ORAL ARGUMENT REQUESTED
Nos. 17-7016, 17-7017

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

CHRISTOPHER A. BROWN,

and

RAYMOND A. BARNES,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA
THE HONORABLE RONALD A. WHITE, NO. 6:13-CR-17-RAW

BRIEF FOR THE UNITED STATES AS PLAINTIFF-APPELLANT

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STATEMENT OF RELATED CASES

This Court has procedurally consolidated the United States' appeals of Barnes's and Brown's resentencing. Their convictions and initial sentences were considered in previous consolidated appeals, Nos. 15-7018, 15-7020, 15-7029, and 15-7030.

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STATEMENT OF JURISDICTION

On June 27, 2016, this Court upheld defendants Raymond Barnes's and Christopher Brown's convictions and overturned their sentences. *United States* v. *Brown*, 654 F. App'x 896 (10th Cir. 2016) (unpublished). The district court resentenced defendants on February 15, 2017, and entered judgment on February

22, 2017. Aplt. App. 559, 565, 918, 923.[1] The district court had jurisdiction under 18 U.S.C. 3231. The United States filed notices of appeal on March 15, 2017. Aplt. App. 662-665. This Court has jurisdiction pursuant to 28 U.S.C. 1291; see also 18 U.S.C. 3742(b).

STATEMENT OF THE ISSUE

Whether the defendants' sentences of 24 months' imprisonment for Barnes and 12 months' imprisonment for Brown are substantively unreasonable, where the district court varied dramatically from the advisory Sentencing Guidelines range of 70-87 months for each defendant.

STATEMENT OF THE CASE

1. Procedural History

On February 13, 2013, a federal grand jury returned a four-count indictment against Raymond Barnes and Christopher Brown for crimes they committed as Superintendent and Assistant Superintendent of the Muskogee County Jail in Oklahoma. Aplt. App. 39-45.[2] Count 1 charged Barnes and Brown with conspiracy to violate the constitutional rights of jail inmates, in violation of 18

[1] "Aplt. App. _" refers to pages in the appellant's appendix.

[2] An amended indictment was filed on February 6, 2014, substituting the full names of the inmate-victims for their initials. Aplt. App. 46. This brief will cite the amended indictment.

U.S.C. 241. *United States* v. *Brown*, 654 F. App'x 896 (10th Cir. 2016) (unpublished); see also Aplt. App. 47. The indictment identified seven overt acts committed in furtherance of the conspiracy. Aplt. App. 48-50; see also *Brown*, 654 F. App'x at 900. Counts 2 and 3 charged two of these overt acts as substantive offenses, involving the deprivation of rights of inmates Jace Rice and Gary Torix, respectively, in violation of 18 U.S.C. 242. Aplt. App. 50-51; see also *Brown*, 654 F. App'x at 900. Count 4 charged Brown with violating 18 U.S.C. 1001 for making a false statement to the Federal Bureau of Investigation (FBI). Aplt. App. 51; see also *Brown*, 654 F. App'x at 900.

On February 25, 2014, the jury returned a guilty verdict against Barnes on all three counts against him and a guilty verdict against Brown on Counts 1, 2, and 4. The jury acquitted Brown of Count 3, the substantive offense involving Torix. Aplt. App. 53-54; see also *Brown*, 654 F. App'x at 902.

The initial presentence report for each defendant calculated an advisory Sentencing Guidelines imprisonment range of 70-87 months. Aplt. App. 683, 717; see also *Brown*, 654 F. App'x at 902. On March 11, 2015, at defendants' first sentencing hearings, the district court granted defendants' motions for a downward variance. Aplt. App. 125, 191-192, 262-264. The court sentenced Barnes to 12 months and a day in prison on each count, to be served concurrently, and Brown to six months' imprisonment on each count, to be served concurrently. Aplt. App.

104, 109, 117, 194, 265-266. The court granted each defendant's request to remain at liberty pending appeal. Aplt. App. 198-199, 269-270. Each defendant appealed. Aplt. App. 113-114. The United States cross-appealed, challenging both sentences as procedurally and substantively unreasonable. Aplt. App. 121-124.

On June 27, 2016, this Court upheld defendants' convictions and reversed their sentences as procedurally unreasonable. *Brown*, 654 F. App'x at 899. The district court resentenced the defendants on February 15, 2017. Aplt. App. 559, 565, 918, 923.

2. Summary Of The Evidence At Trial

The prosecution presented evidence of six overt acts committed in furtherance of the conspiracy to violate inmates' civil rights, in violation of 18 U.S.C. 241. Four, including the assaults underlying Counts 2 and 3, took place during so-called "meet and greets." Two involved other, direct attacks on inmates who were not posing any threat. 654 F. App'x at 900.[3]

a. "Meet And Greets" At Muskogee County Jail

A "meet and greet" was how Barnes and Brown, as the jail administrators, "welcomed" difficult inmates transferred to Muskogee County Jail. *Brown*, 654 F.

[3] A seventh overt act, involving another unprovoked attack on an inmate, was originally charged in the indictment. The inmate involved could not be identified and, at the close of evidence, the court dismissed the count. Aplt. App. 498.

App'x at 900; see also Aplt. App. 275, 345-346, 350. According to detention officers who testified at trial, Barnes boasted that Muskogee County Jail received these problem inmates because it was a "hands-on" facility. Aplt. App. 275, 341. Before an inmate arrived, Barnes, with Brown at his side, would call together the jail staff, describe the incoming inmate, and explain how to "greet" him. Aplt. App. 277-278, 345, 371. Usually 7-15 employees would participate and Barnes would get the jailers "amped up" for the procedure. Aplt. App. 277-278, 326, 353-354, 373; see also *Brown*, 654 F. App'x at 900. Typically, jailers would surround the transport vehicle, pull the restrained inmate out, "slam[] [him] on the ground" of concrete and gravel, and pile on top of him while his restraints were removed and replaced with Muskogee County Jail's own restraints. Aplt. App. 279, 374, 381, 420-421, 448, 450-451; see also *Brown*, 654 F. App'x at 900, 908. The record reflects that on these occasions the inmate was fully restrained, calm, subdued, non-resisting, and compliant, with his hands cuffed in front and legs shackled, and that the inmate was unable to brace or protect himself from the fall. Aplt. App. 281-285, 288, 292-294, 304, 450-451; see also *Brown*, 654 F. App'x at 900. The inmate was then carried into the jail face down. Aplt. App. 379, 382, 394, 397-398, 421-422, 438, 445-446; see also *Brown*, 654 F. App'x at 900. In one instance, the inmate's head hit the door on the way in. Aplt. App. 382, 394; see also *Brown*, 654 F. App'x at 901. Barnes would tell the inmates after they

were carried into the jail, that if there were any problems, "what just happened to [him] will happen to [him] again or even worse." Aplt. App. 288, 295, 305; see also *Brown*, 654 F. App'x at 900.

More than once, "meet and greets" left inmates with head injuries after they were thrown head first to the ground, at Barnes's direction. Aplt. App. 295, 306, 422, 434; see also *Brown*, 654 F. App'x at 900. In one "meet and greet" for inmate Herbert Potts, Brown "personally grabbed Potts and pulled him to the concrete face-first." *Brown*, 654 F. App'x at 901, 908; see also Aplt. App. 451. Potts suffered a gash to the head. Aplt. App. 434.

One jailer observed that Barnes bragged about the way he conducted "meet and greets," and it seemed "like he enjoyed the physical contact of the meet and greet" and enjoyed "that the inmate was injured." Aplt. App. 321-322. At a training event on appropriate use of force, Barnes told others it was acceptable to "strike" an inmate for invasion of "personal space," but the instructor advised him that it was wrong to "escalate" the situation and strike an inmate who is "not a threat to you." Aplt. App. 486-490. He warned Barnes that if he continued to teach that way, the FBI would "come knocking on [his] door." Aplt. App. 486-490.

b. The "Meet And Greets" For Jace Rice And Gary Torix

Witnesses described the two specific "meet and greets" underlying Counts 2 and 3, for Rice and Torix, in detail. Before Rice's arrival, Barnes ordered that "the first thing that touched the ground should be his head." Aplt. App. 302, 333; see also *Brown*, 654 F. App'x at 900. Barnes and Brown supervised the procedure and, consistent with Barnes's directions, Rice's head struck the concrete first; it sounded like a "watermelon" hitting the ground. Aplt. App. 282, 420; see also *Brown*, 654 F. App'x at 900, 908. Rice suffered a knot on his head as a result. Aplt. App. 306, 422; see also *Brown*, 654 F. App'x at 900.

