

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCHUYLER PYATTE BARBEAU,

Defendant.

NO. CR15-391RAJ

**GOVERNMENT’S SENTENCING
MEMORANDUM**

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Thomas M. Woods, Assistant United States Attorney for said District, respectfully submits this sentencing memorandum.

SENTENCING RECOMMENDATION

The government recommends that Barbeau be sentenced to 72 months of imprisonment and three years of supervised release, subject to the conditions recommended by Probation. The Court should specifically emphasize with Barbeau that, as a convicted felon, he will be subject to additional criminal penalties were he to possess a firearm in the future. Finally, the Court should order that the firearm that was seized in this case be forfeited.

INTRODUCTION

Schuyler Barbeau has spent years telling the world that he will use deadly force against law enforcement officers who attempt to take any steps that interfere with his beliefs, including instances in which officers are simply carrying out Court-authorized orders. His conduct has not been limited to words—he built a fully-automatic machinegun that he repeatedly threatened to use against law enforcement. He sought to purchase a .50 caliber gun on the theory that it would be more effective in a shootout with law enforcement. He quit his well-paying job to provide “protection” to Cliven Bundy in Nevada, and has repeatedly lamented the fact that his imprisonment in this case prevented him from joining the armed standoff at the Oregon Wildlife Refuge. He repeatedly stated that he stood above the law, at one point stating, “If I win my case and are set free, I’ll probably get killed too at some future protest/standoff because 1) the government can’t help themselves, they’ll terrorize someone else; and 2) I will always stand for freedom and liberty.” It is for these reasons that the government believes that the Guidelines range in this case of 21 to 27 months is wholly inappropriate. Although the government is heartened by the fact that Barbeau ultimately accepted responsibility—albeit in the middle of trial—the government believes that a sentence of 72 months is appropriate, less than the 120 months the government was prepared to recommend had Barbeau remained defiant through trial and sentencing.

BACKGROUND

A. Barbeau’s Possession and Attempted Sale of a Machinegun/Short-Barreled Rifle

In June 2015, FBI agents spoke with a Confidential Human Source (“CHS”). The CHS reported numerous concerns related to Schuyler Barbeau’s violent and anti-government activities and rhetoric.

On October 17, 2015, Barbeau met with the CHS at Barbeau’s residence in Springdale, Washington. Barbeau told the CHS that he was considering selling a short-barreled rifle (“SBR”) Barbeau owned, and asked the CHS to find a buyer for the SBR.

1 Barbeau said he wanted to sell the SBR for \$5,000. According to the CHS, Barbeau had
2 previously spoken to him about manufacturing a “drop-in auto sear” for this SBR,
3 allowing the SBR to operate as a machinegun.¹

4 On October 23, 2015, FBI agents conducted an open source search of Facebook
5 looking for postings related to Barbeau and an SBR, in an effort to corroborate the
6 information provided by the CHS. The agents found multiple such postings, including:

- 7 • On July 30, 2014, Facebook user “Blaine Cooper” posted a photograph of
8 Barbeau holding an SBR standing in front of the rear tailgate of a sport utility
9 vehicle. The text accompanying the photograph read, “With Schuyler
10 Barbeau,” and provided a direct link to Barbeau’s Facebook account.
- 11 • On August 10, 2014, Barbeau posted on his personal Facebook account a
12 photograph of a tan-colored handgun and an SBR on top of a yellow flag,
13 included as a part of a news article. The text accompanying the photograph
14 said: “I love how a bunch of my pictures are poppin up in articles around the
15 web.” On August 11, 2014, Facebook user “Ryan Gargano” commented on
16 the photograph and inquired, “You own an SBR? Niiice. What barrel length
17 before that muzzle break?” On August 12, 2014, Barbeau responded: “Ryan
18 Gargano it’s a 10.5 Rainier Arms Ultramatch series. it shoots really nice.”

19 On November 8, 2015, the CHS met with Barbeau. FBI Special Agents observed
20 this meeting and the CHS recorded the meeting at the direction of the FBI. During the
21 meeting, the CHS told Barbeau that he had a buyer interested in purchasing the SBR for
22 \$5,000. Barbeau told the CHS that he would consider the offer. Barbeau also made
23 comments referring to the fact that the SBR functioned as a machinegun. Specifically,
24 Barbeau stated words to the effect: “Remember what I have on my rifle. It ain’t no just . .
25 . phew, phew, phew, phew.” The CHS asked Barbeau: “Did you get that thing [the auto
26 sear] to work?” Barbeau replied: “It works, but not good. But it works. And If I can
27 ever find somebody with a 3D printer...”

28 ¹ A drop-in auto sear (DIAS) is, by definition, a combination of parts designed and intended exclusively for use in
converting a weapon to shoot automatically more than one shot, without manual reloading, by a single function of
the trigger. Consequently, an auto sear itself is generally considered a machine gun under federal law, and the use of
an auto-sear with a firearm generally transforms the firearm into a machine gun as defined by federal law.

