UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	No. 14 CR 390
	)	Honorable Milton I. Shadur
KEVIN JOHNSON and	)	
TYLER LANG	)	

GOVERNMENT'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

Defendants have moved to dismiss the indictment, claiming that the charging statute, the Animal Enterprise Terrorism Act ("AETA"), is overbroad, vague, and violates defendants' substantive due process rights. R. 63. Because the AETA is none of those things, defendants' motion should be denied. In further support, the government states as follows:[1]

[1] Like the defendants' brief, the instant filing exceeds 15 pages in length. Prior to the filing of their brief, defendants orally requested leave to file an oversize brief. At that time, the Court indicated that it understood that the issues involved in this briefing would require briefs over the page limit. The government now moves *instanter* for leave to file a brief in excess of 15 pages.

BACKGROUND

On July 8, 2014, defendants Kevin Johnson and Tyler Lang were charged by indictment with damaging an animal enterprise, in violation of 18 U.S.C. § 43(a)(2)(A), and conspiring to damage an animal enterprise, in violation of 18 U.S.C. § 43(a)(2)(C). R.1. The indictment alleges that defendants vandalized and damaged a mink farm by pouring an acidic substance on farm vehicles, spray painting the farm's barn, and releasing over 2,000 mink from the farm property, all of which resulted in significant damage to the mink farm. *Id.*

The charging statute for the two counts in the indictment is the AETA, which was enacted in 2006 in response to "an increase in the number and the severity of criminal acts and intimidation against those engaged in animal enterprises." *See* 152 Cong. Rec. H8591 (daily ed. Nov. 13, 2006) (Statement of Rep. Sensenbrenner). The AETA was designed to close "serious gaps and loopholes . . . with respect to protecting employees and associates of animal enterprises . . ." *Id.* (Rep. Scott).

The AETA, codified under the title "[f]orce, violence, and threats involving animal enterprises," contains five subsections. Section (a) of the AETA defines the "offense":

> (a) Offense. Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate commerce –
>
> (1) for the purpose of damaging or interfering with the operations of an animal enterprise; and
>
> (2) in connection with such a purpose—

> (A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;
>
> (B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family . . . of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation, or
>
> (C) conspires or attempts to do so;
>
> Shall be punished under subsection (b).

18 U.S.C. § 43.

The AETA defines "economic damage" as "the replacement costs of lost or damaged property or records . . . the loss of profits, or increased costs, including losses and increased costs resulting from threats, acts of vandalism, property damage, trespass, harassment, or intimidation" inflicted due to a connection to an animal enterprise. 18 U.S.C. § 43(d)(3)(A). Yet economic damage "does not include any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise . . ." 18 U.S.C. § 43(d)(3)(B). [2]

The AETA also contains "rules of construction." As relevant here, the AETA provides that "[n]othing in this section shall be construed: (1) to prohibit any

[2] The offense does not criminalize loss to intangible property as incorrectly stated in defendants' motion.

expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment"; or "(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, regardless of the point of view expressed . . ." 18 U.S.C. § 43(e)(1), (2).

ARGUMENT

I. Standing

Where First Amendment rights are at issue, defendants have standing to challenge a statute for facial overbreadth and vagueness without alleging an unconstitutional as-applied harm. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). But that does not relieve defendants of the need to demonstrate standing in order to properly invoke the Court's authority under Article III of the Constitution. *Allen v. Wright*, 468 U.S. 737, 750 (1984). Under Article III, the Court only has authority to hear "actual 'cases' and 'controversies'." *Id.* Defendants thus lack standing to challenge elements of 18 U.S.C. § 43 with which they are not charged because those elements do not present a controversy for the court to resolve. *Broadrick*, 413 U.S. at 609-10; *Service Employees International Union v. Municipality of Mt. Lebanon*, 446 F.3d 419, 424 (3rd Cir. 2006); *see also United States v. Johnson*, 376 F.3d 689, 694 (7th Cir. 2004) (holding that defendant lacked standing to challenge child pornography production statute when he had only been charged with the attempt provision). In order for defendants to obtain the relief they seek, they may only

challenge the constitutionality of the sections with which they have been charged, namely, sections (a)(2)(A) and (C) of the AETA. Defendants have not been charged, however, with section (a)(2)(B). That section is therefore not included in the below analysis.[3]

II. AETA Is Not Overbroad.

Defendants first argue that the AETA is overly broad in violation of the First Amendment. Defendants are wrong. The Supreme Court has cautioned that the First Amendment overbreadth doctrine is "'strong medicine' that should not be casually employed." *United States v. Williams*, 553 U.S. 285, 293 (2008) (internal quotations omitted). As such, a movant seeking invalidation on overbreadth grounds bears a very heavy burden: the movant must show that the law "reaches a *substantial amount* of constitutionally protected conduct." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982) (emphasis added). The "mere fact that one can conceive of *some* impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Members of City Council of L.A. v. Taxpayers of Vincent*, 466 U.S. 789, 800 (1984) (emphasis added). In fact, "[r]arely, if ever, will an overbreadth challenge succeed against a law or

[3] The issue of standing does not appear to be in dispute, given that defendants only specifically attack the language in the sections with which they have been charged.

regulation that is not specifically addressed to speech or to conduct necessarily associated with speech." *Broadrick*, 413 U.S. at 613.

Here, defendants cannot show that the AETA reaches a substantial amount of constitutionally protected activity because the statute itself is not aimed at speech at all. *See Virginia v. Hicks*, 539 U.S. 113, 122 (2003).[4] Rather, it is aimed at *conduct* that has the purpose of damaging or interfering with a business with an intent to either cause property damage or loss or place a person in fear of bodily harm via acts such as vandalism or trespass. *See* 18 U.S.C. § 43(a). Not only do the words "damaging," "interfering," "damages or causes the loss of any real or personal property" signify as much, but the AETA expressly exempts expressive conduct or speech protected by the First Amendment. *See id.* § 43(e)(1), (2). Given these "rules of construction," it is difficult to conceive of any "impermissible applications," let alone a *substantial* overbreadth problem. *Taxpayers of Vincent*, 466 U.S. at 800.

Despite the straightforward text of the AETA, defendants insist that the law encompasses constitutionally protected activity if that activity leads to lost profits or increased costs to an animal enterprise. In support, defendants offer a handful of

[4] The prong of the statute at issue here almost exclusively applies to conduct. It is the second prong, which is not at issue in this case, that criminalizes a small fraction of speech – albeit speech that aims to incite and threaten such that it receives no First Amendment protection at all. The only federal court to address the constitutionality of AETA upheld even that prong in the face of both overbreadth and vagueness attacks. *See United States v. Buddenberg*, 2009 WL 3485937 (N.D. Cal. Oct. 28, 2009) (holding that "the AETA's focus is not on speech but rather on conduct").

examples of protected activity, including the production of the documentary "Blackfish" and a general reference to the publication of the conditions under which some animals are treated by animal enterprises. R.63 at 12-14. Those examples not only fall far short of comprising a "substantial" amount of the conduct covered by the statute, they are not covered by the statute in the first place. Specifically, the examples rely on defendants' argument that the term "personal property" in the offense section of the AETA includes lost profits, so that a person who intentionally "damages" or "causes the loss of" such profits through peaceful protest or other expressive activity would face criminal liability under the statute. But again, the statute's "rules of construction" proves defendants' contention to be unfounded. If the producer of "Blackfish" (or any other person publicizing the treatment of the animals by an animal enterprise) were charged under the AETA, those charges would rightfully be dismissed (and should not have been brought in the first place), because the statute plainly exempts First Amendment protected activity, including "peaceful picketing or other peaceful demonstration." 18 U.S.C. § 43(e)(1) (emphasis added).

Even without those "rules of construction," though, a contextual reading of the statute demonstrates that an individual cannot be convicted merely for causing an animal enterprise to lose profits, as each of defendants' examples contemplate. First, the phrase "intentionally damages or causes the loss of any real or personal property" in the offense section of the statute, *id.* § 43(a)(2)(A), should be read

within its statutory context. *See Deal v. United States*, 508 U.S. 129, 132 (1993) (it is a "fundamental principle of statutory construction . . . that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used"); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) ("[A] word is known by the company it keeps"). That statute identifies "animals or records" as examples of the types of "personal property" at issue, thereby signifying that "damages or causes the loss of" was intended to cover damage or harm to *tangible* property - not harm to or loss of intangible, not-yet-realized profits. 18 U.S.C. § 43(a)(2)(A). Furthermore, the real or personal property in question must be "*used by* an animal enterprise," *id.* (emphasis added), again indicating that the statute is directed at those who intentionally cause damage or loss to tangible property, not merely a decrease in profits.