Before Torix's "meet and greet," the facility's medical supervisor cautioned Barnes and other jailers to be careful because Torix had a previous head injury. Aplt. App. 447, 480; see also *Brown*, 654 F. App'x at 900. Despite that warning, and egged on by Barnes's encouraging "Let's do it" (Aplt. App. 444), Torix was slammed to the ground, with his chest, head, and face hitting the ground first. Aplt. App. 328, 436, 448, 481; see also *Brown*, 654 F. App'x at 900. Torix "was 'screaming' and 'thrashing around.'" *Brown*, 654 F. App'x at 900 (citation omitted); see also Aplt. App. 329. He suffered lacerations across his forehead and dripped blood as he was carried into the jail cell. Aplt. App. 331, 337, 357, 438; see also *Brown*, 654 F. App'x at 900.

c. Assaults On Jeremy Armstead And Alton Murphy

The conspiracy count of the indictment described two other assaults. In one, Barnes and Brown responded to a complaint that an inmate waiting in line for medical care was talking too much. Aplt. App. 402-403, 467-468. Witnesses who saw Barnes arrive said he was "bowed up" with his fists clenched. Aplt. App. 404, 471. Without asking who was responsible for the alleged disruption, Barnes grabbed Jeremy Armstead, who had done nothing wrong. Aplt. App. 404-405, 414-415, 417; see also *Brown*, 654 F. App'x at 901. He took Armstead by the shirt collar and shoved him into a wall, injuring his shoulder. Aplt. App. 417, 474; see also *Brown*, 654 F. App'x at 901. Armstead did not resist the attack. Aplt. App. 406, 417-418. While Brown aimed a taser at Armstead, Barnes and Brown handcuffed him, and Brown brought him down to a cell. Aplt. App. 406, 418-419.

In the other incident, Barnes and Brown attacked inmate Alton Murphy because he was "mouthy" (but not physically combative) when asked to return to his cell. Aplt. App. 308; see also *Brown*, 654 F. App'x at 901. Barnes came up behind Murphy, locked him in a wrestling hold, and took him to the ground. Aplt. App. 310-313; see also *Brown*, 654 F. App'x at 901. The two fell backward, and then Brown joined in on top of Murphy. Aplt. App. 309, 311-312; see also *Brown*,

654 F. App'x at 901.[4] Another jailer then pepper-sprayed the three. Aplt. App. 309, 311; see also *Brown*, 654 F. App'x at 901.

d. Efforts To Conceal Abusive Behavior

In addition to the assaults, Barnes and Brown threatened subordinates, retaliated against jail staff for reports of abuse, required jailers to falsify reports, and "generally cultivated an abusive environment at" the jail. *Brown*, 654 F. App'x at 900.

Barnes told staff that if they had a "problem," they needed to go to him, not the sheriff. Aplt. App. 319-320. He threatened employees with termination if they ever went over his head to report an incident. Aplt. App. 359, 369-370. Barnes required and encouraged jailers to write incident reports that falsely justified the use of force or contained misleading or inaccurate accounts. Aplt. App. 323, 325, 331-332, 358-359, 491-492; see also *Brown*, 654 F. App'x at 900-901. Several jailers and medical staff testified that they did not report incidents, stopped reporting them, or wrote inaccurate reports because they feared reprisals (such as termination or the withholding of training necessary for promotion) from Barnes and Brown. Aplt. App. 291, 297-298, 300-301, 314-315, 320, 331-332, 380, 383, 439-440, 476-477. Sometimes Barnes directly interfered with the accurate

[4] According to one witness, Barnes and Brown tackled Murphy at the same time. Aplt. App. 442-443; see also *Brown*, 654 F. App'x at 901.

documentation and reporting of assaults and injuries. For example, he told medical supervisor Kymberlie Shamblin not to take pictures of Torix's injuries following his "meet and greet." Aplt. App. 296, 412-413, 484.

Barnes and Brown punished jailers who took steps to report abuse. One jailer, Tonia Hardy, testified that Barnes and Brown retaliated against her twice after she submitted reports about inmate mistreatment. On one occasion, Barnes switched her shift from nights to days, which he knew would be a hardship for her because of childcare issues. Aplt. App. 493-494; see also *Brown*, 654 F. App'x at 901. On the second occasion, Brown changed her shift. Aplt. App. 494-495; see also *Brown*, 654 F. App'x at 901.

After Barnes's assault on Armstead, then-Deputy Brandi Hoover visited Armstead in his cell. Aplt. App. 426, 474. Hoover told the inmate he had rights and gave him a grievance form to submit to the sheriff. Aplt. App. 426. Barnes apparently intercepted the grievance, and the sheriff never received it. Aplt. App. 457-458, 476. Shortly thereafter, Barnes, accompanied by Brown, berated Hoover for giving Armstead the grievance form and threatened to demote her for "siding with the inmates." Aplt. App. 427-429. He told her "that what happens in the jail needed to stay at the jail." Aplt. App. 429. In connection with the FBI's investigation of the jail, Barnes told Shamblin that when "all of this was over * * * everyone who talked to the FBI should be fired." Aplt. App. 485.

During the FBI investigation and while he was still employed at Muskogee County Jail, Brown voluntarily spoke with FBI agents, with prosecutors present, about the "meet and greets." As Special Agent Jennifer Chapman testified, Brown explained in the interview that, after an inmate transport arrived at the jail sally port, the inmate would be asked to step out of the vehicle and get on the ground. Aplt. App. 455. If an inmate did not comply, Brown stated that the jailers "would gently place the inmate onto the ground." Aplt. App. 455. The agent asked Brown about his use of the phrase "gently placed" on the ground. Brown stood by his words. Aplt. App. 456. Brown's statement formed the basis for Count 4's charge that he made a false statement to the FBI in violation of 18 U.S.C. 1001. Aplt. App. 51; see also *Brown*, 654 F. App'x at 900.

3. Defendants' Prior Sentences

The probation office calculated both Barnes's and Brown's total offense levels to be 27 and placed each in a criminal history category of I. Aplt. App. 680-681, 714-715. The Guidelines imprisonment range was 70-87 months. Aplt. App. 683, 717; see also *Brown*, 654 F. App'x at 902. The court rejected Barnes's and Brown's various objections to the presentence reports. Aplt. App. 127-152, 206-223. Both defendants requested downward variances, which the government opposed. Aplt. App. 152-157, 190-191, 206, 233. Despite accepting the Guidelines calculation of 70-87 months for each defendant, the court sentenced

Barnes to a year and a day on each of the three counts of conviction, with a two-year term of supervised release, to run concurrently. Aplt. App. 194; see also *Brown*, 654 F. App'x at 902. The court sentenced Brown to six months in prison and three years of supervised release on each count, to run concurrently. Aplt. App. 266; see also *Brown*, 654 F. App'x at 902.

Barnes's and Brown's initial sentencing hearings were similar. At both, the court suggested that "a culture of fear and intimidation is probably necessary to keep control in a jail." Aplt. App. 179, 244. At Barnes's sentencing hearing, the government responded that a "show of force" was not objectionable "to the extent that a show of force means having officers show up and stand there and create a presence," but "that is different than people being thrown out on their heads." Aplt. App. 179. When the court later asked at Brown's sentencing about the need for jailers to maintain "a culture of intimidation and fear," government counsel explained that there is "no objection to a show of force inasmuch as a show of force means a display of personnel ready to react to actual threats. What the law prohibits is preemptive reaction to threats that have not occurred." Aplt. App. 244.

