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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:16-MJ-00014

v.

CLIVEN D. BUNDY,

Defendant.

**GOVERNMENT'S MEMORANDUM
IN SUPPORT OF ITS MOTION FOR
PRETRIAL DETENTION**

The United States, by and through undersigned counsel, respectfully submits this Memorandum in Support of its Motion for Pretrial Detention pursuant to The Bail Reform Act, Title 18, United States Code, Section 3142. As explained herein, the government seeks the continued pretrial detention of defendant Cliven Bundy (“Bundy”) both as a risk of non-appearance and as a danger to the safety of others and the community.

Bundy is lawless and violent. He does not recognize federal courts – claiming they are illegitimate – does not recognize federal law, refuses to obey federal court orders, has already used force and violence against federal law enforcement officers while they were enforcing federal court orders, nearly causing catastrophic loss of life or injury to others. He has pledged to do so again in the future to keep federal law enforcement officers from enforcing the law against him. As of the date of this hearing, he continues to violate federal court orders and continues to possess the proceeds of his illegal activities.

Bundy is currently charged with crimes of violence including using and brandishing firearms in connection with crimes of violence under Title 18, United States Code, Section 924(c). As such, the Bail Reform Act presumes that there are no conditions or combination of conditions that will ensure the safety of the community. 18 U.S.C. § 3142(e)(3)(B). Here, no evidence has been adduced during the investigation of the instant charges that even remotely hints at a rebuttal to that presumption. In fact, all the evidence suggests that Bundy will continue to act

lawlessly, will not abide by court orders, and will use violence to ensure that federal laws are not enforced as to him.

I. INTRODUCTION

Bundy was charged in and arrested on a six-count Criminal Complaint filed on February 11, 2016, in the District of Nevada, charging Bundy with conspiring to assault federal officers, obstruct justice, extort federal officers, and use and brandish a firearm in relation to a crime of violence, and the substantive offenses that comprise the objects of the conspiracy, all in violation of Title 18, United States Code, Sections 371, 111(a)(1) and (b), 1114, and 2; 924(c); 1503; and 1951. Bundy was arrested on February 10, 2016, upon arriving at the airport in Portland, Oregon, the probable cause for the arrest arising from evidence of his involvement in a massive assault on federal officers that occurred on April 12, 2014, as detailed in the Complaint.

Based on the evidence adduced from its investigation to date, the government proffers the following in support of its motion for pretrial detention.

A. Background.

Bundy, 69, is a long-time resident of Bunkerville, Nevada, living on 160 acres of land in a very rural and sparsely-populated area of the state. Bundy Ranch, as he refers to the property, is located near the Virgin River a few miles from where Interstate 15 crosses from Nevada into Arizona, approximately 90 miles northeast of Las Vegas, Nevada. Bundy Ranch is surrounded by hundreds of thousands of acres of federal public lands commonly referred to as the Gold Butte area (and

includes an area formerly known as the Bunkerville Allotment). Bundy uses that entire range of land to graze his cattle unlawfully.

While Bundy claims he is a cattle rancher, his ranching operation – to the extent it can be called that – is unconventional if not bizarre. Rather than manage and control his cattle, he lets them run wild on the public lands with little, if any, human interaction until such time when he traps them and hauls them off to be sold or slaughtered for his own consumption. He does not vaccinate or treat his cattle for disease; does not employ cowboys to control and herd them; does not manage or control breeding; has no knowledge of where all the cattle are located at any given time; rarely brands them before he captures them; and has to bait them into traps in order to gather them.

Nor does he bring his cattle off the public lands in the off-season to feed them when the already sparse food supply in the desert is even scarcer. Raised in the wild, Bundy's cattle are left to fend for themselves year-round, fighting off predators and scrounging for the meager amounts of food and water available in the difficult and arid terrain that comprises the public lands in that area of the country. Bereft of human interaction, his cattle that manage to survive are wild, mean and ornery. At the time of the events giving rise to the charges, Bundy's cattle numbered over 1,000 head, straying as far as 50 miles from his ranch and into the Lake Mead National Recreation Area ("LMNRA"), getting stuck in mud, wandering onto golf courses, straying onto the freeway (causing accidents on occasion) – foraging aimlessly and wildly, roaming in small groups over hundreds of thousands of acres

of federal lands that exist for the use of the general public for many other types of commercial and recreational uses such as camping, hunting, and hiking.

