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Appeal No. 21-13891-DD

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

LESLIE MEYERS,
Defendant-Appellant.

On Appeal from the United States District Court
For the Middle District of Georgia, Albany Division
District Court No. 1:18-cr-00058-LAG-TQL-1

BRIEF OF PLAINTIFF-APPELLEE UNITED STATES OF AMERICA

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-5, undersigned counsel certifies that the following persons have, or may have had, an interest in the outcome of this case:

Bowen, Julia C. – former Assistant United States Attorney, Middle District of Georgia;

Brockington, Germany – Co-Defendant;

Bubsey, William E. – Former Trial Attorney for Co-Defendant Kizzy Solomon;

Cannon, John Phillip – Trial Attorney for Co-Defendant Terry Driggers;

Charles, Kevin – Co-Defendant;

Crane, James N. – Former Assistant United States Attorney, Middle District of Georgia;

Curry, Jennifer A. – Trial Attorney for Co-Defendant Kevin Charles;

DeBrow, Barry, Jr. – Trial Attorney for Co-Defendant Shadon Johnson;

Dodson, Jonathan R. – Attorney for Defendant-Appellant Leslie Meyers;

Driggers, Terry – Co-Defendant;

Eddy, Ethan Carson – Attorney, United States Department of Justice;

Gardner, Leslie Abrams - United States District Court Judge, Middle District of Georgia;

Gibson, Kentre – Co-Defendant;

Glover, Maurice – Co-Defendant;

Harrell, Benjamin David – Trial Attorney for Co-Defendant Germany Brockington;

Hunt, Christina L. – Executive Director, Federal Defenders of the Middle District of Georgia, Inc.;

Johnson, Orlando – Co-Defendant;

Johnson, Shadon – Co-Defendant;

Jordan, Alonza – Co-Defendant;

King, Demetrice – Co-Defendant;

Land, Clay D. – United States District Court Judge, Middle District of Georgia;

Langstaff, Thomas Q. - United States Magistrate Judge, Middle District of Georgia;

Leary, Peter D. – United States Attorney, Middle District of Georgia;

McLendon, Robert Robinson, IV – Trial Attorney for Co-Defendant Maurice Glover;

Metts, Marc G. – Trial Attorney for Co-Defendant Kentre Gibson;

Meyers, Leslie – Defendant-Appellant;

Morgan, Starlin – Co-Defendant;

Peeler, Charles E. – former United States Attorney, Middle District of Georgia;

Phillips, Mark Tyson – Trial Attorney for Co-Defendant Alonza Jordan;

Pinder, Erin Leigh – Trial Attorney for Defendant-Appellant Leslie Meyers;

Pflepsen, Keith Allen – Attorney for Co-Defendant Kizzy Solomon;

Smith, Frank Tyrone – Trial Attorney for Co-Defendant Starlin Morgan;

Solomon, Kizzy – Co-Defendant;

Tapley, Denton Duston, Jr. – Trial Attorney for Co-Defendant Timothy White;

Treadwell, Marc T. – Chief Judge, United States District Court, Middle District of Georgia;

White, Timothy – Co-Defendant;

Williams, Catherine M. – Trial Attorney for Defendant-Appellant Leslie Meyers;

Williams, Gerald B. – Trial Attorney for Co-Defendant Demetrice King;

Wolfe, Larry David – Trial Attorney for Co-Defendant Orlando Johnson;

Victims: The government has not identified any victims.[1]

No publicly traded company or corporation has an interest in the outcome of this appeal.

I HEREBY CERTIFY that the above constitutes a complete list of interested persons to this appeal as described in the Rules of the United States Court of Appeals for the Eleventh Circuit Rev. (12/01/20), 11th Cir. R. 28-1(b) and 11th Cir. R. 26.1-1.

/s/ Bridget K. McNeil
BRIDGET KENNEDY McNEIL
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[1] The United States notes that there were canine victims in this dog fighting case, but identifying them here is not necessary to achieve the purpose of the Certificate of Interested Persons.

STATEMENT REGARDING ORAL ARGUMENT

The government believes the issues and arguments are adequately addressed in the briefs, and therefore, does not request oral argument.

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INTRODUCTION

Leslie Meyers was indicted on thirty-one felony counts for violations of the Animal Welfare Act. The first four counts stemmed from a January 2017 dog fight that Meyers helped organize and in which he pitted one of his dogs in a fight. He cruelly killed that dog after the fight ended. Meyers, a convicted felon, also brought a firearm to the dog fight, resulting in an additional charge for the unlawful possession of a firearm by a convicted felon. The remaining Animal Welfare Act counts cover the possession and training, for the purposes of an animal fighting venture, of twenty-seven dogs recovered from the home of his co-defendant, Kizzy Solomon, in rural Georgia.

Meyers entered a plea agreement with the United States and pleaded guilty to the first four Animal Welfare Act counts and the firearm offense. The government agreed to recommend a sentence of no more than 72 months. The Probation Office calculated the advisory sentencing range, under the United States Sentencing Guidelines ("Guidelines"), as 63 to 78 months. After evaluating the offenses under the factors set forth in 18 U.S.C. § 3553(a), however, the district court determined that an upward variance from the Guidelines was warranted, given Meyers's cruel killing

of the dog, the danger posed by bringing a firearm to a violent dog fight, and his extensive criminal history, which included dozens of counts of animal cruelty for similar dog fighting operations. Thus, the district court imposed a sentence of 60 months for the Animal Welfare Act counts and a consecutive sentence of 63 months for the firearm offense, for a total of 123 months.

In this appeal, Meyers argues that the sentence imposed by the district court is substantively unreasonable and that the district court abused her discretion in considering the facts surrounding his killing of his dog after the January 2017 fight, which he now disputes. But the record shows that he did not timely raise that objection with specificity and clarity. The district court thus did not abuse her discretion in considering these facts, or in determining that these facts, and the other evidence in the case, warranted a substantial variance from the Guidelines.

STATEMENT OF JURISDICTION

This is an appeal from a final judgment entered by the District Court for the Middle District of Georgia in a criminal case. That court had subject matter jurisdiction under 18 U.S.C. § 3231. This Court has jurisdiction over

the final decision of the district court pursuant to 28 U.S.C. § 1291 and authority to review the sentence pursuant to 18 U.S.C. § 3742(a).

The district court sentenced Meyers on September 24, 2021. Doc. 534. Judgment was entered on October 5, 2021. Doc. 547.[2] On October 27, 2021, Meyers moved for leave to appeal out of time, due to an administrative oversight within the Federal Defender's Office. Doc. 556. On November 3, 2021, the district court granted the motion and Meyers noticed his appeal the same day. Docs. 562, 563. Thus, this appeal is timely under Federal Rule of Appellate Procedure 4(b)(5).