1 On November 20, 2015, Barbeau contacted the CHS and said he was ready to sell
2 the SBR "ASAP." The CHS told Barbeau that the potential buyer was out of town for the
3 upcoming Thanksgiving holiday. Barbeau suggested he would deliver the SBR to the
4 CHS in advance of the transaction, so that the buyer could inspect the SBR before paying
5 for it. Barbeau agreed to meet the CHS on the afternoon of November 22 to deliver the
6 SBR. During this same conversation, Barbeau told the CHS about new rifles he was
7 interested in buying. The CHS asked Barbeau if his auto-sear would work with these
8 new firearms. Barbeau confirmed that it would.

9 In the early morning of November 22, 2015, Barbeau unexpectedly arrived at the
10 CHS' residence and dropped-off the SBR (as noted above, they had been planning to
11 meet later that day in the afternoon). Barbeau instructed the CHS to obtain the money
12 from the buyer as soon as possible. Shortly thereafter, Barbeau departed the residence,
13 and the CHS contacted the FBI. FBI agents then met with the CHS and took possession
14 of the SBR. The SBR contained the above-referenced auto sear device.

15 On December 6, 2015, the CHS, at the direction of the FBI, arranged a meeting
16 with Barbeau ostensibly to give him the cash from the sale of the SBR. Barbeau was
17 arrested at the designated meeting location. After being advised of and waiving his
18 *Miranda* rights, Barbeau made a post-arrest statement and admitted to possessing the
19 SBR, to knowing the barrel was less than 16 inches in length, and to knowing it operated
20 as a machinegun by firing bursts of multiple rounds with one pull of the trigger. This
21 post-arrest interview was audio recorded.

22 Also on December 6, 2015, FBI agents searched the trailer in which Barbeau
23 resided in Springdale. The agents recovered numerous rounds of ammunition and seven
24 loaded magazines that were compatible with the SBR, documents in Barbeau's name, and
25 a smartphone belonging to Barbeau. This smartphone and another one seized from
26 Barbeau's possession at the time of his arrest were forensically searched pursuant to
27 federal search warrants. Both phones contained multiple photos of the SBR.

1 ATF agents subsequently inspected the SBR and certified that the barrel was less
2 than 16 inches in length, and that it operated as a fully automatic machinegun, therefore
3 requiring registration under the National Firearms Registration and Transfer Record. In
4 addition, the ATF has verified that Barbeau had not registered the firearm in the National
5 Firearms Registration and Transfer Record.

6 **B. Barbeau's Long History of Threatening to Kill Law Enforcement Officials**
7 **Who Enforce Laws With Which He Disagrees**

8 Barbeau repeatedly has proclaimed that he stands above the law, and that he will
9 kill any government officials who attempt to interfere with him. For example:

10 On November 4, 2015, Barbeau, during a recorded conversation with the CHS,
11 commented on his friend's legal problems: "Forget the court. Wait for them (referring to
12 law enforcement) to come and we'll shoot them but they (*i.e.*, his friends) don't want to
13 do that." He also made clear that law enforcement would never take him alive. He
14 stated:

15 The reason nobody has messed with me so far is because I yell and scream
16 to the world that I will shoot people if they don't leave me alone. That's
17 why the FBI contacted the Anacortes Police Department and said 'Beware
18 of this guy, he keeps these guns in his car and with him at all times.' So
19 that an officer doesn't try to think he is gonna do something to me and find
20 out....I'm going to shoot him.

21 He elaborated: "I've got guns and body armor and I'm going to shoot and kill and it's
22 gonna be a big firefight if they (FBI) do come after me." He said the FBI wouldn't want
23 to come after him, stating: "Is it worth losing two, three, four guys to try to serve an
24 arrest warrant? Is it worth having a bunch of our own guys getting' killed, just to try to
25 bring one guy in?" Finally, he boasted that he was above the law, stating: "There's is so
26 much illegal ... felony federal laws I'm breaking right now every day."

27 On November 16, 2015, Barbeau reiterated to the CHS that he planned to shoot
28 anyone who came to arrest his friend, stating "When they come, I want to be there,
because I'm gonna shoot 'em." He talked about how he would position himself in a

1 | shootout, and stated that he would shoot down any police helicopter that showed up,
2 | describing helicopters as “an easy target.”

3 | On November 24, 2015, Barbeau told the CHS he needed his gun back if the buyer
4 | did not want to buy it. He specifically mentioned the need for his weapon for an event
5 | supporting the “Hammonds,” which ultimately turned into the armed standoff at the
6 | Malheur National Wildlife Refuge. Barbeau said that a “revolution” would be started
7 | soon.

