



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 29, 2016

The Honorable Ted Cruz
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Mike Lee
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Cruz and Lee:

This responds to your letter to the Attorney General dated March 29, 2016, regarding the Department of Justice's (the Department) enforcement of the Freedom of Access to Clinic Entrances Act of 1994 (FACE Act). In your letter, you requested information about the Department's FACE Act enforcement with regard to reproductive health facilities and houses of worship from January 2009 to the present. We apologize for our delay in responding to your letter.

As you are aware, the FACE Act makes it illegal to use force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with a person, or attempt to do so, "because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services," or if that person is or has been "lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship." 18 U.S.C. § 248(a)(1)-(2). In addition, the statute prohibits intentionally damaging or destroying facility property, or attempting to do so, "because such facility provides reproductive health services," and intentionally damaging or destroying "the property of a place of religious worship." § 248(a)(3).

The Department views outreach to and communication with community organizations, advocacy groups, and potential targets as critical to its efforts to enforce the FACE Act and other civil rights laws. Accordingly, just as we do in all other areas of civil rights enforcement, we communicate broadly with individuals and groups from the reproductive health community and the religious community. These interactions help to educate the public about federal law, the Department's enforcement authority, and how to provide the Department with information about possible criminal activity.

The Department's National Task Force on Violence Against Reproductive Health Care Providers — led by the Civil Rights Division, and also including the Federal Bureau of Investigation (FBI); the United States Marshals Service; the Bureau of Alcohol, Tobacco, and Firearms; and other law enforcement personnel — meets regularly and works to ensure unified, consistent, and responsive federal involvement when violence occurs. Since January 2009, Department officials have presented at 17 trainings on the FACE Act for local and federal law enforcement entities. Representatives from the reproductive health care community have attended the majority of those trainings. Department officials have also participated in presentations at conferences to ensure that providers are aware of our enforcement authority.

With respect to religious liberty, the Department regularly communicates with religious leaders, religious advocacy organizations, and representatives of houses of worship. On March 8, 2016, the Department announced the launch of “Combating Religious Discrimination Today,” a new interagency community engagement initiative designed to promote religious freedom, challenge religious discrimination, and enhance enforcement of religion-based hate crimes. As part of this initiative, the Department's Civil Rights Division recently partnered with other federal agencies to host a series of community roundtables across the country that focus on protecting people and places of worship from religion-based hate crimes; combating religious discrimination, including bullying, in education and employment; and addressing unlawful barriers that interfere with the construction of places of worship. The other agencies participating in the initiative include the Departments of Education, Homeland Security and Labor; the Equal Employment Opportunity Commission; and within the Department, the FBI, Office of Justice Programs, Executive Office for U.S. Attorneys, and Community Relations Service (CRS).

The inaugural roundtable, held in Newark, New Jersey, on March 8, addressed bullying and religious discrimination in schools. Subsequent sessions have included a meeting in Dallas, Texas, on March 29 on preventing and prosecuting religion-based hate crimes targeting individuals and houses of worship; a meeting in Birmingham, Alabama, on April 20 that examined religious discrimination in employment; a convening in Detroit, Michigan, on May 2 addressing discrimination by local zoning officials against congregants seeking to build places of worship; and a discussion in Palo Alto, California, on May 16 that also focused on bullying and religious discrimination in schools. Additionally, on May 26 and June 20 the Department hosted discussions in Washington, D.C., with religious leaders and religious advocacy organizations to hear suggestions about how the federal government can more effectively address religious discrimination and religion-based hate crimes.

The U.S. Attorneys are also working to strengthen the relationships among religious communities, local law enforcement, and the Department, with the goal of combating violence against houses of worship and protecting religious liberty. In January 2016, U.S. Attorney John Walsh of the District of Colorado released a resource guide entitled “Protecting Houses of Worship” and sponsored multiple community trainings on the issue. Other districts have held similar events. For example, on April 15, 2016, U.S. Attorney Andrew Lugar participated in an

interfaith, intercultural event held by the Somali American Taskforce and Temple Israel in Minneapolis. On May 6, 2016, U.S. Attorney Deirdre Daly made remarks entitled “Protecting Houses of Worship” at a newly built mosque in Waterbury, Connecticut.

These activities are a continuation of the Department’s longstanding engagement with religious liberty advocates and community groups in addressing hate crimes and violence directed at houses of worship and people exercising religious freedoms. In July and December 2015, for example, the Civil Rights Division personnel served as instructors in a webinar sponsored by the Federal Emergency Management Agency on protecting places of worship from violence, in which more than 2,000 clergy and religious community leaders participated. In October 2012, the Civil Rights Division held a town hall meeting with diverse religious groups to discuss how the federal government tracks and reports hate crimes. Based on that meeting, the Division recommended the addition of anti-Sikh, anti-Hindu, and anti-Arab to the hate crime categories. The FBI began tracking these new categories in January 2015. And since September 11, 2001, CRS has held more than 750 town and community meetings addressing backlash-related issues, has trained hundreds of law enforcement departments, and has deployed conflict resolution specialists in communities around the country to alleviate tensions from backlash incidents.

In your letter, you also requested information about cases the Department has pursued under the FACE Act. Based on longstanding policy and to protect the integrity of the investigative process, the Department is not in a position to comment on pending investigations. We are, however, able to share information about matters in which we have publicly filed criminal charges or civil complaints under the FACE Act. With respect to access to reproductive health care, the Department has filed criminal charges in 14 cases, obtaining convictions in 11, since January 2009:

- US v. Lo (N.D. Tex.) – charged 4/20/09, not guilty by reason of insanity
- US v. Hertz (D. Colo.) – charged 8/25/09, guilty plea
- US v. Freeman (D. Or.) – charged 11/9/09, guilty plea
- US v. Dugan & Puckett (S.D.N.Y.) – charged 1/4/10, found guilty
- US v. Moose (M.D.N.C.) – charged 9/27/10, guilty plea
- US v. Holmander (D. Mass.) – charged 3/7/11, not guilty
- US v. Mower (E.D. Cal.) – charged 9/21/11, guilty plea
- US v. Rogers (N.D. Fla.) – charged 1/5/12, guilty plea
- US v. Lang (E.D. Wisc.) – charged 3/28/12, case voluntarily dismissed
- US v. Grady (E.D. Wisc.) – charged 4/17/12, found guilty
- US v. Christian (E.D. Va.) – charged 10/16/12, guilty plea
- US v. Stout (W.D. Mo.) – charged 10/18/13, guilty plea
- US v. Currell (S.D. Ind.) – charged 5/12/14, guilty plea
- US v. Harris (D. Minn.) – charged 2/11/16, guilty plea

Copies of all charging documents, plea agreements, and final judgments for each of these cases are attached.

Since January 2009, the Department has filed civil actions under the FACE Act in nine cases involving access to reproductive health care, securing relief in seven of them.

Holder v. Branca (E.D. Pa.) – filed 7/15/09, consent judgment
US v. Gaona (W.D. Tex.) – filed 7/15/10, consent judgment
Holder v. Pine (S.D. Fla.) – filed 8/18/10, summary judgment for defendant
Holder v. Hamilton (W.D. Ky.) – filed 12/21/10, settlement agreement
US v. Kroack (W.D. Wash.) – filed 3/3/11, consent judgment
US v. Dillard (D. Kan.) – filed 4/7/11, verdict for defendant¹
US v. Ken and JoAnn Scott (D. Colo.) – filed 6/1/11, consent decree with respect to JoAnn Scott, voluntary dismissal of suit against Ken Scott
US v. Retta (D.D.C.) – filed 7/14/11, consent judgment
US v. Parente (W.D. Pa.) – filed 11/7/11, consent judgment

The complaint and, where relevant, the settlement agreement for each of these cases are attached.

With respect to the protection of religious freedom, the Department has prosecuted dozens of cases of violence directed at houses of worship and interference with the free exercise of religion under 18 U.S.C. § 247, a statute that is broader in scope than the FACE Act. Due to the availability of § 247, the Department has not filed any criminal or civil actions under the FACE Act in this enforcement area. Under § 247, it is a federal crime to “intentionally deface[], damage[], or destroy[] any religious real property, because of the religious character of that property, or attempt[] to do so,” or to “intentionally obstruct[] by force or threat of force, any person in the enjoyment of that person’s free exercise of religious beliefs, or attempt[] to do so,” where the offense “is in or affects interstate or foreign commerce.” § 247(a). In addition, the statute criminalizes actual or attempted defacement, damage, or destruction of religious real property “because of the race, color, or ethnic characteristics of any individual associated with that religious property.” § 247(c).

Since January 2009, the Department has charged 27 cases under 18 U.S.C. § 247, obtaining convictions against all defendants involved except one, who was killed after resisting arrest as agents attempted to take him into custody.² The following are examples of significant cases the Department has prosecuted under § 247, reflecting the breadth of this enforcement:

- On May 9, 2016, Martin Alan Schnitzler was sentenced to one year and one day in prison for obstructing persons in the free exercise of religious beliefs at a house of worship in Florida. At his plea hearing, Schnitzler admitted to leaving voicemail messages at a mosque, threatening to “personally have a militia” report to one of the

¹ In this case, the jury found that a reasonable recipient of the letter sent by the defendant would believe that the letter conveyed a true threat of force, but that the defendant did not intentionally seek to intimidate the doctor to whom she sent the letter.

² The defendant was Sandlin Matthews Smith, charged in the Middle District of Florida in May 2011 in connection with the bombing of a Jacksonville mosque.

mosques and “firebomb you, shoot whoever is there on sight in the head. I don’t care if they’re [expletive] two years old or a hundred.”

- On April 18, 2016, Jediah Stout pleaded guilty to the arson of a mosque and two attempted arsons of a Planned Parenthood clinic in Joplin, Missouri. He admitted to violating the federal arson statute, § 247, and the FACE Act for the offense against the clinic.
- On July 20, 2015, Dylann Storm Roof was charged in a 33-count indictment, including 12 counts under § 247, for killing and attempting to kill African American parishioners at Emanuel African Methodist Episcopal Church in Charleston, South Carolina, because of their race and in order to interfere with their exercise of their religion.
- On July 15, 2014, Macon Openshaw was sentenced to five years in prison firing three rounds from a .22 caliber handgun at a synagogue in Salt Lake City, Utah.
- On April 29, 2011, Brian Lewis, Abel Mark Gonzalez, and Andrew Kerber were sentenced for defacing and damaging a synagogue, a Roman Catholic church, and a Greek Orthodox church in Modesto, California.
- On March 9, 2011, Ronald Pudder was sentenced to 51 months in prison for setting fire to the First Azusa Apostolic Faith Church of God in Conneaut, Ohio.

In addition, the Department has brought criminal cases vindicating the free exercise of religion under other federal hate crimes statutes. Under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. § 249, it is a federal crime to commit certain violent acts because of the actual or perceived religion of any person. Under 18 U.S.C. § 245, it is unlawful to willfully injure, intimidate, or interfere with any person, or to attempt to do so, by force or threat of force, because of that other person’s religion and because of that person’s engagement in certain federally protected activities. And under the Fair Housing Act, 42 U.S.C. § 3631, it is unlawful to use force or the threat of force to injure, intimidate, or interfere with any person’s housing rights because of that person’s religion, or to attempt to do so.

In your letter you referenced activity outside the entrance to a house of worship in Los Angeles, California, in 2008, as depicted in an online video. This matter had not previously been brought to our attention. We will consider this information and take any appropriate action.

The Department is also committed to using its civil enforcement tools to ensure nondiscrimination against houses of worship and to combat interference with the free exercise of religion. We address unlawful barriers to the construction of places of worship under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA); combat employment discrimination based on religion under Title VII of the Civil Rights Act of 1964 (“the Act”);

work to end discrimination in public accommodations under Title II of the Act; and combat religious discrimination, including harassment, in education under Title IV of the Act.

Under the land use provisions of RLUIPA, 42 U.S.C. §§ 2000cc, et seq., the Department protects individuals, houses of worship, and other religious assemblies and institutions from discrimination in zoning and landmarking laws.³ RLUIPA prohibits such laws that substantially burden religious exercise unless the imposition of the burden is the least restrictive means of furthering a compelling governmental interest. This prohibition applies in any situation where (i) the state or local government entity imposing the substantial burden receives federal funding; (ii) the substantial burden affects, or removal of the substantial burden would affect, interstate commerce; or (iii) the substantial burden arises from the state or local government's formal or informal procedures for making individualized assessments of a property's uses. In addition, RLUIPA prohibits zoning and landmarking laws that treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions; discriminate against any assemblies or institutions on the basis of religion or religious denomination; totally exclude religious assemblies from a jurisdiction; or unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.

The Department's RLUIPA work has touched on a broad range of religious communities. For example:

- In December 2015, we closed our investigation of the city of Lauderhill, Florida, after the city changed its zoning code to remove special restrictions on the location of churches, which had included a prohibition on churches in freestanding structures and a bar on churches locating within 1,000 feet of another church in certain zones. The Department had opened its investigation after receiving complaints that New Life Haitian Baptist Church was denied a permit to rent space in an office park and subsequently learned that another church, Sanctuary International Ministries, had also been unable to locate in the office park.
- In September 2015, the Department filed suit against Des Plaines, Illinois, over the city's denial of rezoning to allow a Muslim congregation to use a vacant office building as a mosque. The complaint alleged that the city treated the mosque less favorably than it treated nonreligious assemblies, discriminated against the mosque based on religion, and imposed a substantial burden on the mosque members' religious exercise without justification.
- In January 2015, a federal court in Minneapolis, Minnesota, entered a consent order resolving allegations that the city of St. Anthony Village had violated RLUIPA when it refused to permit an Islamic center to use a building in a light industrial zone as a

³ The Department also enforces the "institutionalized persons" provisions of RLUIPA, which recognize the crucial role religion plays in the rehabilitation of many prisoners and which require that state and local institutions—including prisons, jails, pretrial detention facilities, juvenile facilities, and institutions housing and providing government services to persons with disabilities—not place arbitrary or unnecessary restrictions on religious practice.

prayer center. The zone at the time permitted various nonreligious assemblies, including a union hall with banquet facilities.

- In April 2012, the Department filed an amicus brief in the U.S. Court of Appeals for the Fourth Circuit arguing that Montgomery County, Maryland, imposed a substantial burden on Bethel World Outreach Ministries' efforts to build an 800-seat church on its 119-acre site, in light of the need at the church's current smaller location to hold multiple services and curtail a number of important activities.
- In March 2012, the Department submitted an amicus brief to the U.S. Court of Appeals for the Fifth Circuit in support of a nondenominational Christian church in Holly Springs, Mississippi, arguing that a local provision requiring churches, but not nonreligious assemblies, to obtain the permission of 60% of neighbors violated RLUIPA's equal terms provision. The City changed the code on the eve of oral arguments, but still barred churches where nonreligious assemblies were permitted. The Fifth Circuit ruled in September 2012 that the code violated RLUIPA.
- In August 2011, we reached a consent decree with the city of Walnut, California, over its denial of approval for construction of a Buddhist worship center. The complaint alleges that the Buddhist center was treated differently from similarly situated religious and nonreligious assembly uses. The consent decree requires the city to adopt new zoning procedures, as well as training and reporting requirements.
- In May 2011, the Department reached a consent decree in its suit against the Village of Airmont, New York, alleging that it had enacted an ordinance barring boarding schools in order to block a Hasidic Jewish school and to prevent Hasidic Jews from settling in the area. The consent decree required the village to change its ordinance and allow the school to be built.
- In April 2010, the Department argued before the U.S. Court of Appeals for the Ninth Circuit that the City of Yuma, Arizona, violated RLUIPA when it excluded a Spanish language Southern Baptist church from its downtown zoning district. The city claimed that it excluded places of worship in preference to business generating uses. The Department argued that this approach violated RLUIPA's equal terms provision, and the court agreed in its July 2011 decision.

The Department also enforces several parts of the Civil Rights Act of 1964, which outlaws discrimination based on religion. Title VII, 42 U.S.C. § 2000e, *et seq.*, prohibits discrimination in public and private employment and requires employers to make reasonable accommodation of employees' religious observances and practices unless doing so would cause the employer undue hardship. The Department has responsibility for bringing suits under Title VII against state and local governmental employers. Under § 706 of Title VII, individual cases of discrimination against state and local governmental entities must be filed in the first instance with the Equal Employment Opportunity Commission, which can refer cases to the Department.

The Department then opens a supplemental investigation, if warranted, to determine if a lawsuit is appropriate. When a pattern or practice of discrimination by a governmental entity is alleged, the Department may file suit on its own volition under § 707 of Title VII. In recent cases:

- The Department reached a settlement in September 2013 in its suit alleging that the Birmingham, Alabama, Police Department failed to accommodate the Sabbath of a Messianic Jewish employee. The settlement requires the police department to reinstate the employee with back pay, and to develop a religious accommodation policy.
- The Department reached a consent decree with the New York City Transit Authority on July 3, 2012, in its Title VII suit over its refusal to permit Muslim and Sikh bus and subway drivers and station agents to wear religious head coverings on the job.
- The Department reached a consent decree in October 2011 with the Berkeley, Illinois, school board in a suit over its refusal to give a Muslim teacher a two-week unpaid leave of absence to attend the Hajj, a pilgrimage to Mecca.
- In October 2009, the Department launched an investigation of the State of Oregon over a law, dating to the 1920s, that barred public school teachers from wearing religious clothing. When originally passed, the law was intended to keep Catholic priests and nuns from teaching in Oregon's public schools. In April 2010, the Department closed its investigation after the governor signed a bill repealing the statute.
- In February 2009, the Department reached a consent decree in a Title VII case against the Washington Metropolitan Area Transit Authority on behalf of two Muslim women and a Pentecostal woman who had been refused reasonable accommodations to the uniform requirement for bus drivers (headscarves or hijabs in the case of the Muslim women; skirts or culottes instead of pants for the Pentecostal woman).

Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, *et seq.*, provides a right to full and equal enjoyment of public accommodations, without discrimination on the ground of religion. Examples of the Department's work in this area include:

- In August 2010, the Department filed suit and reached a consent decree in a case in which a Chinese restaurant in Queens, New York, refused to serve patrons who had on t-shirts indicating that they were supporters of the Falun Gong spiritual movement.
- In August 2009, the Department closed a compliance review of the Georgia courts that was triggered after we received complaints that three Muslim women had been barred from courthouses for wearing headscarves. We closed the review, which was based on the Georgia courts' receipt of Safe Streets Act funding, after the courts

agreed to modify their policy to permit head-covering for those with religious or medical reasons for doing so.

Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c, *et seq.*, prohibits discrimination on the basis of religion in public schools and colleges. The Department works to ensure that all persons, regardless of their religion are provided equal educational opportunities and are not subjected to discrimination or harassment on the basis of religion. For example:

- In May 2013, the Department reached a settlement with the DeKalb County, Georgia, school district to protect a turban-wearing Sikh high school student from a pattern of bullying by other students. Following an inquiry into the student-specific complaints, we notified the district of our concerns that the district had failed to respond promptly and appropriately to allegations of harassment, including allegations that the student was called “Aladdin” because he wore a turban and was told by a fellow student to “go back to his country.” We also raised concerns that the district had not investigated witness statements that the student had been called a “terrorist” and that there was a history of fellow students targeting him because of his turban. The district-wide settlement agreement is designed to enhance the district’s ability to prevent and respond to peer-on-peer harassment based on national origin and religion and to provide clear and consistent procedures for reporting, investigating, and responding to such conduct.

These are just some of our enforcement activities to protect houses of worship and individuals in the free exercise of their religious beliefs. The Department’s work in this area is collected in a periodic newsletter, “Religious Freedom in Focus,” compiled by the Civil Rights Division’s Special Counsel for Religious Discrimination. Copies of all 65 volumes of the newsletter are available at <https://www.justice.gov/crt/combating-religious-discrimination-and-protecting-religious-freedom-12>.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary

The Honorable Ted Cruz
The Honorable Mike Lee
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The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary

The Honorable Christopher A. Coons
Ranking Member
Subcommittee on Oversight,
Agency Action, Federal Rights and Federal Courts

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIC HOLDER,	:	CIVIL ACTION
ATTORNEY GENERAL,	:	
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DAVID ALLEN BRANCA,	:	
	:	
Defendant.	:	No. 09-_____

COMPLAINT

Eric Holder, Attorney General, United States of America (the "United States Attorney General"), by the undersigned attorneys, asserts a cause of action against Defendant, David Allen Branca, under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994).

1. The United States Attorney General has reasonable cause to believe that Defendant has committed, and may continue to commit, violations of FACE, and that various persons have been and may continue to be injured by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2); and 28 U.S.C. § 1345.

3. The United States Attorney General has standing to bring this action pursuant to FACE 18 U.S.C. § 248(c)(2).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that Defendant resides

in this judicial district, and the events giving rise to this complaint occurred in this judicial district.

FACTUAL BACKGROUND

Defendant: David Allen Branca

5. Defendant resides in the Eastern District of Pennsylvania at 19 Louella Drive, Plymouth Meeting, Pennsylvania 19462; Defendant maintains or maintained the internet website, <http://www.catholictruefaith.org/argumentabortion.htm>.

Defendant's general anti-abortion activities

6. Since approximately 2003, Defendant has actively engaged in, and contributed to, various anti-abortion activities and publications. He has participated in protests at reproductive health care clinics and at the homes of various physicians who provide reproductive health care services, including abortions.

7. Defendant's anti-abortion activities and efforts have included, inter alia, the publication and dissemination of various messages circulated on his internet website, <http://www.catholictruefaith.org/argumentabortion.htm>.

8. Defendant's anti-abortion publications have identified physicians who provide or have provided reproductive health care services to women residing in the Eastern District of Pennsylvania.

9. Through his publications, including his internet website, Defendant intends to force certain identified physicians to cease providing reproductive health care services.

Defendant's actionable threats

10. Through his publications, including his internet website, Defendant threatened physicians providing reproductive health care services.

11. Defendant explicitly encouraged readers of his internet website to shoot and kill physicians providing reproductive health care services.

12. Defendant published on his internet website, the names of reproductive health care physicians, as well as their home and work addresses.

13. Defendant's internet website stated in relevant part:

I have no problem saying kill the abortionist because they intentionally recklessly and cold bloodedly murder babies. First degree murder, CAPITAL CRIMES PUNISHABLE BY DEATH.

Here is an address for you. [Full name of a physician, followed by his home address, township, city, state and zip code]. He kills at his major death camp at Berger Benjamin at 1335 Tabor Road in Philadelphia. Next to Einstein Medical Center on Broad Street. He kills for Malcolm Polis at the Northeast Women's Center on Comly Road in NE Phila. He also kills at Einstein, and lastly kills at Cherry Hill Women's Center. Do the babies a favor, save them if you have the courage. I don't have the courage as most of us don't. But when we all fry to death from the American government and the other governments of the world

don't complain.

Roe v. Wade will not be overturned nor will the laws we need to protect babies on a wide scale will be made or enforced. You want to end Roe, we now have a 5 to 4 court in favor of baby murder. Now with a spot that must take place to begin ending legalized abortion we need to get one of those baby murderer justices off the bench.

So now I have interpreted that we can be equal and say go kill all the abortionists in America. If you want to kill anyone of them from these clinics or hospitals you have just as much right as they do. They are permitted to kill babies, you are permitted to stop them. Stop as many as you must since you will not get away with it. The world will condemn you to prison or the death penalty. I want you to get out of it un-noticed, you are not a murderer or a killer if you do these things to abortionists or Supreme Court Justices upholding Roe. But perhaps some will be able to do it and not get found out. Get [name of second physician] and [name of a third physician] for the babies. Here is a chance for mercenaries and skilled hunters with scopes.

<http://www.catholictruefaith.org/argumentabortion.htm> (excerpts from Defendant's website (emphasis added)). These messages continued to appear on Defendant's internet website until their removal was requested by the United States Attorney's Office, the FBI, and a United States Supreme Court Threat Assessment Officer.

14. Defendant intended to cause reproductive health care physicians to fear for their safety and cease providing reproductive health care services.

15. Defendant's conduct as averred in paragraphs 10-13 hereof constitutes a threat of death or serious bodily injury to

the identified individual reproductive health care physicians.

16. Defendant's conduct as averred in paragraphs 10-13 hereof intimidated, and may continue to intimidate, the identified physicians, and Defendant's conduct interferes with the ability of the physicians to provide reproductive health care services.

17. On information and belief, Defendant willfully engaged in the conduct averred in paragraphs 10-13 when he published on his internet website the threatening messages and those messages were intended to injure and/or intimidate and to interfere with the ability of reproductive health care physicians to provide reproductive health care services.

CAUSE OF ACTION UNDER FACE

18. The United States Attorney General incorporates herein the averments of paragraphs 1 through 17 hereof.

19. Defendant's anti-abortion publications as described above are "threats" of bodily injury designed to injure and intimidate individual(s) who provide reproductive health care services.

20. Defendant's actions as averred in paragraphs 10-13 hereof constitute violations of FACE, 18 U.S.C. § 248 in that they constitute wilful threats of bodily harm and force with the intent to injure, intimidate and interfere with a person providing reproductive health care services.

21. The United States Attorney General is authorized under FACE, 18 U.S.C. § 248(c)(2)(B), to seek and obtain permanent injunctive relief from this Court for Defendant's violations.

22. The United States Attorney General seeks a permanent injunction enjoining Defendant and any and all of his representatives, officers, agents, servants, employees and attorneys, and those persons acting in concert with him, from violating, aiding, abetting, directing or inciting others to violate statutory provisions of FACE by using force and threat of force intentionally to injure, intimidate and interfere with, or to attempt intentionally to injure, intimidate and interfere with any person or any class of persons from obtaining, providing or supporting reproductive health care services.


CONCLUSION

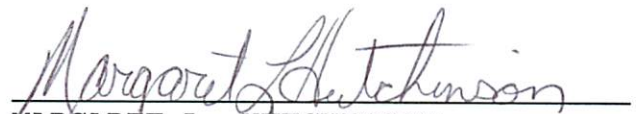
WHEREFORE, the United States Attorney General respectfully requests judgment in his favor and against Defendant, David Allen Branca, in the form of an order prohibiting Defendant and his representatives, agents, employees and any others acting in concert or participation with him, from publishing, either orally or in writing, on paper or in electronic format, in whole or in substantial part, the messages appearing on his internet website as set forth in paragraph 13 hereof or from publishing, either orally or in writing, on paper or in electronic format, equivalent messages that contain the names, addresses, personal information or photographs of


reproductive health care physicians, staff, or patients with the intent to threaten the physicians, staff, or patients -- or any other person or any class of persons -- thus preventing them from providing or obtaining reproductive health care services.

The United States Attorney General is entitled to an order granting such relief.

Respectfully submitted,


MICHAEL L. LEVY
United States Attorney


MARGARET L. HUTCHINSON
Assistant United States Attorney
Chief, Civil Division


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Attorneys for the Attorney General
of the United States of America

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

US DISTRICT COURT
JUL 28 PM 1:15

ERIC HOLDER,
ATTORNEY GENERAL,
UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID ALLEN BRANCA,

Defendant.

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CIVIL ACTION

No. 09- CV-03145

FILED

JUL 29 2009

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CONSENT JUDGMENT AND ORDER OF APPROVAL

Plaintiff, Eric Holder, Attorney General of the United States of America (the "United States Attorney General"), and Defendant, David Allen Branca, hereby agree and consent to judgment in favor of Plaintiff and against Defendant in the form of the following permanent injunction:

1. Defendant, David Allen Branca, and his representatives, agents, employees and any others acting in concert or participation with him are PERMANENTLY ENJOINED from publishing, either orally or in writing, on paper or in electronic format, in whole or in substantial part, the messages appearing on his internet website as set forth in paragraph 13 of the government's complaint, or from publishing, either orally or in writing, on paper or in electronic format,

David A. Branca
7/18/09

equivalent messages that contain the names, addresses, personal information or photographs of reproductive health care physicians, staff, or patients with the intent to threaten the physicians, staff or patients -- or any other person or any class of persons -- thus preventing individuals from obtaining or providing reproductive health care services.

2. The government shall monitor the Defendant's internet website to ensure Defendant is in compliance with the terms of this permanent injunction.
3. Nothing in this permanent injunction shall prohibit Defendant from picketing, creating, publishing, and disseminating anti-abortion information so long as such activities do not constitute illegal threats, elicit violence, nor

David A. Branna
7/18/09

violate the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (1994), in any manner.

DAVID ALLEN BRANCA

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

Defendant

Plaintiff

BY: David A. Branca
DAVID ALLEN BRANCA

BY: MICHAEL L. LEVY
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Attorneys for the Attorney General of the United States

ORDER APPROVING CONSENT JUDGMENT AND PERMANENT INJUNCTION

AND NOW, this 20th day of July, 2009,
upon consideration of the complaint of Plaintiff, Eric Holder,
Attorney General of the United States of America, and the
parties' above-signed Consent to Judgment, it is hereby ORDERED

7/18/09

that judgment is hereby entered in favor of Plaintiff and against Defendant, David Allen Branca, and a permanent injunction shall hereby issue in the above-agreed to form.

APPROVED AND SO ORDERED
BY THE COURT:

Samuel J. David

UNITED STATES DISTRICT JUDGE

David A. Branca
7/18/09

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

JUN 15 2010

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,

CIVIL ACTION

Plaintiff,

SA10CA0494 XR

v.

JUAN ANTONIO GAONA,

No.

Defendant.

COMPLAINT

Eric H. Holder, Jr., Attorney General of the United States of America

(the "United States Attorney General"), by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), as follows:

1. In bringing this action, the United States Attorney General has reasonable cause to believe that Defendant, Juan Antonio Gaona, has committed a violation of FACE, that Defendant's conduct has intimidated various persons, and that Defendant's conduct has interfered with various persons' access to a reproductive healthcare facility.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States Attorney General has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

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4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that Defendant resides in this judicial district, and all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Defendant, Juan Antonio Gaona, is a regular and vocal anti-abortion protester at the Babcock Road Planned Parenthood Clinic ("Clinic"), located at 104 Babcock Road in San Antonio, Texas.

6. On information and belief, Defendant resides at 6806 Farrow Road in San Antonio, Texas, 78240.

FACTUAL BACKGROUND

7. For several years, Defendant has engaged in anti-abortion protest activity outside the Babcock Road Planned Parenthood Clinic.

8. The Babcock Road Planned Parenthood Clinic offers reproductive health services.

9. Defendant has always been the most vocal protester at the Babcock Road Planned Parenthood Clinic, and has used profane language in his protests and direct personal criticisms at Clinic employees.

10. Defendant has typically conducted his protest activity from the public sidewalk that abuts the Clinic's private parking lot.

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11. On April 17, 2009, Mr. Gaona entered the Clinic parking lot, stepped into the Clinic's front door vestibule area, and attempted to enter the door to the patient waiting room.

12. Defendant was unable to enter the locked door, and instead spread his body across the door in order to block the entrance to the patient waiting room.

13. While Defendant blocked the door, he yelled at the clinic receptionist present in the vestibule to "repent," and referred to the clinic staff as "baby killers."

14. As Defendant was blocking the door, a patient was escorted by Clinic volunteers from the parking lot into the vestibule area.

15. When the patient entered the vestibule area, Defendant yelled, "You can't do this" and "You can't go in there."

16. The patient could not enter the waiting area because Defendant continued to use his entire body to block the door to the waiting area.

17. Staff then escorted the patient through a separate, administrative entrance that is not used for patient access to the Clinic.

18. Defendant would not leave the Clinic's property despite repeated requests, and had to be physically removed from the Clinic by two Clinic staff members.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

19. The United States incorporates herein the averments of paragraphs 1 through 18 hereof.

20. Defendant's conduct as described in paragraphs 10 through 18 hereof constitutes a physical obstruction which interfered with a person who had been seeking reproductive health services.

21. Defendant's conduct as described in paragraphs 10 through 18 hereof constitutes a physical obstruction which interfered with persons who had been providing reproductive health services.

22. Defendant's conduct as described in paragraphs 10 through 18 hereof constitutes a physical obstruction which intimidated a person who had been seeking reproductive health services.

23. Defendant's conduct as described in paragraphs 10 through 18 hereof constitutes a physical obstruction which intimidated persons who had been providing reproductive health services.

24. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

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PRAYER FOR RELIEF

25. The United States Attorney General is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

26. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess a civil penalty against a respondent no greater than \$10,000.00 for a nonviolent physical obstruction.

WHEREFORE, the United States Attorney General respectfully requests judgment in his favor and against Defendant, Juan Antonio Gaona, in the form of:

- A. An Order prohibiting Defendant, Juan Antonio Gaona, from coming within 25 feet of the Babcock Road Planned Parenthood Clinic's property;
- B. An Order prohibiting Defendant, Juan Antonio Gaona, and his representatives, agents, employees and any others acting in concert or participation with him, from violating the Freedom of Access to Clinic Entrances Act; and
- C. A civil penalty assessment in the amount of \$10,000.00.

-6-

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN ANTONIO GAONA,

Defendant.

CIVIL ACTION

No. SA 10 CA 0494 XR

FINAL CONSENT JUDGMENT AND ORDER OF APPROVAL

Plaintiff, Eric H. Holder, Jr., Attorney General of the United States of America, and Defendant, Juan Antonio Gaona, hereby agree and consent to judgment in favor of Plaintiff and against Defendant in the form of the following permanent injunction:

1. Defendant, Juan Antonio Gaona, and any others acting under his instruction or direction are **PERMANENTLY ENJOINED** from coming within 25 feet of the Babcock Road Planned Parenthood Clinic's property located at 104 Babcock Road, San Antonio, Texas.
2. Defendant, Juan Antonio Gaona, and any others acting under his instruction or direction are **PERMANENTLY ENJOINED** from violating the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (1994).

BY:


JUAN ANTONIO GAONA

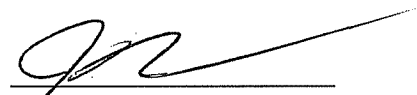
BY:


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ORDER APPROVING CONSENT JUDGMENT AND PERMANENT INJUNCTION

AND NOW, this _____ day of _____, 20____, upon consideration of the Complaint of Plaintiff, Eric H. Holder, Jr., Attorney General of the United States of America, and the parties' above-signed Consent to Judgment, it is hereby ORDERED that judgment is hereby entered in favor of Plaintiff and against Defendant, Juan Antonio Gaona, and a permanent injunction shall hereby issue in the above-agreed to form.

APPROVED AND ORDERED BY THIS COURT

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,

Plaintiff,

v.

MARY SUSAN PINE,

Defendant.

CIVIL ACTION

No.

COMPLAINT

Eric H. Holder, Jr., Attorney General of the United States of America (the "United States Attorney General"), by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), enacted into law May 26, 1994, as follows:

1. In bringing this action, the United States Attorney General has reasonable cause to believe: (1) Defendant, Mary Susan Pine, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States Attorney General has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

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4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that Defendant resides in this judicial district, and all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Defendant, Mary Susan Pine, is a regular and vocal anti-abortion protester at the Presidential Women's Center, located at 100 Northpoint Parkway in West Palm Beach, Florida.

6. On information and belief, Defendant resides in West Palm Beach, Florida.

FACTUAL BACKGROUND

7. The Presidential Women's Center provides women's reproductive healthcare services.

8. Defendant has engaged in anti-abortion protest activity outside the Presidential Women's Center for several years.

9. Defendant is one of two protesters who typically conducts her protest activity on the south side of Northpoint Parkway, which includes walking back and forth in the Presidential Women's Center's driveway.

10. On November 19, 2009, Defendant physically obstructed a car by stepping in front of the car as it was attempting to enter the driveway to the Presidential Women's Center to access the parking lot.

11. The driver of the approaching car stopped to avoid striking Defendant.

12. Defendant attempted to, and did, interfere with the driver's access to the Presidential Women's Center.

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CAUSE OF ACTION UNDER 18 U.S.C. § 248

13. The United States incorporates herein the averments of paragraphs 1 through 12 hereof.

14. Defendant's conduct as described in paragraphs 10 through 12 hereof constitute a physical obstruction which interfered with a person who had been seeking reproductive health services.

15. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

16. The United States Attorney General is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

17. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess a civil penalty against a respondent no greater than \$10,000.00 for a nonviolent physical obstruction.

WHEREFORE, the United States Attorney General respectfully requests judgment in his favor and against Defendant, Mary Susan Pine, in the form of:

- A. An Order prohibiting Defendant, Mary Susan Pine, from entering any driveway leading into the Presidential Women's Center parking lot;

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- B. An Order prohibiting Defendant, Mary Susan Pine, and her representatives, agents, employees and any others acting in concert or participation with her, from violating the Freedom of Access to Clinic Entrances Act; and
- C. A civil penalty assessment in the amount of \$10,000.00.

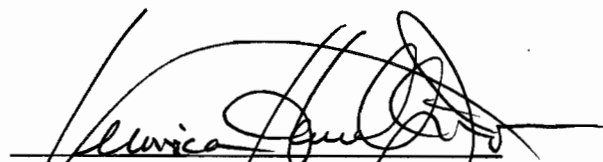
Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,

Plaintiff,

v.

MARY SUSAN PINE,

Defendant.

CIVIL ACTION

No. 9:10-cv-80971-KLR

AMENDED COMPLAINT

Eric H. Holder, Jr., Attorney General of the United States of America (the "United States Attorney General"), by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), enacted into law May 26, 1994, as follows:

1. In bringing this action, the United States Attorney General has reasonable cause to believe: (1) Defendant, Mary Susan Pine, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States Attorney General has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

-2-

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that Defendant resides in this judicial district, and all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Defendant, Mary Susan Pine, is a regular and vocal anti-abortion protester at the Presidential Women's Center, located at 100 Northpoint Parkway in West Palm Beach, Florida.

~~6. On information and belief, Defendant resides in West Palm Beach, Florida.~~

FACTUAL BACKGROUND

7. The Presidential Women's Center provides women's reproductive healthcare services.

8. Defendant has engaged in anti-abortion protest activity outside the Presidential Women's Center for several years.

9. Defendant is one of two protesters who typically conducts her protest activity on the south side of Northpoint Parkway, which includes walking back and forth in the Presidential Women's Center's driveway.

10. Defendant has also intentionally stepped in front of cars as the drivers attempt to enter the driveway to the Presidential Women's Center to access the parking lot.

11. On November 19, 2009, Defendant physically obstructed a car by stepping in front of the car as it was attempting to enter the driveway to the Presidential Women's Center to access the parking lot.

12. Defendant then stopped and stood in front of the car as it was attempting to enter the driveway to the Presidential Women's Center to access the parking lot.

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13. The driver of the approaching car stopped to avoid striking Defendant.

14. A West Palm Beach Police Officer, who was in his vehicle conducting routine patrol in the area, observed Ms. Pine step in front of the car and stop, blocking it from entering the clinic parking lot.

15. During the time the car was standing still, in the driveway, no other cars could enter the driveway, and other cars on Northpoint Parkway had to drive around it, into the oncoming lane, to be able to proceed down the street.

16. When it became apparent to the police officer that the defendant was not going to move out of the driveway, the police officer parked his vehicle, got out, approached the driveway, and intervened so that the driver could enter the Presidential Women's Center parking lot.

17. The vehicle then proceeded into the Presidential Women's Center parking lot.

18. Ms. Pine then yelled at the officer, and told him "it was her right to do what she is doing."

19. The officer told Ms. Pine that she was in violation of Florida State Statute 316.2045(1)(2) (obstructing public, streets, and road) and of City Ordinance Chapter 78-1 and 78-427 (prohibiting impeding traffic flow entering a medical facility).

20. Defendant intentionally attempted to, and did, interfere with access to the Presidential Women's Center, by interfering with the driver's freedom of movement and making access to the clinic unreasonably difficult.

21. Defendant intentionally attempted to, and did, interfere with access to the

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Presidential Women's Center, by making the driver's access to the clinic hazardous.

22. Defendant intentionally attempted to, and did, interfere with access to the Presidential Women's Center by causing the car to stop in the clinic driveway, which blocked the driveway to any other cars whose drivers or passengers may have wished to enter the clinic driveway or parking lot.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

23. The United States incorporates herein the averments of paragraphs 11 through 22 hereof.

24. Defendant's conduct as described in paragraphs 11 through 22 hereof constitute a physical obstruction which interfered with a person who had been seeking reproductive health services.

25. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

26. The United States Attorney General is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

27. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess a civil penalty against a respondent no greater than \$10,000.00 for a nonviolent physical obstruction.

WHEREFORE, the United States Attorney General respectfully requests judgment in his favor and against Defendant, Mary Susan Pine, in the form of:

-5-

- A. An Order prohibiting Defendant, Mary Susan Pine, from entering any driveway leading into the Presidential Women's Center parking lot;
- B. An Order prohibiting Defendant, Mary Susan Pine, and her representatives, agents, employees and any others acting in concert or participation with her, from violating the Freedom of Access to Clinic Entrances Act; and
- C. A civil penalty assessment in the amount of \$10,000.00.

Respectfully submitted,


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-6-

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Veronica Harrell-James

Veronica Harrell-James

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SERVICE LIST

ERIC H. HOLDER, Jr., ATTORNEY GENERAL OF THE UNITED STATES

v.

MARY SUSAN PINE

Case No. 9:10-CV-80971-klr

United States District Court, Southern District of Florida

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No.: 10-CV-80971-RYSKAMP/VITUNAC

UNITED STATES ATTORNEY
GENERAL *Eric H. Holder, Jr.*,

Plaintiff,

v.

MARY SUSAN PINE,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on defendant Mary Susan Pine's motion for summary judgment [**DE 66**] filed on September 9, 2011. The Attorney General filed a response in opposition [**DE 75**] on October 7, 2011. Ms. Pine replied [**DE 82**] on October 24, 2011. A hearing was held on November 8, 2011. This matter is ripe for adjudication.

I. Facts

United States Attorney General Eric H. Holder, Jr. initiated the instant action against Ms. Pine on August 18, 2010. *See* [**DE 1**]. The amended complaint [**DE 30**] asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248, based on events which occurred on November 19, 2009. The relevant facts are summarized as follows:

A. Background

Ms. Pine is a pro-life advocate who believes, based on her past unfortunate experience with abortion, that women who are considering abortion should be made aware of the available alternatives and assistance programs. *See* Pine Dep. [**DE 66-1**] at 5-14. In order to accomplish

her mission, Ms. Pine founded a non-profit organization called “F.A.C.E.” which stands for Faith, Action, Counseling and Education.¹ *Id.* at 5. Ms. Pine, through F.A.C.E., organizes and participates in pro-life demonstrations and projects such as setting up “truth booths” which show the different stages of a child’s development. F.A.C.E. also offers services such as free pregnancy testing and sonograms, as well as post-pregnancy assistance to mothers. *Id.* at 5-13, 19. Ms. Pine also engages in what she refers to as “sidewalk counseling” at the Presidential Women’s Center (the “PWC”) located in West Palm Beach, Florida. *Id.* at 16-17, 20-21. The PWC is a clinic which provides reproductive health services to women, including abortions, gynecological exams, sterilization procedures, and pregnancy testing. *Reis Dep.* [DE 66-5] at 20-21. The PWC also provides non-pregnancy related services such as HIV testing. *Id.* Additionally, women often enter the PWC to obtain information about the services available to pregnant women in the community. *Id.* at 42-43.

Ms. Pine has consistently conducted her sidewalk counseling on the public sidewalk in front of the PWC every week since it moved to its current location on Northpoint Parkway in or about 2001. [DE 66-1] at 16, 34. Ms. Pine’s sidewalk counseling generally consists of approaching vehicles and pedestrians entering and exiting the PWC’s parking lot, engaging in conversations about abortion, and offering information and literature about “life-affirming” alternatives to abortion and the resources available to pregnant women. *Id.* at 19, 21-25. Ms. Pine uses this method instead of holding up protest signs because she believes that being friendly and offering help to people is a more effective means of changing people’s minds about abortion. *Id.* at 18. Sometimes people stop and accept her literature; many people do not. *Id.* at 21, 30. Vehicle passengers who do not wish to receive Ms. Pine’s literature generally continue to drive

¹ According to Ms. Pine, the name “F.A.C.E.” is merely coincidental and has nothing to do with the FACE legislation. *Id.* at 10.

past her without stopping. *Id.* at 18-19, 21, 33, 35. According to Ms. Pine, aside from holding out literature in her hand and motioning vehicles toward her, she does not attempt to stop oncoming vehicles, and she ceases her efforts once the person indicates he or she does not wish to receive Ms. Pine's information. *Id.* at 18-23. It is undisputed that Ms. Pine has never used obscenities or physical threats while conducting sidewalk counseling at the PWC. [DE 66-5] at 22-23.

