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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE ANTHONY J. BATTAGLIA)

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JOHN TIMOTHY EARNEST,
Defendant.

) Case No.: 19CR1850-AJB
) **DEFENDANT’S REPLY IN**
) **SUPPORT OF SENTENCING**
)
) **DATE: DECEMBER 28, 2021**
) **TIME: 9:00 AM**

TO: RANDY GROSSMAN, ACTING UNITED STATES ATTORNEY; PETER KO, ASSISTANT UNITED STATES ATTORNEY; AND CRYSTAL TIGNOR, UNITED STATES PROBATION OFFICER

REPLY

A. It is relevant and significant that John Earnest has acknowledged that his own violent actions were not only legally wrong but morally wrong; this is an important step in the path of redemption taken by a person who will spend the rest of his natural life behind bars.

The government acknowledges that probation should correct its report to reflect that Mr. Earnest condemned his own actions in this case. DE 133 at 1-2. But it

1 attempts to discount the significance of this important step for a young man radicalized
2 by online forces and whose juvenile brain is still developing while in continuous
3 custody. It also unfairly discounts this renunciation of violence by mischaracterizing
4 the record.

5 The government begins by suggesting that Mr. Earnest's personal disavowal of
6 his own violent acts are undercut by the fact that Mr. Earnest made these statements
7 "about a week after mailing a letter to a podcast urging force and violence against Jews
8 and certain 'non-Europeans.'" *Id.* at 1. Left out of the government's argument is the
9 fact that Mr. Earnest told his caller on the same call that he expressed remorse for his
10 actions and that the caller should tell this podcast to "not publish [his] letters because
11 he needs to set the record straight" after coming to this profound realization. *See* DE
12 131, Ex. A.

13 The government further discounts the value of this significant development in
14 Mr. Earnest's thinking and maturation when it claims that the call was made "two days
15 after officials seized an unpublished manifesto from Earnest's cell in which he said
16 violence against Jews is a 'mandatory' duty." DE 133 at 2. First, the government fails
17 to explain that the writing was found in Mr. Earnest's previous cell in local custody
18 after he had been transferred to the California Department of Corrections and
19 Rehabilitation to serve out his life sentence in state custody. *See* Exhibit A (11/4/21
20 FBI 302 report 00020); *c.f.* PSR ¶ 131.¹ The government also fails to note that this
21 "manifesto" was written long before Mr. Earnest's renunciation, a significant fact,
22 considering that Mr. Earnest had been in local custody for over two and a half years
23

24 ¹ The presentence report incorrectly states that the document was found at Donovan
25 State Prison (where Mr. Earnest has never been housed) before his transfer to Wasco
26 State Prison, but the point remains the same: there's no indication of how the writing
27 temporally relates to his decision to disavow his own violence, despite the
28 government's attempt to suggest that "two days" between the document's discovery
and Mr. Earnest's renunciation somehow undercuts the sincerity of the latter.

1 before his expression of remorse. In sum, the government’s timing arguments
2 shouldn’t and don’t discount the significance of this development at all.

3 Nor is Mr. Earnest’s disavowal of violence discounted by the fact that he
4 supposedly said later that “his father and others at the church were ‘the problem,’
5 because they would not say his actions were wrong, but ‘I was right about everything
6 else.’” DE 133 at 2. To be clear, no one and nothing in the record has suggested that
7 anyone thinks Mr. Earnest’s actions in this case were anything but wrong. Even Mr.
8 Earnest, himself, has said that his actions were wrong insofar as they involved
9 violence. Assuming the government meant to say that Mr. Earnest was upset that
10 others wouldn’t agree that Jewish people were the “problem”, this still would not
11 undermine the important point that, whatever the “problem,” Mr. Earnest has now
12 realized that violence is not the answer.

13 Probation acknowledged today in an addendum that the government did not
14 provide the probation officer with this discovery concerning Mr. Earnest’s disavowal
15 of his use of violence until December 7—two and a half weeks after probation filed its
16 report. DE 136 at 1-2. And probation also notes that Mr. Earnest recently made an
17 effort to publicly repent for his attack through the press. *Id.* at 2. But however Mr.
18 Earnest may have privately or publicly attempted to express his disavowal of violence,
19 it is important that this young man has come to this conclusion, one that is a significant
20 marker on a path towards redemption.