Bundy claims he has strong anti-federal government views, proclaiming that the federal government cannot own land under the U.S. Constitution. These are not principled views – and certainly they have no merit legally – but nonetheless serve conveniently as a way for Bundy to somehow try to convince others that he has some reason for acting lawlessly, other than the obvious one: it serves his own ends and benefits him financially. Untethering himself from the law, Bundy claims he can do with his cattle as he pleases, including not incurring the expenses to manage or control them and not paying for the forage they consume at the expense of federal taxpayers.

Federal law requires any rancher to pay fees and obtain grazing permits to run cattle on public lands. The evidence suggests that before 1993, Bundy paid fees and kept current the permit his father before him had acquired for grazing cattle on the Bunkerville Allotment. In 1993, however, when BLM restricted both the number of head he could graze and the seasons during which he could graze them, Bundy was faced with the prospect of having to control his herd and bring them off the land during the off-season. It was then that Bundy claimed that he supposedly “fired the BLM” and refused, from then until to the present, to pay any grazing fees or submit to permits.

It appears that Bundy made some attempt to fight the 1993 restrictions administratively but to no avail. But despite losing, he continued in his scofflaw

ways, ignoring BLM regulations and restrictions pertaining to his use of the public lands, allowing his cattle to run wild and refusing to pay for the forage he leached off the taxpayers.

Ultimately, the BLM sued him in 1998 for trespass, the case being filed in the United States District Court for the District of Nevada before then-United States District Judge Johnny Rawlinson. Bundy lost the case and Judge Rawlinson issued an order requiring Bundy to remove his cattle permanently from the Bunkerville Allotment (hereinafter “the 1998 Order”). Making the same failed claims he continues to make to this day – the federal government cannot own the land – Bundy appealed the 1998 Order to the Ninth Circuit but lost there also.

Undeterred, Bundy simply ignored the 1998 Order, running his cattle as he always had, violating the 1998 Order just as he had all the other rules and regulations governing public lands. In 1999, Judge Rawlinson issued another order, re-affirming the 1998 Order and fining Bundy for each day he refused to remove his cattle. He ignored that Order just as he had the previous one.

Thereafter, other attempts were made to remove or have Bundy remove his cattle, all to no avail. The BLM went back to Court in 2012, filing a new lawsuit against Bundy to remove his cattle from the LMNRA and also filing a motion to renew the 1998 Order pertaining to the Bunkerville Allotment.

United States District Judge Lloyd George presided over the 2012 action. As he had before, Bundy claimed that the federal government could not own the land. However, in keeping with well-established legal precedent, Judge George – like

every other previous court – rejected Bundy’s claims in a July 2013 Order and required Bundy to permanently remove his cattle from the LMNRA within 45 days.

The motion in the 1998 action went before United States District Judge Larry Hicks. Like Judge George, Judge Hicks rejected Bundy’s claims in an October 2013 Order, re-affirming the 1998 Order and requiring Bundy to remove his cattle from the Bunkerville Allotment within 45 days. The Orders from Judge George and Judge Hicks each authorized the BLM to remove and impound the cattle if Bundy refused to do so, Judge Hicks expressly ordering Bundy not to physically interfere with any seizure or impoundment operation conducted by the BLM.

As before, Bundy refused to remove his cattle. Thus, the 2013 Orders in hand, the BLM planned for and commenced impoundment operations beginning around April 5, 2014.

B. The April 12, 2014, Armed Assault

On April 12 and for the purpose of thwarting the impoundment, Bundy organized and led over 400 Followers to assault the BLM officers as they guarded the Impoundment Site, all for the purpose of getting his cattle back. The Complaint sets out the nature of the assault that day as well as many of the threats and acts of violence that led up to the assault, which started even before the impoundment operation began. While the government does not intend to repeat those allegations here, it incorporates them by reference and proffers the following.

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1. The April 12 assault was an extremely violent act.

As the Court knows, it is a violation of federal law to use a firearm to assault, interfere with or intimidate a federal law enforcement officer. And contrary to the fiction recited by Bundy and his Followers to others, including children, there is no First or Second Amendment right or other right recognized in the law anywhere that gives anyone the right to use or carry, let alone brandish, raise or point, a firearm in order to assault, intimidate, interfere with or prevent a federal law enforcement officer from performing his or her duties – whether one thinks the officer is acting constitutionally or not. While that should be obvious to any law abiding citizen, Bundy espouses to the contrary.