Vehicles are able to enter and exit the PWC's parking lot through two driveways. *See* Pine Decl. [DE 66-6]. The designated entrance, which is marked with an "Entrance" sign, is accessible from a private service road which also services other businesses such as restaurants and stores. *See id.*; Pleasant Dep. [DE 66-12] at 5. Sidewalk counseling is not permitted at this entrance because the access road is private property. Ms. Pine therefore conducts her counseling activities on the public sidewalks near the PWC's designated exit driveway which leads onto Northpoint Parkway. [DE 66-1] at 21, 22, 37. Despite the fact that the exit driveway, which is approximately thirty-six feet wide, is clearly marked with a "Do Not Enter" sign and a sign directing drivers to the designated entrance, drivers sometimes use the exit as an entrance. *Id.* at 38; [DE 66-12] at 5; [DE 66-8, DE 66-9]. Ms. Pine is thus able to approach vehicles both entering and exiting the PWC from this location.

In addition to those seeking services at the PWC, the exit driveway is also used by people delivering food and mail, as well as people seeking directions to other businesses. *Id.* at 29-30, 35; Willoughby Dep. [DE 66-13] at 2. According to Ms. Pine, she approaches and solicits all vehicles which pass through, regardless of their purpose, including police officers and the food delivery man. [DE 66-1] at 27-28, 35-36; [DE 66-13] at 4-6. She does this because "she does

not always know why they are there but she wants everyone to know about the life-affirming resources and information she offers.” [DE 66] at 9.

B. The Conduct at Issue

On November 19, 2009, Ms. Pine was engaged in sidewalk counseling at the PWC. [DE 66-1] at 33. This day was significant to Ms. Pine because it marked the anniversary of the abortion she had many years ago. *Id.* West Palm Beach Police Officer Sanjay Raja was on patrol that day, and he had positioned himself so that he could observe Ms. Pine from a distance of approximately 200-300 feet. Raja Dep. [DE 66-14] at 6, 10. According to Officer Raja’s deposition testimony and his written investigation report [DE 66-15], a green sedan began to enter the PWC premises through the exit driveway. As soon as Ms. Pine noticed the sedan, she “quickly started to walk faster towards the car” and stopped at the front side, causing the vehicle to stop. [DE 66-14] at 2-3; [DE 66-15] at 3. Immediately after the vehicle came to a stop, Ms. Pine approached the driver’s window. The driver rolled the window down, and Ms. Pine proceeded to solicit the male driver and the female passenger. [DE 66-15] at 3. At some point during the conversation, Ms. Pine handed the passengers a pamphlet through the open driver’s side window. [DE 66-14] at 3, 23. Although Officer Raja could see that Ms. Pine was speaking to the passengers, he could not hear what she was saying. *Id.* at 16.

According to Officer Raja, the stopped sedan was blocking the flow of traffic on the exit driveway as well as traffic traveling on Northpoint Parkway. *Id.* at 2-3. Officer Raja noticed one vehicle which had to drive around the sedan in order to continue on Northpoint Parkway. *Id.* at 2, 12. Officer Raja approached the sedan and instructed the driver to proceed into the parking lot.² *Id.* at 12-14, 23. The driver immediately took the pamphlet from Ms. Pine and proceeded

² Officer Raja did not specify how long Ms. Pine spoke with the passengers before he intervened. He merely testified that the conversation was “not long,” and that “[i]t wasn’t a significant amount of time.” *Id.* at 16.

to park. *Id.* at 12-14, 23. Ms. Pine yelled at Officer Raja, insisting that she was within her rights. *Id.* at 14. Officer Raja responded by informing Ms. Pine she was violating city and state traffic laws which prohibit impeding traffic entering a medical facility. *Id.* No citations were issued to either Ms. Pine or the driver. [DE 66-14] at 19. Rather, Officer Raja wrote an incident/investigation report and informed the President of the PWC, Mona Reiss, of the situation. *Id.* at 20-22; [DE 66-5] at 35; [DE-66-15]. Officer Raja did not obtain the identities of the passengers or note the vehicle's license plate number in his report, and neither Ms. Pine nor Officer Raja noticed whether the passengers actually entered the PWC building.

The PWC is equipped with a video surveillance system which covers the exit driveway area where the incident occurred. [DE 66-5] at 35. The PWC's patient records consists of a computer database which stores information for patients who have undergone surgery, as well as a daily sign-in sheet for patients who have scheduled appointments to receive services. *Id.* at 31-33. However, certain patients such as those seeking only information or pregnancy testing are not required to sign in. *Id.* The sign-in sheets are destroyed each week, and the video surveillance tapes are destroyed every three weeks pursuant to PWC policy. *Id.* at 29, 31-32.

The day after the incident, November 20, 2009, representatives from the Department of Justice met with the PWC staff, Officer Raja, and another police officer to discuss the incident and determine whether Ms. Pine was in violation of FACE. [DE 66-5] at 26-27. The Government concedes that at no time during or after this meeting did it request the PWC to produce any documents or preserve evidence. *Id.* at 26-27; Ford Dep. [DE 66-17] at 3. The sign-in sheets and video surveillance tapes from date of the incident were thus destroyed pursuant to the PWC's document maintenance policy, making Officer Raja the only witness

(aside from Ms. Pine) to the events at issue. The passengers' identities and their purpose for entering the PWC premises remain unknown.

II. Standard on Motion for Summary Judgment

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)(1)(A)). Where the non-moving party bears the burden of proof on an issue at trial, the movant may meet its burden by “pointing out to the district court that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 325.

After the movant has met its burden under Rule 56(c), the burden shifts to the non-moving party to establish that there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). Although all reasonable inferences are to be drawn in favor of the non-moving party, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), he “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586. The non-moving party may not rest upon the mere allegations or denials of the adverse party’s pleadings, but instead must come forward with “specific facts showing that there is a *genuine issue for trial*.” *Id.* at 587 (citing Fed. R. Civ. P. 56(e)). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Id.* “A mere scintilla of evidence

supporting the opposing party's position will not suffice; there must be a sufficient showing that the jury could reasonably find for that party." *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990). If the non-moving party fails to make a sufficient showing on an essential element of his case on which he has the burden of proof, the moving party is entitled to a judgment as a matter of law. *Celotex Corp.*, 477 U.S. at 323.

III. Analysis

FACE was enacted by Congress in 1993 as a response to nationwide violence arising from protests and demonstrations on the highly controversial topic of abortion. S. Rep. No. 103-117, at 3-12 (1993), *available at* 1993 WL 286699; H.R. Rep. No. 103-306, at 2-3 (1993), *reprinted in* 1994 U.S.C.C.A.N. 699, *available at* 1993 WL 465093; *Cheffer v. Reno*, 55 F.3d 1517, 1518 (11th Cir. 1995). FACE protects a person's right to obtain or provide "reproductive health services," including abortions, by providing civil and criminal remedies to those who have been aggrieved by the prohibited conduct. 18 U.S.C. § 248. To prevail on a FACE claim, the plaintiff must prove that the defendant (1) by force or threat of force or by physical obstruction; (2) intentionally injured, intimidated or interfered with or attempted to injure, intimidate or interfere with any person; (3) because that person is or has been obtaining or providing reproductive health services, or in order to intimidate such person or any other person or any class of persons from obtaining or providing reproductive health services.³ *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 680-81 (11th Cir. 2001) (quoting 18 U.S.C. §§ 248(a)(1)⁴).

³ Other cases separate FACE into four elements by splitting the second element in two. *See, e.g., Lotierzo v. Woman's World Med. Ctr., Inc.*, 278 F.3d 1180, 1182 (11th Cir. 2002) (FACE plaintiff must prove (1) force, threat of force, or physical obstruction; (2) done with the intent to; (3) injure, intimidate, or interfere with a person or attempt to do so; (4) because that person has sought or provided, or is seeking or providing, or will seek or provide, reproductive health services.). *See also United States v. Mahoney*, 247 F.3d 279, 282 (D.C. Cir. 2001).

⁴ FACE provides civil remedies and criminal penalties against anyone who "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or

Ms. Pine argues that summary judgment should be granted in her favor on grounds that the Government has not met its burden of proving: (1) that Ms. Pine physically obstructed or interfered with the passengers in the sedan; and (2) that the passengers were seeking reproductive health services at the PWC. With respect to the latter argument, the parties vehemently disagree as to whether a FACE claim requires such proof at all. According to the Government, it is only required to prove that Ms. Pine, the accused, acted with the requisite intent; whether or not the passengers were in fact seeking reproductive health services is irrelevant. Ms. Pine argues that a valid FACE claim exists only upon proof that the persons allegedly aggrieved are members of the statute's protected class.

Ms. Pine further argues for an adverse inference against the Government for violating its duty to preserve critical evidence relating to this case, namely the PWC's video surveillance tapes and sign-in sheets from the date of the incident. Finally, Ms. Pine argues that FACE's civil penalties are unconstitutional on its face, and that FACE as applied to the facts of this case violates the First Amendment of the United States Constitution. The Court will address each argument in turn.

A. Spoliation of Evidence

District courts have considerable discretion in imposing sanctions based on a spoliation theory. *Flury v. Daimler Chrysler Corp.*, 427 F.3d 939, 943 (11th Cir.2005). A party seeking sanctions "must establish ... that the destroyed evidence was relevant to a claim or defense such that the destruction of that evidence resulted in prejudice." *Eli Lilly and Co. v. Air Exp. Intern. USA, Inc.*, 615 F.3d 1305, 1318 (11th Cir. 2010) (citing *Flury*). In order to obtain an adverse inference, the moving party must also "establish that the missing evidence is *crucial* to their

interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services[.]" 18 U.S.C. § 248(a)(1).

ability to prove their prima facie case,” *Point Blank Solutions, Inc. v. Toyobo Am., Inc.*, No. 09-61166-CIV, 2011 WL 1456029, at *1 (S.D. Fla. Apr. 5, 2011), and that the opposing party’s failure to preserve the evidence was “predicated on bad faith.” *Bashir v. Amtrak*, 119 F.3d 929, 931 (11th Cir. 1997). Mere negligence is insufficient. *Id.*

In this case, the surveillance tapes and the sign-in sheets were destroyed pursuant to the PWC’s routine document maintenance policies. Even assuming that the Government had a duty to preserve the evidence at issue, which was created and controlled solely by the PWC,⁵ Ms. Pine has not set forth evidence establishing that the Government was aware of the PWC’s policies, or that the evidence even existed prior to its destruction. Although one might suspect that the Government was in fact aware of such facts, and that it purposely neglected to prevent destruction of the sign-in sheets and surveillance tapes because they were detrimental to its FACE claim, mere speculation is insufficient to support a finding of bad faith. The Government’s failure to take the necessary steps to prevent the destruction of potentially critical evidence was indeed negligent, and perhaps even grossly negligent. Absent a showing of bad faith, however, an adverse inference is not warranted.

Furthermore, Ms. Pine has failed to demonstrate that the missing evidence was necessary to her case. With respect to the surveillance tapes, assuming the cameras actually captured the incident in question, the videotapes would not have provided much information beyond what is already in the record. At most, they would have revealed exactly where Ms. Pine’s body was located with respect to the vehicle, how long the vehicle was stopped before she approached the driver to initiate conversation, and how long the conversation lasted before she was interrupted

⁵ It is well-established that parties have a duty to preserve evidence upon anticipation of litigation. For evidence which is owned or controlled by a third party, some circuits impose a duty to give the opposing party notice of access to the evidence or of its possible destruction. *See, e.g., Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001). Ms. Pine has not provided, nor is the Court aware of, any authority indicating that this Circuit imposes such a duty.

by Officer Raja. As discussed in further detail *infra*, these facts, though relevant, are not determinative. With respect to the PWC sign-in sheets, the absence of the passengers' names would not necessarily prove that they were not seeking reproductive health services at the PWC. The passengers very well could have been seeking reproductive health services which do not require sign-in, such as pregnancy testing. In any event, as discussed at length *infra*, the Government is not required to prove that the passengers were in fact seeking reproductive health services. Although such proof may have relieved the Court from its lengthy discussion of this issue, it is not necessary to Ms. Pine's case. Based on the foregoin reasons, the Court denies Ms. Pine's request for an adverse inference.⁶

B. Standing

The parties' disagreement about whether the Government is required to prove that the passengers entered the PWC premises in order to obtain reproductive health services, though couched in terms of the Government's *prima facie* case, also implicates issues with respect to standing. The question arises as to whether a valid FACE claim presupposes a victim who is a member of the statute's protected class, *i.e.* whether the Government's standing depends on proof that aggrieved person is a provider or obtainer of reproductive health services. In light of the various other reasons the passengers may have had for entering the PWC premises (e.g. to ask for directions), if the Court finds that such proof is required then the Government lacks standing and the remaining issues become moot.

⁶ It is rather curious that the Department of Justice was able to meet with the PWC staff and police officers the very next day after the alleged violation occurred. It is also curious that the Government failed to make any efforts to obtain the identities of the passengers who are the alleged victims in this case—the Court finds it hard to believe that the Government was completely unaware of the existence of the sign-in sheets and video surveillance system. The Court can only wonder whether this action was the product of a concerted effort between the Government and the PWC, which began well before the date of the incident at issue, to quell Ms. Pine's activities rather than to vindicate the rights of those allegedly aggrieved by Ms. Pine's conduct. If this is the case, the Court would be inclined to sanction the Government with, at a minimum, an adverse inference. Given the absence of further evidence substantiating the Court's suspicions, the Court is not authorized to do so.

The general rule is that an individual seeking protection under federal civil rights laws must allege and prove that he is a member of the statute's protected class. *See, e.g.*, App. to 29 C.F.R. Pt. 1630, App. ("As with other civil rights laws, individuals seeking protection under these anti-discrimination provisions of the ADA generally must allege and prove that they are members of the 'protected class,'" which typically means they must meet the statutory definition of "disability.") There are, however, exceptions to this general rule. For example, the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601 *et seq.*, one of the statutes on which FACE was modeled,⁷ provides a private right of action to an "aggrieved person." *See* 42 U.S.C. § 3613. "Rather than define 'aggrieved person' as a protected class under the act, the statute defines 'aggrieved person' as 'any person who—(1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.'" *Wasserman v. Three Seasons Ass'n No. 1, Inc.*, 998 F. Supp. 1445, 1447 (S.D. Fla. 1998) (quoting 42 U.S.C. § 3602(i)). Any person who fits within this definition has standing to bring a FHA claim regardless of whether that person is a member of the statute's protected class. *Id.*

FACE's legislative history reveals that not only was it designed to protect patients and physicians directly involved in the provision of reproductive health services, but it was also intended to protect clinic staff, persons assisting patients or staff, family members of patients, physicians, and clinic staff, as well as mere bystanders. S. Rep. No. 103-117, at 26. Unlike the FHA, however, FACE carves out from the general category of aggrieved persons a subcategory of those entitled to initiate a private action. Private rights of action under FACE are

⁷ FACE was modeled after several existing civil rights laws, including section 3631 of the FHA which prohibits the use of force or threats of force to willfully injure, intimidate, or interfere with a person's housing opportunities because of his or her race, color, religion, sex or national origin. H. Rep. No. 103-306, at 10.

limited to those “involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services.”⁸ 18 U.S.C. § 248(c)(1)(A). It is clear that if the passengers had initiated the instant action against Ms. Pine, they would in fact have to prove that they were involved in seeking or providing reproductive health services.

This action, however, was initiated by the United States Attorney General, in which case FACE provides different requirements for standing. The Attorney General has standing to bring a civil action under FACE where he has “reasonable cause to believe that any person or group of persons is being, has been, or may be injured by conduct constituting a violation of this section.” *Id.* § 248(c)(2)(A). Noticeably absent from this section is the limiting language contained within the section regarding private rights of action. The Attorney General may bring a FACE claim on behalf of any aggrieved person, regardless of whether such person is involved in providing or seeking reproductive health services. As such, the Government has standing in this case despite its lack of evidence regarding whether the passengers were seeking abortion services at the PWC.

C. The Government’s *Prima Facie* Case

1. Motive

The question remains as to whether the Government must prove that the passengers were involved in seeking or proving reproductive health services as part of its *prima facie* case. Motive is covered by the final element of a FACE claim, which courts consistently refer to as that of the *defendant’s* motive. *See, e.g., Roe*, 253 F.3d at 681. This element is satisfied upon proof that the defendant was “motivated by a desire to ‘prevent [a person] from obtaining reproductive health services.’” *Id.* “That is all the intent that the statute requires.” *United States*

⁸ This limitation applies only to actions such as this which are brought under subsection (a)(1). 18 U.S.C. § 248(c)(1)(A).

v. Weslin, 156 F.3d 292, 298 (2d Cir. 1998). *See also United States v. Balint*, 201 F.3d 928, 932 (7th Cir. 2000); *United States v. Lynch*, 104 F.3d 357 (2d Cir. 1996). This interpretation is also consistent with FACE’s legislative history,⁹ as well as other civil rights laws which focus solely on the motive of the defendant. *See, e.g., Latrece Lockett v. Choice Hotels Int’l, Inc.*, 315 F. App’x 862, 868-69 (11th Cir. 2009) (focus of Title VII retaliation claim is on the beliefs of the defendant/employer rather than that of the plaintiff/employee); *Fogleman v. Mercy Hosp., Inc.*, 283 F.3d 561, 565 (3d Cir. 2002) (Because Title VII forbids an employer from “taking adverse action against an employee for discriminatory reasons, it does not matter whether the factual basis for the employer’s discriminatory animus was correct and that, so long as the employer’s specific intent was discriminatory, the retaliation is actionable.”). Where the defendant acted with the requisite motive, a FACE violation may occur regardless of whether the offending conduct was directed toward a person seeking or providing reproductive health services. For claims involving physical obstruction, as is the case here, there need not even be a victim at all. *See Balint*, 201 F.3d at 933.

Though the viability of a FACE claim ultimately depends on the motive of the defendant, under certain circumstances the Court may also consider the motive of the aggrieved person. For example, in *Roe v. Aware Woman Ctr. for Choice, Inc.*, *supra*, one of the issues before the Eleventh Circuit was whether the plaintiff, a patient at a reproductive health clinic, adequately pleaded the motive element of her FACE claim.¹⁰ The plaintiff’s claim was based on allegations that the defendant physicians refused her requests to stop her abortion and call an ambulance,

⁹ *See* H.R. Rep. No. 103-306, at 11 (“[FACE] requires that the offender be motivated by the involvement of the victim or others in obtaining or providing reproductive health services”); S. Rep. No. 103-117, at 24 (a FACE violation occurs “only if the offender has acted with the requisite motive”).

¹⁰ The facts of *Roe* are decidedly unique and inapplicable to the instant case. However, the Court would be remiss not to discuss *Roe* as it is one of the few Eleventh Circuit cases which discuss the motive element of FACE and is heavily relied on by both Ms. Pine and the Government.

and instead restrained her in order to complete the procedure. The court considered both of the plaintiff's possible reasons for wanting to leave the clinic, either to save the pregnancy or to have the abortion completed at a hospital, and found that if the physicians restrained plaintiff to prevent her from seeking either of these services, then they had acted with the requisite motive because both services are "reproductive health services." *Roe*, 253 F.3d at 682. However, the court declined to draw this inference and upheld the dismissal of the plaintiff's complaint because it was also possible that the physicians were motivated by a desire to protect the plaintiff's life and health and to prevent further injury. *Id.* at 682-84.

Contrary to Ms. Pine's interpretation, *Roe* does not hold that proof of the aggrieved person's motive or intent is a separate element of a FACE claim. Rather, *Roe*'s holding demonstrates that the failure to include specific allegations regarding the defendant's motive is fatal, which lends further support to the principle that a FACE claim ultimately depends on the motive of the defendant rather than the aggrieved person.¹¹ The Court does not necessarily disagree that requiring proof of aggrieved person's motive or intent would serve to more narrowly tailor the statute to achieve its purpose of protecting women's right to obtain reproductive health services. However, the Court is not authorized to impose requirements beyond those contained within the statutory text. The Court need only determine whether the Government has set forth sufficient evidence that Ms. Pine, the accused, acted with the requisite intent.

¹¹ Ms. Pine also relies on *United States v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996), wherein the Eighth Circuit, in dicta, concluded that the defendant's physical assault of a clinic's maintenance supervisor constituted a FACE violation. The court based its conclusion on the finding that a maintenance supervisor is a provider of reproductive health services within the meaning of FACE. Ms. Pine argues that the fact that the *Dinwiddie* court found it necessary to determine this issue means that a FACE claim requires proof that the aggrieved person is a member of the statute's protected class. However, *Dinwiddie* involves allegations of force and threats of force which require an actual victim, whereas this case involves a claim of physical obstruction. In any event, *Dinwiddie* is not conclusive on this issue, nor does its dicta outweigh the significant authority, including that of the Eleventh Circuit, demonstrating that a FACE claim requires proof of only the defendant's motive.

It is undisputed that Ms. Pine holds deeply-rooted personal beliefs against abortion, and that her mission is to provide women with information about the available pro-life alternatives to abortion and pregnancy assistance programs. Although Ms. Pine also concedes that she was conducting sidewalk counseling at the PWC on the day of the incident, the Government has offered no evidence regarding the actual contents of Ms. Pine's conversation with the passengers. In fact, Ms. Pine's deposition transcript reveals that the Government did not even bother to ask what was said. The record merely reveals that Ms. Pine's sidewalk counseling generally consists of attempts to provide "life-affirming" information to anyone willing to receive it, including the mailman, delivery men, police officers, and others who obviously are not seeking abortion services, and that Ms. Pine does not press on once she realizes her solicitation efforts are not welcome. It is evident from these facts that Ms. Pine's ultimate goal is to change the minds of women considering abortion. However, attempting to influence people by peacefully sharing information about abortion alternatives with the general public hardly amounts to a desire to stand in the way of a person from obtaining reproductive health services, and the Court is not authorized to make any assumptions which are not substantiated by evidence in the record. The Court thus finds that the Government has failed to provide evidence sufficient to prove that Ms. Pine acted with the requisite motive.

2. Physical Obstruction¹²

With respect to the first element of a FACE claim, Ms. Pine asserts several arguments that her actions do not constitute a physical obstruction as a matter of law, none of which have been squarely dealt with in this Circuit. First, Ms. Pine asserts that the passengers did not have a

¹² It is undisputed that Ms. Pine did not use either force or threat of force against the passengers. It is also undisputed that Ms. Pine neither injured nor intimidated the passengers. The issue is whether Ms. Pine's conduct constitutes an interfering "physical obstruction."

legal right to enter the PWC parking lot through the exit driveway, citing certain provisions under Florida state traffic law which makes it a non-criminal moving violation for a driver to disobey a traffic control device such as an “Exit only” sign. Ms. Pine further asserts that the passengers could have entered the PWC through the designated entrance rather than the exit driveway. Finally, Ms. Pine argues that her actions cannot constitute a physical obstruction because her interaction with the occupants of the sedan was “consensual.”

FACE provides that “[t]he term ‘physical obstruction’ means rendering impassable ingress to or egress from a facility that provides reproductive health services..., or rendering passage to or from such a facility...unreasonably difficult or hazardous.” 18 U.S.C. § 248(e)(4). When interpreting a statute, the Court “must always yield to plain and unambiguous statutory text,” *Polkey v. Transtecs Corp.*, 404 F.3d 1264, 1268 (11th Cir. 2005), which reveals that FACE contains no exception for ingress or egress constituting a moving violation under state law or where alternate methods of ingress or egress are available. Neither does FACE contemplate the subjective mind state of the persons allegedly obstructed. Rather, the physical obstruction element requires an objective analysis of the defendant’s conduct and its effects on the alleged victims. *See* 18 U.S.C. § 248(e)(4); *New York ex rel. Spitzer v. Operation Rescue Nat’l*, 273 F.3d 184, 194 (2d Cir. 2001). Furthermore, other courts have declined to read additional limitations or exceptions into the definition of physical obstruction. *See, e.g., Mahoney*, 247 F.3d at 284 (“The statute does not distinguish between frequently used and infrequently used means of egress, and we decline to write in such a distinction.”); *United States v. Soderna*, 82 F.3d 1370, 1377 (7th Cir.1996) (broadly construing FACE so as to preclude arguments that a physical obstruction cannot occur where only one entrance is blocked). Based on these principles, the fact that the passengers sought entry through the PWC’s exit driveway rather than

the designated entrance, and the fact that the passengers were not upset by or may have even been receptive to Ms. Pine's solicitation, does not defeat the Government's FACE claim as a matter of law. These facts are merely relevant to overall determination of whether the passengers' ingress was rendered unreasonably difficult or hazardous.¹³

The Government primarily relies on the Second Circuit case *Spitzer v. Operation Rescue National* in support of its argument that Ms. Pine's temporary stoppage of the sedan is sufficient constitute a physical obstruction under FACE. This case is analogous only to the extent that the protestors in *Spitzer* walked across driveways in order to stop the progress of oncoming cars. Unlike Ms. Pine, the *Spitzer* defendants engaged in other protest activities such as shouting at and standing in front of pedestrians approaching clinics, standing directly in front of clinic doors in order to block entry and communicate with patients entering and exiting the building, and threatening clinic workers, including one defendant who told clinic employees that they would die before the day ended. In upholding the preliminary injunction issued against the defendants, the court noted that their behavior was apparently "so extensive that it rendered building access unreasonably difficult." *Spitzer*, 273 F.3d at 194.

Here, although the parties dispute the exact location of Ms. Pine's body with respect to the vehicle, the record reveals that Ms. Pine approached the driver side window *immediately* after the vehicle stopped, and engaged the passengers in a seemingly consensual conversation. Within a matter of seconds, Officer Raja intervened and the driver was able to immediately proceed through the PWC driveway. This hardly rises to the level of extensive conduct engaged in by the *Spitzer* defendants. Ms. Pine's conduct was no more obstructive than if Officer Raja

¹³ The Court also rejects Ms. Pine's argument that her actions do not constitute a physical obstruction because other vehicles had room to drive around the stopped sedan. The relevant issue in this case is whether Ms. Pine's actions physically obstructed the passengers of the sedan, and not anyone else.

himself had stopped the sedan and instructed the driver to turn around and enter through the designated entrance rather than the exit driveway. Moreover, the Court cannot conceive that such an innocuous incident is the type of obstruction Congress had in mind when it enacted FACE. The Court's interpretation of the law is guided "not just by a single sentence or sentence fragment, but by the language of the whole law, and its object and policy." *Balint*, 201 F.3d at 933. Moreover, courts must use common sense and should not interpret the law in a way which yields an absurd result. *See United States v. Haun*, 494 F.3d 1006, 1010 n.3 (11th Cir. 2007). Based on these principles, the Court finds that the evidence could not lead a rational jury to find that Ms. Pine's conduct constituted a physical obstruction within the meaning of FACE.

3. Interference

To the extent that Ms. Pine's arguments with respect to the physical obstruction element also apply to the second element of the Government's FACE claim (whether Ms. Pine intentionally interfered with a person), the Court finds that her arguments fail for the same reasons. FACE provides that the term "interfere with" means "to restrict a person's freedom of movement." 18 U.S.C. § 248(e)(2). Just as with physical obstruction, FACE's definition of interference does not provide for any exceptions, nor does it require evidence related to the subjective mental state of the person interfered with.¹⁴ A FACE plaintiff need only prove that the "defendant intended to restrict the person or persons' freedom of movement." *Roe*, 253 F.3d at 681. In fact, the defendant's efforts do not even need to be successful, as FACE also prohibits attempts to interfere with a person. 18 U.S.C. § 248(a)(1).

¹⁴ Unlike cases such as this which are based on allegations of interference by means of physical obstruction, FACE claims based on allegations that the defendant either injured or intimidated a person through force or threats of force generally require evidence of the aggrieved person's subjective mental state. *See Spitzer*, 273 F.3d at 196 (proof of statement's effect on its recipient is relevant to determining whether the statement is a threat); *Dinwiddie*, 76 F.3d 913 (considering testimony regarding victims' reaction to defendant's statements in order to determine whether they were intimidated). *See also* 18 U.S.C. § 248(e)(3).

In this case, it is undisputed that Ms. Pine approached the sedan in order to speak with and provide information about pro-life abortion alternatives to the passengers, and that the sedan stopped. Ms. Pine has provided testimony that she does not try to stop vehicles or pedestrians who are not interested in receiving her information, and the Government has not provided any evidence to the contrary. The Government has therefore failed to set forth sufficient evidence that Ms. Pine intended to restrict the passengers' freedom of movement, and the interference element of its FACE claim fails as well.

In sum, the record almost entirely devoid of evidence that Ms. Pine acted with the prohibited motive and intent or that Ms. Pine engaged in any unlawful conduct. The Government has failed to create a genuine issue for trial on all three elements of its FACE claim, and Ms. Pine is entitled to judgment as a matter of law.

D. Constitutional Implications

The Court further finds that a contrary holding would violate Ms. Pine's right to free speech guaranteed by the First Amendment of the United States Constitution. Congress, undoubtedly aware of FACE's potential First Amendment implications, specifically provided that FACE shall not be construed "to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution." 18 U.S.C. § 248(d)(1). The legislation has been upheld in spite of its incidental burdens on expressive conduct because it furthers the important government interest of protecting a woman's constitutional right to obtain reproductive health services such as abortion.¹⁵ *Dinwiddie*, 76 F.3d at 923-24. Although facially constitutional,

¹⁵ Intermediate scrutiny applies to a content-neutral law which incidentally burdens expressive conduct. *Dinwiddie*, 76 F.3d at 923. "A statute survives intermediate scrutiny 'if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that

Courts must remain mindful of the fact that an “erroneous application of [FACE] threatens to impinge legitimate First Amendment activity,” which may even include aggressive forms of protest activity such as yelling and approaching persons. *Spitzer*, 273 F.3d at 195. A person is entitled to express his or her views on abortion so long as by doing it does not interfere with another’s right to obtain an abortion.

In this case, Ms. Pine was on a public driveway conducting a peaceful demonstration on an important topic of public concern, which is precisely the type of conduct Congress excepted from FACE’s reach. Stretching the terms of FACE to apply to this case so that delaying a vehicle for a matter of seconds constitutes an unlawful physical obstruction, or so that a desire to provide people with information about alternatives to abortion constitutes an unlawful motive, would unjustifiably impinge on Ms. Pine’s First Amendment rights. This is especially true in light of the complete absence of evidence that the passengers, who were seemingly receptive to Ms. Pine’s solicitation, were seeking reproductive health services at the PWC. There is thus no competing constitutional right to justify the burden placed on Ms. Pine’s right of expression and hold her liable for a hefty civil penalty of up to \$10,000.¹⁶ The Court is at a loss as to why the Government chose to prosecute this particular case in the first place.

interest.” *Id.* at 923-24 (quoting *United States v. O’Brien*, 391 U.S. 367, 377 (1968)). “FACE easily passes this test,” *id.* at 924, and has survived numerous First Amendment challenges. *See, e.g., U.S. v. Wilson*, 154 F.3d 658, 662 (7th Cir. 1998) (“the conduct prohibited by FACE is not protected by the First Amendment”); *Unterburger*, 97 F.3d 1413; *Cheffer*, 55 F.3d 1517; *Soderna*, 82 F.3d 1370; *Am. Life League, Inc. v. Reno*, 47 F.3d 642 (4th Cir. 1995); *Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002).

¹⁶ Ms. Pine also argues that the civil penalties authorized under 18 U.S.C. § 248(c)(2)(B) are facially unconstitutional because they criminal rather than civil in nature, and therefore deprive individuals of the constitutional protections afforded to criminal defendants. Having already concluded that the Government has failed to establish its *prima facie* case, and that FACE as applied would violate Ms. Pine’s First Amendment rights, the Court declines to analyze the constitutionality of FACE’s civil penalties.

IV. Conclusion

In conclusion, the Court finds that the Government has failed to set forth *prima facie* evidence on all three elements of its FACE claim—that Ms. Pine’s conduct created a physical obstruction, that Ms. Pine intended to interfere with the passengers’ freedom of movement, and that Ms. Pine was motivated by a desire to prevent a person from obtaining reproductive health services. Further, imposing liability upon Ms. Pine under the circumstances of this case would unjustifiably burden Ms. Pine’s rights under First Amendment of the United States Constitution. For these reasons, Ms. Pine is entitled to judgment as a matter of law.

The Court has carefully considered the motion, response, reply, applicable law, and pertinent portions of the record. For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that defendant Mary Susan Pine’s motion for summary judgment [DE 66] is **GRANTED**. Final judgment will be entered by separate order.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 13 day of January, 2012.

/s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

FILED US
DISTRICT COURT CLERK
WESTERN DISTRICT OF KY
10 DEC 21 AM 11:07

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE
UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID HAMILTON,

Defendant.

CIVIL ACTION

No.

3:10CV-759-C

COMPLAINT

Eric H. Holder, Jr., Attorney General of the United States of America (the "United States Attorney General"), by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), enacted into law May 26, 1994, as follows:

1. In bringing this action, the United States Attorney General has reasonable cause to believe: (1) Defendant, David Hamilton, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured, intimidated and interfered with by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States Attorney General has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

-2-

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that Defendant resides in this judicial district, and all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Defendant, David Hamilton, is a regular anti-abortion protester at the EWM Women's Surgical Center, located at 138 West Market Street in Louisville, Kentucky.

6. On information and belief, Defendant resides in Louisville, Kentucky.

FACTUAL BACKGROUND

7. The EMW Women's Surgical Center provides women's reproductive healthcare services.

8. Defendant regularly engages in anti-abortion protest activity outside the EMW Women's Surgical Center.

9. On January 30, 2010, Defendant used force against a volunteer clinic escort while that volunteer was escorting a patient into the EMW Women's Surgical Center.

10. Defendant attempted to, and did, injure, intimidate and interfere with persons attempting to obtain and provide reproductive health services from the EMW Women's Surgical Center.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

11. The United States incorporates herein the averments of paragraphs 1 through 10 hereof.

12. Defendant's conduct as described in paragraphs 9 through 10 hereof constitute force

-3-

which injured, intimidated and interfered with persons seeking to obtain and provide reproductive health services.

13. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

14. The United States Attorney General is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

15. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain statutory compensatory damages on behalf of persons aggrieved by Defendant's actions in violation of FACE.

16. The United States Attorney General is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess a civil penalty against a respondent no greater than \$15,000.00 for a first violation other than a nonviolent physical obstruction.

WHEREFORE, the United States Attorney General respectfully requests judgment in his favor and against Defendant, David Hamilton, in the form of:

- A. An Order permanently prohibiting Defendant, David Hamilton, from approaching within 8 feet of another person obtaining or providing reproductive health services (including, but not limited to, volunteer "escorts"), unless such person consents, within a radius of 100 feet from any entrance to the EMW Women's Surgical Center;

-4-

- B. An Order permanently prohibiting Defendant, David Hamilton, and his representatives, agents, employees and any others acting in concert or participation with him, from violating the Freedom of Access to Clinic Entrances Act; and
- C. Statutory compensatory damages to the victim of Defendant David Hamilton's activities in violation of FACE on January 30, 2010, as averred in paragraphs 9 and 10 above. The United States seeks statutory compensatory damages in the amount of \$5,000.
- D. A civil penalty assessment in the amount of \$15,000.00.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
Special Litigation Section



AARON FLEISHER
Trial Attorney
United States Department of Justice
Civil Rights Division
Special Litigation Section

-5-

950 Pennsylvania Ave., N.W.
Washington, DC 20530
(202) 307-6457
(202) 514-6903 (fax)
aaron.fleisher@usdoj.gov

CIVIL COVER SHEET

44 (Rev. 11/04)

This 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) **PLAINTIFFS**
 UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Aaron Fleisher, U.S. Dept. Of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530, (202) 307-6457

WESTERN DISTRICT OF MISSOURI
 10 DEC 21 AM 11:06

DEFENDANTS
 David Hamilton

3:10CV-759-C

County of Residence of First Listed Defendant Jefferson County
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

PTF	DEF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

I. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 18 U.S.C. § 248

Brief description of cause:
 Use of force to intimidate person providing reproductive health services

II. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____ injunctive relief _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

III. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 12/20/2010

SIGNATURE OF ATTORNEY OF RECORD: *Aaron Fleisher*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Western District of Kentucky

UNITED STATES OF AMERICA

Plaintiff

v.

DAVID W. HAMILTON

Defendant

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)
)
)
)

Civil Action No. *3:10CV-759-C*

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

DAVID W. HAMILTON
218 STILZ AVE.
LOUISVILLE, KENTUCKY 40206

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

AARON FLEISHER
UNITED STATES DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20530

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

USM-285 is a 5-part form. Fill out the form and print 5 copies. Sign as needed and route as specified below.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See "Instructions for Service of Process by U.S. Marshal"


PLAINTIFF UNITED STATES OF AMERICA	COURT CASE NUMBER 3:10CV-759-C
DEFENDANT DAVID W. HAMILTON	TYPE OF PROCESS Summons and Complaint

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
 DAVID W. HAMILTON
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
 218 STILZ AVE., LOUISVILLE, KY 40206

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW AARON FLEISHER UNITED STATES DEPARTMENT OF JUSTICE 950 PENNSYLVANIA AVE., N.W. WASHINGTON, DC 20530	Number of process to be served with this Form 285	1
	Number of parties to be served in this case	1
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold Fold

Signature of Attorney other Originator requesting service on behalf of: 	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER 202/307-6457	DATE 12/20/10
--	---	----------------------------------	------------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. <i>(Sign only for USM 285 if more than one USM 285 is submitted)</i>	Total Process	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk	Date
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I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address (complete only different than shown above)	Date _____ Time _____ <input type="checkbox"/> am <input type="checkbox"/> pm
Signature of U.S. Marshal or Deputy	

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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REMARKS:

NOT TO BE FILED OF RECORD

Eric H. Holder, Jr. - Plaintiff

Civil Action No. 3:10-CV-759

v.

David Hamilton - Defendant

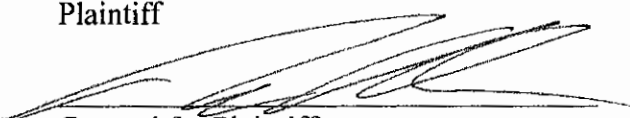
SETTLEMENT AGREEMENT

A settlement conference was conducted on Monday, January 7, 2013. The parties have reached a settlement as to all claims in this litigation. The parties agree that all the material terms of their agreement are set forth herein. The parties are to sign a formal Settlement Agreement and Release of all claims within 30 days that will contain the following material terms of their agreement which resolves all claims made, or which could have been made, in this litigation, including costs and attorney fees, against the parties or any of the parties' agents, employees, officers, heirs or assigns:

Payment by Defendant to Jane Fitts in the amount of \$2,500.00. Defendant does not admit any liability by this payment or otherwise.

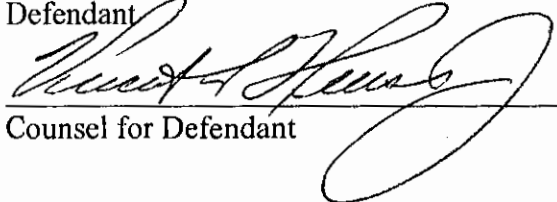
The parties understand and agree that the Magistrate Judge will report that this matter is settled and recommend that it be dismissed as settled, with prejudice, with leave to reinstate within 45 days after entry of the order of dismissal should the parties fail to fulfill the terms of this settlement agreement within that time period.

Plaintiff


Counsel for Plaintiff



Defendant


Counsel for Defendant

Hon. _____

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN C. KROACK,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, the United States of America, by and through its undersigned attorneys, brings this civil cause of action against Defendant, John C. Kroack under the Freedom of Access to Clinic Entrances Act (“FACE”), 18 U.S.C. § 248 (1994), and alleges as follows:

I. NATURE OF ACTION

1. On January 7, 2010, Defendant used force and physically obstructed the entrance to a reproductive health services facility with the intent to injure, intimidate and interfere with persons seeking and providing reproductive health services. Based upon these and other actions, in bringing this action, the United States has reasonable cause to believe: (1) Defendant has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured by Defendant’s conduct. Accordingly, the United States seeks, *inter alia*, a permanent injunction against Defendant from coming within 25 feet of the reproductive health services facility in question and a civil penalty.

1 **II. JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C.
3 § 248(c)(2), and 28 U.S.C. §§ 1331, 1345, and 1355.

4 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and
5 (b)(2), in that, upon information and belief, Defendant resides in this judicial district and all the events
6 giving rise to this complaint occurred in this judicial district.

7 **III. PARTIES**

8 4. Plaintiff is the sovereign United States of America, which has standing to bring
9 this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

10 5. On information and belief, Defendant resides in Mountlake Terrace, Washington.

11 **IV. FACTUAL BACKGROUND**

12 6. The Lynnwood Health Center (“Health Center”) is a reproductive healthcare clinic
13 located at 19505 76th Avenue in Lynnwood, Washington.

14 7. The employees of the Health Center provide, and the patients of the Health Center
15 seek, reproductive health care services.

16 8. On January 5, 2010, Defendant entered the Health Center waiting room and
17 engaged the Health Center manager in conversation about abortion services. The Defendant grew
18 agitated and exited the Health Center without further incident.

19 9. Two days later, in the early morning hours of January 7, 2010, Defendant was
20 witnessed walking along the wooded perimeter of the Health Center property.

21 10. At approximately 10:30 a.m. on January 7, 2010, Defendant entered the Health
22 Center waiting room, and engaged the front desk employee in conversation about abortion services.

23 11. Defendant became agitated and attempted to open the door that separated the
24 waiting room from the exam room hallway.

25 12. When Defendant could not open the door, he kicked the door several times, and
26 threw his shoulder and body against the door several times.

27 13. As the Defendant struck the door, he yelled: “You baby killers! You are all going
28 to hell for being murderers.”

1 14. Defendant's blows impacted a Health Center nurse, who had pressed his body
2 against the reverse side of the door in an attempt to reinforce the door against the Defendant's strikes.

3 15. Defendant's actions caused the Health Center manager to call 911, and then to
4 direct staff to take refuge in a "safe room" in the rear of the Health Center.

5 16. Defendant did not stop beating on the door until police arrived at the Health
6 Center and apprehended Defendant, placing him in handcuffs.

7 17. Defendant told the police that they "need to watch this place."

8 18. Defendant's car, which he had parked in the Health Center parking lot, contained
9 a machete and several "army-style" bags containing netting, rip cord, tools, and camouflage clothing.

10 **V. CAUSE OF ACTION UNDER 18 U.S.C. § 248**

11 19. The United States incorporates herein the averments of paragraphs 1 through 18
12 hereof.

13 20. Defendant's conduct as described in paragraphs 9 through 18 hereof constitutes a
14 physical obstruction that intimidated and/or interfered with reproductive health service providers in
15 violation of FACE, 18 U.S.C. § 248(a)(1).

16 21. Defendant's conduct as described in paragraphs 9 through 18 hereof constitutes a
17 use of force that intimidated and/or injured reproductive health service providers in violation of FACE,
18 18 U.S.C. § 248(a)(1).

19 22. On information and belief, unless Defendant is restrained by this Court, Defendant
20 will again engage in the illegal conduct averred herein, or other similar illegal conduct targeted against
21 the Health Center.

22 **VI. PRAYER FOR RELIEF**

23 23. The United States is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and
24 obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's
25 violation of FACE.