The court asked whether the inmates, although restrained, were nevertheless dangerous. The court characterized Rice as "crazy" and asked about the "possibility that this gentleman, no matter what the show of force, no matter his restraints, when that door opened from that transport would have immediately, or

somehow during—during his transport to the jail have tried to hurt these jailers?" Aplt. App. 180. Asked to agree that Rice was "purtineer crazy," government counsel pointed out that there was no evidence in the record about Rice's background before he arrived at the "meet and greet." Aplt. App. 180.

In considering the attack on Alton Murphy, the court asked whether "[a] subordinate pepper spraying the director and assistant director of the jail might indicate, as far as the seriousness of the crime, that perhaps the inmate was acting up in such a way they needed to be subdued." Aplt. App. 243. Government counsel explained that, according to the trial testimony, the fellow jailer used pepper spray only after Barnes had tackled Murphy without provocation, and no one had testified that Murphy needed to be pepper-sprayed because he was dangerous. See Aplt. App. 243. The court nevertheless asserted: "Well, he was being dangerous when he was wrestling around on the floor with him, wasn't he?" Aplt. App. 243.

The court also questioned the extent of victims' injuries, wondering whether "those were contributed to by the prisoner themselves." Aplt. App. 182-185, 241-243, 254-257. At Brown's sentencing hearing, the court also expressed skepticism regarding the "harm" of Brown's false statement when, as the court said, everyone "knew" he was lying. Aplt. App. 237-238. Addressing the court's questions about defendants' recidivism risk, the government acknowledged that it was low. Aplt.

App. 175, 245. The court wondered whether, as former guards, Barnes and Brown would face particular difficulties in prison. The government answered that the Federal Bureau of Prisons is equipped to handle any security risk and this concern should not immunize convicted guards against incarceration. Aplt. App. 188-189, 239-240.

At the end of each hearing, government counsel objected to the variance and requested that the court enumerate and apply the factors set out in 18 U.S.C. 3553(a) so there would be a record for appeal. Aplt. App. 197-198, 240. The court denied the requests, however, explaining at Brown's hearing that "I think I've been affirmed on that before, that I'm not required to do it." Aplt. App. 240.

4. The Prior Appeal

On appeal, this Court affirmed the defendants' convictions and reversed both their sentences as procedurally unreasonable because of the district court's failure to adequately explain the chosen sentences, particularly the major downward deviations from the Guidelines range. *Brown*, 654 F. App'x at 915-916. The Court pointed out that the district court's short statements of reasons for defendants' sentences were "nearly identical" and that it was "not clear" which facts "the district judge *actually relied on* in varying downward, or how these facts relate to the § 3553(a) factors." *Id.* at 914-915. Considering the limited statements of reasons, this Court concluded that it could not "meaningfully review the district

court's decision based on the record before [it]." *Id.* at 915. It rejected defendants' arguments that it could ascertain the sentencing court's reasons from "the record as a whole," including from the court's questions and comments during the parties' arguments. *Ibid.*

The procedural errors it identified were not harmless, this Court held. "[W]e are left with the firm conviction that the direct effect of the procedural error was the district court's imposition of unusually lenient sentences," it explained, "falling far below the applicable Guidelines range." *Brown*, 654 F. App'x at 915. The Court did not address the sentences' substantive reasonableness. *Id.* at 913.

5. Resentencing On Remand

On remand, revised presentence reports again established a Guidelines range of 70-87 months for each defendant. Aplt. App. 754, 892. Both defendants again requested, and the government again opposed, downward variances from the Guidelines range. Aplt. App. 500, 511, 521, 601-603. For a second time, the district court granted significant downward variances when it resentenced defendants on February 15, 2017. Aplt. App. 612-613, 658.

a. Barnes's Resentencing

Testimony and argument at Barnes's resentencing hearing centered on his family responsibilities. Barnes has two adult children and a 14-year-old who live with him and his wife. In addition, the couple has taken in Barnes's deceased

sister's children, ages 17, 16, 15, and 11. Aplt. App. 575, 581. Barnes's wife provides the primary economic support, while Barnes earns about $200 a month as a youth pastor. Aplt. App. 577. As Barnes's counsel explained, he has several medical conditions, ranging from acid reflux and high cholesterol to diabetes and tongue cancer—the latter recently and successfully treated with surgery. Aplt. App. 578-579. Barnes's counsel also emphasized his lack of criminal history. Aplt. App. 590.

Government counsel, in response, compared Barnes's case to others involving abuse by prison guards and emphasized that his circumstances were not outside the "heartland of similar cases." Aplt. App. 603-605. Indeed, Barnes's crimes were systematic and severe. The government explained that Barnes not only repeatedly violated inmates' constitutional rights, but his behavior as Muskogee County Jail's superintendent greatly harmed other law enforcement employees at the jail, creating an atmosphere of "fear and intimidation" to prevent reports of wrongdoing. Aplt. App. 601, 603. When a law enforcement officer like Barnes engages in routine violations of constitutional protections, "it undercuts the work of good law enforcement officers." Aplt. App. 604.

The government argued that a lack of criminal history was typical for law enforcement officers (the usual defendants for Section 241 or 242 crimes), and that the Guidelines themselves take criminal history into account. Aplt. App. 601. If

Barnes had any criminal history, his Guidelines range would have been higher. Aplt. App. 601. He should be treated like other law enforcement defendants, the government argued, and receive a sentence within the Guidelines. Aplt. App. 605.

Professional and family hardships, government counsel pointed out, are also common to many facing incarceration. Aplt. App. 602, 604. "[A]ll of the time, there are collateral consequences for families." Aplt. App. 602. While acknowledging that Barnes has health complaints, government counsel explained that he will receive appropriate medical care while in prison and that his health did not currently prevent week-long trips to St. Louis every month for Barnes's pastoring job. Aplt. App. 577, 602.

The court again granted Barnes's motion for a downward variance, imposing a term of imprisonment on each count of 24 months, along with three years' supervised release, to run concurrently. Aplt. App. 612-613. The court stated that it had considered, along with the totality of the circumstances, Barnes's family responsibilities, lack of criminal history, low recidivism risk, and the need to avoid unwarranted sentencing disparities. Aplt. App. 609.

In considering the nature of the offense under Section 3553(a)(1), the court said (echoing its similar remarks at both defendants' first sentencing hearings) that "a show of strength and control may have served a purpose in the control of disorderly inmates and the overall safety of the jail staff. Inmates at the facility

included unruly or uncontrollable inmates from other county jails." Aplt. App. 609-610. The court found it significant that Barnes himself was inadvertently pepper-sprayed by another guard in one of the assaults (the assault involving Murphy). Aplt. App. 610.

As to Section 3553(a)(2)(A), addressing the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment, the court stated that "[a]s a result of this conviction, the defendant will no longer be allowed to work in law enforcement and his life, as well as that of his family, has been significantly impacted." Aplt. App. 611; see also 18 U.S.C. 3553(a)(2)(A). The court then addressed the requirements of Section 3553(a)(2)(B) and (C) that a sentence afford adequate deterrence and protect the public. Aplt. App. 611. "[T]he Court is confident that the sentence imposed will provide specific and general deterrence to any future anti-social behavior of this defendant and others," the court asserted, "especially those in law enforcement." Aplt. App. 611-612. The court did not comment further about how the sentence it selected for Barnes avoided sentencing disparities among defendants with similar records.

The government objected to the sentence as procedurally and substantively unreasonable. Aplt. App. 613. The court gave similar written reasons, again citing

the need for "a show of strength" and the fact that Barnes lost his employment as a result of prosecution and conviction. Aplt. App. 618.

b. Brown's Resentencing

Testimony and argument at Brown's resentencing also focused on the defendant's family responsibilities. Brown has five children, ages 17, 12, 8, 5, and 1. Aplt. App. 625. His wife provides financial support, working two jobs. Aplt. App. 625. Brown works night shifts and helps care for the children. Aplt. App. 626-628. His counsel stated he was a "model citizen," starting with his success as a high school student. Aplt. App. 642.