Second, Congress's use of the term "economic damage" in the penalties provision of the statute (section (b)), but omission of the modifier "economic" in the offense provision (section (a)), is significant. "It is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Duncan v. Walker*, 533 U.S. 167, 172 (2001). Here, Congress knew how to specify when it meant "economic damage" because it used the exact term in the penalties provision of the statute. *See* 18 U.S.C. §§ 43(b)(2)(A), 43(b)(3)(A), 43(b)(4)(B) (imposing penalties based on

whether the "offense results in economic damage," and the amount of that economic damage). "The offense" refers to the intentional acts specified in Sections (a)(2)(A) and (a)(2)(B), neither of which includes the term "economic damage." Thus, economic damages may be taken into account only in determining what penalty to impose once a violation of section (a)(2)(A) or (a)(2)(B) has been found. Economic damage cannot, standing alone, give rise to liability under the statute. *See Buddenberg*, 2009 WL 3485937 at *6 ("Any economic damages that factor into the penalty must result from the violation, not from other conduct that might take place simultaneously (*e.g.,* at a demonstration where protected and criminal conduct occurs)."). If Congress had intended to include loss of profits as an actionable offense, it would have included the defined term "economic damage" in the offense provision, but it did not.

Finally, Congress's definition of "economic damage" in the penalties provision reveals the flaws in defendants' lost-profit argument. As noted above, section (b) provides that once a person is found guilty of "a violation of section (a)," he or she can be punished to varying degrees depending on the economic damage or bodily harm resulting from the offense. 18 U.S.C. § 43(b). Congress defined "economic damage" to include "loss of profits or increased costs," but explicitly exempted from the definition "any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise." *Id.* § 43(d)(3). In defining "economic

damage" to exclude "any lawful economic disruption," Congress made it abundantly clear that one cannot be punished - to any degree - for the very thing defendants argue is proscribed: loss of profits due to public reaction to animal rights activists' effective, but lawful, campaign. This also directly refutes defendants' example that the producer of "Blackfish" is technically guilty under the AETA because the statute - despite defendants' arguments to the contrary - does not criminalize the loss of profits from peaceful demonstration.

In any event, and as referenced above, to the extent the statute covers speech or expressive conduct, the rules of construction forbid a prosecution that would violate the First Amendment. "When a federal court is dealing with a federal statute challenged as overbroad, it should [] construe the statute to avoid constitutional problems, if the statute is subject to such a limiting construction." *New York v. Ferber*, 458 U.S. 747, 769 n. 24 (1982). Here, there is unquestionably a limiting construction, based on the terms of the offense provision, the penalties provision, and most significantly, on the AETA's own limiting *instruction* - that it not be read to prohibit any expressive conduct or speech protected by the First Amendment. 18 U.S.C. § 43(e). Those features of the statute preclude a finding of "substantial" overbreadth. *See Ferber*, 458 U.S. at 771-72. Indeed, if the AETA is, in fact, ever applied unconstitutionally, which is certainly not the case here, such a violation "can still be remedied through as-applied litigation[.]" *Hicks*, 539 U.S. at 124.

The rules of construction here reveal the drafters' intent when crafting the statute. *See CISPES v. FBI*, 770 F.2d 468, 474 (5th Cir. 1985) (holding that a nearly identical provision "is a valuable indication of Congress' concern for the preservation of First Amendment rights *in the specific context of the statute in question*") (emphasis added). Congress passed the AETA to provide another tool to combat "violent acts" such as "arson, pouring acid on cars, mailing razor blades, and defacing victims' homes." 152 CONG. Rec. H8590, H8591 (daily ed. Nov. 12, 2006) (House consideration and passage of S. 3880). Yet, at the same time, as reflected in the limiting instruction, Congress sought to protect the "rights of those engaged in first amendment freedoms of expression regarding [animal] enterprises." *Id.* To accomplish this, Congress added the "manager's amendment" (now the rules of construction) to the AETA, ensuring protection for precisely the type of activity that defendants raise in their brief.

Defendants nevertheless complain that the limiting instruction "fails to clarify what is protected under the First Amendment and what is not." R. 63 at 15. But the rules of construction are "no[] more vague than the First Amendment itself." *Hutchins v. District of Columbia*, 188 F.3d 531, 546 (D.C. Cir. 1999). Their existence in the statute "fortifies, rather than weakens, First Amendment values." *Schleifer v. City of Charlottesville*, 159 F.3d 843, 853 (4th Cir. 1998). In any event, the drafters specifically address this problem by including two explicit examples -

peaceful picketing and peaceful demonstration - both of which address the heart of defendants' concern with the statute as a whole.

Despite the specific examples of expressive conduct spelled out in the AETA, defendants try to portray those examples as confusing. But a plain reading of the statute, without convoluted suggestions about possible alternative meanings or interpretations, leaves the layperson with one conclusion: people are permitted to engage in First Amendment-protected speech and conduct, which includes peaceful protest.

The cases cited by defendants are inapposite. In those cases, the "savings" clauses were far more expansive (exempting any reading of the statutes that would be in violation of state or federal law), or were inconsistent with the actual purpose or language of the statute itself, or involved situations in which the statute was unconstitutional on its face. *See e.g.*, *Fisher v.* King, 232 F.3d 391, 395 (4th Cir. 2000); *State v. Machholz*, 574 N.W.2d 415, n.4 (Minn. Sup. Ct. 1998). Here, the limiting instruction is not inconsistent with the language of the statute, limiting only some of the conduct that potentially could fall under the statute's purview. It also does not attempt to "save" the statute from any conceivable unconstitutional construct, limiting only those constructions that violate the First Amendment. The limiting instruction is therefore consistent with the aim of the statute itself, which is to permit peaceful protest while criminalizing unlawful conduct.

Indeed, one case cited by defendants illustrates the distinction between the defendants' argument and this case. In *CISPES*, the Fifth Circuit analyzed the constitutionality of the statute criminalizing the harassment of a foreign official. *CISPES*, 770 F.2d at 474. There, the Fifth Circuit held that the limiting provision was helpful to the statute where, like here, the statute was otherwise lawful and the limiting provision merely clarified that the statute should not reach constitutionally protected conduct:

> Of course, such a provision cannot substantively operate to save an otherwise invalid statute, since it is a mere restatement of well-settled constitutional restrictions on the construction of statutory enactments. However, it is a valuable indication of Congress' concern for the preservation of First Amendment rights in the specific context of the statute in question. Thus, it serves to validate a construction of the statute which avoids its application to protected expression.

Id.

Finally, a statute with identical rules of construction has been upheld as constitutional. *United States v. Bird*, 124 F.3d 667, 683 (5th Cir. 1997) (holding that the Freedom of Access to Clinic Entrances Act [FACE] is not unconstitutionally overbroad, in part, because of its "rules of construction," which are identical to the AETA's); *American Life League v. Reno*, 47 F.3d 642, 649 (4th Cir. 1996) ("the Act's [FACE's] statement of purpose and rules of construction indicate that the Act was not passed to outlaw conduct because it expresses an idea.").

III. The AETA Is Not Vague.

"A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Williams*, 553 U.S. at 304. Defendants argue that the AETA is impermissibly vague because it is sweeping and allows law enforcement significant discretion about who may be prosecuted under the statute. In the defendants' view, the AETA would federalize every act of "theft, libel, or vandalism against every food or retail store in the country, so long as there is an interstate component." R.63 at 18. Defendants fail to offer support for their rhetoric, failing to identify even a single word from the statute that they regard as vague. Nor do they cite to a single portion of the statute that fails to provide defendants notice as to what is prohibited. Instead, they claim that too much is prohibited. Accordingly, defendants are not really making a vagueness argument at all. Instead, they are arguing overreach of the government, but cloaking it in terms of vagueness.

Nevertheless, defendants claim that "the AETA is exactly the same as statutes invalidated in *Papachristou* and *City of Houston*." R. 63 at 18. But a mere glance at the statutes at issue in those cases refutes that claim on its face. In *Papachristou*, eight defendants were convicted of violating Florida's "vagrancy" law, which upon reading the statute, was clearly an archaic law with little-to-no

meaning or application to modern conduct and contained multiple vague and undefined terms:

> Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants.