26 24. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess
27 a civil penalty against a respondent no greater than \$10,000.00 for a nonviolent physical obstruction.
28

1 WHEREFORE, the United States respectfully requests judgment in its favor and against
2 Defendant, John C. Kroack, in the form of:

3 A. An Order prohibiting Defendant, John C. Kroack, from coming within 25 feet of
4 the Health Center property;

5 B. An Order prohibiting Defendant, John C. Kroack, and his representatives, agents,
6 employees and any others acting in concert or participation with him, from violating the Freedom of
7 Access to Clinic Entrances Act; and

8 C. A civil penalty assessment in the amount of \$10,000.00.

9 Dated this 11th day of March, 2011.

10 Respectfully submitted,

11
12 THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

13
14 JONATHAN SMITH, Chief
JULIE ABBATE, Deputy Chief
Special Litigation Section

15
16 /s/ William E. Nolan
WILLIAM E. NOLAN *
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Phone: (202) 352-4637; Fax: (202) 514-6273
Email: William.Nolan@usdoj.gov

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21 JENNY A. DURKAN
UNITED STATES ATTORNEY

22
23 /s/ J. Michael Diaz
J. MICHAEL DIAZ, WSBA # 38100
Assistant United States Attorney
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-7970; Fax: (206) 553-4073
E-mail: Michael.Diaz@usdoj.gov

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25
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27 Attorneys for Plaintiff United States of America

28 * Conditional Admission Pending

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
United States of America
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
J. Michael Diaz, WSBA #38100, Assistant United States Attorney
700 Stewart Street, Suite 5220, Seattle, WA 98101-1271
206-553-7970

DEFENDANTS
John C. Kroack
County of Residence of First Listed Defendant Snohomish
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF DEF [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State PTF DEF [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT REAL PROPERTY TORTS CIVIL RIGHTS PRISONER PETITIONS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
[] 110 Insurance [] 120 Marine [] 130 Miller Act [] 140 Negotiable Instrument [] 150 Recovery of Overpayment & Enforcement of Judgment [] 151 Medicare Act [] 152 Recovery of Defaulted Student Loans (Excl. Veterans) [] 153 Recovery of Overpayment of Veteran's Benefits [] 160 Stockholders' Suits [] 190 Other Contract [] 195 Contract Product Liability [] 196 Franchise
[] 210 Land Condemnation [] 220 Foreclosure [] 230 Rent Lease & Ejectment [] 240 Torts to Land [] 245 Tort Product Liability [] 290 All Other Real Property
PERSONAL INJURY [] 310 Airplane [] 315 Airplane Product Liability [] 320 Assault, Libel & Slander [] 330 Federal Employers' Liability [] 340 Marine [] 345 Marine Product Liability [] 350 Motor Vehicle [] 355 Motor Vehicle Product Liability [] 360 Other Personal Injury
[] 362 Personal Injury - Med. Malpractice [] 365 Personal Injury - Product Liability [] 368 Asbestos Personal Injury Product Liability [] 370 Other Fraud [] 371 Truth in Lending [] 380 Other Personal Property Damage [] 385 Property Damage Product Liability
[] 510 Motions to Vacate Sentence [] 530 General Habeas Corpus: [] 535 Death Penalty [] 540 Mandamus & Other [] 550 Civil Rights [] 555 Prison Condition
[] 610 Agriculture [] 620 Other Food & Drug [] 625 Drug Related Seizure of Property 21 USC 881 [] 630 Liquor Laws [] 640 R.R. & Truck [] 650 Airline Regs. [] 660 Occupational Safety/Health [] 690 Other
[] 710 Fair Labor Standards Act [] 720 Labor/Mgmt. Relations [] 730 Labor/Mgmt. Reporting & Disclosure Act [] 740 Railway Labor Act [] 790 Other Labor Litigation [] 791 Empl. Ret. Inc. Security Act
[] 422 Appeal 28 USC 158 [] 423 Withdrawal 28 USC 157
[] 820 Copyrights [] 830 Patent [] 840 Trademark
[] 861 HIA (1395ff) [] 862 Black Lung (923) [] 863 DIWC/DIWW (405(g)) [] 864 SSID Title XVI [] 865 RSI (405(g))
[] 870 Taxes (U.S. Plaintiff or Defendant) [] 871 IRS—Third Party 26 USC 7609
[] 400 State Reapportionment [] 410 Antitrust [] 430 Banks and Banking [] 450 Commerce [] 460 Deportation [] 470 Racketeer Influenced and Corrupt Organizations [] 480 Consumer Credit [] 490 Cable/Sat TV [] 810 Selective Service [] 850 Securities/Commodities/Exchange [] 875 Customer Challenge 12 USC 3410 [] 890 Other Statutory Actions [] 891 Agricultural Acts [] 892 Economic Stabilization Act [] 893 Environmental Matters [] 894 Energy Allocation Act [] 895 Freedom of Information Act [] 900 Appeal of Fee Determination Under Equal Access to Justice [] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation [] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. 248
Brief description of cause:
Freedom of Access to Clinic Entrances (FACE)

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 03/11/2011 SIGNATURE OF ATTORNEY OF RECORD /s/ J. Michael Diaz, WSBA # 38100

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

WESTERN

District of

WASHINGTON

United States of America,

SUMMONS IN A CIVIL ACTION

V.

John C. Kroack

CASE NUMBER:

TO: (Name and address of Defendant)

John C. Kroack
4710 212th Street SW, Apt. 204
Mountlake Terrace, WA 98043

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

J. Michael Diaz
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101

an answer to the complaint which is served on you with this summons, within 21 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served: <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <input type="checkbox"/> Returned unexecuted: <input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____ <div style="display: flex; justify-content: space-around; width: 100%;"> Date <i>Signature of Server</i> </div> <div style="text-align: center;"> _____ <i>Address of Server</i> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Hon. Marsha J. Pechman

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

MAY - 3 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY



11-CV-00432-JGM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN C. KROACK,

Defendant.

Civil Action No.11-cv-0432-MJP

**CONSENT JUDGMENT AND
~~(PROPOSED)~~ ORDER OF APPROVAL**

(Please Note on Calendar
for: April 27, 2011)

Plaintiff, the United States of America, and Defendant, John C. Kroack, hereby agree and consent to judgment in favor of Plaintiff and against Defendant as follows:

1. Defendant, John C. Kroack, and any others acting under his instruction or direction are **PERMANENTLY ENJOINED** from coming within 25 feet of the Lynnwood Health Center's property located at 19505 76th Avenue in Lynnwood, Washington.
2. Defendant, John C. Kroack, and any others acting under his instruction or direction are **PERMANENTLY ENJOINED** from violating the Freedom of Access to Clinic Entrances ("FACE") Act, 18 U.S.C. § 248 (1994).
3. Defendant, John C. Kroack, agrees to pay a civil penalty in the amount of \$5000.00, as authorized by the FACE Act, 18 U.S.C. § 248 (c)(2)(B).
4. A portion of the civil penalty totaling \$4000.00 shall be suspended and not become due unless the Defendant violates either of the first two provisions above.

1 5. The suspension of a portion of the civil penalty does not bar the United States seeking any other
2 appropriate remedy for any future violation of this permanent injunction.

3 6. The remaining portion of the civil penalty totaling \$1000.00 may be paid in 13 monthly
4 installments.

5

6 Dated this 27th of April, 2011.

7 BY:


8

9 
10 JOHN C. KROACK

11 BY:

12 JENNY A. DURKAN
13 UNITED STATES ATTORNEY

13

14 

15 J. MICHAEL DIAZ, WSBA # 38100
16 Assistant United States Attorney
17 United States Attorney's Office
18 700 Stewart Street, Suite 5220
19 Seattle, Washington 98101-1271
20 Phone: (206) 553-7970
21 Fax: (206) 553-4073
22 E-mail: Michael.Diaz@usdoj.gov

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Attorneys for Plaintiff United States of America

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH, Chief
Special Litigation Section

JULIE ABBATE
Deputy Chief
Special Litigation Section

23 
24 WILLIAM E. NOLAN
25 Senior Trial Attorney
26 U.S. Department of Justice
27 Civil Rights Division
28 Special Litigation Section
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Phone: (202) 353-8560
Fax: (202) 514-6273
Email: William.Nolan@usdoj.gov

1 **ORDER APPROVING CONSENT JUDGMENT AND PERMANENT INJUNCTION**

2 AND NOW, this 2 day of May, 2011, upon consideration of the Complaint
3 of Plaintiff, the United States of America, and the parties' above-signed Consent to Judgment, it is
4 hereby ORDERED that judgment is entered in favor of Plaintiff and against Defendant, John C. Kroack,
5 and a permanent injunction shall issue in the above-agreed to form.
6

7 APPROVED AND ORDERED BY THIS COURT

8 
9 MARSHA J. PECHMAN
10 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION
)	
ANGEL DILLARD,	)	No. 11-1098-SAC-KGS
)	
Defendant.)	
)	
_____)	

COMPLAINT

The United States of America (the "United States"), asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), enacted into law May 26, 1994, as follows:

1. The United States has reasonable cause to believe:

(1) Defendant, Angel Dillard, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured, intimidated and/or interfered with by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

-2-

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that, upon information and belief, Defendant resides in this judicial district, and all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. On information and belief, Defendant resides in Valley Center, Kansas.

FACTUAL BACKGROUND

6. On May 31, 2009, reproductive healthcare provider Dr. George Tiller was shot in his church and killed by anti-abortionist Scott Roeder.

7. Scott Roeder was convicted of first-degree murder and sentenced to life without parole for murdering Dr. Tiller.

8. Since Dr. Tiller's murder, no physician has openly performed abortions in Wichita, Kansas.

9. Dr. Mila Means is a family practitioner in Wichita, Kansas, who is training to provide abortion services to women in Wichita.

10. On or about January 15, 2011, Defendant mailed a letter to Dr. Means in which she made a threat of force for the purpose of intimidating Dr. Means from performing abortions in Wichita. A copy of that letter is appended to this Complaint as Attachment A and is incorporated by reference herein.

11. Defendant's letter states, in part:

Thousands of people are already looking into your background, not just in Wichita, but from all over the US. They will know your habits and routines. They will know where you shop, who your friends are, what you drive, where you live. **You will**

-3-

be checking under your car everyday-because maybe today is the day someone places an explosive under it. [Emphasis added]

12. Defendant's letter references Dr. Tiller by stating, "Maybe you don't realize the consequences of killing the innocent. If Tiller could speak from hell, he would tell you what a soulless existence you are purposefully considering, all in the name of greed."

13. Defendant's letter further states, "I urge you to think very carefully about the choices you are making. . . . We will not let this abomination continue without doing everything we can to stop it."

14. Defendant signed the letter "Angel Dillard" and sent the letter in an envelope with a pre-printed return address sticker with Defendant's name and address.

15. Defendant's letter intimidated Dr. Means and caused her to undertake numerous security measures.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

16. The United States incorporates herein the averments of paragraphs 1 through 15 hereof.

17. Defendant's conduct as described in paragraphs 10 through 15 hereof constitute a threat of force in order to in intimidate a person from providing reproductive health services.

18. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

19. On information and belief, unless Defendant is restrained by this Court, persons seeking to provide reproductive healthcare services will continue to be intimidated.

-4-

20. The United States is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

21. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain statutory compensatory damages on behalf of persons aggrieved by Defendant's actions in violation of FACE.

22. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to seek and obtain a civil penalty against a respondent no greater than \$15,000.00 for a first violation other than a nonviolent physical obstruction.

WHEREFORE, the United States respectfully requests judgment in its favor and against Defendant, Angel Dillard, in the form of:

- A. An Order permanently prohibiting Defendant, Angel Dillard, from contacting Dr. Mila Means via letter, email, phone call, or any other form of communication;
- B. An Order permanently prohibiting Defendant, Angel Dillard, and her representatives, agents, employees and any others acting in concert or participation with her, from violating the Freedom of Access to Clinic Entrances Act;
- C. An Order permanently prohibiting Defendant, Angel Dillard, and her representatives, agents, employees and any others acting in concert or participation with her, from coming within 250 feet of Dr. Mila Means, her residence, her car, or her place of business;

-5-

- D. Statutory compensatory damages to the victim of Defendant Angel Dillard's activities in the amount of \$5,000; and
- E. A civil penalty assessment in the amount of \$15,000.00.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

s/Julie K. Abbate
JULIE K. ABBATE
Deputy Chief
Special Litigation Section

s/Barry R. Grissom
BARRY R. GRISSOM
United States Attorney
For the District of Kansas
500 State Ave., Suite 360
Kansas City, KS 66101
Kansas Bar No. 10866
(316) 269-6481
(316) 269-6484 (fax)

s/Aaron Fleisher
AARON FLEISHER
Trial Attorney
United States Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Ave., N.W.
Washington, DC 20530
(202) 514-6255
(202) 514-6903 (fax)
aaron.fleisher@usdoj.gov

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REQUEST FOR PLACE OF TRIAL

It is requested that the above-entitled cause be placed on the docket for trial at the City of
Wichita, Kansas.

s/Barry R. Grissom
BARRY R. GRISSOM
Assistant U.S. Attorney

received 1/19/11
@ 10:30am

15JAN11

Dr. Means,

It has come to our attention that you are planning to do abortions at your Harry St. location. I am stunned that you would take your career in this direction. Fewer people than ever before are pro-abortion, quality physicians wouldn't even consider associating themselves with it, and more Americans than ever before are unwilling to turn a blind eye to the killing of a baby when the ratio for adoption is 36 couples to 1 baby.

Maybe you don't realize the consequences of killing the innocent. If Tiller could speak from hell, he would tell you what a soulless existence you are purposefully considering, all in the name of greed. Thousands of people are already looking into your background, not just in Wichita, but from all over the U.S. They will know your habits and routines. They know where you shop, who your friends are, what you drive, where you live. You will be checking under your car everyday-because maybe today is the day someone places an explosive under it. People will be picketing your home, your office. You will come under greater scrutiny than you've ever known, legally and professionally. Much worse than the disciplinary actions and ethical concerns that you've been facing. You will become a pariah-no physician will want to associate with you. You will be seen like all the other hacks that have stooped to doing abortions when they weren't good enough to maintain a real practice. You will lose your legitimate clientele, as no one bringing a baby into this world wants to be in the same facility where you are also killing them. You will have trouble keeping staff who are willing to participate in innocent bloodshedding and won't be able to keep the sanitary conditions necessary to maintain a healthy medical facility. You will end up having the same kind of rat-infested, dirty facility that they have in north-eastern Kansas. Anyone who partners with you will experience the same headaches. Not to mention the fact that you will be haunted by bloody, squirming, dismembered babies in your sleep. You can't do what is morally reprehensible and enjoy peace of mind. The Bible says, "There are six things the Lord hates. . . hands that shed innocent blood, a heart that devises evil schemes, feet that are quick to rush into evil. . ." Proverbs 6:16-18. Abortion kills human life-it matters not if you kill it at 6 weeks or at 26 weeks, it's still the unnatural, violent death of a human baby for the sake of convenience. You are doing what the Humane Society wouldn't allow to happen to a pregnant dog or cat.

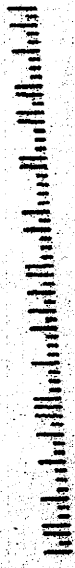
I urge you to think very carefully about the choices you are making. There are 3 churches within 1 block of your practice, and many others who must take a stand. We will not let this abomination continue without doing everything we can to stop it. We pray you will either make the right choice and use your medical practice to heal instead of kill, or that God would bring judgment on you, the likes of which you cannot imagine. We don't want you killing our children in our community. Good people are tired of this rampant evil, and will stand against you every step of the way. Do the world a favor and **ABORT** this stupid plan of yours. It's not too late to change your mind.

Angel Dillard



WICHITA, KS 67207
18 JAN 2011 PM 2 L

Mila Means
9916 E. Hwy
Wichita, Ks 67027



67207+3093

★ PROUD SUPPORTER OF THE USO ★
Mrs. Angel Dillard
9221 E 125th St N
Valley Center, KS 67147



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION
)	
ANGEL DILLARD,	)	No. 6:11-cv-1098-JTM-KGG
)	
Defendant.)	
)	
_____)	

AMENDED COMPLAINT

The United States of America (the "United States"), asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), enacted into law May 26, 1994, as follows:

1. The United States has reasonable cause to believe:

(1) Defendant, Angel Dillard, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured, intimidated and/or interfered with by Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), in that, upon information and belief, Defendant resides in this judicial district, and all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. On information and belief, Defendant resides in Valley Center, Kansas.

FACTUAL BACKGROUND

6. On May 31, 2009, reproductive healthcare provider Dr. George Tiller was shot in his church and killed by anti-abortionist Scott Roeder.

7. Scott Roeder was convicted of first-degree murder and sentenced to life without parole for murdering Dr. Tiller.

8. Defendant is a well-known anti-abortion activist who became friendly with Scott Roeder after he killed Dr. Tiller, and has since visited Scott Roeder in prison, spoken to him on the phone, and exchanged letters with him.

9. Defendant has spoken publicly about her friendship with Roeder and her admiration for his conduct. Defendant has been quoted as telling the Associated Press in a July 2009 interview, “With one move, [Roeder] was able . . . to accomplish what we had not been able to do. So he followed his convictions, and I admire that.”

10. Since Dr. Tiller’s murder, no physician has openly performed abortions in Wichita, Kansas.

11. Dr. Mila Means is a family practitioner in Wichita, Kansas, who is training to provide abortion services to women in Wichita.

12. Dr. Means considers Dr. Tiller her mentor, and intends to follow in his footsteps by

performing abortions in Wichita.

13. Since Dr. Means' intention was publicized in December 2010 by groups opposed to abortion, Dr. Means and her employees have been the target of protests at their office and homes.

14. On or about January 15, 2011, Defendant mailed a letter to Dr. Means in which she made a threat of force for the purpose of intimidating Dr. Means from performing abortions in Wichita. A copy of that letter is appended to this Amended Complaint as Attachment A and is incorporated by reference herein.

15. Defendant's letter states, in part:

Thousands of people are already looking into your background, not just in Wichita, but from all over the US. They will know your habits and routines. They will know where you shop, who your friends are, what you drive, where you live. **You will be checking under your car everyday-because maybe today is the day someone places an explosive under it. [Emphasis added]**

16. Defendant's letter references Dr. Tiller by stating, "Maybe you don't realize the consequences of killing the innocent. If Tiller could speak from hell, he would tell you what a soulless existence you are purposefully considering, all in the name of greed."

17. Defendant's letter further states, "I urge you to think very carefully about the choices you are making. . . . We will not let this abomination continue without doing everything we can to stop it."

18. Defendant signed the letter "Angel Dillard" and sent the letter in an envelope with a pre-printed return address sticker with Defendant's name and address.

19. Defendant's letter intimidated Dr. Means and caused her to undertake numerous security measures, including having her car examined by a mechanic, parking her car where it is visible to her, installing door alarms, staying overnight at different locations, varying her route to

and from work, and looking for a more secure building in which to practice.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

20. The United States incorporates herein the averments of paragraphs 1 through 19 hereof.

21. Defendant's conduct as described in paragraphs 14 through 18 hereof constitutes a threat of force in order to in intimidate a person from providing reproductive health services.

22. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

23. On information and belief, unless Defendant is restrained by this Court, persons seeking to provide reproductive healthcare services will continue to be intimidated.

24. The United States is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

25. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain statutory compensatory damages on behalf of persons aggrieved by Defendant's actions in violation of FACE.

26. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to seek and obtain a civil penalty against a respondent no greater than \$15,000.00 for a first violation other than a nonviolent physical obstruction.

WHEREFORE, the United States respectfully requests judgment in its favor and against Defendant, Angel Dillard, in the form of:

- A. An Order permanently prohibiting Defendant, Angel Dillard, from contacting Dr. Mila Means via letter, email, phone call, or any other form of communication;
- B. An Order permanently prohibiting Defendant, Angel Dillard, and her representatives, agents, employees and any others acting in concert or participation with her, from violating the Freedom of Access to Clinic Entrances Act;
- C. An Order permanently prohibiting Defendant, Angel Dillard, and her representatives, agents, employees and any others acting in concert or participation with her, from coming within 250 feet of Dr. Mila Means, her residence, her car, or her place of business;
- D. Statutory compensatory damages to the victim of Defendant Angel Dillard's activities in the amount of \$5,000; and
- E. A civil penalty assessment in the amount of \$15,000.00.

Respectfully submitted,

BARRY R. GRISSOM
United States Attorney
District of Kansas

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
Special Litigation Section

By: Emily Metzger
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1200 Epic Center
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(316) 269-6484 (fax)

s/Aaron Fleisher
AARON FLEISHER
Trial Attorney
United States Department of Justice
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(202) 514-6903 (fax)
aaron.fleisher@usdoj.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ANGEL DILLARD,	:	No. 6:11-cv-1098-JTM-KGG
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will provide notice of such filing to all registered parties.

s/Aaron Fleisher
AARON FLEISHER
Trial Attorney
Special Litigation Section
Civil Rights Division
UNITED STATES Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 514-6255
Facsimile: (202) 514-6903
aaron.fleisher@usdoj.gov

received 1/19/11
@ 10:30am

15JAN11

Dr. Means,

It has come to our attention that you are planning to do abortions at your Harry St. location. I am stunned that you would take your career in this direction. Fewer people than ever before are pro-abortion, quality physicians wouldn't even consider associating themselves with it, and more Americans than ever before are unwilling to turn a blind eye to the killing of a baby when the ratio for adoption is 36 couples to 1 baby.

Maybe you don't realize the consequences of killing the innocent. If Tiller could speak from hell, he would tell you what a soulless existence you are purposefully considering, all in the name of greed. Thousands of people are already looking into your background, not just in Wichita, but from all over the U.S. They will know your habits and routines. They know where you shop, who your friends are, what you drive, where you live. You will be checking under your car everyday-because maybe today is the day someone places an explosive under it. People will be picketing your home, your office. You will come under greater scrutiny than you've ever known, legally and professionally. Much worse than the disciplinary actions and ethical concerns that you've been facing. You will become a pariah-no physician will want to associate with you. You will be seen like all the other hacks that have stooped to doing abortions when they weren't good enough to maintain a real practice. You will lose your legitimate clientele, as no one bringing a baby into this world wants to be in the same facility where you are also killing them. You will have trouble keeping staff who are willing to participate in innocent bloodshedding and won't be able to keep the sanitary conditions necessary to maintain a healthy medical facility. You will end up having the same kind of rat-infested, dirty facility that they have in north-eastern Kansas. Anyone who partners with you will experience the same headaches. Not to mention the fact that you will be haunted by bloody, squirming, dismembered babies in your sleep. You can't do what is morally reprehensible and enjoy peace of mind. The Bible says, "There are six things the Lord hates. . . hands that shed innocent blood, a heart that devises evil schemes, feet that are quick to rush into evil. . ." Proverbs 6:16-18. Abortion kills human life-it matters not if you kill it at 6 weeks or at 26 weeks, it's still the unnatural, violent death of a human baby for the sake of convenience. You are doing what the Humane Society wouldn't allow to happen to a pregnant dog or cat.

I urge you to think very carefully about the choices you are making. There are 3 churches within 1 block of your practice, and many others who must take a stand. We will not let this abomination continue without doing everything we can to stop it. We pray you will either make the right choice and use your medical practice to heal instead of kill, or that God would bring judgment on you, the likes of which you cannot imagine. We don't want you killing our children in our community. Good people are tired of this rampant evil, and will stand against you every step of the way. Do the world a favor and **ABORT** this stupid plan of yours. It's not too late to change your mind.

Angel Dillard



WICHITA, KS 67207
18 JAN 2011 PM 2 L

Mila Means
9916 E. Hwy
Wichita, Ks 67027



67207+3093

★ PROUD SUPPORTER OF THE USO ★
Mrs. Angel Dillard
9221 E 125th St N
Valley Center, KS 67147



FILED
U.S. District Court
District of Kansas

MAY 06 2016

Clerk, U.S. District Court
By *J. Road* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case No. 11-1098-JTM

ANGEL DILLARD,
Defendant.

Verdict

We, the jury, impaneled and sworn in the above entitled case, upon our oaths, do make the following answers to the questions propounded by the Court:

1. Under all the circumstances of the case, would a reasonable recipient of defendant's January 15, 2011 letter believe that it conveys a true threat of force?

Yes X No

[If your answer to Question 1 is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to Question 2.]

2. Did the defendant, in sending the letter, intentionally seek to intimidate Dr. Means?

Yes No X

[If your answer to Question 2 is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to Question 3.]

3. Did Defendant Dillard send the letter for the purpose of preventing Dr. Means from providing reproductive health services?

Yes _____

No _____

PRESIDING JUROR

5-6-16

DATE

UNITED STATES DISTRICT COURT

DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

JUDGMENT IN A CIVIL CASE

Plaintiff,

v.

ANGEL DILLARD,

Case Number: 11-1098-JTM

Defendant.

This action came on for trial before the Court and a jury, with The Honorable J. Thomas Marten, Chief Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict:

IT IS ORDERED AND ADJUDGED pursuant to the verdict that the jury finds in favor of Defendant, Angel Dillard.

TIMOTHY M. O'BRIEN, Clerk of Court

May 10, 2016

Date

By s/ J. Roach
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

)	
)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Civil Action No.
)	
v.)	
)	
KENNETH SCOTT and JOANN SCOTT,)	
)	
)	
Defendants.)	
<hr style="border: 0.5px solid black;"/>		

COMPLAINT

1. The United States of America files this Complaint pursuant to the Freedom of Access to Clinic Entrances Act of 1994 (“FACE”), 18 U.S.C. § 248.

2. The United States brings this lawsuit because Defendants, by force and by physical obstruction, intentionally injured, intimidated, or interfered, or attempted to do the same, with persons who sought or provided reproductive health services at Planned Parenthood of the Rocky Mountains (“PPRM” or “the facility”), in Denver, Colorado.

3. In bringing this action, the United States has reasonable cause to believe that Defendants, through their past, present, or future conduct, have violated or will continue to violate FACE, and have caused or will cause injury to persons seeking to obtain or provide reproductive health services at PPRM.

JURISDICTION, STANDING, AND VENUE

4. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

5. Plaintiff has standing to initiate this action pursuant to FACE, 18 U.S.C. § 248(c)(2)(A).

6. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b)(2) because all of the events giving rise to this action occurred in this District.

PARTIES

7. Plaintiff is the United States of America.

8. Defendant Kenneth Scott is an individual who engages in protest activities intended to injure, intimidate, or interfere with the right of persons seeking to obtain or provide reproductive health care services at PPRM and participated in the conduct described herein.

9. Defendant JoAnn Scott is an individual who engages in protest activities intended to injure, intimidate, or interfere with the right of persons seeking to obtain or provide reproductive health care services at PPRM and participated in the conduct described herein.

STATEMENT OF FACTS

10. PPRM is the regional headquarters for Planned Parenthood in the Rocky Mountain region, and is located at 7155 East 38th Avenue, Denver, Colorado, 80207.

11. PPRM houses staff and offices for the region, and provides reproductive health services, including abortion procedures. The clinic is open from Tuesday through Saturday, and receives patients from 8:00 am until noon.

12. The PPRM facility consists of a main building and a parking lot for staff and patients, and these are enclosed by a fence. The PPRM facility is the only building within the enclosure. The primary means for entry and exit of vehicles and pedestrians to and from PPRM is through the driveway to the PPRM parking lot, which opens onto Pontiac Street. Abutting the driveway on either side is a sidewalk, which runs along Pontiac Street.

13. Defendants Kenneth Scott and JoAnn Scott, and their associates regularly gather on the sidewalk and in the driveway outside PPRM during the hours the clinic is open, and patients

and staff are entering and exiting the facility. They typically bring large signs and placards expressing opposition to abortion.

14. Defendant Kenneth Scott routinely walks into or stands in the PPRM driveway or the street directly in front of the driveway as vehicles approach to enter or exit the facility.

15. Defendant Kenneth Scott walks into or stands in the PPRM driveway in order to injure, intimidate, or interfere with persons seeking or providing services from entering or exiting the PPRM parking lot.

16. At times, other protestors acting in concert with the Defendants, also walk into or stand in the PPRM driveway or the street directly in front of the driveway as vehicles approach to enter or exit the facility.

17. By walking into or standing in the PPRM driveway or the street as vehicles approach to enter or exit the facility, Defendant Kenneth Scott creates a physical obstruction and unreasonable hazard for persons seeking to enter or exit the facility because drivers must brake, stop, and/or alter their direction in order to avoid hitting Defendant, other protestors, and/or others entering or exiting the facility.

18. In addition to creating a physical obstruction by walking into and/or standing in the PPRM driveway as vehicles enter or exit, Defendant Kenneth Scott often stops vehicles in the middle of the driveway in order to talk to the vehicle occupants, creating an additional physical obstruction and rendering passage unreasonably hazardous for other persons seeking to enter or exit the facility.

19. As PPRM staff and clients enter and leave the facility, Defendants regularly yell anti-abortion rhetoric at them. Examples include "Baby-killer," "Murderer," "Abortionist," and statements that staff and clients will go to hell and are sinners.

Ken Scott Incidents

August 15, 2009 (8:23 a.m.)

20. On August 15, 2009, at approximately 8:23 a.m., Defendant Kenneth Scott physically obstructed multiple vehicles attempting to enter and exit PPRM.

21. As one car approached the driveway to exit the facility, Defendant Kenneth Scott walked into the driveway carrying a sign, impeding its entrance.

22. Defendant Kenneth Scott remained standing in the middle of the driveway while two additional cars attempted to enter the facility, impeding their entrance.

August 15, 2009 (9:33 a.m.)

23. On August 15, 2009, at approximately 9:33 a.m., Defendant Kenneth Scott and an unidentified protestor physically obstructed two vehicles attempting to exit and enter PPRM.

24. Defendant Kenneth Scott and the unidentified protestor stood in the driveway as an individual driving a motorcycle approached to exit the facility.

25. As the motorcyclist entered the driveway, Defendant Kenneth Scott, carrying a sign, walked in front of the motorcyclist, who was forced to stop.

26. Meanwhile, another vehicle approached to enter the facility, and the unidentified protestor walked into the street toward the vehicle as it turned into the driveway.

27. Both vehicles were forced to avoid Defendant Kenneth Scott and the unidentified protestor in order to use the driveway to exit and enter the facility.

August 15, 2009 (9:36 a.m.)

28. On August 15, 2009, at approximately 9:36 a.m., Defendant Kenneth Scott and several unidentified protestors physically obstructed three vehicles attempting to enter and exit PPRM.

29. An unidentified protestor stood in one side of the driveway, holding a sign, and did not move as a vehicle approached to enter the facility, causing the approaching vehicle to take a wide turn into the driveway in order to avoid her.

30. The vehicle entered the driveway in the exit lane of the driveway, and Defendant Kenneth Scott, carrying a sign, walked into the driveway and approached the driver's side of the vehicle.

31. At the same time, another vehicle approached from inside the parking lot in order to exit the facility.

32. Because the first vehicle was already occupying the exit lane, both vehicles stopped, and the first vehicle reversed out of the driveway and into the street in order to allow the other vehicle room to exit.

33. Neither Defendant Kenneth Scott nor the unidentified protestor moved out of the driveway, and when the first vehicle re-entered the driveway, Defendant Kenneth Scott approached the vehicle and started talking to the driver.

34. While Defendant Kenneth Scott had the vehicle stopped in the middle of the driveway, a third car approaching to enter PPRM was forced to stop in the street, unable to enter.

35. After PPRM's security guard directed the first vehicle to drive into the parking lot, an unidentified protestor approached the car waiting to enter and then moved into the driveway as the car turned, cutting off access to part of the driveway.

36. Meanwhile, Defendant Kenneth Scott remained standing in the middle of the driveway, forcing the waiting vehicle to navigate between Defendant Kenneth Scott and the unidentified protestor, who were then both in the driveway.

September 30, 2009

37. On September 30, 2009, beginning at approximately 9:48 a.m., Defendant Kenneth Scott created a physical obstruction for two vehicles attempting to enter and exit PPRM.

38. As a vehicle turned into the driveway in order to enter PPRM, Defendant Kenneth Scott approached the vehicle and started talking to the driver, and the driver stopped the car in the exit lane of the driveway.

39. Defendant Kenneth Scott, carrying a sign, knelt in the driveway next to the driver's side window and spoke to the occupant(s) of the car for more than four minutes.

40. While Defendant Kenneth Scott had the first car stopped in the driveway, a vehicle exiting the facility was forced to use the entrance lane to exit because Defendant Kenneth Scott and the first car were stopped in the exit lane of the driveway.

41. Another vehicle approaching to enter the facility was also obstructed while Defendant Kenneth Scott had the first car stopped in the driveway, and initially could not enter because of the obstruction created by Defendant Kenneth Scott speaking with the occupants of the first car in the middle of the driveway.

42. After the first car moved, Defendant Kenneth Scott remained in the driveway as the waiting vehicle entered the facility, further impeding its entrance.

December 16, 2009

43. On December 16, 2009, beginning at approximately 10:47 a.m., Defendant Kenneth Scott physically obstructed two vehicles attempting to enter and exit PPRM.

44. Defendant Kenneth Scott stood in the middle of the PPRM driveway and did not move as a vehicle approached to enter the driveway, forcing the vehicle to brake and make a narrow turn into the driveway to avoid hitting Defendant Kenneth Scott.

45. With Defendant Kenneth Scott standing in the middle of the driveway, the car slowed as it turned into the driveway, and Defendant Kenneth Scott approached the driver's side window, and spoke with the occupant(s) of the car for more than four minutes.

46. While Defendant Kenneth Scott had the first car stopped in the driveway, a second vehicle attempted to exit the facility, but was initially unable to leave because of the obstruction created by Defendant Kenneth Scott speaking with the occupants of the first car in the middle of the driveway.

47. After a delay, Defendant Kenneth Scott moved away from the first car, but remained in the driveway, forcing the exiting car to squeeze between Defendant Kenneth Scott and the first car in order to exit the facility.

December 23, 2009

48. On December 23, 2009, at approximately 9:24 a.m., Defendant Kenneth Scott physically obstructed a vehicle attempting to enter PPRM.

49. Defendant Kenneth Scott walked into the PPRM driveway as a vehicle approached to enter the driveway.

50. The ground conditions were snowy and slippery, and the approaching vehicle skidded past the driveway and past Defendant Kenneth Scott.

51. As the vehicle reversed out of the skid, Defendant Kenneth Scott, still in the driveway, approached the passenger side of the vehicle.

52. As the vehicle continued to reverse, Defendant Kenneth Scott followed alongside it, walking in the driveway and then the street in front of the driveway, forcing the vehicle to back up and drive around him in order to enter the facility.

January 16, 2010

53. On January 16, 2010, at approximately 10:20 a.m., Defendant Kenneth Scott physically obstructed a vehicle attempting to enter PPRM.

54. As the vehicle approached to enter the PPRM driveway, it was forced to brake as three unidentified protestors, who had been standing in the driveway, moved.

55. While the vehicle was slowed to a near-stop, Defendant Kenneth Scott walked into the driveway and stopped in the middle, next to the front of the car.

56. Defendant Kenneth Scott did not move from this position, forcing the vehicle to turn narrowly to avoid Defendant Kenneth Scott as it continued to enter the facility.

February 4, 2010

57. On February 4, 2010, at approximately 9:48 a.m., Defendant Kenneth Scott physically obstructed two vehicles attempting to exit PPRM.

58. As a vehicle approached the driveway to exit the facility, Defendant Kenneth Scott walked into the driveway across its path, forcing the vehicle to slow down.

59. The car stopped in the middle of the driveway, and Defendant Kenneth Scott approached the vehicle and started talking to the occupant(s) of the car.

60. While Defendant Kenneth Scott had the first vehicle stopped in the driveway, another vehicle attempting to exit the facility was initially unable to leave.

61. After the first vehicle exited the facility, as the second vehicle continued into the driveway to exit, Defendant Kenneth Scott walked across the driveway towards the exiting vehicle, further impeding its egress.

December 2, 2010

62. On December 2, 2010, at approximately 10:22 a.m., Defendant Kenneth Scott physically obstructed multiple vehicles attempting to enter and exit PPRM.

63. As a vehicle approached to enter PPRM, Defendant Kenneth Scott, carrying a sign, walked into the middle of the driveway, forcing the vehicle to slow down and navigate around Defendant Kenneth Scott in order to avoid hitting him.

64. Because of Defendant Kenneth Scott's actions, the vehicle stopped in the middle of the driveway and Defendant Kenneth Scott approached the vehicle and started talking to the driver.

65. While Defendant Kenneth Scott had the first vehicle stopped in the driveway, another vehicle attempting to enter the facility was forced to stop and wait behind the stopped vehicle and Defendant Kenneth Scott.

66. Another vehicle then approached to enter the facility, and was also forced to wait while Defendant Kenneth Scott had the first vehicle stopped in the driveway, forming a line of three vehicles.

67. After the first vehicle continued into the parking lot, Defendant Kenneth Scott remained standing in the middle of the driveway as the second vehicle entered the facility, further impeding that vehicle's entrance.

68. As the third vehicle entered the driveway, Defendant Kenneth Scott walked towards the front of the vehicle, further narrowing the lane through which it could enter and impeding its entrance.

December 8, 2010

69. On December 8, 2010, at approximately 10:35 a.m., Defendant Kenneth Scott created a physical obstruction for two vehicles attempting to enter PPRM.

70. Defendant Kenneth Scott stood in the PPRM driveway as a vehicle approached to enter the facility, and as the vehicle turned into the driveway, Defendant Kenneth Scott approached it and held the sign he was carrying in front of the driver's side of the vehicle.

71. Because of Defendant Kenneth Scott's actions, the vehicle stopped in the middle of the driveway, and Defendant Kenneth Scott approached the vehicle and started talking to the driver.

72. While Defendant Kenneth Scott had the first car stopped in the driveway, another vehicle attempting to enter the facility was initially unable to enter.

73. Because Defendant Kenneth Scott continued to speak to the driver of the stopped vehicle, the second vehicle reversed, and then pulled around Defendant Kenneth Scott and the stopped vehicle, driving through the narrow gap between them and the gate in order to enter the facility.

JoAnn Scott Incidents

April 2, 2010

74. As a patient walked on Pontiac Street towards the PPRM driveway to enter the facility, Defendant JoAnn Scott approached her and followed alongside her telling her to not go into PPRM and telling her that if she went into PPRM, she would be "participating in murder."

75. While on Pontiac Street and before the client reached the PPRM driveway, Defendant JoAnn Scott placed her hand on the patient's shoulder.

76. On April 5, 2011, Defendant JoAnn Scott was convicted for this conduct under Colorado Revised Statute §§ 18-9-122(2) and 18-9-111(1)(c) and 18-9-111(1)(h), which, among other things, prohibits knowingly obstructing, detaining, hindering, impeding, or blocking another person's entry to or exit from a health care facility, and harassment.

June 9, 2010

77. On June 9, 2010, at approximately 10:21 a.m., Defendant JoAnn Scott used force against an individual accompanying another person who was at the PPRM facility to seek reproductive health services.

78. As the individual stood on the sidewalk adjacent to the PPRM driveway, smoking a cigarette, Kenneth Scott and JoAnn Scott began yelling and screaming at the individual that God hated him and other anti-abortion statements.

79. During this altercation, the individual attempted to walk away from the Scotts. However, Defendant JoAnn Scott poked the individual in the back. Shortly thereafter, Defendant JoAnn Scott stepped forward and pushed the individual in the chest.

80. Immediately, Defendant Kenneth Scott restrained Defendant JoAnn Scott by grabbing both of her arms and physically moving her away from the individual. However, Defendant JoAnn Scott actively resisted Defendant Kenneth Scott, repeatedly trying to wrest free and move towards the individual.

81. At that point, the individual walked away from the Scotts, and was escorted into the facility by a PPRM security guard.

**FIRST CLAIM FOR RELIEF FOR VIOLATIONS OF 18 U.S.C. § 248
(against Defendant Kenneth Scott)**

82. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 73 as though fully set forth herein.

83. The actions of Defendant Kenneth Scott on August 15, 2009 at 8:23 a.m.; August 15, 2009 at 9:33 a.m.; August 15, 2009 at 9:36 a.m.; September 30, 2009; December 16, 2009; December 23, 2009; January 16, 2010; February 4, 2010; December 2, 2010; and December 8, 2010, as set forth herein in paragraphs 19 through 73, constituted physical obstructions, as defined by 18 U.S.C. § 248, in that they rendered impassable ingress to or egress from PPRM, or rendered passage to or from PPRM unreasonably difficult or hazardous.

84. Defendant Kenneth Scott's conduct, as described herein in paragraphs 19 through 73, violated FACE, 18 U.S.C. § 248, which prohibits individuals from using physical obstruction to intentionally injure, intimidate, or interfere with, or attempt to do the same, any person because that person is or has been, or in order to intimidate persons from, obtaining or providing reproductive health services.

85. Defendant Kenneth Scott undertook these actions in order to intimidate or interfere with, or in an attempt to intimidate or interfere with, PPRM staff, clients, and others because those persons were seeking or accompanying individuals seeking to obtain or provide reproductive health services, or in order to intimidate such persons from obtaining or providing reproductive health services.

86. Upon information and belief, unless restrained by this Court, Defendant Kenneth Scott will continue to engage in the conduct and practices alleged above.

**SECOND CLAIM FOR RELIEF FOR VIOLATIONS OF 18 U.S.C. § 248
(against Defendant JoAnn Scott)**

87. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 19 and 74-81 though fully set forth herein.

88. The actions of JoAnn Scott on April 2, 2010 and June 9, 2010, as set forth herein in paragraphs 74 through 81, constitute uses of force intended to injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with, PPRM clients and individuals accompanying clients seeking to obtain reproductive health services, or in order to intimidate persons from obtaining reproductive health services.

89. Defendant JoAnn Scott's conduct, as described herein in paragraphs 74 through 81, violated FACE, 18 U.S.C. § 248, which prohibits individuals from using force to intentionally injure, intimidate, or interfere with, or attempt to do the same, any person because that person is or has been, or in order to intimidate persons from, obtaining or providing reproductive health services.

90. Defendant JoAnn Scott undertook these actions in order to intimidate or interfere with, or in an attempt to intimidate or interfere with, PPRM staff, clients, and others because those persons were seeking or accompanying individuals seeking to obtain or provide reproductive health services, or in order to intimidate such persons from obtaining or providing reproductive health services.

91. Upon information and belief, unless restrained by this Court, Defendant JoAnn Scott will continue to engage in the conduct and practices alleged above.

PRAYER FOR RELIEF

92. The Attorney General is authorized under 18 U.S.C. § 248(c)(2)(B) to seek permanent injunctive relief and compensatory damages from this Court for violations of FACE.

WHEREFORE, Plaintiff requests that this Court:

1. Permanently enjoin Defendants, their representatives, agents, employees, and others acting in concert or participation with them, from committing any of the following acts or aiding, abetting, directing, or inciting others to:
 - a. Violate any provision of FACE, 18 U.S.C. § 248;
 - b. Come within 25 feet of PPRM property, including the PPRM driveway;
 - c. Violate any traffic and safety laws or ordinances applying to the PPRM driveway, Pontiac Street, and the sidewalks running alongside Pontiac Street;
2. Order Defendant JoAnn Scott to pay statutory compensatory damages in the amount of \$5,000 to the PPRM patient as a person aggrieved by reason of Defendant JoAnn Scott's conduct in violation of FACE on April 2, 2010, as authorized by 18 U.S.C. § 248(c)(2)(B);
3. Order Defendant JoAnn Scott to pay statutory compensatory damages in the amount of \$5,000 to the individual accompanying the PPRM patient as a person aggrieved by reason of Defendant JoAnn Scott's conduct in violation of FACE on June 9, 2010, as authorized by 18 U.S.C. § 248(c)(2)(B);
4. Assess a civil penalty against Defendant Kenneth Scott in the amount of \$10,000 to vindicate the public interest, as authorized by 18 U.S.C. § 248(c)(2)(B);

5. Assess a civil penalty against Defendant JoAnn Scott in the amount of \$15,000 to vindicate the public interest, as authorized by 18 U.S.C. § 248(c)(2)(B); and
6. Grant any further relief that the Court deems just and proper.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
Special Litigation Section

/s/ Je Yon Jung _____
JE YON JUNG
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Attorneys for Plaintiff United States

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-CV-01430-PAB-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT and
JO ANN SCOTT,

Defendants.

**JOINT MOTION FOR ENTRY OF PROPOSED CONSENT DECREE BETWEEN THE
UNITED STATES AND DEFENDANT JO ANN SCOTT**

Plaintiff, the United States of America, and Defendant, Jo Ann Scott, hereby jointly move for entry of the attached Consent Decree.

