

1 Michael C. Ormsby  
United States Attorney  
2 Eastern District of Washington  
Russell E. Smoot  
3 Assistant United States Attorney  
Post Office Box 1494  
4 Spokane, WA 99210-1494  
Telephone: (509) 353-2767  
5

6 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
7

8 UNITED STATES OF AMERICA, )  
 )  
9 Plaintiff, ) 11-CR-00075-LRS  
 )  
10 vs. ) United States' Sentencing  
 ) Memorandum  
11 JOSEPH JEFFEREY BRICE, )  
 )  
12 Defendant. )  
13

14 Plaintiff, United States of America, by and through Michael C. Ormsby,  
15 United States Attorney for the Eastern District of Washington, and Russell E.  
16 Smoot, Assistant United States Attorney for the Eastern District of Washington,  
17 respectfully submits the following Sentencing Memorandum:<sup>1</sup>

18 **SENTENCING MEMORANDUM**

19 **I. RELEVANT FACTS:**

20 **A. Plea Agreement:**

21 Pursuant to the Plea Agreement, the parties stipulated that the following  
22 facts were accurate, provable beyond reasonable doubt, and constituted an  
23 adequate basis for the entry of the Defendant's guilty pleas.  
24

25 \_\_\_\_\_  
26 <sup>1</sup>The Sentencing Exhibits referenced in this memorandum will be produced  
27 in hard copy form and sent via FedEx to the Court and hand-delivered to defense  
28 counsel on Friday, May 24, 2013.

1 (a). Count One:

2 On April 18, 2010, at approximately 4:16 p.m., the Whitman  
3 County Sheriff's Office ("WCSO") received a call reporting a  
4 firearms accident on SR193 at approximately Mile Post 1 (the  
5 location of the incident was subsequently determined to be Mile Post  
6 3), in Whitman County, in the Eastern District of Washington. At the  
7 scene, WCSO Deputy Keller encountered Defendant JOSEPH  
8 JEFFEREY BRICE (hereinafter "BRICE") who appeared to have  
9 been injured during the detonation of a home-made Improvised  
Explosive Device ("IED"). BRICE was at the scene being treated by  
paramedics for injuries to both legs. BRICE was heard stating, "What  
have I done to myself?" Due to the injuries BRICE sustained during  
the explosion (including severe burns to his legs, broken bones, loss  
of consciousness for approximately 12 days, and damage to his vocal  
chords), WCSO Deputy Keller was not able to interview BRICE until  
approximately four months after the incident.

10 On August 14, 2010, Deputy Keller spoke with BRICE over  
11 the telephone. BRICE stated he made the IED out of a combination  
12 of ammonium nitrate fertilizer, acetone peroxide, hydrogen peroxide  
13 and concrete bleach (a strong acid). According to Federal Bureau of  
14 Investigation ("FBI") Special Agent Bomb Technician ("SABT") Lee  
15 McEuen, the combination of ammonium nitrate fertilizer, acetone  
16 peroxide, hydrogen peroxide and concrete bleach is used to make  
17 Triacetone Triperoxide Peroxyacetone ("TATP") explosives, and  
Acetone Peroxide Ammonium Nitrate ("APAN") explosives, both of  
which are highly unstable and have no known legal commercial use.  
BRICE indicated that the IED weighed about 2.5 pounds (however,  
based on BRICE's own statements in text-messages and internet  
postings, it may have been as much as 8 pounds). BRICE stated he  
has always been good at chemistry and "likes doing things like this."

18 FBI SABT McEuen contacted the Bureau of Alcohol, Tobacco,  
19 Firearms and Explosives ("ATF") and learned that BRICE had not  
registered the IED with the National Firearms Registration and  
Transfer Record.

20 (b). Count Three:

21 In early January 2011, Federal Bureau of Investigation ("FBI")  
22 and the Inland Northwest Joint Terrorism Task Force ("INJTTF") had  
23 received information concerning BRICE's on-going interest in  
24 explosives – and possible *new* growing interest in terrorist activities,  
25 Specifically, FBI SABT McEuen learned that between December  
26 2010, and January 2011, BRICE posted at least five videos on the  
27 "*StrengthofAllah*" channel on the internet site "YouTube." One  
28 video, posted by *StrengthofAllah* on January 10, 2011, was titled, "50  
Kg ANFO," with the comment, "50 Kilograms ANFO inside a small  
house Praise be to Allah (SWT)." The video began with a logo  
known to be associated with Al-Tawhid Wal Jihad (translation:  
"Al-Qa'ida in Iraq") and a Nashid chant soundtrack. The video  
depicted a small, dark-red house being destroyed by an explosion.  
The shockwave destroyed the house and sent debris across the road  
before knocking the camera down.

1 Two additional videos, titled ".5 kg APAN" and ".3KG  
2 APAN," had been posted by *StrengthofAllah* on December 28, 2010.  
3 Each of the videos began with the same logo for Al-Tawhid Wal  
4 Jihad (translation: "Al-Qa'ida in Iraq") and a Nashid chant  
5 soundtrack, followed by a small explosion on the ground near a dirt  
6 access road along a river with rolling hills in the background. The  
7 author's comment for the video titled ".3KG APAN" read, "All praise  
8 due to Allah under all conditions. Sorry about the camera work, was  
9 too close had to step back and caused bad filming." The "APAN"  
10 videos depicted explosions of less magnitude than the video of the 50  
11 pound charge.

12 Finally, two more videos, titled "shaheedan" and "zmuzh  
13 ghanian," were posted by the user *StrengthofAllah* on December 29,  
14 2010. Each of the videos began with a logo, comprising a map of  
15 Afghanistan with two swords and an image of the Koran. Both  
16 videos depicted still photographs of mujahedeen and martyrs. A  
17 Nashid chant soundtrack was looped for the duration of the video.

18 After viewing the videos, FBI SABT McEuen contacted  
19 Whitman County Sheriff's Office Sergeant Chris Chapman to review  
20 the incident reports from the April 18, 2010, IED explosion that  
21 injured BRICE. Based on his review of the crime scene photographs,  
22 and visual comparison of the location of the April 18, 2010, incident,  
23 FBI SABT McEuen determined that the location of the April 18,  
24 2010, incident and location depicted in the APAN videos posted on  
25 the *StrengthofAllah* YouTube channel was the same.

26 FBI SABT McEuen continued the investigation through the  
27 execution of search warrants, grand jury subpoenas, and pen register  
28 orders on email accounts, cellular telephone service, and IP addresses  
believed to be associated with BRICE. In aggregate, the "electronic  
media" phase of FBI SABT McEuen's investigation resulted in FBI  
receiving an extensive amount of email correspondence, text-  
messaging, and internet postings (including conversations and/or  
"chats") evidencing BRICE's on-going interest in explosives and  
terrorist groups who utilize explosive devices. The "electronic  
media" phase of the investigation also identified contact between  
computers used by BRICE, in the Eastern District of Washington, and  
a foreign-based internet web-site that provides opportunities for both  
public and private discussions of jihad and terrorist activities.

On March 30, 2011, "Abu Harith" requested an account on the  
above-referenced internet web-site. The account, which was  
activated several days later, allowed Abu Harith to access the private  
part of the web-site and conduct a review of numerous postings by  
username "Yusuf90," which was known to be associated with BRICE.  
The account also facilitated Abu Harith's contact with BRICE.

During the FBI review of the internet web-site, FBI learned  
that on December 26, 2010, in response to a "thread" titled, "I'm a  
Proud Terrorist" in the English Section "General Discussion" forum  
on the internet web-site (the "thread" was created by an unrelated  
third-party), "Yusuf90" [BRICE] replied with the following posting:

1 Strike fear into the hearts of the Kuffar namely the  
2 United States and it's [sic] allies. But I call not for the  
3 lives of the innocent citizens of the United States but  
4 mainly it's [sic] government systems which are the real  
5 criminals. There are so many ignorant Americans it's  
6 unbelievable. They don't even know their own holy  
7 book, we know theirs [sic] better than they do.

8 Allah grants blessings to those who fight against tyranny  
9 and prey on the weak.

10 On May 1, 2011, Abu Harith initiated contact with BRICE  
11 through the internet web-site by replying to a "Medical Care" thread  
12 of which BRICE had previously replied. Abu Harith also sent a  
13 private message to "Yusuf90" [BRICE] titled, "Help." The "medical  
14 care"-related discussion between Abu Harith and BRICE continued.

15 On May 2, 2011, during the continuation of the internet  
16 conversation between Abu Harith and "Yusuf90" [BRICE], Abu  
17 Harith stated:

18 \* \* \*

19 Shukran [*Translation: "Thank you"*] Akhi [*Translation:*  
20 "*Brother*"] for your eagerness to help. I am sure in lieu  
21 of the yesterday's events [*the death of Osama Bin Laden*  
22 *had occured the previous day*] the time to help with  
23 calcium carbonate has passed. Before we can trust you  
24 to help us we need to know about you and your  
25 expertise.

26 For security reasons all I can divulge to you is that I [sic]  
27 live in, midwest, Dar El Harb [*Translation: "America"*].  
28 We need to be very careful akhi [*Translation:*  
"*Brother*"] and in the future I would like to  
communicate through secure e-mail like gmail.