The government argued that a Guidelines sentence for Brown was "commensurate with similar cases around this country" and that to reduce Brown's sentence because he worked in a jail would undermine the goals of the Sentencing Guidelines, which call for a six-level *enhancement* for crimes by law enforcement "because crimes by law enforcement are so egregious." Aplt. App. 643-644. It was also inappropriate, government counsel argued, to suppose that because Brown can no longer work in law enforcement he should not be punished with a Guidelines sentence. Aplt. App. 654. An impact on family responsibilities and career, government counsel reiterated, is not unusual in sentencing. Aplt. App. 645. "[T]here is always a wife or a mother or a daughter or a son who is going to be adversely impacted." Aplt. App. 645.

The court sentenced Brown to 12 months' imprisonment and three years' supervised release on each count, to run concurrently. Aplt. App. 644.[5] The court said it adopted its findings from the prior sentencing. In applying 18 U.S.C. 3553(a)(1), considering the nature and circumstances of the offense, the court reiterated its concern that "tensions were noted to run high and the need for control was paramount" at Muskogee County Jail. Aplt. App. 651. The court found Brown had no criminal history and no prior "recorded history of misconduct or abuse." Aplt. App. 651-652. In addition, it noted that "the majority of witnesses testified that they did not observe Brown assault any inmates, nor did they hear him give orders to any other staff instructing them to assault or mistreat the inmates." Aplt. App. 651-652. The court again recalled the incident (involving Murphy) highlighted in Barnes's sentencing, where defendants were pepper-sprayed by another jailer. "[I]t brings down to me the severity of the offense a little bit," the court said, that "one of the defendants got pepper sprayed himself." Aplt. App. 647.

The court took into account, in applying Section 3553(a)(2)(A), that Brown "will no longer be allowed to work in law enforcement and his life, as well as that of his family, has been and will continue to be significantly impacted." Aplt. App.

[5] Brown's anticipated release date is March 15, 2018. Barnes's anticipated release date is March 15, 2019.

652-653. The court gave the same assessment of the need for adequate deterrence under Section 3553(a)(2)(B) that it had in Barnes's case. The court said it was "confident that the sentence imposed will provide specific and general deterrence to any future anti-social behavior of this defendant" and that it "believe[d] that a sentence imposed, containing both a period of imprisonment and a term of Supervised Release, will serve as a deterrent to any other Law Enforcement Officers or Correctional Officers." Aplt. App. 653. Again, the court did not comment on how Brown's sentence avoided sentencing disparities with other similarly situated defendants.

The government objected to Brown's sentence on procedural and substantive reasonableness grounds. Aplt. App. 654. The court's written reasons were similar to its verbal explanation. See Aplt. App. 922-923.

SUMMARY OF ARGUMENT

The district court erred in imposing significant and unjustified downward variances from Barnes's and Brown's advisory Sentencing Guidelines range of 70-87 months. Taking into account the "degree of variance * * * from the Guidelines [range]," *Gall* v. *United States*, 552 U.S. 38, 47 (2007), and "all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a)," *United States* v. *Friedman*, 554 F.3d 1301, 1307 (10th Cir. 2009) (citation

omitted), the lenient sentences imposed on each defendant simply are not reasonable.

Barnes and Brown, both high-level supervisors at Muskogee County Jail, conspired to violate the rights of inmates in their care and custody. They personally carried out or orchestrated repeated violence, threats, intimidation, and obstruction. In justifying their light sentences, the district court emphasized their role as corrections officers who must keep order through, as the court described it, "a show of strength and control." Aplt. App. 609, 651. But defendants' positions as law enforcement officers charged with maintaining order and *upholding the law* makes their crimes all the worse; it cannot provide any justification for light sentences. Like other law enforcement officers convicted of violating 18 U.S.C. 241 and 242, Barnes and Brown lost their jobs once their abuse of power was uncovered. *Koon* v. *United States*, 518 U.S. 81, 110 (1996). Their unsurprising and appropriate job loss is not a *punishment* that a district court can rely on, as the district court purported to do here, in order to justify such short sentences. See *United States* v. *Morgan*, 635 F. App'x 423, 448, 450 (10th Cir. 2015) (unpublished).

Defendants' light punishment not only fails to afford an adequate penalty reflecting the seriousness of their crimes, which involved the repeated physical abuse of inmates, but it undercuts Section 3553(a)'s goal of affording general

deterrence. Crimes by law enforcement are particularly difficult to expose and prosecute—indeed, defendants here succeeded in covering up ongoing crimes for over a year. Such brazen wrongdoing calls for punishment sufficient to deter similar crimes. See *United States* v. *Jordan*, No. 14-1377, 2017 WL 491144, at *10 (10th Cir. Feb. 7, 2017) (unpublished).

Nothing in their circumstances separates Barnes and Brown from "run-of-the-mill" offenders who violate Sections 241 and 242. *Friedman*, 554 F.3d at 1309. Most law enforcement officers convicted of abusing their power receive Guidelines sentences and serve considerable prison terms. The district court did not give any reasons that could justify the disparity it has created here. Defendants' lack of criminal history cannot support these variances; most Section 242 defendants have similar histories, and the Guidelines calculations already take this into account. Nor can other conditions, such as defendants' family responsibilities, the weight of the evidence presented against Brown, or the fact that defendants were pepper-sprayed by another jailer during their own unprovoked assault on an inmate, provide reasonable grounds for the drastic reduction of their sentences. Defendants' characteristics are not unusual. What stands out in this case is their wide-ranging, violent, and longstanding pattern of criminal behavior, victimizing both their inmates and their own subordinates. The court's inexplicably lenient sentences are indefensible in the light of such conduct.

ARGUMENT

THE SENTENCES THE DISTRICT COURT IMPOSED ON BOTH DEFENDANTS WERE SUBSTANTIVELY UNREASONABLE

A. Standard Of Review

Appellate courts review a district court's sentencing decision for procedural and substantive reasonableness and apply an abuse of discretion standard. *Gall* v. *United States*, 552 U.S. 38, 46 (2007); *United States* v. *Smart*, 518 F.3d 800, 803, 806 (10th Cir. 2008). Review of sentences for substantive reasonableness focuses on "whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a)."[6] *United States* v. *Friedman*, 554 F.3d 1301, 1307 (10th Cir. 2009) (citation omitted). The analysis considers the district court's "balancing" of the Section 3553(a) factors and "the weight the court gave to those factors." *United States* v. *Lente*, 647 F.3d 1021, 1032 (10th Cir. 2011). A reviewing court may take into account both the degree of variance from the Guidelines range, *Gall*, 552 U.S. at 47, and whether the record distinguishes defendants from "run-of-the-mill" offenders, *Friedman*, 554 F.3d at

[6] The statutory factors include "the nature and circumstances of the offense and the history and characteristics of the defendant"; the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, * * * to provide just punishment for the offense," "to afford adequate deterrence to criminal conduct," and "to protect the public from further crimes of the defendant"; and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. 3553(a)(1), (2), and (6).

1309. This Court has recognized that, even with the deference given to sentencing courts, a "'major' variance should have 'a more significant justification than a minor one,'" *United States* v. *Lente*, 759 F.3d 1149, 1158 (10th Cir. 2014) (citation omitted), and has reversed sentences as substantively unreasonable where the court "relies on impermissible factors[] or ignores relevant factors." *United States* v. *Walker*, 844 F.3d 1253, 1259 (10th Cir. 2017) (citation omitted). On the whole, a reviewing court "must determine if the district court's proffered rationale, on aggregate, justifies the magnitude of the sentence." *United States* v. *Pinson*, 542 F.3d 822, 837 (10th Cir.), cert. denied, 555 U.S. 1059 (2008), and cert. denied, 555 U.S. 1195 (2009).

Although the standard of review for sentencing decisions is a deferential one and although, in this case, the district court increased both defendants' sentences after this Court vacated the initial sentences, the magnitude of the downward variances the district court granted remains substantively unreasonable. Barnes's and Brown's sentences are 46 months and 58 months, respectively, below the bottom of the Guidelines range. Put another way, Barnes received less than 35% and Brown less than 20% of a minimum Guidelines sentence. Barnes and Brown, high-ranking law enforcement professionals, received these lenient sentences after a series of assaults, threats, reprisals, and obstructive behavior lasting more than a year.