Papachristou v. City of Jacksonville, 405 U.S. 156, 158, n. 1 (1972).

In striking down the statute, the Supreme Court explained that the terms used in the vagrancy statute no longer had any application or meaning to the average citizen: "The poor among us, the minorities, the average householder are not in business and not alerted to the regulatory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them." *Id*. at 162-63. This is a far cry from the AETA, which criminalizes specific conduct: intentional damage to an animal enterprise.

The statute in *City of Houston v. Hill*, 482 U.S. 451 (1987) is similar to the one in *Papachristou*. In *Hill*, the ordinance at issue made it unlawful to "assault, strike, or in any manner oppose, molest, abuse, or interrupt any policeman in the execution of his duty, or any person summoned to aid in making an arrest." 482

U.S. at 455. In striking down that ordinance, the Court reasoned that the words "oppose" and "interrupt" largely cover speech rather than conduct, which is obviously problematic because "the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers." *Id.* at 461. Without limiting the speech to fighting words, the words "oppose" and "interrupt" leave the "police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them." *Id.* at 465. This is obviously not analogous to the AETA, where speech is expressly excluded from the statute's application and, in any event, the statute does not contain any word that is anywhere near as vague as "oppose" or "interrupt," which were present in the *Hill* statute.

Defendants next liken the AETA to the statute in *United States v. Lanning*, 723 F.3d 476, 483 (4th Cir. 2013), which they claim was stricken down as unconstitutionally vague. The statute in *Lanning*, however, was not actually deemed unconstitutionally vague, but instead was determined to be vague as applied. *Id.* at 481-82. In *Lanning*, the defendant was charged after he briefly touched the groin area of an undercover officer who had expressly consented to a sexual encounter with the defendant. *Id.* The Court held the statute's "obscenity" prong to be vague as applied because it was unclear that the defendant's conduct was in fact obscene. *Id.* In any event, the statute in *Lanning* contained terms that are nowhere present in the AETA, criminalizing conduct that is "obscene,"

"physically threatening or menacing," or "likely to inflict injury or incite an immediate breach of the peace." *Id.* at 478.

The language in the AETA is straightforward and provides sufficient notice to defendants. Indeed, the only definitional term even highlighted by defendants as allegedly vague is the term "animal enterprise" (R.63 at 18), notwithstanding its statutory definition. 18 U.S.C. § 43(d)(1). The defendants do not find the term unclear, but instead complain that it encompasses a broad range of entities, including retail food chains. The fact that the definition covers a large number of establishments does not support a vagueness challenge. What matters is the clarity of the term.[5]

As for the rest of the statute's language, none of which garners mention by the defendants, it bears no likeness to the language that courts have declared void for vagueness, like "oppose," "indecent," and "vagrant." *See Williams*, 553 U.S. at 306 (noting that the Court has struck statutes tying criminal culpability to whether the defendant's conduct was "annoying" or "indecent"). Rather, when the statute is read in a straightforward, logical way, with an eye toward Congress's intent, "'it is clear what the [law] as a whole prohibits:'" intentional, violent, unlawful conduct

[5] Also, in making this point, defendants assume that just about every possible crime has an "interstate component." That is not the case here. AETA requires that the defendant use interstate commerce in committing the crime. By contrast, the bludgeoning-of-the chickens example offered by the defendants had no similar use *by the defendants* of interstate commerce, which would explain the "lack of federal interest."

outside the reach of the First Amendment. *Hill*, 530 U.S. at 733 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972)). While one can "conjure up hypothetical cases in which the meaning of these terms will be a nice question," *Am. Commc'n Assn. v. Douds*, 339 U.S. 382, 412 (1950), "speculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the vast majority of its intended applications." *Hill*, 530 U.S. at 733 (internal quotation omitted). Because the AETA is not vague as to either defendant's conduct or its other applications, the vagueness claim must fail.

Finally, defendants assert that the AETA is discriminately applied because only animal rights activists have been prosecuted under the statute. As the statute is not vague, whether it has been discriminately applied is moot. The government notes, however, that defendants are wrong when they argue that the AETA has not been used to prosecute an individual without ties to the animal rights movement. Specifically, in 2008, Richard Sills was charged under the AETA with planting a fake bomb at a California university. *See* Sills Documents, provided to the Court as Government Exhibit C. In that case, while Sills originally claimed to have acted on behalf of an animal rights organization, he in fact was a university employee and had no known ties to the animal rights community at all. *Id.*

Setting aside that prosecution, however, given that the AETA's legislative history reflects that Congress enacted the statute to combat the rising threat of

animal rights extremists, it should come as no surprise that the statute will ordinarily apply to those individuals willing to engage in unlawful acts on behalf of their cause. What is clear, though, is that the AETA is not, nor was it intended to be, a way to oppress lawful protest or to discriminate against a minority group.

IV. The AETA Does Not Violate Due Process.

Last, defendants argue that the AETA violates defendants' substantive due process rights because it unfairly labels defendants as "terrorists." That argument is flawed for several reasons. As a threshold matter, there is no due process violation at all, nor is there a liberty interest at stake, because the AETA does not label defendants as anything.[6] The AETA is known as the Animal Enterprise Terrorism Act - nothing more. It is not codified under the federal terrorism statutes. 18 U.S.C. § 2332b(g)(5)(B). The AETA's text contains no reference to the word "terrorism" and the government need not prove that the defendants acted as terrorists in order to sustain a conviction. To be sure, the government will not refer to defendants as terrorists at trial or in any other context. In addition, defendants convicted of the AETA are not required to register as terrorists, nor are convicted defendants automatically subject to any sentence enhancement based on having

[6] This is especially true because courts are cautioned to use extreme care in evaluating, letting along granting, a substantive due process challenge. *See Collins v. City of Harker Heights*, 112 S.Ct. 1061, 1068 (1992) ("As a general matter, the Court has always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended. The doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field").

committed a terrorist act. Finally, while defendants suggest that a conviction under this statute would bear on their status with the Bureau of Prisons, that is not the case.[7] According to a senior analyst with the Counter-Terrorism Unit for the Bureau of Prisons,[8] a prisoner's designation as a terrorist does not, on its own, affect the individual's designation at all. Instead, in determining designation, every aspect of the prisoner's background, including the facts of his crime, are considered. Therefore, while the facts of a terrorism conviction often leads to heightened security concerns, it is just as likely that the facts of another terrorism conviction will not. Indeed, individuals convicted specifically under the AETA are eligible for a minimum security designation, depending on the facts of their conviction and background. According to an intelligence analyst for the FBI's Domestic Terrorism Operations Unit,[9] there have been four individuals incarcerated after convictions under the AETA. Of those four individuals, only one was subject to any level of

[7] The only other examples posited by defendants of potentially negative ramifications resulting from the terrorist "label" are jury prejudice and social stigma. As for jury prejudice, the government intends to move in *limine* to prohibit any reference to the word "terrorism" by either party at trial. So it appears that the parties are in agreement that the jury will never hear that the AETA is known as a terrorism statute. As far as poisoning a prospective jury pool or social stigma, again, the government has not, and does not intend to, ever refer to the defendants as terrorists to the media. It is defendants who have publicized to the media (through comments to journalists and press releases) the fact that they are labeled "terrorists," not the government.

[8] If the Court is so inclined, the analyst can be made available to provide testimony or answer questions of the Court.

[9] FBI agents assigned to this case prepared a report documenting the interview with the intelligence analyst. That report will be provided to the Court upon request.

heightened security at all, and that individual was subjected to heightened security due in part to his prior acts of arson, as well as the fact that he had engaged in online extremism while awaiting trial and sentencing. The other three individuals were all placed in minimum security designations. According to the same intelligence analyst, FBI employees are not even permitted to designate an individual a domestic terrorist for intelligence purposes if the individual has only been convicted under the AETA. Instead, to designate an individual as a domestic terrorist, the individual must have received the terrorist sentencing enhancement. Therefore, there is no right at all that defendants can point to that has been violated because they are not labeled as terrorists; what the statute is called has no bearing or relevance on trial, conviction, sentence, or beyond.