\* \* \*

On May 3, 2011, Abu Harith sent an additional reply to the  
private message from "Yusuf90" [BRICE] titled, "Re: Help," with the  
following posting:

Akhi [*Translation: "Brother"*] Yusuf,

I have reading your posts and it is time to act. Are you  
willing help.  
contact me on abuharith1978@gmail.com

Jazak Allah Kheyr

Akhook Abu Harith [*Translation: "Your brother Abu Harith"*]

On May 5, 2011, BRICE created the email account  
[allahguidance@gmail.com](mailto:allahguidance@gmail.com). and sent a message to Abu Harith

1 through his gmail account titled, "The Beginning," with the following  
2 posting:

3 as-salaamu 3alaykum [*Translation: "Peace be upon  
4 you."*]

5 I am sorry it took me days to respond Akhi [*Translation:  
6 Brother*] Abu. I am also in Dar al-Harb [*Translation:  
7 "America"*]

8 Indeed, now is the time for action. But we must keep safe  
9 in this time as well.

10 Knowledge is for acting upon, so our duty as Muslims is  
11 to act swift and with strength.

12 Stay safe.

13 May Allah, the merciful, watch over us.

14 Amen [*Translation: "Amen"*]

15 Yusuf

16 On May 6, 2011, Abu Harith replied to the email titled, "Re:  
17 The beginning," with the following posting:

18 Akhi [*Translation: "Brother"*] Yusuf,

19 Assalamu 3alaykum wa ra7matu Allahi wa barakatihi.  
20 [*Translation: "Peace be upon you and Allah's blessing  
21 and blessings."*]

22 Thank you for the reply I was start to worry about you  
23 not wanting to help. Let me command you for your  
24 cautiousness by reaching for me on gmail, it is safest.  
25 Living in Dar El Harb [*Translation: "America"*] we  
26 have to be very safe.

27 Akhi [*Translation: "Brother"*] we read your posts on  
28 Din el Haqq and are very impressed by your know of  
chemistry. We are in the middle of planning something  
big that will hurt the kuffar [*Translation: "Infidels"*] and  
inshallah [*Translation: "God willing"*] teach them a  
lesson. Forgive me for not providing you with details,  
the less you know the better for you. But we need your  
help very soon.

29 We have the needed material but are having problems  
30 with consistently making the tafjir [*Translation:  
31 "Detonation"*]. Can you help us?

32 Jazak Allah Kheyr Akhi. [*Translation: "May Allah  
33 reward you for your good deeds brother."*]

1 Akhook Abu Harith [*Translation: "Your brother Abu*  
2 *Harith"*]

3 On May 7, 2011, "Yusuf" [BRICE] at  
4 [allahguidance@gmail.com](mailto:allahguidance@gmail.com), replied to the email titled, "Re: The  
5 beginning," with the following posting:

6 [*Arabic Printing*] [*Translation: "Peace be upon you"*]

7 I am always willing to help my brothers but I must know  
8 more specific parts of your plan. I must also stress that  
9 the kafir [*Translation: "infidel"*] is becoming very smart  
10 in order to fool fellow brothers and sisters into joining  
11 them , then they are arrested . Can you prove to me you  
12 are who you say you are and that I can trust you?

13 What problems are you having with your project? If you  
14 have the needed materials, insha'Allah [*Translation:*  
15 *"Allah or God willing"*]. you should be able to build the  
16 correctly. My trust is in you, therefore I expect in return.

17 Stay safe.

18 [*Arabic Printing*] akhi [*Translation: "May Allah reward*  
19 *you for your good deeds brother"*]

20 Y.

21 On May 7, 2011, Abu Harith replied to the email titled, "Re:  
22 The beginning," with the following posting asking for BRICE's help  
23 in providing advice or information concerning "problems" Abu  
24 Harith, who had previously indicated was in America, claimed to be  
25 having igniting explosives that Abu Harith explained were to be used  
26 against those who have been hurting their "brothers" in Iraq and  
27 Usama Bin Laden.

28 [*Arabic Printing*] [*Translation: "Peace be upon you as*  
*well and Allah's mercy and blessings."*]

Akhi [*Translation: "Brother"*] Yusuf

I am very impressed by your cautiousness and have to  
agree with you about the Kufar [*Translation: "Infidels"*].  
I have been living in Dar El Harb [*Translation*  
"America"] for a while and have seen too many ikhwan  
mujahideen [*Translation: "Holy warrior brothers"*]  
being arrested, because of carelessness and have to be  
honest wondered about you as weell [sic]. WHat [sic]  
can I do to prove to you that I am who I say I am?

As for the target I cannot go into details for the same  
reasons we talked about before, but I can tell you that the  
target is those who have been hurting our Ikhwan  
[*Translation: "Brothers"*] in Iraq and other places for  
years and specifically our Sheikh Abu Abdallah

1 [Translation: "Usama Bin Laden"] last week, the junud  
2 [Translation: "Soldiers"].

3 Akhi [Translation: "Brother"] I will let you decide  
4 whether you want to help or not. Here is our problem.  
5 We are using nail polish remover (acitone) [sic] and  
6 beroxide [sic] cap in diesel fuel and amoniom [sic] ntrate  
7 [sic] but we are not always getting infjar [Translation:  
8 "Detonation"] all the time, ahyanan [Translation:  
9 "Sometimes"] yes wa [and] ahyanan [Translation:  
10 "Sometimes"] No.

11 Akhi [Translation: "Brother"] you decide if you want to  
12 help or not but either way let me know soon.

13 [Arabic Printing] [Translation: "May Allah reward you  
14 for your good deeds."]

15 [Arabic Printing] [Translation: "Your brother in Allah  
16 Abu Harith.]"

17 On May 8, 2011, "Yusuf" [BRICE] at  
18 [allahguidance@gmail.com](mailto:allahguidance@gmail.com). replied to the email titled, "Re: The  
19 beginning," with the following posting:

20 The only way to earn my trust is to give me more  
21 information what you are planning.

22 Do not use nail polish remover. Use real 90% or higher  
23 acetone , you can buy this at hardware stores. If you are  
24 making TATP which is acetone peroxide, you cannot use  
25 this as a blasting cap for ANFO (ammonium  
26 nitrate/diesel). If you are using tatp for your caps you  
27 need to build a booster to bridge the two. ANFO is  
28 difficult to detonate. You need to take your acetone  
peroxide and dehydrate your nitrate by baking in the  
oven for 30-60 minutes. Ammonium nitrate will not  
work properly if the water molecules from the air are  
absorbed. DO NOT PUT THE ACETONE PEROXIDE  
IN THE OVEN. JUST THE FERTILIZER.

A booster should be around 300-500 grams.

To make this , take a ratio of 12:88 APAN (Acetone  
peroxide -ammonium nitrate). So if you have 100 grams  
of APAN, you should measure 12 grams of AP and 88  
grams of nitrate .. and then mix the two well. This  
booster can be detonated with a simple acetone peroxide  
blast cap. Bury the cap in the booster with just the fuse  
or wire from the cap sticking out. It's important to cover  
the cap inside the booster entirely or you may have a  
failed detonation.

Once you have a booster made, you can then mix your  
Ammonium nitrate- diesel fuel at a ratio of 94:6 .

1 Remember that this measurement is by weight so if you  
2 made a 100 gram anfo device, you would measure 94  
3 grams of nitrate and 6 grams of fuel. Mix this well and  
4 let it absorb for a hour. Make sure to seal both the  
5 booster and the anfo so it does not absorb water from the  
6 air. Plastic gallon sized bags are good to use . Double  
7 wrap them to avoid fuel leaking through and getting on  
8 your hands or to hide the smell of fuel.

9 Wrap the AN-FO around the booster . If you have done  
10 this correctly , your nitrate will detonate. ANFO requires  
11 heavy detonation so you must use a booster to build a  
12 bridge between the cap and the ANFO.

13 BUT, you have to perfect your work , there are often  
14 many failed detonations before you achieve success. Be  
15 careful , this is dangerous work, follow all precautions  
16 safely.

17 First you need to make sure you are making correct  
18 acetone peroxide, then move on to your booster. Test  
19 your booster before building a large explosive as to  
20 avoid wasting your time.

21 You will most likely need to ask me more questions  
22 because it is hard to explain everything in one email. But  
23 I need you to tell me , where are you getting your  
24 ammonium nitrate from ? You have to be using the  
25 correct type. Some have new ingredients in the nitrate so  
26 that they cannot be made into explosives.

27 I will design a diagram for you to better understand how  
28 to use the booster but first I need you to answer these  
29 questions in the next email.

30 -Where are you getting your nitrate from?

31 -Are you stabilizing the acetone peroxide with baking  
32 soda powder after you filter it ?

33 -In acetone peroxide there are 3 chemicals; Acetone,  
34 hydrogen peroxide, and third is an acid. Sulfuric acid is  
35 too difficult to acquire, use an acid called "muriatic acid"  
36 . This is found in all hardware stores for a very low price,  
37 it is used to clean pools and concrete ground. It is  
38 dangerous so avoid inhaling.

39 Jazak Allah khayr akhi [*Translation: "May Allah reward  
40 you for your good deeds brother."*]

41 According to FBI SABB McEuen, the information BRICE provided  
42 to Abu Harith was correct and would have resulted in "fixing" the  
43 detonation problem.