STATEMENT OF THE ISSUES

1. Did Meyers timely object, with specificity and clarity, to the statements in the presentence report regarding the killing of his dog so as to require an evidentiary proceeding before the district court could consider these facts as part of his sentence?

2. Was the district court's sentence substantively reasonable?

[2] References to the district record are indicated by "Doc." followed by the relevant docket number and internal page number. References to the page numbers in the transcripts are to the page number that appears in the header generated by the district court's electronic filing system.

STATEMENT OF THE CASE

A. The Federal Animal Fighting Prohibitions

In 1976, Congress sought to address the "grisly business" of dog fighting, in which dogs are forced to viciously attack and kill each other as sadistic entertainment. H.R. Rep. No. 94-801, at 9 (1976). Congress thus amended the Animal Welfare Act to make it unlawful to "knowingly sponsor or exhibit an animal in an animal fighting venture." 7 U.S.C. § 2156(a)(1). Congress also prohibited activities that support organized animal fighting operations, making it unlawful to "knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture." *Id*. § 2156(b).

An "animal fighting venture" involves a fight "between at least 2 animals for purposes of sport, wagering, or entertainment." *Id*. § 2156(f)(1). Congress strengthened these prohibitions several times, most recently increasing the maximum penalty to five years' imprisonment in 2008. Pub. L. No. 110-234, § 14207, 122 Stat. 923, 1461–62 (2008); *see also* 18 U.S.C. § 49.

Many dog fighting ventures are organized criminal activity. They can involve high-stakes gambling and large, coordinated networks of

participants who find and breed dogs of coveted fighting bloodlines, train dogs to develop aggression and fighting ability, and arrange matches.[3]

B. Facts of the Offenses

As set forth in the presentence report, the investigation of the dog fighting conspiracy, and associated charges, began with a tip to an agent of the United States Department of Agriculture ("USDA") from a confidential source that a dog fight was scheduled to occur on January 21, 2017. Doc. 522 at ¶ 14. The agent equipped the source with a GPS tracking device to determine the location of the dog fight and a video camera to film the fight. *Id.* After obtaining the location, the county sheriff's office obtained a search warrant for the address in Leslie, Georgia. *Id.* Local law enforcement and the USDA agents executed the warrant during the fight and they found individuals, pit bull-type dogs, and a temporary dog fighting pit. *Id.* ¶ 15. There were two pit bull-type dogs engaged in a dog fight and the two dogs continued to fight as individuals fled the scene, including Meyers. *Id.*

[3] For a detailed description of the underground dog fighting "industry" generally— including its scale and structure; the dogs, paraphernalia, and training methods used; and the animal abuse involved—see the memorandum decision filed in *United States v. Berry*, No. 3:09-cr-30101, 2010 WL 1882057 (S.D. Ill. May 11, 2010), *aff'd sub nom. United States v. Courtland*, 642 F.3d 545 (7th Cir. 2011).

Three individuals did not attempt to flee, one was detained after a brief chase, and two others were arrested in the area a few hours later. *Id*.

In and around the dog fighting pit, officers found carpeted flooring stained with blood, as well as a large amount of currency and several cell phones. *Id*.¶ 16. Officers also found one dead tan pit bull-type dog. *Id*. After a search of the vehicles surrounding the fighting pit, officers also found three handguns, two knives, wallets with identification, dog fighting papers, equipment utilized in dog fights, and veterinary drugs and equipment. *Id*. ¶ 17. Officers also found a badly injured pit bull-type dog in a crate with recent severe injuries to his face. Officers transported the dog to the nearest emergency veterinary clinic, but the dog was euthanized for humane reasons due to the extent of his injuries and his emaciated condition. *Id*.

After review of the video taken by the confidential source, officers determined that there had been an earlier dog fight involving the injured dog found in the car, as well as the tan dog found dead on site. *Id.* ¶ 19. The video showed the fight lasting approximately 45 minutes, with a referee and two handlers in the ring, one of which was Meyers. *Id.* Multiple cooperating defendants later identified Meyers as handling the tan dog

during this fight. *Id.* ¶ 31. One cooperating defendant in particular, Timothy White, stated that while Meyers's dog won the fight, he became upset when his dog refused to continue to attack the losing dog, a custom known as a "courtesy scratch." *Id.* ¶ 32. White stated that Meyers tried to hang the dog by his belt from the open tailgate of one of the vehicles, but the tailgate would not bear the weight of the dog. *Id.*[4] Meyers then swung the dog by his neck in the air and hung it from a tree branch until it suffocated. *Id.*

One of the vehicles searched at the scene was registered to Meyers. *Id.* ¶ 33. Inside the car, officers found Meyers's identification, a .45 caliber pistol, dog fighting equipment, cell phones, and a key to a room in a nearby motel. *Id.* One of the cell phones seized from Meyers's vehicle was subscribed to by him and contained numerous materials relating to dog fighting, including text messages between Meyers and other co-defendants regarding the sale of two pit bull-type dogs for dog fighting purposes. *Id.* ¶ 31.

[4] As discussed below, at the sentencing hearing, Meyers belatedly denied the fact that he hung his dog.

The seized cell phones included additional text messages pertaining to dog fighting, including one indicating that if Meyers won the dog fight on January 21, 2017, he would use his winnings to purchase an additional fighting dog. *Id.* ¶ 34. Based on this, agents suspected Meyers of breeding and selling dogs for fighting purposes.

On July 26, 2018, a parcel carrier made a report to animal control officers in Decatur County, Georgia, about a property with many dogs illegally tethered in the yard. *Id.* ¶ 35. The property was owned by Kizzy Solomon, who had been in a romantic relationship with Meyers. *Id.* Animal control officers came to the property that day but could not speak with anyone, although they did observe several pit bull-type dogs with heavy collars and weighted chains and saw that some of the dogs had scars consistent with dog fighting. *Id.*

Animal control officers returned to the property the next day and met with Meyers. *Id.* ¶ 36. They explained the proper tethering requirements and asked to see the animals on the property. *Id.* Meyers refused, stating that although he lived there with Solomon, the property belonged to Solomon and she would not like individuals on her property when she was not home. *Id.* The officers returned on July 31, 2018 when Solomon was

home. *Id.*¶ 37. They discussed the tethering and vaccination requirements with Solomon and Meyers. *Id*. Officers observed 25-30 pit bull-type dogs as well as items commonly used for dog fighting purposes, like treadmills specially outfitted for dogs. *Id*. During the conversation, Solomon stated that all dogs on the property belonged to her. *Id.* However, Solomon refused to allow the officers to inspect the dogs more closely or to look around. *Id*.

