibits.

One, the Court already referred to which is the memo from probation in response to the Court's request. The memo is dated September 3rd, 2024. So I'd ask that that be part of the record.

I am also asking that the email exchanges between the Court and counsel and probation be included as part of the record. I do have copies here. They are in two different

pieces because we needed two parts to include the whole conversation but I would ask that the whole communication between the Court and counsel and probation be included in the record.

THE COURT: All right. If you've got copies of those, perhaps you can give them to James here so we can get them filed.

MS. ZOGHLIN: I will, Judge. I do have copies of that.

I'm also asking that memorandum from a Lieutenant V. Toney, from the Bureau of Prisons. It's dated October 20th, 2023. It is a paragraph that summarizes what they classify as the inmate assault, specifically the incident that we've been referring to with Mr. Pattison at U.S.P. McCreary and I'm asking that that part of the BOP file be put in the record. It is something that both probation -- probation included other pieces of the record in the PSR and both probation and the government have this document.

THE COURT: Right. But it's not part of presentence report itself, not I've seen.

MS. ZOGHLIN: It isn't part of the -- probation took some pieces from the BOP file. They didn't include this. So I'm just asking that this memo from a lieutenant in the BOP summarizing the inmate assault be made part of the record, as well.

THE COURT: Any objection, Mr. Harvey?

MR. HARVEY: No, your Honor.

THE COURT: All right, so be it.

MS. ZOGHLIN: Thank you, Judge.

THE COURT: I'd like to read it, I guess, at some point.

MS. ZOGHLIN: Certainly. I'll. I'll.

THE COURT: You want to have these marked defense exhibits or government exhibit or court exhibits?

MS. ZOGHLIN: I was thinking court exhibits, Judge, but it's not -- immaterial to me how they are marked.

THE COURT: I have read these. We will have them all marked as soon as we are able to.

Okay. Ms. Zoghlin, does that conclude your remarks?

MS. ZOGHLIN: Hardly, Judge.

I do need to -- I do want to address the Court's request to probation and probation memo in a number of respects. Obviously, first, we're here and the Court is sentencing Mr. Pattison for the crime of possessing a rifle and a shotgun in his home in October and November of 2020. For most of the period covered by the plea agreement, Mr. Pattison was actually in jail. And it was his girlfriend who was living in the home where those weapons were found. I'm not denying possession. He's pled guilty to that.

I think it is relevant for a couple of reasons, though.

The Court has indicated in the initial sentencing, and again today and then specifically Mr. Harvey just referred to

the purpose that he possessed those weapons. And I respectfully disagree with that conclusion. There is no, there is no denying the racist inflammatory rhetoric, often violent, threatening rhetoric that Mr. Pattison put out primarily through social media.

I don't think what was actually recovered in his home or his actions outside of his home with regard to firearms support the notion that that's what those guns were for. And, in fact, as I note in my sentencing memo, Mr. Pattison on the jail recorded calls is specifically saying to his girlfriend that he would just be more comfortable if she had them there for her own protection, essentially. So, that's what I submit they were there for.

I would also note that if one were to adopt the rhetoric that is set forth at length in the PSR, that Mr. Pattison was actually preparing for a racial holy war, I submit that a rifle and a shotgun and 25 rounds of ammunition were not, in fact, a way to prepare for a racial holy war. One would expect, if one were to believe that rhetoric, there would be an arsenal in Mr. Pattison's home. There was not close to that. In fact, what was found there is what is, I think, not unusual to be found for self-defense. Clearly he didn't have the right to possess them. That's why we're here but that is the offense that he's being sentenced for.

The Guidelines are 37 to 46 months. And the government

has requested the absolute maximum sentence denying Mr. Pattison any credit for having entered a plea of guilty to those crimes, to begin with, and are requesting the maximum which is three times -- essentially three times the Guidelines, the applicable Guidelines.

In the email to probation, the Court indicated that defendant has admitted to BOP authorities that he intentionally slashed a fellow inmate with a homemade knife causing extensive bleeding and severe injury. I respectfully disagree with that characterization. He did accept responsibility for causing an injury. I don't think it is at all clear -- it has not been determined in any forum -- that what he caused was a severe injury and, in fact, there are very clear legal definitions of bodily injury, severe injury, all the way to the top. And that is not something that has been established factually, legally, and it is a conclusion that I dispute.

THE COURT: You're not suggesting that he denies doing what I'll call the slashing.

MS. ZOGHLIN: I am not suggesting that, Judge, that's correct. I'm suggesting the characterization of the injury which then played into probation's calculations of the Guidelines. So --

THE COURT: I've already said I'm really not focused on what those Guidelines would be. I'm focused on somebody

takes a knife and cuts another individual in a lengthy scar right around his artery. I mean it's a miracle, to me, that he wasn't killed. It wasn't a slash on the wrist. It wasn't a slash on the leg. It was about the most serious place you can slash somebody with a knife. And he doesn't dispute he did that. And he tells us why he did it.