44 On May 9, 2011, FBI and INJTTF arrested BRICE. When  
45 BRICE was taken into custody, FBI SABB McEuen and FBI RAC  
46 Harrill advised BRICE of his rights. BRICE waived his right to  
47 remain silent, signed an Advice of Rights form, and provided a  
48



1 recorded statement to FBI SABB McEuen and FBI RAC Harrill.  
2 Essentially, BRICE confirmed that he had established the  
3 *StrengthofAllah* YouTube channel and posted the explosive-related  
4 and terrorist-related videos. Additionally, BRICE stated he was a  
5 member of the "jihadi" website "Deen al-Haqq" and used the screen  
6 name "Yusuf90" on that site. BRICE admitted that he posted files  
7 that contained step by step instructions to make the improvised  
8 explosives, including TATP and APAN on that site. BRICE  
9 indicated he created the account [allahguidance@gmail.com](mailto:allahguidance@gmail.com) and sent  
10 Abu Harith detailed information on how to make and use explosives.  
11 BRICE stated he supplied the explosives knowledge and files to the  
12 jihadists in order to gain their trust, obtain access to them, and learn  
13 what their plans were. He stated he did not report any of his activities  
14 to law enforcement, but may have in the future.

15 During the post-arrest interview, BRICE also signed a Consent  
16 to Assume Online Presence and provided the screen name  
17 [allahguidance@gmail.com](mailto:allahguidance@gmail.com) and the password "ronald55." On May  
18 16, 2011, the FBI accessed the account using the provided screen  
19 name and password. The string of email communications between  
20 "Yusuf" [BRICE] at [allahguidance@gmail.com](mailto:allahguidance@gmail.com) and "Abu Harith"  
21 was located. "Abu Harith" was an alias created by an FBI undercover  
22 employee.

23 (See ECF Doc. 342, pgs. 5-13).

24 **B. Additional Facts:**

25 In addition to the above-stipulated facts, the parties agreed that the  
26 "statement of facts does not preclude either party from presenting and arguing, for  
27 sentencing purposes, additional facts which are relevant to the guideline  
28 computation, the sentencing factors, or any other sentencing arguments by the  
United States or the Defendant." (See ECF Doc.342, pg. 5).

29 **C. Presentence Investigation Report:**

30 On March 25, 2013, U.S. Probation Officer Petretee disclosed a  
31 comprehensive Presentence Investigation Report ("PSIR"). In addition to  
32 detailing the relevant terms of the Plea Agreement, the PSIR expands upon the  
33 agreed upon facts to include information provided in the United States' Bill of  
34 Particulars, Road Map, and Discussion of Relevant Evidence, (*compare* ECF Doc.  
35 314 *with* PSIR ¶¶ 16-75) the United States Supplemental Notice of Expert  
36 Testimony, (*compare* ECF Doc. 186 *with* PSIR ¶¶ 147-164) and the results of two  
37 jail cell searches conducted on May 18, 2012, and recorded telephone  
38

1 conversations from Spokane County Jail. (*compare* ECF Doc. 385 with PSIR ¶¶  
2 103-107).

3 **1. Charge(s) and Conviction(s):**

4 The United States concurs in PSIR ¶¶ 1-12.

5 **2. The Offense Conduct:**

6 The United States does not anticipate any Defendant objections to PSIR ¶¶  
7 15-19 as such paragraphs address the offense conduct related to Count One, the  
8 manufacturing of an unregistered firearm (destructive device), in violation of 26  
9 U.S.C. § 5861(f). There is no factual dispute that on April 18, 2010, the  
10 Defendant was severely injured as a result of the pre-detonation of a homemade,  
11 chemical-based, Improvised Explosive Device (“IED”) that the Defendant  
12 manufactured on or about April 18, 2010. *See* ECF Docs. 314 (Bill of Particulars),  
13 342 (Plea Agreement).

14 Beginning at ¶ 20, and continuing through ¶ 67, the PSIR discusses the  
15 offense conduct relevant to Count Two (which the United States agreed to move to  
16 dismiss at sentencing) and Count Three, the attempt to provide material support to  
17 terrorists, in violation of 18 U.S.C. § 2339A(a), (b)(1-3). The PSIR notes that  
18 although the Whitman County Sheriff’s Office “thought that [the Defendant] had  
19 learned his lesson the hard way” concerning the manufacturing and detonation of  
20 IEDs, (*See* PSIR ¶ 19), “[l]aw enforcement’s interest in [the Defendant] was  
21 renewed in January 2011.” (*See* PSIR ¶ 20). The PSIR continues to discuss in  
22 greater detail the same “StengthofAllah” facts to which the parties stipulated in the  
23 Plea Agreement. (*See* PSIR ¶¶ 20-21, 23-28; *see also* PSIR ¶ 42). One point of  
24 interest in the PSIR is the reference to the Defendant appearing to have  
25 “undergo[ne] a ‘rapid radicalization’ to Islam.”<sup>2</sup> (*See* PSIR ¶ 21).

---

26  
27  
28 <sup>2</sup>(*See* Sentencing Exhibit 1).

1 After the discussion of the “StrengthofAllah” videos, the PSIR provides  
2 highlights from the “electronic media” phase of the investigation. (See PSIR ¶¶  
3 29-53). As noted in the Plea Agreement,

4 In aggregate, the “electronic media” phase of FBI SAbT McEuen’s  
5 investigation resulted in FBI receiving an extensive amount of email  
6 correspondence, text-messaging, and internet postings (including  
7 conversations and/or “chats”) evidencing BRICE’s on-going interest  
8 in explosives and terrorist groups who utilize explosive devices. The  
9 “electronic media” phase of the investigation also identified contact  
10 between computers used by BRICE, in the Eastern District of  
11 Washington, and a foreign-based internet web-site that provides  
12 opportunities for both public and private discussions of jihad and  
13 terrorist activities.

14 (See ECF Doc. 342). The PSIR expands upon this brief, generalized summary of  
15 the evidence obtained through the subpoenas, pen register orders, and search  
16 warrants, and includes specific and abbreviated examples of anti-government,  
17 terrorism-related, jihad-related, and explosive-related statements, and emulating,  
18 idolizing references to Timothy McVeigh, made by the Defendant. (See PSIR ¶¶  
19 30-32; see also ECF Doc. 314).<sup>3</sup> The PSIR explicitly highlights the Defendant’s

---

20 <sup>3</sup>Pretrial, the Defendant challenged the United States’ intended use of many  
21 of the statements that were arguably political in nature. (See ECF Doc. 192). As  
22 the United States noted, however, while such statements may have some level of  
23 First Amendment relevance, such possibly “protected” speech is not per se  
24 inadmissible. (See ECF Doc. 235 (quoting and citing *Wisconsin v. Mitchell*, 508  
25 U.S. 476, 489 (1993)(“The First Amendment does not prohibit the evidentiary use  
26 of speech to establish the elements of a crime or prove motive or intent.”)).  
27 Further, as the United States explained during the August 6, 2012, Pretrial  
28 Hearing:

I would argue that we’re looking at a day and age to where,  
here’s a defendant whose anywhere from 18, 19, 20, 21 years old, and  
is a part of a generation, arguably, that communicates through text  
messages, communicates through social media, communicates  
through YouTube.

1 statement that “[McVeigh]’s characteristics are nearly the same as myself,  
2 physically/politically[,]” (*see* PSIR ¶ 31), and the “[c]hronology of  
3 [c]omments” made in social media that evidence an ongoing interest in explosives  
4 and general terrorist activities. (*See* PSIR ¶ 32; *see also* ECF Doc. 314).

5 The PSIR continues to note the numerous email accounts used by the  
6 Defendant (including joeybrice55@gmail.com; rzaforshiza@gmail.com; **and**  
7 StrengthofAllah@gmail.com), (*See* PSIR ¶ 33), and the computer contact between  
8 to Internet Protocol addresses associated with the Defendant and the Internet  
9 Protocol address used by the website commonly referred to as: Deen Al Haq. (*See*  
10 PSIR ¶ 34). In addition to the connection between the Deen Al Haq website and  
11 the Defendant’s subsequent email correspondence with FBI undercover employee,  
12 the PSIR provides a is the description of the website itself. (*See* PSIR ¶ 36 (noting  
13 that the website contained “images of crossed swords and two men whose faces  
14 were obscured by scarves, and one of the men holding a rocket-propelled grenade  
15 launcher[;] \* \* \* images of holy sites in Mecca[;] \* \* \* the words ‘Islamic  
16

17 \* \* \*

18 We see that, Your Honor, on Spokesman Review articles that  
19 are posted on the web. S soon as something’s posted, there’s a blog  
or whatever they call it, to where people can post comments.

20 Those comments in and of themselves constitute statements  
21 made by an individual, but those statements are in response to,  
arguably, a statement made by the Spokesman Review.

22 I this case, if a video, if there’s a comment that the United  
23 States believes that the video is necessary to provide the relevance of  
the comment, then arguably it’s a two-part conversation. The video is  
24 the first part of the conversation, the defendant’s comment is the  
second part of the conversation.