8 | On December 5, 2015, Barbeau told the CHS during a recorded call that he
9 | planned to acquire a .50 caliber gun. He said the gun would “fire less rounds, but the
10 | rounds that I do fire are going to do some massive damage.” He mentioned again not
11 | letting his friend get arrested. He said, “They are not going to make it very far down the
12 | driveway.... I can go up the hill back here... and I can see way down the road.” He talked
13 | about sights on his gun, and said, “Oh, he is behind the corner of the building? No
14 | problem. Blow a hole through it. Oh, he’s hiding behind that truck? No problem. Blow
15 | a hole through it.”

16 | Barbeau’s comments were not limited to those he made to the CHS. He
17 | repeatedly told his friends on Facebook that he intended to engage in violence. For
18 | example, on October 21, 2015, responded to a Facebook post, stating in part:

19 | Every country in all of Washington from what I can tell is corrupt. I’ve
20 | heard more stories of government terrorism and people's lives destroyed
21 | then I’d like to. Yet I hear of no judges disappearing, no county or state
22 | prosecutors found dead, no law enforcement having their homes burned
23 | down, or whatever. Nothing! Terrorists only understand one language,
24 | terrorism. Bullies only understand one language, violence. The time is
25 | getting closer to when the gloves come off and it’s a bare knuckle fight.

26 | On October 9, 2015, Barbeau praised Timothy McVeigh, the Oklahoma City
27 | bomber who killed 168 people, 15 of whom were young children in a daycare, stating:
28 | “That guy killed 168, ya he’s my hero. Hes (sic) the only person I know that didn’t like
how the federal government is, and actually did something against them.”

1 On November 25, 2015, Barbeau posted:



2 **Schuyler Barbeau**

3 Here's what I emailed to the county and sheriff:

4 He he he, oh man, you guys are sooo screwed. 8+ million dollar lawsuit
5 for your corruption!! You terrorists are getting what's coming to you. Be
6 very careful about what you might want to do to retaliate against my
7 friend - the plaintiff. There is currently security for the plaintiff (my
8 client), and backup support. Do anything but pay the damages to the
9 plaintiff, and it will cost more, and I'm not talking about money. You
10 (grant county) have declared war against free Americans. We will
11 defend ourselves against tyranny and terrorist governments. Go ahead
12 and call the FBI, give them my name and see what they tell you. They
13 know who I am. I Defended Cliven Bundy and his family against federal
14 tyranny during the Bundy Ranch standoff in Nevada last year. I
15 defended miners at Sugar Pine Mine in Oregon earlier this year from
16 more federal tyranny. And I've been involved in many other security
17 operations throughout the western states. Grant county, this is your
18 notice, don't put anyone at risk.

15 On October 31, 2015, he wrote on Facebook:

16 I've witnessed it first and secondhand, judges do not care. Legislators do
17 not care. If they don't want you to have freedom, they are not going to let
18 you have it no matter what. But there is something we can do. Shoot 'em,
19 just like my ancestors shot the British. They didn't try to fight for freedom
20 in the British's courts. But most of the time I talk about taking up arms
21 against the government, I'm hated and scorned like Mark Twain said. I'm
22 just thanking everyone for the way I'm treated and it's OK, I'll try to make
23 sure I have plenty of coat tails for everyone to grab ahold of when my cause
24 succeeds.

23 Barbeau reaffirmed his views countless times after being arrested in this case. For
24 example, on July 15, 2016, he wrote to a supporter from the FDC and stated: "I don't
25 expect myself to live much longer. If I win my case and are set free, I'll probably get
26 killed too at some future protest/standoff because 1) the government can't help
27 themselves, they'll terrorize someone else; and 2) I will always stand for freedom and
28 liberty."

1 On November 8, 2016, Barbeau told his mother: “I am going to get out of prison
2 and I am going to go back to living my life the way I want regardless of the laws,
3 regardless of anything. I am going to live my life as a free person... and as long as I am
4 not injuring other people, I am going to live my life as I please.”

5 Finally, Barbeau repeatedly expressed disappointment at missing out on the armed
6 standoff at the Malheur National Wildlife Refuge. He said his motivation for selling his
7 gun was to acquire a .50 caliber gun because he anticipated being “deploy[ed]” to the
8 wildlife refuge. As he told a supporter: “My case is a little more complicated than just a
9 \$200 tax stamp. I was getting ready to go down to the Oregon refuge to get into place
10 before the occupation began and I was trying to get a 50 cal rifle so I could shoot the
11 FBI's MRAPS [*i.e.*, armed vehicles] when they would show up.”

12 SENTENCING GUIDELINES

13 The Guidelines do not appear to be in dispute. There is a base offense level of 18
14 under section 2K2.1(a)(5). Assuming Barbeau continues to accept responsibility at the
15 time of sentencing, he should receive a two-point reduction for acceptance of
16 responsibility, yielding a total offense level of 16. Barbeau has no known criminal
17 history and thus his range is 21 to 27 months of imprisonment.

