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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 SERGIO PATRICK RODRIGUEZ,
15 Defendants.

CASE NO. 1:13-CR-0109 LJO-SKO

UNITED STATES' RESPONSE TO
DEFENDANT'S SENTENCING
MEMORANDUM AND FORMAL
OBJECTIONS

Date: March 10, 2014
Time: 8:30 a.m.
Court: Hon. Lawrence J. O'Neill

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17
18 Plaintiff United States of America, by and through its counsel of record, hereby responds to
19 the defendant's sentencing memorandum and formal objections to the presentence report. The
20 government's formal objections to the presentence report and sentencing recommendations were
21 submitted for the Court's consideration on February 28, 2014.
22

23 **I. DEFENSE OBJECTIONS BY PARAGRAPH NUMBER OF PSR**
24

25 5. Both Air George and Air-1 were flying well below 10,000 feet and were under FAA
26 regulations flying at a critical flight phase. FAA regulations provide, "critical phases of flight
27 includes all ground operations involving taxi, takeoff and landing, and all other flight operations
28

1 conducted below 10,000 feet, except cruise flight.” 14 C.F.R. § 121.542.

2 8. Agreed. Coleman, not Rodriguez, said it was not her fault if the helicopter flew in front
3 of the laser she was pointing into the air.

4 19. The jury found the defendant guilty of willfully attempting to interfere with persons
5 engaged in the operation of Air-1. This offense required proof of not only reckless disregard for the
6 safety of human life but an attempt to willfully interfere with or disable anyone engaged in the
7 authorized operation of Air-1.

8 The evidence indicated that the powerful laser pointer that the defendant used to strike Air-1
9 caused glare and after-image effects that resulted in significant visual interference of the pilot and
10 tactical flight officer of Air-1. The resulting visual interference of the airmen of Air-1 constitutes an
11 endangerment of the aircraft within the meaning of U.S.S.G. § 2A5.2(1)(1), since the potential
12 physical consequences of a pilot being unable to see are obvious. If a pilot cannot see, and no one
13 else is able to fly the aircraft, as Tactical Flight Officer George Valdez was unable to do, the pilot
14 cannot navigate the aircraft and the aircraft could crash. Such aircraft endangerment was also
15 intentional, since the jury found the defendant’s conduct was willful. As the jury was instructed in
16 this case, willfulness required a much higher state of mind than knowingly and intentional. *See, e.g.,*
17 *United States v. Gonzalez*, 492 F.3d 1031, 1038 (9th Cir. 2007) (“An aircraft is a captive, closed
18 environment in which the safety of the passengers and the integrity of the aircraft are closely
19 intertwined.”).

20 The fact that the laser strikes did not cause actual damage or that the aircraft did not crash
21 does not compel a finding otherwise. *See id. at 1035* (“[E]ndangerment of the aircraft does not
22 require evidence of *actual* harm to the aircraft.”); *United States v. Guerrero*, 193 F.Supp.2d 607, 609
23 (E.D.N.Y.2002) (“Endangerment ‘means a threatened or potential harm and does not require proof
24 of actual harm.’” (quoting *United States v. Poe*, 215 F.3d 1335 (9th Cir.2000))).
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26
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1 Accordingly, application of Section 2A5.2(a)(1) is appropriate.

2 48. Agreed. The word “seventeen” should be corrected to thirteen.

3 71. Agreed. Bobbie Flores did not testify at trial.

4 101. As set forth above “critical flight phase” applies.

5 103. As the discovery materials provided to the defense and probation officer indicate, Air
6 George was ascending but had not yet approached flying altitude when it was struck. *See* FBI
7 Report of Interview of Pilot Chesonis, Bates Stamp No. 103, attached hereto as Government Exhibit
8 A. Pilot Chesonis clarified at trial that his destination was Porterville.
9

10 105. The evidence highly suggests that the defendant was aware that Air-1 was a law
11 enforcement aircraft. The aircraft was flying 500 feet above ground when it was struck about 7
12 times. It had big bold letters on it indicating it was a Fresno Police Department aircraft. The Night
13 Sun was used to assist ground units to apprehend the offenders. Flashing lights and reflective
14 material were also on the aircraft.

