

1 MCGREGOR W. SCOTT  
United States Attorney  
2 KAREN A. ESCOBAR  
Assistant United States Attorney  
3 2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
4 Telephone: (559) 497-4000  
Facsimile: (559) 497-4099  
5

6 Attorneys for Plaintiff  
United States of America  
7

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

10 UNITED STATES OF AMERICA,  
11  
12 Plaintiff,  
13 v.  
14 THOMAS LEE CROW,  
15 Defendant.

CASE NO. 1:17-CR-242 LJO

UNITED STATES' SENTENCING  
MEMORANDUM AND FORMAL OBJECTIONS

DATE: November 26, 2018

TIME: 8:30 a.m.

COURT: Hon. Lawrence J. O'Neill

16 The United States of America, by and through its undersigned counsel, hereby submits its formal  
17 objections to the presentence report and sets forth its position as to the sentence to be imposed on  
18 Defendant Thomas Lee Crow ("Crow") in this case. The presentence report correctly calculated the  
19 applicable United States Sentencing Guidelines Total Offense Level to be 13 with a guidelines range of  
20 12 to 18 months' imprisonment. However, for the reasons set forth below, a split sentence of 6 months'  
21 imprisonment, as recommended by the probation officer, is not warranted in this case.

22 I. **PROCEDURAL HISTORY**

23 A grand jury returned a three-count indictment on October 12, 2017, charging Crow with  
24 violations of the animal fighting prohibitions of the Animal Welfare Act, 7 U.S.C. § 2156. (Doc. 1).  
25 Crow entered into a guilty plea to aiding and abetting an unlawful animal fighting venture, as charged in  
26 count one of the indictment.

27 The draft presentence report issued October 18, 2018. (Doc. 15). In the report, the probation  
28

officer recommended a split sentence of 6 months in prison and 6 months home detention as a condition of supervised release.

The United States submitted timely informal objections to the presentence report on November 5, 2018. *See* Final PSR at 16-1 (Doc. 16). The probation officer incorporated in the final presentence report some of the United States' requested changes. However, the probation officer's sentencing recommendation did not change. Although she acknowledged that the animal cruelty in this case is "horrid," the probation officer indicated that a split sentence allowing for home detention was appropriate to allow Crow to maintain his employment. PSR 16-1 at 1. The probation officer cited Crow's employment as the primary mitigating factor in support of a split sentence. PSR 20.

## II. LEGAL FRAMEWORK

The Animal Welfare Act makes it unlawful, in pertinent part, to "knowingly sponsor or exhibit an animal in an animal fighting venture." 7 U.S.C. § 2156(a)(1). An "animal fighting venture" is defined as "any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least 2 animals for purposes of sport, wagering, or entertainment." 7 U.S.C. § 2156(g)(1).

Crow pleaded guilty to count one, which charges a violation of 7 U.S.C. § 2156(a)(1) and involves the sponsoring and exhibition of trained fighting birds used in cockfighting. This violation is punishable by up to five years in prison. 18 U.S.C. § 49. The government will move to dismiss the remaining counts at sentencing.

## III. BACKGROUND REGARDING COCKFIGHTING

The cockfighting in this case was organized, moneymaking, and cold-blooded entertainment at the expense of the animals involved. It is illegal under federal law and in all 50 states. Cockfighting is an extreme form of cruelty to animals. Not only do the animals suffer grave injuries and frequently die during the fights, but they are also mistreated before and after the fights. Roosters used for fighting have their waddles, combs, and spurs crudely dubbed, or amputated, for the purposes of facilitating fights. A referee supervises the fights between the roosters. The fight ends when one rooster dies or refuses to continue to fight. If not killed during the fight, the losing rooster is usually killed after the fight. If both roosters are paralyzed or too injured to continue at the end of a fight, but have not yet died, handlers

place both birds in a small enclosure known as the “drag pit” to wait to see which one dies first – a process that can take hours or even days. A series of cockfights conducted in a day is referred to as a derby. A derby usually consists of dozens of individual cockfights lasting several hours depending on the number of entries.