Based on these facts, as well as a social media post from Meyers showing that he was still active in breeding, transporting, and selling pit bull-type dogs, agents obtained a search warrant for Solomon's property. *Id*. ¶ 38. The warrant was executed on September 12, 2018. *Id*. Officers found 27 pit bull-type dogs, including three puppies, chained in conditions consistent with being maintained for dog fighting purposes. *Id*. Specifically, the dogs were tethered on heavy chains where they could see and agitate but could not reach one another. *Id.* The dogs had inadequate shelter and many were emaciated and bore scars consistent with dog fighting. *Id*. Inside the residence, officers found three treadmills set up to condition dogs. *Id*. ¶ 39. One of treadmills was boxed in with wooden slats that contained written fight records of several dogs, including notations about

whether they died as a result of the fights. *Id*. Officers found many items associated with dog-fight training practices, including weighted dog harnesses, collars and leashes, several dog crates, and multiple items of veterinary equipment, medication, and supplements. *Id*. Officers also found a logbook belonging to Meyers. Later investigation revealed that a significant quantity of electronic money transfer orders for these dog transport orders were made out to Solomon as the recipient. *Id.*

C. Indictment, Superseding Indictment, and Disposition of Co-Defendants

In December 2018, a grand jury for the Middle District of Georgia returned a thirty-three count indictment against Solomon, Meyers, and eleven other co-defendants. Doc. 1. Count One, against all twelve men that attended or participated in the January 21, 2017 dogfight, was for conspiracy to violate the Animal Welfare Act, in violation of 18 U.S.C. § 371 and 7 U.S.C. § 2156. Doc. 1 at 1-5. Counts Two and Three charged Meyers and Solomon for transporting and delivering a dog to the January 21, 2017 fight, in violation of 7 U.S.C. § 2156. *Id.* at 5. Count Four charged Meyers with sponsoring and exhibiting a dog in that fight, in violation of 7 U.S.C. § 2156. *Id.* at 5-6. Count Five charged Meyers with possession of a firearm as

a convicted felon, in violation of 18 U.S.C §§ 922(g)(1) and 924 (a)(2). Count Six charged another co-defendant – Timothy White - with sponsoring and exhibiting a dog in the same fight. Doc. 1 at 6-7. Counts Seven through Thirty-Three charged Solomon and Meyers with possession, transporting, and training a dog in an animal fighting venture, with each count representing an individual dog recovered from Solomon's property. *Id.*

After Timothy White pleaded guilty to Count 1, the government filed a superseding indictment which added overt acts to the alleged conspiracy, included the subsequent possession by three of the men, including Meyers, of pit bull-type dogs for the purposes of having the dogs participate in an animal fighting venture. *See* Doc. 522 ¶ 6; Doc. 218 ¶ 13(s), (t), (u). The superseding indictment also dropped Count Six against White, dropped Solomon from Counts Two and Three, and added Counts Thirty-Three to Thirty-Nine against an existing co-defendant for possessing and training of a dog for animal fighting purposes. *See* Doc. 218. Over the next seventeen months, all of Meyers's co-defendants, except Solomon, entered guilty pleas. Doc. 522 ¶ 7. Solomon tried her case to a jury and was convicted in June 2021. *Id.*

On August 4, 2020, pursuant to a plea agreement with the United States, Meyers pleaded guilty to Counts One through Five, and the court dismissed the remaining counts on the government's motion. Doc. 330; Doc. 534. In the plea agreement, the government agreed to recommend that the court sentence Meyers to a prison term of no more than 72 months. Doc. 533 at 7.

D. Presentence Report

The Probation Office filed the initial presentence investigation report in June 2021, setting forth its calculation of Meyers's advisory sentencing range. Doc. 413. Under the Guidelines, violations of the Animal Welfare Act involving animal fighting ventures fall under Section 2E3.1 and have a base offense level of 16. U.S.S.G. §2E3.1(a)(1). Meyers's firearms offense (Count Five) falls under Section 2K2.1(a)(4) and has a base offense level of 20. Because Meyers possessed the firearm in connection with the Animal Welfare Offenses, an upward adjustment of four levels applied, see U.S.S.G. § 2K2.1(b)(6)(B), resulting in an adjusted offense level of 24. Doc. 522 at ¶ 63.

Under the Guidelines, when multiple offenses are grouped, they are to be sentenced together under the offense guideline that results in the

highest offense level. U.S.S.G. § 3D1.3(a). The Probation Office grouped Counts One through Four together because they involved the same victim — society — and were connected by a common criminal objective. Doc. 522 at ¶¶ 47-50; *see also* U.S.S.G. § 3D1.2. In addition, because the Animal Welfare Act offenses embodied conduct that was treated as a specific offense characteristic for the firearm offense, the Probation Office grouped all five counts together. U.S.S.G. § 3D1.3(b)(2)(C). Accordingly, the Probation Office calculated the offense level as 24, the highest offense level for the group. Doc. 522 at ¶ 51.

The Probation Office then recommended a two-level downward adjustment, under U.S.S.G. §3E1.1(a), for Meyers's acceptance of responsibility and a one-level downward adjustment for a timely acceptance of responsibility. *Id.* ¶ 66-67. This resulted in a total offense level of 21. *Id.* ¶ 68.

The Probation Office calculated Meyers's criminal history as Category VI (the highest level). *Id.* ¶ 79. The advisory sentencing range at offense level 21 and criminal history VI is 77 to 96 months. *Id.* ¶ 94.

E. Parties' Positions on Sentencing

In an effort to ensure the safety of the public by minimizing the backlog of cases scheduled for trial once the district court's COVID-19 Jury Trial Moratorium ended, the government offered a two-level downward departure to defendants willing to enter into plea agreements during the trial moratorium. *Id.* ¶ 114. Accordingly, in February, 2021, the government moved for this departure, which would reduce the advisory Guidelines range to 63 to 78 months, if granted. Doc. 392.