MS. ZOGHLIN: Right. What I would dispute, Judge, is the characterization of the severity of the injury and the suggestion that what it establishes is potentially an intent to kill. I dispute those conclusions but more to the point, Judge, he is not being sentenced here for that crime. I'm not suggesting the Court can -- for that offense, which was not determined to be a crime, I'm not suggesting the Court can consider it.

I do suggest, however, that it is inappropriate for the Court to consider what the Guidelines would be for an offense for which he was not charged, for which there was an administrative proceeding in the Bureau of Prisons where he was not represented by counsel and an incident which the, to the extent that the administrative proceeding in the Bureau of Prisons is relevant, what they found was characterized as moderate injury and what they found him guilty of was possession of a weapon and assault without serious injury. So those things, I think, are relevant considerations to the way that the incident is characterized in the PSR.

THE COURT: Did you look at the pictures that were attached to the government's brief?

MS. ZOGHLIN: I absolutely did, Judge. And I understand that the picture is disturbing. I don't think, however -- first of all, we have no medical records. I do have actually the medical assessment of the victim from the BOP in which he classifies his pain level as zero.

So, I'm not -- I don't mean to suggest that there's anything acceptable about slashing somebody in the face. What I'm suggesting is that there is no determination, not a legal or factual determination, of the severity of the injury which would support the Court in any way considering what the Guidelines would be. For example --

THE COURT: I keep saying I'm not relying on the Guidelines that were in that memo.

MS. ZOGHLIN: Well, Mr. Harvey did. He, he mentioned the probation's memo. He said that that incident would get him at least 7 years and then he proffered some reasons why the government in that district decided not to prosecute --

THE COURT: Yeah, which is --

MS. ZOGHLIN: -- that offense.

THE COURT: Which is shocking to me, frankly, but I don't make those decisions.

MS. ZOGHLIN: Certainly, Judge, I understand. They investigated, they decided not to pursue it. Frankly, I

don't find the notion that the FBI didn't maintain the video as particularly persuasive, given the other evidence they appear to have or that his statement wasn't admissible given the fact that they clearly have eyewitnesses. But be that as it may, they decided, they elected not to pursue those charges and Mr. Pattison was sentenced for specific violations and infractions by the Bureau of Prisons.

I understand what the Court has said about the Guidelines produced in that memo but still the Court requested it for a reason and Mr. Harvey referred to it for a reason. And what I need to note about that is not only are what the Guidelines would be in a hypothetical situation if he were charged with an offense not relevant to the Court's consideration, but even within the calculations, for example, the calculations begin at serious bodily injury -- which is a determination that has not been made -- and they go up to assault with intent to commit murder for permanent or life threatening bodily injury. They don't provide the Guidelines for the first level which would be bodily injury. They don't subtract 3 levels for acceptance of responsibility. Which, you know, I find it somewhat ironic that they would use or that the court would use his admission and then not deduct those 3 levels.

By my calculations, for bodily injury with acceptance of responsibility, the Guideline range would be more in the

realm of 51 to 63 months. So, again, that's operating in a paradigm that I don't think is relevant or an appropriate consideration --

THE COURT: I think --

MS. ZOGHLIN: -- but it is something that the Court asked for and that probation provided.

THE COURT: I asked for it. I've reviewed it. You have objected to it. I've said now about three times I am not going to use that memo as a basis for my increasing the sentence. I certainly will use the fact of Mr. Pattison's actions, period. I mean, I'll say it again if you want me to. It -- enough said.

Go ahead, you may continue.

MS. ZOGHLIN: Thank you.

Regarding the upward departure and, of course, I object to any upward departure either in offense level or Criminal History Category and specifically referring to the policy statement in the Guidelines 4A1.3. What is generally considered -- they set forth four Guidelines in 4A1.3 of categories of information that they suggest would be appropriate for the Court to consider in an upward departure for Criminal History Category. And as I've also set out in my sentencing memo, none of them, none of them apply to either Mr. Pattison's previous offenses or his actions within the Bureau of Prisons.

THE COURT: Ms. --

MS. ZOGHLIN: They are not, for example, a prior sentence not used in computing the Criminal History Category, for example, sentences for foreign and tribal convictions. They are not prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order or any of the other ones that are specifically set out under that Guideline.

THE COURT: And they are set out with the preface "may be considered" and that certainly doesn't mean, to me, that they are the exclusive things the Court can consider.

