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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 3:11-cr-00022
vs.	)	
	)	
FRANCIS SCHAEFFER COX,	)	
	)	
Defendant.	)	
	)	

UNITED STATES RE-SENTENCING MEMORANDUM

The United States files with the court a re-sentencing memorandum for defendant Francis Schaeffer Cox. The United States maintains, for reasons provided here and in the totality of the facts of the trial, that the sentence to be imposed upon remand by the Ninth Circuit Court of Appeals, particularly when compared to the defendant's post-conviction and current position on guilt and self-victimization should remain unchanged. At re-

sentencing the United States will be recommending that the court impose a sentence as originally adjudged, that being a sentence of 310 months. No downward departure for imperfect entrapment is supported by the facts nor warranted.

A. Remand From the Ninth Circuit

Oral argument in this case was held before the Ninth Circuit Court of Appeals in Anchorage on August 16, 2017. Thirteen days later, on August 29, 2017, the Court of Appeals issued a non-published memorandum opinion reversing the conviction for Solicitation to Murder Federal Officials, and remanding for sentencing. The United States does not contest that sentencing is essentially a new sentencing proceeding conducted without the dismissed count.

B. The Counts of Conviction for Re-Sentencing

Defendant Cox is pending sentencing for the following counts of conviction:

-Count 1: Conspiracy to Possess Unregistered Silencers and Destructive Devices (hand grenades, silencers)

-Count 2: Possession of Unregistered Destructive Devices (hand grenade components for 4 hand grenades found in Cox's trailer)

-Count 3: Possession of Unregistered Silencer (Silencer made by Cox found in trailer)

-Count 4, Possession of Unregistered Machine Gun (Sten machine gun found in trailer made fully automatic by Cox)

-Count 5: Illegal Possession of a Machine Gun (Sten machine gun)

-Count 6: Making of a Silencer (.22 Silencer made by Cox found in Cox's trailer)

-Count 10: Possession of Unregistered Destructive Devices (37mm Hornet's Nest Launcher and Rounds)

-Count 12: Conspiracy to Murder Federal Officials (Guilty as to Cox and Vernon)

The bulk of Cox's sentencing memorandum concerns itself with the conspiracy to murder federal officials count and the concept of imperfect entrapment. It ignores the facts, statements and the reasons for Cox's possession of silencers, the machine gun, hand grenades, and other recorded statements made by Cox establishing his intent to murder if one of his men were captured by law enforcement, he was taken into custody or any member of his family taken into custody. These devices are part and parcel of the sentencing matrix which should be given serious weight by the court at sentencing.

Counsel for defendant have done an extensive job of focusing attention, as they should, on Count 12, Conspiracy to Murder. However the facts and circumstances of the other 7 counts of conviction, and Cox's own recorded statements should and must receive just as significant consideration as the facts giving rise to the conviction on Count 12. Focusing alone on the acts and statements of Fulton and Olson misses the holistic, relevant conduct marks of sentencing. Indeed, for every statement by Cox alluding to wanting to 'wait' there are just as many about hanging clerk of court employees so they 'dangle like wind chimes of liberty,' non-opposition to sending 'heads in boxes' and

other such statements. In the brief, the defense fails to mention the clear, present and real possibility that Cox was clear on 2-4-1. It would occur upon his arrest, an arrest of a militia member, or of a member of his family. Given Cox's provocations to the courts and law enforcement, the fact that a warrant was active for his arrest, the 2-4-1 scenario was something that could have happened at any time-a fact the defense brief ignores. Instead, it spends a significant amount of time on the 'Stalinesque' takeover of the United States and when that may or not happen. That argument shifts the needle of the issue to the vacuous. The reality was and is Cox's arrest was imminent, and if he was arrested his loyal lieutenant Barney, Sergeant Vernon and possibly others were ready to take up his cause—numbers of militia members were irrelevant-all it would have taken was one of these men to implement Cox's plan upon his arrest.

One other trial established point requires mention and is relevant to Cox's argument of lack of intention. It concerns the Alaska State Troopers. Prior to his arrest on federal charges, Cox had occasion to be stopped by an Alaska State Trooper. After the stop did Cox let the matter go? No. He located the Trooper's address, wrote it down, and put the Trooper's name on his 'list.' These actions demonstrate just how serious a threat Cox was to the community, law enforcement and others. While Dr. Cunningham labels Cox a 'prepper' the label is a farcical one. A 'prepper' prepares and passively awaits Armageddon or some natural disaster to occur-safely holed in a bunker or place of refuge. Here, Cox was open and notoriously instigating a clash with the court's and law enforcement, challenging them backed by the strength of his militia and thumbing his

nose at the court's by holding a sovereign citizen court at a Denny's exonerating him of physically abusing his wife. He had been challenging law enforcement to take action on him for some time by public statements, showing up at arrests armed under his "Liberty Bell" program, advising Troopers 'we could have you dead in one night", holding seminars advising citizens that criminal convictions were wrongfully and illegally obtained. The facts here are clear, Cox was no 'prepper' but was instead an instigator and threatening raconteur without any amusement.