After issuance of the revised presentence investigation report, Meyers moved to continue the sentencing hearing and sought an extension of time to file objections to the presentence report. Doc. 434. The district court granted this motion in July 2021. Doc. 466. Meyers filed objections to the presentence report on August 2, 2021. Doc. 489. Meyers raised two objections, to two paragraphs concerning his criminal history. *Id.* He did not object to any of the facts reported in the presentence report with respect to his offense conduct, including the facts regarding his killing of his dog. *Id.*

On August 9, 2021, the United States filed a sentencing memorandum styled as a motion for upward departure. But the government did not seek

a departure from the total Guidelines range calculated by the Probation Office. Rather, the United States simply asked the district court to impose an upward departure on the Animal Welfare Act offenses which, if sentenced by themselves under U.S.S.G. § 2E3.1, would have resulted in a Guidelines range of 43 to 57 months. Accordingly, based on the extraordinary cruelty, the government moved the district court to impose the statutory maximum (of 60 months) for the Animal Welfare Act, to run concurrent with the sentence for the firearm offense. Doc. 494 at 15-17. In making this request, the United States emphasized, among other things, Meyers's conduct in killing his dog after the January 2017 dog fight. *Id.* at 1, 9-10, 15, 16-17.

A month later, Meyers filed his sentencing memorandum. Doc. 514. This memorandum consisted solely of eight character letters and ten photographs. *Id.* Meyers did not address the government's request to sentence him to the statutory maximum on the Animal Welfare Act offenses based on the cruel killing of his dog, nor did he dispute any of the facts supporting the government's motion. *Id.*

F. Sentencing Hearing and Sentence

The district court began the September 24, 2021 sentencing hearing by confirming with Meyers that he had reviewed the presentence report and discussed it with his attorney. Doc. 561 at 2-3. The district court asked Meyers whether his attorney had failed to file any objections that he requested. *Id.* at 3. Meyers confirmed that he had no other objections. The district court then proceeded to address Meyers's two written objections to the criminal history section of the presentence investigation report. *Id*. The district court overruled these objections. *Id.* at 3-5. The court then invited the parties to state any further objections. *Id.* at 5. The district court then accepted the plea agreement and stated that, based on its overruling of the two objections, "the presentence report is adopted as written." *Id.* at 6.

The defense then called two nephews to testify on Meyers's behalf. *Id*. at 7-10. Meyers's attorney spoke on his behalf, arguing that the characteristics of the defendant warranted a lesser sentence. *Id*. at 10-14. Finally, Meyers addressed the district court (not under oath), seeking to explain his criminal history. *Id*. at 14-21.

After this testimony and argument, the district court began to impose the sentence. First, it granted the government's motion for a downward

departure based on Meyers's willingness to enter a guilty plea during the global pandemic while the Covid-19 jury trial moratorium was in effect. *Id*. at 21. The district court thus calculated the advisory Guidelines range at 63 to 78 months. *Id.* at 21-22. The district court then explained its difficulty in reconciling the testimony in favor of Meyers's character with "the torture of animals," continuing:

> And that's what dog fighting is. Whether you're doing it for some sick pleasure, whether you're doing it for money, these animals are tortured mentally and physically. The 27 dogs that were taken from Kizzy Solomon's property . . . except for three puppies, I believe, showed signs of having been injured in dog fights, some of them horribly injured. Some of those animals had to be euthanized because of what they suffered at your hands, at your direction, under your control.

Id. at 22.

The district court stated that its consideration of the nature and circumstances of the offense also included Meyers killing his dog after winning the 2017 dog fight because the dog refused "to go over and continue to maul an incapacitated and/or dead animal." *Id*. at 23. "The offense is horrific as it is, but that, that makes it even worse." *Id*. At this point, the district court observed Meyers seeking to interject, which she allowed him to do. *Id.* Meyers denied that he hung the dog and specifically

claimed that Timothy White's statements were a lie. *Id*. at 23-24. Meyers claimed to have left the dog with the fight organizers and disavowed further knowledge of what happened to the dog. *Id*. at 24.

After this interjection, the district court stated that "the evidence in the case" is that Meyers did kill the dog. *Id.* at 25. The district court then continued pronouncing the sentence, noting that, despite knowing he could not have a firearm as a convicted felon and that he was attending a criminal enterprise, Meyers took a pistol to the 2017 dog fight "which increased the danger to everyone there and also to law enforcement when they came." *Id*. at 25. The district court also assessed Meyers's criminal history, noting that he was in the highest criminal history category available "because time and time and time again, when given the opportunity . . . you choose to do something that is illegal." *Id*. at 26. The district court also noted that at least three of the prior convictions are for animal cruelty and neglect. *Id*.

In consideration of all of this, the district court opined that "the advisory guideline range in this case is inadequate." *Id*. The district court noted the nature and circumstances of the offense, including the manner and death of Meyers's dog at the 2017 fight, making a "specific finding"

that the evidence presented in the case shows that Meyers did kill the dog. *Id.* at 26-27. The district court further found that Meyers's criminal history of animal-related convictions is "indicative of a pattern of cruelty." *Id*. at 27. Thus, the district court found that an upward variance was appropriate, sentencing Meyers to 60 months for Counts 1 through 4 and a consecutive 63 months for Court 5, for a total imprisonment sentence of 123 months. [5] *Id*. Counsel for Meyers objected that the sentence was excessive, which was noted by the district court. *Id.* at 28-29.

[5] Under the Guidelines, when counts are grouped, the court is to impose the same total punishment (determined for the group) on each count and direct that the terms of imprisonment be served concurrently, unless the total punishment exceeds the statutory maximum on any one count, in which case the court is to direct the terms to run consecutively to the extent necessary to achieve the total punishment. *See* U.S.S.G. §§ 5G1.2(a)-(d). Here, the district court imposed a sentence of 60 months (the statutory maximum) for the Animal Welfare Act offenses, and a sentence of 63 months (within the statutory maximum of 120 months) for the firearms offense. The 63-month sentence for Count 5 is the minimum of the Guidelines range and not a variance by itself. The court varied from U.S.S.G. § 5G1.2(c) by directing the counts to be imposed consecutively—resulting in a total imprisonment of 123 months, as opposed to the upper end of the Guidelines range of 78 months.

SUMMARY OF THE ARGUMENT

Meyers does not carry his heavy burden to show that the district court abused its discretion in determining that a sentence of 123 months is warranted here. First, this Court should reject Meyers's argument that he made a timely objection to the facts contained in the presentence report concerning his cruel killing of his dog after the January 2017 fight. Meyers did not file written objections to this fact, despite the government's heavy reliance upon it in its sentencing memorandum. At the sentencing hearing, the district court specifically inquired as to whether Meyers had any objections to the presentence report, other than his written objections concerning offenses included in his criminal history. Meyers confirmed he had no further objections. The district court later gave all parties the opportunity to raise further objections. Satisfied that it had resolved all objections, the district court then stated that it was adopting the presentence report as written.

Only once the district court began imposing the sentence did Meyers seek to interrupt and deny killing his dog. But neither he nor his counsel asked for an evidentiary hearing or the opportunity to present testimony on the issue. Nor did he or his counsel provide "good cause" for making a

new and untimely objection. Given the last-minute denial and the absence of any formal objection, the district court did not abuse its discretion in treating the facts in the presentence report as undisputed.