On April 12, Bundy had mustered more than 60 firearms to assault and intimidate federal law enforcement officers while they were performing their duties. The evidence shows that officers confronted an angry mob of more than 270 people directly in front of them, the mob being backed up by gunmen brandishing or carrying rifles and firearms among the unarmed Followers, or perched on high ground in over-watch positions, or in concealed sniper positions aiming their assault rifles from bridges. The officers guarding the gate that day, almost to a person, thought either they, or unarmed civilians in front of them, or both, were going to be killed or wounded. Many of these officers, some of them combat veterans, remain profoundly affected emotionally by this event to this day. Witnesses have described the level of threatened violence as so intense that something as innocent as the

backfire of vehicle, or someone lighting a firecracker, would have set off a firefight between the gunmen and the law enforcement officers.

The Complaint alleges and the investigation shows that Bundy was responsible for recruiting the gunmen to come to Nevada to confront the BLM. He and his co-conspirators did so by issuing numerous calls to arms, inciting and soliciting others to bring weapons to Bundy Ranch, to show force, to make the BLM back down, to surrender, and other similar exhortations. The justification, according to Bundy and his followers: BLM was acting unconstitutionally in impounding his cattle. In other words, BLM was enforcing the law and Bundy didn't like it – so he organized an armed assault.

2. Bundy, his co-conspirators and Followers have pledged to do it again.

The evidence shows that this was an unprecedented act. The gunmen traveled great distances in a short period of time, answering Bundy's call to arms, coming from more than ten states to get to Bundy Ranch to confront the BLM, flooding into the Ranch between April 10 and the morning of April 12. The evidence shows that when the gunmen arrived, the conspirators organized them into camps, armed patrols, and security check points.

The evidence shows that Bundy rallied and directed his Followers to get his cattle out of the impoundment site on the morning of April 12. Bundy's son, Ammon, led the assault on one of the entrances to the site. Indicative of his intent that day was his statement to another person as he was drove his truck to the

impoundment site: “These federal agencies have a lot of power and they are not just going to give that power up. The people just have to take it, I guess.”

In the immediate aftermath of the assault and extortion, after having delivered the extortionate demands to the BLM and coercing the officers into leaving by threatening violence, Ammon Bundy was asked whether BLM was gone for good. Ammon responded: “They better be or the people will do it again.”

In an interview later in the evening on April 12, Ammon Bundy stated:

We the people expressed our power and as a result the Sheriff took control of his county. The Sheriff must protect the agency of man. The people have the power – it’s designed that way -- you have the people and then you have the Sheriff. Sovereign citizens on our own land.

Many of these same gunmen who conspired with Bundy and his son to assault the impoundment remain at large and, through Facebook postings and other social media outlets, have pledged to support Bundy again if BLM takes any action against him. There is no evidence to suggest that Bundy cannot quickly muster his gunmen again if any law enforcement action is taken against him.

C. Post-Assault: April 13 and thereafter.

Immediately after the assault, Bundy openly celebrated his role in driving the BLM out of the area. In an interview posted to the Pete Santilli Show’s YouTube channel on or about April 16, 2014, Bundy was interviewed by an individual named Peter Rense. When asked whether the BLM still had officers in the area, Bundy stated, “We the people and the militia definitely rid this place of any of that kind of influence.” See <https://www.youtube.com/watch?v=dI->

[3qYTMGgU](#) (last visited February 11, 2016). In the same interview, Bundy expressed dismay that the BLM officers were allowed to leave with their weapons on April 12: “we haven’t won the war, we’ve just won one chapter of it.” *Id.* Bundy’s characterization of the assault as part of a larger “war” makes clear that his efforts to thwart and interfere with BLM law enforcement officers would carry on.

To that end, Bundy relied on armed individuals who continued to travel to Bundy Ranch in the months after the assault. These individuals, camping in and around what the Bundys designated as “militia camps,” engaged in reconnaissance missions, manned check points on public roads, and conducted armed patrols of the area around Bundy Ranch to ensure BLM officers were not present and would not return. Bundy and his conspirators established a firing range on public land which his lead bodyguard used to train other gunmen to protect Bundy and his ill-gotten gains.