In any event, even assuming that the AETA does label defendants as "terrorists" and that triggers a liberty interest as a result, defendants' argument still fails. In the case cited by defendants, *People v. Knox*, the court held that the right against being unfairly labeled may be a liberty interest, but certainly is not a fundamental right. 903 N.E. 2d 1149, 1151 (N.Y Ct. App. 2009).[10] As such, the court would apply the deferential rational basis test in determining whether the AETA's use of the word "terrorism" in the title of the statute, with no further reference or

[10] There was clearly a liberty interest at stake in *Knox* because the "label" required adherence to the Sex Offender Registry Act where the ramifications of being labeled a sex offender were obviously significant – much more so than any vague and unspecified harm of being labeled a terrorist by the AETA. *Id.*

ramification to that word, violates due process. *Id.* at 1153 ("The right not to have a misleading label attached to one's serious crime is not fundamental in this sense, and we therefore apply the rational basis test to defendant's claims."). Therefore, the question is not whether defendants' rights have been violated, but whether the intrusion on that that liberty is "rationally related to a legitimate government interest." *Hayden v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 576 (7th Cir. 2014). "Government action passes the rational basis test if a sound reason may be hypothesized. The government need not prove the reason to a court's satisfaction." *Northside Sanitary Landfill, Inc. v. City of Indianapolis*, 902 F.2d 521, 522 (7th Cir. 1990) (collecting cases).

Here, criminalizing acts committed against animal enterprises as acts of terror is rationally related to a legitimate government interest, which is the "increase in the number and the severity of criminal acts and intimidation against those engaged in animal enterprises." *See* 152 Cong. Rec. H8591 (daily ed. Nov. 13, 2006) (Statement of Rep. Sensenbrenner). The Act was designed to close "serious gaps and loopholes . . . with respect to protecting employees and associates of animal enterprises . . ." *Id.* (statement of Rep. Scott). In passing and then amending the statute, Congress heard testimony and information about the severity and increasingly dangerous nature of the actions taken by animal rights extremists. Before the bill's passage, the Deputy Assistant Director of the FBI addressed Congress and provided it with examples of arsons, bombings, and other harassing

and intimidating conduct perpetuated by the animal rights extremists, each of which would rightly be defined as acts of terror. *See* Lewis Statement, attached as Government Exhibit D.

In sum, the AETA does not label anyone as anything and because there are no real ramifications to the use of the word "terrorism" in the title of the statute, there is no liberty interest at stake here at all. But, in any event, that label is rationally related to a legitimate interest of the government, which is to protect individuals involved in lawful employment (often one involving academia and the advancement of medical and scientific research) from the wrath of individuals like defendants.

CONCLUSION

For the reasons set forth above, the government requests that this Court deny defendants' motion to dismiss.

Respectfully submitted,

ZACHARY T. FARDON
United States Attorney

By: /s/ Bethany K. Biesenthal
BETHANY K. BIESENTHAL
NANCY DEPODESTA
Assistant United States Attorneys
219 South Dearborn Street
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(312) 886-7629

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. RICHARD SILLS, Defendant.	Case No. 08CR0213-LAB **GOVERNMENT'S SENTENCING MEMORANDUM** Date: July 28, 2008 Time: 9:30 a.m. Court: The Hon. Larry A. Burns

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Peter J. Mazza, Assistant United States Attorney, and hereby files its Sentencing Memorandum. This Sentencing Memorandum is based upon the files and records of the case together with the attached Statement of Facts and Memorandum of Points and Authorities.

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I

STATEMENT OF THE CASE

On January 22, 2008, a federal grand jury in the Southern District of California returned a five-count Indictment charging defendant Richard Sills ("Defendant") with three counts of providing false information and hoaxes, in violation of 18 U.S.C. § 1038(a)(1), and two counts of making bomb threats by telephone, in violation of 18 U.S.C. § 844(e). Defendant was arraigned on the Indictment on January 24, 2008. On March 11, 2008, the United States filed a superseding Information charging Defendant with one count of making threats involving animal enterprises, in violation of 18 U.S.C. § 43. Defendant pled guilty to the Information that same day.

II

STATEMENT OF FACTS

A. Sills Makes Bomb Threats

On December 4, 2007, at approximately 10:15 a.m., John Van Zante, Public Relations Director for the Helen Woodward Animal Center, received a call from an anonymous male caller who stated:

> *John, you need to know that the American Animal Liberation Front is going to be doing a very drastic action against UCSD animal torture facilities in the medical schools and research centers. That's happening today. They have been told they need to take all the animals to a central animal location and a sanctuary would be there to help them relocate those animals. If not, there's going to be extreme consequences. So, I'm giving you a heads-up. Hopefully you all will be there.*

On December 5, 2007, at approximately 8:45 a.m., the University of California, San Diego (UCSD) Office of Research Affairs received a call from an anonymous male caller who stated: *"You need to take this very seriously - there is a bomb in Leichtag."* At approximately 9:05 a.m., the UCSD Chancellor's Office received a call from an

anonymous male caller who warned: *"Take this very seriously, there is a bomb in the Leichtag Building, take this very seriously."*

The UCSD police department then received a letter through UCSD's intra-campus mail system also during the morning of December 5, 2007. The letter, which is attached hereto as Exhibit 1, stated that there would be *"very drastic action,"* in the form of *"very powerful yet compact explosives"* in at least six campus locations where *"animals are tortured and killed in the name of science."* The writer stated the attack would be a *"9/11 event for raising the awareness of what you and institutions like you are doing to these defensles [sic] sentiant [sic] beings."* The letter closed with a warning: *"This is not a hoax. We do not want to see your people hurt. However if they are in and around these buildings when we detonate . . . ."* The letter was signed, *"A.L.F."*

B. Hoax Improvised Explosive Device Found

At approximately 10:26 a.m., a UCSD employee called the campus police to report a suspicious device found in the lobby of the Leichtag Biomedical Research Building (LBRB). As a result of the discovery, UCSD officials ordered an evacuation of the LBRB and several neighboring buildings.

A Federal Bureau of Investigation (FBI) bomb technician responded to the scene at approximately 11:00 a.m. Initial inspection revealed what appeared to be an antenna attached to the device. Based on the threat of detonations that had been made earlier in the morning, the presence of the antenna increased concern that the device was a functional improvised explosive device (IED). Subsequent investigation determined the device to be a hoax.

The device consisted of a 1.02 pound Coleman camping fuel container with four 12-gauge shotgun shells taped to the outside of the cylinder. Wires and an antenna were also affixed to the container. The hoax IED was inside a plastic grocery bag.

C. Subsequent Investigation

Subsequent investigation by the FBI revealed that the threatening letter sent to the UCSD police originated from the office of Dr. John Kelsoe. Defendant was Dr. Kelsoe's administrative assistant at the time the threats were made.

A search of Defendant's cellular telephone indicated that it had been used to place the three threatening calls made on December 4-5, 2007. Defendant's cellular telephone also made calls to the United States Attorney's Office for the Southern District of California on December 13, 2007.

On January 4, 2008, agents interviewed Defendant. Defendant denied knowing about the hoax bomb beyond that he was evacuated from work that day. When confronted with the calls made to UCSD from his cellular phone, Defendant denied knowing how that could have happened. When told that agents were preparing to search his house, Defendant offered that they would likely find a shotgun in his apartment. Finally, when agents confronted Defendant with a call made to Duncan's Gunworks from his cellular phone in October, 2007, Defendant acknowledged "[t]his does not look very good. It looks kind of bad. I think I want a lawyer. I want to cooperate but I also need to protect myself." The interview terminated at that point.

Later in the day on January 4, 2008, agents searched Defendant's apartment. The search revealed several items that assisted agents in their investigation: (1) pieces of paper with information for an

Assistant U.S. Attorney and several defense attorneys that had been involved in the investigation; (2) shotgun shells that matched those found on the hoax IED; (3) a shotgun with four shots in it; (4) a box of shotgun shells with eight shots missing; and (5) a Colman propane tank that matched the one used to construct the hoax IED.

Agents arrested Defendant on January 4, 2008.

D. Impact on UCSD

The individuals who initially discovered the device were distraught. One individual reported to an FBI Agent that she felt that "she aged five years in five minutes." Several buildings, including the LBRB, were evacuated for approximately four hours on December 5, 2007. Several experiments were interrupted and lost, some of which had been multiple-week projects. Several animals also died as a result, including some genetically engineered research mice. Economic damage resulting from the bomb threats and subsequent evacuation totaled $10,419.01. This figure includes costs incurred due to lost experiments, lost animals and equipment, as well as expenses incurred by Li-COR Biosciences, a private corporation that had flown a representative to UCSD to conduct a seminar that was cancelled as a result of Defendant's actions.