B. Defendants' Status As Law Enforcement Professionals Reinforces The Need For Guidelines Sentences, Rather Than Significant Downward Variances

Violations of Sections 241 and 242 are very serious crimes. "Public officials convicted of violating § 242 have done more than engage in serious criminal conduct; they have done so under color of the law they have sworn to uphold." *Koon* v. *United States*, 518 U.S. 81, 110 (1996). The district court here, however, improperly weighed defendants' position as jailers and their unsurprising loss of law enforcement employment (a common occurrence for those convicted of violating Sections 241 or 242) as reasons for punishment *reduction*. Furthermore, these light sentences fail to provide adequate general deterrence for other, similar crimes in the law enforcement context and create unjustified disparities with sentences imposed on other similarly situated defendants.

1. Defendants' Sentences Do Not Reflect The Seriousness Of Their Actions In Orchestrating And Concealing Violence Against Inmates

Section 242 is "especially" intended to address "correctional officers who flagrantly beat inmates * * * placed by the law in their charge." *United States* v. *McQueen*, 727 F.3d 1144, 1158 (11th Cir. 2013). But in considering the seriousness of the crime and circumstances of the offense, as required under Section 3553(a)(1) and (a)(2)(A), the district court gave little weight to defendants' abuse of authority. Instead, the district court felt free to *reduce* defendants' sentences because they were jailers who assaulted inmates. As the court explained

during Barnes's hearing, "a show of strength and control may have served a purpose in the control of disorderly inmates and the overall safety of the jail staff." Aplt. App. 609, 917. In resentencing Brown, the court likewise reasoned that "tensions were noted to run high" at the jail and "the need for control was paramount." Aplt. App. 651, 922. These troubling assertions echo the court's prior statements, at defendants' first sentencing hearings, that "in a prison situation, a culture of intimidation and fear is probably necessary." Aplt. App. 179, 244.

There was no legitimate security purpose for the violence defendants visited on compliant, restrained, and powerless inmates. "Being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society." *Farmer* v. *Brennan*, 511 U.S. 825, 834 (1994) (citations and internal quotation marks omitted). Defendants' assaults were planned and systematic. And their crimes included not only violence against inmates, but retaliation, threats, and obstructive behavior designed keep employees in line and hide defendants' crimes.

Courts have held that "a defendant's status as a law enforcement officer is often times more akin to an aggravating as opposed to a mitigating sentencing factor." *United States* v. *Thames*, 214 F.3d 608, 614 (5th Cir. 2000); see also *Koon*, 518 U.S. at 110. Accordingly, the court's assessment of the crime and its

emphasis on defendants' roles as prison guards turns Congress's logic in promulgating Sections 241 and 242 on its head. In passing these statutes, Congress designated crimes under color of law as particularly serious. "[A]ction taken 'under color of' state law" differs from an ordinary assault because it entails not only violence but "[m]isuse of power, possessed by virtue of state law." *United States* v. *Classic*, 313 U.S. 299, 326 (1941).

Similarly, the district court's lenient assessment is at odds with the policy judgments reflected in relevant Sentencing Guidelines, which add a six-level *enhancement* for crimes committed under color of law. See U.S.S.G. § 2H1.1(b)(1)(B); see also *United States* v. *LaVallee*, 439 F.3d 670, 705 (10th Cir. 2006) (holding where prison guards are convicted of violating Section 242 "the enhancement for acting under color of law is fully reflected in the jury's verdict") (internal citation omitted). As the Fifth Circuit has observed, "[t]he Sentencing Commission surely considered the possibility that some defendants convicted of violating a person[']s civil rights *under color of law* would be law enforcement officers" but it "applied greater not lesser sentences for such crimes." *United States* v. *Winters*, 174 F.3d 478, 486 (emphasis omitted), cert. denied, 528 U.S. 969 (1999); see also *United States* v. *Rybicki*, 96 F.3d 754, 759 (4th Cir. 1996) ("We do not find any indication that either Congress or the Sentencing

Commission intended to shield law enforcement officers as a group from the otherwise universally applicable effects of incarceration on convicted criminals.").

The Guidelines are, of course, discretionary. But they "seek to embody the § 3553(a) considerations, both in principle and in practice," and "it is fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." *Rita* v. *United States*, 551 U.S. 338, 350 (2007). A court may grant a downward variance based on disagreement with the Guidelines, but even this discretion is constrained by the requirement of reasonableness. The Eighth Circuit, for example, found a Section 242 sentence that was 115 months below the Guidelines range unreasonable, even though the district court had explained its rejection of the Guidelines' color-of-law enhancement. *United States* v. *Dautovic*, 763 F.3d 927, 935 (2014), cert. denied, 135 S. Ct. 1441 (2015). The district court's "policy disagreement with the Guidelines," the court held, "do[es] not justify the imposition of a 20-month sentence." *Ibid*.

Indeed, this Court has recently emphasized the need to *avoid* improper sentence reductions for public servants who abuse their power. It held in *United States* v. *Morgan*, 635 F. App'x 423, 448 (2015) (unpublished), that a drastically reduced sentence for public corruption was substantively unreasonable because it did not reflect the "seriousness of the offense" as required under Section

3553(a)(2)(A). Crimes by public servants are dangerous because they "harm * * * the reputation of honest public servants and the public faith in legitimate state government." *Ibid*. The same holds true in Barnes's and Brown's case. Their actions greatly damaged a public institution, particularly given that they were not merely jailors at, but the administrators of, Muskogee County Jail. Their abuse of power included the misuse of supervisory authority to carry out reprisals, threaten other jail employees, and order subordinates to help conceal Barnes's and Brown's wrongdoing.

2. Law Enforcement Officers Who Violate Sections 241 And 242 Are Not Entitled To A Sentence Reduction Based On Job Loss

After abusing their positions to commit crimes, Barnes and Brown lost their jobs. They will no longer work in law enforcement, and this is as it should be. But in considering the need to promote respect for the law and for just punishment under Section 3553(a)(2)(A), the district court inexplicably gave great weight to defendants' loss of their positions as law enforcement officers. Aplt. App. 611, 918 (noting that prosecution ended Barnes's career in law enforcement), 652-653, 923 (noting Brown's job loss).

Color-of-law defendants should not receive special sentence reductions simply because their crimes—almost inevitably—end their careers. As this Court has held, collateral consequences of prosecution or conviction (such as job loss) are not *punishment* that a court can rely on, as the district court did, to reduce the

judicial punishment it imposes. *Morgan*, 635 F. App'x at 444. Section 3553(a)(2)(A) requires, instead, that "the *sentence* imposed * * * reflect the seriousness of the offense." *Ibid.* (internal quotations marks omitted) (quoting *United States* v. *Bistline*, 665 F.3d 758, 760 (6th Cir. 2012)). Similarly, in *Walker*, 844 F.3d at 1257, this Court rejected arguments that non-custodial consequences—in that case 13 months' time spent in pretrial residential drug treatment—could offset a sentence. It reversed as substantively unreasonable defendant's custodial sentence of 33 days (time served in pretrial detention) for bank robbery, holding that the additional months of residential drug treatment "did not constitute punishment" to be considered in sentencing. *Id*. at 1257-1258.

As *Morgan* explained, emphasis on collateral job loss would have troubling repercussions, permitting courts to sentence defendants according to occupation or socioeconomic status on the theory that they "suffer greater reputational harm or have more to lose by conviction." 635 F. App'x at 444 (quoting *United States* v. *Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012)). "[N]o 'middle class' sentencing discounts are authorized." *Id.* at 445 (quoting *United States* v. *Stefonek*, 179 F.3d 1030, 1038 (7th Cir. 1999)). To avoid such consequences, this Court in *Morgan* reversed a lawmaker's sentence because it was based, in part, on his loss of reputation and law license. *Id.* at 445-446. Considering these misfortunes "as

punishment," this Court concluded, "impermissibly focused on the collateral consequences of Morgan's prosecution and conviction." *Id*. at 445.[7]

Defendants' job loss does not distinguish them from other Section 242 and 241 offenders. *Friedman*, 554 F.3d at 1309. As the Supreme Court has explained, "many public employees are subject to termination and are prevented from obtaining future government employment following conviction of a serious crime," and "career-related consequences" are to be expected for violations of Section 242. *Koon*, 518 U.S. at 110.