In determining an upward variance, the district court reasonably considered the totality of the circumstances and the factors set forth in 18 U.S.C. § 3553(a). The district court gave great weight to the significant aggravating factors, including possession of the firearm at an already-violent dog fight and the cruel manner of death of Meyers's dog after the fight. The district court also gave great weight to Meyers's criminal history, finding that the multiple counts of animal cruelty for similar dogfighting operations were indicative of a pattern of cruelty. Although the district court imposed a sentence significantly above the total Guidelines range, the court imposed the statutory maximum for the Animal Welfare Act counts, to run concurrent with each other, and imposed a consecutive sentence for the firearm offense, which was the low end of the Guidelines range for that count. The total sentence was within the range of sentences that reasonably could be imposed in this case. Meyers has not carried his heavy burden to show that this sentence is substantively unreasonable and this Court should affirm the district court's sentence.

STANDARD OF REVIEW

This Court reviews sentencing decisions only for abuse of discretion, using a two-step process." *United States v. Alfaro–Moncada*, 607 F.3d 720, 734 (11th Cir. 2010). The Court first must "ensure that the district court committed no significant procedural error . . . [and] then consider the substantive reasonableness of the sentence imposed." *United States v. Pugh,* 515 F.3d 1179, 1190 (11th Cir.2008) (quotation marks omitted). Procedural errors include: "failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Id.* (quotation marks omitted). The Court then reviews the substantive reasonableness of the sentence, looking to the factors set forth in 18 U.S.C. § 3553(a) as a guide. *United States v. Winingear*, 422 F.3d 1241, 1246 (11th Cir. 2005).

ARGUMENT AND CITATIONS OF AUTHORITY

I. THE DISTRICT COURT DID NOT ERR IN CONSIDERING MEYERS'S KILLING OF HIS DOG

Meyers asserts that the district court erred in considering the cruelty involved in killing his dog after the January 2017 dog fight. However, a

sentencing court may rely on undisputed statements in the presentence report. Fed. R. Crim. P. 32(i)(3)(A); *United States v. Wilson*, 884 F.2d 1355, 1356 (11th Cir. 1989). Where a defendant lodges a timely objection to the factual basis of his sentence, the government has the burden of establishing the disputed fact. *United States v. Sepulveda*, 115 F.3d 882, 890 (11th Cir. 1997). However, challenges to the facts contained in the presentence report must be asserted with specificity and clarity. *See United States v. Aleman*, 832 F.2d 142, 145 (11th Cir. 1987). Otherwise, the objection is waived. *See United States v. Shelton*, 400 F.3d 1325, 1330 (11th Cir. 2005).

There is no dispute that Meyers failed to timely object to the portion of the presentence report describing his killing of his dog. As Meyers argues, the district court certainly had discretion, for "good cause" shown, to allow a new objection. Appellant's Initial Brief ("App. Br.") at 18; *see* Fed. R. Crim. P. 32(i)(1)(D). But when asked directly at the start of the sentencing hearing, neither he nor his counsel indicated that they wished to raise any additional objections, beyond the two written objections filed in August 2021. Doc. 561 at 2-6. Nor did he or his counsel object when the district court stated that it was adopting the presentence report as written. *Id.* at 6. Even if Meyers's belated denial could be construed as an objection

under Rule 32, neither he nor his counsel proffered good cause for asserting a new objection. Nor did he or his counsel ask for an evidentiary hearing or for the opportunity to present testimony contrary to the facts stated in the presentence report. In this context, the district court did not abuse its discretion in treating the relevant facts as undisputed.

Under Rule 32(f)(1) of the Federal Rules of Criminal Procedure, a party must submit written objections to the content of, or omissions from, the presentence report, within 14 days after receiving the report. Fed. R. Crim. P. 32(f)(1). After receiving any written objections from the parties, the probation officer "may meet with the parties to discuss the objections," "investigate further," and "revise the presentence report as appropriate." Fed. R. Crim. P. 32(f)(3). These procedures are integral to "the manifest purpose" of the report which is to ensure that the district court can meaningfully exercise its sentencing authority based on a complete and accurate account of all relevant information. *United States v. Aguilar-Ibarra*, 740 F.3d 587, 591 (11th Cir. 2014).

Here, the presentence report contained three different paragraphs addressing the facts relevant to Meyers's treatment of his dog, first noting that the dog fought by Meyers at the January 2017 fight lost and that

Meyers "killed this dog by hanging it until dead." Doc. 522 at ¶ 27. The report also states that "multiple cooperating defendants would testify that each recognized Meyers as handling one of the dogs in the fight, and that Meyers subsequently hung his dog to death after the dog fight." *Id.* ¶ 31. The report included further statements from co-defendant Timothy White specifying how Meyers hung the dog. *Id.* ¶ 32. Nonetheless, the only objections that Meyers filed to the presentence report concerned two paragraphs relevant to his criminal history. Doc. 489.

Meyers's failure to object to these facts is all the more noteworthy because the government's August 9, 2021 motion for upward departure and sentencing memorandum focused heavily on Meyers's cruel killing of his dog as rationale for the appropriateness of a maximum sentence on the Animal Welfare Act counts. Doc. 494. Although certainly not the only rationale supporting the government's proposed sentence, the fact was a central element of the motion. *See id.* at 1, 9-10, 15, 16-17. Yet, a month later, in Meyers's own sentencing memorandum, the fact of killing the dog is not addressed, let alone disputed. *See* Doc. 514. Nor did Meyers file further objections to the presentence report prior to the sentencing hearing.

Rule 32(f)(1) "clearly provides that all objections" to the presentence report "must be submitted in writing well in advance of sentencing." *Aguilar-Ibarra*, 740 F.3d at 591. Meyers thus waived his right to object by failing to file a written objection to the facts about the killing of his dog in advance of the sentencing hearing.

The record also shows that Meyers did not raise an objection at the proper point in the sentencing hearing so as to put the district court and the government on notice that he was raising a specific objection. At the start of the hearing, the district court specifically asked Meyers if he had the opportunity to review the presentence report with his attorney. Doc. 561 at 2. In response to the district court's questions, Meyers specifically confirmed that he had reviewed the objections filed on his behalf and that he did not have any objections that his attorney failed to file. *Id.* at 3. As the record shows, the district court proceeded to resolve all stated objections to the presentence report and then stated that she was adopting the presentence report as written. *Id.* at 3-6. Neither Meyers nor his attorney raised an objection at this time. *Id.* at 6. Thus, the record is clear that Meyers failed to object to the facts related to the killing of the dog as contained in the presentence report "despite several opportunities to do

so" and he should be deemed to have waived his objection to the facts. *United States v. Bennett*, 472 F.3d 825, 833-4 (11th Cir. 2006).