Respectfully submitted,

Attorney for Defendant Jo Ann Scott

 /s/ Barry Arrington
BARRY ARRINGTON
7340 E. Caley Avenue
Suite 360
Centennial, CO 80111
(303) 205-7870
barry@arringtonpc.com

Attorney for Plaintiff United States

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
Special Litigation Section

/s/ Je Yon Jung_____

JE YON JUNG
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E-mail: Jeyon.jung@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that the Joint Motion for Entry of the Proposed Consent Decree Between the United States and Defendant Jo Ann Scott was filed electronically using the CM/ECF system, which will provide notice of such filing to all registered parties.

/s/ Je Yon Jung _____
JE YON JUNG
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
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Jeyon.jung@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-CV-01430-PAB-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT and
JO ANN SCOTT,

Defendants.

CONSENT DECREE

Plaintiff, the United States of America, and Defendant, KewnJo Ann Scott, hereby agree and consent to judgment in favor of the Plaintiff and against Defendant, Jo Ann Scott, as follows:

1. Defendant, Jo Ann Scott, is PERMANENTLY ENJOINED from using force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere or attempting to injure, intimidate, or interfere with any person because that person is or has been obtaining or providing reproductive health services.
2. Defendant, Jo Ann Scott, agrees to be bound by the terms of any injunctive relief against Kenneth Scott agreed to by the parties.
3. Defendant, Jo Ann Scott, agrees to pay seven hundred and fifty dollars (\$750.00) to each of the two (2) alleged victims of Jo Ann Scott's alleged uses of force in the United States' complaint. Payment shall be made within thirty (30) days.

4. This Consent Decree reflects a compromise of the disputed claims. No party admits any liability to the other party.

Dated this 9th day of September, 2011.

BY:

/s/ Jo Ann Scott
JO ANN SCOTT
Defendant

/s/ Barry Arrington
BARRY ARRINGTON
Attorney for Defendant Jo Ann Scott
7340 E. Caley Avenue
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Centennial, CO 80111
(303) 205-7870
barry@arringtonpc.com

BY:

/s/ Julie Abbate
JULIE ABBATE
Deputy Chief, Special Litigation Section
Attorney for Plaintiff United States

/s/ Je Yon Jung
JE YON JUNG
Senior Trial Attorney
Attorney for Plaintiff United States
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 305-1457
Jeyon.jung@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that the Consent Decree was filed electronically using the CM/ECF system, which will provide notice of such filing to all registered parties.

/s/ Je Yon Jung _____
JE YON JUNG
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 305-145
Jeyon.jung@usdoj.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-CV-01430-PAB-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT and
JO ANN SCOTT,

Defendants.

**ORDER APPROVING THE PROPOSED CONSENT DECREE BETWEEN THE
UNITED STATES AND DEFENDANT JO ANN SCOTT**

AND NOW, this ___ day of _____, 20_, upon consideration of the United States' Complaint and Consent Decree between the United States and Defendant Jo Ann Scott, it is hereby ORDERED that judgment is hereby entered in favor of Plaintiff and against Defendant, Jo Ann Scott; and the attached Consent Decree shall be adopted as an Order of the Court.

Judge Philip A. Brimmer
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-01430-PAB-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT and
JO ANN SCOTT,

Defendants.

ORDER

This matter is before the Court on the Joint Motion for Entry of Proposed Consent Decree Between the United States and Defendant Jo Ann Scott [Docket No. 67] filed by plaintiff and defendant Jo Ann Scott (collectively, the “parties”). The parties request that the Court enter judgment in favor of plaintiff and against Jo Ann Scott pursuant to the terms of a Consent Decree. See Docket No. 67-1.

The parties’ request implicates Federal Rule of Civil Procedure 54(b), which allows a district court to “direct entry of a final judgment as to one or more, but fewer than all, . . . parties only if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b). The parties have jointly sought entry of final judgment. The Court perceives little risk of piecemeal appeals and, therefore, concludes there is no just reason to delay entering final judgment pursuant to the parties’ agreement. See *Comerica Bank-Detroit v. Allen Industries, Inc.*, 769 F. Supp. 1408, 1410 (E.D. Mich. 1991) (where the court concluded there was “no just reason to delay” entry of judgment

pursuant to Rule 54(b) because it could not “perceive any risk that the parties to the[] settlement agreements will appeal this judgment”); *cf. Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980) (stating that district court, when determining whether to enter judgment pursuant to Rule 54(b), must aim to “preserve[] the historic federal policy against piecemeal appeals”) (citation omitted).

For the foregoing reasons, and the Court having reviewed the Joint Motion and the attached Consent Decree, it is

ORDERED that the Joint Motion for Entry of Proposed Consent Decree Between the United States and Defendant Jo Ann Scott [Docket No. 67] is GRANTED. It is further

ORDERED that the Consent Decree entered into between plaintiff and defendant Jo Ann Scott [Docket No. 67-1] is adopted as an Order of the Court. It is further

ORDERED that defendant Jo Ann Scott’s motion to dismiss [Docket No. 29] is denied as moot. It is further

ORDERED that judgment shall enter in favor of plaintiff and against defendant Jo Ann Scott pursuant to Federal Rule of Civil Procedure 54(b).

DATED October 18, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE PHILIP A. BRIMMER

Civil Action No. 11-cv-01430-PAB-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT and
JO ANN SCOTT,

Defendants.

FINAL JUDGMENT

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order entered on October 18, 2011, by Judge Philip A. Brimmer, which is incorporated herein by reference as if fully set forth, it is

ORDERED that the Joint Motion for Entry of Proposed Consent Decree Between the United States and Defendant Jo Ann Scott filed September 12, 2011 is GRANTED.

It is

FURTHER ORDERED that the Consent Decree entered into between plaintiff and defendant Jo Ann Scott filed September 12, 2011 is adopted as an Order of the Court. It is

FURTHER ORDERED that, pursuant to the order of the Court that there is no just reason for delay, final judgment is hereby entered in favor of plaintiff and against defendant Jo Ann Scott pursuant to Federal Rule of Civil Procedure 54(b).

Dated this 19th day October, 2011.

ENTERED FOR THE COURT:

GREGORY C. LANGHAM, CLERK

s/Edward P. Butler

Edward P. Butler, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-01430-PAB-MEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH SCOTT,

Defendant.

ORDER OF DISMISSAL

This matter is before the Court on the Joint Stipulation for Dismissal [Docket No. 189] filed by the remaining parties in this matter, plaintiff United States of America and defendant Kenneth Scott. The parties “stipulate to dismiss this action, with prejudice.” The stipulation, however, was not signed by “by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii); see *Anderson-Tully Co. v. Federal Ins. Co.*, 347 F. App’x 171, 176 (6th Cir. 2009) (under Fed. R. Civ. P. 41(a)(1)(A)(ii), “all parties who have appeared” includes both current and former parties). As a result, the Joint Stipulation for Dismissal, by itself, does not serve to dismiss this action. The Court, however, having reviewed the stipulation, finds that dismissal is appropriate. Therefore, pursuant to Fed. R. Civ. P. 41(a)(2), it is

ORDERED that all claims by and between plaintiff and defendant are dismissed with prejudice, each party to bear its own costs and attorneys’ fees. It is further

ORDERED that this case shall be closed in its entirety.

DATED March 29, 2012.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
Department of Justice)
Civil Rights Division)
Special Litigation Section)
950 Pennsylvania Avenue)
Washington, DC 20530)
(202) 514-6255)

Plaintiff,

v.)

Richard Retta,)
48 Orchard Way N)
Potomac, MD 20854-6128)
Defendant.)

Case: 1:11-cv-01280
Assigned To : Boasberg, James E.
Assign. Date : 7/14/2011
Description: Civil Rights-Non. Employ.

COMPLAINT

The United States of America, by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"), 18 U.S.C. § 248 (1994), as follows:

1. In bringing this action, the United States has reasonable cause to believe (1) Defendant, Richard Retta, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be intimidated and/or interfered with by the Defendant's conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) in that all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Defendant, Richard Retta, is a regular anti-abortion protestor at the Planned Parenthood of Metropolitan Washington ("Clinic"), located at 1108 16th Street, NW in Washington, D.C., 20036.

6. On information and belief, Defendant resides in Rockville, Maryland.

FACTUAL BACKGROUND

7. The Planned Parenthood of Metropolitan Washington provides reproductive healthcare services.

8. For over ten years, Defendant Richard Retta has regularly engaged in anti-abortion protest activity at the Planned Parenthood of Metropolitan Washington.

9. Defendant Retta has been among the most vocal and aggressive anti-abortion protestors outside of the Clinic.

10. Defendant Retta frequently walks very closely beside patients as they walk to the Clinic.

11. When volunteer patient escorts accompany patients towards the Clinic entrance, Defendant also typically walks in front of the escorts so that the escorts must change course and walk around Defendant in order to keep walking beside the patient.

12. Defendant frequently follows patients to the Clinic entrance and continues to yell at the patient as the door closes.

13. On one occasion, Defendant walked so closely to a patient that he stepped on the patient's shoe and broke the shoe strap.

14. Defendant frequently follows patients and/or their companions as they leave the Clinic and walk down the block.

15. Defendant frequently follows patients or their companions into the street and oncoming traffic.

16. On January 8, 2011, Mr. Retta physically obstructed a patient from entering the Clinic, and physically obstructed Clinic escorts, such that the patient was only able to ultimately access the Clinic with the extraordinary assistance and intervention of another Clinic escort and staff.

17. At approximately 11:20 a.m., Defendant began talking to a patient as she stood in front of the Clinic gate.

18. After the patient became visibly upset, a volunteer escort offered to walk the patient to the Clinic so that the patient would not have to talk to Defendant.

19. As two volunteer escorts began walking the patient through the gate and along the narrow walkway to the Clinic entrance, Defendant walked alongside the patient and yelled at the escorts that they should not be escorting the patient into the Clinic. He followed alongside them

for approximately 35 feet, nearly the entire length of the walkway from the sidewalk to the door of the Clinic.

20. About six feet in front of the Clinic entrance, Defendant walked in front of the patient and positioned himself so that he stood directly in front of the patient and escorts with his back towards the Clinic entrance.

21. The escorts repeatedly asked Defendant to move out of the patient's way so that she could enter the Clinic, and otherwise attempted to guide the patient into the Clinic.

22. Defendant shouted at the escorts and yelled to the patient, "Don't go in there. Don't let them kill your baby."

23. Each time the patient attempted to walk around Defendant so that she could enter the Clinic, Defendant shifted his position, weaving to step in front of the patient so that he blocked her access to the Clinic.

24. Defendant's actions likewise prevented Clinic escorts from taking the patient up to the door of the Clinic.

25. The patient was only able to enter the Clinic, and the escorts were only able to facilitate her ingress, with assistance from third parties when another escort physically planted himself next to Defendant, preventing Defendant from continuing to block the patient. Additionally, the security officer who sits at the front desk inside the Clinic exited the Clinic in order to quickly guide the patient into the Clinic.

26. The patient's ultimate access to the Clinic, and the escorts' ability to facilitate the patient's entrance into the Clinic, were rendered unreasonably difficult and hazardous as a result of the obstruction.

27. Defendant attempted to, and did, by physical obstruction, intentionally intimidate or interfere with persons because they were or had been providing or obtaining reproductive health services, or in order to intimidate such persons from providing or obtaining reproductive health services at the Planned Parenthood of Metropolitan Washington.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

28. The United States incorporates herein the averments of paragraphs 1 through 27.

29. Defendant's conduct as described in paragraphs 16 through 27 constitutes a physical obstruction that intentionally intimidated or interfered with persons, or constituted an attempt to intimidate and/or interfere with such persons, because they were or had been providing reproductive health services, or in order to intimidate such persons from providing reproductive health services at the Planned Parenthood of Metropolitan Washington.

30. Defendant's conduct as described in paragraphs 16 through 27 constitutes a physical obstruction that intentionally intimidated or interfered with persons, or constituted an attempt to intimidate and/or interfere with such persons, because they were or had been obtaining reproductive health services, or in order to intimidate such persons from obtaining reproductive health services at the Planned Parenthood of Metropolitan Washington.

31. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

32. On information and belief, unless Defendant is restrained by this Court, persons seeking and/or providing reproductive health services will continue to be intimidated and/or interfered with by Defendant's actions.

PRAYER FOR RELIEF

33. The United States is authorized under 18 U.S.C § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

34. The United States is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain statutory compensatory damages on behalf of person aggrieved by Defendant's actions in violation of FACE.

35. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess a civil penalty against a respondent no greater than \$10,000 for a first violation for a nonviolent physical obstruction.

WHEREFORE, the United States respectfully requests judgment in its favor and against Defendant, Richard Retta, in the form of:

- A. An Order permanently prohibiting Defendant, Richard Retta, and his representatives, agents, employees, and any others acting in concert or participation with him, from coming inside the Clinic gate;
- B. An Order permanently prohibiting Defendant, Richard Retta, and his representatives, agents, employees, and any others acting in concert or participation with him, from coming within 20 feet of the entrance of the Clinic gate;
- C. An Order permanently prohibiting Defendant, Richard Retta, and his representatives, agents, employees, and any others acting in concert or participation with him, from physically obstructing Clinic escorts, other Clinic staff, or patients seeking to obtain or provide reproductive health services or

who had been obtaining or providing reproductive health services at the Clinic;

- D. An Order permanently prohibiting Defendant, Richard Retta, and his representatives, agents, employees, and any others acting in concert or participation with him, from violating the Freedom of Access to Clinic Entrances Act;
- E. Statutory compensatory damages of \$5,000 to the three victims of Defendant Richard Retta's activities in violation of FACE;
- F. A civil penalty assessment in the amount of \$10,000; and
- G. An Order permitting the local police to enforce the permanent injunction against Defendant Richard Retta.

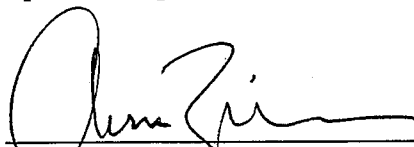
RONALD C. MACHEN, JR.
D.C. BAR # 447889
United States Attorney for the
District of Columbia

Respectfully Submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
Special Litigation Section



AARON B. ZISSER
MICHELLE L. LEUNG

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Special Litigation Section
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Washington, DC 20530
(202) 305-3355
(202) 514-6903 (fax)
aaron.zisser@usdoj.gov

UNITED STATES DISTRICT COURT

for the
District of Columbia

United States of America)
Plaintiff)
v.) Case No.

Richard Retta)
Defendant)

APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

United States of America

Date: 07/14/2011



Attorney's signature

Michelle L. Leung

Printed name and bar number

United States Department of Justice
Civil Rights Division, Special Litigation Section
950 Pennsylvania Ave NW
Washington, DC 20530

Address

michelle.leung@usdoj.gov

E-mail address

(202) 305-3773

Telephone number

(202) 514-6903

FAX number

CIVIL COVER SHEET

JS-44
(Rev. 2/11 DC)

I (a) PLAINTIFFS United States of America, <i>DOJ</i>	DEFENDANTS Richard Retta
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) <u>Montgomery</u> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Aaron B. Zisser Michelle L. Leung United States Department of Justice Civil Rights Division Special Litigation Section 1950 Pennsylvania Ave. NW Washington, DC 20530 (202) 305-3355	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
<table style="width: 100%;"> <tr> <td><input checked="" type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input checked="" type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width: 100%;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4 <input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5 <input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6 <input type="radio"/> 6</td> </tr> </table>	PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4 <input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5 <input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6 <input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA ((1395ff)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	OR	<input type="radio"/> F. Pro Se General Civil	
Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input checked="" type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

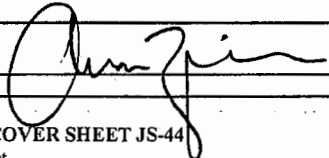
V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 FACE Act, 18 U.S.C. § 248 (1994). Physical obstruction with intent to intimidate and/or interfere persons providing/obtaining reproductive health services.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** 15,000 Check YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form.

DATE July 14, 2011 SIGNATURE OF ATTORNEY OF RECORD 

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

CIVIL COVER SHEET

JS-44 (Rev. 2/11 DC)

I (a) PLAINTIFFS: United States of America, DOJ
DEFENDANTS: Richard Retta
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: (EXCEPT IN U.S. PLAINTIFF CASES)
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER): Aaron B. Zisser, Michelle L. Leung, United States Department of Justice, Civil Rights Division, Special Litigation Section, 1950 Pennsylvania Ave. NW, Washington, DC 20530, (202) 305-3355
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY): Montgomery
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
ATTORNEYS (IF KNOWN):

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in item III)
III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!
PTF DFT PTF DFT
Citizen of this State 1 1 Incorporated or Principal Place of Business in This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

A. Antitrust
B. Personal Injury/Malpractice
C. Administrative Agency Review
D. Temporary Restraining Order/Preliminary Injunction
Any nature of suit from any category may be selected for this category of case assignment.
(If Antitrust, then A governs)
151 Medicare Act
Social Security:
861 HIA ((1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
Other Statutes:
891 Agricultural Acts
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
890 Other Statutory Actions (If Administrative Agency is Involved)

E. General Civil (Other) OR F. Pro Se General Civil

Real Property: 210 Land Condemnation, 220 Foreclosure, 230 Rent, Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
Personal Property: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
Bankruptcy: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
Prisoner Petitions: 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition
Property Rights: 820 Copyrights, 830 Patent, 840 Trademark
Federal Tax Suits: 870 Taxes (US plaintiff or defendant), 871 IRS-Third Party 26 USC 7609
Forfeiture/Penalty: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 RR & Truck, 650 Airline Regs, 660 Occupational Safety/Health, 690 Other
Other Statutes: 400 State Reapportionment, 430 Banks & Banking, 450 Commerce/ICC Rates/etc., 460 Deportation
462 Naturalization Application, 465 Other Immigration Actions, 470 Racketeer Influenced & Corrupt Organizations, 480 Consumer Credit, 490 Cable/Satellite TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 900 Appeal of fee determination under equal access to Justice, 950 Constitutionality of State Statutes, 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) <i>*(If pro se, select this deck)*</i>	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 FACE Act, 18 U.S.C. § 248 (1994). Physical obstruction with intent to intimidate and/or interfere persons providing/obtaining reproductive health services.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 15,000 Check YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form.

DATE July 14, 2011

SIGNATURE OF ATTORNEY OF RECORD 

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 1:11-cv-1280-JEB
)	
RICHARD RETTA,)	
)	
Defendant.)	
_____)	

~~**PROPOSED**~~ **ORDER APPROVING CONSENT JUDGMENT**

AND NOW, this 14 day of January, 2013, upon consideration of the United States' Complaint and the Consent Judgment between Plaintiff, the United States of America, and Defendant, Richard A. Retta, it is hereby ORDERED that the attached Consent Judgment shall be adopted as an Order of the Court.

BY THE COURT:

/s/ James E. Boasberg
Hon. James E. Boasberg
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 1:11-cv-1280-JEB
)	
RICHARD RETTA,)	
)	
Defendant.)	
_____)	

CONSENT JUDGMENT

Plaintiff, the United States of America, and Defendant, Richard A. Retta (together, “the parties”), hereby stipulate and consent to the following with regard to Planned Parenthood of Metropolitan Washington located at 1108 16th Street, NW, Washington, D.C. (“Clinic”):

1. Defendant, Richard A. Retta, is **PERMANENTLY ENJOINED** from violating, or directing or instructing others to violate, the Freedom of Access to Clinic Entrances Act (“FACE”);

2. Defendant, Richard Retta, is **PERMANENTLY ENJOINED** from coming inside the Clinic gate, which abuts the sidewalk running north and south along 16th Street, marked by the dotted rectangle in Exhibit 1;

3. Defendant, Richard A. Retta, is **PERMANENTLY ENJOINED** from coming within the boundary directly outside the Clinic gate marked by a solid rectangle on Exhibits 1 and 2 indicating a rectangular “buffer zone” approximately 18 feet and 7 1/4 inches from north to south (extending from the first fence post footing south of the fence opening (“gate”) to the first

fence post footing north of the gate), by approximately 6 feet from east to west (2 concrete tiles east of the fence, but not including the concrete tiles adjacent to the curb abutting 16th Street). The concrete tiles adjacent to the curb abutting 16th Street are outside the buffer zone, and Mr. Retta is free to walk north and south, stop, stand, and engage in other legal behavior on those tiles. Should any physical obstruction block any portion of the concrete tiles adjacent to the curb abutting 16th Street, Mr. Retta is permitted to cross into the buffer zone temporarily to pass the obstruction;

4. The terms of paragraph 3 of this Consent Judgment only apply during the hours of operation, as indicated on the website of the Clinic, and two hours before and after the hours of operation of the Clinic;

5. This Consent Judgment does not restrict any of the rights of the Defendant, Richard A. Retta, including his First Amendment rights, outside the gated area described in paragraph 2 and outside the buffer zone described in paragraph 3 of this Consent Judgment. Nor does this Consent Judgment restrict any rights of the Defendant, Richard A. Retta, including his First Amendment rights, inside the buffer zone described in paragraph 3 when, as described in paragraph 4 of this Consent Judgment, the terms of paragraph 3 do not apply;

6. Plaintiff, the United States of America, agrees not to file any civil action under FACE against Defendant, Richard A. Retta, for any conduct that occurred outside the Clinic prior to the date that this agreement is signed by the parties; and Plaintiff, the United States of America, agrees not to file any criminal action against Defendant, Richard A. Retta, under FACE for any conduct that was formally disclosed in any way in this case and that occurred prior to the date that this agreement is signed by the parties;

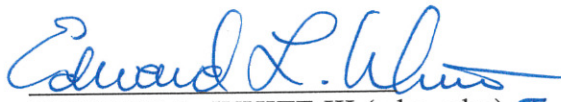
7. Nothing in this Consent Judgment restricts Defendant, Richard A. Retta, from filing a motion for relief of judgment under Federal Rule of Civil Procedure 60; and

8. This Consent Judgment reflects a compromise on the disputed claims alleged in the above-captioned case and is a full resolution of those claims. No party admits liability to the other party, and the parties agree to bear their own attorneys' fees, costs, and expenses in this action. Only the Plaintiff, the United States of America, and Defendant, Richard A. Retta, are bound by the terms of this Consent Judgment.

Dated:


RICHARD A. RETTA
Defendant

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division


EDWARD L. WHITE III (adm. phv) *Jan. 10, 2013*
Counsel for Defendant
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(734) 302-1758 (fax)
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JONATHAN M. SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
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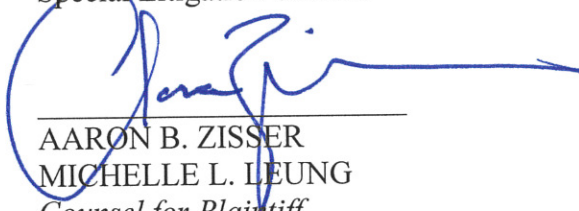

AARON B. ZISSER
MICHELLE L. LEUNG
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Civil Rights Division
Special Litigation Section
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Washington, DC 20530
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(202) 514-4883 (fax)
Aaron.Zisser@usdoj.gov
Michelle.Leung@usdoj.gov

EXHIBIT 1

**DISTRICT DEPARTMENT OF THE ENVIRONMENT
WATERSHED PROTECTION DIVISION
SEDIMENT CONTROL APPROVAL**

PLAN NUMBER: _____

NOTICE: This approval is for the Grading and Sediment Control Permit. The applicant is required to construct design features as shown on these plans. The applicant must notify this office by phone (see below) at least 24 hours prior to the start of grading activity and with 12 weeks after completion of project to request final inspection. If there is need to make any changes or modifications in the approved design, this office must be notified immediately.

Approved by: *[Signature]*
Date: 3/31/10

Phone: (202) 595-0277

District Department of the Environment
Watershed Protection Division
Review Plans
[Signature]
Date 3/31/10

Sidewalk

8'-5" Field Verify

City Utilities Access

2'-10"



17'-0"

Gates Sized As Req'd



City Utilities Access

8'-5" Field Verify

NOTE: Field Verify All Existing Conditions For Proper Fabrication.

Tree Trunk



Post Footings Typ. As Req'd

Post Footings Typ. As Req'd

Curved Curb

Curved Curb

4'-9 1/4" ±

4'-9 1/4" ±

4'-9 1/4" ±

4'-9 1/4" ±

5'-5" ±

5'-5" ±

5'-5" ±

5'-5" ±

19'-3"

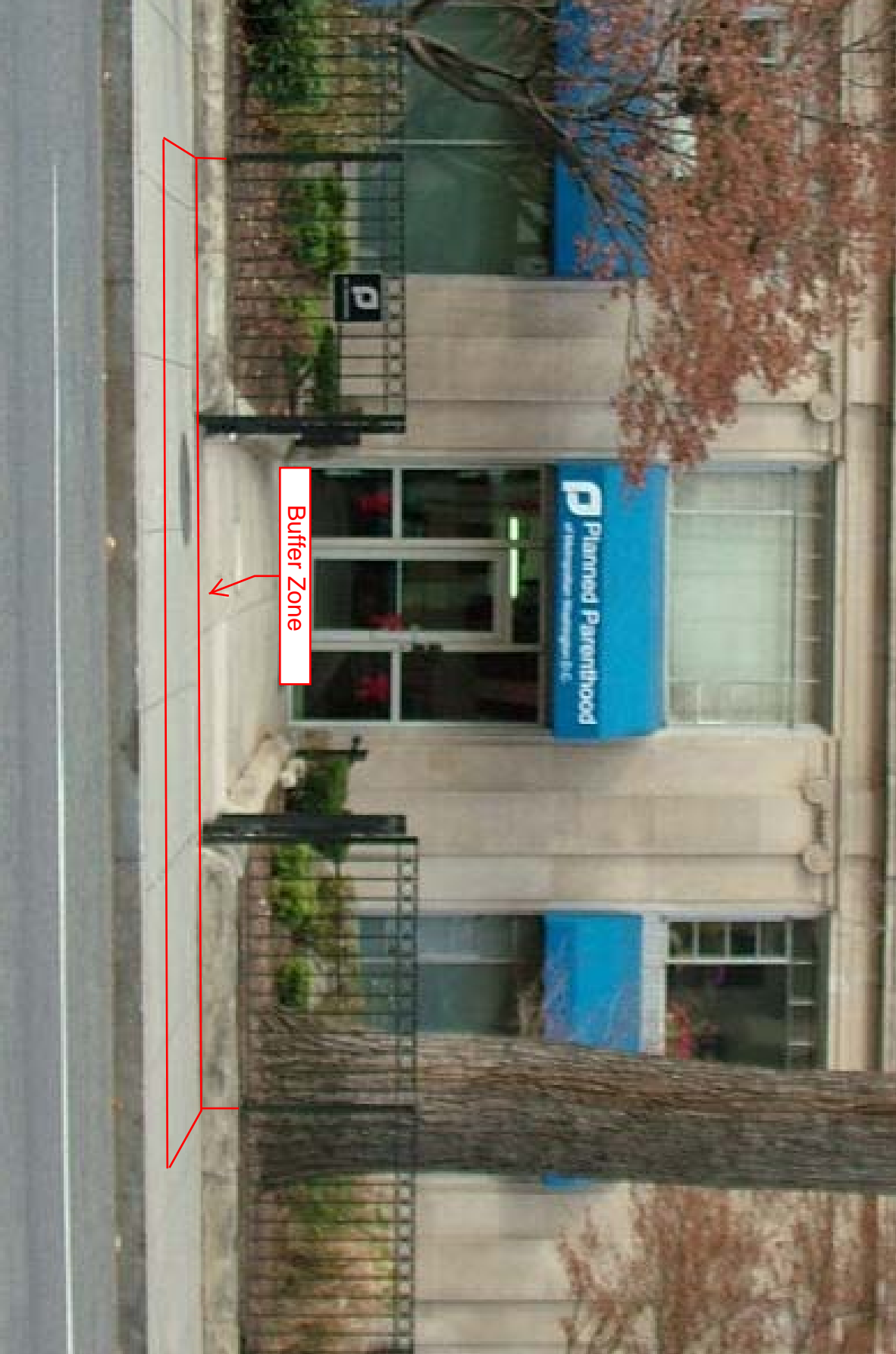
21'-5"

40'-6" Field Verify

1'-3"

Buffer Zone =
6 ft. x 18 ft. 7 1/4 in.

EXHIBIT 2



Buffer Zone

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No.
)
MEREDITH PARENTE,)
)
 Defendant.)
_____)

COMPLAINT

The United States of America, by the undersigned attorneys, asserts a civil cause of action under the Freedom of Access to Clinic Entrances Act (“FACE”), 18 U.S.C. § 248 (1994), as follows:

1. In bringing this action, the United States has reasonable cause to believe (1) Defendant, Meredith Parente, has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured, intimidated, and/or interfered with by the Defendant’s conduct.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C. § 248(c)(2), and 28 U.S.C. § 1345.

3. The United States has standing to bring this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) in that all the events giving rise to this complaint occurred in this judicial district.

DEFENDANT

5. Upon information and belief, Defendant, Meredith Parente, resides in Pittsburgh, Pennsylvania.

FACTUAL BACKGROUND

6. The Planned Parenthood of Western Pennsylvania Liberty Avenue (“PPWP”), located at 933 Liberty Avenue in Pittsburgh, Pennsylvania, provides reproductive healthcare services.

7. The City of Pittsburgh has adopted an ordinance, Pittsburgh, Pa., Code Title. 6, § 623.04, that prevents a person or persons from knowingly congregating, patrolling, picketing, or demonstrating in a zone extending 15 feet from any entrance to a hospital and/or health care facility (“the buffer zone”).

8. Defendant regularly engages in anti-abortion protest activity outside PPWP.

9. On January 15, 2011, at approximately 9:00 a.m., two volunteer escorts were accompanying a patient and her companion into PPWP.

10. The two volunteer escorts were following behind the patient and her companion, approximately 15 feet outside of the buffer zone.

11. Defendant approached the escorts from behind.

12. Defendant intentionally shoved the two escorts from behind, pushing them towards the patient and her companion.

13. Defendant attempted to, and did, injure, intimidate, and/or interfere with persons because they were attempting to provide and/or obtain reproductive health services from PPWP.

CAUSE OF ACTION UNDER 18 U.S.C. § 248

14. The United States incorporates herein the averments of paragraphs 1 through 13.

15. Defendant's conduct as described in paragraphs 12 and 13 constitutes a use of force that intentionally injured, intimidated, and/or interfered with persons seeking to provide and/or obtain reproductive health services.

16. On information and belief, unless Defendant is restrained by this Court, Defendant will continue to engage in the illegal conduct averred herein.

17. On information and belief, unless Defendant is restrained by this Court, persons seeking and/or providing reproductive health services will continue to be injured, intimidated, and/or interfered with by Defendant's actions.

18. The United States is authorized under 18 U.S.C § 248(c)(2)(B) to seek and obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's violation of FACE.

19. The United States is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and obtain statutory compensatory damages on behalf of persons aggrieved by Defendant's actions in violation of FACE.

20. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to seek and obtain a civil penalty from a Defendant no greater than \$15,000 for a first violation other than a nonviolent physical obstruction.

WHEREFORE, the United States respectfully requests judgment in its favor and against Defendant, Meredith Parente, in the form of:

- A. An Order permanently prohibiting Defendant, Meredith Parente, and her representatives, agents, employees, and any others acting in concert or participation with her, from approaching within 25 feet of the buffer zone outside the Planned Parenthood of Western Pennsylvania Liberty Avenue;

- B. An Order permanently prohibiting Defendant, Meredith Parente, and her representatives, agents, employees, and any others acting in concert or participation with her, from violating the Freedom of Access to Clinic Entrances Act;
- C. Statutory compensatory damages of \$5,000 to the two victims of Defendant Meredith Parente's activities in violation of FACE;
- D. A civil penalty assessment in the amount of \$15,000; and
- E. An Order permitting the local police to enforce the permanent injunction against Defendant Meredith Parente.

Respectfully Submitted,

DAVID J. HICKTON
United States Attorney
Western District of Pennsylvania

s/ Michael Comber
MICHAEL COMBER
Assistant U.S. Attorney
United States Attorney's Office
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(412) 644-4549 (fax)
michael.comber@usdoj.gov

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief, Special Litigation Section

JULIE K. ABBATE
Deputy Chief, Special Litigation Section

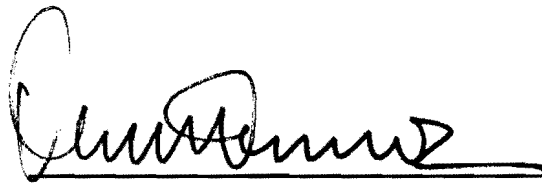
s/ Aaron S. Fleisher
AARON S. FLEISHER
MICHELLE L. LEUNG
Trial Attorneys
United States Department of Justice
Civil Rights Division
Special Litigation Section
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Washington, DC 20530
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(202) 514-6903 (fax)
aaron.fleisher@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 2:11-cv-01420
)	
MEREDITH PARENTE,)	
)	
Defendant.)	

ORDER APPROVING CONSENT JUDGMENT

AND NOW, this 8th day of November, 2012, upon consideration of the United States' Complaint, the other submissions of the parties, and the Consent Judgment agreed to by the United States and Defendant, Meredith Parente, and for the reasons set forth on the record on this date, it is hereby ORDERED, ADJUDGED and DECREED that judgment is entered against Defendant, Meredith Parente; and the attached Consent Judgment shall be adopted as an Order of the Court. This civil action shall be marked CLOSED on the docket, subject to being reopened for cause shown. Each party shall bear their own fees, costs and expenses. The Court shall retain jurisdiction over this civil action, and over the parties, for purposes of the interpretation, application or enforcement of its Orders.



Mark R. Hornak
United States District Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. 2:11-cv-01420 MRH
)
 MEREDITH PARENTE,)
)
 Defendant.)
 _____)

CONSENT JUDGMENT

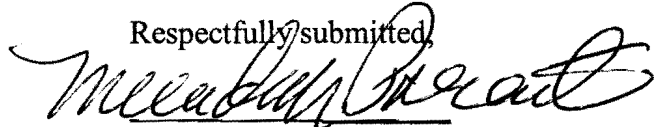
Plaintiff, the United States of America, and Defendant, Meredith Parente, hereby agree and consent to judgment against Defendant as follows:

1. Defendant is PERMANENTLY ENJOINED from being physically located within 25 feet of the existing buffer zone established by Pittsburgh, Pa., Code Title. 6, § 623.04, around the Planned Parenthood of Western Pennsylvania Liberty Avenue, located at 933 Liberty Avenue in Pittsburgh, Pennsylvania.
 - a. The existing buffer zone is marked by a painted yellow semi-circle in front of the entrance of 933 Liberty Avenue.
 - b. When facing 933 Liberty Avenue, the permanent injunction prevents Defendant Parente from being physically located within 25 feet to the left of the existing buffer zone, or from being physically located within 25 feet to the right of the existing buffer zone. The injunction is not meant to prevent Defendant Parente from being in a vehicle on the street driving past 933 Liberty Avenue within 25 feet of the existing buffer zone.

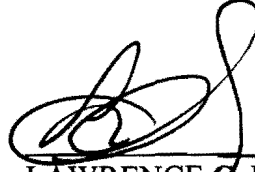
- c. To the left of the existing buffer zone, Defendant Parente is not permitted to be physically located any closer than the furthest edge of 931 Liberty Avenue.
 - d. To the right of the existing buffer zone, Defendant Parente is not permitted to be physically located any closer than the doorway of 937 Liberty Avenue.
 - e. Attached as Exhibit 1 is a photograph of the outside area of 933 Liberty Avenue. The proposed permanent injunction is marked by two red boxes on either end of the existing buffer zone.
2. Defendant Parente and any others acting under her instruction or direction are PERMANENTLY ENJOINED from violating the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (1994).
3. Five years from the date of the Order Approving the Consent Judgment, Defendant may move for good cause to dissolve the Consent Judgment. Good cause requires a showing that:
 - a. Defendant has not committed any violations under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248;
 - b. Defendant has not violated the terms of the Consent Order; and
 - c. Defendant has not violated any buffer zone in Pittsburgh established by Pittsburgh, Pa., Code Title. 6, § 623.04.
4. This Consent Judgment reflects a compromise of the disputed claims. No party admits liability to the other party.

Date: 10/29/12

Respectfully submitted,



MEREDITH PARENTE



LAWRENCE C. PALADIN, JR, ESQ.

Counsel of Record for Defendant

Paladin Law Offices, P.C.

10700 Frankstown Rd., Suite 305

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for 

AARON S. FLEISHER

MICHELLE L. LEUNG

Trial Attorneys

United States Department of Justice

Civil Rights Division

Special Litigation Section

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Washington, DC 20530

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(202) 514-6903 (fax)

aaron.fleisher@usdoj.gov

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 20 2010
CLERK, U.S. DISTRICT COURT
By *[Signature]* 4.30pm

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

ERLYNDON J. LO

§
§
§
§
§

NO.

3-10 CR 110-M

INDICTMENT

The Grand Jury Charges:

Count One

Transmitting a Threatening Communication in Interstate Commerce
(Violation of 18 U.S.C. § 875(c))

On or about April 1, 2010, **ERLYNDON J. LO**, knowingly transmitted in interstate commerce, from in or around the City of Plano, Texas, a communication via Federal Express mailing and that the defendant knew would be transmitted via the ECF/Pacer Internet filing system, that contained a threat to use physical force and deadly force against clients and employees of the Southwestern Women's Surgical Center ("SWSC"), a facility located in the Northern District of Texas, that provides reproductive health services, that is, statements declaring as follows: "...ON FRIDAY, APRIL 2, 2010, TOMORROW, I WILL BE AT THE SOUTHWESTERN LATE-TERM ABORTION FACILITY LOCATED AT 8616 Greenville Ave. at Royal Ln. (NE corner), Dallas 75243, I will try to

stop an abortion using oral words, and if words are not enough, I will use physical force if necessary, and if anyone tries to physically stop me, I will overcome that force, and if I must use deadly force to defend the innocent life of another human being, I will.”


All in violation of Title 18, United States Code, Section 875(c).

Count Two
Interference with Access to Reproductive Health Services
(Violation of 18 U.S.C. § 248(a)(1))

On or about April 1, 2010, in the Northern District of Texas and elsewhere, **ERLYNDON J. LO**, by threat of force, intentionally intimidated and interfered with, and attempted to intimidate and interfere with, the employees and clients of the Southwestern Women's Surgical Center ("SWSC"), a facility located in the Northern District of Texas, that provides reproductive health services, because the SWSC provided reproductive health services, and in order to intimidate the employees and clients of the SWSC from providing and obtaining reproductive health services.

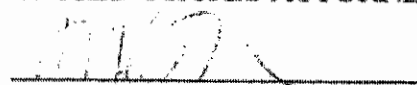
All in violation of Title 18, United States Code, Section 248(a)(1).

A TRUE BILL



FOREPERSON

JAMES T. JACKS
UNITED STATES ATTORNEY



SARAH R. SALDAÑA
Assistant United States Attorney
Texas Bar No. 05776775

ERRIN MARTIN
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Telephone: 214.659.8600
Facsimile: 214.767.4104

THOMAS J. PEREZ
ASSISTANT ATTORNEY GENERAL

MYESHA BRADEN
Trial Attorney
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Civil Rights Division, Criminal Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: 202.305.1483

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 20 2010
CLERK, U.S. DISTRICT COURT
By *[Signature]*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

v.

ERLYNDON J. LO

3-10 CR 110-M

INDICTMENT

18 U.S.C. § 875(c)
Transmitting a Threatening Communication in Interstate Commerce

18 U.S.C. § 248(a)(1)
Interference with Access to Reproductive Health Services

2 Counts

A true bill rendered

DALLAS

[Signature]
FOREPERSON

Filed in open court this 20 day of April, 2010

Clerk

Defendant is in Federal Custody

[Signature]
UNITED STATES DISTRICT/MAGISTRATE JUDGE

Magistrate Complaint 3:10-MJ-126

3-10 CR 110-M

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Related Case Information

Superseding Indictment: Yes No
New Defendant: Yes No
Pending CR Case in NDTX: Yes No (If yes, CR #):
Search Warrant Case Number: _____
Rule 20 from District of: _____
Magistrate Case Number: 3:10-MJ-126

1. Defendant Information

Juvenile: Yes No
Matter to be sealed:
 Yes No

Defendant Name Erlyndon J. Lo (I)
Alias Name _____
Address _____

County in which offense was committed: Dallas

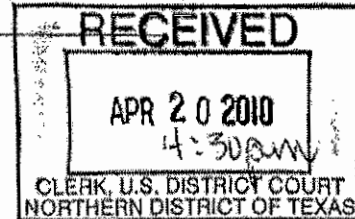
2. U.S. Attorney Information

Sarah Saldaña Bar # 05776775

3. Interpreter

Yes No

If Yes, list language and/or dialect: _____



4. Location Status

Already in Federal Custody
 Already in State Custody
 On Pretrial Release

5. U.S.C. Citations

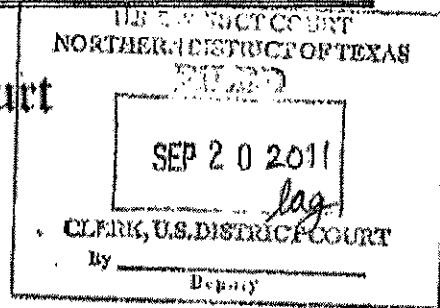
Total # of Counts as to This Defendant: 2 Petty Misdemeanor Felony

Citation	Description of Offense Charged	Count(s)
18 U.S.C. § 875(c)	Transmitting a Threatening Communication in Interstate Commerce	1
18 U.S.C. § 248(a)(1)	Interference with Access to Reproductive Health Services	2

Date 4/20/10

Signature of AUSA: _____

United States District Court
Northern District of Texas
Dallas Division



**JUDGMENT OF ACQUITTAL
BY REASON OF INSANITY
AND ORDER OF RELEASE SUBJECT TO CONDITIONS**

UNITED STATES OF AMERICA

v.

Case Number: 3:10-CR-110-M (01)
USMS No. 16609-078

ERLYNDON J. LO
Defendant.

The Court finds that Defendant ERLYNDON J. LO ("Lo"), is NOT GUILTY of all charges brought against him in this cause, by reason of insanity. The Court further finds that the undisputed evidence before it establishes that Lo's conditional release, under a prescribed regimen of medical, psychiatric, and psychological care or treatment, will not create a substantial risk of bodily injury to another person or serious damage to the property of another, and the Court therefore ORDERS, ADJUDGES AND DECREES that Lo shall be promptly released, subject to these conditions:

- 1). Lo shall reside at the home of Michael Lo, 3504 Nancy Court, Plano, Texas 75023. He shall remain at said residence at the direction of the U.S. Probation Officer assigned to his case ("USPO"). Lo shall make no change from this residence unless approved by the USPO or the Court in advance.
- 2). Lo shall be supervised by the U.S. Probation Office and shall follow all instructions given by the USPO. He shall meet with the USPO as directed, but no less than twice per month.
- 3). Lo shall actively participate in and cooperate with a regimen of mental health and psychiatric care as directed by the USPO, as administered by his treating mental health provider(s), including voluntary admission on an inpatient basis for stabilization of his mental condition should it be deemed necessary by his mental health provider(s). He shall follow all the rules, regulations and instructions of the treatment staff and comply with the treatment regimen recommended by them.
- 4). Lo shall have his medication, prescribed for him by his mental health provider, administered to him by injection every two weeks, or as otherwise prescribed, at the office of a medical service provider, as determined by the USPO.

5). Lo shall waive his rights to confidentiality regarding his mental health treatment, to allow sharing of information with the USPO and with other mental health treatment providers, who will assist in evaluating whether these conditions imposed on Lo remain appropriate or should be modified.

6). Lo will refrain from the use of alcohol and illegal drugs, as well as abuse of over-the-counter medications, and submit to mandatory urinalysis testing as deemed warranted by treating mental health staff and/or the USPO. This includes participating in substance abuse treatment as deemed necessary by the USPO and/or Lo's mental health providers. Nothing herein prevents Lo from taking communion for religious purposes.

7). Lo shall not have in his possession at any time actual or imitation firearms or other dangerous weapons, and he may not write, state or communicate threats to anyone. He shall submit to a warrantless search, on request of his USPO or any law enforcement officer, of his person or property for the purpose of determining compliance with these conditions, and shall permit confiscation of any contraband found in such a search.

8). Lo shall not commit a federal, state, or local crime, and shall immediately notify his USPO if he is arrested or questioned by any law enforcement officer. He shall not associate with any person convicted of a felony unless granted permission to do so by his USPO.