3. These Light Sentences Do Not Provide Adequate General Deterrence For Similar Crimes

"General deterrence" is "one of the key purposes of sentencing." *Walker*, 844 F.3d at 1257 (citation omitted). "This purpose becomes particularly important when the district court varies substantially from the sentencing guidelines" as the court did here. *Id.* at 1258. The court here stated, with no explanation, that it "believe[s] that [the] sentence imposed * * * would serve as deterrence to any other Law Enforcement Officers or Correctional Officers who learn of the facts surrounding this case and who may be tempted to engage in similar misconduct."

[7] This Court concluded that reliance on the collateral consequences of Morgan's conviction was so egregious that it amounted to consideration of an improper factor, and therefore, a procedural error. *Morgan*, 635 F. App'x at 444. But it also relied on the improper weight given to collateral consequences to hold that Morgan's sentence was substantively unreasonable. *Id.* at 450.

Aplt. App. 613-612, 918; see also Aplt. App. 653, 923. Perhaps because the court considered job loss as a cognizable "punishment" in cases like these, it assumed that even very lenient sentences—far below the recommended Guidelines range—are sufficient to deter other potential defendants. But weighing professional loss as *deterrence* is as inappropriate as weighing it as *punishment*. See 18 U.S.C. 3553(a)(2)(B) (sentencing court shall consider "the need for the *sentence* imposed * * * to afford adequate deterrence") (emphasis added). As this Court explained in *Morgan*, in assessing defendant's loss of a law license, "considering it to be a deterrent represents a loss of focus; [the defendant] used his law license to facilitate his criminal act." 635 F. App'x at 450. Here, prison administrators used their considerable authority to carry out and cover up multiple crimes.

Contrary to the district court's assumptions, this is an area of law that requires robust deterrence. Courts have repeatedly explained that general deterrence "is especially compelling in the context of officials abusing their power." *United States* v. *Hooper*, 566 F. App'x 771, 773 (11th Cir. 2014) (unpublished). "[V]iolent abuse by corrections officers against inmates may easily go undetected and unpunished," the Eleventh Circuit has pointed out. *McQueen*, 727 F.3d at 1158. Because "[t]he ability to unearth these crimes by law enforcement officers in a prison setting is particularly difficult," the court held that

"extraordinarily lenient sentences" will "sap the goal of general deterrence." *Id.* at 1158-1159.

This Court, too, has observed that "[g]eneral deterrence comes from a probability of conviction and significant consequences. If either is eliminated or minimized, the deterrent effect is proportionately minimized." *United States* v. *Jordan*, No. 14-1377, 2017 WL 491144, at *10 (Feb. 7, 2017) (unpublished) (citation omitted). This reasoning applies here. Barnes's and Brown's pattern of violence, which went on for more than a year, was discovered only by chance after an anonymous caller reported an injury. Aplt. App. 160. Crimes like theirs are hard to expose and prosecute, so the probability of conviction is relatively low. Minimizing consequences, as the district court did here, exacerbates the existing difficulties with deterrence.

Considering the gravity of defendants' offenses and the difficulty of prosecuting crimes by law enforcement, the district court's proffered assertions about deterrence are ultimately not convincing. "[T]he farther down the judge goes the more important it is that he give cogent reasons for rejecting the thinking of the Sentencing Commission." *United States* v. *Smith*, 811 F.3d 907, 910 (7th Cir. 2016). Where a court has "paid only lip service" to the Section 3553(a) factors, as the district court did here in assessing deterrence, the sizeable

discrepancy between the Guidelines sentences and the ones the court chose is not justified. *Morgan*, 635 F. App'x at 448.

C. Defendants' Light Sentences Create Unwarranted Disparities

The Guidelines and Section 3553(a)(6) share, as one of their primary goals, "eliminat[ing] disparities among sentences nationwide." *United States* v. *Franklin*, 785 F.3d 1365, 1371 (10th Cir.), cert. denied, 136 S. Ct. 523 (2015); *United States* v. *Conatser*, 514 F.3d 508, 521 (6th Cir.) (stating Section 3553(a)(6)'s aim is to eliminate "*national* disparities between defendants with similar criminal histories convicted of similar criminal conduct"), cert. denied, 555 U.S. 963 (2008). In applying this factor, a court should consider disparities "among defendants with similar records and Guideline calculations." *United States* v. *Martinez*, 610 F.3d 1216, 1228 (10th Cir.) (citation omitted), cert. denied, 562 U.S. 1019 (2010). Here, the district court's sentences actually *create* disparities with defendants convicted of similar criminal conduct across the country. The light sentences here are far out of line with those imposed in many similar cases involving violations of 18 U.S.C. 241 or 242.[8] Indeed, law enforcement officers have received much

[8] See, *e.g.*, *United States* v. *Wilson*, 686 F.3d 868, 869 (8th Cir. 2012) (supervisory corrections officer who orchestrated beatings sentenced to 120 months), cert. denied, 113 S. Ct. 873 (2013); *United States* v. *McCoy*, 480 F. App'x 366, 367 (6th Cir. 2012) (unpublished) (prison shift supervisors who slammed prisoners into walls and covered up attacks sentenced to 120 months); *United States* v. *Gould*, 672 F.3d 930, 934 (10th Cir. 2012) (prison lieutenant, who

(continued…)

greater sentences for less egregious conduct, including non-violent crimes, isolated violations, and crimes by non-supervisory officers.[9] As the Eleventh Circuit observed in reversing a supervisory jailer's one-year sentence in *McQueen*, 727 F.3d at 1160, "[a]s best as we can tell, the federal courts have treated violations of § 241 by police or corrections officers as serious crimes meriting far higher sentences." (citing cases); see also *Smith*, 811 F.3d at 910-911 (reversing police officer's sentence, describing other officers' sentences for Section 242 violations, and suggesting the examples provide no "basis for thinking 14 months," where the

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(…continued)
was a shift leader, sentenced to 97 months' imprisonment on each of two counts of violating Section 242); *United States* v. *Miller*, 477 F.3d 644, 646-648 (8th Cir. 2007) (supervisory corrections officer sentenced to 78 months' imprisonment for two assaults, with minor injuries, and falsification of reports); *LaVallee*, 439 F.3d at 678-679 (corrections officers sentenced to 41 months and 30 months for assaults which included an inmate "dropped * * * on his face").

[9] See, *e.g.*, *United States* v. *Owens*, 437 F. App'x 436, 437-438 (6th Cir. 2011) (unpublished) (affirming sentence of 63 months, 24 months below the guidelines range, for police officer who conspired to steal from arrestees); *United States* v. *Bunke*, 412 F. App'x 760, 764 (6th Cir. 2011) (correctional officer sentenced to 48 months' imprisonment for beating an inmate); *United States* v. *Lopresti*, 340 F. App'x 30, 31 (2d Cir. 2009) (unpublished) (corrections officer sentenced to 51 months for a single assault); *United States* v. *Carson*, 560 F.3d 566, 573, 586-587 (6th Cir. 2009) (police officer sentenced to 33 months, the low end of the guidelines range, for obstruction and a single assault on arrestee); *United States* v. *Bailey*, 405 F.3d 102, 112-114 (1st Cir. 2005) (affirming corrections officer's sentence of 41 months, the low end of the Guidelines range, for a single beating); cf. *United States* v. *Kulla*, 434 F. App'x 268, 269 (4th Cir. 2011) (public official received the same sentence Brown received, 12 months, for misdemeanor violation of Section 242 through blackmail efforts).

Guidelines range was 33 to 41 months, was "a proper sentence"). The Guidelines call for years of imprisonment, and for the most part defendants receive such sentences. Sentences like those defendants received here are rare and, in this case, entirely unjustified.