While that was the "then," the 'this is now' is just as problematic. Cox's public posts and positions (*See, Exhibits 1-26*) made during his time of incarceration reveal no change in Cox in the slightest. Nor does it evidence any capacity or attempt to change. He continues to believe the United States conspired against him, defrauded him, concealed evidence, withheld evidence, has treated him unfairly in prison and that he remains to this day an innocent man and political prisoner.

None of this warrants, nor should warrant a downward departure based on the reversal of the solicitation count, particularly as the court will see below.

C. The Past and Current Mindset of Defendant Schaeffer Cox: '*An Innocent Political Prisoner'*

The insert below is from Schaeffer Cox's Facebook page as of October 16, 2019. A similar advert ran in the Fairbanks Daily News Miner newspaper in September, 2019. The page provides the court with the current mindset of this defendant:

UP TO $25,000 PLEDGED FOR INFORMATION LEADING TO THE EXONERATION OF SCHAEFFER COX

Help Free an Innocent Man!

~TELL US WHAT TO FOIA

~TELL US WHAT TO SUBPOENA

~POINT US TO A WITNESS WE SHOULD INTERVIEW

~REVEAL WHAT THE PROSECUTOR IS ILLEGALLY HIDING

www.FreeSchaeffer.com

Everyone knows Schaeffer Cox is an innocent political prisoner. Even the prosecutor knows. That's why the Judge ORDERED the prosecutor to hand over all evidence that could be helpful to Schaeffer Cox.

But this prosecutor has proven time and again that he'd rather lie to the Judge than comply with an order like this one, that might cost him his case.

That's why JUSTICE NEEDS YOU

*SUPPORT THE JUDGE'S ORDER

*FIGHT CORRUPTION

*GET PAID FOR IT

CONTACT: SchaefferCox@gmail.com

According to this still current post, Cox views himself as:

-An innocent political prisoner

-An innocent man

-and beset by various other claims of wrongdoing against him on behalf of the prosecution, the FBI and the United States.

-And an offer for 'up to $25,000 pledged for information leading to the exoneration of Schaeffer Cox.'[1]

The defendant also maintains an active 'blog' site where various posts provide very clear views into his mindset about this case. Attached as Exhibits 1-25 are blogs from the defendant's 'prison blog.' These are broken down as follows:

Exhibit 1: 'Holy Government' from July 28, 2016. In this post Cox claims he is not mentally ill, and generally blames the government for his current situation.

Exhibit 2: 'Inaction, After all is Action', May 9, 2017: Cox states he's 'in a hole…sitting on concrete naked and alone in the dark.' This blog is another multi-page denial of responsibility blaming his predicament on Fulton, Bennett, J.R. Olson, the government, the prosecution and others.

Exhibit 3: Apples and Oranges, from 'Free Schaeffer Cox.com'. This is essentially a complaint post-appeal against the prosecution.

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[1] Apparently Mr. Cox's fundraising efforts were so successful he amassed $3 million dollars which were, according to the article on this hyperlink, absconded with by some former supporters/associates. https://madisonrecord.com/stories/511358818-alaskan-man-convicted-on-conspiracy-charges-sues-individuals-over-money-collected-for-legal-defense

Exhibit 4 and 5: 'Big Win in Court' February 13, 2019: This post claims the prosecution continues to hide evidence and solicits contributions to his legal defense fund.

Exhibit 6: Conspiracy to be Schaeffer Cox, February 26, 2019: Cox again seeks funds for his legal defense under the guise of lying prosecutors who are hiding evidence.[2]

Exhibit 7: Dirty Conviction: August 22, 2018: Is a claim that his attorney client visits were listened to by the FBI. This is untrue. None of Cox's conversations were recorded. Cox claims are false, as to what he refers to were video, without audio recordings that occurred at the Anchorage Jail with several inmates and their attorneys. None of this occurred during Cox's tenure at the Anchorage Jail, and even if it did no sound was recorded. None of what Cox refers to in this post is true. Cox then again posts that his investigation was 'politically motivated where the prosecutors knew he was innocent.'

Exhibit 8: Dollars for Downfall: July 28, 2017: In this post Cox claims the prosecution withheld information on who may or may not have been an informant in the case. The post then solicits money for filing of some type of lawsuit, even though Cox is currently being represented by the Federal Public Defender.

Exhibit 9: FBI Ambushes Innocent Man/American Political Prisoner: Schaeffer Cox, July 23, 2013: This post is 15 page denial of any wrongdoing and a repeat of Cox's trial themes and testimony at trial.

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[2] Cox, or his followers, sent brochures to the public claiming various wrongdoings and seeking funds. The office of the U.S. Attorney received more than 100 of these brochures, signed, and unsigned, mostly from the elderly, seeking Cox's release. How much money Cox received from this solicitation is unknown. (*See, Exhibit 27, attached hereto, "No Smoking Gun, the Federal Framing of Schaeffer Cox*)

Exhibit 10: US Government Fears Zombies, Resistance, and Truth, January 8, 2018: In this post, among other things, Cox solicits readers to getting 'big names and celebrities' support his case and speak out against the prosecution, 'if you can get some big names to talk about my case, and ridicule its architects (Obama, Holder, Bottini, Skrocki) it will crumble.