MS. ZOGHLIN: I understand that, Judge, and I think there's a reason, however, that in a policy statement they set forth specific categories and that --

THE COURT: Well, it's --

MS. ZOGHLIN: -- Mr. Pattison's prior criminal record don't fall within any of those categories.

In addition, his prior criminal record which I reviewed at some length in my sentencing statement and I believe the PSR adds some important context to the prior adjudications, they are, they are accounted for in his criminal history.

The felony assault that the Court mentioned, has got 3 points, as any felony, no matter how serious, would get. 3 points.

The other offenses, to the extent that they were within

the appropriate time range, also got the points that the Guidelines recommend.

So I believe his Criminal History Category does accurately reflect the severity of his previous history.

Obviously what needs to be considered in terms of the offense are the relevant and -- sorry, one moment, Judge.

The relevant conduct under 1B1.3, clearly that doesn't involve any of his prior offenses and that doesn't involve the offense in the Bureau of Prisons.

Regarding that offense, Judge, I think it is also relevant to consider what I have added in my sentencing statement which is a declaration from an individual with a long history of working in the Bureau of Prisons for, I think, more than 25 years and, unfortunately, what he described in a penitentiary where Mr. Pattison was and where he would presumably return is a situation where virtually everyone needs to align themselves with a group.

I disagree with Mr. Harvey's characterization of it as "Skinheads" but people do align themselves with groups based on race, virtually all of them do. This is not something that Mr. Pattison sought out because it was consistent with his ideology or agenda any more than anyone else who goes there does. They, the consequence of not affiliating yourself with a group is being victimized yourself. So I think it's important to consider that context, not as a

justification but as an explanation for what both Mr. Pattison and the other individual involved in this offense told BOP officials as the reason for committing it.

Mr. Harvey in that context said that 8 years apparently made no difference. If 8 years didn't do the trick, it's a fair inference that 10 years will or something of that nature. And I respectfully disagree with Mr. Harvey. I don't think there's anything about the surroundings in a United States penitentiary that suggest that more time there will have some sort of remedial effect.

It is a place that, more often than not, and this is not just our expert who spends a career there but this is the director of the Bureau of Prisons, Collette Peters, I believe is her name, they are severely understaffed. They have people doing jobs that they were not trained to do and more often than not the facility was locked down, meaning he had no access to vocational, educational, drug or alcohol treatment, none of that. Because the facility is not able to provide it. So, for -- in terms of the purpose of sentencing that someone get the necessary vocational, educational training, I submit that a longer time in a penitentiary does not serve that purpose.

The other thing I think the Court is required to consider is the need to avoid sentencing disparities between similar defendants convicted of similar crimes. And in that

respect, our sentencing memo on Pages 7 to 13 specifically address that. They address it in detail. But I'll just say very briefly: The average sentence for people with offense level 19 and Criminal History Category III -- and that's before any upward departures are added -- the average sentence is 35 months.

But even if one were to entirely accept the Court's proposition that the Criminal History Category should be VI, and that the Offense Level should also be increased by 2 to 21, the average sentence under the applicable Guideline 2K2.1 for that individual is 71 months. So even after the Court's upward departure, the Court's previous sentence of 96 months was well above the national average.

It also, as I mentioned, the credit for acceptance of responsibility is I think a fundamental policy within the Guidelines to impose the maximum sentence for someone who has entered a plea I think is inconsistent with that. And the facts of the case, specifically the possession of a rifle and a shotgun, I don't believe warrant any increase in the offense level.

This Court very clearly said at sentencing -- and I believe quoted earlier this afternoon -- a person can have white supremacist views and support Nazi philosophy and use racist language. That's not what Mr. Pattison's is being sentenced for even though those statements are offensive and

repugnant. I agree with that statement. I think it is very difficult to separate his views from his actions but I would ask the Court to do that because that is the appropriate thing to do. The views that he expressed and the racist, violent ways in which he expressed them are offensive and repugnant but he's being sentenced here for possession of a rifle, a shotgun and 25 rounds of ammunition. And I submit, Judge, that those actions and his criminal history as calculated by probation are appropriate and that a Guideline sentence would be appropriate in this case.

THE COURT: All right. Thank you.

MR. HARVEY: So, Judge, can I briefly respond?

THE COURT: Pardon me?

MR. HARVEY: Can I briefly respond?

THE COURT: Briefly.

MR. HARVEY: Just a couple of points, your Honor.

You do not have to separate his views from his actions in this case because in the four months leading up to his taking possession of the two weapons in this case, that is when he was on Facebook talking about or making threats to kill black people. Including the very day that he obtained one of the weapons, he was in a Facebook audio message threatening to kill black people and protestors at a genocidal rate. So, to say that you have to separate his views from his underlying conduct in this case, I think is

just simply not appropriate or warranted.