15 106. A prison term of 168 months is not greater than necessary to accomplish the goals of
16 Section 3553(a)(2), given: (a) the severity of the offense, use of a dangerous laser beam, and the
17 tracking and striking of two separate aircraft, (b) the defendant’s significant criminal history, (c) his
18 history of probation violations, (d) history and offense conduct involving reckless disregard of
19 human life, (e) Bulldog gang affiliation, and (f) the fact that the guideline range based on the
20 application of official victim and dangerous weapon enhancements trigger a guideline range of 360
21 months to life in prison.
22

23 **Justification at Page 22**

24 As set forth above and the government’s sentencing memorandum, a sentence of 168 months
25 is appropriate. Should the Court determine that the base offense level should be 18, pursuant to
26 U.S.S.G. § 2A5.2(a)(2), the resulting guideline range would be 140 to 175 months, based on a CHC
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28

1 VI and application of dangerous weapon (2A5.2(b)(1)(ii)) and official victim witness enhancements
2 (3A1.2(c)). The 168 month sentence recommended by the probation officer and the government
3 would fall within this lower guideline range.

4 The trial evidence indicates that the laser strikes posed a distraction to Pilot Chesonis, who
5 continued on his call to Porterville to pick up a patient for Children's Hospital.

6
7 **II. A SENTENCE OF 168 MONTHS DOES NOT CREATE SENTENCING**
8 **DISPARITIES.**

9 The defendant has referenced several laser cases wherein the defendant was sentenced to a
10 lower sentence. Those cases are distinguishable.

11 In *United States v. Gardenhire*, Cr. No. 12-345 SVW, a case out of the Central District of
12 California, the defendant, who had a CHC of I, was not charged with a violation of 18 U.S.C. §§
13 32(a)(5) and (a)(8). The defendant was in a two-count indictment with violating 18 U.S.C. § 39A,
14 knowingly aiming a laser pointer at an aircraft. The defendant pled guilty to one count.

15 The probation officer recommended a sentence of 18 months based on the application of
16 U.S.S.G. § 2A5.2(a)(2), which set the base offense level at 18, and a CHC I. The probation officer
17 did not recommend the application of any sentencing enhancements. There was never any
18 recommendation that Defendant Gardenhire be sentenced for having intentionally endangered the
19 safety of the aircraft, nor was there any recommendation for any sentencing enhancement.
20

21 Applying a three-level reduction for acceptance of responsibility, the government
22 recommended a sentence of two years based on an additional two-level reduction due to the
23 defendant's "very young age," his lack of any significant criminal history, and his assistance to law
24 enforcement. *See Gardenhire* Court Record at 44.

25 Over the recommendations of the probation officer and government, the district court
26 departed upward and sentenced the defendant to 30 months – 14 months below the statutory
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28

1 maximum term of 60 months.

2 In contrast, the defendant in this case was convicted of violating not only Section 39A but
3 Sections 32(a)(5) and (a)(8), which carry a maximum prison sentence of 20 years. Rodriguez was
4 also older than Gardenhire at the time of this offense and had a General Education Diploma. Unlike
5 Gardenhire, Rodriguez has a significant criminal history, gang involvement, history of violent
6 conduct, and history of probation violations. Although the laser in the Gardenhire case also emitted
7 a green laser beam, the laser was not as powerful as the laser in this case and, according to AUSA
8 Melissa Mills, was not considered by the district court in sentencing Gardenhire. We know from the
9 trial testimony in this case that the laser beam was 13 times more powerful than what is legally
10 permissible for a laser pointer.
11

12 *United States v. Sasso*, 695 F.3d 25 (1st Cir. 2012), is also distinguishable, since the First
13 Circuit reversed on the willfulness element. The jury was not instructed as in this case that:

14 An act is done willfully if a defendant intentionally acted with knowledge that his or her
15 conduct was unlawful. A defendant need not be aware of the specific law or rule that his
16 conduct violated.

17 *United States v. Kendra Snow and Jared Dooley*, 1:08-cr-0008 LJO, is also distinguishable.
18 This case was the first laser strike case charged in our district. Unlike Defendant, neither of these
19 defendants had a CHC VI. There was no evidence of gang involvement. There was one victim
20 aircraft involved, not two, as in this case. The record indicates that, while they laser beam tracked
21 the aircraft in the *Dooley* case, it only struck the aircraft one time. *See Dooley Complaint*. In
22 addition, the laser beam emitted by the laser pointer in this case is 18.7 times more powerful than the
23 laser beam in the *Dooley/Snow* case, which was determined to emit a 3.5 milliwatt laser beam. In
24 contrast to this case, *Dooley and Snow* pled guilty to the offenses and neither the probation officer
25 nor the government sought a base offense level of 30.
26

27 This Court recently sentenced Charles Mahaffey to a prison term of 21 months following his
28

1 guilty plea to a violation of 18 U.S.C. § 39A, aiming a laser pointer at an aircraft. *United States v.*
2 *Charles Mahaffey*, Case No. 1:13CR00 108 LJO. Mahaffey did not have a CHC VI and the strength
3 of the laser beam was never measured. The laser pointer emitted a red laser beam, which is less
4 harmful than the green laser beam that the laser pointer emitted in this case. Neither the probation
5 officer nor the government sought a base offense level of 30. Mahaffey also had mental health
6 issues which are not present in this case.