25 (*See* ECF Doc. 314). As such, the United States submits that the Defendant’s  
26 “statements” are as relevant to sentencing, in terms of assessing sentencing  
27 factors, *see* 18 U.S.C. § 3553(a), as they would have been in terms of proving the  
28 Defendant’s state-of-mind at trial.

1 Caliphate written across a map of the Middle East[;] \* \* \* men holding weapons  
2 [;] \* \* \* [a] caption stat[ing] ‘Allah grants respite to the oppressor, but when he  
3 finally seizes him, he will not let him escape[;] \* \* \* [and a] picture [that] changed  
4 back and forth from a map of the Middle East to a picture of Osama Bin  
5 Laden[.]’).<sup>4</sup>

6 The PSIR also references the Defendant’s postings on other websites or  
7 forums. (See PSIR ¶¶ 39-40, 44). On the website known as the “Young News  
8 Channel” or “YNC,” which according to the PSIR “caters to users that wish to  
9 post extreme pornographic and violent video content[.]” the Defendant acted as a  
10 “super moderator.” (See PSIR ¶ 39). Postings of significance include the  
11 reference and link to *Inspire* magazine,<sup>5</sup> which the YNC noted as a “jihad  
12  
13

---

14 <sup>4</sup>In a pre-sentence motion, the Defendant asserted that

15 [i]n prior pleadings, the Government has repeatedly referenced its  
16 intention to introduce evidence regarding the Deen Al Haq website.  
17 [Citations to prior ECF files omitted.] Such pleadings leave no doubt  
18 that the Government will argue that the Deen Al Haq website was  
19 frequented by radical Islamic jihadists who either had committed acts  
of terrorism, were seeking to commit acts of terrorism or were prone  
to support acts of terrorism. According to the Government’s theory,  
simply frequenting that website is itself evidence of the intent to  
support terrorism. [The Defendant did not cite any statement by the  
United States supporting this conclusion.]

20 (See ECF Doc. 358). In the motion, which sought evidence related to the Deen Al  
21 Haq website, the Defendant noted that “[i]t appears that the Government intends to  
22 introduce evidence regarding the Deen Al Haq website at sentencing.” (See ECF  
23 Doc. 358). The Defendant seems to be foreshadowing an argument that minimizes  
24 the significance of the Deen Al Haq website being arguably “terrorist” or “jihad”  
25 friendly. The very construction of the website (see Sentencing Exhibit 2) and the  
26 Defendant’s own post-arrest confession (see Sentencing Exhibit 3), however,  
27 suggest otherwise.

28 <sup>5</sup>(See Sentencing Exhibit 4).

1 magazine” released by Al Qaeda, and an image of the mutilated victims of a  
2 suicide bombing. (See PSIR ¶¶ 40, 41).

3 In addition to the Defendant’s internet postings and comments, the PSIR  
4 quotes from an email between the Defendant and a third party in which the  
5 Defendant discussed using “a bomb threat and make real explosives although there  
6 won’t be an active trigger detonator \* \* \* to leave on school property” as a  
7 distraction for a planned bank robbery. (See PSIR ¶ 47). The Defendant appears  
8 to have planned for the possibility of “hav[ing] to kill someone.” (See PSIR ¶  
9 47).<sup>6</sup>

10 The PSIR continues to set forth the offense conduct through a discussion of  
11 the details of the Defendant’s contact with the Deen Al Haq website and the FBI  
12 undercover employee that initially made contact with the Defendant through the  
13 website (the Defendant used the moniker “Yusuf90”) and subsequently through  
14 gmail accounts (the Defendant used the moniker “allahguidance@gmail.com”).  
15 (See PSIR ¶¶ 48-67). On significance in the Deen Al Haq-related postings and  
16 other communications is the Defendant’s December 26, 2010, posting to the  
17 thread: “I’m a Proud Terrorist[,]” which read:

18  
19  
20  
21  
22  
23  
24 <sup>6</sup>The email, which appears to have been sent on April 12, 2010, discusses a  
25 potential date for the bank robbery as April 30, 2010. (See PSIR ¶ 47). Due to the  
26 Defendant severely injuring himself on April 18, 2010, during the pre-detonation  
27 of the IED he manufactured, it is speculative as to whether the bank robbery would  
28 have occurred as discussed.

1 Strike fear into the hearts of the Kuffar<sup>7</sup> ] namely the United States  
2 and it's [sic] allies. But I call not for the lives of the innocent citizens  
3 of the United States but mainly it's [sic] government systems which  
4 are the real criminals. There are so many ignorant Americans it's  
5 unbelievable. They don't even know their own holy book, we know  
6 theirs [sic] better than they do.

7 Allah grants blessings to those who fight against tyranny and prey on  
8 the weak

9 (See PSIR ¶ 51; see also ECF Doc. 342). The PSIR notes that the Defendant  
10 posted a link to a second *Inspire* magazine,<sup>8</sup> (see PSIR ¶¶ 52, 53), and discussed  
11 the covert acquisition of a blood clotting agent that could be used to “help the  
12 Jihad movement.” (See PSIR ¶¶ 54-59). On May, 3, 2011, the FBI undercover  
13 employee contacted the Defendant, indicated that “it is time to act[,]” and asked  
14 the Defendant if he was “willing help [sic].” (See PSIR ¶ 61). Through a newly  
15 created email account, [allahguidance@gmail.com](mailto:allahguidance@gmail.com), the Defendant responded:  
16 “Indeed, now is the time for action.”<sup>9</sup> (See PSIR ¶ 62). The PSIR then includes  
17 the stipulated email exchange between the Defendant and the FBI undercover  
18 employee during with the Defendant provides the chemical formula for

---

19 <sup>7</sup>The Defendant used the term “kuffar” on other occasions, including in  
20 commenting to a YouTube video of a report on the shooting of Congresswoman  
21 Gabriel Giffords titled: “Witness to AZ Shooting Told Investigators Someone Else  
22 Was Working With Shooter.” The Defendant used his “StengthofAllah”  
23 identification to post in relevant part: “\* \* \* Anyway, as long as its one more dead  
24 American kuffar, what difference does it make to me if she is a democrat or gop?”  
25 (See Sentencing Exhibit 5).

26 <sup>8</sup>(See Sentencing Exhibit 6).

27 <sup>9</sup>The string of emails between the Defendant and the FBI undercover  
28 employee does not appear to be the first time the Defendant expressed an interest  
in “action” in support of jihad or terrorist activity. (See Sentencing Exhibit 7).

1 constructing the firing mechanism an ANFO chemical IED. (*See* PSIR ¶¶ 63-66).

2 The PSIR specifically notes that the Defendant

3 engaged in an online conversation with an FBI [undercover  
4 employee], during which [the Defendant] provided his expertise in  
5 manufacturing APAN explosives to a person he believed was a jihad  
6 terrorist planning retaliation for the elimination of Osama Bin Laden.

7 (*See* PSIR ¶ 67).

8 The PSIR then notes the Defendant's post-arrest confession,<sup>10</sup> (*see* PSIR ¶¶  
9 68-70), and the results of FBI's search of computers seized during the execution of  
10 search warrants. (*See* PSIR ¶¶ 71-75). Of significance is that the post-arrest  
11 confession and the computer searches corroborated the Defendant's contact with  
12 the Deen Al Haq website (which the Defendant indicated was a "jihadi" site); the  
13 Defendant's posting on Deen Al Haq and contact with the FBI undercover  
14 employee; and the Defendant's other postings and monikers.<sup>11</sup> (*See* PSIR ¶¶ 68,  
15 69, 70).

### 16 **3. Offense Behavior Not Part of Relevant Conduct:**

17 After outlining the Sentencing Guidelines calculations, see *infra*, the PSIR  
18 provides information concerning events that occurred after the offense conduct  
19 appeared, but nevertheless deemed significant enough to sentencing to be  
20 included. (*See* PSIR ¶¶ 101-107). The post-offense conduct information is  
21 essentially broken down into three categories: items seized from the Spokane  
22 County Jail cell search of convicted inmate Wayde Kurt;<sup>12</sup> items seized from the

---

23 <sup>10</sup>(*See* Sentencing Exhibit 3).

24 <sup>11</sup>(*See also* Sentencing Exhibit 8 (FBI created time-line initialed by the  
25 Defendant during the post-arrest interview)).

26 <sup>12</sup>Wayde Kurt, a confirmed White Supremacist with an extensive criminal  
27 history, was recently convicted of being a felon in possession of a firearm, in  
28 violation of 18 U.S.C. § 922(g)(1), and unlawful production of an identification  
card, in violation of 18 U.S.C. § 1028. During the sentencing hearing, Senior



1 Spokane County Jail cell search of the Defendant; and telephone conversations  
2 between the Defendant and non-attorney-third-parties that were recorded (with a  
3 warning provided to the Defendant) by the Spokane County Jail telephone  
4 recording system.

5 First, in terms of the items seized from the search of Wayde Kurt's cell, the  
6 PSIR references a number of letters that appear on the face of the envelope top be  
7 from the Defendant's brother to Wayde Kurt. (*See* PSIR ¶ 103). The content of  
8 one of the letters, however, suggests that the writer of the letter was actually the  
9 Defendant. (*See* PSIR ¶ 103 (subparagraph 2)). Of significance are the references  
10 in the letter to "X<", which according to the case agent is code for what has been  
11 described as "Asatru runes." (*See* PSIR ¶ 103 (subparagraph 2); *see also*  
12 Sentencing Exhibit 9).