18 SECTION 3553 ANALYSIS

19 The government recommends that Barbeau be sentenced to 72 months of
20 imprisonment. A sentence within the Guidelines range of 21 to 27 months does not fully
21 capture the offense conduct for the following reasons:

22 First, Barbeau has threatened violence on multiple occasions. Although Barbeau
23 repeatedly has maintained that he would only fire in “self-defense,” the Court should not
24 take comfort because Barbeau uses the term “self defense” in a manner wholly
25 inconsistent with its common meaning. Specifically, Barbeau has repeatedly stated that
26 he will use deadly force to “protect himself” against an arrest where *he* believes that the
27 arrest is unlawful. Thus, he repeatedly stated his intent to kill any law enforcement
28

1 officers who sought to arrest him or his friends because of his view that none of them
2 have done anything wrong. This conduct is not “self-defense”—it is murder.

3 Barbeau’s statements are all the troubling because he has repeatedly gone out of
4 his way to praise others for taking “action”—whether that be his praise of Timothy
5 McVeigh, his calls for a “revolution,” or his support for the armed takeover of the
6 Oregon Malheur National Wildlife Refuge. As he said on Facebook in October 2015, “I
7 need a team of shooters. The days of trying to inform and wake people up are over
8 because we could spend the next hundred years trying. The days of action are
9 beginning.”

10 Barbeau, moreover, has repeatedly made clear that he has no respect for our
11 system of law. Barbeau has repeatedly stated that he—and he alone—will decide what
12 laws he decides to obey. Thus, he bragged to an under FBI employee at the Bundy ranch
13 in Nevada that his gun was not “legal in any way, shape or form,” and that the gun
14 “violates a lot of NFA and state laws.” He also threatened to “remove” the California
15 judge presiding over his misdemeanor firearms case because he disagreed with state
16 firearms law. Furthermore, as noted above, Barbeau bragged during this case that
17 “There’s is so much illegal ... felony ... federal laws I’m breaking right now every day.”

18 It also is aggravating that Barbeau attempted to sell his illegal firearm on the black
19 market. Barbeau did not show any particular interest in learning about the identity of the
20 seller who the CHS said was willing to purchase the gun. The CHS told Barbeau that the
21 potential buyer worked for Microsoft, but Barbeau showed no interest in ascertaining
22 why this individual wanted a gun that operated both as a machinegun and a short-barreled
23 rifle. Rather, Barbeau was fixated instead on the profit that he would make—which
24 would allow him to upgrade to a .50 caliber gun that he believed would be more effective
25 in a shootout with law enforcement. It is bad enough to manufacture a machine gun/short
26 barreled rifle—it is worse to sell the gun in the black market without any proper
27 background check or due diligence as to why the gun was being purchased.

1 Barbeau also stands before the Court without any of the mitigating circumstances
2 that so many other defendants present. By all accounts, he grew up in a supportive
3 family. As the Court observed at trial, he is a bright man. He has no substance abuse
4 issues and has never been diagnosed with any mental disorder. He had a good and well-
5 paying job at Boeing—which he quit in order to join Cliven Bundy in his standoff with
6 law enforcement. Barbeau had every opportunity to succeed—instead he chose a path of
7 purposely and intentionally flouting the law.

8 The government believes that the recent sentencing of Daniel Franey, CR16-
9 5073RBL, presents comparable circumstances. In that case, Daniel Franey, a prohibited
10 person, briefly possessed firearms that were handed to him by an undercover agent.
11 Franey had expressed a repeated desire to kill law enforcement officers and the military
12 in the name of the Islamic State, *i.e.*, ISIL or ISIS. Although the Sentencing Guidelines
13 range was only 33-41 months, the Court sentenced Franey to 72 months of imprisonment,
14 citing, among other things, his repeated desire to commit violence.

15 The government strongly contemplated recommending 120 months of
16 imprisonment in this case. The government, however, acknowledges that Barbeau
17 accepted responsibility—albeit belatedly—and has publicly disavowed some of the
18 comments by his supporters, including those who have threatened the CHS in this case.
19 Although Barbeau’s contrition is entitled to some weight, it cannot entirely erase
20 Barbeau’s long history of threatening statements and disrespect for the law.

21 In sum, this case has a number of unique and aggravating facts that place it well
22 beyond the heartland of cases contemplated by the Sentencing Guidelines range of 21 to
23 27 months. A sentence of 72 months is the appropriate sentence.

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CONCLUSION

For the foregoing reasons, the Court should sentence Barbeau to 72 months of imprisonment and three years of supervised release.

DATED: August 24, 2017

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties.

/s/ Salee Porter

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