One of the more detailed descriptions of a cockfighting operation was given by a California appellate court in *People v. Baniqued*, 101 Cal. Rptr. 2d 835 (Cal. App. 3 Dist., 2000), which described the conduct that Sacramento County Sheriff’s Department deputies encountered as “a scene of undeniable horror.” *Id.* at 837. *Baniqued* involved a derby in a large barn with about 100 persons in attendance and, in the end, scores of dead birds in a burn barrel. *Id.* at 837-838. There were “weapon[s]” in the form of “curved, pointed and very sharp knives or gaffs” attached to the roosters’ legs. *Id.* at 838.

The court relied on an expert witness from the Humane Society of the United States, Eric Sakach, who testified that the purpose of the “gaffs” is “to inflict lethal wounds.” *Id.* They resemble “curved ice picks or needles” and tend to cause puncture wounds. *Id.* Cockfights usually last only five to ten minutes because the gaffs “cause so much damage to the birds that one or both are mortally wounded fairly quickly.” *Id.*

Animals are not the only victims in animal cruelty cases. There is overwhelming evidence that animal abuse is linked to other forms of criminal conduct, particularly interpersonal violence. *See, e.g.,* McPhedran, *Animal Abuse, Family Violence, and Child Wellbeing: A Review*, 24 J. Fam. Violence 41-52 (2009). In addition, cockfighting is closely linked to other criminal and gang activities which often lure juvenile participants and pose a threat to community safety. *See generally* Mary Lou Randour & Tio Hardiman, *Creating Synergy for Gang Prevention: Taking a Look at Animal Fighting and Gangs* (2007).

Cockfighting is not only a barbaric form of animal cruelty, but a public health risk. Cockfighting is associated with the spread of deadly diseases, such as the fatal Viral Newcastle's Disease, and avian flu, which can spread to humans. *See, e.g.,* “Cockfighting, Crowing and Deadly Bird Virus Spur Rooster Limits in LA County,”(10-1-18), available at <https://www.citywatchla.com/index.php/2016-01-01-13-17-00/animal-watch/16293-cockfighting-crowing-and-deadly-bird-virus-spur-rooster-limits-in-la>

county; “Avian Influenza and Cockfighting,” (2-23-06), available at [http://www.upc-online.org/poultry\\_diseases/22306flu\\_cockfighting.html](http://www.upc-online.org/poultry_diseases/22306flu_cockfighting.html).

#### IV. THE INVESTIGATION

As the presentence report notes, the underlying investigation was initiated when Fresno County Sheriff’s Office deputies and vice detectives responded to a report of animal fighting at an address on North Vineland Avenue in Kerman, California. The deputies found a gruesome scene similar to that encountered by the Sacramento County Sheriff’s Office deputies in *Baniqued*. As the deputies in this case approached the rural location, 80 to 100 subjects fled from a metal shop/shed where a large cockfighting event was in progress. One of the spectators was a Norteño gang member who was on federal supervised release for distributing methamphetamine and was smoking heroin when the deputies encountered him.

A door to the shed had the words “Keep Shut” painted on it. Inside, a large rectangular plywood ring had been constructed for cockfighting. Numerous chairs and benches were placed around the ring and there was a large cooking station with a cash box, food for tacos, beer, and soda. There was also equipment and paraphernalia relating to cockfighting, including Mexican slashers or knives for fighting. There were 25 dead roosters found in buckets and trash cans. There were 10 wounded roosters, and 114 live roosters. *See Representative Photos*, attached hereto. The combs and wattles of the roosters had been removed and the spurs trimmed. A mass grave for the dead roosters was located outside of the shed.

The deputies initially encountered Crow in the backyard of the residence at the property. The shed where the cockfighting event was held was located behind the residence. The evidence indicates that Crow was not forthright with the deputies or the detectives who later questioned him two times. Crow was wearing a fanny pack. When the deputies asked what was in the fanny pack, Crow said it contained about \$20,000.<sup>1</sup> After feeling a large lump in Crow’s left front pants pocket, one of the deputies asked what was in the pocket. Crow said, “It’s about \$2,000.”

---

<sup>1</sup> The fanny pack did not contain \$22,800, as stated in the presentence report. PSR ¶ 9. The government’s informal objections requested correction of this misstatement. The government again requests that the correction of this misstatement.