9). Lo shall submit, subject to review by the Court in a period of six months, to Global Positioning Satellite ("GPS") tracking, if available where he resides, and shall contribute to the costs of the monitoring services rendered (copayment) at a rate of at least \$8.49 per day, not to exceed the total cost per day of the monitoring services, to the extent he has the financial ability to do so.

10). Lo shall stay away from any Reproductive Health Providers, their staff, clinics and facilities.

11). Lo shall not come within 100 yards of the Southwestern Women's Surgery Center and its employees.

12). Lo shall not affiliate or associate with any organization advocating violence, harassment, protests or acts of civil disobedience involving the provision of reproductive health services, including abortion.

13). Lo shall not access the Internet for the purpose of reading, posting, communicating, or reviewing information involving the provision of reproductive health services, including abortion.

14). The United States Marshal Service of the Northern District of Texas- Dallas Division, or such other person designated by the Court, shall review any court documents prepared in the future by Mr. Lo on his own behalf, prior to filing.

15). Lo shall permit the USPO to visit him at anytime, at home or elsewhere, and shall allow the USPO access to search his computer and personal possessions for, and to confiscate, any contraband or other materials involving the provision of reproductive health services, including abortion.

16). Lo shall surrender his passport or equivalent travel document and shall not submit an application to acquire a passport or equivalent travel document.

17). The USPO shall prepare and deliver to the Court a status report regarding Mr. Lo's compliance with his conditions of release every two months for a period of six months. If these reports are satisfactory, the Court will then require a report every six months over a period of eighteen months. At the end of this two-year period, the Court will determine whether additional regular reports from the USPO to the Court are necessary.

18). Lo shall be released from the custody of the Bureau of Prisons immediately, but only after his daily medication has been administered. Immediately upon Mr. Lo's release from the custody of the Bureau of Prisons, Michael Lo, Mr. Lo's father, shall deliver him to the U.S. Probation Office for the Eastern District of Texas, located at 500 North Central Expressway, Suite 220, Plano, Texas, to meet with U.S. Probation Officer Jamie Perrenoud. Lo shall meet with a designated medical provider no later than the day following his release from the custody of the Bureau of Prisons, for continued administration of Mr. Lo's medication, and such other services as the provider deems necessary.

IT IS THEREFORE ORDERED that Defendant Eryndon J. Lo is acquitted and discharged subject to the conditions stated herein, and any bond exonerated.

Signed this the 20th day of September, 2011.



BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

REDACTED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD HERTZ,

Defendant.

INDICTMENT
18 U.S.C. §§ 248(a)(1) and 875(c)

COUNT 1

The Grand Jury charges that:

On or about June 23, 2009, in the City of Boulder in the State and District of Colorado, **DONALD HERTZ**, by threat of force, intentionally intimidated and interfered with, and attempted to intimidate and interfere with, W.H. and the employees of the Boulder Abortion Clinic, a facility that provides reproductive health services, because W.H. and the employees of the Boulder Abortion Clinic were and had been providing reproductive health services, and in order to intimidate W.H. and the employees of the Boulder Abortion Clinic from providing reproductive health services.

All in violation of Title 18, United States Code, Section 248(a)(1).

COUNT 2

The Grand Jury further charges that:

On or about June 23, 2009, DONALD HERTZ knowingly transmitted in interstate commerce, from in or around the City of Spokane in the State and Eastern District of Washington to the Boulder Abortion Clinic in the City of Boulder in the State and District of Colorado, a communication via telephone that contained a threat to injure and kill the family of W.H., that is, statements indicating that individuals were planning to travel from the State of Utah to Boulder for the purpose of killing members of the family of W.H.

All in violation of Title 18, United States Code, Section 875(c).

A TRUE BILL:

Ink signature on file in the clerk's office
FOREPERSON

LORETTA KING
Acting Assistant Attorney General

By: s/Benjamin J. Hawk
STEPHEN J. CURRAN
Deputy Chief
BENJAMIN J. HAWK
Trial Attorney
United States Department of Justice
Civil Rights Division, Criminal Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 28 2010

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

1 James A. McDevitt
United States Attorney
2 Eastern District of Washington
Joseph H. Harrington
3 Assistant United States Attorney
P.O. Box 1494
4 Spokane, WA 99210-1494
Telephone: (509) 353-2767

5 Thomas E. Perez
6 Assistant Attorney General
Civil Rights Division
7 U.S. Department of Justice
Benjamin J. Hawk
8 Trial Attorney
601 D St. NW
9 Washington, DC 20004
Telephone: (202) 514-8208

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 DONALD HERTZ,

17 Defendant.

CR-10-098-RMP

PLEA AGREEMENT

19 Plaintiff, United States of America, by and through James A. McDevitt,
20 United States Attorney for the Eastern District of Washington, Joseph H.
21 Harrington, Assistant United States Attorney for the Eastern District of
22 Washington, Thomas E. Perez, Assistant Attorney General for the Civil Rights
23 Division of the U.S. Department of Justice, and Benjamin J. Hawk, Trial Attorney
24 for the Civil Rights Division of the U.S. Department of Justice, and Defendant,
25 DONALD HERTZ, and his counsel, Dustin Deissner, agree to enter into the
26 following Plea Agreement:

27 1. Transfer of Venue:

28 DONALD HERTZ acknowledges that he has been charged by way of a two-

Plea Agreement- 1

1 count Indictment, dated August 25, 2009, in the District of Colorado, and that he
2 has consented to transfer the case to the Eastern District of Washington, pursuant
3 to Rule 20 of the Federal Rules of Criminal Procedure, for entry of guilty pleas and
4 sentencing. DONALD HERTZ understands that, pursuant to Fed. R. Crim. P.
5 20(c), should he enter a plea of not guilty to either of the charged offenses, the case
6 shall be transferred back to the District of Colorado for trial.

7 2. Plea and Maximum Statutory Penalties:

8 DONALD HERTZ agrees to plead guilty to Counts One and Two of the
9 Indictment. Count One charges him with Interference with Freedom of Access to
10 Reproductive Health Services, in violation of 18 U.S.C. § 248(a)(1). DONALD
11 HERTZ understands this charge is a Class A misdemeanor offense that carries a
12 maximum statutory penalty of: not more than a one-year term of imprisonment; not
13 more than a \$100,000 fine; not more than a one-year term of supervised release;
14 and a \$25 special assessment fee. DONALD HERTZ also understands the Court
15 may impose an order of restitution, if any.

16 Count Two charges him with Interstate Transmission of Threatening
17 Communications, in violation of 18 U.S.C. § 875(c). DONALD HERTZ
18 understands this charge is a Class D felony offense that carries a maximum
19 statutory penalty of: not more than a five-year term of imprisonment; not more
20 than a \$250,000 fine; not more than a three-year term of supervised release; and a
21 \$100 special assessment fee. DONALD HERTZ also understands that the Court
22 may impose an order of restitution, if any.

23 3. Consecutive Sentences and Violations of Supervised Release:

24 DONALD HERTZ understands that the Court has the authority to impose
25 consecutive sentences for each conviction, which sentences he would have to serve
26 one after the other. DONALD HERTZ also understands that a violation of a
27 condition of supervised release carries an additional penalty of re-incarceration for
28 all or part of the term of supervised release, without credit for time previously

1 served on post-release supervision.

2 4. The Court Is Not a Party to this Plea Agreement:

3 DONALD HERTZ and the United States understand that the Court is not a
4 party to this Plea Agreement and may accept or reject it. DONALD HERTZ also
5 understands: that sentencing is a matter within the sole discretion of the Court; that
6 the Court is under no obligation to accept any recommendations made by the
7 United States and/or by DONALD HERTZ; that the Court will obtain an
8 independent report and sentencing recommendation from the U.S. Probation
9 Office; and that the Court may, in its discretion, impose any sentence it deems
10 appropriate up to the statutory maximum penalty.

11 DONALD HERTZ acknowledges that no promises of any type have been
12 made to him regarding the sentence that the Court will impose in this matter.

13 DONALD HERTZ understands that the Court is required to consider the
14 sentencing range applicable under the Sentencing Guidelines, but that the Court
15 may depart upward or downward from the range.

16 DONALD HERTZ also understands that the Court may not accept any of the
17 parties' recommendations set forth in this Plea Agreement. DONALD HERTZ
18 understands further that such a circumstance does not provide him a basis for
19 withdrawing from this Plea Agreement or for withdrawing either of his pleas of
20 guilty.

21 5. Waiver of Constitutional Rights:

22 DONALD HERTZ understands that by entering a plea he is knowingly and
23 voluntarily waiving certain constitutional rights, including: (a.) the right to a jury
24 trial; (b.) the right to see, hear, and question the government's witnesses; (c.) the
25 right to remain silent at trial; (d.) the right to testify at trial; and (e.) the right to
26 compel witnesses to testify. While DONALD HERTZ understands he is waiving
27 certain constitutional rights, he also understands that he will retain the right to be
28 assisted through the sentencing process and the appellate process, if any, by an

1 attorney, who will be appointed at no cost to him if he cannot afford to hire an
2 attorney.

3 6. Elements of the Offenses:

4 DONALD HERTZ acknowledges and agrees that, in order to be found guilty
5 of 18 U.S.C. § 248(a)(1), as charged in Count One of the Indictment, the United
6 States would have to prove each of the following elements beyond a reasonable
7 doubt:

- 8 First, DONALD HERTZ used or threatened the use of force;
9 Second, DONALD HERTZ intentionally injured, intimidated, or
10 interfered with the victims, or attempted to do so; and
11 Third, DONALD HERTZ acted because the victims were or had been,
12 or in order to intimidate the victims from, providing
13 reproductive health services.

14 DONALD HERTZ further acknowledges and agrees that, in order to be
15 found guilty of 18 U.S.C. § 875(c), as charged in Count Two of the Indictment, the
16 United States would have to prove each of the following elements beyond a
17 reasonable doubt:

- 18 First, DONALD HERTZ intentionally transmitted a communication
19 in interstate commerce;
20 Second, The communication contained a threat to injure a person; and
21 Third, DONALD HERTZ acted with the specific intent to threaten.

22 7. Factual Basis and Statement of Facts

23 DONALD HERTZ acknowledges and agrees that, in proving the elements of
24 the crimes to which he is pleading guilty, the United States can establish the
25 following facts beyond a reasonable doubt, that these facts constitute an adequate
26 basis for his pleas of guilty, and that for sentencing purposes, neither party is
27 precluded from presenting additional facts and arguing the relevance of the facts to
28 the Sentencing Guidelines computation or to sentencing generally, unless

1 otherwise prohibited by this Plea Agreement:

- 2 (a.) On May 31, 2009, George Tiller, a physician who provided
3 reproductive health services, was shot and killed.
- 4 (b.) The Defendant, DONALD HERTZ, learned of Dr. Tiller's death from
5 media sources. The Defendant also learned from the media that some
6 of Dr. Tiller's patients began obtaining reproductive health services
7 from the Boulder Abortion Clinic (Clinic), which is operated by W.H.
8 and located in Boulder, Colorado. The Defendant used an information
9 service to obtain the telephone number for the Clinic.
- 10 (c.) On June 23, 2009, the Defendant, while located in Spokane,
11 Washington, used a telephone to communicate to an employee of the
12 Clinic, who was located in Boulder, and thereby intentionally
13 transmitted a communication in interstate commerce. In an effort to
14 conceal his identity, the Defendant dialed *67 before calling the Clinic
15 in order to prevent his caller identification information from being
16 obtained by the Clinic.
- 17 (d.) During the telephone call to the Clinic, the Defendant, by threat of
18 force, intentionally intimidated and interfered with W.H. and the
19 employees of the Clinic because they were, and in order to intimidate
20 them from, providing reproductive health services. Specifically, the
21 Defendant communicated to an employee of the Clinic that two of the
22 Defendant's acquaintances were driving from Spanish Fork, Utah, to
23 Boulder to kill members of W.H.'s family in order to make W.H.
24 suffer because of his work at the Clinic. The Defendant knew the
25 employee would communicate this threat to W.H. The Defendant
26 intended for this threat to scare W.H. and the employees of the Clinic
27 and to intimidate them so that they would stop providing abortions.
- 28 (e.) The Defendant's threat to injure W.H.'s family did in fact intimidate

1 and interfere with W.H., W.H.'s family, and the employees of the
2 Clinic. W.H. and his family feared for their own lives and the lives of
3 each other. The Defendant's threat greatly disrupted their lives.
4 Additionally, the employees of the Clinic feared for their own lives
5 and the lives of each other and were impacted by the Defendant's
6 threat.

7 8. Waiver of Inadmissibility of Statements:

8 DONALD HERTZ agrees that, if he withdraws either of his guilty pleas, he
9 waives the inadmissibility of statements, if any, made in the course of plea
10 discussions with the United States, pursuant to Fed. R. Crim. P. 11(f). DONALD
11 HERTZ agrees further that any such inadmissible statements also include those
12 statements made at the change of plea hearing to establish facts sufficient for the
13 Court to accept his plea. DONALD HERTZ agrees that this waiver permits the
14 United States to move for the introduction into evidence of any such inadmissible
15 statements in its case-in-chief.

16 9. Effect of Breach:

17 DONALD HERTZ agrees if he breaches this Plea Agreement: that the Plea
18 Agreement is null and void; that the time necessary to process the Fed. R. Crim. P.
19 20 consent to transfer is excludable under the Speedy Trial Act; that he expressly
20 waives the right to challenge the initiation of additional charges against him for
21 any criminal activity; and that the United States may make derivative use of and
22 may pursue any investigative leads suggested by him.

23 10. United States Sentencing Guidelines Calculation:

24 The United States and DONALD HERTZ acknowledge that the final
25 Sentencing Guidelines calculations will be determined by the Court, with input
26 from the U.S. Probation Office. The United States and DONALD HERTZ reserve
27 the right to advise the Court and the U.S. Probation Office about the law and facts
28 applicable to any sentencing issues.

1 (a.) *Base Offense Level*

2 The United States and DONALD HERTZ agree: that the base offense level
3 for Count One is 12, U.S.S.G. §§ 2H1.1(a)(1) and 2A6.1; that the base offense
4 level for Count Two is 12, U.S.S.G. § 2A6.1; and that the adjusted offense level
5 after grouping is 12, U.S.S.G. § 3D1.2.

6 (b.) *Acceptance of Responsibility*

7 If DONALD HERTZ pleads guilty and demonstrates a recognition and
8 affirmative acceptance of personal responsibility for his criminal conduct, provides
9 complete and accurate information during the sentencing process, and does not
10 commit any obstructive conduct, the United States will recommend a two-level
11 reduction of his adjusted offense level for acceptance of responsibility. The
12 resulting offense level would be 10.

13 DONALD HERTZ agrees to pay the \$25 mandatory special assessment for
14 Count One and the \$100 mandatory special assessment for Count Two to the Clerk
15 of the Court for the Eastern District of Washington before sentencing, and shall
16 provide a receipt from the Clerk to the United States before sentencing as proof of
17 this payment, as a condition of this recommendation by the United States. 18
18 U.S.C. § 3013. If DONALD HERTZ lacks the financial resources to pay the
19 assessment at or before sentencing and if he is placed in a Bureau of Prison facility
20 to serve any term of incarceration imposed by the Court, he agrees to participate in
21 the Bureau of Prison's Inmate Financial Responsibility Program in order to pay the
22 assessment.

23 DONALD HERTZ and the United States also agree that the United States
24 may, at its option and upon written notice to DONALD HERTZ, not recommend a
25 reduction for acceptance of responsibility if, prior to the imposition of sentence, he
26 is charged with or convicted of any criminal offense whatsoever and/or if he tests
27 positive for any controlled substance.

28

1 (c.) *Criminal History*

2 DONALD HERTZ and the United States understand that his criminal history
3 computation will be determined by the Court, based on input from the U.S.
4 Probation Office and the Presentence Investigation Report. DONALD HERTZ and
5 the United States acknowledge they have made no agreement and have made no
6 representations as to the Criminal History Category within which DONALD
7 HERTZ will be placed.

8 11. Incarceration:

9 The United States agrees not to oppose a request by DONALD HERTZ that
10 he be permitted to serve any term of incarceration imposed by the Court in home
11 detention, so long as any such request comports with the Sentencing Guidelines.
12 DONALD HERTZ and the United States acknowledge that they are otherwise free
13 to make whatever sentencing recommendations concerning incarceration that they
14 deem appropriate.

15 12. Criminal Fine:

16 DONALD HERTZ and the United States reserve the right to make whatever
17 recommendation(s) they deem appropriate concerning the imposition of a criminal
18 fine.

19 13. Supervised Release:

20 DONALD HERTZ and the United States reserve the right to make whatever
21 recommendation(s) they deem appropriate concerning the imposition of a term of
22 supervised release.

23 14. Payments While Incarcerated:

24 If DONALD HERTZ lacks the financial resources to pay any monetary
25 obligations imposed by the Court, including any fine and/or restitution, and if he is
26 placed in a Bureau of Prison facility to serve any term of incarceration imposed by
27 the Court, he agrees to participate in the Bureau of Prison's Inmate Financial
28 Responsibility Program to earn money to pay toward any such obligations.

1 15. Additional Violations of Law Can Void Plea Agreement:

2 DONALD HERTZ and the United States agree that the United States may, at
3 its option and upon written notice to DONALD HERTZ, withdraw from this Plea
4 Agreement or renegotiate its recommendations if, prior to the imposition of
5 sentence, he is charged with or convicted of any criminal offense whatsoever or if
6 he tests positive for any controlled substance.

7 16. Waiver of Appeal Rights:

8 DONALD HERTZ acknowledges that his guilty pleas are unconditional and
9 that, upon entry of those pleas pursuant to this Plea Agreement, he waives the
10 appeal of all pending pretrial issues, if any, arising in this case. On the condition
11 that the Court imposes a custodial sentence that is within or below the Guidelines
12 sentencing range (or any statutory mandatory minimum sentence if greater) as
13 determined by the Court, DONALD HERTZ agrees to waive: a) any right
14 conferred by 18 U.S.C. § 3742 to appeal the sentence imposed, including any
15 restitution order and b) any right to seek a reduction of sentence or other attack of
16 the conviction or sentence, including but not limited to proceedings pursuant to 28
17 U.S.C. § 2255 (Writ of Habeas Corpus), except as any such attack directly relates
18 to the effectiveness of his legal representation. The United States and DONALD
19 HERTZ agree and acknowledge that this waiver does not preclude DONALD
20 HERTZ from seeking relief under 28 U.S.C. § 2241 to address the conditions of
21 his confinement or the decisions of the U.S. Bureau of Prisons regarding the
22 execution of his sentence. Nothing in this Plea Agreement precludes the United
23 States from opposing any such request for relief.

24 Should the conviction(s) be set aside, reversed, vacated, or dismissed, this
25 Plea Agreement is null and void and the United States may institute or re-institute
26 any charges against DONALD HERTZ and make derivative use of any statements
27 or information he has provided.

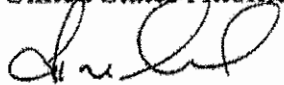
17. Integration Clause:

DONALD HERTZ and the United States acknowledge that the above-stated terms and conditions constitute the entire plea agreement between the parties and deny the existence of any other terms or conditions not stated herein. The parties agree this Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington and the Civil Rights Division for the United States Department of Justice, and cannot bind other federal, state, or local authorities. The parties also agree that this agreement cannot be modified except in a writing that is signed by the parties.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington and the Civil Rights Division of the U.S. Department of Justice.

James A. McDevitt
United States Attorney

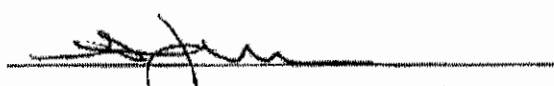


7/28/10

~~Joseph H. Harrington~~ AINE Ahmed
Assistant United States Attorney

Date

Thomas E. Perez
Assistant Attorney General



July 28, 2010

~~Benjamin J. Hawk~~ Stephen Curran
Trial Attorney

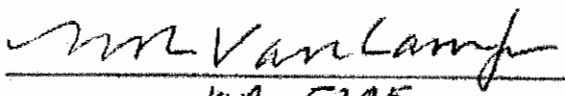
Date

I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter

1 into this Plea Agreement. Furthermore, I have consulted with my attorney about
2 my rights, I understand those rights, and I am satisfied with the representation of
3 my attorney in this case. No other promises or inducements have been made to me,
4 other than those contained in this Plea Agreement and no one has threatened or
5 forced me in any way to enter into this Plea Agreement. I am agreeing to plead
6 guilty because I am guilty.

7
8  28 July 2010
9 Donald Hertz Date
10 Defendant

11 I, Russell Van Camp, hereby acknowledge that I am counsel for DONALD
12 HERTZ in the above-captioned case. I have read the Plea Agreement and have
13 discussed the contents of the agreement with my client. The Plea Agreement
14 accurately and completely sets forth the entirety of the agreement between the
15 parties. I concur in my client's decision to plead as set forth in the Plea Agreement.
16 To the best of my knowledge, DONALD HERTZ has no viable defense to the
17 instant charge and there is no legal reason why the Court should not accept his
18 pleas of guilty.

19
20  28 July 2010
21 Russell Van Camp WA. 5385 Date
22 Attorney for the Defendant
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
Eastern District of Washington

OCT 29 2010

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES OF AMERICA
V.
Donald Hertz

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:10CR00098-001
USM Number: 12793-085

Russell Van Camp
Defendant's Attorney



THE DEFENDANT:

- pleaded guilty to count(s) 1 and 2 of indictment
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 248(a)(1)	Interference with Freedom of Access to Reproductive Health Services	06/23/09	1
18 U.S.C. § 875(c)	Interstate Transmission of Threatening Communication	06/23/09	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/28/2010

Date of Imposition of Judgment

Signature of Judge

Rosanna Malouf Peterson

The Honorable Rosanna Malouf Peterson Judge, U.S. District Court

Name and Title of Judge

Date

October 28, 2010

DEFENDANT: Donald Hertz
CASE NUMBER: 2:10CR00098-001

PROBATION

The defendant is hereby sentenced to probation for a term of: **5 year(s)**

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Donald Hertz
CASE NUMBER: 2:10CR00098-001

ADDITIONAL PROBATION TERMS

14. You shall have no contact with the victim, Dr. Warren Hern, any member of his family, or the Boulder Abortion Clinic or any of its employees or patients, in person, by letter or other communication devices, audio or visual devices, or through a third party, unless authorized by the supervising officer. You shall not enter the premises or loiter within 1,000 feet of the victim's residence or place of employment.

15. You shall have no contact with any abortion clinic or any of its employees or patients, in person, by letter or other communication devices, audio or visual devices, or through a third party, unless authorized by the supervising officer. You shall not enter the premises or loiter within 1,000 feet of any abortion clinic.

16. For a period of 180 days, you are restricted to your residence at all times except for employment, education, religious services, medical, substance abuse, or mental health treatment, attorney visits, court appearances, court-ordered obligations, or other activities as pre-approved by the supervising officer.

17. You shall submit your person, residence, telephone records, office, or vehicle to a search, conducted by a probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search may be grounds for revocation. You shall warn persons with whom you share a residence that the premises may be subject to search.

DEFENDANT: Donald Hertz
 CASE NUMBER: 2:10CR00098-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$125.00	\$0.00	\$0.00

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non federal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____	0.00	\$ _____	0.00
---------------	----------	------	----------	------

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Donald Hertz
 CASE NUMBER: 2:10CR00098-001

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 125.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
 Case Numbers (including defendant number) and Defendant and Co-Defendant Names, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

FILED '09 NOV 09 05:33 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	CR 09- <u>60148</u> -HO
)	
Plaintiff,)	
	)	<u>INFORMATION</u>
v.)	
	)	[18 U.S.C. § 844(e)]
GREGORY PAUL FREEMAN,)	
)	
Defendant.)	

THE UNITED STATES ATTORNEY CHARGES:

**USING TELEPHONE TO COMMUNICATE
THREAT TO COMMIT ARSON**

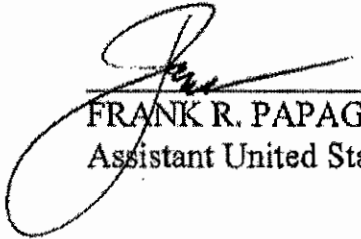
On or about December 30, 2008, in the District of Oregon, Defendant,
GREGORY PAUL FREEMAN, through the use of a telephone, willfully made a
threat to damage or destroy a building located at 793 Danebo Avenue in Eugene,

Oregon, by means of fire or an explosive, in and affecting interstate commerce,

In violation of Title 18, United States Code, Sections 844(e).

DATED this 9th day of November, 2009.

KENT ROBINSON
Acting United States Attorney



FRANK R. PAPAGNI, JR.
Assistant United States Attorney



U.S. Department of Justice

Kent S. Robinson

Acting United States Attorney

District of Oregon

405 East 8th Avenue, Suite 2400

(541) 465-6771

Eugene, OR 97401-2798 Main Fax: (541) 465-6917

RECEIVED

November 12, 2009

NOV 12 2009

FEDERAL PUBLIC DEFENDER
EUGENE

Mr. Craig E. Weinerman
Asst. Federal Public Defender
151 W. 7th Avenue, Suite 510
Eugene, OR 97401

Re: Plea Agreement in United States v. Gregory Paul Freeman, CR 09-60148

Dear Mr. Weinerman:

The Government submits the following offer to Mr. Freeman which has been approved by Supervisory Assistant United States Attorney Christopher Cardani. The terms of the offer are as follows:

1. Mr. Freeman will sign a written waiver of his constitutional right to have his case presented to a grand jury and to proceed by Indictment. Rule 7(b), Fed.R.Crim.Proc.. He will agree to proceed by Information of the United States Attorney.
2. The parties will submit this signed Plea Agreement to the Court, and the Court will conduct a colloquy with Mr. Freeman to ensure he voluntarily, knowingly, and intelligently understands, accepts and agrees to its terms.
3. Mr. Freeman will sign a written waiver of his constitutional right to a trial by jury, and agree to a trial by the Court on the charge set forth in the Information. Rule 23(a), Fed.R.Crim.Proc..
4. At the trial to the Court, Mr. Freeman will agree and stipulate to the accuracy and truthfulness of the facts set forth in a written document entitled "Stipulation to Testimony for Trial by the Court" which is attached and incorporated into this agreement.
5. The parties will sign the "Stipulation to Testimony for Trial by the Court," and agree it provides a factual basis for the Court to find beyond a reasonable

Mr. Craig E. Weinerman

November 12, 2009

Page 2

Re: Plea Agreement in United States v. Gregory Paul Freeman

doubt that Mr. Freeman is guilty of the charge set forth in the Information: Using a Telephone to Communicate a Threat to Commit Arson, a violation of 18 U.S.C. § 844(e).

6. Mr. Freeman agrees to give up his rights to confront and cross-examine the Government's witnesses, to remain silent, to testify, to suppress or object to evidence, and to pursue any affirmative defenses and to present evidence.
7. In return for Mr. Freeman's agreement to waive indictment, trial by jury, and to proceed to trial by the Court on stipulated facts with the understanding that those facts support his being found guilty of the charge alleged in the information, and his compliance with the other terms of this agreement, the Government agrees to:
 - A. Not seek an Indictment in the District of Oregon charging Mr. Freeman with Using a Telephone to Communicate Threat to Commit Arson to David and Lynn Frohnmayr, the Masonic Lodge and to Dr. Howard Russell Sampley during the time period from January 1, 2008 until February 2, 2009, in violation of 18 U.S.C. § 844(e).
 - B. Not seek a fine because Mr. Freeman is 100 percent disabled, receives social security disability payments and will not have the financial ability to pay a fine after paying the \$100 special assessment.
 - C. Recommend Mr. Freeman remain released pending his being sentenced on the conditions set by the Pretrial Services Office, provided he continues not to violate any of the terms of his pretrial release, and does not intentionally provide false information to the Court, the Probation Office, Pretrial Services or the Government, and abides by the terms of this agreement.

Mr. Craig E. Weinerman

November 12, 2009

Page 3

Re: Plea Agreement in United States v. Gregory Paul Freeman

- 7.. At sentencing Mr. Freeman and the Government will agree:
- A. Pursuant to U.S.S.G. § 2A6.1(a)(1), he has a base offense level of 12.
 - B. Based on the facts set forth in the Affidavit supporting the Criminal Complaint, that pursuant to U.S.S.G. § 1B1.3(a)(1)(A) ("Relevant Conduct), and U.S.S.G. § 2A6.1(b)(2) that his offense involved more than two threats, and his offense level should be increased by 2 levels.
 - C. By accepting this agreement and being found guilty, Mr. Freeman has timely and clearly accepted responsibility for his offense and, pursuant to U.S.S.G. § 3E1.1, his base offense level should be decreased by 2 levels.
 - D. Mr. Freeman should have a Criminal History Category I.
 - E. Because Mr. Freeman received a severe brain injury when he was struck by a train in 2005, and when committing this offense was suffering from a significantly reduced mental capacity, his base offense level should be reduced by 4 levels for diminished capacity as permitted by U.S.S.G. § 5K2.13.¹ This downward departure is warranted because Mr. Freeman's criminal conduct was not significantly caused by his ingestion of alcohol, did not involve actual or a serious threat of violence, and his criminal history does not indicate a need to incarcerate him for the protection of the public.

¹ "Significantly reduced mental capacity" means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful." App. Note 1 to U.S.S.G. § 5K2.13.

Mr. Craig E. Weinerman

November 12, 2009

Page 4

Re: Plea Agreement in United States v. Gregory Paul Freeman

- F. Mr. Freeman should have a total offense level of 8 and a Criminal History of I for an advisory sentencing guideline range of 0 to 6 months.
 - G. Mr. Freeman should receive a 5-year term of probation with the Standard Conditions of Probation and Special Conditions which include that (1) he provide his Probation Officer with his monthly telephone call detail record or consent to his Probation Officer obtaining such record from his cellular telephone service provider; (2) have no contact with the victims – David and Lynn Frohnmayer, Dr. Howard Sampley, and the employees of the Masonic Lodge and Planned Parenthood; (3) not possess or consume alcohol, or enter an establishment where alcohol is the primary item for sale; (4) receive psychological counseling; and (5) shall take prescribed medication.
8. By accepting the benefits of this agreement and if sentenced by the Court to a term of imprisonment of less than 6 months, Mr. Freeman waives **any and all** of his rights to appeal including all pretrial motions, and his statutory right to file a petition pursuant to 28 U.S.C. § 2255 challenging the length of his sentence.
 9. Pursuant to U.S.S.G. § 1B1.3, the Government will bring all relevant conduct and facts regarding and related to this case to the attention of the Probation Office and the Court.
 10. The foregoing constitutes all promises and concessions the Government is willing to make to Mr. Freeman in return for his agreement and stipulation to facts resulting in his being found guilty, and sentencing recommendations.
 11. By signing this agreement, Mr. Freeman is confirming that:

Mr. Craig E. Weinerman

November 12, 2009

Page 5

Re: Plea Agreement in United States v. Gregory Paul Freeman

- (A) He has had adequate time to discuss this case, the evidence, and this agreement with you.
- (B) Has been provided with all the legal advice that he has requested.
- (C) At the time he signed this agreement, he was not under the influence of any alcohol, drug or medicine that caused him not to fully understand and voluntarily agree to each term of the agreement.
- (D) His decision to sign the "Stipulation to Testimony for Trial by the Court" is made knowing all the elements of the charges against him, any possible defenses, and the benefits and possible detriments of proceeding to trial.
- (E) His decision to completely comply with the terms of this agreement is made voluntarily, and no one coerced or threatened him into this agreement.

Sincerely,

KENT S. ROBINSON
Acting United States Attorney



FRANK R. PAPAGNI, JR.
Assistant U.S. Attorney

cc: Mr. Christopher Cardani, Supervisory AUSA
Ms. Nancy Savage, FBI RAC
Mr. William Soule, FBI Case Agent
Ms. Denna Rawie, Victim Witness Specialist

Mr. Craig E. Weinerman


November 12, 2009

Page 6

Re: Plea Agreement in United States v. Gregory Paul Freeman

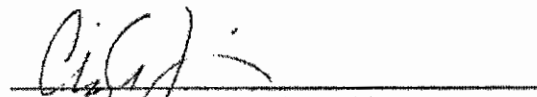
I, GREGORY PAUL FREEMAN, HAVE READ THIS AGREEMENT CAREFULLY AND REVIEWED EVERY PART OF IT WITH ATTORNEY CRAIG E. WEINERMAN. I UNDERSTAND AND ACCEPT THE OFFER AND VOLUNTARILY AGREE TO EVERY TERM.

DATE: 15 Dec 09



GREGORY PAUL FREEMAN
Defendant

DATE: 15 Dec 09



CRAIG E. WEINERMAN
Defendant's Attorney

UNITED STATES DISTRICT COURT FILED '10 MAR 08 12:07 USDC-ORE
DISTRICT OF OREGON

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: CR 09-60148-01-HO

GREGORY PAUL FREEMAN

USM Number: 71325-065

Craig Weinerman, assistant Federal Defender
Defendant's Attorney

Frank Papagni, Jr.
Assistant U.S. Attorney

THE DEFENDANT:

- pleaded guilty to count _____
- pleaded nolo contendere to count _____ which was accepted by the court.
- was found guilty on count 1 of the Information after a stipulated facts trial.

The defendant is adjudicated guilty of the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 U.S.C. § 844(e)	Using a Telephone to Communicate Threat to Commit Arson	On or about December 30, 2008	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count _____, and is discharged as to such count.
- Count _____ is/are dismissed on the motion of the United States.
- The defendant shall pay a special assessment in the amount of \$100.00 for Count 1 payable immediately to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties sheet.)

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States Attorney of any material change in the defendant's economic circumstances.

March 2, 2010

Date of Imposition of Sentence

Michael R. Hogan
Signature of Judicial Officer

MICHAEL R. HOGAN, UNITED STATES DISTRICT JUDGE

Name and Title of Judicial Officer

March 8, 2010

Date

DEFENDANT: FREEMAN, Gregory Paul
CASE NUMBER: CR 09-60148-01-HO

Judgment-Page 2 of 5

PROBATION

The defendant is hereby sentenced to probation for a term of: five years.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

[] The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of probation in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the Standard Conditions of Probation that have been adopted by this court as set forth in this judgment. The defendant shall also comply with the Special Conditions of Supervision as set forth below and any additional conditions attached to this judgment.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a mental health treatment program approved by the probation officer.
2. As directed by the probation officer, the defendant shall take psychotropic medication, if medically approved, for the treatment of a mental or emotional disorder
3. The defendant shall cooperate in the collection of DNA as directed by the probation officer, if required by law.
4. The defendant shall have no contact with David and Lynn Frohnmayer or Dr. Howard Sampley, or the employees of the Masonic Lodge or Planned Parenthood. The defendant shall not enter onto the premises of the Masonic Lodge or Planned Parenthood.
5. The defendant shall not communicate any threat to another party by any means.
6. The defendant shall provide copies of his telephone records to the Probation Office on a monthly basis, as directed by the Probation Officer.
7. The defendant shall cooperate in the acquisition of any communication record (including faxes, emails, Internet or other electronic communications) as requested by the probation office, and shall allow the Probation office access to review any such communication records.
8. The defendant shall not possess or consume alcohol or enter an establishment where alcohol is the primary item for sale.

DEFENDANT: FREEMAN, Gregory Paul
CASE NUMBER: CR 09-60148-01-HO

Judgment-Page 3 of 5

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

The Judges of the District of Oregon adopt the following standard conditions of probation and supervised release to apply in every case in which probation and/or supervised release is imposed upon a defendant. The individual judge may impose other conditions deemed advisable in individual cases of probation or supervised release supervision, as consistent with existing or future law.

1. The defendant shall report in person to the probation office for the district to which he or she is released within 72 hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. Revocation of probation or supervised release is mandatory for illegal possession of a controlled substance.
3. The defendant shall not possess a firearm, destructive, or dangerous device.
4. If the defendant illegally uses drugs or abuses alcohol, has a history of drug or alcohol abuse, or drug use or possession is determined to be an element of the defendant's criminal history or instant offense, the defendant shall participate in a substance abuse treatment program as directed by the probation officer which may include urinalysis testing to determine if the defendant has used drugs or alcohol. In addition to urinalysis testing that may be part of a formal drug treatment program, the defendant shall submit up to eight (8) urinalysis tests per month.
5. The defendant shall submit to a search of his/her person, residence, office or vehicle, when conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn other residents that the premises may be subject to searches pursuant to this condition.
6. The defendant shall not leave the judicial district without the permission of the court or probation officer.
7. The defendant shall report to the probation officer as directed by the court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.
8. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer. The defendant may decline to answer inquiries if a truthful response would tend to incriminate him/her. Such a refusal to answer may constitute grounds for revocation.
9. The defendant shall support his or her dependents and meet other family responsibilities to the best of his or her financial ability.
10. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
11. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
12. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. If, at any time, the probation officer has reasonable cause to believe the defendant is using illegal drugs or is abusing alcohol, the defendant shall submit to urinalysis testing, breathalyzer testing, or reasonable examination of the arms, neck, face, and lower legs.
13. The defendant shall not knowingly frequent places where controlled substances are illegally sold, used, distributed, or administered.
14. The defendant shall not knowingly associate with any persons engaged in criminal activity, and shall not knowingly associate with any person convicted of a felony, unless granted permission to do so by the probation officer.
15. The defendant shall permit a probation officer to visit him or her at any reasonable time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer.
16. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
17. The defendant shall not enter into any agreement to act as an informant or special agent of a law enforcement agency without the permission of the court.
18. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by his or her criminal record or personal history and characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such a notification requirement. This requirement will be exercised only when the probation officer believes a reasonably foreseeable risk exists or a law mandates such notice. Unless the probation officer believes the defendant presents an immediate threat to the safety of an identifiable individual, notice shall be delayed so the probation officer can arrange for a court hearing and the defendant can obtain legal counsel.

DEFENDANT: FREEMAN, Gregory Paul
 CASE NUMBER: CR 09-60148-01-HO

Judgment-Page 4 of 5

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this Judgment:

	<u>Assessment</u> (as noted on Sheet 1)	<u>Fine</u>	<u>Restitution</u>	<u>TOTAL</u>
TOTALS	\$100.00	\$0	\$0	\$100.00

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Total Amount of Loss*</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
	\$	\$	
TOTALS	\$	\$	

If applicable, restitution amount ordered pursuant to plea agreement \$_____.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine and/or restitution.

the interest requirement for the fine and/or restitution is modified as follows:

Any payment shall be divided proportionately among the payees named unless otherwise specified.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: FREEMAN, Gregory Paul
 CASE NUMBER: CR 09-60148-01-HO

Judgment-Page 5 of 5

SCHEDULE OF PAYMENTS

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

- A. Lump sum payment of \$100.00 due immediately.
 [] not later than _____, or
 [] in accordance with [] C or [] D below; or
- B. [] Payment to begin immediately (may be combined with [] C or [] D below); or
- C. [] If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$_____ until paid in full to commence immediately upon release from imprisonment.
- D. [] Special instructions regarding the payment of criminal monetary penalties:

Payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows: (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program.

It is ordered that resources received from any source, including inheritance, settlement, or any other judgment, shall be applied to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

- | | | |
|--|---|---|
| <input type="checkbox"/> Clerk of Court
US District Court - Oregon
1000 SW Third Avenue
Suite 740
Portland, OR 97204 | <input checked="" type="checkbox"/> Clerk of Court
US District Court - Oregon
405 East 8 th Avenue
Suite 2100
Eugene, OR 97401 | <input type="checkbox"/> Clerk of Court
US District Court - Oregon
310 West Sixth Street
Room 201
Medford, OR 97501 |
|--|---|---|

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

<u>Case Number</u>	<u>Defendant and Co-Defendant Names</u> <u>(including defendant number)</u>	<u>Total Amount</u>	<u>Joint and Several</u> <u>Amount</u>	<u>Corresponding Payee,</u> <u>if appropriate</u>
--------------------	--	---------------------	---	--

- [] The defendant shall pay the cost of prosecution.
- [] The defendant shall pay the following court cost(s):
- [] The defendant shall forfeit the defendant's interest in the following property to the United States:

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

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

RICHARD R. DUGAN and
THEODORE A. PUCKETT,

Defendants.

SDNY
DOCUMENT
ELECTRONICALLY
FILED
DATE FILED: 1/4/10

10 CRIM 006

10 CRIM 006

The United States Attorney charges:

COUNT ONE

On or about December 12, 2009, in the Southern District of New York, RICHARD R. DUGAN and THEODORE A. PUCKETT, the defendants, by force and threat of force and by physical obstruction, intentionally, knowingly and willfully, did injure, intimidate and interfere with and did attempt to injure, intimidate and interfere with persons because such persons are and have been, and in order to intimidate such persons and other persons and a class of persons from, obtaining and providing reproductive health services, to wit, DUGAN and PUCKETT physically obstructed entryways of a clinic located on Bleecker Street in Manhattan that provides reproductive health services, and interfered with staff and patients attempting to enter the

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC # 10-00006-6
DATE FILED: JAN 04 2010

clinic, because they were providing and obtaining reproductive health services.

(Title 18, United States Code, Sections 248(a)(1) and (b)(1), and Section 2.)



PREET BHARARA
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

RICHARD R. DUGAN and
THEODORE A. PUCKETT,

Defendants.

INFORMATION

10 Cr.

(18 U.S.C. §§ 248(a)(1) and (b)(1), and § 2.)

PREET BHARARA
United States Attorney.

UNITED STATES DISTRICT COURT

District of _____

UNITED STATES OF AMERICA

V.

THEODORE PUCKETT

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 10 CR. 000006-002

USM Number: 70771-054

Daniel Nobel - AUSA Alvin Bragg

Defendant's Attorney

Date of Original Judgment: October 12, 2010
(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) ONE after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 248(a)(1)	Obstruction of Access to a Clinic.	12/12/2009	1

The defendant is sentenced as provided in pages 2 thru 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

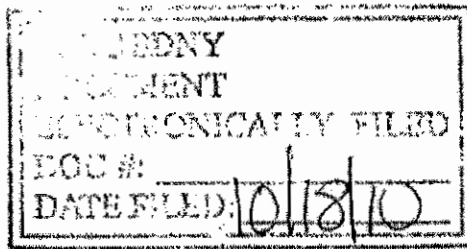
It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 15, 2010
Date of Imposition of Judgment

Robert W. Sweet
Signature of Judge

Robert W. Sweet, United States District Judge
Name and Title of Judge

10.15.10
Date



IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 1 Month imprisonment.

Defendant is out on bail pending appeal.
No voluntary surrender date until appeal is decided.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT:
CASE NUMBER:

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
1 year.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the

DEFENDANT: THEODORE PUCKETT
CASE NUMBER: 10 CR. 000006-002

ADDITIONAL SUPERVISED RELEASE TERMS

1. Defendant shall provide the probation officer with access to any requested financial information.
2. Defendant shall submit his person, residence, place of business, vehicle, or any other premises under his control to a search on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of the release may be found. The search must be conducted at a reasonable time and in a reasonable manner.
Failure to submit to a search may be grounds for revocation.
Defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.
3. Defendant shall not knowingly come within 1000 feet of any facility covered by the ~~statute~~ statute .
4. The Defendant shall be supervised by his district of residence.

DEFENDANT: THEODORE PUCKETT
CASE NUMBER: 10 CR. 000006-002

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 50.00	\$	\$

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____	
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- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
 - the interest requirement is waived for fine restitution.
 - the interest requirement for fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: THEODORE PUCKETT
CASE NUMBER: 10 CR. 000006-002

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 50.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.