Exhibit 11: Hit List: This post claims the 'hit list' is not real. (August 27, 2017)[3]

Exhibit 12: I Just Got Some Big News, May 29, 2018: This post comments about the U.S. Supreme Court reviewing his case, but again Cox denies guilt or responsibility.

Exhibit 13: It is Torture, Please Help Me: May 30, 2018: Cox complains, among other things, about not being on the Freedom Coalition's pardon list to the President of the United States, claiming he's in prison for a 'hypothetical crime, in an imaginary future.'

Exhibit 14: Let Freedom Ring: September 18, 2018: Cox announces a 'defense team' for an open civil case(s) and alleges discovery was withheld from him prior to trial. He then solicits funds for his legal defense fund via PayPal.

Exhibit 15: Message From America's Black Site Prison, September 2, 2017: This post is similar to others, but threatens readers of a much larger scale of a government crackdown on individuals. After writing about the erosion of the United States in general, and the impending crackdown, Cox asks for $50 or $100 contribution.

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Exhibit 16: Highly Organized Persecution of Christians, November 7, 2017: In a limited part, these sections of the blog stands out:

> After I was arrested, they put me in solitary confinement, sleep deprived me for days on end, then told me that my family was ashamed of me and wouldn't speak to me until I signed a confession against myself so all this would be put to bead and stop more mud from coming out. IT WAS ALL LIES! IT WAS A TRICK! My family was camped out on the jail steps saying this was crazy and I was innocent. But I didn't know it.

> ~ Fulton and these same handlers are still at work dreaming up ways to spook off anyone who would support me. And they are still raping the daylights out of Alaska Native/Eskimo toddlers at their power parties in Anchorage. They've moved it from the Ocean View House, but they didn't stop.

Exhibit 17: DOJ Prosecutor Has the Same Compulsions As A Serial Killer: May 22, 2017: This post is directed at AUSA Joseph Bottini, and likens him to having the same compulsions as a serial killer.

Exhibit 18: The Taste of Bad News: November 8, 2017: This post comments about the Ninth Circuit ruling, resulting in this sentencing remand, and extensive claims of innocence.

Exhibit 19: Skrocki and Caligula, July 3, 2017, in this post the undersigned is compared with the Roman Emperor Caligula, in deeds and in writings.

Exhibit 20: Hero Blood, September 30, 2017: Cox seeks from others in this post assistance in garnering celebrity endorsement of his cause.

Exhibit 21: Spin Doctors, August 19, 2019: In this post, the FBI Special Agent assigned to the case is spotlighted vis a vis Cox's innocence.

Exhibit 22: The Deeper the Love, the Deeper the Pain, April 11, 2018: Cox complains of having communication improperly or illegally blocked with one of his supporters.

Exhibit 23: 'It's Like Cave Man Court', March 5, 2017. This post shows a picture of Cox, prior to arrest, staring at a notice on a glass door that prohibits firearms inside the building. The post concerns itself with the government's appeal brief and this court's ruling on the Rule 29 argument concerning the Solicitation charge.

Exhibit 24: You Just Never Know, June 16, 2018, this post can be summarized as follows:

> Let me tell you what, I've been mistreated about as bad as anyone can be. So I'm sure my case is in the top 1,000 most unfair cases. Maybe even in the top 40. And we have the proof! Which means you guys out there can literally Tweet me out of prison right now if you boil down the message and push it hard enough at a single concentrated target, like Trump or someone close to him. Please go familiarize yourselves with the facts of my case by reading FreeSchaeffer.com and by watching the many videos about my case on You Tube. Then blast our president and his staff with requests for a pardon, focusing on the unfairness of it all.

Exhibit 25: Your Life Depends On It, September 3, 2017, among other things this post again warns of pending government crackdown on citizens. Like the others, Cox claims he's a victim of government oppression and criminal activity.

Exhibit 27: Free Schaeffer Cox brochure sent to the U.S. Attorney's Office.

D. Re-Sentencing Arguments by Cox on Count 1, Conspiracy to Murder Federal Officials

a. Facts

The facts from trial as to Count 1 of the indictment are adequately but in general covered at pg. 4 of the Addendum to the Presentence Report, pg. 4. The United States adopts that response and incorporates it by reference to this memorandum. The United States also relies upon the facts provided in its answering brief on appeal, (See, United States Answering Brief, Case 13-30000, Docket 121, pgs. 5-51, attached hereto as Exhibit 26 for the court and parties' convenience)[4] The defense has provided the court with several transcripts with selected excerpts, none new, of Cox, and Confidential Human Sources Fulton and Olson. What has been provided to the court are snippets casting blame, and, in reality, innocence on Cox under the guise this whole prosecution was at the behest of these two men.

-Cox started his speech circuit before ever meeting the CHS's.

-His machine gun, silencer and grenade making activities occurred independent of and prior to meeting the CHS's.

-The CD's found in his home on poisons, full-auto conversions of various rifles, creation of explosives and other illegal activities were in Cox's possession without knowledge of, nor at the urging, nor provision of Fulton or Olson. At trial, Cox dismissed the CD's as "spam" that somebody had left on his desk.

[4] All citations in the United States answering brief cite to the trial record in this case.