Bundy’s gunmen also took up over-watch positions along State Route 170, the main artery into the town of Bunkerville, and attempted to threaten their way into public facilities in the neighboring town of Mesquite, creating an environment of fear for these communities.

From April 11 through the present, Bundy has rarely been seen in public without an armed escort. His lead bodyguard, Brian Cavalier, currently detained and facing charges for his involvement in the MNWR occupation, was a constant companion of Bundy everywhere he went immediately after April 12 through the

following year. Just days after the stand-off, Bundy and two of his sons were seen giving news interviews surrounded by armed guards:



Bundy's bodyguards effectively protected Bundy from arrest for his criminal activities. Indeed, on or about April 16, 2014, in an interview with a national media person, Bundy stated that if the Federal Government came for him in the night "these feds, I don't recognize their jurisdiction or authority, so no, I wouldn't go with them." See <https://www.youtube.com/watch?v=hg646sJU3EI> (last visited on February 11, 2016). Also in this interview, Bundy stated, "I break federal laws almost every time I turn around, every step I take. . . I do try to abide by all of the sovereign state of Nevada laws though." *Id.*

On April 17, 2014, a local television news reported on the continued armed presence in the area and stated that "Armed protesters continue to surround the Bundy ranch and are even blocking a county road. Some of the supporters attempted Thursday to keep a [local] news crew from entering the area, despite it

being a public road. . . . The armed men say they'll be at the site for weeks to come to defend the Bundy family." The news segment included footage of a Bundy guard blocking access to a public road.

Organized patrols of the public lands continued all through the summer into the fall of 2014. Additionally, evidence shows that telephone lines with roster information were set up, donation pages on the internet continued to be utilized to solicit funds, and gunmen traveled back and forth from other states to do duty at the Ranch. The purpose of these missions was to ensure Cliven Bundy was not arrested and that BLM did not return to the public lands either to impound the cattle or for any other purpose.

On April 26, 2014, Bundy's son, Ryan Bundy, and Ryan Payne, both currently detained and pending charges for their role in the MNWR occupation and other members of the armed patrols, physically stopped a truck driving through Mesquite hauling a livestock trailer. Ryan Bundy demanded to see the written documents reflecting the ownership of the cattle in the trailer. The driver of the truck complied with Ryan Bundy's demands and after determining the cattle were not from among Bundy's feral herd, Ryan allowed the driver to continue on. The driver left the area and called police.

On February 17, 2015, an Arizona-based BLM fire crew traveling in a marked BLM truck decided to take a shortcut through Bunkerville, Nevada to their project site located at Pakoon Spring, Arizona. The crew drove southwest on Gold Butte Rd, Bunkerville, Nevada, in the vicinity of the Bundy Ranch. Just after

turning on to Gold Butte Rd, the two-person BLM fire crew noticed that they were being followed closely by a vehicle. When they attempted to allow the car to pass, it stopped and the firemen observed Ryan Bundy as a passenger in the vehicle.

Bundy asked questions in an aggressive tone and the fire crew, feeling the tension, decided to drive on. Ryan Bundy's vehicle followed them for over ten miles until the terrain made it difficult for the vehicle to do so. The fire crew contacted law enforcement and were safely escorted out of the area.

On March 27, 2015, a Las Vegas Metropolitan Police Department (LVMPD) officer agreed to escort two BLM civilian employees to the Bunkerville area to conduct an annual plant survey. The officer provided escort in his patrol vehicle and the BLM employees were in an unmarked BLM vehicle with government plates. As the cars neared the Bundy Ranch, the officer sent the BLM employees onward and then stopped and made contact with Ryan Bundy who was in a truck near the Bundy Ranch property. During his conversation with Ryan Bundy, the officer advised Bundy that he would be escorting the federal employees in the Gold Butte area. Ryan Bundy twice asked what agency they employees were with and wanted to know which plants they were counting. He stated "do they know the plants belong to us not them." Ryan Bundy also made statements to the effect of "I know that we want those guys off of here and out of here. We really don't want them here. . . . Put it this way: every time we see a government plate we follow them out . . . We have been doing that and we have not been stopping anybody but

we usually will take our security and let them know we are there and we're watching.”