With respect to the sentencing disparities argument, the key word there is "unwarranted" sentencing disparities.

Ms. Zoghlin talks about the average sentences for individuals with a Criminal History Category III and an offense level 19 as being 35 months, and after the upward departure, 71 months.

The government submits that this defendant is not your average defendant. He is not somebody who is within the typical 922(g)(1) case that comes before this Court. In my experience -- and I'm sure in the Court's experience as well -- this defendant stands out based on the, not only his criminal history and his conduct in this case but also stands out as one of the only people I can remember who committed a serious violent crime while serving a prison sentence.

With respect to the declaration from the BOP expert, I'm obviously not in a position to controvert what's in that declaration. But I will say that particular expert did not work at U.S.P. McCreary, as far as I can tell from the paperwork, and all of his conclusions that he comes to in that declaration, Judge, are suggestions, are opinions, are speculation. He completely ignores this defendant's long, established history of embracing white supremacist ideology including that the defendant had to align himself with the white gang in prison, completely ignores that. And

completely ignores various other things including he comes to the conclusion that based on his experience, the defendant must have been directed to commit the violence in this case. There's simply no support for that in this record. The defendant's own statement does not claim that he was directed to do it.

THE COURT: Finishing up.

MR. HARVEY: Yes, I am, Judge.

With respect to the upward departure, Ms. Zoghlin spent a lot of time saying that the defendant's Criminal History Category is not underrepresented here in this case. She didn't address the second prong of that under 4A1.3(a), which is or the likelihood that the defendant will commit new crimes. I submit to this Court that based on this defendant's criminal history and his commission of the most recent offense, it's a near certainty that this defendant will commit another crime and based on the trajectory that he's on, you can bet that it's going to be a more serious crime than those that have come before it.

So I think the defendant through his conduct here has demonstrated his danger to the community and the need to protect the community from this defendant, Judge.

THE COURT: Ms. Zoghlin, you want the last word.

MS. ZOGHLIN: Thank you, Judge. I didn't think you were going to give me that opportunity.

Only --

THE COURT: I always give you the opportunity.

MS. ZOGHLIN: I appreciate that, Judge.

I would only note that Mr. Harvey I believe just said that there, there was no -- there's nothing in the record of the prison offense that suggests that he was directed to do that, and I disagree with that. It does say basically they were directed to put in work and essentially the notion there is you either do the work or you are the work, meaning when you're directed to do something by the people that call the shots, either you do it or you're a victim yourself. Again, I'm not condoning it. There's no legal justification but I do think the context is relevant.

MR. HARVEY: That's a leap, Judge. He said it was his turn to --

THE COURT: No, no.

MR. HARVEY: -- put in work not that he was directed to do so.

THE COURT: No, I said she gets the last word. Thank you both for your helpful comments.

The rules require that I give Mr. Pattison an opportunity to speak as well. He does not have to speak. I don't think I've received a written statement this time. He did submit a statement at the first sentencing.

But, Mr. Pattison, you have a right to speak. You don't

have to but if you'd like to, the Court would hear what it is that you wish to present.

THE DEFENDANT: I do not wish to speak, your Honor.

THE COURT: All right, thank you.

We have taken quite a bit of time here but the matter is certainly important.

I guess I'll start I'll repeat again that I do believe a sentence above the present Criminal History III and the offense level of 37 to 46 is very much warranted. I gave reasons when I first sentenced Mr. Pattison and I repeat and incorporate those here, some of which I will read.

I also believe the Facebook statements, some of them are germane. And I think what I'll refer to this slashing incident is most relevant, I think, this new evidence of, frankly, the kind of danger and violence that you present. I'm talking about the incident described at Paragraph 20 of the presentence report. I still describe it as either assault with a deadly weapon or attempted murder. I mean, you cut somebody in the neck. That's just not a nick, that's just not a love tap.

I found in my May 23rd sentence that the Criminal History Category then which was IV underrepresented the seriousness of Mr. Pattison's criminal history, and also the likelihood that he would commit a crime again.

The government has set forth, I think, the gruesome

photographs of the victim lying in a pool of blood. And my sentence back in May, May 23 of 2022, I spoke about not only the fact the criminal history underrepresented, substantially underrepresented the seriousness of Mr. Pattison's criminal record but the likelihood that he would commit a new crime. That's what Mr. Pattison was sentenced for.

He was on parole for the assault on his significant other where, according to the presentence report, not only did he get 3 years but he threatened to drown her, to have someone shoot her in the face. He was on parole. That parole was violated. He absconded, he fled. He possessed these weapons, was sentenced by me.