Judgment in a Criminal Case
(For Revocation of Probation or Supervised Release)

RICHARD DUGAN

Case No. 10 cr. 00006 (RWS)

USM No. 70770-054

John Byrnes - AUSA Carolina Fornos
Defendant's Attorney

THE DEFENDANT:

- admitted guilt to violation of condition(s) specification #4 and #6 of the term of supervision.
- was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
Specification #4	On or about June 30, 2011, Richard Dugan left the district of New Jersey and traveled to the state of Connecticut without the permission of the probation officer, condition #8.	June 30, 2011
Specification #6	On or about October 4, 2011, Richard Dugan traveled to Louisiana without the permission of probation officer, Condition #2.	October 4, 2011

The defendant is sentenced as provided in pages 2 through 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

X The defendant has not violated condition(s) 1,2,3,5 and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 0383

Defendant's Year of Birth: 1961

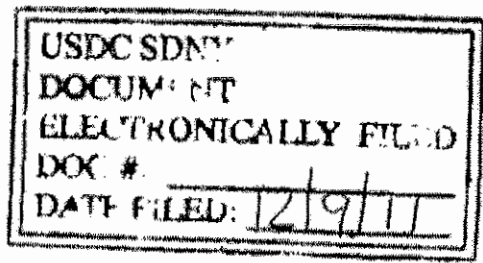
City and State of Defendant's Residence:
Louisiana, LA

December 8, 2011
Date of Imposition of Judgment

[Signature]
Signature of Judge

Robert W. Sweet, United State District Judge
Name and Title of Judge

12-9-11
Date



DEFENDANT: Richard Dugan
CASE NUMBER: 10 cr. 00006

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
The term of supervised release on the J & C dated 10-28-10 is hereby revoked and a new term of supervised release is imposed for 6 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

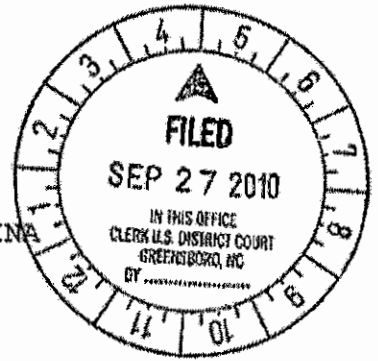
If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA

v.

JUSTIN CARL MOOSE

1:10CR 358 -1

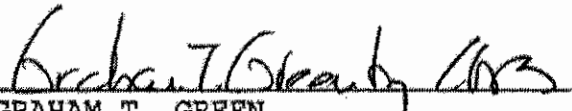
The Grand Jury charges:


From on or about August 3, 2010, continuing up to and including on or about September 5, 2010, the exact dates to the Grand Jurors unknown, in the County of Cabarrus, in the Middle District of North Carolina, JUSTIN CARL MOOSE did teach the making and use of an explosive, a destructive device, and a weapon of mass destruction, and did distribute information pertaining to the manufacture and use of an explosive, destructive device, and weapon of mass destruction, with the intent that the teaching and information be used for, and in furtherance of, an activity that constitutes a Federal crime of violence, specifically, a violation of Title 18, United States Code, Section 248(a)(1) and (3), freedom

of access to clinic entrances; in violation of Title 18, United States Code, Sections 842(p)(2)(A) and 844(a)(2).

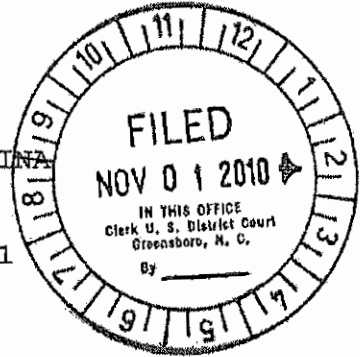
A TRUE BILL:

FOREPERSON


GRAHAM T. GREEN
ASSISTANT UNITED STATES ATTORNEY


JOHN W. STONE, JR.
ACTING UNITED STATES ATTORNEY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA : 1:10CR358-1
: :
v. : :
: :
JUSTIN CARL MOOSE : PLEA AGREEMENT

NOW COME the United States of America, by and through John W. Stone, Jr., Acting United States Attorney for the Middle District of North Carolina, and the defendant, JUSTIN CARL MOOSE, in his own person and through his attorney, Walter Clinton Holton, Jr., and state as follows:

1. The defendant, JUSTIN CARL MOOSE, is presently under Indictment in case number 1:10CR358-1, which charges him with a violation of Title 18, United States Code, Section 842(p)(2)(A) and 844(a)(2), distributing information pertaining to the manufacturing and use of an explosive.

2. The defendant, JUSTIN CARL MOOSE, will enter a voluntary plea of guilty to the Indictment herein. The nature of this charge and the elements of this charge, which must be proved by the United States beyond a reasonable doubt before the defendant can be found guilty thereof, have been explained to him by his attorney.

a. The defendant, JUSTIN CARL MOOSE, understands that the maximum term of imprisonment provided by law for the Indictment herein is not more than twenty years, and the maximum

fine, for the Indictment, is \$250,000, or both. The fine is subject to the provisions of Title 18, United States Code, Section 3571, entitled "Sentence of Fine."

b. The defendant, JUSTIN CARL MOOSE, also understands that the Court may include as a part of the sentence, as to the Indictment, a requirement that he be placed on a term of supervised release of not more than three years after imprisonment, pursuant to Title 18, United States Code, Section 3583.

c. The defendant, JUSTIN CARL MOOSE, further understands that the sentence to be imposed upon him is within the discretion of the sentencing Court subject to the statutory maximum penalties set forth above. The sentencing Court is not bound by the sentencing range prescribed by the United States Sentencing Guidelines. Nevertheless, the sentencing Court is required to consult the Guidelines and take them into account when sentencing. In so doing, the sentencing Court will first calculate, after making the appropriate findings of fact, the sentencing range prescribed by the Guidelines, and then will consider that range as well as other relevant factors set forth in the Guidelines and those factors set forth in Title 18, United States Code, Section 3553(a) before imposing the sentence.

d. The defendant, JUSTIN CARL MOOSE, understands that if he is not a citizen of the United States that entering a plea of guilty may have adverse consequences with respect to his immigration status. The defendant, JUSTIN CARL MOOSE, nevertheless wishes to enter a voluntary plea of guilty regardless of any immigration consequences his guilty plea might entail, even if such consequence might include automatic removal and possibly permanent exclusion from the United States.

3. By voluntarily pleading guilty to the Indictment herein, the defendant, JUSTIN CARL MOOSE, knowingly waives and gives up his constitutional rights to plead not guilty, to compel the United States to prove his guilt beyond a reasonable doubt, not to be compelled to incriminate himself, to confront and cross-examine the witnesses against him, to have a jury or judge determine his guilt on the evidence presented, and other constitutional rights which attend a defendant on trial in a criminal case.

4. The defendant, JUSTIN CARL MOOSE, is going to plead guilty to the Indictment herein because he is, in fact, guilty and not because of any threats or promises.

5. The extent of the plea bargaining in this case is as follows:

a. It is further understood that if the Court determines at the time of sentencing that the defendant, JUSTIN

CARL MOOSE, qualifies for a 2-point decrease in the offense level under Section 3E1.1(a) of the Sentencing Guidelines and that the offense level prior to the operation of Section 3E1.1(a) is 16 or greater, then the United States will recommend a decrease in the offense level by 1 additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. It is further understood that the Court is not bound by this recommendation.

6. It is further understood that the United States and the defendant, JUSTIN CARL MOOSE, reserve the right to bring to the Court's attention any facts deemed relevant for purposes of sentencing.

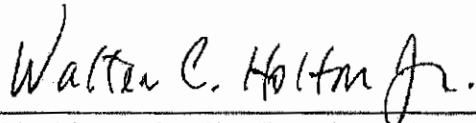
7. The defendant, JUSTIN CARL MOOSE, further understands and agrees that pursuant to Title 18, United States Code, Section 3013, for any offense committed on or October 11, 1996, the defendant shall pay an assessment to the Court \$100 for each offense to which he is pleading guilty. This payment shall be made at the time of sentencing by cash or money order made payable to the Clerk of the United States District Court. If the defendant is indigent and cannot make the special assessment payment at the time of sentencing, then the defendant agrees to participate in the Inmate Financial Responsibility Program for purposes of paying such special assessment.

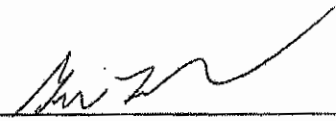
8. No agreements, representations, or understandings have been made between the parties in this case other than those which


are explicitly set forth in this Plea Agreement, and none will be entered into unless executed in writing and signed by all the parties.

This the 27 day of October, 2010.

JOHN W. STONE, JR.
Acting United States Attorney


WALTER CLINTON HOLTON, JR.
Attorney for Defendant


GRAHAM T. GREEN
NCSB #22082
Assistant United States Attorney

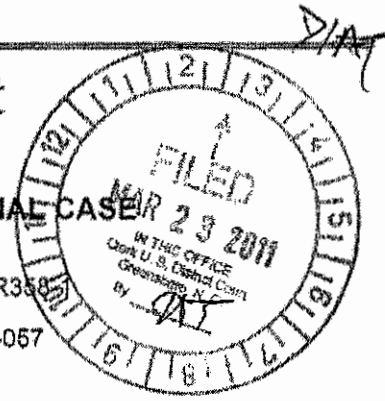

JUSTIN CARL MOOSE
Defendant

P. O. Box 1858
Greensboro, NC 27402

336/333-5351



United States District Court Middle District of North Carolina



UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JUSTIN CARL MOOSE

Case Number: 1:10CR358

USM Number: 27494-057

Walter Holton, Jr.
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1.
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18:842(p)(2)(A) and 844(a)(2)	Distributing Information relating to the Making of an Explosive Device to be used to Commit a Federal Crime of Violence	September 5, 2010	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

March 2, 2011

Date of Imposition of Judgment

Thomas A. Schroeder
Signature of Judicial Officer

Thomas D. Schroeder, United States District Judge

Name & Title of Judicial Officer

March 23, 2011
Date

DEFENDANT: JUSTIN CARL MOOSE
CASE NUMBER: 1:10CR358-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 30 months.

The court makes the following recommendations to the Bureau of Prisons: the defendant be given a mental health evaluation and any recommended treatment while in the custody of the Bureau of Prisons and the defendant be designated to a facility as close as possible to his home in North Carolina.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.

at _____ am/pm on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 pm on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____

_____, with a certified copy of this judgment.

UNITED STATES MARSHAL

BY

DEPUTY US MARSHAL

DEFENDANT: JUSTIN CARL MOOSE
CASE NUMBER: 1:10CR358-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable).
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable)
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable)

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JUSTIN CARL MOOSE
CASE NUMBER: 1:10CR358-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to substance abuse testing, at anytime, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing or inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall provide any requested financial information to the probation officer.

The defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer.

The defendant shall cooperatively participate in a mental health treatment program, which may include inpatient/residential treatment, and pay for treatment services, as directed by the probation officer.

The defendant shall not possess or use a computer, or any other means to access any "on-line computer service" at any location (including employment) without the prior approval of the probation officer. This includes any internet service provider, bulletin board system, or any other public or private computer network.

DEFENDANT: JUSTIN CARL MOOSE
CASE NUMBER: 1:10CR358-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals	\$ 100.00	\$	\$

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

Totals:	\$	\$
----------------	----	----

Restitution amount ordered pursuant to plea agreement: \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6, may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

** Findings for the total amount of losses are required under Chapters 109A, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 24, 1998.

DEFENDANT: JUSTIN CARL MOOSE
CASE NUMBER: 1:10CR358-1

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g. weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g. weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

To the extent the defendant cannot immediately comply, the Court will recommend he participate in the Inmate Financial Responsibility Program.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, P. O. Box 2708, Greensboro, NC 27402, unless otherwise directed by the court, the probation officer, or the United States Attorney. Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

PATRICK HOLMANDER,
Defendant.

)
) CRIMINAL NO **11-10072-TSH**
)
) VIOLATION:
)
) 18 U.S.C. § 248(a)(1)
) Interference by Force
) Or Threat of Force with
) Persons Providing or
) Obtaining Reproductive
) Health Services

INFORMATION

The United States Attorney charges that:

At all times material to this information:

Planned Parenthood League of Massachusetts, Inc., located at 1055 Commonwealth Avenue, Boston, Massachusetts, is a facility that provides reproductive health services, as defined in 18 U.S.C. § 248(a)(1), in the District of Massachusetts.

COUNT ONE: (18 U.S.C. § 248(a)(1) - Interference by Force Or Threat of Force with Obtaining or Providing Reproductive Health Services)

On or about June 25, 2008, at Planned Parenthood League of Massachusetts, Inc., 1055 Commonwealth Avenue, Boston,

PATRICK HOLMANDER,

defendant herein, did by force and threat of force, intentionally injure, intimidate and interfere with and attempt to injure, intimidate and interfere with D.S. and others because D.S. and others were and had been, obtaining and providing reproductive

health services.

All in violation of Title 18, United States Code,
§ 248(a)(1).

Respectfully submitted,
CARMEN M. ORTIZ
United States Attorney

By: Suzanne Sullivan
SUZANNE SULLIVAN
S. THEODORE MERRITT
Assistant U.S. Attorney

Dated: March 7, 2011

Criminal Case Cover Sheet

U.S. District Court - District of Massachusetts

Place of Offense: MA Category No. III Investigating Agency FBI

City Boston, MA Related Case Information:

County Suffolk Superseding Ind./ Inf. _____ Case No. 11-10072-TSH
Same Defendant _____ New Defendant _____
Magistrate Judge Case Number 11-mj-4067-TSH
Search Warrant Case Number _____
R 20/R 40 from District of _____

Defendant Information:

Defendant Name Patrick Holmander Juvenile Yes No

Alias Name _____

Address 57 Eliot Road, Revere, MA 02151

Birth date (Year only): 1973 SSN (last 4 #): 2876 Sex M Race: White Nationality: _____

Defense Counsel if known: Mark Gallant Address: 462 Boston Street, Suite 1, 2nd floor
Topsfield, MA 01983

Bar Number: _____

U.S. Attorney Information:

AUSA Suzanne Sullivan/ Theodore Merritt Bar Number if applicable _____

Interpreter: Yes No List language and/or dialect: _____

Victims: Yes No If Yes, are there multiple crime victims under 18 U.S.C. §3771(d)(2) Yes No

Matter to be SEALED: Yes No

Warrant Requested Regular Process In Custody

Location Status:

Arrest Date: February 7, 2011

Already in Federal Custody as pretrial detainee in Wyatt Federal Detention Facility

Already in State Custody _____ Serving Sentence Awaiting Trial

On Pretrial Release: Ordered by _____ on _____

Charging Document: Complaint Information Indictment

Total # of Counts: Petty _____ Misdemeanor 1 Felony _____

Continue on Page 2 for Entry of U.S.C. Citations

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: March 7, 2011 Signature of AUSA: Suzanne Sullivan

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Patrick Holmander

	<u>Index Key/Code</u>	<u>U.S.C. Citations</u> <u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>18 U.S.C. s. 248(a)(1)</u>	<u>Force or threat of force or attempt to injure</u>	<u>1</u>
Set 2	_____	<u>person who was providing or obtaining</u>	_____
Set 3	_____	<u>reproductive health services</u>	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION:

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
)	
	)	CRIMINAL ACTION
	)	NO. 11-10072 -TSH
vs.)	
)	
)	
PATRICK HOLMANDER,)	
Defendant.)	
_____)	

VERDICT FORM

WE, THE JURY, FIND THE DEFENDANT:

As to COUNT ONE (18 United States Code, Section 248(a)(1) - Intentionally interfering by Force or Threat of Force, or Attempting to do so, with Person(s) Obtaining or Providing Reproductive Health Services):

_____ Guilty

~~_____~~ Not Guilty

FOREPERSON: Stephen E. Mantzouras

DATE: 4-27-11

Your deliberations are complete. Please notify the court security officer in writing that you have reached a verdict.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

PATRICK HOLMANDER

JUDGMENT OF ACQUITTAL

CASE NUMBER: 11-CR-10072-TSH

The Defendant was found not guilty. IT IS ORDERED that the Defendant is acquitted, discharged, and any bond exonerated.

/s/ Timothy S. Hillman

Signature of Judge

TIMOTHY S. HILLMAN

Name of Judge

US DISTRICT JUDGE

Title of Judge

10/5/2012

Date

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 Civil Rights Division, Criminal Section
 8 601 D Street NW
 Washington, DC 20004
 9 Telephone: (202) 514-5259

10 Attorneys for Plaintiff
 UNITED STATES OF AMERICA
 11

FILED
 SEP 21 2011
 CLERK U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY *[Signature]*
 DEPUTY CLERK

12 IN THE UNITED STATES DISTRICT COURT FOR THE
 13 EASTERN DISTRICT OF CALIFORNIA
 14

15 1:11-cr-308-LJO

16 UNITED STATES OF AMERICA,	)	1:11-MJ-43 GSA
)	
17 Plaintiff,)	
)	
18 v.	)	VIOLATION: 18 U.S.C. §844(i) -
	)	Arson; 18 U.S.C. §247(c) -
19 DONNY EUGENE MOWER,	)	Damaging Religious Property;
	)	18 U.S.C. §248(a)(3) -
20 Defendant.	)	Damaging a Reproductive Health
	)	Facility
)	
)	

22
 23 INFORMATION
 24

25 COUNT ONE: [18 U.S.C. §844(i) - Arson]
 26 The United States charges T H A T
 27 DONNY EUGENE MOWER
 28 defendant herein, on or about September 2, 2010, in the County of

1 Madera, within the State and Eastern District of California, did
2 maliciously damage or destroy, or attempt to damage or destroy, by
3 means of fire or an explosive, any building used in or affecting
4 interstate commerce or in any activity affecting interstate
5 commerce, namely, the Madera Planned Parenthood clinic, in
6 violation of Title 18, United States Code, Section 844(i).

7
8 COUNT TWO: [18 U.S.C. §247(c) - Damaging Religious Property]

9 The United States further charges T H A T

10 DONNY EUGENE MOWER

11 defendant herein, on or about August 20, 2010, in the County of
12 Madera, within the State and Eastern District of California, did
13 knowingly and intentionally deface and damage, or attempt to
14 deface and damage, religious real property, to wit: Masjid Madera,
15 a mosque in Madera, California, because of the race, color, and
16 ethnic characteristics of its members, in violation of Title 18,
17 United States Code, Section 247(c).

18
19 COUNT THREE: [18 U.S.C. §248(a)(3) - Damaging a Reproductive
20 Health Facility]

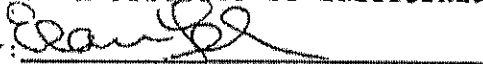
21 The United States further charges T H A T

22 DONNY EUGENE MOWER


23 defendant herein, on or about September 2, 2010, in the County of
24 Madera, within the State and Eastern District of California, did
25 intentionally damage or destroy, or attempt to damage or destroy,
26 the property of a facility, namely, the Madera Planned Parenthood
27 clinic, because such facility provides reproductive health
28 services, in violation of Title 18, United States Code, Section

1 248(a)(3).

2 Benjamin B. Wagner
3 United States Attorney
4 Eastern District of California

4 By: 
5 Elana S. Landau
6 Assistant United States Attorney
7 Eastern District of California

Thomas E. Perez
Assistant Attorney General
Civil Rights Division

By: 
Chiraag Bains
Trial Attorney
Criminal Section
Civil Rights Division

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10 Attorneys for Plaintiff
UNITED STATES OF AMERICA
11
12

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15

16	UNITED STATES OF AMERICA,	)	CASE NO. 1:11-MJ-43 GSA
17	Plaintiff,	)	PLEA AGREEMENT
18	v.	)	Date: September 21, 2011
19	DONNY EUGENE MOWER	)	Time: 1:30p.m.
20	Defendant.	)	Honorable Gary S. Austin
21		)	Courtroom Ten

22
23 1. This document constitutes the binding plea agreement
24 (Agreement) between Donny Eugene Mower (defendant), and the United
25 States Department of Justice (DOJ), United States Attorney's Office
26 for the Eastern District of California, and the Civil Rights
27 Division, Criminal Section, in the above-captioned case. This
28 Agreement is limited to the United States Department of Justice and

1 cannot bind any other federal, state or local prosecuting,
2 administrative, or regulatory authorities. This plea agreement is
3 set forth under Federal Rule of Criminal Procedure 11(c)(1)(A).

4 I. CHARGES

5 2. Defendant agrees to waive his right to be indicted by a
6 grand jury and plead guilty to an information that charges him with
7 one felony count of malicious damage to property by means of fire or
8 an explosive, in violation of 18 U.S.C. §844(i), one misdemeanor
9 count of damaging religious property, in violation of 18 U.S.C.
10 §247(c), and one misdemeanor count of damaging the property of a
11 reproductive health services facility, in violation of 18 U.S.C.
12 §248(a)(3).

13 II. ELEMENTS OF THE OFFENSES

14 3. In order for the defendant to be found guilty of malicious
15 damage to property by means of fire or an explosive, in violation of
16 18 U.S.C. §844(i), as alleged in Count One of the Information, the
17 government would have to prove the following:

18 (a) the defendant damaged or destroyed, or attempted to
19 damage or destroy, a building, vehicle, or other real or personal
20 property;

21 (b) the defendant did so maliciously;

22 (c) the defendant did so by means of fire or an explosive;

23 and

24 (d) the building, vehicle, or personal or real property was
25 used in interstate or foreign commerce or in any activity
26 affecting interstate or foreign commerce.

27 4. In order for the defendant to be found guilty of damaging
28 religious property, in violation of 18 U.S.C. §247(c), as alleged in

1 Count Two of the Information, the government would have to prove the
2 following:

3 (a) the defendant defaced, damaged or destroyed religious
4 real property, or attempted to do so;

5 (b) the defendant did so intentionally;

6 (c) the defendant did so because of the race, color, or
7 ethnic characteristics of any individual associated with
8 that religious property.

9 5. In order for the defendant to be found guilty of damaging
10 the property of a reproductive health services facility, in violation
11 of 18 U.S.C. §248(a)(3), as charged in Count Three of the
12 Information, the government would have to prove the following:

13 (a) the defendant damaged or destroyed, or attempted to
14 damage or destroy, the property of a facility;

15 (b) the defendant did so intentionally;

16 (c) the defendant did so because such facility provided
17 reproductive health services.

18 III. PENALTIES AND RESTITUTION

19 6. The maximum statutory sentence for Count One of the
20 Information, a violation of 18 U.S.C. §844(i), is as follows:

21 (a) a mandatory minimum of 5 years imprisonment up to 20
22 years imprisonment;

23 (b) a fine of up to \$250,000;

24 (c) not more than 3 years of supervised release;

25 (d) a mandatory special assessment of \$100; and

26 (e) restitution.

27 7. The maximum statutory sentence for Count Two of the
28 Information, a violation of 18 U.S.C. §247(c) is as follows:

- 1 (a) a term of imprisonment of not more than one year;
- 2 (b) a fine of up to \$100,000;
- 3 (c) not more than 1 year of supervised release;
- 4 (d) a mandatory special assessment of \$25; and
- 5 (e) restitution.

6 8. The maximum statutory sentence for Count Three of the
7 Information, a violation of 18 U.S.C. §248(a)(3) is as follows:

- 8 (a) a term of imprisonment of not more than one year;
- 9 (b) a fine of up to \$100,000;
- 10 (c) not more than 1 year of supervised release
- 11 (d) a mandatory special assessment of \$25; and
- 12 (e) restitution.

13 9. Supervised release is a period of time following
14 imprisonment during which defendant will be subject to various
15 restrictions and requirements. Defendant understands that, if he
16 violates one or more of the conditions of any supervised release
17 imposed, he may be returned to prison for all or part of the term of
18 supervised release, which could result in defendant serving a total
19 term of imprisonment greater than the statutory maximum stated above.

20 10. Defendant understands that the Court may issue a
21 Restitution Order requiring the defendant to make restitution for the
22 losses that victims have suffered as a result of the crimes to which
23 the defendant is pleading guilty. Defendant acknowledges that such
24 an order may require a lump sum payment, payments at intervals, the
25 replacement of property and/or services that the defendant must
26 provide to the victims.

27 11. Defendant further understands that the convictions in this
28 case may subject defendant to various collateral consequences,

1 including but not limited to revocation of probation, parole, or
2 supervised release in any other case, and suspension or revocation of
3 any professional license. Defendant understands that an
4 unanticipated collateral consequence will not serve as a ground to
5 withdraw his guilty plea.

6 IV. FACTUAL BASIS

7 12. Defendant and DOJ agree to the statement of facts provided
8 below. The statement of facts is sufficient to support a plea of
9 guilty to the charges described in this agreement and to establish
10 the sentencing guideline factors set forth in Section VI below. This
11 factual basis is not meant to be a complete recitation of all facts
12 relevant to the underlying criminal conduct or all facts known to
13 either party that relate to the conduct. Defendant agrees that all
14 of the facts set forth in the following statement are true and
15 correct, and that these facts will be offered to the Court in support
16 of defendant's guilty plea. Defendant further concedes that, if this
17 case proceeded to trial, the government could prove these facts to a
18 jury beyond a reasonable doubt:

19 On or about August 20, 2010, defendant placed a sign in
20 front of the Madera Planned Parenthood clinic, located in
21 the City of Madera, California, State and Eastern District
22 of California, stating, "Murdering children? That is your
23 choice? Reap your reward. ANB". On or about August 30,
24 2010, defendant placed a sign at the clinic entrance
25 stating, "Untitled. ANB is AMERICAN nationalist, not white
26 nationalist, black nationalist, or any other racist
27 motivated group. The signs posted, the things to come, and
28 yes even the brick are not hate motivated, but rather
messages. The [sic] are the voices of us who refuse to
allow America to continue to be torn down brick by brick.
Notice also, that the mosque was not the only target of
choice. We are here to revive American pride, which has
been dampened by a lot of things. The rise of Islam in
America, despite 9/11; the sickening number of murdered
children since 1973, hidden behind the guise of 'abortion'
or 'choice'; the abomination of homosexuality being
rewarded, while those who chose natural relationships are

1 bigots. These and so many more are are [sic] the hate
2 crimes, they hit America with a sucker punch... isn't it time
3 that someone hit back?"

4 On or about September 2, 2010, defendant threw an
5 incendiary device through a window of the Madera Planned
6 Parenthood clinic. As a result, the clinic sustained fire
7 and smoke damage estimated at a loss of \$26,566, and was
8 forced to cease operating for two days. Defendant also left
9 a sign at the Madera Planned Parenthood clinic entrance
10 stating, "Murder our Children? We have a 'choice' too.
11 Let's see if you can burn just as well as your victims.
12 ANB".

13 Specifically, during the evening of September 1, 2010
14 and early morning hours of September 2, 2010, the defendant
15 constructed a Molotov cocktail from cloth that he had soaked
16 in diesel fuel and stuffed into a beer bottle. Defendant
17 then drove to the Madera Planned Parenthood clinic, lit the
18 Molotov cocktail, threw it through a ground floor window,
19 and drove home. Defendant threw the Molotov cocktail at the
20 Madera Planned Parenthood clinic and left the signs at the
21 clinic because he knew it provided reproductive health
22 services. The Madera Planned Parenthood clinic and its
23 contents are used in and affect interstate commerce.

24 Also, on or about August 18, 2010, defendant placed a
25 sign in front of Masjid Madera (Madera Islamic Center), a
26 mosque located in the City of Madera, California, State and
27 Eastern District of California, which read, "No temple for
28 the god of terrorism at ground zero. ANB". Two days later,
on August 20, 2010, the defendant returned to the Masjid
Madera and threw a brick at the front of the center,
damaging the building's stucco. On August 24, 2010, the
defendant placed two additional signs in front of the Masjid
Madera, which read, "Wake up America, the enemy is here ANB"
and "American Nationalist Brotherhood." Defendant admits
that he threw the brick at the Masjid Madera because of the
race, color, or ethnic characteristics of the individuals
associated with that particular religious property.

Defendant admits that he was "ANB" (American
Nationalist Brotherhood) and that he was acting alone.

21 V. WAIVER OF RIGHTS

22 13. Defendant understands that by pleading guilty he surrenders
23 certain rights, including the following:

- 24 (a) If defendant persisted in a plea of not guilty to the
25 charges against him, he would have the right to be
26 represented by an attorney at all stages of the
27 proceedings, and would have a right to a public and speedy
28 trial.

1 (b) If the trial were a jury trial, the jury would be
2 composed of twelve lay persons selected at random.
3 Defendant and his attorney would have a say in who the
4 jurors would be by removing prospective jurors for cause
5 where actual bias or other disqualification is shown, or
6 without cause by exercising peremptory challenges. The
7 jury would have to agree unanimously before it could return
8 a verdict of either guilty or not guilty. The jury would
9 be instructed that defendant is presumed innocent and that
10 it could not convict him unless, after hearing all the
11 evidence, it was persuaded of his guilt beyond a reasonable
12 doubt.

13 (c) If the trial were held before a judge without a jury, the
14 judge would find the facts and determine, after hearing all
15 the evidence, whether or not he was persuaded of the
16 defendant's guilt beyond a reasonable doubt.

17 (d) At a trial, whether by a jury or a judge, the
18 government would be required to present its witnesses and
19 other evidence against defendant. Defendant would be able
20 to confront those government witnesses and his attorney
21 would be able to cross-examine them. In turn, defendant
22 could present witnesses and other evidence on his own
23 behalf. If the witnesses for defendant would not appear
24 voluntarily, he could require their attendance through the
25 subpoena power of the Court. At trial, the defendant would
26 also have the right to assistance of legal counsel. If he
27 could not afford legal counsel, one would be appointed for
28 him by the court at no expense to him.

1 (e) At a trial, defendant would have a privilege against
2 self-incrimination so that he could decline to testify,
3 and no inference of guilt could be drawn from this refusal
4 to testify.

5 14. By pleading guilty, defendant also gives up any and all
6 rights to pursue any affirmative defenses, Fourth Amendment or Fifth
7 Amendment claims, and other pretrial motions that could be filed.

8 15. By pleading guilty, the defendant waives any right to seek
9 attorney's fees and/or costs under the Hyde Amendment, and the
10 defendant acknowledges that the government's position in this
11 prosecution is not vexatious, frivolous, or undertaken in bad faith.

12 16. Should the defendant withdraw from this agreement or commit
13 or attempt to commit any additional federal, state, or local crimes,
14 or should it be established that the defendant has intentionally
15 provided materially false, incomplete, or misleading testimony or
16 information or otherwise violated any provision of this agreement,
17 the government will be released from its obligation under this
18 agreement, but the defendant may not withdraw the guilty plea entered
19 pursuant to this agreement. In such case, the defendant may
20 thereafter be prosecuted for any federal criminal violation of which
21 the government has knowledge, including, but not limited to, perjury
22 and obstruction of justice. Furthermore, if this plea agreement is
23 revoked or if the defendant's conviction ultimately is overturned,
24 then the government retains the right to file any and all charges
25 which were not filed because of this agreement.

26 17. By signing this agreement, defendant expressly and
27 voluntarily waives the protection of Federal Rule of Evidence 410.
28 Thus, in the event that he violates the plea agreement or, at any

1 time after signing this agreement, withdraws his offer to plead
2 guilty, any statements he makes in conjunction with, or following,
3 this plea agreement – including the statements contained in the
4 Factual Basis, any statements he makes to law enforcement that are
5 not covered by a proffer agreement, any re-arraignment colloquies
6 related to this case, any testimony he gives before a grand jury or
7 another tribunal, and any leads from such statements, testimony, or
8 colloquies – shall be admissible for all purposes against him in any
9 and all criminal proceedings. By signing this agreement, the
10 defendant admits that the statements listed above will be admissible
11 against him for any and all purposes if, for any reason, he fails to
12 plead guilty, his plea of guilty is voided, or he withdraws his
13 guilty plea.

14 18. Defendant understands that by pleading guilty he is waiving
15 all of the rights set forth above and acknowledges that defendant's
16 attorney has explained those rights to him and the consequences of
17 his waiver of those rights.

18 VI. SENTENCING FACTORS AND STIPULATIONS

19 19. Defendant understands that the Court must consult the
20 Federal Sentencing Guidelines (as promulgated by the Sentencing
21 Commission pursuant to the Sentencing Reform Act of 1984, 18 U.S.C.
22 §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by United
23 States v. Booker and United States v. Fanfan, 543 U.S. 220 (2005)),
24 and must take them into account when determining a final sentence.
25 Defendant understands that the Court will determine a non-binding and
26 advisory guideline sentencing range for this case pursuant to the
27 Sentencing Guidelines. Defendant further understands that the Court
28 will consider whether there is a basis for departure from the

1 guideline sentencing range (either above or below the guideline
2 sentencing range) because there exists an aggravating or mitigating
3 circumstance of a kind, or to a degree, not adequately taken into
4 consideration by the Sentencing Commission in formulating the
5 Guidelines. Defendant further understands that the Court, after
6 consultation and consideration of the Sentencing Guidelines, must
7 impose a sentence that is reasonable in light of the factors set
8 forth in 18 U.S.C. § 3553(a).

9 20. The terms "depart", "adjust", "specific offense
10 characteristics", and all variants thereof shall have the same
11 meaning as in the Sentencing Guidelines. In contrast to a
12 Guidelines-based "departure", the term "variance" means any decision
13 by the Court under Booker, on whatever grounds, to impose a sentence
14 that is above or below the determined Guideline sentencing range.
15 "Total adjusted offense level" means the offense level calculated by
16 the Court based on consideration of all special offense
17 characteristics and any adjustments, but before considering whether
18 to grant any departure available under the Guidelines. "Final
19 offense level" means the offense level calculated by the Court after
20 applying any Guideline-based departure, before exercising its
21 discretion to vary from the determined Guideline sentencing range.

22 21. Defendant and DOJ agree to the applicability of the
23 following Sentencing Guideline factors and computations, based on the
24 November 1, 2010 Sentencing Commission Guidelines Manual:

25 Count One:

26 Base Offense Level [U.S.S.G. §2K1.4(a)(1)(B)] 24

27 ///

28 ///

1 Count Two:

2 Base Offense Level [U.S.S.G. §2H1.1(a)(3)]	10
3 Adjustment for Hate Crime Motivation [3A1.1(a)]	<u>+3</u>
4 Total Adjusted Offense Level for Count Two	13

5 Count Three:

6 Base Offense Level [2H1.1(a)(1); 2K1.4(a)(1)(B)]	24
--	----

7 Grouping:

8 No grouping for 2H1.1 offenses [U.S.S.G. §3D1.2(d)]	24
9 Number of Units [U.S.S.G. §3D1.4]	<u>+2</u>

10 TOTAL ADJUSTED OFFENSE LEVEL	26
---------------------------------	----

11 Acceptance of Responsibility [U.S.S.G. §3E1.1]	<u>-3</u>
---	-----------

12 FINAL OFFENSE LEVEL	23
------------------------	----

13 22. DOJ agrees not to argue for application of any other
14 specific offense characteristic or adjustment. DOJ further agrees
15 not to argue for any upward departure from Guideline calculations
16 above.

17 23. The parties anticipate that the defendant will be
18 classified with a Criminal History Category of I.

19 24. The defendant understands that the Court will determine the
20 facts and calculations relevant to sentencing. Both defendant and
21 DOJ are free to: (a) supplement the facts to which all parties
22 stipulated in this Agreement by supplying relevant information to the
23 United States Probation Office and the Court; and (b) correct any and
24 all misstatements of fact relating to the calculation of the
25 sentence.

26 25. Defendant understands that the Sentencing Guidelines do not
27 render inapplicable or otherwise affect the applicable statutory
28 mandatory minimum discussed in paragraph 6 of this Agreement.

1 VII. DEFENDANT'S OBLIGATIONS

2 26. The defendant agrees to the following:

3 (a) Defendant agrees that this plea agreement shall be
4 filed with the court and become a part of the record in the
5 case.

6 (b) Defendant agrees to plead guilty to Counts One, Two and
7 Three of the Information. The defendant agrees that he is
8 in fact guilty of the charges and that the facts set forth
9 in the Factual Basis are accurate and sufficient to
10 establish his guilt.

11 (c) Defendant agrees that, at the entry of plea proceeding, he
12 will sign a written waiver of prosecution by indictment and
13 consent to proceed by information rather than by
14 indictment.

15 (d) The defendant understands and agrees that the Court is
16 not a party to this agreement, that sentencing is a matter
17 solely within the discretion of the Court, the Court is
18 under no obligation to accept any recommendations made by
19 the government, and the Court may in its discretion impose
20 any sentence it deems appropriate up to and including the
21 statutory maximum stated in this Plea Agreement. If the
22 Court should impose any sentence up to the maximum
23 established by the statute, the defendant cannot, for that
24 reason alone, withdraw his guilty plea, and he will remain
25 bound to fulfill all of the obligations under this
26 Agreement. The defendant understands that neither the
27 prosecutor, defense counsel, nor the Court can make a
28 binding prediction or promise regarding the sentence he

1 will receive.

2 (e) The defendant is aware that Title 18, United States
3 Code, Section 3742 affords a defendant the right to appeal
4 the sentence imposed. Acknowledging this, the defendant
5 knowingly waives the right to appeal his conviction or any
6 sentence (or the manner in which that sentence was
7 determined) which is within the statutory maximum for the
8 crime on the grounds set forth in Title 18, United States
9 Code, Section 3742 or on any ground whatever, in exchange
10 for the concessions made by the United States in this plea
11 agreement. The defendant also waives his right to
12 challenge his conviction, sentence or the manner in which
13 his sentence was determined in any post-conviction attack,
14 including but not limited to a motion brought under Title
15 28, United States Code, Sections 2241 or 2255.

16 (f) The defendant agrees to waive all rights under the "Hyde
17 Amendment", Section 617, P.L. 105-119 (Nov. 26, 1997), to
18 recover attorneys' fees or other litigation expenses in
19 connection with the investigation and prosecution of all
20 charges in the above-captioned matter and of any related
21 allegations (including without limitation any charges to be
22 dismissed pursuant to this Agreement and any charges
23 previously dismissed).

24 VIII. GOVERNMENT'S OBLIGATIONS

25 27. If defendant complies fully with all of his obligations
26 under this Agreement, DOJ agrees to the following:

27 (a) The government will recommend that the defendant receive a
28 three-level reduction in the computation of his offense

1 level due to his acceptance of responsibility, provided
2 that the defendant qualifies for such a reduction in his
3 interview with the probation officer.

4 (b) The government agrees to recommend that the defendant's
5 initial term of imprisonment be five (5) years, which
6 corresponds with the statutory mandatory minimum sentence
7 for Count One.

8 IX. QUESTIONS BY THE COURT

9 28. Defendant understands that if the court questions him under
10 oath, on the record and in the presence of counsel, about any of the
11 offenses to which he has pleaded guilty, his answers, if false, may
12 later be used against him in a prosecution for perjury.

13 X. COURT AND UNITED STATES PROBATION OFFICE NOT PARTIES

14 29. Defendant understands that neither the Court nor the United
15 States Probation Office are a party to this agreement. Defendant
16 understands that the United States Probation Office will conduct an
17 independent investigation of defendant's activities and his
18 background. It will then prepare a presentence report which it will
19 submit to the Court as its independent sentencing recommendation.
20 The Court is then free to impose a sentence up to the maximum
21 penalties previously set forth. Also, should the court fail to
22 follow any or all of the government's sentencing recommendations, the
23 defendant will not be allowed to withdraw his plea.

24 XI. SCOPE OF AGREEMENT

25 30. This Agreement applies and relates only to the disposition
26 of the pending information in the above-referenced criminal case and
27 the crime expressly charged therein. This Agreement has no effect on
28 any offenses not charged in the pending information. This Agreement

1 shall not preclude or have any other effect on any orders that the
2 Court may make collateral to the matter of sentencing or on any other
3 separate proceedings against defendant not mentioned expressly
4 herein, including any past, present, or future forfeiture actions.

5 XII. ENTIRE AGREEMENT

6 31. This agreement sets forth the entire agreement between
7 defendant and DOJ. Except as set forth herein, there are no
8 promises, understandings, or agreements, written or oral, express or
9 implied, between DOJ and defendant or defendant's counsel. This plea
10 of guilty is freely and voluntarily made and not the result of force
11 or threats or of promises apart from those set forth in this plea
12 agreement. There have been no representations or promises from
13 anyone as to what sentence this Court will impose.

14 XIII. APPROVALS AND SIGNATURES

15 32. I have read this plea agreement and have discussed it fully
16 with my client. The plea agreement accurately and completely sets
17 forth the entirety of the agreement. I concur in my client's
18 decision to plead guilty as set forth in this plea agreement.

19
20 DATED: _____

9/19/11

Melody Walcott

MELODY WALCOTT
Attorney for Defendant

21
22 33. I have read this plea agreement and carefully reviewed
23 every part of it with my attorney. I understand it, and I
24 voluntarily agree to it. Further, I have consulted with my attorney
25 and fully understand my rights with respect to the provisions of the
26 Sentencing Guidelines that may apply to my case. No other promises
27 or inducements have been made to me, other than those contained in
28 this plea agreement. In addition, no one has threatened or forced me

1 in any way to enter into this plea agreement. Finally, I am
2 satisfied with the representation of my attorney in this case.

3
4 DATED: 9/19/2011 Donny Mower
5 DONNY EUGENE MOWER
6 Defendant

7 34. I accept and agree to this plea agreement on behalf of the
8 government.

9 DATED: 9/21/2011 BENJAMIN B. WAGNER
10 United States Attorney
11 Eastern District of California

12 THOMAS E. PEREZ
13 Assistant Attorney General
14 U.S. Department of Justice
15 Civil Rights Division

16 By: Elana S. Landau
17 ELANA S. LANDAU
18 Assistant U.S. Attorney

19 By: Chiraag Bains
20 CHIRAAG BAINS
21 Trial Attorney

United States District Court
Eastern District of California

UNITED STATES OF AMERICA
v.
DONNY EUGENE MOWER

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 1:11CR00308-001

Melody Walcott
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): 1, 2 and 3 of the Information.
- pleaded nolo contendere to counts(s) ___ which was accepted by the court.
- was found guilty on count(s) ___ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 844(i)	Arson (CLASS C FELONY)	9/2/2010	1
18 USC 247(c)	Damaging Religious Property (CLASS A MISDEMEANOR)	8/20/2010	2
18 USC 248(a)(3)	Damaging a Reproductive Health Facility (CLASS A MISDEMEANOR)	9/2/2010	3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on counts(s) ___ and is discharged as to such count(s).
- Count(s) ___ (is)(are) dismissed on the motion of the United States.
- Indictment is to be dismissed by District Court on motion of the United States.
- Appeal rights given. Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/9/2012
Date of Imposition of Judgment

Lawrence J. O'Neill
Signature of Judicial Officer

LAWRENCE J. O'NEILL, United States District Judge
Name & Title of Judicial Officer

1/24/2012
Date

CASE NUMBER: 1:11CR00308-001
DEFENDANT: DONNY EUGENE MOWER

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 60 months for Count 1, 12 months for Count 2, and 12 months for Count 3, all to be served concurrently for a total term of 60 months.

The court makes the following recommendations to the Bureau of Prisons:

1. The Court recommends the defendant participate in the RDAP Program.
2. The Court recommends that the defendant be incarcerated in a facility in or near Herlong, California or Sheridan, Oregon, but only insofar as this accords with security classification and space availability.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.
 at ___ on ____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before _ on ____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Officer.
If no such institution has been designated, to the United States Marshal for this district.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

CASE NUMBER: 1:11CR00308-001
DEFENDANT: DONNY EUGENE MOWER

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 36 months for Count 1, 12 months for Count 2, and 12 months for Count 3, all to be served concurrently for a total term of 36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall submit to the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register and comply with the requirements in the federal and state sex offender registration agency in the jurisdiction of conviction, Eastern District of California, and in the state and in any jurisdiction where the defendant resides, is employed, or is a student. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CASE NUMBER: 1:11CR00308-001
DEFENDANT: DONNY EUGENE MOWER

Judgment - Page 4 of 6

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall not dispose of or otherwise dissipate any of his assets until the fine and/or restitution order by this Judgment is paid in full, unless the defendant obtains approval of the Court or the probation officer.
3. The defendant shall provide the probation officer with access to any requested financial information.
4. The defendant shall not open additional lines of credit without the approval of the probation officer.
5. As directed by the probation officer, the defendant shall participate in an outpatient correctional treatment program to obtain assistance for drug or alcohol abuse.
6. As directed by the probation officer, the defendant shall participate in a program of testing (i.e. breath, urine, sweat patch, etc.) to determine if he has reverted to the use of drugs or alcohol.
7. The defendant shall abstain from the use of alcoholic beverages and shall not frequent those places where alcohol is the chief item of sale.
8. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
9. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to \$25 per month.
10. The defendant shall register, as required in the jurisdiction in which he resides, as a arson offender.