21
22 **B. Designating a very young man to a life sentence in a state institution much**
23 **closer to family might aid his rehabilitative process.**

24
25 The government speculates without any support that Mr. Earnest’s request for a
26 designation to state custody “is essentially an effort to evade monitoring and controls
27 that could prevent him from disseminating more calls for violence against religions
28 and races besides his own.” DE 133 at 3-4. To begin, it is fanciful and incorrect to

1 suggest that the State of California doesn't have its own controls and measures to
2 monitor and prevent calls of violence. *See, e.g.*, Cal. Code of Regulations §
3 3315(a)(3)(I) & (b) (classifying as a serious disciplinary offense any attempt by an
4 inmate to willfully incite others to commit an act of force or violence and providing for
5 segregation from general population as one of several disciplinary actions for such
6 conduct); 2021 Cal. Dept. of Corrections and Rehab. Manual ("DOM") § 54010.8
7 (subjecting incoming and outgoing inmate mail to inspection); DOM § 54010.14
8 (specifically disallowing offense, threatening or other correspondence that contains
9 security concerns); DOM § 52060.12 (subjecting inmate telephone calls to
10 monitoring). Wherever Mr. Earnest is housed for the rest of his life, he will be
11 subjected to adequate monitoring and repercussions for behavior that could incite or is
12 intended to incite violence.

13 What is not subject to speculation is the government's admitted efforts to (a)
14 first, transfer Mr. Earnest into federal custody; and then, (b) have Mr. Earnest sent into
15 isolation at the United States Penitentiary, Administrative Maximum, ("the
16 Supermax") in Florence, Colorado, far from his family, and subject to the additional
17 special administrative measures specifically referenced by the government in its
18 pleading, measures that not only limit his interaction and visitation with others, but
19 also his family and even counsel. *See* DE 133 at 3 (citing 28 C.F.R. § 501.3); *see also*
20 Allard K. Lowenstein, *The Darkest Corner: Special Administrative Measures and*
21 *Extreme Isolation in the Federal Bureau of Prisons* (2017) (documenting the "extreme
22 restrictions" arising from SAMS at ADX Florence).² The efforts, already underway,
23 are not only troubling in light of Mr. Earnest's disavowal of violence, *see supra*, they
24 are troubling because Mr. Earnest, in spite of the heinous nature of his crimes,
25 committed them at such a young age.

26
27 ² Found at
28 https://ccrjustice.org/sites/default/files/attach/2017/09/SAMs%20Report.Final_.pdf.

1 Mr. Earnest will continue to pay for his crimes, no matter how young he was
2 when he committed them. Rather than insisting on a trial (and any publicity that might
3 have come from it), Mr. Earnest pled guilty and agreed to serve the rest of his natural
4 life in prison.³ And because of his age, that will be a very long time. But by ignoring
5 Mr. Earnest's youth as a factor and inappropriately attempting to undercut his
6 disavowal of violence in this case, the government is pursuing a course that cannot
7 reasonably be justified; if the government achieves its apparent objective of placing
8 Mr. Earnest under SAMS, Mr. Earnest will become isolated and frozen in the
9 maturation process that he has clearly begun.

10 The United States Sentencing Commission has recognized the importance of
11 youth in sentencing and punishment: "Recent studies on brain development and age,
12 coupled with recent Supreme Court decisions recognizing differences in offender
13 culpability due to age, have led some policymakers to reconsider how youthful
14 offenders should be punished." U.S.S.G., *Youthful Offenders in the Federal System*
15 (2017) (classifying "youthful offenders" as age 25 or younger).⁴ Mr. Earnest
16 committed these offenses when he was only 19 years old. He is still only 22 years old
17 today.

18 Long ago, society chose the age of eighteen as the magical age where a person
19 transitions from legal childhood to legal adulthood; however, science now tells us that
20 there is nothing magic about a person's eighteenth birthday that makes him any more,
21 or less, a child or an adult. For Mr. Earnest, that meant his brain was not operating in
22 the manner of a fully-developed adult brain during the relevant time period. This is
23 because the most important portion of the brain, the pre-frontal cortex, or PFC, was not
24

25 ³ Mr. Earnest made his initial offer to plead to life sentences, as to both the State and
26 Federal charges, in October 2019.

27 ⁴ Found at [https://www.ussc.gov/sites/default/files/pdf/research-and-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf)
28 [publications/research-publications/2017/20170525_youthful-offenders.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170525_youthful-offenders.pdf)

1 fully mature. Research in developmental psychology and neuroscience in the years
2 since the Supreme Court’s ruling in *Roper v. Simmons*, 543 U.S. 551 (2005), has
3 confirmed that older adolescents (ages 18-20 years old) differ from adults in ways that
4 both diminish their culpability and impair their thinking, making them more impulsive,
5 less comprehending of the consequences of their actions, and more susceptible to the
6 influence of peers, even online peers. Such older adolescents (or “emerging adults”)
7 are less able to envision or comprehend the full range of potential future consequences
8 of their immediate actions, and less able to control their impulses. The parts of the
9 brain that enable impulse control and reasoned judgment are not yet fully developed in
10 this age group. In a very real sense, until the early 20s, our youth do not yet fully know
11 who they are or who they will ultimately become. Their vulnerability and still-
12 developing nature preclude a reliable determination of who they will become or how
13 they will grow and mature.