In sentencing Barnes and Brown, the district court claimed to have considered the need to avoid unwarranted sentencing disparities (Aplt. App. 609, 650-651, 917, 922), and it checked the box labeled "To avoid unwarranted sentencing disparities among defendants" on the standardized "Statement of Reasons" form (Aplt. App. 916, 921). But then the court did not *discuss* this sentencing factor. It did not address the government's argument urging the court to impose sentences "commensurate with similar cases around this country" (Aplt. App. 643; see also Aplt. App. 516-518, 603-605), or any of the case examples presented in the government's briefing or argument (Aplt. App. 516-518, 604-605). See *Morgan*, 635 F. App'x at 451 (noting, in holding defendant's sentence was substantively unreasonable, that the court "did not mention, even in passing, the government's credible argument" concerning "unwarranted sentencing disparities"); see also *United States* v. *Ward*, 506 F.3d 468, 478 (6th Cir. 2007) (stating that a sentence may be substantively unreasonable if court failed to consider a pertinent Section 3553(a) factor). In its briefs below, the United States argued that corrections officers routinely receive years in prison for assaults on

inmates. Aplt. App. 77-78, 98-100, 517 (citing cases). All in all, the district court gave "little or no weight to the congressional values of punishment, general deterrence, * * * respect for the law, and avoidance of unwarranted sentence disparities." *Walker*, 844 F.3d at 1259.

C. The Court Did Not Identify Other Circumstances Justifying Light Sentences

The district court gave several other reasons for the remarkable variances it granted. But none justify such extraordinary deviations from the guidelines.

1. Defendants' Lack Of Criminal History Does Not Justify These Variances

It is not reasonable, in defendants' circumstances, to base such large variances on defendants' lack of criminal history. In this case, the criminal conduct went on for more than a year. Assaults at the "[m]eet and [g]reets" were the "norm" and part of "the same routine," *United States* v. *Brown*, 654 F. App'x 896, 908 (10th Cir. 2016) (citation omitted), rather than aberrant, isolated, or uncharacteristic. Furthermore, the Guidelines calculations *already* account for defendants' lack of criminal history. See *Koon*, 518 U.S. at 111; see also Aplt. App. 601. A lack of criminal history does nothing to distinguish Barnes and Brown from other Section 242 defendants. Because the statute criminalizes conduct committed under color of law, defendants are often law enforcement professionals who have no prior criminal histories.

That Brown had "no recorded history of misconduct or abuse" during his "prior employment" at the jail, as the district court put it (Aplt. App. 651), is far from mitigating considering the pattern of assaults and cover-ups that he perpetrated over an extended period without any check or appropriate sanction. And because, as noted above, prisoner abuse is difficult to detect and punish, jailers convicted under Section 242 often have no prior record of wrongdoing. See *McQueen*, 727 F.3d at 1158 (recognizing that "violent abuse by corrections officers against inmates" can "easily go undetected and unpunished"). That was certainly the case at Muskogee County Jail, where complaints by inmates and jail staff alike were repressed with threats and retaliation. It would be ironic to afford Brown leniency because of his "clean" record, in light of the tactics he used—obstruction, retaliation, and threats—to keep it that way. See, *e.g.*, Aplt. App. 493-495 (Brown changed a subordinate's shift because she made a complaint about misconduct).

2. Defendants' Exposure To Pepper Spray During Their Assault On An Inmate Does Not Mitigate Culpability

It was also unreasonable for the court to weigh, as a purportedly mitigating factor, the fact that another jailer inadvertently pepper-sprayed defendants in the confusion that followed their *own* unlawful assault on an inmate. For the most part, the court did not discuss defendants' several assaults in any detail. But it singled out the one on Alton Murphy, which was one of the less serious attacks (it

was not, as the court put it, "the focus of the prosecution" or "a part of the main focus of the case"). Aplt. App. 609-610, 646-647. After Murphy refused an order to enter his cell, Barnes grabbed him from behind and took him to the ground in a wrestling hold. Brown then joined the fray, and a fellow jailer pepper-sprayed the group. "It is just ironic to me that one of the offenses of conviction," the court explained at Brown's sentencing, "is based upon something where, you know, one of the defendants got pepper sprayed himself. * * * [I]t brings down to me the severity of the offense a little bit." Aplt. App. 647; see also Aplt. App. 610. That the assault here ended with some discomfort for defendants does not alter the fact that it was Barnes and Brown who assaulted an inmate without any justification for the use of force.

3. Considerations Of The Weight Of Evidence Against Brown Cannot Lessen The Seriousness Of His Offenses

Brown was convicted of several serious offenses, those convictions have been upheld, and the sufficiency of evidence against him is no longer at issue. It is problematic, therefore, that the district court seemingly reassessed the evidence against Brown in weighing the severity of his crimes. The court said: "Considering trial testimony, the majority of witnesses testified that they did not observe Brown assault any inmates, nor did they hear him give orders to any other staff instructing them to assault or mistreat inmates." Aplt. App. 652, 922. Read in the context of the first sentencing, the court's comment suggests that it

sentenced Brown leniently in part based on doubts about the evidence. At Brown's first sentencing, the court seemed open to Brown's arguments that "there[] [was] hardly any incriminating evidence" against him and remarked that Brown "did a lot of standing around during * * * this deprivation of rights." Aplt. App. 206, 234; see also Aplt. App. 210.

As this Court recently emphasized, however, a sentencing "court cannot substitute 'its view of the evidence ... for the jury's verdict.'" *Morgan*, 635 F. App'x at 443 (quoting *United States* v. *Bertling*, 611 F.3d 477, 481 (8th Cir. 2010)). "[T]he legitimacy of the sentence unravels when the record shows the court's doubts about the verdict leaked into the sentencing decision." *Ibid.* Unfortunately, this may have happened at Brown's resentencing.

In appealing his convictions to this Court, Brown already attempted to make the case that there was insufficient evidence that he had assaulted anyone. This Court answered: "That is simply not true." *Brown*, 654 F. App'x at 908. At Herbert Potts's "meet and greet," it was Brown who pulled the victim from the vehicle and dragged him "onto the concrete pretty much face first." *Id.* at 901, 908. He also joined Barnes in the attack on Murphy. *Id.* at 908-909. And even if he had not become an active participant, he cannot "s[i]t idly by as other inmates were beaten" at his direction and escape liability. *McQueen*, 727 F.3d at 1157. In any event, this Court explained, "[p]hysical assault is not a necessary element of

either count" under Sections 241 and 242. *Brown*, 654 F. App'x at 909 (citing cases).

The district court's focus on whether Brown personally assaulted individual victims discounted the evidence that Brown directly participated in the assaults on Potts and Murphy and disregarded the fact that Brown violated inmates' rights and conspired to "cultivate[] an abusive environment at" the jail in additional ways: overseeing the "[m]eet and [g]reets," supporting Barnes in his assault on Jeremy Armstead, retaliating against potential informants, and covering up inmate abuse. *Brown*, 654 F. App'x at 900-902, 908-909. It is worth remembering that Brown was not merely a member of the rank-and-file at Muskogee County Jail. He does not deserve leniency, as if he were a mere bystander, when he was "a ranking law enforcement officer," *McQueen*, 727 F.3d at 1157, charged with protecting inmates and supervising other corrections officers.

4. Familial Responsibilities Do Not Warrant Such Drastic Variances

Although family responsibilities can be considered in sentencing, the district court was not justified, on balance, in cutting Barnes's and Brown's sentences back to less than 35% and 20%, respectively, of the minimum Guidelines range based on this consideration. Defendants presented evidence that they are involved in their children's care. Aplt. App. 584-585, 628. But this is not a situation where

the children would be left without support, as may be the case if a single parent faces incarceration.