CASE NUMBER: 1:11CR00308-001
 DEFENDANT: DONNY EUGENE MOWER

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 150.00	\$ Waived	\$ 26,566.00

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

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Madera Planned Parenthood 500 E. Almond Avenue, Ste. 1 Madera, CA 93637	\$ 26,566.00	\$ 26,566.00	100%
<u>TOTALS:</u>	<u>\$ 26,566.00</u>	<u>\$ 26,566.00</u>	

Restitution amount ordered pursuant to plea agreement \$ ____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the fine restitution

The interest requirement for the fine restitution is modified as follows:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

CASE NUMBER: 1:11CR00308-001
DEFENDANT: DONNY EUGENE MOWER

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ 26,716.00 due immediately, balance due
 - not later than __, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within __ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

FILED January 5, 2012
(Date)

AO 91 (Rev. 08/09) Criminal Complaint

NORTHERN DISTRICT OF FLORIDA
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

United States of America)

v.)

BOBBY JOE ROGERS)

Case No. 3:12MJ21

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 1, 2012 in the county of Escambia in the Northern District of Florida, the defendant(s) violated:

Code Section

Title 18 United States Code,
Section 844 (i)

Offense Description

Did unlawfully and maliciously damage or destroy or attempt to damage or destroy by means of fire or an explosive, any building or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.

This criminal complaint is based on these facts:

I further state that I am a Special Agent of the Bureau of Alcohol, Tobacco, Firearms and Explosive and that this complaint is based up on the facts provided in the attached affidavit. See Attached Affidavit

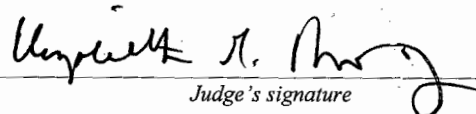
Continued on the attached sheet.


Complainant's signature

Special Agent George Bruno
Printed name and title

Sworn to before me and signed in my presence.

Date: 1-5-12


Judge's signature

City and state: Pensacola, Florida

Elizabeth M. Timothy, United States Magistrate
Printed name and title

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA

v.

BOBBY JOE ROGERS

INDICTMENT

3:12CA18/MCR

THE GRAND JURY CHARGES:

COUNT ONE

On or about January 1, 2012, in the Northern District of Florida, the defendant,

BOBBY JOE ROGERS,

did maliciously damage and attempt to damage and destroy, by means of fire, a building or personal property located at 6770 North Ninth Avenue, Pensacola, Florida, which was then being used in interstate commerce and in an activity affecting interstate commerce.


In violation of Title 18, United States Code, Section 844(i).

COUNT TWO

On or about January 1, 2012, in the Northern District of Florida, the defendant,

BOBBY JOE ROGERS,

did intentionally damage and destroy, and attempt to damage and destroy, the property of a facility, namely, the American Family Planning Clinic, because such facility provides reproductive health services.

Returned in open court pursuant to Rule	
Date	2/22/2012
	
United States Magistrate Judge	

In violation of Title 18, United States Code, Sections 248(a)(3) and 248(b)(1).

A TRUE BILL:

FOREPERSON

U U

2-22-2012

DATE


PAMELA C. MARSH
United States Attorney


EDWIN KNIGHT
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA

vs.

CASE NO.: 3:12cr18/MCR

BOBBY JOE ROGERS
_____ /

PLEA AGREEMENT

1. PARTIES TO AGREEMENT

This agreement is entered into, by, and between, Bobby Joe Rogers as the Defendant, Thomas Keith as attorney for the Defendant, and the United States Attorney for the Northern District of Florida. This agreement specifically excludes and does not bind any other state or federal agency, including other United States Attorneys and the Internal Revenue Service, from asserting any civil, criminal, or administrative claim against the Defendant.

2. TERMS

The parties agree to the following terms:

a. The Defendant will plead guilty to Count One and Count Two of the Indictment. As to Count One, the penalties include a minimum mandatory sentence of 5 years imprisonment and a maximum possible penalty of 20 years imprisonment, a fine of \$250,000, not more than 3 years of supervised release, and a \$100 special monetary assessment. As to Count Two, the penalties include a maximum possible penalty of 1

FILED IN OPEN COURT THIS

7-19-2012

**CLERK, U.S. DISTRICT
COURT, NORTH. DIST. FLA.**

year imprisonment, a \$100,000 fine, not more than 1 year of supervised release, and a \$50 SMA. Defendant agrees to pay the special monetary assessment(s) on or before the date of sentencing.

If the Defendant is unable to pay the special assessment(s) prior to sentencing due to indigence, the Defendant agrees to participate in the Inmate Financial Responsibility Program.

The maximum sentence to which the Defendant is subject includes the forfeiture of all forfeitable assets.

In addition, the Court may enter an order denying Defendant federal benefits pursuant to 21 U.S.C. 862(a)(1).

b. That by voluntarily pleading guilty to the charges in the Indictment, the Defendant, as to the count pled herein, knowingly waives and gives up constitutional rights which attend a Defendant on trial in a criminal case. These constitutional rights include: the right to plead not guilty; the right to have a jury or judge determine guilt on the evidence presented; the right to compel the government to prove guilt beyond a reasonable doubt; the right to confront and cross-examine witnesses; the right not to be compelled to incriminate oneself; the right to testify; the right to present evidence; and the right to compel the attendance of witnesses.

c. The Defendant is pleading guilty because the Defendant is in fact guilty of the charges alleged in Counts One and Two of the Indictment. In pleading guilty, the Defendant acknowledges that were this case to go to trial, the government would present evidence to support the charges beyond a reasonable doubt.

d. Upon the District Court's adjudication of guilt of the Defendant for the charged crimes, the United States Attorney, Northern District of Florida, will not file any further criminal charges against the Defendant arising out of the same transactions or occurrences to which the Defendant has pled. The Defendant agrees that substantial evidence exists to support the charges.

e. Nothing in this agreement shall protect the Defendant in any way from prosecution for any offense committed after the date of this agreement.

f. If the Defendant is not a citizen of the United States, the Defendant understands that this conviction may adversely affect the Defendant's immigration status and may lead to deportation.

g. The parties agree that the sentence to be imposed is left solely to the discretion of the District Court, which is required to consult the United States Sentencing Guidelines and take them into account when sentencing the Defendant. The parties further understand and agree that the District Court's discretion in imposing sentence is limited only by the statutory maximum sentence and any mandatory minimum sentence prescribed by statute for the offenses.

h. Both parties reserve the right to advise the District Court and other authorities of their versions of the circumstances surrounding the offenses committed by the Defendant. The United States Attorney further reserves the right to correct any misstatements by the Defendant or Defendant's attorney and to present evidence and make arguments pertaining to the application of the sentencing guidelines and the

considerations set forth in Title 18, United States Code, Section 3553(a), including sentencing recommendations, and whether departure upward or downward is appropriate.

3. SENTENCING

a. Defendant understands that any prediction of the sentence that may be imposed is not a guarantee or binding promise. Due to the variety and complexity of issues that may arise at sentencing, the sentence may not be subject to accurate prediction.

b. The parties understand and agree that either party may offer additional evidence relevant to sentencing issues. However, the Court is not limited to consideration of the facts and events provided by the parties. Adverse rulings or a sentence greater than anticipated shall not be grounds for withdrawal of the Defendant's plea.

c. The parties reserve the right to appeal any sentence imposed.


4. VICTIM RESTITUTION

The Defendant agrees to make full restitution to the victim in the amounts as determined by the Court. The Defendant agrees that the amount of restitution may include losses resulting from related conduct for which the Defendant was not convicted, if the loss flowed directly from the relevant conduct of which the Defendant was a part.

CONCLUSION

In every case in the Northern District of Florida in which the parties enter a Plea Agreement, the Court requires the parties to enter a sealed Supplement to Plea Agreement indicating whether or not the Defendant agrees to cooperate with the United States Attorney. The parties agree to the Supplement to Plea Agreement entered in this case.

The Defendant enters this agreement knowingly, voluntarily, and upon advice of counsel.




Thomas Keith
Attorney for Defendant

7/17/12
Date



Bobby Joe Rogers

7/17/12
Date

PAMELA C. MARSH
United States Attorney


Edwin Knight
Florida Bar no. 380156
Assistant United States Attorney
Northern District of Florida
21 East Garden Street
Pensacola, Fla. 32501
850-444-4000

7-19-12
Date

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

UNITED STATES OF AMERICA

-vs-

Case # 3:12cr18-001/MCR

BOBBY JOE ROGERS

USM # 21292-017

**Defendant's Attorney:
Thomas Keith (AFPD)
3 West Garden Street, Suite 200
Pensacola, Florida 32502**

JUDGMENT IN A CRIMINAL CASE


The defendant pled guilty to Counts One and Two of the Indictment on July 19, 2012. Accordingly, **IT IS ORDERED** that the defendant is adjudged guilty of such count(s) which involve(s) the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>DATE OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 844(i)	Maliciously Damaging or Destroying, or Attempting to Damage or Destroy by Means of Fire, a Building Used in Interstate Commerce	January 1, 2012	One
18 U.S.C. § 248(a)(3) and (b)(1)	Blocking Freedom of Access to a Facility Providing Reproductive Health Services, by Intentionally Damaging or Destroying the Property of the Facility	January 1, 2012	Two

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, including amendments effective subsequent to 1984, and the Sentencing Guidelines promulgated by the U.S. Sentencing Commission.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence:
October 4, 2012


M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE

Date Signed: October 10th, 2012

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **120 months**. **This term consists of 120 months as to Count One and 12 months as to Count Two, with said terms to run concurrently, one with the other.**

The court recommends the Bureau of Prisons [BOP] review the defendant's Psychiatric Evaluation, dated January 12, 2012, and reevaluate the defendant for an appropriate placement at a designated facility which will address the defendant's need for substance abuse treatment as well as mental health issues.

The court identifies the defendant as a person in need of a focused, intensive substance abuse treatment program, both during incarceration and on reentry through a residential reentry center.

The court recommends defendant's placement into the BOP's Residential Drug Abuse Program. Additionally, while awaiting placement into RDAP, or, if deemed ineligible for RDAP due to the time of sentence, or for any other reason, the court orders the defendant to complete Drug Education Classes and fully participate in the BOP's nonresidential drug abuse treatment program.

The defendant shall complete GED classes to the extent the Bureau of Prisons finds the defendant competent to participate in such classes.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years as to Count One, and 1 year as to Count Two, with said terms to run concurrently, one with the other.**

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime and shall not possess a firearm, destructive device, or any other dangerous weapon.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the following standard conditions that have been adopted by this court.

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within **72 hours** of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. if this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

The defendant shall also comply with the following additional conditions of supervised release:

1. The defendant shall be evaluated for substance abuse and referred to treatment as determined necessary through an evaluation process. The defendant may be tested for the presence of illegal controlled substances or alcohol at any time during the term of supervision.
2. The defendant shall be evaluated for mental health treatment and follow any recommended treatment.
3. The defendant shall stay at least 1000 feet away from any facility that is known by the defendant to provide reproductive health care that includes pregnancy termination services.
4. The defendant shall have no direct or indirect contact with anyone known by the defendant to provide reproductive health care services to include pregnancy termination or any staff members of such an individual.
5. The defendant shall not affiliate or associate with any organization advocating violence, harassment, protests or acts of disobedience involving the provision of reproductive health services, including abortion.

Upon a finding of a violation of probation or supervised release, I understand the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

CRIMINAL MONETARY PENALTIES

All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk, U.S. District Court, unless otherwise directed by the Court. Payments shall be made payable to the Clerk, U.S. District Court, and mailed to 111 N. Adams St., Suite 322, Tallahassee, FL 32301-7717. Payments can be made in the form of cash if paid in person.

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments. The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

SUMMARY

<u>Special Monetary Assessment</u>	<u>Fine</u>	<u>Restitution</u>
\$125.00	Waived	None

SPECIAL MONETARY ASSESSMENT

A special monetary assessment of **\$125.00** is imposed (\$100.00 as to Count One and \$25.00 as to Count Two).

FINE

No fine imposed.

RESTITUTION

No restitution imposed.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) special monetary assessment; (2) non-federal victim restitution; (3) federal victim restitution; (4) fine principal; (5) costs; (6) interest; and (7) penalties in full immediately.

Breakdown of fine and other criminal penalties is as follows:

Fine: Waived SMA: \$125.00 Restitution: None Cost of Prosecution: None

The \$125.00 monetary assessment shall be paid immediately. Any payments of the monetary assessment and the fine made while the defendant is incarcerated shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. The defendant must notify the court of any material changes in the defendant's economic circumstances, in accordance with 18 U.S.C. §§ 3572(d), 3664(k) and 3664(n). Upon notice of a change in the defendant's economic condition, the Court may adjust the installment payment schedule as the interests of justice require.

Special instructions regarding the payment of criminal monetary penalties pursuant to 18 U.S.C. § 3664(f)(3)(A):

Unless the court has expressly ordered otherwise above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. In the event the entire amount of monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due. The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA	)	INDICTMENT
v.	)	Case No. 12 CR 43 <i>wmc</i>
RALPH LANG,	)	18 U.S.C. §245(b)(1)(E)
Defendant.	)	18 U.S.C. §924(c)

THE GRAND JURY CHARGES:

COUNT 1

On or about May 25, 2011, in the Western District of Wisconsin, the defendant,

RALPH LANG,

willfully attempted: (1) to injure, to intimidate, and to interfere with persons, by force and threat of force, because they were and had been participating in and enjoying the benefits of a program and activity receiving Federal financial assistance; and (2) to intimidate persons, by force and threat of force, from participating in and enjoying the benefits of a program and activity receiving Federal financial assistance. LANG's acts included the attempted use of a dangerous weapon, specifically a firearm, and an attempt to kill.

(In violation of Title 18, United States Code, Section 245(b)(1)(E)).

COUNT 2

On or about May 25, 2011, in the Western District of Wisconsin, the defendant,

RALPH LANG,


knowingly and intentionally used, carried, possessed, and discharged a firearm, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, specifically the violation of Title 18, United States Code, Section 245 charged in Count 1 of this indictment, which is incorporated by reference herein.

(In violation of Title 18, United States Code, Section 924(c)(1)(A)(iii)).

A TRUE BILL



PRESIDING JUROR



JOHN W. VAUDREUIL
United States Attorney

Indictment returned: March 28, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

Case No. 12-CR-00043-WMC

RALPH LANG,

Defendant.

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon, the United States Attorney for the Western District of Wisconsin hereby dismisses, without prejudice, the indictment against defendant Ralph Lang. This dismissal is based on the reasons set forth in the attached affidavit of John W. Vaudreuil.

Dated this 10th day of June 2013.

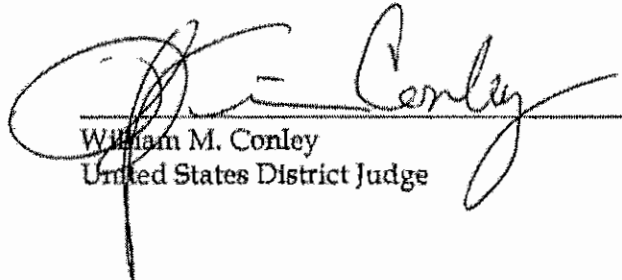
Respectfully submitted,

/s/

JOHN W. VAUDREUIL
United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

Dated: June 11, 2013



William M. Conley
United States District Judge

U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

2012 APR 17 P 1

UNITED STATES OF AMERICA,

JON W. SANFORD
CLERK

Plaintiff.

v.

Case No. 12-CR- 77

FRANCIS G. GRADY,

[18 U.S.C. §§ 844(i), 248(a)(3) and (b)(1)]
Green Bay Division

Defendant.

INDICTMENT

COUNT ONE

Arson of Building Used in Interstate Commerce

THE GRAND JURY CHARGES:

That on or about April 1, 2012, in the State and Eastern District of Wisconsin,

FRANCIS G. GRADY

maliciously damaged by means of fire a building that was used in interstate commerce, that is,

Planned Parenthood, located at 3800 N. Gillett Street, Grand Chute, Wisconsin.

All in violation of Title 18, United States Code, Section 844(i).

COUNT TWO

Freedom of Access to Clinic Entrance

THE GRAND JURY FURTHER CHARGES:

That on or about April 1, 2012, in the State and Eastern District of Wisconsin,

FRANCES G. GRADY

intentionally damaged the property of Planned Parenthood, a facility that provides reproductive health services, because Planned Parenthood provided such reproductive health services.

All in violation of Title 18, United States Code, Sections 248(a)(3) and (b)(1).

A TRUE BILL:


FOR PERSON

Dated: April 17, 2012


JAMES L. SANTELLE
United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 12-CR-77

FRANCIS G. GRADY,

Defendant.

VERDICT - Guilty Count One

As to the offense of arson of a building used in interstate commerce, as charged in Count One of the indictment, we find the defendant Francis Grady guilty.

Dated at Green Bay, Wisconsin, this 7th day of July, 2012.


Jury Foreperson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 12-CR-77

FRANCIS G. GRADY,

Defendant.

VERDICT - Guilty Count Two

As to the offense of intentionally damaging the property of Planned Parenthood, a facility that provides reproductive health services because Planned Parenthood provided such reproductive health services, as charged in Count Two of the indictment, we find the defendant Francis Grady guilty.

Dated at Green Bay, Wisconsin, this 9th day of July, 2012.


Jury Foreperson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 12-CR-77

FRANCIS GERALD GRADY

USM Number: 11656-089

Thomas E. Phillip

Defendant's Attorney

William J. Roach

Assistant United States Attorney

THE DEFENDANT was found guilty on counts one (1) and two (2), after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 844(i)	Arson of building used in interstate commerce	April 1, 2012	1
18 U.S.C. §§ 248(a)(3) and (b)(1)	Freedom of Access to Clinic Entrance	April 1, 2012	2

The defendant is sentenced as provided in Pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in economic circumstances.

Date of Imposition of Judgment

February 14, 2013

s/ William C. Griesbach, Chief Judge, United States District Court

Signature of Judicial Officer

February 20, 2013

Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of one hundred and twenty months (120) as to count one and twelve (12) months as to count 2 to be served consecutively, for a total of one hundred and thirty-two (132) months.

- The court makes the following recommendations to the Bureau of Prisons: placement in a facility close to defendant's home.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district.
 - at ____ a.m./p.m. on ____.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,
 - before ____ a.m./p.m. on ____.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to count one and one (1) year as to count two to be served concurrently, for a total term of three (3) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance.

- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from the use of all alcoholic beverages and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant is to participate in a program of testing to include not more than six urinalysis tests per month and residential or outpatient treatment for drug and alcohol abuse, as approved by the supervising probation officer, until such time as he or she is released from such program. The defendant shall pay the cost of this program under the guidance and supervision of the supervising probation officer. The defendant is to refrain from use of all alcoholic beverages throughout the supervised release term.
2. The defendant is to pay restitution at a rate of not less than \$50.00 per month or 10% of his or her net earnings, whichever is greater. The defendant will also apply 100 percent of his or her yearly federal and state tax refunds toward the payment of restitution. The defendant shall not change exemptions without prior notice of the supervising probation officer.
3. The defendant is to provide access to all financial information requested by the supervising probation officer including, but not limited to, copies of all federal and state tax returns. All tax returns shall be filed in a timely manner. The defendant shall also submit monthly financial reports to the supervising probation officer.
4. The defendant shall participate in a mental health treatment program and shall take any and all prescribed medications as directed by the treatment provider and participate in any psychological/psychiatric evaluation and counseling as approved by the supervising probation officer. The defendant shall pay the cost of such treatment under the guidance and supervision of the supervising probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached page.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<u>Totals:</u>	\$125.00	\$0.00	\$650.00

- The determination of restitution is deferred until _____. An Amended Judgement in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If a defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>**Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Planned Parenthood Attn: Joanne Krueger (Francis Grady case)		\$650.00	
<u>Totals:</u>	\$	\$650.00	

- Restitution amount ordered pursuant to plea agreement: \$_____.
- The defendant must pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution, is modified as follows:

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

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

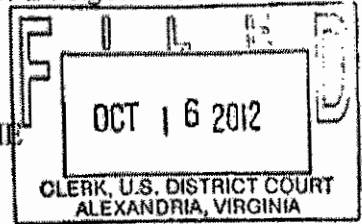
- A** Lump sum payment of \$125.00 due immediately.
- B** Payment to begin immediately (may be combined with C, D, E, or F below; or
- C** Payment in equal monthly installments of not less than \$___ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after the date of this judgment; or
- D** Payment in equal monthly installments of not less than \$50.00 or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within 30 days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:
- The defendant shall pay the cost of prosecution
- The defendant shall pay the following court costs
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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



IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.	)	CASE NO. 1:12-mj-645
)	
CHRISTINE CHRISTIAN,)	
Defendant)	

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

On or about October 19, 2011, within the Eastern District of Virginia and elsewhere, the defendant CHRISTINE CHRISTIAN, by threat of force, intentionally intimidated and interfered with, and attempted to intimidate and interfere with, the employees and clients of the medical practice of E.S., a medical professional that provides reproductive health services, in order to intimidate the employees and clients of the medical practice from providing and obtaining reproductive health services, all in violation of Title 18, United States Code, Section 248(a)(1).

Neil H. MacBride
United States Attorney

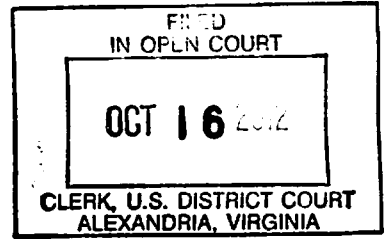
Thomas E. Perez
Assistant Attorney General

By: Stacey K. Luck
Stacey K. Luck
Special Assistant United States Attorney (LT)

Saeed A. Mody
Trial Attorney
U.S. Department of Justice, Civil Rights Division

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 1:12-mj-645
)
 CHRISTINE CHRISTIAN,)
)
 Defendant.)

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt with admissible and credible evidence:

1. On or about October 19, 2011, within the Eastern District of Virginia, the defendant CHRISTINE CHRISTIAN, by threat of force intentionally intimidated and interfered with, and attempted to intimidate or interfere with, the employees and clients of the medical practice of E.S., a medical professional that provides reproductive health services, in order to intimidate the employees and clients of the medical practice from providing and obtaining reproductive health services, in violation of Title 18, United States Code, Section 248(a)(1).

2. Specifically, on or about October 19, 2011, at approximately 12:15 p.m., CHRISTIAN placed a telephone call to the medical practice of E.S., a medical professional who provided reproductive health services to women. A receptionist with E.S.'s medical practice answered the telephone and CHRISTIAN asked whether the practice performed abortions. When the receptionist answered in the affirmative, CHRISTIAN stated, "Since you kill babies, there's a bomb in the building and I'm going to kill you," and then hung up.

3. At the time, CHRISTIAN had been employed by E.S. for approximately three (3) years as a medical assistant. CHRISTIAN used her cellular telephone to place the telephone call, and made the call while in her vehicle in the parking lot of the medical practice. The medical practice was located in Fairfax County, Virginia, a location within the Eastern District of Virginia.

4. The acts taken by the defendant in furtherance of the offense charged in this case, including the acts described above, were done willfully and knowingly with the specific intent to violate the law. The defendant acknowledges that the foregoing Statement of Facts does not describe all of the defendant's conduct relating to the offense charged in this case.

5. The Statement of Facts shall be admissible as a knowing and voluntary confession in any proceeding against the defendant. Moreover, the defendant waives any rights that the defendant may have under Fed. R. Crim. P. 11(f), Fed. R. Evid. 410, the United States Constitution, and any federal statute or rule in objecting to the admissibility of the Statement of Facts in any such proceeding.

Respectfully submitted,

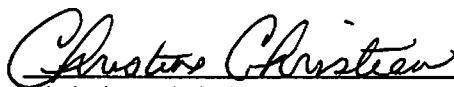
Neil H. MacBride
United States Attorney

By: Stacey Luck
Stacey Luck (LT)
Special Assistant United States Attorney

Saeed Mody
Trial Attorney
Civil Rights Division
U.S. Department of Justice

Defendant's Stipulation and Signature


After consulting with my attorney, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



Christine Christian
Defendant

Defense Counsel's Signature

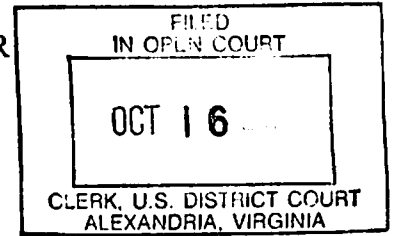
I am the attorney for Christine Christian. I have carefully reviewed the above Statement of Facts with her. To my knowledge, her decision to stipulate to these facts is informed and voluntary.



Todd Richman, Esq.
Counsel for the Defendant

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA)	
)	
v.	)	CRIMINAL NO. 1:12-mj-645
)	
CHRISTINE CHRISTIAN,)	
)	
Defendant.)	

STIPULATED SENTENCING GUIDELINES CALCULATION

The parties, through the undersigned attorneys, hereby submit the following agreed upon sentencing guidelines calculations pursuant to the United States Sentencing Commission *Guidelines Manual* (U.S.S.G.) (Nov. 2011), in aid of sentencing in the instant case.

1. Applicable Guidelines Manual: Pursuant to Section 1B1.1(a) of the Sentencing Guidelines, the applicable Guidelines Manual is the 2011 edition.
2. Applicable Guidelines Offense and Base Offense Level: Pursuant to Section 2H1.1 of the Sentencing Guidelines, the base offense level is ten (10). U.S.S.G. § 2H1.1(a)(3).
3. Acceptance of Responsibility: Pursuant to Section 2E1.1, the defendant has clearly demonstrated acceptance of responsibility for her offense resulting in a two (2) level decrease. U.S.S.G. § 2E1.1(a).
4. Criminal History Category: The parties proffer that the defendant's criminal record reflects a Criminal History Category of I.
5. Overall Guideline Range: The parties agree and stipulate that the adjusted offense level, incorporating a two-level reduction for acceptance of responsibility, is a level 8, and the

applicable sentencing guideline range (assuming a Criminal History Category of I) is 0-6 months' incarceration.


AGREED:

FOR THE GOVERNMENT:

Neil H. MacBride
United States Attorney

Date: 10/16/12


By:


Stacey Luck
Special Assistant U.S. Attorney (LT)
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: (703) 299-3800
Stacey.Luck2@usdoj.gov

Saeed Mody
Trial Attorney
Civil Rights Division
U.S. Department of Justice
Patrick Henry Building
601 D Street, N.W.
Washington, DC 20530
Phone: (202) 514-5107
Saeed.Mody@usdoj.gov

FOR THE DEFENDANT:

Date: 10-16-12


Todd Richman
Assistant Federal Public Defender
Office of the Federal Public Defender
1650 King Street, Suite 500
Alexandria, VA 22314
Phone: (703) 600-0845
Todd_Richman@fd.org

MAGISTRATE JUDGE: THERESA CARROLL BUCHANAN

UNITED STATES OF AMERICA

HEARING: 1A/Plea/Sent CASE #: 12mj645

-VS-

DATE: 10/16/12 TIME: 10:00am

TYPE: FTR RECORDER DEPUTY CLERK: T. FITZGERALD

Christine Christian

COUNSEL FOR THE UNITED STATES: S. Luck

COUNSEL FOR THE DEFENDANT: T. Richman

INTERPRETER: _____ LANGUAGE: _____

- () DEFENDANT APPEARED: () WITH COUNSEL () WITHOUT COUNSEL
- () DEFENDANT FAILED TO APPEAR () WARRANT TO BE ISSUED
- () DEFT. INFORMED OF RIGHTS, CHARGES, PENALTIES and/or VIOLATIONS
- () COURT TO APPOINT COUNSEL _____ () DFT. TO RETAIN COUNSEL
- () JURY TRIAL WAIVED () CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE (ORAL)
- () PLEA OF GUILTY TO COUNT(S) 1 () PLEA OF NOT GUILTY TO COUNT(S) _____
- () COURT ACCEPTS PLEA () GVT. DISMISSES COUNT(S) _____

MINUTES: Joint recommendation on sentencing - GRANTED.

CONDITIONS OF RELEASE:

- (\$) UNSECURED (\$) SECURED () PTS () 3RD PARTY () TRAVEL RESTRICTED
- () APPROVED RESIDENCE () SATT () PAY COSTS () ELECTRONIC MONITORING () MENTAL HEALTH TEST/TREAT () ROL () NOT DRIVE () FIREARM () PASSPORT () AVOID CONTACT
- () ALCOHOL & DRUG USE () EMPLOYMENT

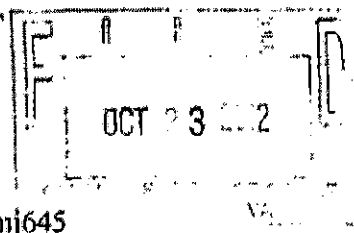
SENTENCE:

- (12) MONTHS PROBATION () SUP () UNSUP () 3607 () YRS SUP RELEASE
- () DAYS JAIL () AS DIRECTED PURSUANT TO 18 USC 3563(b)(10) () CREDIT
- () DAYS HOME DETENTION () TIMEOUTS () ELECTRONIC MONITORING
- () SATT () ALCOHOL PROGRAM () ROL () NO DRIVING () INTERLOCK DEVICE
- () MENTAL HEALTH TEST/TREAT () BARRED FROM FEDERAL PARKS () HRS. COMMUNITY SERVICE
- (\$) FINE (\$ 25) S.A. (\$) PROCESSING FEE AS TO COUNT 1
- (\$) FINE (\$) S.A. (\$) PROCESSING FEE AS TO COUNT _____

NEXT COURT APPEARANCE: _____ at _____ Before _____

- () DH () PH () STATUS () TRIAL () JURY () PLEA () SENT () PBV () SRV () R5
- () RELEASE ORDER GIVEN TO USMS
- () DEFENDANT REMANDED TO THE CUSTODY OF THE U.S. MARSHALS

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division



UNITED STATES OF AMERICA
v.

Case Number: 1:12mj645

Christine Christian
Defendant.

Defendant's Attorney: Todd Richman, Esq.

JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Count 1.

Accordingly, the defendant is adjudicated guilty of the following counts involving the indicated offenses.

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Offense Class</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 248(a)(1)	Intentionally intimidated and interfered with and attempted to interfere with the employees and clients of a medical practice	Misdemeanor	10/19/11	1

As pronounced on October 16th, 2012, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Signed this 16th day of October, 2012.

/s/

Theresa Carroll Buchanan
United States Magistrate Judge

Defendant's Name: Christine Christian
Case Number: 1:12mj0645

PROBATION

The defendant is hereby placed on probation for a term of one (1) year.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of probation.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess or use a controlled substance.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF PROBATION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant's Name: Christine Christian
Case Number: 1:12mj645

SPECIAL CONDITIONS OF SUPERVISION

While on probation pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

- 1) The defendant shall undergo mental health treatment as determined necessary by the probation officer.
- 2) The defendant shall have **NO** contact with the victim and/or make **NO** false or slanderous statements about the victim's medical practice.

***Travel restrictions are waived for the defendant.**

A defendant shall pay a \$25.00 special assessment, to be paid within thirty (30) days

Defendant's Name: Christine Christian
Case Number: 1:12mj645

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Count</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	1	\$25.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$0.00
TOTALS:		\$25.00	\$0.00	\$0.00

FINES

No fines have been imposed in this case.

SCHEDULE OF PAYMENTS

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

The special assessment shall be paid with 30 days.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. Payments shall be applied in the following order: (1) assessment (2) restitution principal (3) restitution interest (4) fine principal (5) fine interest (6) community restitution (7) penalties and (8) costs, including cost of prosecution and court costs.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

UNITED STATES DISTRICT COURT
for the
Western District of Missouri

United States of America
v.
JEDEDIAH STOUT

Case No. 13-2339DPR-01

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of between 10/3/2013 and 10/4/2013 in the county of Jasper in the
Western District of Missouri, the defendant(s) violated:

Code Section 18 USC 844(i) Offense Description Attempted arson of a building used in interstate commerce

This criminal complaint is based on these facts:

See Attached affidavit

Continued on the attached sheet.

/s/ Stacy Moore
Complainant's signature

Stacy Moore, Special Agent FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: 10/18/2013

/s/ David P. Rush
Judge's signature

City and state: Springfield, Missouri David P. Rush, U.S. Magistrate Judge
Printed name and title

CHARGE

Between October 3 and October 4, 2013, in Jasper County, in the Western District of Missouri, JEDEDIAH STOUT, defendant herein, maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire and explosive materials, the building at 701 South Illinois Avenue, Joplin, Missouri, used in and affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).

**THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

Stacy Lee Moore, being duly sworn, hereby depose and say:

- 1) I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been so employed since January 2004. I am currently assigned to the Joplin, Missouri Resident Agency and work a variety of crimes, including violations of Civil Rights. I have received training in the investigation of these types of crimes through the FBI Academy. I have also received training from other agents experienced in working these types of investigations.
- 2) The statements in this affidavit are based on information learned by your affiant during the course of investigating the attempted arson at the Planned Parenthood facility in Joplin, Missouri on October 3, 2013 and October 4, 2013 and information received from other law enforcement officers with knowledge of the investigation. Since this affidavit is being prepared for the limited purpose of securing an arrest warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that JEDEDIAH STOUT attempted to damage or destroy, by means of fire or an explosive, a building used in interstate commerce in violation of Title 18, United States Code, Section 844(i), arson.
- 3) On Thursday, October 3, 2013, at approximately 6:00 P.M., an employee of Planned Parenthood, located at 701 S. Illinois Avenue, Joplin, Missouri, arrived at the facility and parked in the vicinity of the rear entrance. As the employee exited her vehicle, the employee noticed an object located on the roof of the facility and a partially burned piece of material located on the ground

near the rear entrance. After noticing these items, the employee moved her vehicle and contacted law enforcement.

- 4) Officers and investigators with the Joplin, Missouri Police Department arrived at the Planned Parenthood facility at approximately 6:20 P.M. on October 3, 2013. After arriving on scene, a Joplin Police Department Investigator photographed the crime scene and collected the items discovered by the employee. A more thorough review of these items revealed that the item located on the roof of the facility and observed by the facility employee was a black, backpack. Tied to the handle of this backpack was what appeared to be a camouflage colored rope of some type, with a black, plastic sleeve. The rope tied to the backpack was partially burned and sections of the partially burned rope were also located on the ground near the rear entrance of the facility. Additionally, Joplin Police department Investigators observed a clear, plastic container filled with an unknown, bi-layered liquid located in the guttering of the facility, approximately three feet from where the backpack was discovered.
- 5) In addition to collecting physical evidence, the facility's video surveillance system was reviewed. This review showed that on Thursday, October 3, 2013, at approximately 12:00 A.M., an unknown individual, wearing dark pants and a light colored jacket with a light colored "hoodie" pulled over his/her head, approached the rear entrance of the Planned Parenthood facility. The individual then placed the black backpack that was recovered from the roof of the facility on the ground and retrieved a section of the camouflaged colored rope from the backpack. The individual then made several attempts to toss the backpack onto the roof of the facility and eventually caused the backpack to wedge on the roof between the roof and several sets of telephone and/or cable lines entering the building. After successfully tossing the backpack onto the roof, the individual was observed lighting the camouflaged colored rope

extending from the backpack to the ground. After the individual lit the rope, the individual was observed departing the view of the security cameras by traveling in a northwest direction on foot.

- 6) After obtaining the backpack from the Joplin Police Department, agents with the FBI examined the backpack and located a manufacturing tag located on the inside of the backpack. The UPC Code located on the backpack was 061884220425. The manufacturing tag also included a style number, UL22A900 and a WM#, 22A700BK-0312. The WM number contained on the tag corresponds to a Wal-Mart contract number. Agents with the FBI contacted investigators with Wal-Mart Global Investigations and learned that the backpack was manufactured for Wal-Mart and sold at Wal-Mart stores located throughout the United States. Initial information received from Wal-Mart indicated that the backpack may have been sold at a Wal-Mart store located in Neosho, Missouri.
- 7) After obtaining this information, agents and investigators traveled to the Wal-Mart store in Neosho, Missouri to meet with asset protection personnel. While at this store, an item was discovered in the pet care section that matched the physical description of the camouflaged colored rope that was found tied to the backpack that was located on the roof of the Planned Parenthood facility on October 3, 2013. The item discovered at Wal-Mart was a "Pet Champion brand X-Large camo five knot with handle rope toy," bearing UPC # 4487500180.
- 8) After learning that the camouflaged colored rope was actually a pet toy sold by Wal-Mart, Wal-Mart Global Investigations was served a Federal Grand Jury subpoena requesting Wal-Mart to identify transactions in the area surrounding Joplin, Missouri where the camouflaged colored pet toy and the black backpack were sold during the same transaction.
- 9) On October 4, 2013 at approximately 11:15 P.M., your affiant was contacted by the Joplin Police Department and informed that another attempt had been made to burn the Planned Parenthood

facility located at 701 S. Illinois Avenue, Joplin, Missouri. After arriving at the scene, your affiant made contact with facility employees and reviewed surveillance video that was captured by the facility's security cameras. A review of the surveillance video indicated that at approximately 11:00 P.M. on October 4, 2013, an unidentified individual approached the rear of the Planned Parenthood facility. This individual was wearing dark pants, a light colored jacket with a light colored "hoodie". This individual was observed throwing some type of device onto the roof of the facility in the same vicinity as the first attempt. This individual was then observed igniting material that was hanging from the item thrown onto the roof. After igniting this material, the individual departed the area traveling south on foot. Due to the items thrown by the individual burning completely, there was little physical evidence collected by investigators.

10) In addition to reviewing the surveillance video, your Affiant learned that members of the Joplin Police Department had detained an individual who was observed walking on the railroad tracks located approximately five blocks from the Planned Parenthood facility a short time after the reports of the fire were received. This individual was identified as JEDEDIAH STOUT. According to the detaining officers, STOUT was observed at approximately 11:15 P.M. walking north on the railroad tracks located in the vicinity of 9th Street and Minnesota Avenue. As the officers approached STOUT, STOUT informed the officers that he was intoxicated and was just out walking. According to the arresting officers, STOUT did not appear to be intoxicated and did not smell of alcohol. Additionally, the detaining officers indicated that STOUT was sweating profusely. The detaining officers requested permission to search STOUT's pockets and received consent. STOUT informed the officers that he had a cigarette lighter in his front pocket. After retrieving the lighter from STOUT's front pocket, the searching officer indicated

that after touching STOUT's front pocket, his hand smelled of some type of fuel, possibly lighter fluid or butane. The officers indicated that although STOUT had a cigarette lighter in his pocket, STOUT did not have any cigarettes on his person and did not smell of cigarette smoke. STOUT was cited for trespassing on the railroad and was transported to the Joplin City Jail. STOUT was not wearing a jacket or "hoodie" at the time he was detained by law enforcement.

11) On Saturday, October 5, 2013, STOUT was interviewed by your affiant and Special Agent Brian Ford. During a post-*Miranda* interview, STOUT stated that he was "sort of" homeless and on the evening of October 4, 2013, he had visited the OK Bar located on Main Street in Joplin, Missouri and drank Absolute Vodka, Jim Beam and beer. STOUT indicated that he became extremely intoxicated and left the bar to walk to the AAA Taxi office located at 9th and Minnesota in Joplin, Missouri. STOUT indicated that he was walking to the taxi office when he was detained by the Joplin Police Department. When STOUT was informed that the officers who arrested him indicated that they smelled lighter fluid on his clothing, STOUT stated that this was probably due to him spilling vodka on his clothing while drinking at the bar. STOUT was asked if he had any involvement in the attempted arson at the Planned Parenthood facility and stated that he did not.

12) While STOUT was being interviewed, investigators with the Joplin Police Department traveled to the OK Bar and showed an employee who had been working on the evening on October 4, 2013 a photograph of STOUT. In this photograph, STOUT was wearing the same shirt that he was wearing when he was arrested. The employee was asked if he recalled seeing STOUT in the OK Bar on the evening of October 4, 2013. The employee stated that he did not recall seeing STOUT during his shift at the bar and that based on the unique design of the shirt STOUT was

wearing, the employee was confident that he/she would have recalled seeing a person wearing such a unique shirt.

13) On October 9, 2013, Wal-Mart Global Investigation provided a response to a Grand Jury subpoena requesting Wal-Mart purchases that included both a backpack and a camouflage colored dog rope toy. According to the information provided by Wal-Mart, on October 1, 2013, an individual purchased one backpack matching the UPC Code of the backpack recovered from the Planned Parenthood facility and three of the dog rope toys from a Wal-Mart in Joplin, Missouri located at 1501 S. Range Line Road. Wal-Mart Global Investigations were able to provide a sales receipt that captured all items purchased during this transaction to include the UPC codes associated with the items. After reviewing the sales receipt, it was noted that the purchaser of these items also purchased a bottle of alcohol. The sales associate conducting the transaction captured the birth date of the purchaser as 12/11/1983. This is JEDEDIAH STOUT's date of birth.

14) Based on this information, agents and investigators traveled to the Wal-Mart store located at 1501 S. Range Line Road in Joplin, Missouri with a copy of the sales receipt provided by Wal-Mart Global Investigations. Asset protection personnel were contacted and were able to produce surveillance camera video which captured the individual purchasing these items. After reviewing the video, your affiant was able to identify the individual purchasing the black backpack with the same UPC Code as the backpack recovered from the Planned Parenthood facility on October 3, 2013 and three camouflage-colored dog rope toys, matching the items recovered from the Planned Parenthood facility on October 3, 2013, as JEDEDIAH STOUT. JEDEDIAH STOUT was also observed purchasing a large jacket. According to the sales receipt, this jacket was captured as a "DICKIES JKT" with UPC code 076125366853. Agents and

investigators located a jacket with the matching UPC Code as the jacket purchased by Stout. This jacket is dark in color and contains a sewn in, light colored hoodie. This jacket was purchased by Investigators for investigative purposes. In addition to the surveillance video capturing the purchases made by STOUT, Wal-Mart asset protection personnel were able provide surveillance video which captured STOUT loading the items he purchased into the trunk area of a white, four-door Dodge Charger being driven by an individual known to be Leanard Stout, JEDEDIAH STOUT's father, and departing the Wal-Mart parking lot.

15) On October 10, 2013 at approximately 11:00 P.M., agents and investigators traveled to the Planned Parenthood facility in Joplin, Missouri. An investigator with the Joplin Police Department wore the jacket previously purchased at Wal-Mart matching the UPC Code of the jacket purchased by STOUT and walked outside the rear of the facility. After a few minutes, the facility's video surveillance was downloaded and the video reviewed by agents and investigators. The dark colored jacket worn by the Joplin Investigator appeared to be a light colored jacket when viewed on the surveillance video system of the Planned Parenthood facility.

16) On October 17, 2013, your Affiant received a report from the Missouri State Highway Patrol crime Laboratory Division, Carthage, Missouri, pertaining to analysis the lab performed on the clear plastic bottle containing a bi-layered liquid that was recovered from the gutter of the Planned Parenthood facility on October 3, 2013. According to the report, the lab was able to extract a latent fingerprint from this bottle and when this print was compared with fingerprints obtained from JEDEDIAH STOUT, a positive match was made between this extracted latent print and the right thumb print of JEDEDIAH STOUT.

17) Planned Parenthood Federation of America (PPFA), commonly shortened to Planned Parenthood, is the United States affiliate of the International Planned Parenthood Federation

(IPPF) and one of its larger members. Planned Parenthood is a non-profit organization providing reproductive health and maternal and child health services. Planned Parenthood is a federation of 85 independent Planned Parenthood affiliates around the United States. These affiliates together operate more than 820 health centers in all 50 states and the District of Columbia. The Planned Parenthood facility in Joplin, Missouri provides health care to patients from Missouri and other states.

18) Based on the foregoing, your affiant believes that there is probable cause to believe that on October 3, 2013 and October 4, 2013, JEDEDIAH STOUT attempted to damage or destroy, by means of fire or an explosive, a building used in interstate commerce in violation of Title 18 United States Code, Section 844(i).

Stacy Lee Moore, Special Agent
Federal Bureau of Investigation

Sworn and subscribed to before me this _____ day of October, 2013,

David P. Rush
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEDEDIAH STOUT,
[DOB 12-11-1983]

Defendant.

