

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MARKUS MALY,

Defendant.

Case No. 21-cr-178-APM

GOVERNMENT’S SUPPLEMENTAL SENTENCING MEMORANDUM

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this supplemental sentencing memorandum in connection with the above-captioned matter.

On April 17, 2023, the government submitted its sentencing memorandum in this case, where it requested this Court sentence Markus Maly to 188 months’ incarceration, three years of supervised release, \$2,000 in restitution, a fine of \$16,011, and the mandatory \$620 special assessment. ECF No. 204 at 1. The basis for the fine was that, despite having court appointed counsel, as of April 17, 2023, Maly had raised over \$16,000 through his Give Send Go online donation page.¹ In his solicitations and subsequent article posted online about his trial, Maly referred to himself as a “January 6 P.O.W.,” dismissed the integrity of the jury that convicted him, and alleged the FBI had pointed rifles at his six-year old son while he was being arrested.²

¹ As of June 7, 2023, Maly has raised \$16,516 through this donation page.

² See <https://www.givesendgo.com/G9QRD>; <https://www.thegatewaypundit.com/2023/03/are-you-lost-dad-jan-6-dad-speaks-for-first-time-since-jury-slaughter-in-dc-kangaroo-court-and-prison-surrender-please-help-markus-maly-and-his-family/> (Last accessed June 7, 2023).

Since the government's filing, Maly continues to solicit donations in an attempt to profit off his notoriety as a January 6, 2021, Capitol Riot convict. On June 2, 2023, a 12-minute video was posted to Rumble titled "Political Prisoner Markus Maly," with the words "Calls from the Gulag" superimposed on the first few seconds of the video.³ The video appears to be taken outside the D.C. jail during a nightly vigil for January 6 defendants. In the video, Maly calls into the vigil from the jail, and references an article that was published on May 28, 2023,⁴ naming him as one of the Capitol Riot defendants for whom the government is requesting a fine commensurate with his online "crowdsourced" funding efforts.

During the video, Maly references his Give Send Go account, states that the money is "for his family" and that the account is for him to "get[] piece of mind that the bills are paid."⁵ Shortly thereafter, Maly plugs his account handle, asking for donations to help his family.⁶ Maly ends the call by again referencing his funding page and joking with the vigil hosts about the inferior intellects of vigil counter protesters.⁷

³ Available at <https://rumble.com/v2rg7nk-political-prisoner-markus-maly.html> (Last accessed June 7, 2023). A copy of the video has been downloaded, titled "Government's Sentencing Exhibit 1," and sent to both the Court and defense counsel through the government's file sharing system.

⁴ Jan. 6 rioters are raking in thousands in donations. Now the U.S. is coming after their haul, Available at <https://abcnews.go.com/US/wireStory/government-claw-back-money-jan-6-rioters-profit-99660355> (Last accessed June 7, 2023). The article appears to have been written by a reporter with the Associated Press and picked up by numerous outlets, including the Huffington Post, which Maly references in the video.

⁵ *Id.* at 6:45-6:53.

⁶ *Id.* at 7:10-7:22.

⁷ *Id.* at 10:30-10:55.

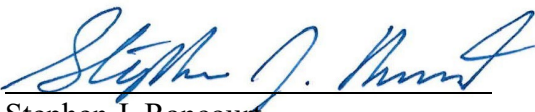
In its sentencing memorandum, the government quoted from *United States v. Seale*, 20 F.3d 1279, 1284-86 (3d Cir. 1994), and stated that, “[i]n assessing a defendant’s income and earning capacity, a sentencing court properly considers whether a defendant can or has sought to ‘capitalize’ on a crime that ‘intrigue[s]’ the ‘American public.’” In *Seale*, the husband-and-wife defendants were convicted following the highly publicized kidnapping and death of an oil company executive. *Id.* at 1281. Both were sentenced to lengthy prison terms and ordered to pay fines of between \$500,000 and \$1.75 million. *Id.* at 1282. At the time of sentencing, both defendants had a negative net worth, and their only sources of income was a monthly pension. *Id.* However, Mr. Seale had directed an attorney to negotiate the rights to his story, and although he had not entered into any formal agreement, represented to the Court that he would not partake in the proceeds and the money instead would be used both as restitution to the victim’s family and put in a trust for his children. *Id.* at 1283. The sentencing court decided that the Seales *may* be able to pay a fine, and on that basis departed from the applicable Guidelines fine range to impose the statutory maximum. *Id.* The appellate court upheld the lower court’s sentence of a maximum fine.

There is no doubt that Maly is capitalizing on his own notoriety, generating income after his conviction for a crime that has captivated the American public. Moreover, unlike in *Seales*, the government is not asking the Court to impose a fine based on whether the defendant is *likely* to capitalize on his crime. He admits to doing so. Maly’s statements—if true—that the money is going to his family do not absolve him. Unlike other defendants who have hired counsel, Maly has been provided an attorney and has no legal fees. The money he has raised following his

conviction is entirely profit built on his efforts to publicize his case and portray himself as a political prisoner and martyr. A fine in that amount—currently \$16,516—is reasonable, appropriate, and within this Court’s discretion.

Respectfully submitted,

MATTHEW M. GRAVES
UNITED STATES ATTORNEY

BY: 
Stephen J. Rancourt
Assistant United States Attorney, Detailee
Texas Bar No, 24079181
601 D Street, N.W.
Washington, D.C. 20530
(806) 472-7398
stephen.rancourt@usdoj.gov