III

SENTENCING MEMORANDUM

A. Defendant's Advisory Guideline Calculation

Under the advisory guidelines, Defendant is subject to a base offense level of six, increased by four levels under USSG § 2B1.1(b)(1)(C) for causing more than a $10,000 loss. Defendant should receive two points for acceptance of responsibility under USSG § 3E1.1. The parties have agreed - with the concurrence of the

probation officer - that a six-level increase is warranted under USSG § 5K2.21 for dismissed and/or uncharged conduct that acknowledges the seriousness of the offense and the underlying charges that will be dismissed as part of the negotiated plea agreement. With a criminal history category of I, Defendant's range is 15-21 months.

Defendant should be sentenced to 21 months in custody, which is the high-end of his advisory guideline range. A sentence at the high-end is appropriate for several reasons. First, Defendant terrorized the UCSD campus. He made several detailed phone calls threatening significant damage to UCSD officials as well as the Helen Woodward Animal Center. Defendant also mailed a letter to the UCSD police that reiterated his plans to bomb several campus locations in the name of protecting research animals. Specifically, Defendant's letter identified six buildings that he claimed had bombs placed in them, and warned of additional bombs in other buildings.

Second, the fact that Defendant placed a hoax IED in the lobby of a main research building could only be interpreted as having been done so to terrorize the campus community. Indeed, individuals who initially discovered the device reported feeling very frightened at seeing it. While the device seems crude and relatively benign in retrospect, the FBI bomb expert who first inspected the device reported that it had the appearance of an authentic device in part because of the wires and antenna attached to it.

Finally, Defendant caused great disruption to UCSD. The disruption included the interruption or cancellation of several scientific experiments, some of which had been underway for several weeks. And, as a cruel twist of irony, several research animals died as a result of the lengthy evacuation, including several genetically

modified mice. In total, Defendant's actions caused the loss of thousands of dollars, research animals, and undoubtedly contributed to greater apprehension on UCSD's campus for months to come.

B. SECTION 3553(A) FACTORS

In imposing a sentence, the district court should consider the factors set forth at 18 U.S.C. § 3553(a). See United States v. Booker, 543 U.S. 220, 245-46 (2005). These 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, and 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 educational or vocational training, medical care, or other correctional treatment. 18 U.S.C. § 3553(a)(1)&(2). Unwarranted sentencing disparities among defendants with similar records who have committed similar conduct should also be avoided. § 3553(a)(6).

Defendant should be sentenced to a term of 21 months, the high-end of his agreed upon Guideline range. Importantly, the probation officer agrees with the Government in this recommendation. Such a sentence would be reasonable in light of all of the § 3553(a) factors, particularly the circumstances of Defendant's actions.

In mitigation, Defendant does not have any criminal history. However, while this is an isolated incident, it is disturbing that Defendant took such steps to instill fear in his colleagues and coworkers at UCSD. Defendant spoke highly of Dr. Kelsoe, the professor for whom Defendant worked at UCSD, yet it was the very same community of scientists and students that were affected by Defendant's

actions. No criminal action can be viewed in a vacuum. Even an "isolated" incident like this, while perhaps aberrational for Defendant, obviously has an impact on other individuals and entire communities. Defendant was certainly aware of the context in which his actions occurred, as evidenced by his reference to "9/11" in his letter to the UCSD police. Exh. 1. Additionally, no public place has been more affected by localized acts of terrorism since "9/11" than the college campus. The bomb threats and hoax IED constitute a serious criminal act that had as a goal to raise awareness for animals, but only caused fear in those who worked and attended classes at UCSD. Accordingly, a sentence of 21 months would adequately reflect the history and characteristics of Defendant, the seriousness of this offense and provide just punishment for it, and protect the public from future crimes by Defendant.

IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court sentence Defendant to a 21-month term of custody.

DATED: July 21, 2008

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

/s/ Peter J. Mazza
PETER J. MAZZA
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	Case No. 08CR213-LAB
Plaintiff,	CERTIFICATE OF SERVICE
v.	
RICHARD SILLS,	
Defendant.	

IT IS HEREBY CERTIFIED THAT:

I, PETER J. MAZZA, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S SENTENCING MEMORANDUM** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Jodi Thorp, Esq.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 21, 2008

/s/ ***Peter J. Mazza***
PETER J. MAZZA
Assistant U.S. Attorney

WARNING!

WE REPRESENT THE ANIMAL LIBERATION FRONT.

WE ARE PLANNING A VERY DRASTIC DIRECT ACTION ON UCSD MEDICAL SCHOOL AND RESEARCH FACILITIES.

THIS ACTION HAS BEEN PLANNED AND SET UP OVER A LONG PERIOD OF TIME UNTIL WE HAVE HAD THE CAPABILITY TO EXECUTE.

THAT TIME IS NOW.

WE HAVE PLACED VERY POWERFUL YET COMPACT EXPLOSEIVES IN KEY LOCATIONS IN SEVERAL BUILDINGS INCLUDING BUT NOT LIMITED TO THE MEDICAL TEACHING BUILDING, LEICHSTAD RESEARCH BUILDING, STEIN RESEARCH, SKAGGS, BIO-MEDICAL, BASIC SCIENCE BUILDINGS AND MORE.

EVERYWHERE THAT ANIMALS ARE TORTURED AND KILLED FOR SO CALLED SCIENCE.

YOU HAVE UNTIL 4:00PM TUESDAY DEC 4™ TO REMOVE ALL ANIMALS TO A CENTRAL CAMPUS LOCATION WHERE WE WILL NOTIFY AN ANIMAL SANCTUARY TO PICK THEM UP.

IF WE DO NOT SEE THE EVACUATION OF THESE ANIMALS STARTING BY 3:00PM ON TUESDAY WE WILL DETONATE REMOTELY ALL EXPLOSIVE DEVICES.

THIS WILL BE A 9/11 EVENT FOR THE RAISING OF AWARNESS OF WHAT YOU AND INSTITUTIONS LIKE YOU ARE DOING TO THESE DEFENSLES SENTIANT BEINGS.

THEY ARE DEFENSELESS NO MORE!

THIS IS NOT A HOAX. WE DO NOT WANT TO SEE YOUR PEOPLE HURT. HOWEVER IF THEY ARE IN AND AROUND THESE BUILDINGS AND WE DETONATE. . .

A.L.F.

KAREN P. HEWITT
United States Attorney
PETER J. MAZZA
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California State Bar No. 239918
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Telephone: (619) 557-5528

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RICHARD SILLS, Defendant.	Case No. ~~08CR0231~~ 08CR213 LAB-LAB

PLEA AGREEMENT

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Karen P. Hewitt, United States Attorney, and Peter J. Mazza, Assistant United States Attorney, and defendant, Richard Sills, with the advice and consent of Jodi Thorp, Esq., counsel for defendant, as follows:

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I

THE PLEA

Defendant agrees to plead guilty to a single-count Superseding Information in Case No. 08CR0231-LAB charging defendant with:

> On or about December 5, 2007, within the Southern District of California, defendant Richard Sills did use a facility of interstate commerce, to wit, a telephone, for the purpose of interfering with the operations of the University of California, San Diego's Leichtag Biomedical Research Building, an animal enterprise; and, in connection with that purpose, did intentionally damage and cause the loss of research animals and other items used in the course of scientific experiments, real and personal property used by the animal enterprise; the offenses having resulted in economic damage exceeding 10,000; in violation of Title 18, United States Code, Section 43(a) and (b)(2)(A), a felony.

The Government agrees to move to dismiss the remaining charges when defendant is sentenced.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. The defendant used or caused to be used any facility of interstate or foreign commerce, for the purpose of damaging or interfering with the operations of an animal enterprise;
2. In connection with that purpose, the defendant intentionally damaged or caused the loss of real or personal property used by an animal enterprise; and
3. The offense resulted in economic damage exceeding $10,000.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. On or about December 5, 2007, at approximately 8:45 a.m., defendant willfully and knowingly placed a telephone call to the University of California, San Diego ("UCSD") where he stated "You need to take this very seriously - there is a bomb in Leichtag." Defendant was referring to the Leichtag Biomedical Research Building ("LBRB")on the UCSD's campus.

2. On or about December 5, 2007, at approximately 9:05 a.m., Defendant placed a second telephone call to UCSD, warning, "Take this very seriously, there is a bomb in the Leichtag Building, take this very seriously."

