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 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
 13 Plaintiff,
 14 v.
 15 CHANCE BRANNON,
 TIBET ERGUL, and
 16 XAVIER BATTEN,
 17 Defendants.

No. CR 8:23-00100 (A) -CJC-3
GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT XAVIER BATTEN
 Hearing Date: May 13, 2024
 Hearing Time: 11:00 a.m.
 Location: Courtroom of the
 Hon. Cormac Carney

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

23 This Sentencing Position is based upon the attached memorandum
 24 of points and authorities, the files and records in this case, and
 25 such further evidence and argument as the Court may permit. The

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In March 2023, defendant Xavier Batten (“defendant”) counseled his codefendant on how to build a destructive device, knowing and intending that it would be used to attack a healthcare clinic. In July 2023, defendant was charged by indictment with crimes carrying a five-year statutory mandatory minimum: conspiracy and aiding and abetting the malicious destruction of property by fire and explosives, in violation of 18 U.S.C. §§ 844(n) and 844(i). (Dkt. 26.) In January 2024, defendant pled guilty to a superseding information charging him with aiding and abetting the possession of an unregistered destructive device, in violation of 26 U.S.C. § 5861(d), and intentional damage to a reproductive health services facility, in violation of 18 U.S.C. § 248(a)(3). (Dkt. 78.)

In March 2023, the United States Probation and Pretrial Services Office (“Probation”) issued its Presentence Investigation Report and Recommendation Letter, in which it correctly calculated defendant’s offense level as 21 and his criminal history category as I, for a Guidelines range of 37 to 46 months’ imprisonment. (Dkt. 104 (PSR) ¶ 144.) Noting defendant’s mental health history and diagnoses, Probation recommended that defendant be sentenced to 30 months’ imprisonment (the equivalent of a two-level downward variance), a three-year term of supervised release, and a \$125 mandatory special assessment. (PSR ¶ 161; Dkt. 103 (“Recommendation”) at 2.) The government agrees with Probation’s calculations but submits that defendant’s history and characteristics, coupled with the nature and circumstances of his crime and the need to protect the public, warrant a within-Guidelines

1 sentence. Accordingly, the government respectfully requests that the
2 Court sentence defendant to 37 months' imprisonment, a three-year
3 term of supervised release to include suspicion-less search
4 conditions¹, \$1,000 in restitution, and a \$125 mandatory special
5 assessment.

6 **II. STATEMENT OF FACTS**

7 **A. Defendant Counsels His Codefendant on How to Build a**
8 **Destructive Device to Firebomb a Planned Parenthood**

9 Beginning around February 2022, defendant knowingly conspired
10 with his codefendant, Chance Brannon ("Brannon"), to use a Molotov
11 cocktail to damage a Planned Parenthood. (Dkt. 75 ¶ 14.) On or
12 about March 12, 2022, in codefendant Tibet Ergul's ("Ergul's") garage
13 in Orange County, California, Brannon and Ergul put together a
14 Molotov cocktail. (Id.) Defendant, who was in Florida at the time,
15 helped Brannon by advising him as to how to build the Molotov
16 cocktail, including by exchanging the following text messages just
17 hours before the attack:

18 BRANNON: How much styrofoam
19 DEFENDANT: You don't need an exact measurement just ensure
20 you have at least a few inches
21 DEFENDANT: You can also just do as much as it will dissolve.
22 The point is adhesion.
23 BRANNON: God bless.
24 BRANNON: Pray for our success
25 DEFENDANT: I will right now

26 (Dkt. 61 at 21-23.) Defendant advised Brannon knowing that Brannon
27 intended to use the Molotov cocktail to firebomb a fertility clinic.
28 (PSR ¶ 14.)

1 Defendant agreed to this condition in his plea agreement.
(Dkt. 75 ¶ 2n.)

1 Around 1:00 a.m. on March 13, 2022, disguised in dark clothing,
2 hoods, masks, and gloves, Brannon and Ergul drove to the vicinity of
3 a Planned Parenthood in Orange County. (Id.) Brannon and Ergul
4 approached the entrance of the clinic, ignited the Molotov cocktail,
5 and threw it at the clinic entrance, intentionally starting a fire.
6 (Id.) Brannon and Ergul then fled. (Id.) Within minutes, Brannon
7 texted defendant to tell him their plan had been successful. (Id.)
8 Specifically, Brannon and defendant exchanged the following messages:

9 BRANNON: It's done.

10 DEFENDANT: 88.² Did you see how long it lasted?

11 BRANNON: Not really but it was fucking good

12 DEFENDANT: Just making sure it all went well.

 Congratulations on your success brother

13 BRANNON: Thank you. Please pray for our shelter from the
 investigative eyes

14 DEFENDANT: I will.

15 (PSR ¶ 27.)