After adopting the presentence report, the district court resolved the pending motions, then heard from defense counsel, the character witnesses presented by the defense, and from Meyers. During his lengthy allocution, Meyers did not address the facts about killing the dog. Doc. 561 at 14-21. Only after the district court began to impose her sentence and mentioned Meyers's cruel killing of the dog, as part of the nature and circumstances of the offense, did he seek to interrupt the court to address the events of the dog's death. Doc. 561 at 23-25.

Meyers now argues that this colloquy should be interpreted as the district court allowing Meyers to make a new factual objection, pursuant to Rule 32(i)(1)(D). App. Br. at 18. However, the record does not support this argument. Instead, the district court merely recognized that Meyers was seeking to interject and allowed him to speak. Doc. 561 at 23. There is no request from Meyers to make a new objection to any facts, no discussion of whether there is "good cause" to justify such a delayed objection, as required by the rules, and no recognition from the district court that she

was being asked to allow such a late objection, let alone that she was granting one.[6] *Id.* at 23-25.

The statement from Meyers that followed thus did not serve to adequately object to the relevant facts in the presentence report (which would have shifted the burden of proof to the government and required the district court to make a specific factual ruling on the alleged dispute). As this Court recognizes, objections are required to be made with specificity and clarity in order to alert the government and the district court of the alleged mistake and provide the government with "an opportunity to address or correct the alleged error." *United States v. Ramirez-Flores*, 743 F.3d 816, 824 (11th Cir. 2014); *see also Aleman*, 832 F.2d at 145 (vague objections would "oblige the district court to guess whether a challenge is being mounted as well as what [the] defendant wishes to contest").

[6] At the end of his denial statement, Meyers said, "I was supposed to address that before we got to this part." Doc. 561 at 25. Meyers did not argue in his opening brief that this shows an intent to make an objection earlier in the hearing. To the extent that he makes such an argument on reply, that statement alone was insufficient to alert the district court that Meyers or his counsel were requesting permission to make an untimely objection under Rule 32 after their repeated failure to do so earlier in the hearing.

Furthermore, none of the cases cited by Meyers support the notion that a defendant's belated oral interjections during the imposition of a sentence meet the obligation to properly object to a fact in the presentence report, so as to trigger the requirements of Rule 32(i)(3)(B). In *United States v. Lawrence*, the defendant sent a "written response" to the presentence report objecting to the relevant fact (there, the quantity of drugs attributable to the defendant) and maintained that objection at the sentencing hearing. 47 F.3d 1559, 1563-64 (11th Cir. 1995). Furthermore, the Court noted in *Lawrence* that the requirements to resolve a disputed fact apply only when a defendant "*properly* objects" to factual recitals in the presentence report. *Id.* at 1567 (emphasis added). In *Wilson*, the defendant objected to the presentence report and defense counsel presented argument on the objection at the sentencing hearing. 884 F.2d at 1356.

The cases relied on by Meyers stand in marked contrast to this one, where Meyers: (1) failed to file written objections to the now-disputed fact; (2) failed to respond to the heavy reliance on that fact in the government's sentencing motion; (3) specifically confirmed at the sentencing hearing that he did not have any further objections to the presentence report that his attorney failed to file; and (4) did not raise the issue at the time the district

court resolved the other objections and stated that she was adopting the presentence report.

Had Meyers timely contested the facts raised in the presentence report, or requested leave, for good cause, to make a belated objection, the government could have called one of the "multiple cooperating co-defendants," Doc. 522 at ¶ 31, as a witness or requested a continuance of the sentencing hearing so that the district court could receive evidence in order to resolve any disputed fact. Allowing Meyers's belated explanation, interrupting the district court in the middle of her sentencing statement, to serve as an objection to the presentence report would defeat the reasons behind requiring objections to be made with specificity and clarity.

Finally, there is no merit to Meyers's argument that the district court "specifically resolved" an objection—by making a finding of fact on a disputed evidentiary issue—as opposed to holding any such objection to be untimely. App. Br. at 18. It is true that the district court stated that she was making a "finding" that Meyers had killed his dog as "described in the record" (i.e., the presentence report). Doc. 561 at 27. But the district court was free to accept those facts absent a valid objection. *Aguilar-Ibarra*, 740 F.3d at 592. Here, Meyers and his counsel never made a formal objection,

much less proffer good cause, and the district court had already stated, earlier in the hearing, that she was adopting the facts in the presentence report as written. In this context, the court's later statement is best construed as a statement that she would continue to rely on the facts set forth in the presentence report, which was well within her discretion.

II. THE DISTRICT COURT'S SENTENCE WAS SUBSTANTIVELY REASONABLE

Meyers also asserts that the district court's sentence of 123 months — 60 months for Counts One to Four followed by 63 months for Count Five — was substantively unreasonable. The government agrees that Meyers preserved this objection and did not waive the right to appeal an above-Guidelines sentence in his plea agreement. App. Br. at 20-21. Thus, the issue is whether Meyers has met his burden to show that the sentence is "unreasonable in light of the facts of this case and the § 3553(a) factors." *United States v. Isaac*, 987 F.3d 980, 994 (11th Cir. 2021). As shown below, he has not.

In determining a sentence, a district court must evaluate all of the Section 3553(a) factors, but it can attach great weight to one factor over others, including the nature and circumstances of the offense. *United States*

v. Delva, 922 F.3d 1228, 1256 (11th Cir. 2019). "The weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court." *United States v. Johnson*, 803 F.3d 610, 618 (11th Cir. 2015). With regard to variances, "a district court has considerable discretion in deciding whether the § 3553(a) factors justify a variance and the extent of one that is appropriate." *United States v. Holt*, 777 F.3d 1234, 1269 (11th Cir. 2015) (internal quotation omitted).

The defendant's "burden of establishing that his sentence is substantively unreasonable is heavy," and "the district court has wide discretion to decide whether the § 3553(a) factors justify a variance." *United States v. Rodriguez*, 628 F.3d 1258, 1264 (11th Cir. 2010). "[I]t is only the rare sentence that will be substantively unreasonable." *United States v. Dixon*, 901 F.3d 1322, 1351 (11th Cir. 2018) (internal quotation omitted). In any given case, there is a range of reasonable sentences from which the district court may choose. *United States v. Stanley*, 739 F.3d 633, 656 (11th Cir. 2014). A district court's imposition of a sentence well below the statutory maximum penalty is an indicator of reasonableness. *Id.*; *Delva*, 922 F.3d at 1257.