-The facts at trial were clear that Cox stated that in the event of his, or a militia members capture that the '2-4-1' plan would be put into effect. Cox was also clear that in the event he, or a member of his family was arrested, again, there was an arrest warrant pending for his arrest, that arrest would also trigger a violence response. (See, United States Answering Brief, Case 13-30000, Docket 121, pgs. 12-13, 2)

-In furtherance of the arming of himself, his lieutenant Coleman Barney, and members Lonnie and Karen Vernon, Cox was arrested purchasing silencers and what he believed to be two hand grenades.

-Cox, as has been argued time and time again, was predisposed to not only acquiring silencers and grenades, but was looking for C-4 explosive. Cox sent Olson and Lonnie Vernon to the Militia Convention with the express purpose of acquiring them. (See, Answering Brief, Case 13-30000, Docket 121, pgs. 20-24)

-The idea for a 'hit list' with Mike Anderson came from Cox, and nobody else. **Cox provided Anderson with the names of state and federal officials** for the list, and the two drew a map of the U.S. Courthouse in Fairbanks as part of the discussion. Based on this, Anderson began research on his own, including locating U.S. Marshal Jimmy Johnson on his own. Anderson, for his part, was so worried about Cox that he destroyed the 'database.' What information it contained will never be known. What is

known is that Cox wanted the database and made great effort while on the lam to locate it and was the one who provided Cox with specific names of state and federal officials to begin the database.

-Cox wanted access to the database before fleeing, Lonnie Vernon wanted access to the database as well. (Ex. 26, pg. 35) Cox spent hours with Olson trying to locate Anderson to get the list. (Ibid, pg. 36)

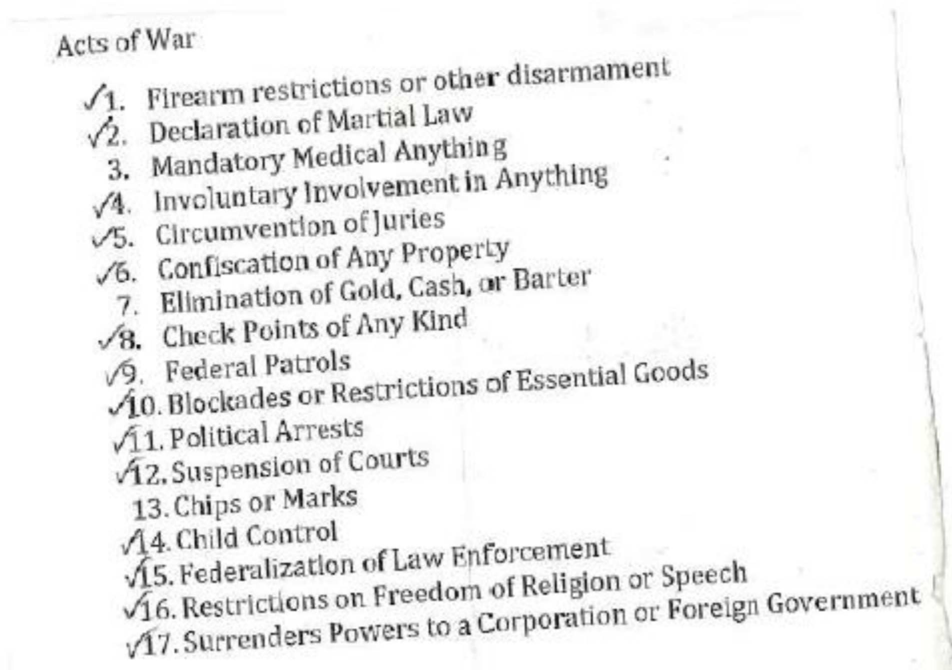
-Even if Cox's tale of 'leaving the state' was to be believed, Cox took with him his machine gun, and ammunition, his silencer for his .22 and grenade components and parts, along with his grenade launcher/hornets nest parts and pieces for his semi-automatic rifle.

-Cox discussed with Olson how a silencer would work, that he wanted to 'stock up' with grenades if the cost would be below $70 each, 'I would be feeling like I can buy as much as I want.' (Ex. 26, at pg. 33) None of this was at the urging of Olson. Cox also explained to Olson how to use a bolt and a two-part adhesive to plug the hole in the 17 grenade bodies found in his trailer so they could be used a real grenades. Such items were found in Cox's trailer the day of his arrest, J-B Weld, reloading powder, grenade fuses and 17 grenade bodies.

-On the day of his arrest, Cox opined that, in the context of having to purchase a .22 with a silencer, 'but see, even at close range, they take a long

time to die. Coleman Barney was not different, asking, "How are they for devastation? Pretty Good?" (Ex. 26, pg. 37)

-The following checklist establishes that Cox was not waiting for some futuristic 'Stalinesque' takeover to occur. In Cox's mind, which is what matters, that day had already arrived, save for two items:



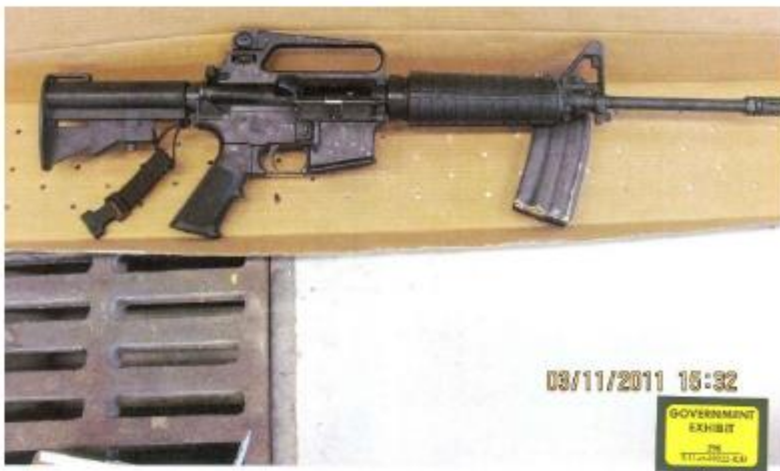
Acts of War

√1. Firearm restrictions or other disarmament
√2. Declaration of Martial Law
3. Mandatory Medical Anything
√4. Involuntary Involvement in Anything
√5. Circumvention of Juries
√6. Confiscation of Any Property
7. Elimination of Gold, Cash, or Barter
√8. Check Points of Any Kind
√9. Federal Patrols
√10. Blockades or Restrictions of Essential Goods
√11. Political Arrests
√12. Suspension of Courts
13. Chips or Marks
√14. Child Control
√15. Federalization of Law Enforcement
√16. Restrictions on Freedom of Religion or Speech
√17. Surrenders Powers to a Corporation or Foreign Government

Set out below are photographs of some of the items seized from Cox's trailer. The .30 caliber hand cranked Browning machine gun, the fully automatic Sten machine gun, grenade bodies and other items.

GOVERNMENT
EXHIBIT

GOVERNMENT
EXHIBIT



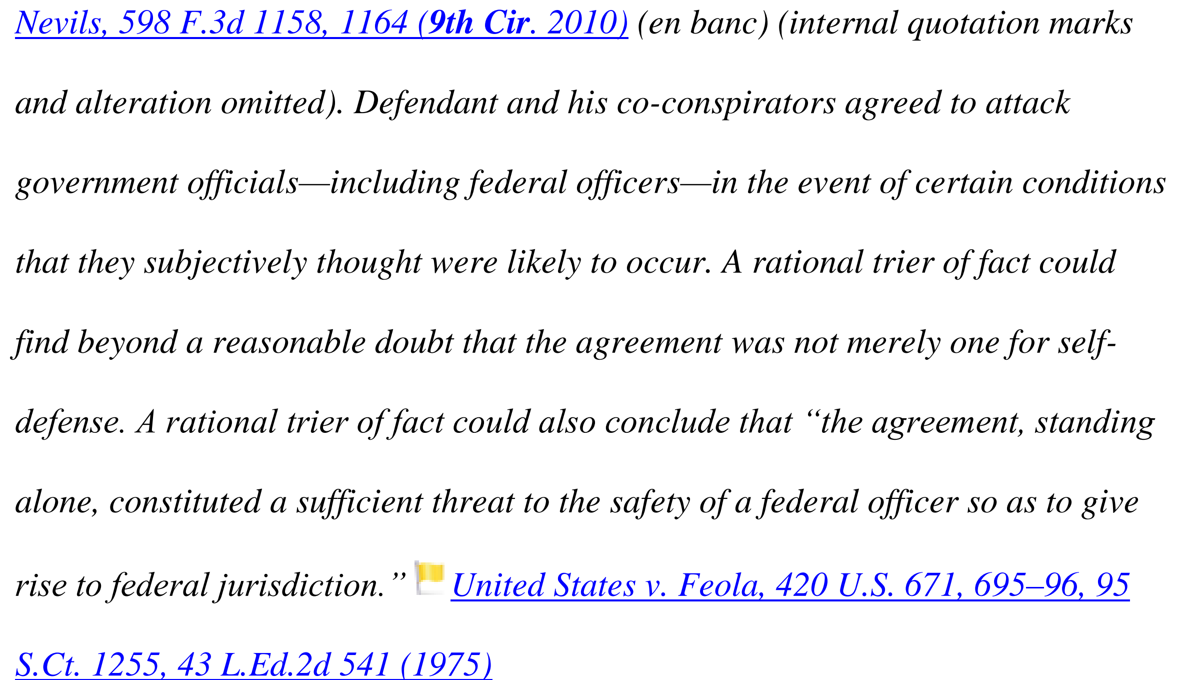
These aren't the tools of a defensive 'prepper' but are, instead offensive weapons and weaponry which Cox actively sought, independent of Fulton or Olson and or possessed well before meeting Fulton or Olson.

Nevertheless, as set out below, Cox maintains this case is an 'outlier' warranting a reduction in sentence for that and other reasons. The memorandum opinion of the Ninth Circuit found, however, that that the conspiracy to murder charge itself, standing alone, was sufficient for conviction, and not evidence as to numbers of individuals on the Cox-Anderson hit list, or other targets, nor timing, was necessary.