7
8 **III. A SENTENCE OF 168 MONTHS WILL SERVE AS A DETERRENT.**

9
10 Laser strikes on aircraft have been increasing dramatically. It is only a matter of time before
11 an aircraft crashes as a result of a laser strike. Sentencing Rodriguez to a substantial prison term will
12 send an important deterrent message that could not be more timely.

13 On February 11, 2014, the FBI in Sacramento, along with several other cities in the United
14 States that have had a relatively high number of laser strikes on aircraft, launched a public awareness
15 campaign regarding the issue and offered a \$10,000 reward for information that leads to the arrest of
16 a laser offender. *See* FBI Press Release, attached hereto as Government Exhibit B.

17
18 According to FBI statistics maintained as a result of reports to the FAA, there were 3,482
19 laser strike incidents in the United States in 2012 and 3,960 incidents, or 10.85 incidents per day, in
20 2013. The Eastern District of California reported 94 laser strikes or 7 per month. The largest
21 number of strikes in our district was reported by the airports in Fresno and Bakersfield, both tying at
22 27. The trend is continuing in our district for 2014. This year, our district has reported
23 approximately 3 laser strikes per week, with four reports from the Fresno airport. In addition, many
24 of the laser incidents reported to the FAA involved eye injury to the pilot.

25
26 In sum, Rodriguez committed a dangerous crime against two pilots, one tactical flight officer,
27 the flying public, and the people of Fresno. The Court should impose a significant sentence in order
28 both to punish Rodriguez and to deter others from engaging in a practice that is growing more

1 prevalent and dangerous by the day. 18 U.S.C. § 3553(a)(2)(B).

2 **IV. CONCLUSION**

3
4 Based on the foregoing, as well as the government's sentencing memorandum, the
5 government respectfully requests the Court sentence the defendant to 168 months as to count 3 and
6 60 months as to count 5, to run concurrently.

7 The government further requests that the Court make final the Preliminary Order of
8 Forfeiture filed on January 7, 2014.

9
10 DATED: March 3, 2014

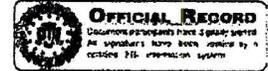
Respectfully submitted,

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13
14 /s/ Karen A. Escobar
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FD-302 (Rev. 5-8-10)

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FEDERAL BUREAU OF INVESTIGATION

Date of entry 04/15/2013

TIM CHESONIS, emergency transport helicopter pilot (namely, Air George), employed by MED-TRANS of Texas, contracted to CHILDREN'S HOSPITAL OF CENTRAL CALIFORNIA (CHCC), residential address [REDACTED], [REDACTED], cellular telephone number [REDACTED], was telephonically interviewed on April 15, 2013. After being advised of the identity of the interviewing agent and the nature of the interview, CHESONIS voluntarily provided the following information:

CHESONIS has been a civilian helicopter pilot for approximately 6 1/2 years, and flown emergency patient transports for CHCC for approximately 1 1/2 years. Throughout that time, CHESONIS (specifically the helicopter he was piloting) has only once been struck by a laser on one occasion - August 25, 2012.

On August 25, 2012, at approximately 9:00 P.M., CHESONIS was piloting Air George with two crew members from the CHCC in Madera County, California to either the Porterville or Delano, California area to pick up a patient.

CHESONIS could not remember which crew members were aboard during the flight in question because the crew members change regularly. CHESONIS and crew were traveling at approximately 130 miles per hour and ascending at approximately 1000 feet above ground level (AGL) toward his preferred cruising altitude of 1,500 feet AGL when the helicopter was struck by a green laser beam. CHESONIS described the weather as mostly clear, with only slight clouds. CHESONIS said he was not worried about the weather.