The sentencing judge "has greater familiarity with . . . the individual case and the individual defendant before him than the Commission or the appeals court," and "is therefore in a superior position to find facts and judge their import under § 3553(a) in each particular case." *Kimbrough v. United States*, 552 U.S. 85, 109 (2007) (internal quotations omitted). As such, this Court's "review for reasonableness is deferential." *United States v. Valnor*, 451 F.3d 744, 750 (11th Cir. 2006). The fact that an "appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court." *Gall v. United States*, 552 U.S. 38, 51 (2007). "A district court's sentence need not be the most appropriate one, it need only be a reasonable one." *United States v. Whyte*, 928 F.3d 1317, 1338 (11th Cir. 2019), *cert. denied*, 140 S. Ct. 875 (2020) (internal quotation omitted). "Even as to a substantial variance, [this Court] will not reverse a sentence unless [it is] left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." *Johnson*, 803 F.3d at 618-19; *accord Delva*, 922 F.3d at 1256-57.

Here, the upward variance imposed by the district court was reasonable in light of the factors set forth in 18 U.S.C. § 3553(a). Meyers not only attempted to sell two pit bull-type dogs for the purposes of dog fighting, but fought a dog in an illegal dog fight, brought a prohibited firearm to that dog fight, and cruelly killed his dog after the fight. He did so against a backdrop of the highest criminal history category, which included prior convictions indicative of a pattern of animal cruelty. And he maintained a significant dog fighting venture with more than two dozen dogs living in substandard conditions, many of which were emaciated and bore scarring consistent with dog fighting. Meyers was also breeding puppies to continue the venture. The district court explained that it weighed all of these factors when determining that the advisory Guidelines sentence was insufficient and that this case warranted a higher total prison sentence of 123 months.

Meyers argues that the district court committed four errors which together indicate an abuse of discretion. App. Br. at 24-30. However, one of those alleged errors was the district court's consideration of Meyers killing his dog after the 2017 dog fight. As discussed above, the district court correctly relied on this fact and this cannot be the grounds for any abuse of

discretion. Furthermore, while Meyers characterizes this fact as "the most important factor" in the court's determination, the district court considered numerous factors that contributed to her sentence. Doc. 561 at 22-23, 25-27. Thus, the government limits its response below to Meyers's other three arguments.

A. The Court Reasonably Considered the Cruelty Involved in the Animal Welfare Act Offenses Separate from the Firearms Offense

Meyers argues that district court abused its discretion in weighing the cruelty inherent in dog fighting when the Guidelines already account for this factor. App. Br. at 25-26. Meyers recognizes that the felony firearm conviction (Count Five) drove his offense level for the purpose of calculating the Guidelines range, but seems to argue that because that base offense level was higher than the offense level for the Animal Welfare Act claims, the district court was not permitted to consider the cruelty involved in those offenses. There are several problems with this argument.

First, Meyers's argument assumes that the district court was bound by the Guidelines grouping recommendations and that it was thus unreasonable for the district court to separately look at the facts underlying the Animal Welfare Act counts or to impose a separate sentence for those

offenses. But the Guidelines' recommended grouping of counts does not preclude a district court from considering the entire facts of the case when assessing the factors set forth in 18 U.S.C. § 3553(a). *See, e.g.*, 18 U.S.C. § 3661 (stating that no limitation shall be placed on the information a district court may receive and consider for the purpose of imposing an appropriate sentence).

Second, Meyers argues that the base offense level for animal fighting ventures already sufficiently accounts for the cruelty that is characteristic of these crimes, especially since this was part of the reason for the Sentencing Commission's decision in 2016 to increase in the base offense level. App. Br. at 25. However, as set forth in the government's sentencing memorandum, even after the increase in the base offense level, numerous courts have imposed sentences significantly above the Guidelines range and those sentences have been upheld on appeal.[7] Doc. 494 at 6-7 (citing

[7] Furthermore, although the district court here did not impose an upward departure, Meyers's argument is undercut by the Guidelines themselves, which recognize that there may be cases in which the offense level "substantially understates the seriousness of the offense," as to warrant an upward departure. U.S.S.G. §2E3.1 cmt. n.2. One of the examples given is if the offense involved "extraordinary cruelty to an animal beyond the violence inherent in such a venture (such as by killing an animal in a way that prolongs the suffering of the animal)." *Id.*

numerous cases where courts imposed upward variances on dog fighting offenses).

Indeed, this Court recently upheld an upward variance on an Animal Welfare Act offense in the face of nearly the same arguments. In *United States v. Safford*, No. 20-12903, 2021 WL 3177690 (11th Cir. 2021), the defendant argued that district court erred in imposing an upward variance because the Guidelines offense level already accounted for the nature and circumstances of the dog fighting charges. The Court rejected this, finding that the district court properly weighed the factors in 18 U.S.C. § 3553(a) and explained why the facts of the offense, including "the extent of the abuse apart from the dog fighting," warranted an upward variance. *Id.* at *2. Here, the district court similarly provided a clear explanation of her determination that the nature and circumstances of the offense, including Meyers's extreme cruelty in choking and suffocating the dog to death by hanging, supported an upward variance. Doc. 561 at 23, 27. She also considered the mental and physical torture, injuries, and resulting euthanizations of the dogs rescued from Meyers's dogfighting operation discovered at Solomon's home. *Id.* at 22-23.

Meyers also claims that the district court's "primary reason" for varying upward was the cruelty in the animal fighting venture counts, App. Br. at 26, but the record shows that the district court was equally concerned about how the firearm changed the nature and circumstances of the offense. She told Meyers that not only did he know he could not carry a firearm, but that by taking a firearm to the dog fight he "increased the danger to everyone there" as well as to law enforcement. Doc. 561 at 25. Dog fights are already incredibly violent situations and the district court reasonably found that Meyers knowingly increased the risks involved by bringing a firearm to the 2017 fight.

B. The District Court Reasonably Considered Meyers's Multiple Past Convictions for Animal Cruelty Offenses

Meyers claims that the district court abused its discretion in weighing his past criminal history when the advisory Guidelines range already accounted for these convictions. As a general matter, this argument has been rejected repeatedly by this Court. *See Johnson*, 803 F.3d at 620 (citing *United States v. Moran*, 778 F.3d 942, 984 (11th Cir. 2015)). The Guidelines are "a starting point for consideration as to whether a given sentence is 'reasonable' in view of the entirety of [18 U.S.C. § 3553(a)]." *United States v.*

Hunt, 459 F.3d 1180, 1185 (11th Cir. 2006). It is not an abuse of discretion for a district court to weigh an extensive criminal history more heavily than other factors. *United States v. Sammour*, 816 F.3d 1328, 1342 (11th Cir. 2016). Here, the district court weighed this factor heavily, finding that "time and time and time again, when given the opportunity or when faced with something, you choose to do something that is illegal." Doc. 561 at 26.