And then I went through a whole litany as to the reasons why I was doing it, why I imposed the sentence, and part of that certainly was the likelihood that he might offend again.

And it did not take very long for Mr. Pattison to do just that. In October of 2023, he engaged with another inmate, this beating of this inmate, appears to be a white inmate who had the temerity and gall to traffic in weapons with a group, another race, presumably a black group. I mean, that just highlights the, once again, the racial animus that Mr. Pattison has and has repeatedly talked about. There was suggestion maybe he was directed or told to do that but that's no excuse. I mean, that's, you know, the good Nazi: I do what I'm told to do.

It seems to me, frankly, in light of the fact within a relatively few years Mr. Pattison was convicted of a significant enough assault in Missouri that he got 3 years. No misdemeanor there. And the language and what he allegedly did was, was horrendous. Then he's put on parole and from what I can see just about violated every required condition, ended up fleeing, was arrested here and, of course, with the firearms that he pleaded to before me.

So this case is much more about just possessing those two firearms. You know, he's on parole, and from the Facebook pages, Mr. Pattison clearly knew that he can't buy a gun on paper. You can't go to a store, Wal-Mart, and buy a gun because he's prohibited from doing that.

But then after we have this lengthy sentence where I describe the reasons why I thought departure was warranted, Mr. Pattison does exactly what I was concerned about and why I thought the departure was warranted; that is, the likelihood that he'll commit another offense. Bingo. He does it big time by what I still view is pretty close to attempted murder. I mean, when you slash somebody with a knife across the neck and throat, the result -- not unreasonable result -- would be that you would cause the death of that person.

Back in May 23 of 2022, starting at Page 29 of a transcript that was prepared, I talked about the reasons at

that time I thought why a departure was warranted. I talked about the Sentencing Guidelines and indicated that Mr. Pattison did not come out too well on those. I talked about the nature of the offense, that is a felon possessing firearms. Congress meant to prohibit that, and there's a reason people convicted of felonies having firearms present a danger.

I opined that although there was some indication or claim that Mr. Pattison got these guns to protect his significant other but there was really no evidence that there was any threat in the town of Hilton which was many, many miles from the city of Rochester where these protests were happening. You talk in Facebook -- I mentioned this -- about using firearms, assaulting people, shooting them.

Then I talked about the history and characteristics of you. The Court can't just base departure on the fact that you have a prior record -- that's obvious. But as I pointed out then, all these prior convictions, some of them misdemeanors, some of them when you were younger, except for your DWI conviction, they all have a smell of racial animus.

You know, the neighbor who wanted you and others to turn down the music in your house, end up throwing his lawn furniture and using epithets walking through a street in East Rochester when you were younger screaming about white supremacy and punching or knocking down a Hispanic woman and

tearing up her Mexican flag. Other incident in a pub in Buffalo even with friends that involved some animus.

And the nature of your conviction in Missouri was a violent episode. Sometimes assaults are dealt with what simply was a misdemeanor. But this was 3 years real time with a parole period to follow. There were repeat violations of probation and parole, all of which I remember.

I reviewed at the time your statement that you sent to me where you appear to express some remorse and described your comment and things as stupid and there was an indication you intended to do better. Well, that didn't last too long because of this terrible episode at the McCreary facility.

I mean, sometimes, you know, a terrible incident happens, someone gets shot, someone, and people say, you know, was there any warning, was there any hint that something might happen? And then in your case, were you to do something else, there are so many flags here that suggest the likelihood that you would offend again. I said back in May of 2022 that you were a danger and I certainly, based on your activities at the institution -- and I understand maximum facilities are not, you know, schoolyards. But we all have choices, and you made the choice with one of your buddies, you know, to beat the hell out of this other inmate who not just cuz he was selling guns, he was dealing with another race.

You have demonstrated who you are, Mr. Pattison.

Without summarizing them all, although I think I have done most of it, your prior record, although some of it older and some misdemeanors, because of your world, there is racial violence in many of those activities. I think your Facebook rants are instructive. I mean, it's out of your own mouth. I'm not going to repeat every Facebook but, you know, and the paragraphs I'm referring to are in the presentence report.

You know, as I read Paragraph 47 you admit assaulting protestors.

Paragraph 48: Getting ready for the holy war.

Paragraph 50: Someone referenced being a martyr and you apparently refer to it and state "mow them down".

Paragraph 51: You report fighting niggers in the city. I had a knife fight in the prison yard.

Paragraph 52: I fight Black Lives Matter protestors and Antifa groups.

Paragraph 53: In terms of an Antifa person, we should throw bricks through his window. And also proudly reporting, apparently -- and that's my interjection -- that you'd beat up six Antifa or protestors so far.

Paragraph 57: We should be able to slaughter anyone bringing Communism to this country.