13 Second, in terms of items seized from the Defendant's cell, the PSIR  
14 references a number of writings from the Defendant, including a note scratched on

15 \_\_\_\_\_  
16 District Court Judge Nielsen added four points to the Defendant's base offense  
17 level for possession of a firearm in connection with another felony offense under  
18 U.S.S.G. § 2K2.1(b)(6)(B). When overruling the Defendant's objection to the  
19 enhancement, the district court stated,

20 there was a lot of evidence, primarily in the form of transcriptions of  
21 conversations that Mr. Kurt was involved in, in which he went into  
22 some detail about plans to commit what would certainly be referred to  
23 as "terrorist acts." There was going to be a final [solution]. There was  
24 reference to nuclear material. There was reference to killing or  
25 harming or implying that the President should be killed. There was  
26 never a specific plan as to exactly what was going to be done. But  
27 there were so many references to it in so many conversations that it  
28 was clear that, in his mind, preparations were being made to commit  
that type of a -- what would be referred to as a "terrorist" or a "violent  
act," doing harm. Even indicated that it was going to be such a severe  
act that, if he ever got caught, he'd be eligible for the death penalty.  
There were other references along that line that made it clear that he  
had this plan in mind that he was working toward.

27 Kurt was sentenced to the maximum term on the firearm conviction and a  
28 consecutive three year term on the subsequent false identification conviction.

1 the Defendant's bunk (signed "Lykos"<sup>13</sup>), (*see* PSIR ¶ 104), and papers containing  
2 the Defendant's handwriting (signed "John Lykos") and what is believed to be  
3 consistent with Wayde Kurt's handwriting. (*See* PSIR ¶ 105). Of significance is  
4 the note that appears to be a letter or note with an inquiry to Wayde Kurt and a  
5 response from Wayde Kurt back to the Defendant; (*See* PSIR ¶ 105 (subparagraph  
6 3)); a note that includes prison survival notes; (*See* PSIR ¶ 105 (subparagraph 4));  
7 multiple pages of what appears to be consistent with Wayde Kurt's handwriting  
8 that details both "Asuatru" religious status and tips on prison survival, specifically  
9 who to contact and what to say. (*See* PSIR ¶ 105 (subparagraph 10)). The PSIR  
10 also indicates that pending trial/resolution on the charges of manufacturing a  
11 chemical IED, providing explosive-related information, and attempting to provide  
12 material support to terrorists, the Defendant continued to research chemistry. (*See*  
13 PSIR ¶ 105 (subparagraph 14)).

14 Finally, in terms of the recorded telephone conversations, the PSIR notes  
15 that several violations of the jail rules, including: obtaining medication for his  
16 roommate and receiving contraband books "from his attorney using the ruse that  
17 they were for his case." (*See* PSIR ¶ 107). The recorded jail conversations also  
18 corroborated the connection between the Defendant and Wayde Kurt. (*See* PSIR ¶  
19 107).

#### 20 **4. Mental and Emotional Health**

21 After discussing the Defendant's physical and mental health, (*see* PSIR ¶¶  
22 129-146), the PSIR notes that "[h]ad this case proceeded to trial, the government  
23 intended to call Gregory Saathoff, M.D., a board-certified psychiatrist as an expert  
24  
25

---

26 <sup>13</sup>According to FBI SABB McEuen, the term "Lykos" is significant as it is  
27 code for "wolf," which, in the context of terrorism often denotes an individual  
28 work conducts terrorist activities alone (i.e. as a "lone wolf").

1 witness.”<sup>14</sup> (*See* PSIR ¶ 147). According to the PSIR, Dr. Saathoff noted a  
 2 number of personal characteristics, gleaned from discovery materials, that serve as  
 3 factors relevant to violent behavior, including “covert behavior[;]” (*see* PSIR ¶  
 4 148); “clandestine activity[;]” (*see* PSIR ¶ 149); detailed plans including  
 5 “violence, criminal enterprise and use of diversionary tactics[;]” (*see* PSIR ¶ 150);  
 6 chronic use and abuse of street drugs[;]” (*see* PSIR ¶ 152); “significant history of  
 7 risk-taking behavior[;]” (*see* PSIR ¶ 154); “continued \* \* \* interest in bomb-  
 8 making[;]” (*see* PSIR ¶ 155); demonstrated interest \* \* \* regarding the use of  
 9 deadly poisons \* \* \* demonstrated disregard for human life[;]” (*see* PSIR ¶ 155).

10 In summary, the PSIR states that

11 Dr. Saathoff stated that few of [the Defendant’s] friends and  
 12 associates were aware of [the Defendant’s] Internet communication  
 13 with others who claimed to be associated with violent groups. [The  
 14 Defendant’s] written communications revealed him to be sympathetic  
 15 to disparate ideologies with one overriding commonality: the use of  
 16 violence. Research demonstrates that positive attitudes toward  
 17 problem behaviors (illegal activities and violence) have been shown  
 18 to be associated with risk of future violence.

19 (*See* PSIR ¶ 156). The PSIR then continues to list the examples Dr. Saathoff  
 20 provided to support his conclusion. (*See* PSIR ¶¶ 157-164).<sup>15</sup>

21 <sup>14</sup>This statement in the PSIR is actually incorrect. While the United States  
 22 included Dr. Saathoff in its Supplemental Notice of Expert Testimony, (*see* ECF  
 23 Doc 186), this Court excluded Dr. Saathoff’s testimony from the United States’  
 24 case-in-chief on the finding that such conclusions of “future” dangerousness were  
 25 more relevant to the sentencing phase than trial.

26 <sup>15</sup>Note that many of the examples cited by Dr. Saathoff were included in the  
 27 United States Bill of Particulars, (*see* ECF Doc. 314), and elsewhere in the PSIR.  
 28 (*See generally* PSIR ¶ 15-76).

1 Prior to outlining the sentencing options, the PSIR addressed substance  
2 abuse; education<sup>16</sup> and vocational skills; employment record; and the Defendant's  
3 financial condition. (See PSIR ¶¶ 165-177).

## 4 **II. IMPOSITION OF A REASONABLE SENTENCE**

5 The statutory penalty for Manufacturing an Unregistered Firearm, in  
6 violation of 26 U.S.C. § 5861(f), is not more than ten (10) years imprisonment; a  
7 fine not to exceed \$250,000; a term of supervised release of not more than three  
8 (3) years; and a \$100 special penalty assessment; and the statutory penalty for  
9 Attempt to Provide Material Support to Terrorists, in violation of 18 U.S.C. §  
10 2339A(a), (b)(1-3), is not more than fifteen (15) years imprisonment; a fine not to  
11 exceed \$250,000; a term of supervised release of not more than life, pursuant to 18  
12 U.S.C. § 3583(j) and 18 U.S.C. § 2332b(g)(5)(B); and a \$100 special penalty  
13 assessment.<sup>17</sup> See also PSIR pgs. 1-2.

---

15 <sup>16</sup>The PSIR notes that the Defendant became very upset when Clarkston  
16 High School would not allow him to graduate due to incomplete credits. (See  
17 PSIR ¶ 170). Coincidentally, in addition to the computer evidence of Google  
18 Earth "surveillance" of the Zion Bank (target of plan/discussion bank robbery),  
19 (see Sentencing Exhibit 10), and Google Earth "surveillance" of the U.S.  
20 Courthouse in Spokane (target of plan/discussion to blow up the federal building),  
21 (see Sentencing Exhibit 11) FBI located a saved Google Earth screen shot of the  
22 back side of the bleachers outside of Clarkston High School. (See Sentencing  
23 Exhibit 12).

24 <sup>17</sup>Notwithstanding the United States' agreement to recommend the 10-year  
25 and 15-year sentences be imposed concurrently, pursuant to the Plea Agreement,

26 [t]The Defendant further understands that pursuant to *United States v.*  
27 *Booker*, 543 U.S. 220 (2005), the Court could impose consecutive  
28 sentences on each count of conviction, resulting in an aggregate  
maximum possible penalty of not more than twenty-five (25) years  
imprisonment; a fine not to exceed \$500,000; and a term of

1 Pursuant to the Plea Agreement,

2 The United States agrees to recommend not more than a ten  
3 (10)-year term of imprisonment on Count One and not more than a  
4 fifteen (15)-year term of imprisonment on Count Three to be served  
5 concurrently. The Defendant is free to make whatever  
6 recommendation concerning the imposition of a term of imprisonment  
7 he believes is reasonable and sufficient, but not greater than  
8 necessary, to comply with the purposes set forth in 18 U.S.C. §  
9 3553(a)(2).

10 (See ECF Doc. 314). The United States' recommendation represents the  
11 maximum sentence that can be imposed on each count of conviction.

12 **A. CONSIDERATION OF THE SENTENCING GUIDELINES:**

13 The Defendant understands and acknowledges that the United States  
14 Sentencing Guidelines (hereinafter "U.S.S.G.") are applicable to this case, in that  
15 the Court must consider and determine the Defendant's applicable sentencing  
16 guideline range at the time of sentencing. The Defendant also understands,  
17 however, that pursuant to United States v. Booker, 543 U.S. 220 (2005), the  
18 U.S.S.G. range is advisory, and that the Court is required to consider the factors  
19 set forth in 18 U.S.C. § 3553(a), and to impose a reasonable sentence.