3. Defendant made the telephone calls for the purpose of interfering with the activities of the LBRB, an academic enterprise that uses animals and animal products for education, research, and testing.

4. In connection with that purpose, defendant intentionally caused the loss of real and personal property ~~research animals, research supplies,~~ and other economic damage.

5. The economic damage included the cost of lost research animals, other research items and supplies, and the costs of repeating invalidated or interrupted

experiments.

6. The economic damage caused by defendant totaled $10,419.01.

7. At the time Defendant made the threatening telephone calls, Defendant knew the information he conveyed to the dispatcher was untrue, but the information would be reasonably believed.

8. On or about December 5, 2007, Defendant sent, and caused to be received, a letter to the UCSD Police Department that warned of "very drastic action on UCSD medical school and research facilities." Defendant further stated in the letter that "remote controlled explosive devices" had been placed in six UCSD buildings, including the "Leichstag [sic] Research Building." The letter stated that "they" would detonate the explosive devices remotely.

9. On or about December 5, 2007, at some time prior to 10:26 a.m., defendant placed, or caused to be placed, a hoax improvised explosive device in the Leichtag Building. At approximately 10:26 a.m., a UCSD employee discovered the hoax device in the Leichtag Building.

10. The device consisted of a camping fuel container with an antenna and wires affixed to it. Four 12-gauge shotgun shells were also taped to the outside of the device.

11. Defendant agrees that the unlawful use of an

improvised explosive device is governed under Title 18, United States Code, Chapter 113B, Section 2332a.

III

PENALTIES

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

A. a maximum 5 years in prison;

B. a maximum $250,000.00 fine;

C. a mandatory special assessment of $100 per count; and

D. a term of supervised release of no more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison all or part of the term of supervised release.

E. an order from the court pursuant to Title 18, United States Code, Section 3663A that defendant make mandatory restitution to the victim(s) of the offense of conviction, or the estate(s) of the victims(s).

Defendant further understands that by pleading guilty defendant may become ineligible for federal benefits.

IV

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt;

B. a speedy and public trial by jury;

C. the assistance of counsel at all stages of trial;

D. confront and cross-examine adverse witnesses;

E. present evidence and to have witnesses testify on behalf of defendant; and

F. not testify or have any adverse inferences drawn from the failure to testify.

V

DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of defendant known to the undersigned prosecutor in this case has been turned over to defendant. The Government will continue to provide such information establishing the factual innocence of defendant.

Defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. Defendant acknowledges, however, that by pleading guilty defendant will not be provided this information, if any, and Defendant also waives the right to this information. Finally, defendant agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

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VI

DEFENDANT'S REPRESENTATION THAT GUILTY PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with defense counsel, and has a clear understanding of the charges and the consequences of this plea;

B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this plea agreement or otherwise disclosed to the court;

C. No one has threatened defendant or defendant's family to induce this guilty plea; and

D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

VII

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF CALIFORNIA

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by defendant.

VIII

APPLICABILITY OF SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must

consult the United States Sentencing Guidelines (Guidelines) and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is **not binding on the Court**. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow

any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

x

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following sentencing calculations under the Guidelines:

1.	Base Offense Level [USSG §2B1.1]	6
2.	USSG §2B1.1(b)(1)(C) More than $10,000 loss	+4
3.	USSG § 3E1.1 Acceptance of Responsibility	-2
4.	USSG § 5K2.21 Dismissed and Uncharged Conduct (Reflecting the seriousness of the offense and the underlying charges dismissed as a result of the negotiated plea agreement)	+6
	Adjusted Offense Level	**14**

The parties agree that the conduct charged in Superseding Information establishes an offense specifically covered by USSG §2B1.1 (Threats Involving Animal Enterprises).

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.3 above, the Government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or

2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or

3. Fails to appear in court, or

4. Engages in additional criminal conduct, or

5. Attempts to withdraw the plea, or

6. Refuses to abide by any lawful court order.

C. ADJUSTMENTS AND DEPARTURES

The parties agree that neither party may request adjustments or departures other than those adjustments and departures specified above in paragraph A.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

There is no agreement as to defendant's Criminal History Category.

E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

The parties agree that the facts in the "factual basis" paragraph of this agreement are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

The parties agree that the Government will recommend the high end of the jointly recommended Guideline range and **defendant will recommend the low end of that range** (for example, if defendant qualifies for Criminal History Category I under the USSG, the Government will recommend 21 months and defendant will recommend 15 months). If the Court adopts an offense level or downward adjustment or departure below the parties' recommendations in this

plea agreement, the Government will recommend a sentence as near as possible to what the sentence would have been if the parties' recommendations had been followed.

G. SPECIAL ASSESSMENT

The parties will jointly recommend that defendant pay a special assessment in the amount of $100.00 to be paid forthwith at time of sentencing. The special assessment shall be paid through the office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

H. FINE/RESTITUTION

Fine. The parties agreed that they will jointly recommend that no fine, beyond the restitution described below, should be imposed.

Restitution. The parties jointly recommend that restitution be imposed pursuant to 18 U.S.C. § 3663A and the terms of this plea agreement. Defendant agrees that the amount of restitution ordered by the court shall include defendant's total offense conduct, and is not limited to the count(s) of conviction. Accordingly, the parties will jointly recommend that defendant provide restitution for economic damage caused to the University of California, San Diego and individuals and other associations affiliated with the Leichtag Biomedical Research Building in response to defendant's conduct outlined above in section II, paragraph B, in the amount of $10,419.01. The parties agree that, during the period of incarceration, the restitution be paid through the Inmate Financial Responsibility Program at the greater of the rate of 50% of the defendant's income, or $25 per quarter, with the balance remaining

thereafter to be collected by the United States in accordance with law. The parties agree to recommend that interest will be suspended during incarceration.

The restitution described above shall be paid through the Office of the Clerk of the District Court by bank or cashier's check or money order made payable to the "Clerk, United States District Court."

Further, the restitution described above shall be paid to or on behalf of the following victims on a pro rata basis:

VICTIM	RESTITUTION AMOUNT
University of California, San Diego	$7,969.01
Li-COR Biosciences	$2,450

Defendant agrees that, before sentencing, defendant shall provide to the United States, under penalty of perjury, a financial disclosure form listing all his/her assets and financial interests valued at more than $1,000. Defendant understands that these assets and financial interests include all assets and financial interests in which defendant has an interest (or had an interest prior to December 5, 2007), direct or indirect, whether held in defendant's own name or in the name of another, in any property, real or personal. Defendant shall also identify all assets valued at more than $5,000 which have been transferred to third parties since December 5, 2007, including the location of the assets and the identity of the third party(ies).

The parties will jointly recommend that as a condition of probation or supervised release, defendant will notify the

Collections Unit, United States Attorney's Office, of any interest in property obtained, directly or indirectly, including any interest obtained under any other name, or entity, including a trust, partnership or corporation after the execution of this plea agreement until the fine and restitution are paid in full.

The parties will also jointly recommend that as a condition of probation or supervised release, defendant will notify the Collections Unit, United States Attorney's Office, before defendant transfers any interest in property owned directly or indirectly by defendant, including any interest held or owned under any other name or entity, including trusts, partnerships and/or corporations.

XI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution order, unless the court imposes a custodial sentence greater than the high end of the guideline range that encompasses the custodial recommendation by the Government pursuant to this plea agreement at the time of sentencing. If the custodial sentence is greater than the high end of that range, defendant may appeal, but the Government will be free to support on appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this plea agreement, defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

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XII

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

This plea agreement is based on the understanding that, prior to defendant's sentencing in this case, defendant has not committed or been arrested for any offense not known to the Government prior to defendant's sentencing. This plea agreement is further based on the understanding that defendant has committed no criminal conduct since defendant's arrest on the present charges, and that defendant will commit no additional criminal conduct before sentencing. If defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms of any agreement with the Government, the Government will not be bound by the recommendations in this plea agreement, and may recommend any lawful sentence. In addition, at its option, the Government may move to set aside the plea.

XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire plea agreement between the parties and supersedes any other plea agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing this plea agreement, defendant certifies that

defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this plea agreement with defense counsel and fully understands its meaning and effect.

XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney

3/1/08
DATED

PETER [illegible] MAZZA
Assistant U.S. Attorney

2/29/08
DATED

JODI THORP
Attorney for Defendant

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

2/29/08
DATED

RICHARD SILLS
Defendant

EXHIBIT D

STATEMENT OF JOHN E. LEWIS
DEPUTY ASSISTANT DIRECTOR
COUNTERTERRORISM DIVISION
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE

MAY 18, 2004

Good morning Chairman Hatch, and members of the Committee, I am pleased to have this opportunity to appear before you and discuss the threat posed by animal rights extremists and eco-terrorists in this country, as well as the measures being taken by the FBI and our law enforcement partners to address this threat, and some of the difficulties faced by law enforcement in addressing this crime problem.

As you know, the FBI divides the terrorist threat facing the United States into two broad categories, international and domestic. International terrorism involves violent acts that occur beyond our national boundaries and are a violation of the criminal laws of the United States or similar acts of violence committed by individuals or groups under some form of foreign direction occurring within the jurisdiction of the United States.

Domestic terrorism involves acts of violence that are a violation of the criminal laws of the United States or any state, committed by individuals or groups without any foreign direction, and appear to be intended to intimidate or coerce a civilian population, or influence the policy of a government by intimidation or coercion, and occur primarily within the territorial jurisdiction of the United States.
During the past decade we have witnessed dramatic changes in the nature of the domestic terrorist threat. In the 1990s, right-wing extremism overtook left-wing terrorism as the most dangerous domestic terrorist threat to the United States. During the past several years, however, special interest extremism, as characterized by the Animal Liberation Front (ALF), the Earth Liberation Front (ELF), and related extremists, has emerged as a serious domestic terrorist threat. Special interest terrorism differs from traditional right-wing and left-wing terrorism in that extremist special interest groups seek to resolve specific issues, rather than effect widespread political change. Such extremists conduct acts of politically motivated violence to force segments of society, including the general public, to change attitudes about issues considered important to the extremists' causes.

Generally, extremist groups engage in much activity that is protected by constitutional guarantees of free speech and assembly. Law enforcement only becomes involved when the volatile talk of these groups transgresses into unlawful action. The FBI estimates that the ALF/ELF and related groups have committed more than 1,100 criminal acts in the United States since 1976, resulting in damages conservatively estimated at approximately $110 million.

The ALF, established in Great Britain in the mid-1970s, is a loosely organized extremist movement committed to ending the abuse and exploitation of animals. The American branch of the ALF began its operations in the late 1970s. Individuals become members of the ALF not by filing paperwork or paying dues, but simply by engaging in "direct action" against companies or individuals who, in their view, utilize animals for research or economic gain, or do some manner of business with those companies or individuals. "Direct action" generally occurs in the form of criminal activity designed to cause economic loss or to destroy the victims' company operations or property. The extremists' efforts have broadened to include a multi-national campaign of harassment, intimidation and coercion against animal testing companies and any companies or individuals doing business with those targeted companies. Huntingdon Life Sciences (HLS) is one such company. The "secondary" or "tertiary" targeting of companies which have business or financial relationships with the target company typically takes the form of fanatical harassment of employees and interference with normal business operations, under the threat of escalating tactics or even violence. The harassment is designed to inflict increasing economic damage

until the company is forced to cancel its contracts or business relationship with the original target. Internationally, the best example of this trend involves Great Britain's Stop Huntingdon Animal Cruelty (SHAC) organization, a more organized sub-group within the extremist animal rights movement. SHAC has targeted the animal testing company HLS and any companies with which HLS conducts business. While the SHAC organization attempts to portray itself as an information service or even a media outlet, it is closely aligned with the ALF and its pattern of criminal activities - many of which are taken against companies and individuals selected as targets by SHAC and posted on SHAC's Internet website. Investigation of SHAC-related criminal activity has revealed a pattern of vandalism, arsons, animal releases, harassing telephone calls, threats and attempts to disrupt business activities of not only HLS, but of all companies doing business with HLS. Among others, these companies include Bank of America, Marsh USA, Deloitte and Touche, and HLS investors, such as Stephens, Inc., which completely terminated their business relationships with HLS as a result of SHAC activities.

Examples of SHAC activities include publishing on its website as a regular feature "Targets of the Week" for followers to target with harassing telephone calls and e-mails in order to discourage that company or individual from doing business with HLS.

In recent years, the Animal Liberation Front and the Earth Liberation Front have become the most active criminal extremist elements in the United States. Despite the destructive aspects of ALF and ELF's operations, their stated operational philosophy discourages acts that harm "any animal, human and nonhuman." In general, the animal rights and environmental extremist movements have adhered to this mandate. Beginning in 2002, however, this operational philosophy has been overshadowed by an escalation in violent rhetoric and tactics, particularly within the animal rights movement. Individuals within the movement have discussed actively targeting food producers, biomedical researchers, and even law enforcement with physical harm. But even more disturbing is the recent employment of improvised explosive devices against consumer product testing companies, accompanied by threats of more, larger bombings and even potential assassinations of researchers, corporate officers and employees.

The escalation in violent rhetoric is best demonstrated by language that was included in the communiqués claiming responsibility for the detonation of improvised explosive devices in 2003 at two separate northern California companies, which were targeted as a result of their business links to HLS. Following two pipe bomb blasts at the Chiron Life Sciences Center in Emeryville, California on August 28, 2003, an anonymous claim of responsibility was issued which included the statement: "This is the endgame for the animal killers and if you choose to stand with them you will be dealt with accordingly. There will be no quarter given, no half measures taken. You might be able to protect your buildings, but can you protect the homes of every employee?" Just four weeks later, following the explosion of another improvised explosive device wrapped in nails at the headquarters of Shaklee, Incorporated in Pleasanton, California on September 26, 2003, another sinister claim of responsibility was issued via anonymous communiqué by the previously unknown "Revolutionary Cells of the Animal Liberation Brigade." This claim was even more explicit in its threats: "We gave all of the customers the chance, the choice, to withdraw their business from HLS (Huntingdon Life Sciences). Now you will all reap what you have sown. All customers and their families are considered legitimate targets... You never know when your house, your car even, might go boom... Or maybe it will be a shot in the dark... We will now be doubling the size of every device we make. Today it is 10 pounds, tomorrow 20... until your buildings are nothing more than rubble. It is time for this war to truly have two sides. No more will all the killing be done by the oppressors, now the oppressed will strike back." It should be noted that the FBI Joint Terrorism Task Force in San Francisco has identified and charged known activist Daniel Andreas San Diego, who is currently a fugitive from justice, in connection with these bombings. While no deaths or injuries have resulted from this threat or the blasts at Chiron and Shaklee, it demonstrates a new willingness on the part of some in the movement to abandon the traditional and publicly stated code of nonviolence in favor of more confrontational and aggressive tactics designed to threaten and intimidate legitimate companies into abandoning entire projects or contracts.

Despite these ominous trends, by far the most destructive practice of the ALF/ELF to date is arson. The ALF/ELF extremists consistently use improvised incendiary devices equipped with crude but effective

timing mechanisms. These incendiary devices are often constructed based upon instructions found on the ALF/ELF websites. The ALF/ELF criminal incidents often involve pre-activity surveillance and well-planned operations. Activists are believed to engage in significant intelligence gathering against potential targets, including the review of industry/trade publications and other open source information, photographic/video surveillance of potential targets, obtaining proprietary or confidential information about intended victim companies through theft or from sympathetic insiders, and posting details about potential targets on the Internet for other extremists to use as they see fit.

In addition to the upswing in violent rhetoric and tactics observed from animal rights extremists in recent years, new trends have emerged in the eco-terrorist movement. These trends include a greater frequency of attacks in more populated areas, as seen in Southern California, Michigan and elsewhere, and the increased targeting of Sport Utility Vehicles (SUVs) and new construction of homes or commercial properties in previously undeveloped areas by extremists combating what they describe as "urban sprawl." Eco-terrorists have adopted these new targets due to their perceived negative environmental impact. Recent examples of this targeting include the August 1, 2003 arson of a large condominium complex under construction near La Jolla, California, which resulted in an estimated $50 million in property damages; the August 22, 2003 arson and vandalism of over 120 SUVs in West Covina, California; and the arson of two new homes under construction near Ann Arbor, Michigan in March 2003. It is believed these trends will persist, as extremists within the environmental movement continue to fight what they perceive as greater encroachment of human society on the natural world.