16 Defendant's browser history reflects that later on the day of
17 the firebombing, defendant sought out news coverage of the attack he
18 facilitated, searching for "abortion clinic bombing" and "California
19 abortion clinic bombing" on his phone. (Dkt. 61 at 15.) When he
20 could not reach Brannon a few days later because Brannon was in the
21 field on military assignment, defendant searched for "abortion clinic
22 arsonist arrested in California" to see whether Brannon had been
23 caught. (Id. at 15, 27.) But when defendant was arrested more than
24 a year later, defendant told law enforcement he had not heard about
25 the incident until Brannon's June 2023 arrest. (Id. at 14.)

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27
28 ² "88" is a coded term for "Heil Hitler," often used by white
supremacists and neo-nazis, based on H being the eighth letter of the
alphabet.

1 **B. Defendant Evinces an Interest in Committing Additional**
2 **Violent Attacks and Seeks Advice From His Codefendant**

3 After congratulating his codefendant on a successful attack,
4 defendant's interest in explosives seemingly grew. On March 14,
5 2022, the day following the firebombing, defendant searched "how to
6 make an IED," "how to make a pressure activated mine," and "how to
7 make a landmine." (Dkt. 61 at 15.) In April, defendant searched
8 "what would happen if you dropped a lit cigarette into a gas tank of
9 a car? Would it explode right away or just catch fire?" (Id.)

10 Defendant's search history throughout April and May reflect
11 persistent interest in a variety of topics, including antisemitic or
12 racist ideologies ("catholic kkk," "kkk allies," "happy birthday
13 hitler," "stalin racist quotes," and "78 percent of slaveowners
14 jewish"); cannibalism ("human meat recipes," "a defense of
15 cannibalism," "canninalism [sic] is morally good," "cannibal
16 recipes," "pro cannibalism essay," and "I love sneaking into
17 maternity wards and eating the afterbirth"); abortion ("why are fetal
18 skulls crushed during an abortion"); firearms ("Remington revolver
19 serial number generator," "Remington revolver models," "Ruger SR22
20 Rimfire Pistol Models," and "thhomegunsmith.com"); and, most
21 concerningly, acts of mass violence ("tulsa race riot," "buffalo
22 shooting," "tranny shooter," "Orlando shooter was American," "who
23 shot up Orlando"). (Id. at 15-16.) Defendant also kept various
24 violent and racist notes on his phone. (Id. at 15.)

25 On May 19, 2022, defendant texted Brannon, asking for advice on
26 committing an attack similar to that he had helped commit two months
27 earlier:

28 DEFENDANT: Can you give me a quick rundown on good opsec
 BRANNON: Be a little more specific

1 DEFENDANT: For instance how would that nigga in the bible
2 get away with destroying the temple of moloch³ in
3 the modern age
4 BRANNON: No phone or at least enable airplane mode within
5 vicinity of site-print off directions at home if
6 they're needed
7 Quick escape routes
8 Don't be identified on camera in a vehicle near
9 the site
10 If must be id'd on camera on foot obscure all
11 identifying info-face, skin color, logos on
12 clothing
13 BRANNON: Plan out approach and exit beforehand
14 BRANNON: Gloves mandatory
15 BRANNON: No eyewitnesses present
16 BRANNON: Shit happens so if someone sees you you better be
17 masked and don't run back to your car at first
18 because they will make your plates
19 BRANNON: Go at least 25 minutes drive away from where you
20 normally live, hang out, and work. It should be
21 in the jurisdiction of another PD
22 DEFENDANT: Understood. Thanks for helping me with my history
23 homework
24 BRANNON: Delete these messages after you write them down
25 or memorize them
26 DEFENDANT: Got it
27 DEFENDANT: Wouldn't me being 6'6 be an identifying feature
28 BRANNON: "Putting out a call for a tall male"
BRANNON: Unidentified race
DEFENDANT: True
BRANNON: If you're gone immediately there's basically zero
chance of capture. The local pd will be searching
for a tall man who's not even around anymore
BRANNON: Plus by the time they review the camera footage
(if there is any) it'll be far too late

(Id. at 29-34; PSR ¶ 29.)

**C. Defendant States He Is Planning a Mass Shooting and
Distributes Guides for Creating Weapons of Mass Destruction**

In August 2022, defendant texted Brannon that he had done some
"deep thinking" about his desire to restore his "previous piety."
(Dkt. 61 at 36.) Defendant expressed having "prayed that [his] blood

³ "Temple of Moloch" is believed to be a coded reference to an
abortion clinic, based on reference to a biblical form of child
sacrifice.