20 **1. Offense Level for Count One:**

21 **(a). Base Offense Level:**

22 The base offense level for Manufacturing an Unregistered Firearm, in  
23 violation of 26 U.S.C. § 5861(f), at eighteen (18). See U.S.S.G. §2K2.1(a)(5).

24 **(b). Specific Offense Characteristics:**

25 The base offense level is increased by an additional two (2) levels because  
26 the offense involved a destructive device that was not a portable rocket, a missile,  
27

28 supervised release of not more than life. The Defendant understands  
that a separate \$100 special penalty assessment must be applied to  
*each* count of conviction (Counts One and Three).

(See ECF Doc 314 (Plea Agreement)). The possibility of the imposition of  
consecutive terms was discussed during the plea colloquy.

1 or a device for use in launching a portable rocket or a missile. See U.S.S.G.  
2 §2K2.1(b)(3)(B).

3 **2. Offense Level for Count Three:**

4 **(a). Base Offense Level:**

5 The base offense level for Attempt to Provide Material Support to  
6 Terrorists, in violation of 18 U.S.C. § 2339A(a), (b)(1-3), is twenty-six (26). See  
7 U.S.S.G. §2M5.3(a); see also U.S.S.G. §2X5.1 ("If the offense is a felony for  
8 which no guideline expressly has been promulgated, apply the most analogous  
9 guideline."). The BOL determination is complicated in relation to Count Three.  
10 USSG Appendix A (Statutory Index) directs the user to USSG §2X2.1 and §2X3.1  
11 for 18 U.S.C. § 2339A offenses. USSG §2X2.1 states: "The offense level is the  
12 same as that for the underlying offence." The *Commentary* includes 18 U.S.C. §  
13 2339A, and the *Application Note* provides:

- 14 1. Definition – For purposes of this guideline, "underlying  
15 offense" means the offense the defendant is convicted of aiding  
16 or abetting, or in the case of 18 U.S.C. § 2339A or §  
17 2339C9a)(1)(A), "underlying offense" means the offense the  
18 defendant is convicted of having materially supported or  
19 provided or collected funds for, prior to or during its  
20 commission.

21 Thus, one turns to the underlying offense, which in this case is 18 U.S.C. §  
22 2332a (use of a weapon of mass destruction). USSG Appendix A (Statutory  
23 Index) directs the user to USSG §A6.1, §2K1.4, and §2M6.1 for a 18 U.S.C. §  
24 2332a offense. USSG §2A6.1 addresses "Threatening or Harassing  
25 Communications; Hoaxes; False Liens," which appears to be clearly inapplicable  
26 to the offense conduct. USSG §2K1.4 addresses "Arson; Property Damage by Use  
27 of Explosives" which also appears to be inapplicable. Finally, USSG §2M6.1  
28 addressed "Nuclear, Biological, and Chemical Weapons and Materials, and other

1 *Weapons of Mass Destruction.*” (Emphasis added.) At first blush, §2M6.1 would  
2 appear to apply. However, upon review of the *Application Notes*, it appears that  
3 the precise “weapon of mass destruction” applicable to the facts of this case is a  
4 “destructive device” as defined in 18 U.S.C. § 2332a(c)(2)(A) (specifically  
5 including “destructive device” as defined in 18 U.S.C. § 921) is not included in  
6 §2M6.1. *Application Note 1* explicitly provides: “Weapon of mass destruction”  
7 has the meaning given that term in 18 U.S.C. § 2332a(c)(1)(B), (C), (D).” – *not*  
8 *subsection (A)*. Therefore, faced with no on-point “statute-to-guideline-provision”  
9 reference, one must analyze the case through the guideline provision that is most  
10 applicable to the offense conduct.

11 In this case, the most applicable guideline provision found in USSG Chapter  
12 Two - Offense Conduct is USSG §2M5.3, which addresses “Providing Material  
13 Support or Resources to a Designated Foreign Terrorist Organization or  
14 Specifically Designated Global Terrorists, *or For a Terrorist Purpose.*” (Emphasis  
15 added.) Pursuant to §2M5.3, the base offense level is 26. Additionally, pursuant  
16 to subsection (b)(1) (Specific Offense Characteristics), “[i]f the offense involved  
17 the provision of (A) dangerous weapons; (B) firearms; (C) explosives; (D) funds .  
18 . . (E) material support . . . “increase by 2 levels.” *Application Note 1* defines  
19 “weapon of mass destruction” as it is defined pursuant to §2M6.1, *see supra*, and  
20 “explosives” as it is defined in *Application Note 1* of §2K1.4 (noting that  
21 “‘explosives’ includes any explosive, explosive material, or destructive device.”).  
22 As such, it appears that the applicable guideline provision for 18 U.S.C. § 2339A,  
23 when the specified federal offense is 18 U.S.C. § 2332a, *and* the weapon of mass  
24 destruction is defined as a “destructive device,” *see* 18 U.S.C. § 2332a(c)(1)(A), is  
25 USSG §2M5.3.

26 **(b). Specific Offense Characteristics:**

27 The base offense level is increased by an additional two (2) levels because  
28 the offense involved the provision of material support with the intent, knowledge

1 or reason to believe the material support is to be used to commit or assist the  
2 commission of a violent act. See U.S.S.G. §2M5.3(b)(1)(E).

3 **(c). Terrorism Enhancement:**

4 The adjusted offense level is increased by an additional twelve (12) levels  
5 because the offense is a felony that involved, or was intended to promote, a federal  
6 crime of terrorism, as defined in 18 U.S.C. § 2332b(g)(5). See U.S.S.G.  
7 §3A1.4(a).

8 **3. Multiple Count Analysis:**

9 Due to the agreement to move to dismiss Count Two at sentencing, the  
10 offense level does not increase based on a multiple count analysis because the  
11 offense level for Count One is 9 levels less serious than the offense level for  
12 Count Three. See U.S.S.G. §3D1.4(c).

13 **4. Acceptance of Responsibility:**

14 The Defendant plead guilty and demonstrated a recognition and an  
15 affirmative acceptance of personal responsibility for the criminal conduct. If he  
16 provides complete and accurate information during the sentencing process; and  
17 does not commit any obstructive conduct; the United States will move for a three  
18 (3) level downward adjustment in the offense level for the Defendant's timely  
19 acceptance of responsibility, pursuant to U.S.S.G. §3E1.1(a) and (b).

20 **5. Final Adjusted Offense Level:**

21 If the Court applies a downward adjustment for acceptance of responsibility  
22 pursuant to U.S.S.G. §3E1.1, the final adjusted offense level is thirty-seven (37).

23 **6. Criminal History:**

24 Because the offense is a felony that involved, or was intended to promote, a  
25 federal crime of terrorism, as defined in 18 U.S.C. § 2332b(g)(5), and U.S.S.G.  
26 §3A1.4(a) applies to Count Three, the Defendant's Criminal History Category is  
27 VI. See U.S.S.G. §3A1.4(b).



1           **7.     Applicable Sentencing Guideline Range:**

2           With a Final Adjusted Offense Level of 37 and a Criminal History Category  
3 of VI, the applicable sentencing guideline range is *360 months to life*.

4           **8.     Guideline Sentence and Total Punishment:**

5           Pursuant to U.S.S.G. §5G1.1(a), “where the statutorily authorized  
6 maximum sentence is less than that the minimum of the applicable guideline  
7 range, the statutorily authorized maximum sentence shall be the guideline  
8 sentence.” In this case, had the Defendant been convicted of either Count One or  
9 Count Three (but not both), the “guideline sentence” would be *120 months* (Count  
10 One) or *180 months* (Count Three). However, notwithstanding the non-binding<sup>18</sup>  
11 terms of the Plea Agreement, due to the convictions on *both counts*, a correct  
12 consideration of the sentencing guidelines indicates that the “total punishment”  
13 would an aggregate *300-months* term of imprisonment. *See* U.S.S.G. §5G1.2(d)  
14 (noting that multiple counts of conviction shall run consecutively to reach the  
15 guideline range).

16           **B.     CONSIDERATION OF THE SENTENCING FACTORS:**

17           Pursuant to 18 U.S.C. § 3553(a), in relevant part,

18           The court shall impose a sentence sufficient, but not greater  
19 than necessary, to comply with the purposes set forth in paragraph (2)  
20 of this subsection. The court, in determining the particular sentence to  
21 be imposed, shall consider—

22           (1) the nature and circumstances of the offense and the history  
23 and characteristics of the defendant;

24           (2) the need for the sentence imposed—

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

28                   (B) to afford adequate deterrence to criminal conduct;

---

<sup>18</sup>The pleas were not entered pursuant to Fed. R. Crim. P. 11(c)(1)(C).

Thus, this Court is not bound to accept the parties’ recommendations.