The FBI has developed a strong response to the threats posed by domestic and international terrorism. Between fiscal years 1993 and 2003, the number of special agents dedicated to the FBI's counterterrorism programs more than doubled. In recent years, the FBI has strengthened its counterterrorism program to enhance its abilities to carry out these objectives.

Cooperation among law enforcement agencies at all levels represents an important component of a comprehensive response to terrorism. This cooperation assumes its most tangible operational form in the Joint Terrorism Task Forces (JTTFs) that are established in FBI field divisions across the nation. These task forces are particularly well-suited to respond to terrorism because they combine the national and international investigative resources of the FBI with the expertise of other federal law enforcement and local law enforcement agencies. The FBI currently has 84 JTTFs nationwide, one in each of the 56 Field Offices, and 28 additional annexes. By integrating the investigative abilities of the FBI, other federal law enforcement and local law enforcement agencies, these task forces represent an effective response to the threats posed to U.S. communities by domestic and international terrorists.

The FBI and our law enforcement partners have made a number of arrests of individuals alleged to have perpetrated acts of animal rights extremism or eco-terrorism. Some recent arrests include eco-terror fugitive Michael James Scarpitti and accused ELF arsonist William Cottrell. Scarpitti, commonly known by his "forest name" of Tre' Arrow, was arrested by Canadian law enforcement authorities on March 13, 2004 in British Columbia. Scarpitti had been a fugitive since August 2002, when he was indicted for his role in two separate ELF-related arsons that occurred in the Portland, Oregon area in 2001. William Cottrell was arrested by the FBI's Los Angeles Division on March 9, 2004, and indicted by a federal grand jury on March 16, 2004 for the role he played in a series of arsons and vandalisms of more than 120 sport utility vehicles that occurred on August 22, 2003 in West Covina, California. Those crimes resulted in more than $2.5 million in damages.

Between December 8, 2003 and January 12, 2004, three members of an ELF cell in Richmond, Virginia entered guilty pleas to federal arson and conspiracy charges, following their arrests by the FBI Richmond Division and local authorities. Adam Blackwell, Aaron Linas and John Wade admitted to conducting a series of arson and property destruction attacks in 2002 and 2003 against sport utility vehicles, fast food restaurants, construction vehicles and construction sites in the Richmond area, which they later claimed were committed on behalf of the ELF. In addition, the FBI Richmond Division, working in concert with the Henrico County Police Department, successfully identified, disrupted and prevented another arson plot

targeting SUVs by a second, independent ELF cell in February 2004. The four members of this alleged cell, all juveniles, are currently awaiting trial on federal and state charges.

In February 2001, teenagers Jared McIntyre, Matthew Rammelkamp, and George Mashkow all pleaded guilty, as adults, to Title 18 U.S.C. 844(i), arson, and 844(n), arson conspiracy. These charges pertained to a series of arsons and attempted arsons of new home construction sites in Long Island, NY, which according to McIntyre were committed in sympathy of the ELF movement.

An adult, Connor Cash, was also arrested on February 15, 2001, and charged under federal statutes for his role in these crimes. Cash is currently on trial in federal court for charges of providing material support to terrorism. The New York Joint Terrorism Task Force played a significant role in the arrest and prosecution of these individuals.

Despite these recent successes, however, FBI investigative efforts to target these movements for identification, prevention and disruption have been hampered by a lack of applicable federal criminal statutes, particularly when attempting to address an organized, multi-state campaign of intimidation, property damage, threats and coercion designed to interfere with legitimate interstate commerce, as exhibited by the SHAC organization. While it is a relatively simple matter to prosecute extremists who are identified as responsible for committing arsons or utilizing explosive devices, using existing federal statutes, it is often difficult if not impossible to address a campaign of low-level (but nevertheless organized and multi-national) criminal activity like that of SHAC in federal court.

In order to address the overall problem presented by SHAC, and to prevent it from engaging in actions intending to shut down a legitimate business enterprise, the FBI initiated a coordinated investigative approach beginning in 2001. Investigative and prosecutive strategies were explored among the many FBI offices that had experienced SHAC activity, the corresponding United States Attorneys= Offices, FBIHQ, and the Department of Justice. Of course, the use of the existing Animal Enterprise Terrorism (AET) statute was explored. This statute, set forth in Title 18 U.S.C., Section 43, provides a framework for the prosecution of individuals involved in animal rights extremism. In practice, however, the statute does not reach many of the criminal activities engaged in by SHAC in furtherance of its overall objective of shutting down HLS.

As written, the AET statute prohibits traveling in commerce for the purpose of causing physical disruption to an animal enterprise, or causing physical disruption by intentionally stealing, damaging or causing the loss of property used by an animal enterprise, and as a result, causing economic loss exceeding $10,000. An animal enterprise includes commercial or academic entities that use animals for food or fiber production, research, or testing, as well as zoos, circuses and other lawful animal competitive events. Violators can be fined or imprisoned for not more than three years, with enhanced penalties if death or serious bodily injury result.

While some ALF activities have involved direct actions covered by this statute, such as animal releases at mink farms, the activities of SHAC generally fall outside the scope of the AET statute. In fact, SHAC members are typically quite conversant in the elements of the federal statute and appear to engage in conduct that, while criminal (such as trespassing, vandalism or other property damage), would not result in a significant, particularly federal, prosecution. However, given SHAC's pattern of harassing and oftentimes criminal conduct, and its stated goal of shutting down a company engaged in interstate as well as foreign commerce, other statutory options were explored at the federal level in order to address this conduct. Ultimately, prosecution under the Hobbs Act (Title 18 U.S.C., Section 1951) was the agreed upon strategy.

The theory advanced to support a Hobbs Act prosecution was that the subjects were (and continue to be) engaged in an international extortion scheme against companies engaged in, or doing business with companies engaged in, animal-based research. In furtherance of this scheme of extortion, the victims are subjected to criminal acts such as vandalism, arson, property damage, harassment and physical attacks,

or the fear of such attacks, until they discontinue their animal-based research or their association with or investment in companies such as HLS, engaged in animal-based research.

However, as a result of the Supreme Court's 2003 decision in Scheidler v. National Organization for Women , the use of the Hobbs Act in prosecuting SHAC was removed as an option. In the Scheidler decision, the Supreme Court held that, while activists may be found to illegally interfere with, disrupt or even deprive victims of the free exercise of their property rights or their right to conduct business, this activity does not constitute extortion as defined under the Hobbs Act unless the activists seek to obtain or convert the victims' property for their own use.

Currently, more than 34 FBI field offices have over 190 pending investigations associated with ALF/ELF activities. Extremist movements such as the ALF and the ELF present unique challenges. There is little, if any, known hierarchal structure to such entities. The animal rights extremist and eco-terrorism movements are unlike traditional criminal enterprises that are often structured and organized. They exhibit remarkable levels of security awareness when engaged in criminal activity, and are typically very knowledgeable of law enforcement techniques and the limitations imposed on law enforcement.

The FBI's commitment to address the threat can be seen in the proactive approach that we have taken regarding the dissemination of information. Intelligence Information Reports (IIRs) are used as a vehicle for delivering FBI intelligence information to members of the Intelligence, Policy and Law Enforcement Communities. Since its establishment in March 2003, the Domestic Collection, Evaluation and Dissemination Unit has issued 20 IIRs to the field relating specifically to animal rights/eco-terrorism activity.

The commitment to addressing the threat posed by animal rights extremists and eco-terrorism movements can also be demonstrated by the FBI's proactive information campaign. This campaign has included ongoing liaison with federal, state, and local law enforcement and prosecutors, relevant trade associations and targeted companies and industries. The FBI has established a National Task Force and Intelligence Center at FBIHQ to coordinate this information campaign, and develop and implement a nationwide, strategic investigative approach to addressing the animal rights/eco-terrorism threat in the United States. The FBI has also conducted liaison and cooperated in investigations with foreign law enforcement agencies regarding animal rights extremist/eco-terrorism matters.

In conclusion, the FBI has made the prevention and investigation of animal rights extremists/eco-terrorism matters a domestic terrorism investigative priority. The FBI and all of our federal, state and local law enforcement partners will continue to strive to address the difficult and unique challenges posed by animal rights extremists and eco-terrorists. Despite the continued focus on international terrorism, we in the FBI remain fully cognizant of the full range of threats that confront the United States.

Chairman Hatch and members of the committee, this concludes my prepared remarks. I would like to express appreciation for your concentration on these important issues and I look forward to responding to any questions you may have.