1 lust and apathy and rage would be calmed” and claimed to have been
2 feeling “docile and happier and going out of [his] way to help
3 people[.]” (Id.) Just a month later, in September 2022, defendant
4 threatened to commit a mass shooting on a gaming platform. (Id. at
5 16.) Specifically, defendant set his tag line to “I am planning a
6 mass shooting” and told other users he was planning a mass shooting
7 because the “system” had failed him. (Id.; PSR ¶ 31.) Defendant
8 also used the gaming platform to distribute guides on making weapons
9 of mass destruction and guides on “civilian warfare and sabotage,”
10 among others. (Dkt. 61 at 16.) When interviewed, defendant implied
11 that he did not remember writing anything about a shooting and was
12 just joking around. (Id.)

13 Later, defendant told Brannon about the warnings FBI had given
14 him about continuing to disseminate the guides. (Id.; PSR ¶ 30.)
15 When Brannon chastised defendant for having made admissions to the
16 agents, defendant insisted “They had everything word for word,” but
17 assured Brannon “I also told them I have autism.” (Id.)

18 Defendant’s threats were not his first. Five years earlier,
19 while in high school, defendant was hospitalized after making threats
20 to shoot his classmates and claiming to be an Islamic terrorist.
21 (PSR ¶ 101.)

22 **III. A 37-MONTH SENTENCE IS SUFFICIENT BUT NO GREATER THAN NECESSARY**
23 **TO ACCOUNT FOR THE RELEVANT FACTORS UNDER 18 U.S.C. § 3553(A)**

24 First, the nature and circumstances of the offense charged
25 support a within-Guidelines sentence. Defendant intentionally helped
26 his codefendants create an incendiary device to throw at a healthcare
27 clinic, intending to damage or destroy the building. In other words,
28 defendant conspired to commit arson and aided and abetted his

1 codefendants in committing it. As illustrated by the fact that
2 Congress prescribed a five-year mandatory minimum for that conduct,
3 defendant's behavior was extremely serious and put both people and
4 property at risk.

5 To be sure, defendant was not physically present when his
6 codefendants firebombed the Planned Parenthood. Nonetheless,
7 defendant acted with full knowledge that his codefendants were not
8 only creating an explosive device or planning to use it to commit
9 arson in general, but with the additional knowledge that they were
10 planning to attack a healthcare clinic. Moreover, defendant's
11 willingness to help his codefendants firebomb a healthcare clinic
12 from afar, without being present to check for people or control the
13 circumstances, reflects a seeming apathy to whether anyone would be
14 hurt or killed as a result of his tutelage. Accordingly, the nature
15 and circumstances of the crime militate in favor of a within-
16 Guidelines sentence.

17 Second, defendant's participation in the firebombing neither
18 deterred him nor caused him to second guess the propriety or
19 dangerousness of his conduct. To the contrary, apparently inspired
20 by the firebombing he aided and abetted, defendant researched how to
21 make new incendiary devices the very next day and persistently
22 searched firearms and mass casualty events over the next two months,
23 finally turning to Brannon for advice on completing and getting away
24 with an attack on a second clinic. (Dkt. 61 at 16-18, 29-34.) Four
25 months after that, in September 2022, defendant zealously shared his
26 knowledge on creating weapons of mass destruction -- and tactics on
27 how to use them -- with friends and strangers on a gaming platform.
28 (Id. at 16.) Even more concerning, defendant perpetuated his history

1 of threatening to commit mass shootings. (Id.; PSR ¶¶ 31, 100.)
2 Accordingly, defendant's history and characteristics also weigh in
3 favor of a within-Guidelines sentence.

4 Third, although defendant suffers from mental health issues
5 which are in one sense mitigating, those mental health issues also
6 seemingly exacerbate his danger to the community. (PSR ¶ 113.) That
7 danger is further exacerbated by his violent and racially motivated
8 ideology, which is evident from the searches on his phone, his
9 communication with Brannon, and his threats to strangers over the
10 internet. Defendant wrote himself violent and racist notes, sought
11 out information related to prior hate-motivated shootings, frequently
12 greeted Brannon with coded language for "Heil Hitler," and researched
13 and exchanged homophobic, racist, and antisemitic information and
14 sentiments. (Dkt. 61 at 16-18; PSR ¶ 27.) As one example, in
15 January 2023, Brannon texted defendant to ask how far he lived from
16 Hollywood, Florida. (Dkt. 61 at 40-42.) Defendant responded that he
17 was four and a half hours away. (Id.) Brannon responded: "I need
18 you to drive there and lynch a [n-word] and his two children" and
19 provided defendant with the person's name. (Id.) Defendant
20 responded: "On it." (Id.) Those conversations are concerning
21 enough, but are especially so when coupled with defendant's interest
22 in prior mass casualty events, his repeated threats to conduct mass
23 shootings, his demonstrated interest in firearms and explosives, and,
24 in his own words, his "blood lust and apathy and rage." (Id. at 16-
25 18, 36; PSR ¶¶ 31, 100.) A significant period of custody is
26 necessary to incapacitate defendant until his mental health
27 stabilizes and to protect the public from his conduct.

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