Paragraph 58: Talking to a person with the initials K.H., a known Antifa person advising this was a declaration

of war.

Paragraph 61: Interestingly, you admit you cannot possess guns.

Paragraph 62: I shoot people that come down my street, I don't give a fuck about the laws. I don't intend to maim protestors, I intend to kill them. They can call me the angel of death, the new Joseph Mengele. Frightening. Frightening. Disturbing.

The government's brief cited a couple of cases which I have reviewed and these dealt with statements. And this one case it was an anti-Semitic statement with a Nazi salute wanting to overthrow Jews, and the crime involved possession of firearms or other material. An illegal assault weapon.

And the question was whether these statements, racial statements -- I mean, there was suggestion here, perhaps, that there's some protection under the First Amendment. But I think the Second Circuit in the case of *United States v. Miner*, 2022 WL 721447, a Second Circuit case in 2022, the Court considered the threatening anti-Semitic statement and said: "Those properly consider both motive and potential for violence to the community. Two considerations that this court" -- meaning the Second Circuit -- "has upheld as permissible and relevant to sentencing."

So, I think this is what Mr. Pattison engaged in.

United States v. Stewart, 686 F.3d 156 at 170, a 2012

Second Circuit case. Again, "while the First Amendment forbids uncabined reliance on a defendant's abstract beliefs, the government may introduce evidence of beliefs or associational activities as long as they are relevant to prove permissible sentencing factors such as, again, motive, or aggravating circumstances" -- and this is important -- "to illustrate future dangerousness."

And I think that's so much as to what we're concerned with here is Mr. Pattison's future danger to the community based on all of the things I mentioned: His prior record and the nature of it. I mean, having departed once before and found that his criminal history underrepresented the seriousness of his record and or the likelihood that he will commit again, I mean, I'm -- it just seems unbelievable that within a relatively few months Mr. Pattison commits an offense again. Admittedly, not on the street but where he was housed serving a sentence while he was awaiting appeal.

The Court in every case must consider the sentencing factors under Section 3553(a). There are eight of them here.

I've considered the nature and circumstances of the offense. Knowing he couldn't possess firearms, Mr. Pattison did what he could to get weapons through others. He knew it was against the law. I mean, there's some suggestion, well, he just got it to have his girlfriend protected. But I don't buy it. They wanted weapons. They were going to use them if

protestors should dare come near Hilton.

The history and characteristics of the defendant. I've discussed those at some length here. His assault where he got convicted in Missouri in December 2016, the misdemeanor convictions, all involving -- and one was a plea to a hate crime. He got relatively minor sentences, probation. There were violations of probation. The Missouri conviction was followed by parole. He violated those conditions. He fled the state and ended up here.

Another factor is that a sentence should afford deterrence. I don't know what would deter Mr. Pattison from his activities. Prior convictions didn't seem to. The Court's 96-month sentence here didn't have much effect on his decision to slash a fellow inmate. But I think deterrence also speaks to the need to deter others that may have unpopular views from engaging in this kind of dangerous, violent conduct, especially when you've been convicted of a felony in Missouri, felony in New York for firearms, and then you see fit to, I think, almost kill someone. Those who share the warped view that Mr. Pattison does, perhaps this sentence will deter them.

And, finally, a factor is to protect the public from further crimes by the defendant. I think that's an important factor here. You've got a man who has a significant record, repeat offenses, violations of probation and parole. Commits

this slashing crime after the court had previously raised his prior sentence because of the Court's concern, in part, that there's a likelihood that he'll offend again. And he does big time.

So I think, frankly, removing you from society, Mr. Pattison, for a period much longer than the 37 to 46 months is not inappropriate.

I recognize that now the Criminal History is III. So, as Ms. Zoghlin mentioned, to depart up to the 120 month range would be quite significant. But after reviewing all the facts and trying to articulate my reasons here, the Guidelines suggest you should go sequentially from in this case Criminal History III to see what Criminal History Category accurately represents Mr. Pattison's criminal history as compared to others.

And I think that it's a level VI. I think it's the top of the line here. And that's what I choose to base my sentence on.

And I also think, based on my discussion of the Section 3553(a) factors, that a variance is also warranted.

The offense level is 19. Let me just check one thing here.

The offense level is 19. I think a variance or an upward level from 19 to 23 is appropriate.

And that range would be at 92 to 115 months.

But I think based on all the matters that I referenced -- both when I sentenced Mr. Pattison before and as I've done at some length here today -- I think both the departure and the variance in this case are warranted. I understand it's significant but I believe it's absolutely warranted in this case. Mr. Pattison has proven he's a danger and I think the Court needs to deal with that.