Meyers argues more specifically that the district court erred in focusing on the "pattern of cruelty" evident in Meyers's prior animal cruelty convictions because those offenses had already increased his advisory Guidelines range. App. at 27. However, the district court was well within its discretion to heavily weigh this history of at least forty-four counts of animal cruelty. As this Court recently stated

> A defendant's criminal history tells a sentencing court, among other things, whether he is a repeat offender, a violent one, or one likely to use firearms. If he is a recidivist, the court may correctly conclude that previous punishment for criminal conduct failed to deter him and that a harsher sentence is warranted. If his crimes have involved violence or firearms, a court may correctly conclude that a stronger sentence is necessary to protect the public from his future crimes, which research has shown are likely to occur more often, more quickly, and with more damage done.

United States v. Riley, 995 F.3d 1272, 1280 (11th Cir. 2021). This observation applies to Meyers on all counts. His first conviction was for unlawful dealing in firearms, Doc. 522 at ¶ 72, and yet, he was not deterred by past punishment for that conviction and brought a firearm to an already-violent dog-fight situation.

And more importantly, the past animal cruelty convictions showed the district court that punishment for those crimes had not deterred Meyers from almost the same exact behavior in 2018. As detailed in the government's sentencing memorandum, Meyers's prior conviction in Leon County, Florida, involved a very similar situation, where law enforcement found 26 pit bull-type dogs at a property he used to house and train the dogs for dog fights. Doc. 494 at 11. There was "excessive blood" found on the dog training implements and in the residence. *Id.* Some of the dogs were crated without access to food and many were emaciated, including a nursing female dog; some dogs were so weak that they lacked the power to stand. *Id.* At least two dogs were found dead chained to the ground, having died from sepsis due to untreated injuries. *Id.* While law enforcement was at the scene, one additional dog dragged herself out from under the house, suffering from such fresh, extensive dog fighting injuries that she had to be

euthanized the same day. *Id.* Because the facts of this prior conviction were so similar to the dog fighting operation that Meyers had re-established at Solomon's property (down to the nearly exact number of dogs and evidence of a breeding program), the district court reasonably weighed the "pattern of cruelty" evidenced by Meyers's past convictions when determining that a higher sentence was warranted to deter such future crimes.

C. There Is No Unwarranted Sentencing Disparity

Finally, Meyers argues that no court has imposed a sentence as lengthy as the one at issue here for animal fighting offenses, resulting in a disparity with other sentences for animal fighting ventures. App. at 26, 27-29. Meyers overstates the argument. The question is not whether there is a disparity with any other defendant sentenced for animal fighting ventures. Rather, a sentencing court need only "avoid unwarranted sentence disparities among defendants *with similar records* who have been found guilty of *similar conduct*." 18 U.S.C. § 3553(a)(6) (emphasis added). A "well-founded claim of disparity . . . assumes that apples are being compared to apples." *United States v. Docampo*, 573 F.3d 1091, 1101 (11th Cir. 2009). Meyers's argument fails to do so and should be rejected.

The government's sentencing memorandum referenced several cases where defendants with fewer counts of dog fighting violations, and lower criminal history categories, still received significantly increased sentences. Doc. 494 at 4-6. For example, in *United States v. Chadwick,* 7:16-cr-122, 2017 WL 6055384 (E.D.N.C. Dec. 7, 2017), *aff'd* 796 F. App'x 795 (4th Cir. 2019), a defendant with the lowest criminal history category and an advisory Guidelines range of 12 to 18 months was sentenced to 60 months based on the defendant's history of dog fighting and the scope of his operation. *Id.* at *2. While this does not compare "apples to apples," because Meyers has a significantly higher criminal history and also a felony firearm conviction, it shows that Meyers's sentence is not disparate when compared with the upward variances imposed for other dog fighting offenses.

The cases upon which Meyers focuses do not support his argument. For example, Meyers goes to great lengths to distinguish *United States v. Anderson*, 3:13-cf-100 (M.D. Ala. Nov. 17, 2014). App. Br. at 28-29. While there is no doubt that Anderson's dog fighting operation consisted of more dogs, both operations involved abused dogs kept in terrible conditions, some of which had to be euthanized, and both defendants killed their dogs after the animals lost a fight. More importantly, even though Anderson's

advisory Guidelines range was 12 to 18 months, he was still sentenced to 96 months. *See Anderson*, Sentencing Transcript, ECF 723 at 30. Meyers also points to *United States v. Hargrove*, 701 F.3d 156 (4th Cir. 2012). App. Br. at 29. Hargrove pled guilty to only one violation of the Animal Welfare Act, not the four counts at issue here, and Hargrove did not have a felony firearm count like Meyers. Furthermore, Hargrove had no apparent criminal history, contrasted with Meyers's highest criminal history category. Hargrove's assumed Guidelines range on appeal was 0 to 6 months, and yet the Fourth Circuit upheld a sentence of 60 months, based on the cruelty involved and Hargrove's history in dog fighting.

Meyers fails to show that his sentence results in an unwarranted disparity when compared to similar defendants convicted of similar conduct.

*****

In sum, Meyers fails to carry the heavy burden of establishing that his sentence is substantively unreasonable. The district court properly explained why it deemed the advisory Guidelines range insufficient here, reasonably weighing the factors set forth in 18 U.S.C. § 3553(a). It was well within the district court's discretion to determine that the sentence for

Count Five should run consecutive in order to arrive at an appropriate total sentence.

CONCLUSION

For the above-stated reasons, the United States respectfully requests that this Court affirm the judgment and sentence of the district court.

Respectfully submitted this 24th day of March, 2022,

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)

This brief complies with the word limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excepting the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 9,216 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared using Microsoft Word 2016 in 14-point Book Antiqua, a proportionally spaced font.

/s/ Bridget K. McNeil
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Brief of Plaintiff-Appellee United States of America with the Clerk of Court using the Eleventh Circuit CM/ECF system, which will send notification of filing to counsel of record for Appellant.

I further certify that pursuant to Federal Rule of Appellate Procedure 25(a)(2)(A)(ii) and Eleventh Circuit Rule 31-3, four paper copies of this Brief were dispatched for filing with the Clerk of Court using a third-party commercial carrier that will deliver them to the Clerk within three days.

This the 24th day of March, 2022.

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