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

3 (D) to provide the defendant with needed educational or  
4 vocational training, medical care, or other correctional  
5 treatment in the most effective manner;

6 (3) the kinds of sentences available;

7 (4) the kinds of sentence and the sentencing range established

8 **1. Nature and Circumstances of the Offenses:**

9 **(a). Count One:**

10 On April 18, 2010, the Defendant was severely injured during the pre-  
11 detonation of a chemical-based IED that he had manufactured, transported,  
12 detonated. Notwithstanding the sever injuries the Defendant suffered, the  
13 Whitman County Sheriff's Office ultimately dismissed the seriousness of the  
14 offense and concluded that the Defendant had most likely learned his lesson the  
15 hard way.

16 Looking at the single incident in a vacuum, one might be tempted to agree  
17 with the first responding officers and chalk the incident up to "boys being boys."  
18 In fact, during a recorded telephone conversation between the Defendant and his  
19 father, his father stated that "everyone's made a bomb." (*See* PSIR ¶ 107). During  
20 another recorded conversation, the Defendant's father said that he was not  
21 surprised that the Defendant had made a bomb, and that had he (Defendant's  
22 father) known, he would have gone with the Defendant to watch the explosion.  
23 (*See* PSIR ¶ 107).

24 The actual nature and circumstances of manufacturing the "unregistered  
25 firearm," which relevant to the incident charged in Count One was an Acetone  
26 Peroxide Ammonium Nitrate ("APAN") Improvised Explosive Device ("IED"), is  
27 nothing like lighting firecrackers in the driveway. Rather, the actual incident  
28 charged in Count One was the result of years of internet research, experimentation  
with dangerous chemical mixtures, and involving others in both the manufacturing

1 process and the detonation of pipe bombs and chemical IEDs. Had this matter  
2 gone to trial the United States was prepared to present an extensive amount of  
3 “social media” evidence including conversations involving BRICE and known and  
4 unknown individuals through email correspondence, text-messaging, and internet  
5 postings (including conversations and/or “chats”) evidencing BRICE’s interest  
6 with explosives.<sup>19</sup> In addition to the “social media” evidence,<sup>20</sup> the Defendant  
7 initialed a Timeline<sup>16</sup> of relevant events that included failed detonation of AN  
8 bomb on August 14, 2009; detonation of a bomb in a suitcase on October 9, 2009;  
9 making a batch of chemical explosives on January 15, 2010; purchasing explosive  
10 material on January 25, 2010; making AP on February 1, 2010; filtering chemicals  
11 on March 25, 2010; testing explosives and blasting caps on March 26, 2010;  
12 requesting a third-party to purchase acetone and hydrogen peroxide and  
13 manufacturing explosives on March 29, 2010; manufacturing nine jars of  
14 explosives on April 2, 2010; detonating a bomb on April 3, 2010; detonating two  
15

---

16 <sup>19</sup>The United States previously provided the Court with a CD and Exhibit  
17 Notebooks containing trial exhibits relevant to explosives. (*See* CD and Exhibit  
18 Notebooks containing *Govt. Ex.* 38, 39, 41, 42, 45, 50, 55-58, 64, 67-71, 77-79,  
19 82, 86-88, 91, 95-98, 100, 103, 107, 109, 115, 131, 137, 138, 157, 158, 160-162,  
20 165, 167-192, 202, 208, 222, 224, 238, 234, 244) (including researching on line,  
21 trial and error in manufacturing explosives, motives for using explosives (e.g.  
22 bank robbery diversion and destruction of the U.S. Courthouse in Spokane,  
23 Washington (*See Govt. Ex.* 41, 99)).

24 <sup>20</sup>Many of the Defendant’s explosive-related comments are abbreviated and  
25 set forth across the chronology of comments in PSIR ¶ 32. (*See also* ECF Doc.  
26 314, pgs. 23-33).

27 <sup>16</sup>The Timeline was created by FBI SABB McEuen prior to the post-arrest  
28 interview based on the evidence gleaned from the investigation.

1 pounds of ANFO using APAN on April 11, 2010; mixing chemicals with a third  
2 party on April 13, 2010; the manufacturing and pre-detonation incident relevant to  
3 Count One on April 18, 2010. (*See* Sentencing Exhibit 8). Most significant in  
4 regards to the level of dangerousness the Defendant disregarded in the context of  
5 manufacturing and detonating chemical-based IEDs is the cavalier manner in  
6 which he involved third-parties. Video evidence from one of his computers  
7 depicts the presence of his girlfriend (“A.P.”) at more detonation than the April 18,  
8 2010, incident. Despite any apparent caution taken by A.P. to keep a safe distance  
9 from the actual detonation, the Defendant indicated during the post-arrest  
10 interview that he had transported the highly unstable chemical mixture between  
11 his legs in the passenger seat while A.P. drove to the detonation site – with the  
12 improvised detonator already inserted into the explosive. (*See* Sentencing Exhibit  
13 3). During one text message exchange between the Defendant and a third-party,  
14 the Defendant indicated that he had burned his eyes mixing chemicals. (*See*  
15 Sentencing Exhibit 14).

16 Finally, the nature and circumstances of manufacturing a bomb, or in this  
17 case a chemical-based IED, should be viewed in the context in which the April 18,  
18 2010, incident actually occurred. During the time period leading up to the April  
19 18, 2010, incident, the Defendant appeared to be researching, idolizing, and  
20 emulating Timothy McVeigh through social media comments and postings.<sup>17</sup>  
21 Many of the Defendant’s social media comments included terrorist emulation and  
22 criticism.<sup>18</sup> When one adds the Defendant’s Google Earth “surveillance” of the  
23

---

24 <sup>17</sup>Many of the Defendant’s Timothy McVeigh-related comments are  
25 abbreviated and set forth across the chronology of comments in PSIR ¶ 32. (*See*  
26 *also* ECF Doc. 314, pgs. 23-33). (*See also* Sentencing Exhibit 27).

27 <sup>18</sup>Had this matter gone to trial, the United States was prepared to present  
28 evidence of the Defendant’s interest in Timothy McVeigh and other terrorist

1 U.S. Courthouse in Spokane, Washington, (*See* Sentencing Exhibit 12), to the  
2 Defendant's statements such as: "Tim's characteristics are nearly the same as  
3 myself, physically/politically" (January 14, 2010), (*See* Sentencing Exhibit 13),  
4 and numerous statements referencing the justification of killing innocent persons,  
5 with the fact that the Defendant was manufacturing – and perfecting – the *same*  
6 *type* of chemical IED utilized by Timothy McVeigh to destroy the Murrah Federal  
7 Building in Oklahoma City, and the fact that the Defendant utilized the alias  
8 "Timothy McVeigh," (*See* Sentencing Exhibit 14), the nature and circumstances of  
9 manufacturing an "unregister firearm," specifically a chemical-based IED, in  
10 violation of 26 U.S.C. 5861(f), is very serious indeed.

11 **(b). Count Three:**

12 Between December 22, 2010, and May 9, 2011, the Defendant attempted to  
13 provide material support to terrorists by assisting an individual he thought was a  
14 terrorist with a formula relevant to the manufacturing of a acetone peroxide  
15 ("AP") ignition booster for the type of chemical-based IED the Defendant had  
16 manufactured on April 18, 2010. In terms of the nature and circumstances of the  
17 offense, it takes very little imagination to put the act into perspective. The  
18 Defendant, an individual with a demonstrated interest and expertise in chemical  
19 explosives, a demonstrated interest in violence, a demonstrated interest in the IRA,  
20

---

21 individuals, groups and martyrs who utilize explosive devices, (*See* CD and  
22 Exhibit Notebooks containing *Govt. Ex.* 40, 43, 44, 47-49, 51-53, 59-61, 66, 76,  
23 80, 81, 83, 84, 85, 89, 90,93, 94, 99, 101, 102, 104, 105, 106, 108, 110-130, 132-  
24 136, 138-140, 143-145, 159, 163, 164, 166, 202, 211, 220, 221, 225, 226, 229-  
25 233, 237, 254-256)), and other violent acts (including anti-government statements  
26 (*See* CD and Exhibit Notebooks containing *Govt. Ex.* 41, 46, 49, 54, 62, 72, 73,  
27 75, 92, 99, 119, 122, 128, 138, 140, 141, 142, 211). (*See also generally See* CD  
28 and Exhibit Notebooks containing *Govt. Ex.* 146, 150, 156, 168, 185, 193, 206).

1 jihad, and other acts of terror, provided his expertise – in recipe form – to an  
2 individual who indicated that given the prior day’s events (the elimination of  
3 Osama Bin Laden) that now is the time to act. (*See* ECF Doc. 342 (Plea  
4 Agreement)).

5 The fact that the Defendant provided a ratio of a mixture of chemicals is  
6 significant in two ways. First, the 12:88 ratio was correct and one already  
7 perfected through the Defendant’s own experimentation. (*See* Sentencing Exhibit  
8 8). Second, the fact that the Defendant provided a ratio (or recipe) on how to  
9 manufacture the detonation booster does not limit the size of IED the “terrorist”  
10 could have made. Both facts cuts against the Defendant’s post-arrest minimization  
11 of his providing the information. (*See* Sentencing Exhibit 3). If the Defendant  
12 was truly joking with the “terrorist,” why would he provide a *correct* ratio.  
13 Furthermore, there is no evidence, other than the Defendant’s attempt to minimize  
14 during the post-arrest interview,<sup>19</sup> that the “terrorist” intended to manufacture a  
15 small, insignificant explosive device.