So the result is I will not impose a sentence of 120 months but I elect to commit the defendant, Stephen Pattison based on everything I've said here, for a period of 108 months. That's 9 years.

When he completes his bid, he's to be placed on supervised release for a period of 3 years.

While on supervised release, sir, you shall not commit another federal, state or local crime.

You can't possess a firearm. You can't possess a bullet.

You can't possess any illegal controlled substance.

And, Mr. Pattison, you know, I always try to be optimistic and when I put somebody on supervised release, but based on your history of violation of parole, and probation, I just have a feeling that there is a not insignificant chance that you will violate terms of supervised release. And you need to know if that happens, you can be sent back to jail for I believe as much as 2 years. I warn you of that.

You must submit to random drug testing.

You must cooperated in the collection of a DNA sample, if requested.

Probation recommended at least five special conditions in the presentence report. One, two, three, four and five. I adopt them all in the language set forth.

First, that you shall participate in a program for substance abuse including testing and treatment as directed, and I adopt the full language of the recommendation.

Second, you must participate in a mental health treatment program including evaluation and treatment, if recommended. I adopt the language of the recommendation.

Third, you shall submit to a search of your person, property, vehicle, or place of residence based on reasonable suspicion to search, and recover any evidence or contraband or weapons.

Fourth, you must notify your probation officer of any opiate based pain medication prescribed by a doctor before the prescription is filled.

And, fifth, if there be any, you must comply with all orders of protection.

The Court does impose a modest fine in this case. The guideline for fines are between 10,000 and 100,000. Unrealistic here. I impose a fine of $500. I believe that Mr. Pattison can pay toward that fine according to the Bureau

of Prisons Responsibility Program. And if it's not paid by the end of his sentence, it's to be paid at the rate of 10 percent of his monthly income, if any.

You must probation with access to any financial information as long as the fine is outstanding.

And I do impose a $100 special assessment.

I don't know if that was paid after the first sentence or not.

MS. ZOGHLIN: I believe it was, Judge.

THE COURT: All right. Then that's been taken care of.

The defendant shall forfeit the Smith & Wesson 30-06 rifle and the Winchester model 12 gauge shotgun and the ammo according to Section VIII of the plea agreement.

That is the sentence of the Court.

Anything from probation?

PROBATION OFFICER LOTZ: Judge, will the Court be making any recommendations to the Bureau of Prisons?

THE COURT: Oh, yeah. I don't know, Ms. Zoghlin, if you want to be heard on this but I really think my recommendation to the BOP would be that he not be sent back to McCreary.

MS. ZOGHLIN: Judge, he's just asked to be able to participate in RDAP or any other drug treatment program that's available.

He does not have a request regarding location.

THE COURT: All right. I'll recommend he participate in

drug treatment. I thought I did. But I think, I mean, he goes back to McCreary, you know, he's a target for retribution and retaliation and I just think he ought to be -- it's up to the Bureau of Prisons, Mr. Pattison, but my recommendation is that you serve somewhere else.

Anything else, Probation?

PROBATION OFFICER LOTZ: No, your Honor, thank you.

THE COURT: Anything from the government?

MR. HARVEY: No, your Honor, thank you.

THE COURT: All right. The Court must advise the defendant that although he waived or gave up the right to appeal if this sentence was within the Guideline range, this sentence obviously is not that.

So Mr. Pattison certainly has a right to appeal the sentence.

And I'm sure, Ms. Zoghlin, you understand that must be done within 14 days, and will the public defender then take steps to file the necessary appeal?

MS. ZOGHLIN: Yes, Judge, certainly.

THE COURT: All right. Thank you.

If that doesn't happen, Mr. Pattison, you can ask the Court to do what needs to be done to file an appeal but I'm sure Ms. Zoghlin will eagerly file the appeal. All right.

Thank you. Anything else?

MR. HARVEY: Nothing further, Judge.

THE COURT: All right.

(WHEREUPON, proceedings adjourned.)

* * *

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court of the Western District of New York before the Honorable David G. Larimer on September 5, 2024.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR
Official Court Reporter

AO 245C (Rev. 10/19) Amended Judgment in a Criminal Case
Sheet 1

JLL/ct(7207451)
(NOTE: Identify Changes with Asterisks (*))

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA
V.

Stephen Reed Pattison

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 6:21CR06097-001
USM Number: 19944-509

Date of Original Judgment: 05/23/2022
(Or Date of Last Amended Judgment)

Sonya A. Zoghlin
Defendant's Attorney

UNITED STATES DISTRICT COURT
FILED
SEP 17 2024
MARY C. LOEWENGUTH, CLERK
WESTERN DISTRICT OF NY

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

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

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2)	Possession of a Firearm and Ammunition by a Convicted Felon	11/12/2020	1

The defendant is sentenced as provided in pages 2 through 7 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.