E. The Agreement, Standing Alone, Constituted a Sufficient Threat to the Safety of a Federal Officer so as to Give Rise to Federal Jurisdiction Thus Sentencing is Not Limited to Cox and Anderson's Lists and Databases

Cox complains that the conviction for Count 1 is an outlier and cites to various authorities in support of this claim. This case, however, is no outlier. More to the point, Cox repeatedly states that the 'list' was Anderson's list. Factually, this is incorrect. *It was Cox who gave to Anderson all of the names on the list.* Anderson had no idea as to whom these individuals were. Cox did, however, and knew of them because they were simply government employees, or even a family friend like Tina Beachamp who made the mistake of not giving Cox information as to whether or not he was on a no-fly list. To say this was "Anderson's" list is factually incorrect, Cox sought out and utilized Anderson's skills for his own needs. Anderson did not independently arrive at this project, it was only done at the urging of Cox. As stated by the 9th Circuit:

> *Defendant next challenges the sufficiency of the evidence on the conspiracy charge. We assume, without deciding, that Defendant has properly preserved this challenge, so that our review is de novo. See United States v. Phillips, 704 F.3d 754, 762 (**9th Cir**. 2012). We conclude that, "consider [ing] the evidence presented at trial in the light most favorable to the prosecution[,] ... [that] evidence, so viewed, is adequate to allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." United States v.*



*Nevils, 598 F.3d 1158, 1164 (**9th Cir**. 2010) (en banc) (internal quotation marks and alteration omitted). Defendant and his co-conspirators agreed to attack government officials—including federal officers—in the event of certain conditions that they subjectively thought were likely to occur. A rational trier of fact could find beyond a reasonable doubt that the agreement was not merely one for self-defense. A rational trier of fact could also conclude that "the agreement, standing alone, constituted a sufficient threat to the safety of a federal officer so as to give rise to federal jurisdiction." United States v. Feola, 420 U.S. 671, 695–96, 95 S.Ct. 1255, 43 L.Ed.2d 541 (1975)*

What matters here is not what *might* happen, but *what Cox thought might happen along with the 'agreement' standing alone constituted a threat to the safety of federal officials*. As was discussed at trial, again, several times, was Cox's belief in his pending arrest, the arrest of one of his family, removal of his son by OCS, or capture of one of his militia members was pending, and pending soon. The facts of the cases cited by Cox are all distinguishable when viewed in this light.

F. Imperfect Sentencing Entrapment

a. For every "Ghandi" there was "I'm not Against Sending Heads in Boxes"

Cox's entire sentencing brief, including the report of Dr. Cunningham, is tactically filed for the purpose of a sentencing reduction for imperfect entrapment. The reduction,

however, should not be awarded to Cox for several reasons. The United States starts with the *McClelland* case itself.

In *United States v. McClelland*, the defense sought and received a sentencing departure where entrapment was rejected at trial. The United States appealed claiming such a departure was not available where the defendant initiated the criminal activity. The 9th Circuit disagreed. *United States v. McClelland*, 72 F.3d 717, 725 (9th Cir.1995)

In fact, evidence of imperfect entrapment, like evidence of imperfect coercion, is in some cases a legitimate ground for departure, because it may show that the defendant is "both less morally blameworthy than an enthusiastic [defendant] and less likely to commit other crimes if not incarcerated." See Garza-Juarez, 992 F.2d at 913 n. 1 (quoting with approval Dickey, 924 F.2d at 840 (Reinhardt, J., dissenting)). A district court could properly determine that a defendant who first proposed an illegal scheme, but who later expressed serious reservations and acted only after strong and repeated inducements by the government is less morally blameworthy and less likely to commit crimes in the future than a defendant who eagerly participated in an illegal scheme with no inducement other than the initial suggestion by a government agent. Thus, if a district court departs downward on the ground of imperfect entrapment in a case in which the defendant first approached the government, the departure may still be completely consistent with at least two important factors relevant to sentencing-protection of the public, and characteristics particular to the defendant's culpability. See Pacheco-Osuna, 23 F.3d at 271-72; Garza-Juarez, 992 F.2d at 913 n. 1.

In this investigation Cox did not approach the United States, the United States approached him due to his statements about possessing illegal weaponry and other activities. The investigation revealed that Cox was predisposed to have, and did have illegal weaponry well in advance of any government contact. Not only that, he wanted more, on his own volition, including C-4 explosive and hand grenades. Cox was predisposed and wanted more without any government incentive. The most, the very most the defense can point to are statements by Fulton and Olson, in essence, asking for information about Cox's plan. This investigative technique is not instigation, nor inducement. In fact, the activities and statements of Cox and Vernon were terrifying to law enforcement particularly due to the fact that Cox, who had a warrant outstanding for his arrest, could have been arrested at any time. The same holds true of the Vernons who were, in fact, arrested with a map to Judge Beistline's home, members of his family's home, and more than a dozen 'good-bye' letters, along with assault rifles and ammunition. These men were so dangerous that the FBI posted to law enforcement a 'do not arrest notice' due to them being armed and the statements they were making. While Cox over and over states that 'a plan' was at instigation of the government the record is devoid of any 'pushing' for action, only for information for law enforcement's protection of those targeted. While this is clearly a fine line, it is an important one and an important distinction. Neither Fulton nor Olson urged Cox to go operational, start killing people or otherwise. They asked Cox 'when' in effect he was going to do so. For every answer by Cox of a 'Ghandi' there were answers by him, Vernon, or Coleman Barney about

targeting police officers, killing government employees, judges and collecting data on them in the event of his arrest or the arrest of others. These facts remove any claim under *McClelland* that Cox is deserved of a downward departure for imperfect entrapment. Cox never once, not once, retracted 2-4-1 in the event of his arrest or an arrest of his family, a militia member, or if his son was taken by OCS. There was no aggressive encouragement to take action, only to provide information.