16 Indeed, the nature and circumstances of attempting to provide material  
17 support to an individual who expressed an intent to retaliate – against Americans –  
18 for the recent elimination of Osama Bin Laden, is a factor that supports a  
19 significant sentence.

## 20 **2. History and Characteristics of the Defendant:**

21 Perhaps in this case, the “history and characteristics” of the Defendant is the  
22 most important factor. Whereas the relevant pretrial question may have been  
23

---

24 <sup>19</sup>Recall that the Defendant told the FBI agents conducting the interview:

25 It's going to look like I'm a fucking Muslim terrorist, but I was just  
26 fucking with these guys. I was just toying with them. I drink beer, I  
27 drink beer every day. I do, I do everything opposite of whatever it  
28 looks like. I was just fucking with them, there's a guy, this is going to  
look so bad!

(*See* Sentencing Exhibit 3).

1 “why?” (See ECF Doc. 314), the relevant question in terms of sentencing is  
2 arguably “who” is the Defendant? Dr. Saathoff has indicated that the Defendant is  
3 a covert, clandestine individual who plans violent, criminal enterprises and the use  
4 of diversionary tactics. (See PSIR ¶¶ 148-150). Furthermore, the Defendant is a  
5 chronic user and abuser of street drugs, with a significant history of risk-taking  
6 behavior, and an interest in bomb-making, the use of deadly poisons, and a  
7 demonstrated disregard for human life. (See PSIR ¶¶ 152, 154, 155). The  
8 evidence obtained during the investigation includes: the use of false identification  
9 (see Sentencing Exhibit 15), including use of the name “Timothy McVeigh;” (see  
10 Sentencing Exhibit 14); attempting to keep his interest in jihad and terrorism  
11 secret; the posting of videos and comments on the internet through non-  
12 identifiable internet accounts such as chslosers@gmail.com;  
13 rzaforshiza@gmail.com; allahguidance@gmail.com; and  
14 StrengthofAllah@gmail.com),<sup>20</sup> the planning of a bank robbery, a FedEx truck  
15 robbery; (see Sentencing Exhibit 16); the discussion of retaliation against a former  
16 boyfriend of the Defendant’s girlfriend; (see Sentencing Exhibit 17); the posting  
17 of visual depictions of the aftermath of a violent suicide bombing; (see Sentencing  
18 Exhibit 18); excessive violent and degrading pornography saved on his  
19 computer;<sup>21</sup> video recordings of what appears to be the Defendant consuming  
20 marijuana through a gas mask; (see Sentencing Exhibit 19); and all of the evidence  
21 related to experimenting with the manufacturing and detonation of IEDs. The  
22 United States defers the ultimate determination as to whether Dr. Saathoff’s  
23 conclusion that the Defendant presents “a risk of future violence” to the Court.

---

25 <sup>20</sup>In fairness the Defendant did also use the internet account of  
26 joeybrice55@gmail.com for some internet communication.

27 <sup>21</sup>Not provided as a Sentencing Exhibit. FBI SABB McEuen can testify as  
28 to the content of the saved pornography.

1 The United States submits, however, that the factors Dr. Saathoff relied upon are  
2 supported by the evidence.

3 In assessing the characteristics of the Defendant, an admitted “bomber,” the  
4 Court may find a study done by the National Center for the Analysis of Violent  
5 Crime FBI Academy helpful. (*See* Sentencing Exhibit 20). In *Behavior and*  
6 *Characteristics of Bomb Related Offenders*, the authors note that one of the  
7 reasons for using explosives is that “they are exciting.” (*See* Sentencing Exhibit  
8 20, pg. 66). The evidence obtained during the investigation includes: the  
9 Defendant’s own admission that “it was kind of fun. Seeing your work done, it  
10 was, it’s kind of weird ya know when you feel, when you feel that, when you feel  
11 it hit your chest, ya know, the shock waves [unitelligible] kind of.” (*See*  
12 Sentencing Exhibit 3, pg. 61).

13 Furthermore, in terms of “who” the Defendant is, it is significant that during  
14 the investigation, FBI became concerned that the Defendant to had “undergo[ne] a  
15 ‘rapid radicalization’ to Islam.” (*See* PSIR ¶ 21). Perhaps the most telling  
16 evidence of the Defendant’s characteristics, and possible movement toward  
17 ‘radicalization’ are the comments he has made to the some of the most dramatic  
18 YouTube videos. For example, to a video of the Twin Tower attack on September  
19 11, 2001, (*see* Sentencing Exhibit 21), the Defendant commented “Allah Akbar.”  
20 (*See* Sentencing Exhibit 22).

21 **3. Seriousness of the Offense; Respect for the Law; Just**  
22 **Punishment:**

23 In short, the facts related to nature and circumstances of the offenses (*see*  
24 *supra*), apply to the factors of “seriousness of the offense,” “respect for the law”  
25 and “just punishment,” as well. If one looks at the at the seriousness of either  
26 offense through the lens of objective reasonableness, it is difficult to conclude that  
27 a reasonable person would not find the offenses to be extremely serious. Although  
28 it has been previously alluded to the may not be uncommon to want to watch



1 things explode, the preparation and motivation (*see supra*) behind Count One  
2 arguably raises the seriousness exponentially. In terms of Count Three, it is  
3 perhaps even more difficult to argue that the act of attempting to provide material  
4 support to terrorists is anything but serious. In this case, where the act was to  
5 provide expertise in manufacturing an explosive device, the potential for harm to  
6 persons and property is infinite and uncontrollable. The Defendant may have said  
7 he was just joking with the “terrorist,” but once he provided credible expertise, the  
8 manner and means of how that expertise might be used was no longer in the  
9 Defendant’s control. Furthermore, in relation to Count Three, the Defendant’s  
10 prior conduct leading up to the commission of the actual offense, though not  
11 necessarily criminal in and of itself, shows a significant amount of preparation.  
12 For example, the posting of the StrengthofAllah YouTube video “.5 kgs. APAN”  
13 (*see* Sentencing Exhibit 23), represents the final compilation of items collected  
14 from numerous sources. (*See* Sentencing Exhibit 24).

#### 15 **4. Adequate Deterrence:**

16 During the pendency of this case, law enforcement discovered that the  
17 Defendant and Wayde Kurt were communicating. The concern that two  
18 “bombers” were communicating resulted in two separate jail cell searches. One of  
19 the documents discovered during the search contained handwriting that appears  
20 consistent with both the Defendant and Wayde Kurt. The “document” suggests  
21 that after release from Bureau of Prisons custody, the Defendant and Kurt plan to  
22 associate together in possible future criminal conduct. (*See* Sentencing Exhibit 25;  
23 *see also* PSIR ¶ 105 (subparagraph 3)). Furthermore, the Defendant does not  
24 appear to show remorse or contrition. Instead, while the case was pending trial or  
25 resolution, the Defendant bragged about his exploits, (*see* Sentencing Exhibit 26),  
26 and indicated in a recorded telephone conversations that the government had a  
27 choice of turning him into an asset or a liability, (*see* PSIR ¶ 107), which suggests  
28 that *if the FBI chose to not use him*, he would continue to be a “liability.” The

1 United States submits that the Defendant's contact with Wayde Kurt suggests that  
2 the Defendant has already made the choice to be a future liability.

3 **5. Protect the Public:**

4 In light of the above, the United States respectfully submits that protection  
5 of the public may be the single-most important factor in determining a reasonable  
6 sentence.

7 **III. RESERVATION OF RIGHT TO SUBMIT ADDITIONAL  
8 SENTENCING EXHIBITS AND TESTIMONY**

9 As previously discussed, the United States anticipates a lengthy sentencing  
10 hearing. The United States is evaluating whether to illicit testimony from as many  
11 as 2-4 witnesses from the FBI and a number of video exhibits. The United States'  
12 sentencing presentation is not expected to take much longer than 3 hours  
13 (including reasonable cross examination time).

14 **IV. UNITED STATES' SENTENCING RECOMMENDATION**

15 Consistent with the Plea Agreement, the United States will recommend a  
16 10-year term of imprisonment to be imposed on Count One and a 15-year to be  
17 imposed on Count Three. The United States will further recommend that the two  
18 terms run concurrently and that a life-term of Supervised Release be imposed on  
19 Count Three. The United States' recommendation reflects the maximum term that  
20 can be imposed on Count Three.

21 DATED May 23, 2013.

22 Michael C. Ormsby  
United States Attorney

23 *s/ Russell E. Smoot*

24 Russell E. Smoot  
25 Assistant United States Attorney  
26  
27  
28

1 I hereby certify that on May 23, 2013, I electronically filed the foregoing  
2 with the Clerk of the Court using the CM/ECF System which will send  
3 notification of such filing to the following, and/or I hereby certify that I have  
4 mailed by United States Postal Service the document to the following non-  
5 CM/ECF participant(s):

6  
7 Matthew Campbell  
8 Federal Defenders  
9 10 North Post Street, Suite 700  
10 Spokane, WA 99201

11 Gloria M. Petretee  
12 U.S. Probation Officer  
13 920 West Riverside, Room 540  
14 Spokane, WA 99201

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
*s/Russell E. Smoot*

Russell E. Smoot  
Assistant United States Attorney