September 5, 2024
Date of Imposition of Judgment

Signature of Judge

Honorable David G. Larimer, U.S. District Judge
Name and Title of Judge

September 16, 2024
Date

AO 245C (Rev. 10/19) Amended Judgment in a Criminal Case
Sheet 2 — Imprisonment

JLL/ct (7207451)
(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :
108 months

The cost of incarceration fee is waived.

☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant shall participate in a suitable substance abuse treatment program, including the Residential Drug Treatment Program, if he is determined to be eligible, while in the Bureau of Prisons.

The defendant shall not be housed at USP McCreary.

☒ 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: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a 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 which 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: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

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 court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against 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

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. 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 _____

U.S. Probation Officer's Signature _____ Date _____

AO 245C (Rev. 10/19) Amended Judgment in a Criminal Case
Sheet 3C — Supervised Release

JLL/ct (7207451)
(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant is to participate in a mental health treatment program, including a mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave such treatment until completion or as ordered by the Court. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall notify the Probation Officer of any opiate based pain medication prescribed by a doctor BEFORE the prescription is filled by a pharmacist.

The defendant shall comply with all Orders of Protection.

The defendant shall provide the U.S. Probation Office with access to any requested personal and/or business financial information. The U.S. Probation Office is authorized to release pre-sentence and post-sentence financial information submitted by the defendant to the U.S. Attorney's Office for use in the collection of any unpaid fine. If fine is owed, the defendant shall notify the U.S. Probation Office of any assets received and shall not disburse his interest in any assets, including, but not limited to, income tax refunds, inheritance, insurance and lawsuit settlements, or gambling winnings without the approval of the U.S. Probation Office.

AO 245C (Rev. 10/19) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

JLL/ct (7207451)
(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	AVAA Assessment*	JVTA Assessment**	Fine	Restitution
TOTALS	$ 100	$ 0	$ 0	$500	$ 0

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

☐ The defendant must 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 $ _____ $ _____

☐ 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 the ☒ 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.

AO 245C (Rev. 10/19) Amended Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

JLL/ct (7207451)
(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Stephen Reed Pattison
CASE NUMBER: 6:21CR06097-001

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

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

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

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

The defendant shall pay a special assessment of $100, which shall be due immediately. Payments shall be made to the Clerk, U.S. District Court, Attention: Finance, United States Courthouse, 2 Niagara Square, Buffalo, New York 14202 or pay online, visit www.nywd.uscourts.gov for instructions, unless otherwise directed by the Court, the probation officer, or the United States Attorney.

Regarding the fine, the Court finds that the defendant has the ability to pay a $500 fine. While incarcerated, if the defendant is non-UNICOR or UNICOR grade 5, the defendant shall pay installments of $25 per quarter. If assigned grades 1 through 4 in UNICOR, the defendant shall pay installments of 50% of the inmate's monthly pay. While on supervision, the defendant shall make monthly payments at the rate of 10% of monthly gross income.

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*	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:
one (1) Smith and Wesson ITC, Model Compass, 30-06 rifle, bearing serial number U231831; one (1) Winchester Ranger, Model 120, 12gauge shotgun, bearing serial number L1929872; and ammunition, namely, 25 rounds of 12-gauge shotgun ammunition (Winchester)

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.

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Western District of New York

Caption:

United States v.

Stephen Reed Pattison

Docket No.: 21-CR-06097

Hon. David G. Larimer
(District Court Judge)

Notice is hereby given that Stephen Reed Pattison appeals to the United States Court of Appeals for the Second Circuit from the judgment ✓, other | | (specify)

entered in this action on September 17, 2024.
(date)

This appeal concerns: Conviction only | | Sentence only | | Conviction & Sentence | ✓ | Other | |

Defendant found guilty by plea | ✓ | trial | | N/A | |.

Offense occurred after November 1, 1987? Yes | ✓ | No | | N/A | |

Date of sentence: September 5, 2024 N/A | |

Bail/Jail Disposition: Committed | ✓ | Not committed | | N/A |

Appellant is represented by counsel? Yes ✓ | No | If yes, provide the following information:

Defendant's Counsel: Timothy P. Murphy, Assistant Federal Public Defender

Counsel's Address: Federal Public Defender's Office
300 Pearl Street, Suite 200, Buffalo, NY, 14202

Counsel's Phone: 716-551-3341

Assistant U.S. Attorney: Brett A. Harvey, Assistant U.S. Attorney

AUSA's Address: United States Attorney's Office
100 State Street, Rochester, NY, 14614

AUSA's Phone: 585-263-6760

/s/ Timothy P. Murphy
Signature