1 A score sheet with numbers written in green ink and a green Sharpie were found in Crow's right  
2 front pants pocket, not the fanny pack.<sup>2</sup> As the presentence report indicates, the vice detectives, who  
3 were familiar with gambling at cockfights, indicated the score sheet was distinctive. It contained  
4 multiple columns and rows in a hand-drawn grid on a big sheet of paper. There were five columns that  
5 tracked the entrance fees, entrant number, and wins and losses for each of the entrants' three bird derbies  
6 or fights. The entrance fees totaled \$21,600. The score sheet indicated that six cockfights had already  
7 occurred. The score sheet showed 48 entries for three bird derbies, indicating that 144 birds were going  
8 to fight. The entrance fees and corresponding entry numbers in the first and second columns also  
9 corresponded to written numbers on six bundled stacks of money found in Crow's fanny pack. A tally of  
10 expenses totaling \$1,080 appears on the back of the score sheet: 480 ref (referee), 200 Danny, 200 Band,  
11 100 Clean and 100 Park Paid. Danny Matern, the tenant of the residence, indicated he had been paid  
12 \$200 for the event.

13 According to the score sheet, entrance fees in the amount of \$21,600 was collected. Organizers  
14 of cockfights typically take 10% of the money collected or, in this case, \$2,160. On the front of the  
15 score sheet, there were notations showing \$21,600, less \$3,240 (operating expenses and commission),  
16 totaling \$18,360 or the total pot available to the winners.

17 The detectives later counted and inspected the money seized from Crow. The total amount of  
18 money seized was \$22,800. There were six stacks of bundled currency. The bills in each stack had  
19 handwritten notes that corresponded to entrant numbers and entrance fees on the score sheets. \$20,500  
20 was seized from Crow's fanny pack and \$2,300 was seized from Crow's pocket, consistent with the  
21 amounts Crow had related to the deputies at the time of his search. Further, the \$2,300 seized from  
22 Crow's pocket represents close to the 10% of the money collected consistent with the organizer's share  
23 of the purse.

24 Upon questioning by the deputies, Crow said he was going to buy a car the following day but did  
25 not know the make, model, year, or location of the car. Crow said he lives at an address in Fresno and  
26 was visiting Danny Matern. Crow denied taking part in or having knowledge of cockfighting. He then

---

27 <sup>2</sup> The government informally objected and now objects to this misstatement and requests  
28 correction of the presentence report.

1 changed his story and said that when people ran from the shed, an individual named Jesse gave him  
2 \$20,000, the scorecard, and pen. According to Crow, Jesse said he would return for these items later.  
3 Crow said he had been smoking a cigarette in the backyard when the deputies arrived and the subjects  
4 fled. Crow also said that he resides at 6890 W. Clinton Avenue in Fresno

5       Upon further questioning by the detectives following advice and waiver of his Miranda rights,  
6 Crow said he had arrived at Matern's residence at around 6 p.m. that evening. Matern told Crow that he  
7 had rented the storage shed out for a party that night. Crow spent most of the evening in Matern's  
8 residence and came outside every half hour to smoke a cigarette. He was smoking a cigarette when  
9 people ran out of the shed. He said he did not hear the sound of roosters crowing. He had never been to  
10 a cockfight and did not know there was one that night. He was last in the storage shed six months prior  
11 to that night. Crow admitted that he had told the deputies that the money in the fanny pack was for the  
12 purchase of a vehicle. However, the fanny pack, scorecard, and pen actually belonged to "Jessie," who  
13 had given it to him to hold. The fanny pack contained about \$20,000. He said he did not know how to  
14 contact Jessie.

15       Crow was arrested on state charges. However, as noted in the presentence report, the District  
16 Attorney's Office did not pursue charges to allow for federal prosecution. In a recorded jail call  
17 following his initial arrest, Crow advised his wife, Denise Crow, that "They found the paper and the  
18 money." Denise told Crow that several people had come by their residence, including the man who calls  
19 the fights. Denise then reminded Crow that the telephone call was being recorded and they stopped  
20 talking. Crow also directed Denise to feed all of the chickens.

21       A federal search warrant was subsequently executed at Crow's residence. Agents found about  
22 200 birds, including individual penned gamecocks, which are too aggressive to co-exist with other  
23 animals. The agents found large handwritten score sheets similar to the one the deputies found in  
24 Crow's fanny pack. The agents also found a fanny pack similar to the one Crow was wearing at the time  
25 of the cockfight, which contained scales for measuring, Mexican slashers, analog counters, waxed string,  
26 moleskin, sharpening stones and metal files. Eric Sakach, the expert in *Baniqued*, confirmed that there  
27 were numerous items located at Crow's residence relating to the breeding of gamecocks and  
28 cockfighting, including "Pure Aggression," an injectable stimulant, 293 gaffs, and personalized leg

bands for his fighting birds. *See* last page of attached photos.