No. 13-05054-01-CR-SW-DGK

COUNTS 1 & 2

18 U.S.C. § 844(i)

NLT 5 Years Imprisonment

NMT 20 Years Imprisonment

NMT \$250,000 Fine

NMT 3 Years Supervised Release

Class C Felony

\$100 Special Assessment (each count)

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT 1

On or about October 3, 2013, in Jasper County, within the Western District of Missouri, **JEDEDIAH STOUT**, defendant herein, maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire and explosive materials, the building at 701 South Illinois Avenue, Joplin, Missouri, used in and affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).

COUNT 2

On or about October 4, 2013, in Jasper County, within the Western District of Missouri, **JEDEDIAH STOUT**, defendant herein, maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire and explosive materials, the

building at 701 South Illinois Avenue, Joplin, Missouri, used in and affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).

A TRUE BILL

/s/
FOREPERSON OF THE GRAND JURY

/s/ James J. Kelleher
James J. Kelleher
Assistant United States Attorney

DATED: 11/05/2013

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEDEDIAH STOUT,
[DOB 12-11-1983]

Defendant.

No. 13-05054-CR-SW-BCW

COUNTS 1 & 2

18 U.S.C. § 844(i)
NLT 5 Years Imprisonment
NMT 20 Years Imprisonment
NMT \$250,000 Fine
NMT 3 Years Supervised Release
Class C Felony

COUNT 3

18 U.S.C. § 247(a)(1)
NMT 20 Years Imprisonment
NMT \$250,000 Fine
NMT 3 Years Supervised Release
Class C Felony

COUNT 4

18 U.S.C. § 248(a)(3)
NMT 1 Year Imprisonment
NMT \$250,000 Fine
NMT 1 Year Supervised Release
Class A Misdemeanor

\$100 Special Assessment (each count)

SUPERSEDING INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT 1

On or about October 3, 2013, in Jasper County, within the Western District of Missouri, **JEDEDIAH STOUT**, defendant herein, maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire and explosive materials, the building at 701 South Illinois Avenue, Joplin, Missouri, used in and affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).

COUNT 2

On or about October 4, 2013, in Jasper County, within the Western District of Missouri, **JEDEDIAH STOUT**, defendant herein, maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire and explosive materials, the building at 701 South Illinois Avenue, Joplin, Missouri, used in and affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).


COUNT 3

On or about August 6, 2012, in Jasper County, within the Western District of Missouri, **JEDEDIAH STOUT**, defendant herein, did knowingly and intentionally deface, damage, and destroy religious real property, to wit: the Joplin Islamic Center, by and through the use of fire, because of the religious character of that property, which offense was in and affecting interstate commerce, all in violation of Title 18, United States Code, Section 247(a)(1).

COUNT 4

On or about October 3, 2013, in Jasper County, within the Western District of Missouri, **JEDEDIAH STOUT**, defendant herein, did intentionally attempt to damage and destroy, the property of a facility, namely Planned Parenthood of Joplin, Missouri, because such facility provides reproductive health services, all in violation of Title 18, United States Code, Section 248(a)(3).

TAMMY DICKINSON
United States Attorney



James J. Kelleher
Assistant United States Attorney

DATED: 4/18/16

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEDEDIAH STOUT,

Defendant.

No. 13-05054-01-CR-SW-BCW

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. **The Parties.** The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Tammy Dickinson, United States Attorney, and James J. Kelleher, Assistant United States Attorney, and the defendant, Jedediah Stout ("the defendant"), represented by David Mercer.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. **Defendant's Guilty Plea.** The defendant agrees to and hereby does plead guilty to Counts 1 through 4 of the superseding information, charging him with violations of 18 U.S.C. § 844(i), that is, Arson, Counts 1 and 2, 18 U.S.C. § 247, that is, Damage to Religious Property, Count 3, and 18 U.S.C. § 248, that is, Freedom of Access to Clinic Entrances Act, Count 4. By

entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is, in fact, guilty of these offenses.

3. **Factual Basis for Guilty Plea.** The parties agree that the facts constituting the offenses to which the defendant is pleading guilty are as follows:

Shortly after midnight, on Thursday, October 3, 2013, an individual, wearing dark pants and light colored jacket with a hood, was captured on surveillance cameras approaching the rear entrance of the Planned Parenthood facility in Joplin, Missouri, with a backpack. The individual placed the backpack on the ground, pulled out a section of what was later identified as a rope dog toy, and threw the backpack on the roof of the building while holding onto the rope toy. After the backpack became wedged on the roof between several sets of utility wires leading into the building, the cameras captured the individual setting the rope attached to the backpack on fire. The suspect then quickly departed in a northwest direction on foot.

The following evening, October 4, 2013, an employee of Planned Parenthood observed the backpack on the roof and a partially burnt piece of rope on the ground near the rear entrance to the building. The employee immediately notified the Joplin Police Department. Investigators from the Joplin Police Department, Bureau of Alcohol, Tobacco and Firearms, and the Federal Bureau of Investigation, arrived on scene. The backpack, which had a length of the rope dog toy still tied to it, was recovered from the roof. A clear plastic container, containing a bi-layered accelerant, was located in the gutter three feet from the backpack. The footage from the security camera was also collected by the investigators.

Special Agents of the FBI examined the backpack and found that it still had the manufacturer's tag attached. The tag bore a UPC number, style number and a Wal-Mart contract number. After concluding that the backpack was sold by Wal-Mart, the investigators proceeded to the Wal-Mart in Neosho, Missouri, in furtherance of the investigation. While meeting with Wal-Mart asset protection personnel, the agents learned that the rope toy, used in the arson attempt, was also sold by Wal-Mart. As result, a grand jury subpoena was subsequently issued to Wal-Mart Global Investigations, requesting information pertaining to any sales transactions in which the backpack and rope toy were sold during the same transaction.

On October 4, 2013, a second arson attempt was made at the Planned Parenthood facility. Again, security cameras caught an individual, attired in the same manner as on the previous incident, approach the rear of the building with a backpack at approximately 11:00 p.m. The individual threw the backpack on the roof and ignited a strip of unknown material that was protruding from the backpack. The perpetrator then departed the area, traveling south on foot.

Investigators arrived approximately 15 minutes after the attempt. The backpack and rope were burnt beyond recognition and virtually no physical evidence was recovered from the scene.

While investigators were still on scene, other members of the Joplin Police Department detained an individual, identified as JEDEDIAH STOUT, for trespassing on railroad property that was located approximately five blocks south from the Planned Parenthood building. STOUT advised the officers that he was drunk and just out walking. The officers, however, reported that STOUT displayed no indicia of

intoxication. The officers requested and obtained STOUT's consent to search his clothing. A cigarette lighter was recovered from STOUT's front pocket. STOUT did not possess any cigarettes or smell of cigarette smoke. The officer who removed the lighter noted that his hand smelled of lighter fluid or butane after touching STOUT's clothing. STOUT was then placed under arrest for trespassing and transported to the Joplin City Jail.

On October 9, 2013, Wal-Mart Global Investigation provided a response to the Grand Jury subpoena. According to the information provided by Wal-Mart, on October 1, 2013, an individual purchased one backpack matching the UPC Code of the backpack recovered from the Planned Parenthood facility and three of the dog rope toys from the Wal-Mart in Joplin, Missouri located at 1501 S. Range Line Road. Wal-Mart Global Investigations was able to provide a sales receipt that captured all items purchased during this transaction, including the UPC codes associated with the items. After reviewing the sales receipt, the investigators noted that the purchaser also bought a bottle of alcohol. The sales associate conducting the transaction obtained the birth date of the purchaser as December 11, 1983. This is JEDEDIAH STOUT's date of birth.

The investigators then proceeded to the Wal-Mart store located at 1501 S. Range Line Road in Joplin, Missouri, with a copy of the sales receipt provided by Wal-Mart Global Investigations. Local Wal-Mart asset protection personnel were able to produce surveillance camera video, which captured the individual purchasing these items in question. JEDEDIAH STOUT was identified by the investigators as the individual purchasing the items used in the arson attempt. STOUT also purchased a large jacket during the transaction, resembling the jacket worn on the nights of the arson attempts.

The investigators located a jacket with the matching UPC Code as the jacket purchased by STOUT. In addition to the surveillance video capturing the purchases made by STOUT, Wal-Mart asset protection personnel were able provide surveillance video which captured STOUT loading the items he purchased into the trunk area of a white, four-door Dodge Charger, being driven by an individual known to be Leanard Stout, STOUT's father, and departing the Wal-Mart parking lot.

On October 17, 2013, Special Agent Moore received a report from the Missouri State Highway Patrol Crime Laboratory Division, Carthage, Missouri, pertaining to analysis the lab performed on the clear plastic bottle containing a bi-layered liquid that was recovered gutter of the Planned Parenthood facility on October 3, 2013. According to the report, an identifiable latent fingerprint was located on the bottle. This print was then compared with fingerprints obtained from STOUT, resulting in a positive match between the latent print from the bottle and the right thumb print of STOUT.

On October 18, 2013, Special Agent Moore executed a warrant to search STOUT's residence and the vehicle used in the purchase of the materials used in the arson attempts. STOUT was arrested on scene under color of a federal arrest warrant issued in connection with a complaint charging STOUT with attempted arson. STOUT was transported to the FBI field office in Joplin, Missouri, for questioning. After being advised of his *Miranda* rights both verbally and in writing, STOUT agreed to speak with the investigators. STOUT confessed that he was responsible for the both arson attempts. STOUT stated that he does not believe in abortions based upon his religious and personal beliefs and would like to see all abortion clinics converted to orphanages. STOUT further asserted that individuals who perform abortions should be arrested.

STOUT reported that on October 3, 2013, he obtained gasoline from his parent's lawnmower and poured it into the plastic bottle later recovered from the roof of Planned Parenthood. The bottle was then placed into a backpack, with the rope toy used as a fuse to ignite the package. STOUT also admitted that he used a similar device during the second arson attempt the following night, using lamp oil instead of gasoline and strips of a sheet as a fuse.

STOUT was then questioned about several unsolved arsons that were in the vicinity of his home, including the arson of the Islamic Society of Joplin Mosque that took place on August 6, 2012. STOUT advised the agents that he did not like Islam as a religion. Agent Moore then questioned STOUT about the attempted arson and, later, successful arson of the Islamic Society of Joplin Mosque on July 4, and August 6, 2012. STOUT proceeded to confess to both crimes. STOUT told the investigators that he committed both crimes using the same backpack device used in the Planned Parenthood arson attempts. At the conclusion of the interview, STOUT signed security footage photographs from each of four crimes, acknowledging that he was the person depicted in the pictures.

Planned Parenthood Federation of America, commonly shortened to Planned Parenthood, is the United States affiliate of the International Planned Parenthood Federation. Planned Parenthood is a non-profit organization providing reproductive health and maternal and child health services. Planned Parenthood is a federation of 85 independent Planned Parenthood affiliates around the United States. These affiliates together operate more than 820 health centers in all 50 states and the District of Columbia. The Planned Parenthood facility in Joplin, Missouri provides health care to

patients from Missouri and other states. Further, many of the medications and other products provided by Planned Parenthood to their clients are manufactured outside the State of Missouri.

The Islamic Society of Joplin Mosque is a not-for-profit Missouri corporation. The Mosque, at the time of the arson, was insured by a company located in Kansas, made substantial purchases and acquisitions from companies located outside the State of Missouri, and served families from neighboring states, many of whom provided funding for the operation of the Mosque. As a direct result of the fire, many donations made during the Muslim holy period of Ramadan were destroyed.

4. **Use of Factual Admissions and Relevant Conduct.** The defendant acknowledges, understands and agrees that the admissions contained in paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines (“U.S.S.G.”), including the calculation of the defendant’s offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment, as well as all other uncharged, related criminal activity, may be considered as “relevant conduct” pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. **Statutory Penalties.** The defendant understands that, upon his plea of guilty to Counts 1 and 2 of the superseding information, charging him with Arson, the minimum penalty the Court may impose is not less than five (5) years’ imprisonment, while the maximum penalty the Court may impose is not more than twenty (20) years’ imprisonment, not more than three (3)

years' supervised release, a \$250,000 fine, an order of restitution, and a \$100 mandatory special assessment, which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class C felony.

The defendant understands that, upon his plea of guilty to Count 3 of the superseding information, charging him with Damage to Religious Property, the maximum penalty the Court may impose is not more than twenty (20) years' imprisonment, not more than three (3) years' supervised release, a \$250,000 fine, an order of restitution, and a \$100 mandatory special assessment, which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class C felony.

The defendant understands that, upon his plea of guilty to Count 4 of the superseding information, charging him with violating the Freedom of Access to Clinic Entrances Act, the maximum penalty the Court may impose is not more than one (1) year imprisonment, not more than three (3) years' supervised release, a \$100,000 fine, an order of restitution, and a \$100 mandatory special assessment, which must be paid in full at the time of sentencing. The defendant further understands that this offense is a Class A misdemeanor.

6. **Sentencing Procedures.** The defendant acknowledges, understands and agrees to the following:

a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";

b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three (3) years as to Counts 1, 2, and 3, and up to one (1) year as to Count 4;

d. if the defendant violates a condition of his supervised release, the Court may revoke his supervised release and impose an additional period of imprisonment of up to two (2) years without credit for time previously spent on supervised release as to Counts 1, 2, and 3, and up to one (1) year as to Count 4. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed three (3) years as to Counts 1, 2 and 3, and one (1) year as to Count 4, less the term of imprisonment imposed upon revocation of the defendant's first supervised release;

e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

f. any sentence of imprisonment imposed by the Court will not allow for parole;

g. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

h. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. **Government's Agreements.** Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against the defendant for any federal criminal offenses related to the arson and attempted arson of the Planned Parenthood facility in Joplin, Missouri, on October 3, and 4, 2013, and the arson and attempted arson of the Islamic Society of Joplin Mosque on July 4, and August 6, 2012, and for which it has venue and which arose out of the defendant's conduct described above.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that, if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. **Preparation of Presentence Report.** The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the counts to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel, and to correct any misstatements or inaccuracies. The United States further

reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. **Withdrawal of Plea.** Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw his pleas of guilty only if the Court rejects the plea agreement, or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that, if the Court accepts his pleas of guilty and this plea agreement but subsequently imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his pleas of guilty.

10. **Agreed Guidelines Applications.** With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Guidelines section for the offense of conviction as to Counts 1 and 2 is U.S.S.G. § 2K1.4. The applicable Guidelines section for the offense of conviction as to Counts 3 and 4 is U.S.S.G. § 2H1.1;

c. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources

efficiently. Therefore, he is entitled to a 3-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect, unless the defendant: (1) fails to abide by all of the terms and conditions of this plea agreement and his pretrial release; or (2) attempts to withdraw his guilty pleas, violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility;

d. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

e. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty;

f. The defendant understands that the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable." However, while the United States does not agree that a sentence outside the Guidelines range is appropriate, the defendant may argue for a sentence outside the Guidelines range. The agreement by the Government not to seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office, and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable";

g. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and

h. The defendant understands and agrees that the factual admissions contained in paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed upon Guidelines calculations contained in this agreement.

11. **Effect of Non-Agreement on Guidelines Applications.** The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in paragraph 10 and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. **Change in Guidelines Prior to Sentencing.** The defendant agrees that, if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by the defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. **Government's Reservation of Rights.** The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by the defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the superseding information;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed, and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. **Waiver of Constitutional Rights.** The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against him;
- e. the right to compel or subpoena witnesses to appear on his behalf;
and
- f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that, by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that, if he pleads guilty, the Court may ask him questions about the offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands that he has pleaded guilty to a felony offenses and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. **Waiver of Appellate and Post-Conviction Rights.**

- a. The defendant acknowledges, understands and agrees that, by pleading guilty pursuant to this plea agreement, he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea

agreement, except on grounds of (1) ineffective assistance of counsel; or (2) prosecutorial misconduct; and

b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An “illegal sentence” includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government’s appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. **Financial Obligations.** By entering into this plea agreement, the defendant represents that he understands and agrees to the following financial obligations:

a. The Court must order restitution to the victims of the offense to which the defendant is pleading guilty. The defendant agrees that the Court may order restitution in connection with the conduct charged in any counts of the indictment which are to be dismissed and all other uncharged, related criminal activity;

b. The United States may use the Federal Debt Collection Procedures Act and any other remedies provided by law to enforce any restitution order that may be entered as part of the sentence in this case and to collect any fine;

c. The defendant will fully and truthfully disclose all assets and property in which he has any interest, or over which the defendant exercises control, directly or indirectly, including assets and property held by a spouse, nominee or other third party. The defendant’s disclosure obligations are ongoing, and are in force from the execution of this agreement until the defendant has satisfied the restitution order in full;

d. Within ten (10) days of the execution of this plea agreement, at the request of the USAO, the defendant agrees to execute and submit: (1) a Tax Information Authorization form; (2) an Authorization to Release Information; (3) a completed financial disclosure statement; and (4) copies of financial information that the defendant submits to the U.S. Probation Office. The defendant understands that compliance with these requests will be taken into account when the United States makes a recommendation to the Court regarding the defendant’s acceptance of responsibility;

e. At the request of the USAO, the defendant agrees to undergo any polygraph examination the United States might choose to administer concerning the identification and recovery of substitute assets and restitution;

f. The defendant hereby authorizes the USAO to obtain a credit report pertaining to him to assist the USAO in evaluating the defendant's ability to satisfy any financial obligations imposed as part of the sentence;

g. The defendant understands that a Special Assessment will be imposed as part of the sentence in this case. The defendant promises to pay the Special Assessment of \$400.00 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of his fulfillment of this obligation at the time of sentencing;

h. The defendant certifies that he has made no transfer of assets or property for the purpose of: (1) evading financial obligations created by this Agreement; (2) evading obligations that may be imposed by the Court; or (3) hindering efforts of the USAO to enforce such financial obligations. Moreover, the defendant promises that he will make no such transfers in the future; and

i. In the event the United States learns of any misrepresentation in the financial disclosure statement, or of any asset in which the defendant had an interest at the time of this plea agreement that is not disclosed in the financial disclosure statement, and in the event such misrepresentation or nondisclosure changes the estimated net worth of the defendant by ten thousand dollars (\$10,000.00) or more, the United States may at its option: (1) choose to be relieved of its obligations under this plea agreement; or (2) let the plea agreement stand, collect the full forfeiture, restitution and fines imposed by any criminal or civil judgment, and also collect 100% (one hundred percent) of the value of any previously undisclosed assets. The defendant agrees not to contest any collection of such assets. In the event the United States opts to be relieved of its obligations under this plea agreement, the defendant's previously entered pleas of guilty shall remain in effect and cannot be withdrawn.

17. **Waiver of FOIA Request.** The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. **Waiver of Claim for Attorney's Fees.** The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

19. **Defendant's Breach of Plea Agreement.** If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that, in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal, or any leads from such statements or testimony, shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

20. **Defendant's Representations.** The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with

this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys, or any other party to induce him to enter his plea of guilty.

21. **No Undisclosed Terms.** The United States and the defendant acknowledge and agree that the above stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

22. **Standard of Interpretation.** The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Tammy Dickinson
United States Attorney

By

/s/ James J. Kelleher
James J. Kelleher
Assistant United States Attorney
Missouri Bar No. 51921

Dated: 4-18-2016

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the superseding information. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated: 4-18-2016

/s/ Jedediah Stout
Jedediah Stout
Defendant

I am defendant Jedediah Stout's attorney. I have fully explained to him his rights with respect to the offenses charged in the superseding information. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Jedediah Stout's decision to enter into this plea agreement is an informed and voluntary one.

Dated: 4-18-2016

/s/ David Mercer
David Mercer
Attorney for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

2014 MAY 12 AM 10:57

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BENJAMIN D. CURELL,)
)
 Defendant.)

Cause No.

1:14-cr-0098 JMS-TAB

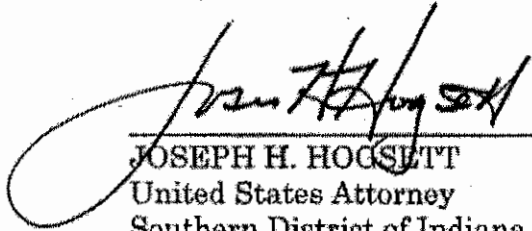
INFORMATION

Count One
[18 U.S.C. § 248]
[Intentionally Damaging a Reproductive Health Facility]

The United States Attorney charges that:

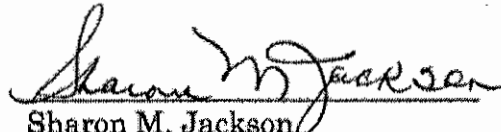
On or about April 11, 2013, in Monroe County within the Southern District of Indiana, defendant BENJAMIN D. CURELL intentionally damaged the property of a facility that provided reproductive-health services and BENJAMIN D. CURELL did so knowingly and because the facility was being used to provide reproductive-health services.

All in violation of Title 18, United States Code, Section 248(a)(3).

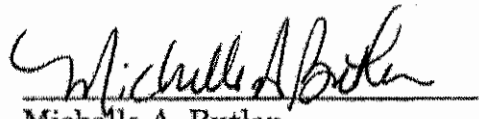

JOSEPH H. HOGSETT
United States Attorney
Southern District of Indiana

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Sharon M. Jackson, being first duly sworn, upon her oath deposes and says that she is an Assistant United States Attorney in and for the Southern District of Indiana, that she makes this affidavit for and on behalf of the United States of America and that the allegations in the foregoing Information are true as she is informed and verily believes.


Sharon M. Jackson
Assistant United States Attorney

Subscribed and sworn to before me, a notary public, on this 9th day of May, 2014.


Michelle A. Butler
Notary Public

My Commission Expires: January 21, 2016

My County of Residence: Hendricks

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BENJAMIN CURELL,)
)
 Defendant.)

Cause No. 1:14-cr-00098-JMS-TAB

PLEA AGREEMENT

The United States of America, by counsel, Joseph H. Hogsett, United States Attorney for the Southern District of Indiana, and by Sharon M. Jackson, Assistant United States Attorney, and by Sanjay Patel, Trial Attorney, Department of Justice, Civil Rights Division, and the Defendant, BENJAMIN CURELL, in person and by counsel, Daniel Reuter, hereby inform the Court that a Plea Agreement has been reached in this cause pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and the following are its terms and conditions:

1. BENJAMIN CURELL agrees to enter a plea of guilty to the one-count Information that charges him violating the Freedom of Access to Clinic Entrances Act, 18 U.S.C. 248(a)(3).
2. Count 1 charges that BENJAMIN CURELL intentionally damaged a facility because the facility provides reproductive-health services in violation of Title 18, United States Code, Section 248(a)(3). This offense is a misdemeanor and

punishable by a prison term of not more than 1 year, a fine of not more than \$100,000, and a term of supervised release of up to 1 year following any term of imprisonment. A term of probation for up to 5 years is also authorized.

3. The elements of this charge are that:

First: the defendant intentionally damaged the property of a facility described in the information; and

Second: the defendant did so knowingly and because the facility was being used to provide reproductive-health services; and

Third: the "facility" is a hospital, clinic, physician's office, or other facility that provides reproductive-health services.

4. The United States and the defendant acknowledge and agree that this plea agreement is governed by Fed. R. Crim. P. 11(c)(1)(C) and that the parties have agreed that the specific sentence set forth in Paragraphs 7 through 12 of this Plea Agreement is the appropriate disposition of this cause. The parties understand that the Court must accept or reject the sentence specified in this Plea Agreement. The defendant acknowledges that, pursuant to Fed. R. Crim. P. 11(c)(3), (4), and (5), if the Court rejects the Plea Agreement, the Court will advise the defendant personally in open court that the Court is rejecting the Plea Agreement and the Court will afford both parties the opportunity to then withdraw the Plea Agreement.

5. The defendant understands that, in determining whether to accept or reject the sentencing provisions in the Plea Agreement, the Court will look to the statutory range set forth in Paragraph 2 above. The defendant further

understands that the Court will consider the factors set forth in 18 U.S.C. § 3553(a) and the United States Sentencing Guidelines (U.S.S.G.) in determining whether to accept or reject the sentence outlined in this agreement.

SPECIFIC PROVISIONS

6. **Counts of conviction:** The defendant, BENJAMIN CURELL, will enter a plea of guilty to Count 1 of the Information.

7. **Sentence Recommendation:** At the time of sentencing, the United States and the defendant agree that the Court shall impose a sentence of three (3) years probation to run concurrent to the sentence of probation imposed in *State of Indiana v. Benjamin David Curell*, cause number 53C05-1304-FC-000371.

9. **Supervised release/probation:** The parties agree that the Court will have the right to impose terms and conditions of the probation.

10. **Restitution:** The parties agree that an order of restitution for the property damaged in this case, in the amount of \$22,822.14, is mandatory in this case and will be ordered. However, the defendant will be given credit for any restitution payments made pursuant to his state court probation.

11. **Fine:** The Court shall order that no fine be imposed in light of the restitution that will be due and owing.

12. **Special Assessment:** BENJAMIN CURELL will pay a total of \$50.00 on the date of sentencing to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed pursuant to Title 18, United States Code, Section 3013.

14. **Background Information:** The defendant acknowledges and understands that no limitation shall be placed upon the Court's consideration of information concerning the background, character, and conduct of the defendant for the purpose of imposing an appropriate sentence. BENJAMIN CURELL acknowledges and understands that, notwithstanding the agreement not to bring additional charges as outlined above, the United States is not prohibited from providing information concerning the background, character, and conduct of the defendant for the purpose of recommending or advocating an appropriate guideline calculation and sentence.

15. **Financial Information:** Additionally, BENJAMIN CURELL agrees that as of the date of filing this plea agreement he will provide all requested financial information to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana for use in the collection of any fines and restitution imposed by the Court and authorizes the Financial Litigation Unit to obtain credit reports relating to BENJAMIN CURELL for use in the collection of any fines and restitution imposed by the Court.

16. **Waiver of Appeal Rights:** BENJAMIN CURELL understands that he has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right, and in exchange for the concessions made by the United States in this Plea Agreement, he expressly waives his right to appeal the conviction imposed in this case on any ground, including the right to appeal conferred by 18 U.S.C. § 3742. He also

expressly agrees not to contest, or seek to modify, his conviction or sentence or the manner in which either was determined in any proceeding, including, but not limited to, an action brought under 18 U.S.C. § 2255. This waiver of appeal specifically includes all provisions of the guilty plea and sentence imposed, including the terms of the supervised release and the amount of any fine. This Section 2255 waiver does not encompass claims that the defendant received ineffective assistance of counsel in the negotiation of the plea or plea agreement.

SENTENCING GUIDELINES STIPULATIONS

17. Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the Stipulations below. The parties understand and agree that these Stipulations are binding on the parties but are only a recommendation to the Court and that the Court will determine the sentencing guidelines applicable in this case.

18. The parties stipulate and agree that the applicable Sentencing Guideline for Count 1 is U.S.S.G. § 2H1.1 (Offenses involving Individual Rights) and applies as follows:

- A. The base offense level is 10 pursuant to § 2H1.1(a)(3)(B) as the offense involved property damage.
- B. The specific offense characteristic is inapplicable.

19. The parties stipulate and agree that, based upon the information known at the time of this agreement, the adjustments in U.S.S.G. Chapter Three,

Part A (Victim-Related), Part B (Role in the Offense), Part C (Obstruction), and Part D (Grouping) are inapplicable in this case.

22. *Provided that* BENJAMIN CURELL continues his acceptance of responsibility for his criminal acts, the parties agree that the combined adjusted offense level should be reduced by 2 levels pursuant to U.S.S.G. §3E1.1 [Acceptance of Responsibility].

23. The parties agree that no stipulation regarding any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court.

FINAL PROVISION


24. BENJAMIN CURELL acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce BENJAMIN CURELL to plead guilty. This document is the complete and only plea agreement between BENJAMIN CURELL and the United States Attorney for the Southern District of Indiana and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.

Respectfully submitted,

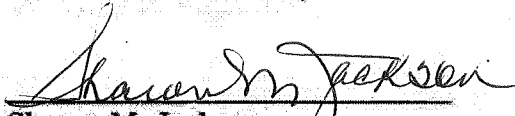
FOR THE DEFENSE:

FOR THE UNITED STATES:

JOSEPH H. HOGSETT
United States Attorney




BENJAMIN CURELL
Defendant

By: 

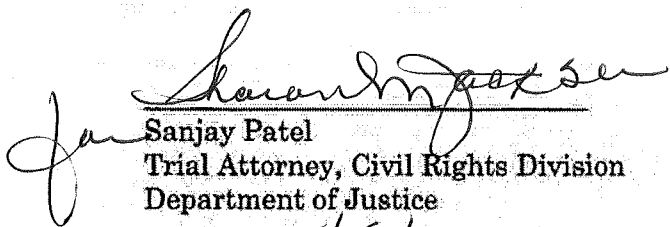
Sharon M. Jackson
Assistant United States Attorney

Date: 5/1/2014

Date: 5/8/2014



Daniel Reuter
Attorney for Defendant



Sanjay Patel
Trial Attorney, Civil Rights Division
Department of Justice

Date: 5/1/2014

Date: 5/8/2014

UNITED STATES DISTRICT COURT

Southern District of Indiana

UNITED STATES OF AMERICA

v.

BENJAMIN D. CURELL

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:14CR00098-001

USM Number: 12349-028

Daniel C. Reuter
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1

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

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

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 248(a)(3)	Intentionally Damaging a Reproductive Health Facility	4/11/2013	1

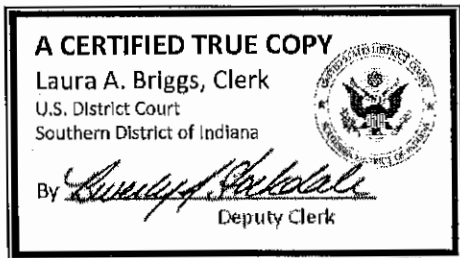
The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/1/2014
Date of Imposition of Judgment



[Signature]
Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

07/02/2014
Date

DEFENDANT: BENJAMIN D CURELL
CASE NUMBER: 1:14CR00098-001

PROBATION

The defendant is hereby sentenced to probation for a term of 3 years, concurrent with the sentence of probation imposed in State of Indiana v. Benjamin David Curell, cause number 53C05-1304-FC-000371

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: BENJAMIN D CURELL
CASE NUMBER: 1:14CR00098-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation officer access to any requested financial information.

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

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

DEFENDANT: BENJAMIN D CURELL
 CASE NUMBER: 1:14CR00098-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 25.00	\$	\$ 22,822.14

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

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Planned Parenthood	\$8,458.14	\$8,458.14	
Tim Ellis Realtors & Auctioneers	\$14,364.00	\$14,364.00	

TOTALS	\$ <u>22,822.14</u>	\$ <u>22,822.14</u>
---------------	---------------------	---------------------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BENJAMIN D CURELL
CASE NUMBER: 1:14CR00098-001

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or G below; or
- B Payment to begin immediately (may be combined with C, D, or G below); or
- C Payment in _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time;
- F If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.
- G Special instructions regarding the payment of criminal monetary penalties:
 Payment shall be made directly to the Monroe County, Indiana, Clerk's Office, as ordered under cause number 53C05-1304-FC-000371.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>Defendant Name</u>	<u>Case Number</u>	<u>Joint & Several Amount</u>
-----------------------	--------------------	-----------------------------------

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s): _____
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

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FEB 11 2016

CLERK, U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

~~Criminal No.~~

16-mj-81 HB

UNITED STATES OF AMERICA,

INFORMATION

Plaintiff,

v.

18 U.S.C. § 248(a)(1)

18 U.S.C. § 248(b)(1)

MICHAEL JOHN HARRIS,

Defendant.

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT 1

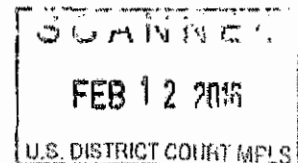
(Freedom of Access to Clinic Entrances)

On or about May 12, 2014, in the State and District of Minnesota, the defendant,

MICHAEL JOHN HARRIS,

by force and threat of force, intentionally injured, intimidated, interfered with, and attempted to injure, intimidate, and interfere with, another person associated with a clinic that provides reproductive health services, because that person was and had been, and in order to intimidate that person and any other person from, obtaining and providing reproductive health services.

All in violation of Title 18, United States Code, Sections 248(a)(1) and 248(b)(1).



COUNT 2

(Freedom of Access to Clinic Entrances)

On or about May 12, 2014, in the State and District of Minnesota, the defendant,

MICHAEL JOHN HARRIS,

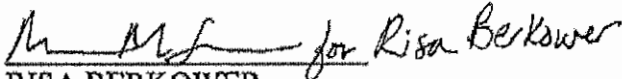
by force and threat of force, intentionally injured, intimidated, interfered with, and attempted to injure, intimidate, and interfere with, another person associated with a clinic that provides reproductive health services, because that person was and had been, and in order to intimidate that person and any other person from, obtaining and providing reproductive health services.

All in violation of Title 18, United States Code, Sections 248(a)(1) and 248(b)(1).

02/11/2016

ANDREW M. LUGER
UNITED STATES ATTORNEY

MANDA M. SERTICH
ASSISTANT U.S. ATTORNEY
Attorney ID No. 4289039


RISA BERKOWER
TRIAL ATTORNEY
U.S. Department of Justice
Civil Rights Division, Criminal Section
950 Pennsylvania Ave. NW
Washington, DC 20530

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Criminal No. 16 MJ 81 HB

UNITED STATES OF AMERICA,

Plaintiff,

v.

PLEA AGREEMENT AND
SENTENCING STIPULATIONS

MICHAEL HARRIS,

Defendant.

The United States of America and Michael Harris (hereinafter referred to as "Defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only Defendant, the United States Attorney's Office for the District of Minnesota, and the Civil Rights Division of the United States Department of Justice. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges.** Defendant agrees to plead guilty to Count 1 and Count 2 of the Information, which charge Defendant with two separate violations of Title 18, United States Code, Section 248(a)(1), Freedom of Access to Clinic Entrances.

2. **Factual Basis.** The parties agree on the following factual basis for the plea:

- a. **Count 1:** On or about May 12, 2014, in the State and District of Minnesota, Defendant, acting by force and threat of force, intentionally injured, intimidated, and interfered with, and attempted to injure, intimidate, and interfere with, a person associated with a clinic that provides reproductive health services in Minneapolis, Minnesota, because that person was and had been, and in order to intimidate that person and any other person from, obtaining and providing reproductive health services. Specifically, Defendant made a telephone call to a clinic that provides reproductive health services in Minneapolis, Minnesota, in which Defendant threatened to kill the recipient of the call with his bare hands and to cut the recipient's head off with a band saw. Defendant made these threats because the recipient was and had been, and in order to intimidate the recipient and any other person from, obtaining and providing reproductive health services.

SCANNED

MAR 02 2016

U.S. DISTRICT COURT ST. PAUL

- b. Count 2: On or about May 12, 2014, in the State and District of Minnesota, Defendant, acting by force and threat of force, intentionally injured, intimidated, and interfered with, and attempted to injure, intimidate, and interfere with, a person associated with a clinic that provides reproductive health services in Minneapolis, Minnesota, because that person was and had been, and in order to intimidate that person and any other person from, obtaining and providing reproductive health services. Specifically, Defendant made a telephone call to a second clinic that provides reproductive health services in Minneapolis, Minnesota, in which Defendant told the recipient that he was going to kill the recipient and the recipient's co-workers, and that he was going to travel to the clinic and shoot everyone present. Defendant made these threats because the recipient was and had been, and in order to intimidate the recipient and any other person from, obtaining and providing reproductive health services.
- c. Relevant conduct: On or about May 13, 2014, in the State and District of Minnesota, Defendant made a second telephone call to the second clinic that provides reproductive health services that Defendant had called the previous day. In that call, Defendant told the recipient that he was a detective and asked for the home address of one of the clinic's doctors, because, Defendant stated, that doctor had killed someone and needed to be arrested. Defendant then threatened to arrest everyone in the clinic and put them in a cage. Defendant then stated that he was ten minutes away from the clinic and abruptly ended the call.

3. Waiver of Indictment. Defendant agrees to waive indictment by a grand jury on these charges and to consent to the filing of a criminal information. Defendant further agrees to execute a written waiver of Defendant's rights to be indicted by a grand jury for these offenses.

4. Waiver of Pretrial Motions. Defendant understands and agrees that he has certain rights to file pretrial motions in this case. As part of this plea agreement, and based upon the concessions of the United States contained herein, Defendant knowingly, willingly, and voluntarily gives up the right to file and/or litigate pretrial motions in this case.

5. Statutory Penalties. The parties agree that, because Defendant does not have a prior conviction under 18 U.S.C. § 248, Counts 1 and 2 of the Information each carry a statutory penalty of:

- a. a maximum of one year imprisonment;

- b. a supervised release term of one year;
- c. a fine of up to \$100,000;
- d. a mandatory special assessment of \$25; and
- e. payment of mandatory restitution in any amount, if ordered by the Court.

6. Revocation of Supervised Release. Defendant understands that if he violates any condition of supervised release, Defendant could be sentenced to an additional term of imprisonment up to the length of the original supervised release term.

7. Guideline Calculations. The parties acknowledge that Defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines independently and is not bound by any agreement between the parties concerning the Sentencing Guidelines. Acknowledging this, the parties stipulate to the following guideline calculations:

- a. Base Offense Level. The parties agree that the base offense level for a violation of 18 U.S.C. § 248(a)(1) is 10. (U.S.S.G. § 2H1.1).
- b. Grouping. The parties agree U.S.S.G. § 3D1.4 provides for a 2-level increase of the total offense level because Count 1 and Count 2 in the Information are not grouped together as closely related counts under U.S.S.G. § 3D1.2.
- c. Acceptance of Responsibility. The government agrees to recommend that Defendant receive a 2-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, Defendant understands and agrees that this recommendation is conditioned upon the following: (i) Defendant testifies truthfully during the change of plea and sentencing hearings; (ii) Defendant cooperates with the Probation Office in the pre-sentence investigation, including disclosure of truthful and accurate financial information to the Probation Office; and (iii) Defendant commits no acts and makes no statements inconsistent with acceptance of responsibility. (U.S.S.G. § 3E1.1(a)).

The parties agree that no other adjustments from Chapter 3 of the Sentencing Guidelines apply here.

- d. Total Offense Level. The parties agree that the total offense level for Defendant, based on a guilty plea to Count 1 and Count 2 in the Information, is 10.
- e. Criminal History Category. Based on the information available at this time, the parties believe that Defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history category will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing. Defendant understands that if the presentence investigation reveals any prior adult or juvenile sentence that should be included in his criminal history under the U.S. Sentencing Guidelines, Defendant will be sentenced based on his true criminal history, and he will not be permitted to withdraw from this Plea Agreement. (U.S.S.G. § 4A1.1).
- f. Guideline Range. The parties agree that, for a total offense level of 10 and a criminal history category of I, the Sentencing Guidelines imprisonment range is 6 to 12 months of imprisonment.
- g. Eligibility for Probation: The parties agree that, for a total offense level of 10 and a criminal history category of I, the applicable guidelines range falls within Zone B of the sentencing table. Accordingly, the parties agree that the Sentencing Guidelines authorize a sentence of probation if the Court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention as provided in U.S.S.G. § 5C1.1(c)(3). The parties agree that, should the Court impose a sentence of probation, the term of probation shall be at least one year and no more than five years. (U.S.S.G. §§ 5B1.1, 5B1.2(a)(1)).
- h. Fine Range. For an adjusted offense level of 10, the fine range under the Sentencing Guidelines is \$2,000 to \$20,000. (U.S.S.G. § 5E1.2).
- i. Supervised Release. If the Court imposes a term of imprisonment of more than one year, the Sentencing Guidelines require that the Court impose a term of supervised release of up to one year. If the Court imposes a term of imprisonment of less than one year, the Sentencing Guidelines provide that the Court may impose a term of supervised release of up to one year. (U.S.S.G. §§ 5D1.1, 5D1.2).
- j. Sentencing Recommendation and Departures. Defendant reserves the right to make a motion for departures from the applicable Guidelines. Defendant further reserves the right to argue for a sentence outside the applicable Guidelines range. Based on the facts known to the Government at the time of the execution of this

plea agreement, the Government agrees to request a sentence at the low end of the Guidelines range stipulated to by the parties in this agreement. The Government reserves the right to seek a sentence exceeding the low end of the Guidelines range stipulated to by the parties in this agreement if new facts warranting such a change are discovered prior to sentencing.

8. **Discretion of the Court.** The foregoing stipulations are binding on the parties but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and that their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guidelines factors and the applicable criminal history category. The Court may also depart from the applicable Guidelines range. If the Court determines that the applicable Guideline calculations or Defendant's criminal history category are different from that stated above, the parties may not withdraw from this agreement, and Defendant will be sentenced pursuant to the Court's determinations.

9. **Special Assessment.** The Guidelines require payment of a special assessment in the amount of \$25 for each count of which Defendant is convicted. (U.S.S.G. §5E1.3). This special assessment of \$50 becomes due and payable at sentencing.

10. **Restitution.** Defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, applies and that the Court is required to order Defendant to make restitution to the victims of the crime. There is no agreement with regard to the amount of restitution, if any; however, Defendant understands and agrees the Court may order Defendant to make restitution to any victims of his crimes regardless of whether the victim was named in the Information or whether the victim is included in the count of convictions.

11. **Waivers of Appeal and Collateral Attack.** The parties understand that 18 U.S.C. § 3742 affords them the right to appeal the sentence imposed in this case. Acknowledging this right, the parties hereby waive all rights conferred by 18 U.S.C. § 3742 to

appeal Defendant's sentence, except that Defendant may appeal the sentence if the term of imprisonment imposed is greater than the high end of the applicable Guidelines range as determined by the Court, and the Government may appeal the sentence if the term of imprisonment is less than the low end of the applicable Guidelines range as determined by the Court. In addition, Defendant expressly waives the right to petition under 28 U.S.C. § 2255. However, the waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of an unconstitutional sentence or on a claim of ineffective assistance of counsel. Defendant has discussed these rights with Defendant's attorney. Defendant understands the rights being waived, and Defendant waives these rights knowingly, intelligently, and voluntarily.

12. Waiver of Rights Under Fed. R. Evid. 410. In an effort to resolve this matter in a timely fashion and showing good faith while cooperating with the Government, Defendant agrees to knowingly, voluntarily, and expressly waive any rights pursuant to Rule 410 of the Federal Rules of Evidence. Defendant understands and agrees that in the event that Defendant violates the plea agreement, Defendant withdraws his decision to plead guilty, or Defendant's guilty plea is later withdrawn, any statements made by Defendant to law enforcement agents or to an attorney for the prosecuting authority (including, but not limited to, statements made during plea discussions, any statements made during any court proceeding involving Defendant's plea of guilty, and any factual bases or summaries signed by Defendant or agreed to by Defendant under oath, or any other statements made by Defendant in court proceedings, and any testimony given by Defendant before a grand jury or any tribunal or court, and any leads from such statements or testimony), shall be admissible for all purposes against Defendant in any and all criminal proceedings.


13. Joint Recommendation Concerning Terms of Probation or Supervised Release. Should the Court impose a probationary sentence, the parties jointly recommend the following terms of probation to the Court: that Defendant successfully complete an intensive alcohol treatment program; that Defendant complete 100 hours of community service; that Defendant stay away from, and have no contact of any kind with, either Planned Parenthood of Minneapolis, Minnesota, or the Office of Dr. Mildred Hanson in Minneapolis, Minnesota; that Defendant not commit any violation of federal, state, or local criminal law; and that Defendant be subject to strict supervision by the U.S. Probation Office. Should the Court instead sentence Defendant to a term of imprisonment followed by supervised release, the parties jointly recommend that these conditions be imposed on Defendant as terms of his supervised release.

14. Complete Agreement. This, along with any agreement signed by the parties before entry of plea, is the entire agreement and understanding between the United States and Defendant.

Date: 3/2/16

ANDREW M. LUGER
UNITED STATES ATTORNEY

MANDA M. SERTICH
ASSISTANT U.S. ATTORNEY
Attorney ID No. 4289039



BY: RISA BERKOWER
TRIAL ATTORNEY
U.S. Department of Justice
Civil Rights Division

Date:

3-2-16


MICHAEL HARRIS
Defendant

Date: 3.2.16



JAMES BECKER, ESQ.
Counsel for Defendant