



U.S. Department of Justice

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Re: *United States v. Rhodes, et al.* (22-cr-15-APM)

Dear Counsel:

As we stated at our last status hearing, the government has imposed a deadline for plea negotiations of May 6, 2022. We write to advise you of the applicable penalties that could apply upon conviction at trial.

1. Charges and Statutory Penalties

- (1) A violation of 18 U.S.C. § 2384 carries a maximum sentence of 20 years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.
- (2) A violation of 18 U.S.C. § 1512(k) carries a maximum sentence of 20 years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.
- (3) A violation of 18 U.S.C. § 1512(c)(2) carries a maximum sentence of 20 years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.
- (4) A violation of 18 U.S.C. § 372 carries a maximum sentence of six years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.
- (5) A violation 18 U.S.C. § 1361 carries a maximum sentence of 10 years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.
- (6) A violation 18 U.S.C. § 231(a)(3) carries a maximum sentence of five years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.
- (7) A violation 18 U.S.C. § 1512(c)(1) carries a maximum sentence of 20 years of imprisonment; a fine of \$250,000, pursuant to 18 U.S.C. § 3571(b)(3); a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your clients may be ordered to pay a special assessment of \$100 per felony conviction to the Clerk of the United States District Court for the District of Columbia.

Your clients should also understand that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Commission, *Guidelines Manual* (2018) (hereinafter “Sentencing Guidelines,” “Guidelines,” or “U.S.S.G.”), the Court may also impose a fine that is sufficient to

pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

2. Sentencing Guidelines Analysis

Your clients should understand that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the applicable guidelines and policies promulgated by the Sentencing Guidelines.

We are not providing here a detailed estimated Sentencing Guidelines analysis for each of the charges your clients face; however, your clients should be aware of the following two aspects of the Sentencing Guidelines that might be applied in their cases upon conviction:

a. Guidelines for Seditious Conspiracy

There is no guideline provision expressly promulgated for seditious conspiracy. Under U.S.S.G. 2X5.1, where available, the Court should apply the most analogous offense guideline. The United States takes the position that the most analogous offense to seditious conspiracy is “Treason,” under U.S.S.G. 2M1.1.

Depending on your clients’ alleged conduct in this case, there are two possible ways your client’s applicable guidelines estimate for this charge could then be calculated:

i. *Conduct “tantamount to waging war against the United States*

If a seditious conspiracy involves a conspiracy to engage in conduct that “is tantamount to waging war against the United States,” then the most analogous offense guideline is Sentencing Guidelines § 2M1.1(a)(1), and the base offense level would be 43. **At that level, regardless of criminal history, the Sentencing Guidelines recommend a life sentence.**

ii. *Other seditious conspiracy conduct*

If a defendant’s conduct was not “tantamount to waging war against the United States,” the district court is to use “the offense level applicable to the most analogous offense,” Sentencing Guidelines § 2M1.1(a)(2). For defendants whose conduct was not “tantamount to waging war against the United States,” the government would agree that, in this case, “Obstruction of Justice” under U.S.S.G. 2J1.2 would be the most analogous offense. Under this approach, the following base offense level would be 14, pursuant to U.S.S.G. § 2J1.2.

b. Application of U.S.S.G. § 3A1.4

Additionally, please be advised that if your client is convicted of a felony that involved, or was intended to promote, a federal crime of terrorism, under U.S.S.G. § 3A1.4, your client’s base offense level will be increased by 12 levels; but if the resulting offense level is less than level 32,


it will be increased to level 32. Additionally, even if your client has no prior convictions, the Sentencing Guidelines recommend that your client be assigned a criminal history category of Category VI. Note that under Application Note 4 of U.S.S.G. § 3A1.4, even if an offense is not a federal crime of terrorism, an upward departure may still apply where an offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. **The recommended Sentencing Guidelines sentence for level 32, Category VI, is 210-262 months, or 17.5-21.8 years, of incarceration.**

Please contact us if you have any questions about the information in this letter or if your client is interested in discussing a potential plea offer.


Sincerely yours,

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