Crow's wife, Denise Crow, confirmed that Crow bred and sold roosters for cockfighting. She also indicated that Crow had attended cockfights in the past and had been involved in cockfighting for years. Finally, she acknowledged that she was aware that cockfighting is illegal. Crow's son, 21 year old son Billy Crow, was encountered during the execution of the search warrant at Crow's residence. PSR ¶ 21. Billy indicated that he resides with his parents.

## V. SENTENCING ANALYSIS

Post-*Booker* sentencing is a two-step process. First, this Court must properly calculate and consult the applicable advisory guideline range. *United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2006). Once the guidelines range is calculated, the Court must construct a reasonable sentence "in light of all the 18 U.S.C. § 3553(a) factors." *Id.* at 1280. The factors listed in § 3553(a) include the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of available sentences, and the advisory guideline range. 18 U.S.C. § 3553(a). Also included are the need for the sentence 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; to protect the public from further crimes of the defendant; and to provide the defendant with needed training, medical care, or other treatment. 18 U.S.C. § 3553(a). Finally, the sentence should serve to "avoid unwarranted sentencing disparities" and "provide restitution to any victims of the offense." 18 U.S.C. § 3553(a)(6)&(7).

### A. The Advisory Guidelines Range Is 12 to 18 Months.

The probation officer has properly calculated the applicable guidelines range. Based on a Total Offense Level of 13 and a Criminal History Category of I, the guidelines range is 12 to 18 months. Although Crow's Criminal History Category is I, his criminal record is not blemish free. *See* PSR at 10. The probation officer found that a downward departure or variance is not warranted in this case.

### B. Application of the 18 U.S.C. § 3553(a) Factors Supports a 12 Month Prison Term.

Having considered the Section 3553(a) factors, the probation officer recommends a split sentence of 6 months in prison and 6 months home detention as a condition of supervised release. In support of this recommendation, the probation officer points to Crow's employment as a mitigating



factor. The United States does not concur with this recommendation. Guidelines section 2E3.1 provides for a base offense level of 16 if the offense involved “an animal fighting venture.” In this case, Crow was not involved in one animal fighting venture. Crow’s relevant conduct indicates that he has been involved in raising gamecocks and cockfighting for years. Considering all sentencing factors, a split sentence is not appropriate in this case.

### **1. Nature and Circumstances of the Offense**

As noted above in the background section, cockfighting is an extreme form of cruelty to animals, both before, during, and after a fight. Even setting aside the suffering and killing of roosters, cockfighting is also a serious crime because it drives high-stakes illegal gambling and the concomitant threats and violence that attend such gambling, it burdens municipal and charitable entities that care for animals, and it threatens community safety.

### **2. The History and Characteristics of the Defendant**

Some, if not many, participants in cockfighting are motivated mainly by financial gain and are simply indifferent to the suffering of the animals. Others, by contrast, seem to affirmatively take pleasure in the violent aspects of the blood sport.

The evidence shows that Crow was not simply someone who dabbled in cockfighting, but rather, took his pursuits seriously enough to breed and raise gamecocks for sale to others for fighting purposes. He had also attended cockfighting events for years. The evidence further shows that Crow was not a mere spectator at the cockfighting incident in Kerman but was an organizer of the event, given his possession of 10% of the monies collected at the event. Crow’s level of involvement was greater than that of a spectator at a single cockfighting event.