14 Before his rapid online radicalization, all indications pointed to Mr. Earnest
15 being on course to lead a productive, meaningful and law-abiding life. Less than two
16 years before this offense, John Earnest graduated from high school with very high
17 grades and was “loved” by his teachers. PSR ¶ 252. He worked as a lifeguard,
18 following in the path of his father, learning how to save and protect others. PSR ¶ 256.
19 He volunteered free time to Feed San Diego and I Love a Clean San Diego. PSR ¶ 257.
20 He built on this commitment to others with his decision to go to nursing school at CSU
21 San Marcos. PSR ¶ 251.

22 But this path towards a good, productive life was unfortunately interrupted by a
23 young, still-growing and immature mind, the mind of a youth who was still trying to
24 identify who he was and left Mr. Earnest to being vulnerable to peer pressure and a
25 fear of exclusion. See Robert Sapolsky, *Behave: The Biology of Humans at Our Best
26 and Worst*, at 165 (documenting how neuroimaging studies demonstrate the sensitivity
27 of young adults to their peers, leading them to identify who they are by how others
28

1 define them). The online world that John Earnest looked to for these self-identifying
2 answers ultimately consumed him, leading to this tragic end.

3 John Earnest will spend the rest of his life, decade upon decade, in prison. And
4 he will do so because of his actions, actions for which he has taken responsibility. But
5 the nature of his custody should not be of a kind that precludes him from continuing a
6 path of rehabilitation and being in proximity to those, such as his parents and family,
7 who can ultimately help him continue the path of reconciliation and redemption that
8 this young man has just only begun. But to follow the government's intended path at
9 such an early juncture is sure to halt any such effort.

10 For these reasons, Mr. Earnest asks that the Court make the recommendation
11 that Mr. Earnest serve his federal sentence in the custody of the California Department
12 of Corrections and Rehabilitation, a recommendation that represents the best hope that
13 Mr. Earnest will continue on a path that he has recently begun to come to terms with
14 the damage that his actions have caused.

15
16 Dated: December 21, 2021

Respectfully submitted:

17 *s/ Patrick J. Burke*
PATRICK J. BURKE

18
19 *s/ Ellis M. Johnston III*
ELLIS M. JOHNSTON III

20 Attorneys for Mr. Earnest
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EXHIBIT A



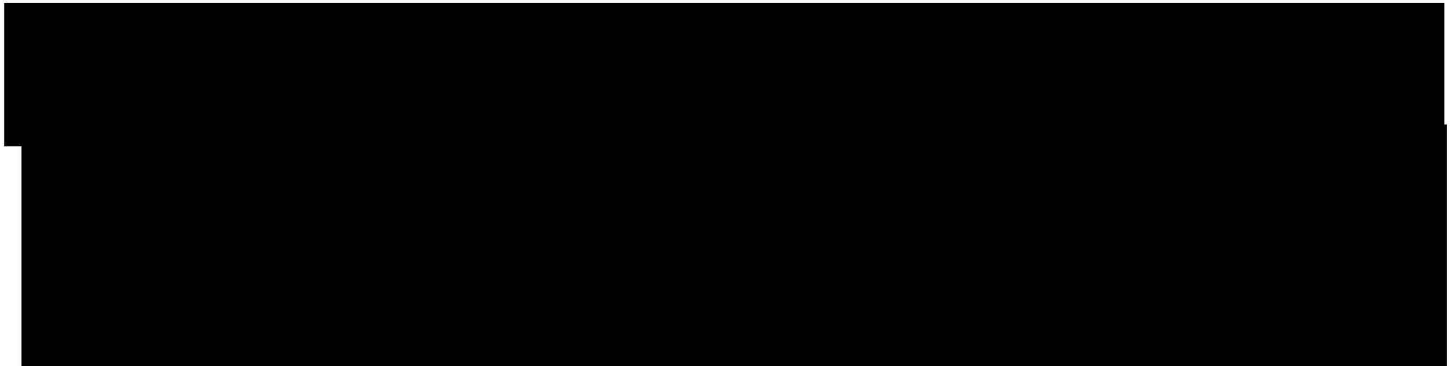
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FEDERAL BUREAU OF INVESTIGATION

Date of entry 11/04/2021

Task Force Officer (TFO) Michael Silva was notified by San Diego County Sheriff Corporal Brian Lopez that subject John Earnest (44D-SD-3102023) is being transported from San Diego County Sheriff custody to California Department of Corrections and Rehabilitation. Corporal Lopez conducted a property search of Subject Earnest before leaving the George Bailey Detention Facility in Otay Mesa. Corporal Lopez located a six page written document believed to be a manifesto. The document was found inside an envelope inside one of his books. The written document is attached as a 1A.

The San Diego County Sheriff Transportation Unit confirmed subject Earnest is in the process of transportation to Wasco State Prison (WSP), located at 701 Scofield Ave, Wasco CA 93280.



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Investigation on 11/03/2021 at San Diego, California, United States (Email)

File # 415M-SD-C67477, 44D-SD-3102023 Date drafted 11/03/2021

by SILVA MICHAEL JOHN

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