The facts of this case are far removed from those in *McClelland*. Cox's plan, clearly stated, was that in the event of his arrest 2-4-1 would be triggered. This was his order, and done at his urging, not at the urging of Fulton or Olson. *McClelland* based its rationale for the imperfect entrapment departure on the very clear premise that a *'[a] district court could properly determine that a defendant who first proposed an illegal scheme, but who later expressed serious reservations and acted only after strong and repeated inducements by the government is less morally blameworthy and less likely to commit crimes in the future than a defendant who eagerly participated in an illegal scheme with no inducement other than the initial suggestion by a government agent.'* *McClelland,* 72 F.3d at 726 In a footnote, the court noted that, *'in deciding whether a departure is warranted on the ground of imperfect entrapment, the amount of inducement, the level of reluctance on the defendant's part, and who acted first should <u>all</u> be factors for the district court to weigh. Id.*

Here, taking the elements in reverse order, Cox clearly acted first, by and in all accounts, his level of reluctance was slim to none, and the amount of inducement as to

action was limited to nil. Inducement as to what the plans were, yes, taking action, liking murdering a spouse as in *McClelland,* no. *The only reason Cox showed any reluctance was not due to being timid, lacking in intent, or general reluctance, but only, only because he and his militia, in terms of a general takeover strength, were not yet strong enough to prevail*. Hence, the attempted purchase of silenced pistols and grenades to further those aims.

One more point requires mention. In an abundance of caution the United States took the unusual step of releasing its own email assessments of Cox's timeline in discovery. This was done as the reporting of investigative activity to the United States Attorney as a briefing did reveal that Cox had no timetable for his uprising, outside of his possible arrest. However, the emails were focused on not only the Cox case, but the Vernon's case and plan to murder Judge Beistline and his family, a crime occurring parallel to all of Cox's activity. Not only that, the emails were based on a limited review, at the time, of Cox's recordings usually made the night before, thus they were not a full and complete review of what was actually said, but were informationally only for the United States Attorney. The United States stands behind the emails content and disclosed them based on its assessment of the timeline of Cox's plans to murder state judges and other law enforcement members and Vernon's plan to murder Judge Beistline and his family. Here, nobody in this case said, 'hey, let's call this off and let's not do this.' In fact, it was the opposite, 'we'd like to do it, but when?' True, Cox never formally had a timetable to independently murder State Court Judge McConnahy, or other members of

the judiciary, but the emails do nothing to contradict the clear facts that if Cox was arrested pursuant to the outstanding state warrant his orders for 2-4-1 were in clear effect.

The Report of Dr. Cunningham

The defense has filed, in aid of sentencing, the report of a second psychiatrist, Dr. Mark Cunningham. Dr. Cunningham's report contradicts an early report, provided by Dr. Robin LaRue, which Dr. Cunningham finds as incorrect. The court therefore has before it competing reports by two medical professionals. Dr. Cunningham's report is extensive, but does not, in the government's view, really provide anything new. To wit:

-It is no surprise that the defendant was physically and verbally abusive to his spouse. This was known by the investigation,

-It is no surprise that the defendant exaggerated, exaggerates, misrepresents, lies and fabricates his own deeds, facts and enjoyed being the center of attention,

-It is no surprise that Cox harbors features of narcissism, as stated by Dr. Cunningham,

-That he possesses socially confident oratory skills. The United States agrees, and that those skills were put to great effect in talks across the Western United States, in Fairbanks, Alaska, and to members of his militia. It continues to this day with his blog posts on his current legal predicament.

Other findings such as 'thinking errors and deficits in critical thinking, emotional over-reactivity, high initiative but deficient perseverance have no bearing on the sentence to be imposed in this case. Moreover, Dr. Cunningham's conclusion that Cox's likelihood

of committing acts of violence upon release is 'very low' ignores the basic tenant of this case. It is not Cox doing the violence, it is Cox's words, arguments, instigations, and manipulation of others to do his bidding which is the greatest cause of concern. Facts in this case are legion that Cox was able to convene dozens to hold a fake trial exonerating him from choking his wife. He was able to enlist dozens to march on the Fairbanks courthouse in support of his defiance of a state court judge, whom he threatened, and in the process threatened a state trooper as well. These threats, of course, were made with dozens behind his back in support. None were made alone. He was able to muster more than a half dozen for a 'security detail' at radio station KJNP, dressed in body armor, armed with anti-riot grenade launchers, semi-automatic rifles, all to face an unknown federal 'hit squad.' Such was the power of his convincing that independent checklists, plans, routes, and other logistics were arranged, all to protect Cox.