Imprisonment almost always brings collateral harm for family members. This Court has recognized that "the disintegration of existing family life or relationships ... is to be expected when a family member engages in criminal activity that results in a period of incarceration." *United States* v. *Rodriguez-Velarde*, 127 F.3d 966, 968 (10th Cir. 1997) (citation omitted); see also *Conatser*, 514 F.3d at 525 (affirming prison guard's Guidelines sentence of life imprisonment and quoting district court's assessment that "the terrible family consequences are a usual rather than an unusual consequence of criminal conduct"). Indeed, in *Rodriguez-Velarde* this Court said that even incarceration of a child's "sole caretaker" is not "an unusual family situation." 127 F.3d at 969; see also *Mower* v. *United States*, No. CIV. 2:08-CV-5-TC, 2008 WL 1808706, at *3 (D. Utah Apr. 21, 2008) (unpublished) (quoting sentencing court's observation, in considering autistic son's dependence on defendant, that "about one case out of three has something like this") (citation omitted). The district court in this case even acknowledged, during Barnes's sentencing, that "in every case that I have in front of me typically there are close family members, including children who are affected." Aplt. App. 607.

A court is not precluded from considering family responsibilities in a discretionary sentencing regime, and, as government counsel acknowledged, it is natural to feel sympathy for the children involved. Aplt. App. 602-603, 645. But the fact that the two men are fathers does not separate them from "run-of-the-mill" offenders, *Friedman*, 554 F.3d at 1309, and cannot justify sentences so far below the Guidelines range.[10]

* * * * *

The offenses in this case were particularly severe. For more than a year, these jail superintendents adopted a systematic policy of inflicting "sadistic" abuse on unresisting inmates. *Brown*, 654 F. App'x at 910-911. Barnes's and Brown's actions were deliberate and calculated, taken with no regard for the inmates entrusted to their care, the subordinates put in their power, or their obligations to obey the law. None of the reasons cited by the district court supports such sizeable variances for jail administrators who coolly planned assaults at the "meet and greets," engaged in other unjustified attacks on inmates, recruited other jailer participants, falsified reports to cover up wrongdoing, and threatened jailers who opposed them.

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[10] The district court also noted Barnes's health issues as another reason for his lenient sentence. Aplt. App. 610, 918. But, as government counsel argued, none of Barnes's medical conditions have prevented him from taking monthly trips to St. Louis, nor do they preclude adequate treatment in prison. Aplt. App. 577-602.

CONCLUSION

This Court should vacate both defendants' sentences and remand this case to the district court for resentencing.

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

The United States respectfully requests oral argument in this case. It involves multiple legal errors and a complex factual background. The United States believes oral argument would be helpful in this Court's resolution of the case.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains no more than 10,500 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. 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 it has been prepared in a proportionally spaced typeface using Word 2007 in 14-point Times New Roman font.

s/ April J. Anderson
APRIL J. ANDERSON
Attorney

Date: May 10, 2017

CERTIFICATE OF DIGITAL SUBMISSION

I certify that the electronic version of the foregoing BRIEF FOR THE UNITED STATES AS PLAINTIFF-APPELLANT, prepared for submission via ECF, complies with all required privacy redactions per Tenth Circuit Rule 25.5, is an exact copy of the paper copies submitted to the Tenth Circuit Court of Appeals, has been scanned with the most recent version of Symantec Endpoint Protection (version 14), and is virus-free.

s/ April J. Anderson
APRIL J. ANDERSON
Attorney

Date: May 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2017, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS PLAINTIFF-APPELLANT with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

In addition, I certify that on May 10, 2017, I will cause seven paper copies of the same to be sent by Federal Express overnight to this Court.

s/ April J. Anderson
APRIL J. ANDERSON
Attorney

ATTACHMENT

UNITED STATES DISTRICT COURT

Eastern District of Oklahoma

UNITED STATES OF AMERICA

v.

RAYMOND A. BARNES

Date of Original Judgment: March 11, 2015
(Or Date of Last Amended Judgment)

Reason for Amendment:

☒ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: CR-13-00017-001-RAW
USM Number: 06154-063
Stephen J. Knorr
Defendant's Attorney

☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant to ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☐ pleaded guilty to count(s) _____
☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
☒ was found guilty on count(s) 1, 2 and 3 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:241	Conspiracy Against Rights	May 2011	1
18:242	Deprivation of Rights Under Color of Law	March 26, 2010	2
18:242	Deprivation of Rights Under Color of Law	December 8, 2010	3

The defendant is sentenced as provided in pages 2 through *6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____
☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 15, 2017
Date of Imposition of Judgment

Ronald A. White
United States District Judge
Eastern District of Oklahoma

E.O.D. February 22, 2017
Date

O 245C (Rev. 11/16) Amended Judgment in a Criminal Case
Sheet 2 — Imprisonment (NOTE: Identify Changes with Asterisks (*))

DEFENDANT: Raymond A. Barnes
CASE NUMBER: CR-13-00017-001-RAW

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of : *24 months on Count 1, 24 months on Count 2 and 24 months on Count 3 of the Indictment. The terms imposed on each of Counts 1, 2 and 3 shall be served concurrently.

☒ *The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in the federal facility at El Reno, Oklahoma, or as close to home as possible to facilitate family contact, taking the defendant's law enforcement background into consideration for placement.

The Court shall be informed in writing as soon as possible if the Bureau of Prisons is unable to follow the Court's recommendations, along with the reasons for not following such recommendations made by the Court.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a m. ☐ p m. on _____ .

☐ as notified by the United States Marshal.

☒ *The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 12 p.m. on March 15, 2017 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Raymond A. Barnes
CASE NUMBER: CR-13-00017-001-RAW

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : *3 years on each of Counts 1, 2 and 3. The terms of supervised release shall run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☒ *The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Raymond A. Barnes
CASE NUMBER: CR-13-00017-001-RAW

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Raymond A. Barnes
CASE NUMBER: CR-13-00017-001-RAW

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	**$** 300.00	$ *0.00	**$** 0.00	**$** 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$	0.00	$	0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Raymond A. Barnes
CASE NUMBER: CR-13-00017-001-RAW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Said special assessment of $300 shall be paid through the United States Court Clerk for the Eastern District of Oklahoma, P. O. Box 607, Muskogee, OK 74402, and is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

Eastern District of Oklahoma

UNITED STATES OF AMERICA

v.

CHRISTOPHER A. BROWN

Date of Original Judgment: March 11, 2015
(Or Date of Last Amended Judgment)

Reason for Amendment:

☒ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: CR-13-00017-002-RAW
USM Number: 06156-063
J. Lance Hopkins
Defendant's Attorney

☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant to ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☐ pleaded guilty to count(s)
☐ pleaded nolo contendere to count(s) which was accepted by the court.
☒ was found guilty on count(s) 1, 2 and 4 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:241	Conspiracy Against Rights	May 2011	1
18:242	Deprivation of Rights Under Color of Law	March 26, 2010	2
18:1001	False Statement	September 28, 2011	4

The defendant is sentenced as provided in pages 2 through *6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 3
☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 15, 2017
Date of Imposition of Judgment

Ronald A. White
United States District Judge
Eastern District of Oklahoma

E.O.D. February 22, 2017
Date

DEFENDANT: Christopher A. Brown
CASE NUMBER: CR-13-00017-002-RAW

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of : *12 months on Count 1, 12 months on Count 2 and 12 months on Count 4 of the Indictment. The terms imposed on each of Counts 1, 2 and 4 shall be served concurrently.

☒ *The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a federal facility at El Reno, Oklahoma, or as close to home as possible to facilitate family contact, taking defendant's law enforcement background into consideration for placement.

The Court shall be informed in writing as soon as possible if the Bureau of Prisons is unable to follow the Court's recommendations, along with the reasons for not following such recommendations made by the Court.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a m. ☐ p m. on _____ .

☐ as notified by the United States Marshal.

☒ *The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 12 p.m. on *March 15, 2017 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Christopher A. Brown
CASE NUMBER: CR-13-00017-002-RAW

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : 3 years on each of Counts 1, 2 and 4. The terms of supervised release shall run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☒ *The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Christopher A. Brown
CASE NUMBER: CR-13-00017-002-RAW

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Christopher A. Brown
CASE NUMBER: CR-13-00017-002-RAW

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	**$** 300.00	$ *0.00	**$** 0.00	**$** 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$	0.00	$	0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Christopher A. Brown
CASE NUMBER: CR-13-00017-002-RAW

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

Said special assessment of $300 shall be paid through the United States Court Clerk for the Eastern District of Oklahoma, P. O. Box 607, Muskogee, OK 74402, and is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.