CHESONIS was wearing night-vision goggles when struck by the laser. CHESONIS reported the first strike was only acknowledged as a quick green flash, and he asked the crew if they saw it. The crew was reading paperwork at the time, and did not observe the flash. About 5-10 seconds later, the helicopter was struck a second time, and the laser tracked the aircraft for a few seconds. During that time, CHESONIS said he was able to observe the entire laser beam and track it back to the source. CHESONIS immediately radioed to the FRESNO YOSEMITE AIRPORT tower that the helicopter was just struck by a laser and provided a general location.

CHESONIS said the laser continued to be pointed in his general direction, but he thinks the helicopter was traveling too fast for the person(s) pointing the laser to track them again.

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Investigation on 04/15/2013 at Fresno, California, United States (Phone)

File # 149A-SC-2470801

Date drafted 04/15/2013

by Chet M. Johnston

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FD-302a (Rev. 05-08-10)

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149A-SC-2470801

Continuation of FD-302 of Interview of pilot Tim Chesonis, On 04/15/2013, Page 2 of 2

CHESONIS said the green laser beam "lit up the whole cockpit", and made it difficult to see through the glass because of the reflection. CHESONIS described the effect of the laser as similar to driving toward vehicle which had its bright headlights on. CHESONIS said the laser beam was "more of an annoyance" than anything, but if the tracking strike had continued for much longer, it would have been a potential hazard.

CHESONIS said the night-vision goggles operate by magnifying the ambient light available to provide vision in the dark. Therefore, when the goggles magnified the laser beam it caused him to see a bright flash followed by a dimming-out period until the goggles adjusted to the additional light source.

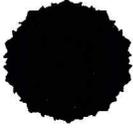
CHESONIS confirmed the laser strike occurred while en route to pick up a patient for transport, not during the flight back to CHCC. CHESONIS later completed a laser strike form and submitted it via email to DOUG KREDIT of the FEDERAL AVIATION ADMINISTRATION (FAA).

CHESONIS did not suffer any temporary or permanent injury from the laser, and no night vision or after image effects because he was wearing night-vision goggles.

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U.S. v. RODRIGUEZ, et al.
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Supplemental Discovery
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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

FOR IMMEDIATE RELEASE
February 11, 2014

NATIONAL PRESS OFFICE
(202) 324-3691
www.fbi.gov

FBI Pilots New Reward Program Aimed at Deterring Laser Strikes

The FBI today announced a new regional reward program to deter people from pointing lasers at aircraft.

Reported incidents of the federal violation are on the rise. Since the FBI and the Federal Aviation Administration (FAA) began tracking laser strikes in 2005, statistics reflect a more than 1,100 percent increase in the deliberate targeting of aircraft by people with handheld lasers.

In an effort to raise public awareness about the issue, the FBI has launched a targeted regional reward program, which will run for 60 days in 12 FBI field offices. As part of the pilot program, the FBI will offer a reward of up to \$10,000 for information that leads to the arrest of any individual who aims a laser at an aircraft.

The FBI will also be working with state and local law enforcement to educate teens about the dangers associated with lasing.

“Aiming a laser pointer at an aircraft is a serious matter and a violation of federal law,” said Ron Hosko, assistant director of the FBI’s Criminal Investigative Division. “It is important that people understand that this is a criminal act with potentially deadly repercussions.”

In 2013, there were a total of 3,960 laser strikes reported – an average of almost 11 incidents per day. Industry experts say laser attacks present potential dangers for pilots.

“Shining a laser into the cockpit of an aircraft can temporarily blind a pilot, jeopardizing the safety of everyone on board,” said FAA Administrator Michael Huerta. “We applaud our colleagues at the Justice Department for aggressively prosecuting aircraft laser incidents and we will continue to use civil penalties to further deter this dangerous activity.”

“The risk associated with illegal and inappropriate laser illuminations is unacceptable. Pointing lasers at aircraft in flight poses a serious safety risk to the traveling public,” said Air Line Pilots Association, Int’l President, Capt. Lee Moak. “Since ALPA successfully urged lawmakers to make laser illuminations on aircraft a specific federal crime, laser targeting of aircraft is now a



violation of both federal and civil laws with real penalties, and we will advocate for our FBI and FAA partners to vigorously pursue anyone who misuses these devices.”

Thousands of laser attacks go unreported every year. If you have information about a lasing incident, or see someone pointing a laser at an aircraft, call your local FBI field office or dial 911.

(FBI Field Offices participating in the regional reward program are: Albuquerque, Chicago, Cleveland, Houston, Los Angeles, New York City, Philadelphia, Phoenix, Sacramento, San Antonio, San Juan and the Washington Field Office.)

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