If that weren't enough, Cox, apparently intent on leaving Alaska, (or so he says) took his armaments with him-a crank .30 caliber machine gun, a .22 with a homemade suppressor attached, a fully automatic machine gun, grenade components and parts, handcuffs, ammunition, a semi-automatic rifle and other implements. Cox held these items dear enough that they were not left behind, but saved as they constituted the beginnings of his weapon cache to be used when needed by him. Of course, during trial, Cox took the stand and denied everything, from the Sten gun not working, to not wanting grenades, to having no idea how information on explosives and full auto conversion

manuals landed on his desk, and that a 'hit list' reference found on his iPhone meant a 'music' list.

Dr. Cunningham does an extensive amount of work attempting to explain Cox's behavior and actions away, but they are belied by the facts of the investigation and the facts of the trial. Moreover, Dr. Cunningham's report takes steps and opines about Cox's actions which are very much belied by the facts. Two examples are provided here:

Mr. Cox's mood disorder, anxiety disorder, and personality maladjustments <u>rendered him particularly vulnerable to the fear-inducing interactions with a government informant and the facilitation of the informant in procuring hand grenades</u>. In the absence of these government-sponsored influences, it is improbable that Mr. Cox would have engaged in some of the offense conduct. (Cunningham Report, pg. 33)

Let's set the record straight on this statement, Cox would have continued on this path, with our without government 'sponsored influences.' This so as Cox had been predisposed for years, and wanted more without government urging. The idea for more grenades and C-4 were his and his alone. Additionally, Cox made a .22 silencer himself, before ever meeting Olson or Fulton. The same holds true about the Sten machine gun. Cox showed Barney how the silencer worked, outside of any influence of Olson or Fulton. Cox had his own grenade pieces and parts, and fuses obtained from Aaron Bennett, totally outside any influence or knowledge of Fulton and Olson. As was established at trial, Cox and Barney practiced with dummy grenades, outside the presence or even with the knowledge of Olson or Fulton. Cox, on recording, instructed Olson and

Vernon to get as many grenades as possible at the Militia Convention in Anchorage. For added measure, Cox, on his own, asked the men to look into getting C-4. (Barney, on his own, mentioned speaking to an 'arms dealer') These are just a few of the facts which make Dr. Cunningham's report meaningless. In summary, it is nothing more than a results oriented exercise which contradicts an earlier report by another qualified mental health professional. So, which one is correct? In this circumstance, this report does nothing but justify Cox's actions based on lack of socialization, upbringing, having no limits and then concludes by adopting Cox's own mantra about this case: none of this was his fault, or if it was it can be explained away for reasons not attributed to him. The facts of the trial belie that conclusion.

Another example is as follows:

Mr. Cox was not regarded as a serious threat of violence, whether personally perpetrated or inspired, by case agents in the months prior to his arrest. (Cunningham Report, pg. 33)

This is flatly untrue. In the months leading to his arrest this case was being investigated and monitored almost 24/7. And had been for months. This statement, given all of the evidence adduced at trial and discovered from the investigation about murdering judges, killing children, acquiring C-4, grenades, silencers, shooting Hornets Nests rounds in people's homes and shooting them as they came out, by Cox, Vernon, Barney and others is shockingly inaccurate. The issue was and is not *when* an external act would occur, but *what Cox thought and expressed in the now*, if he was arrested, or a

Barney or Vernon was arrested, or his child taken by OCS. These trigger points were real for the investigation and could have happened at any time. Far from being a 'prepper' Cox was an instigator who advocated violence and the arming of citizenry against an allegedly oppressive government for his own purposes and sense of self-aggrandizement. While Cox may not have ultimately been the one to use violence, he was perfectly happy to have others around whom he would instigate, cajole, and/or talk into using violence- Lonnie Vernon is a prime example of that.

The United States reserves the remainder of any commentary on Dr. Cunningham's report, and the sentence to be imposed for the sentencing until after Dr. Cunningham testifies.

Conclusion

There is no imperfect entrapment here. Cox's desire for weapons of lethality, silencers, grenades, C-4 and other equipment possessed for his shadow war dispatch that argument. While the defense made a significant effort to reduce Cox's sentence it has done so by selective quotes, emails and snippets of recordings from a month's long investigation. Cox's own statements during the investigation contradict this repeated argument. Dr. Cunningham's report does not tell this court anything new, other than opining that none of this is Cox's fault and he is a non-violent individual. While there may be some shred of evidence to support that conclusion, the fact remains that Cox surrounded himself with those that would, and did, believe in him and do his bidding. This makes him the leader removed, but the leader in charge of those willing to serve

under him. Cox, more importantly, could have ended his diatribes against the government at any time, yet he chose and elected not to do so. He continues to do so up to this day and has done nothing to alter the court's prior views and comments.

The sentence should remain unchanged.[5]

RESPECTFULLY SUBMITTED October 21, 2019, at Anchorage, Alaska.

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s/ Steven E. Skrocki
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Assistant U.S. Attorney
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2019,
a true and correct copy of the foregoing
was served on the following electronically:

Michael Flipovic

s/ Steven E. Skrocki
Office of the U.S. Attorney

[5] This brief is lengthy due to the size of the case and the issues presented by Cox. Ordinarily, the United States would include an analysis of the 18 U.S.C. Section 2253 factors. As to those factors the United States relies on and adopts those provided to the court as if fully set forth herein, and as stated at Docket 550.