### **3. Seriousness of the Offense, Respect for the Law and Just Punishment**

Over the last decade, there has been increased public awareness of the serious, violent nature of animal fighting, as reflected by Congress’s repeated strengthening of the Animal Welfare Act.<sup>3</sup> On

---

<sup>3</sup> Congress has strengthened the law three times over the last nine years: the Animal Fighting Prohibition Enforcement Act of 2007, Pub. Law 110–22, 121 Stat. 88, which increased animal fighting from a misdemeanor with a one-year statutory maximum to a felony with a three-year statutory maximum; the 2008 Farm Bill, Pub. Law 110–234, Sec. 12407, 122 Stat. 923, which raised the statutory maximum to five years, relaxed the interstate commerce element, and added substantive prohibitions; and, most recently, the 2014 Farm Bill, Pub. Law 113–79, Sec. 12308, 128 Stat. 649, which made attending animal fights a misdemeanor offense and added a felony offense for bringing anyone 16 years



April 15, 2016, the Sentencing Commission voted to increase the base offense level for most animal fighting offenses (including the ones charged here) from 10 to 16 points, effective November 1, 2016. This amendment of the substantive guideline by the Sentencing Commission further underscores the seriousness of the offense. *See* Sentencing Guidelines for United States Courts, 81 Fed. Reg. at 27,265 (“[t]he Commission [ ] determined that the increased base offense level better accounts for the cruelty and violence that is characteristic of these crimes”). Further, given the extensive, secretive networks that are needed to solicit opponents and to locate, buy and sell gamecocks of particular coveted bloodlines, such as the Dan Grey, a breed that Crow raised that is known as a quality fighting bird, cockfighting is organized crime in the traditional sense of that term. PSR ¶ 17. It is a serious offense, often driven by large amounts of money.

Crow’s conduct prior to his arrest shows that he did not appreciate the seriousness of the offense or have respect for the law. 18 U.S.C. § 3553(a)(2)(A). As noted above, Crow was not truthful with the deputies or detectives about his involvement or role in the cockfighting event in Kerman. Further, Crow had been involved in raising gamecocks and attending cockfights for years, notwithstanding the fact that it is illegal.

#### 4. Need to Afford Adequate Deterrence to Criminal Conduct

Cockfighting is a highly secretive enterprise that is difficult for law enforcement and investigative professionals to infiltrate. A cockfighting investigation requires many of the same skills and resources employed in major undercover narcotics investigations, thus challenging the resources of any agency that seeks to respond to it. An additional complication is that the evidence likely to be seized in a raid includes the gamecocks — living creatures who must be provided necessary care pending surrender or judicial process.

Given the limited law enforcement and animal-care resources available for cases such as this, and the strain it places upon municipal and charitable animal shelters, it is imperative that the sentences imposed in the few cases that are able to be brought send a strong message of deterrence. Those who choose to brutalize animals for entertainment and profit must know that their criminal conduct will be

---

or younger to an animal fight.

severely punished. Consequently, only a guidelines sentence without the leniency of a split sentence will “afford adequate deterrence to criminal conduct,” both to Crow and to other potential offenders. 18 U.S.C. § 3553(a)(2)(B).

### 5. **Avoiding Unwarranted Sentencing Disparities Among Similarly Situated Defendants**

People participate in cockfighting at different levels. The very top tier is occupied by people like Crow, who have developed a reputation for success in the fighting ring, sometimes over years, and who have capitalized on that reputation by breeding and selling fighting birds to other cockfighters. The industry even recognizes its own celebrities in underground magazines and similar electronic publications.<sup>4</sup> A top-tier participant, like Crow, rightly merits sentencing without the benefit of a split sentence.

## VI. **CONCLUSION**

Considering all of the 18 U.S.C. § 3553 factors and the relevant guideline provisions, the Court should sentence Crow to 12 months’ incarceration. Crow was not a casual participant in cockfighting. He was a sponsor of cockfighting events, such as the one in Kerman, and he raised gamecocks for sale at his home, where his wife and son lived. A 12 month sentence is also appropriate to reflect the acute suffering of the gamecocks that he sponsored, fought, and sold to other cockfighters. In making this recommendation, the government, and the Guidelines, factored in Crow’s post-indictment acceptance of responsibility and Criminal History Category I.

////

////

////

////

////

////

////

---

<sup>4</sup> For example, Sabong.net is one popular cockfighting website. “The Feathered Warrior” and “Gamecock” are popular cockfighting magazines.

1 It is further requested that the Court order restitution, pursuant to the plea agreement, in the  
2 amount of \$6,278.72, payable to the Fresno County Sheriff-Coroner's Office, 220 Fresno Street, Fresno,  
3 California 93721 (Point of Contact: Jan Stevens).

4 Dated: November 7, 2018

McGREGOR W. SCOTT  
United States Attorney

6 By: /s/ Karen A. Escobar  
7 Karen A. Escobar  
Assistant United States Attorney



