On June 5, 2015, three civilians working on behalf of the BLM traveled to the Gold Butte region for an overnight assignment involving site surveys, which included surveying cattle troughs and other cattle-related sites. At the final site a truck came up the road at around 6:30 p.m. and parked behind the civilians' truck, blocking them in. One female employee approached the truck and observed a man who appeared to be 50-65 and who was subsequently identified by her as Cliven Bundy, and a younger man (18-25), subsequently identified by her as Arden Bundy, in the truck. Bundy said to her in a joking manner that they had been chasing these BLM employees all day. He asked why they were there and she said they were there to camp. Bundy said they were welcome to stay and that he was there to fix a leaky pipe and then feed the cattle.

At approximately 9:00 pm that night, the employees heard a vehicle coming up the road and stop approximately 500 meters from their camp. Three gunshots or popping noises were fired in fairly rapid succession. The vehicle then drove away. At approximately 10:00 pm, a vehicle came to the same spot and again three gunshots were fired in rapid succession, which one employee understood is sometimes meant to signal danger. The employees also heard several male voices but could not make out what was being said. They could see headlights in the direction of their camp. After a few minutes, the vehicle drove away. The

employees immediately packed up their camp and left Gold Butte, returning to Las Vegas after 1:30 in the morning.

On March 6, 2015, at a public meeting in Mesquite regarding pending BLM initiatives in the region, Bundy's sons, Ryan and Dave Bundy both spoke publicly, stating the BLM should stay away from the region and had no title to the land at issue. Bundy's bodyguard, Brian Cavalier stated, "If the BLM wants to go to the field to play ball, then me and my crew will come play ball too."

On September 12, 2015, the Bundy Ranch Facebook page – the official Facebook page for Cliven and Carol Bundy – posted a YouTube video featuring Ammon Bundy denouncing federal agencies with the following status update, "The Federal Government Does NOT have authority to be acting the way they are. PLEASE WATCH AND SHARE - Federal agencies are the greatest DANGER the American people have ever faced."

In the fall of 2015, the Bundy Family, both on Bundy's blog, bundyranch.blogspot.com, and on the Bundy Ranch Facebook page, began efforts to amass a movement to prevent two men, Dwight and Steven Hammond, convicted of federal arson-related charges in Oregon, from self-surrendering in January for their federal prison sentence. On December 11, 2015, the following message was posted on the Bundy Ranch Facebook page:

To all People, Patriot groups, Militias, Coalitions, Churches, Families and other Supporting entities . . . If we felt we could wait until after Christmas to give you this information we would. The Adversary never sleeps. We must stay aware, and act in these matters of defense. It is our duty to do so. . . . It is certain that what has happened to the people of Harney County and the Hammond family is a type and a

shadow of what will happen to all people across these United States if we do not put an end to it. . . . Please understand that we must exhaust all prudent measures before taking a physical stand against the horrific actions that the People of Harney County are enduring (including the Hammond's). If this Notice is ignored, then one more Notice of Demand will be sent, it will list the many petitions that have been ignored and demand that the Hammond's rights be restored. If that final Notice is rejected then People across the Union will have justification to assemble and once again restore individual rights. . . . Thank you,

The Bundy Family

The Hammonds were scheduled to report to federal prison on January 4, 2016. The following message was posted to the Bundy Ranch Facebook page:

FOR IMMEDIATE PRESS RELEASE:

CLIVEN D. BUNDY
PO Box 7175
Bunkerville, NV 89007
702-346-5564
January 1, 2016

With great concern and love and much consideration from prayer, I come to you Harney County Sheriff of Oregon David M. Ward, rancher Steven Dwight Hammond, and rancher Dwight Lincoln Hammond, Jr.,

I, Cliven D. Bundy, have been involved for several weeks in the background striving to understand and comprehend your dilemmas in Harney County, Oregon. . . .

The United States Justice Department has NO jurisdiction or authority within the State of Oregon, County of Harney over this type of ranch management. These lands are not under U.S. treaties or commerce, they are not article 4 territories, and Congress does not have unlimited power. These lands have been admitted into statehood and are part of the great State of Oregon and the citizens of Harney County enjoy the fullness of the protections of the U.S. Constitution. The U.S. Constitution limits United States government.

It is my suggestion, Steven Hammond, that you go and check yourself into Harney County jail asking for protective custody. It is my suggestion, Dwight Hammond, that you go and check yourself into

Harney County jail asking for protective custody. It is my suggestion, Harney County Sheriff David Ward, accept these two ranchers into your jail, notify the United States Solicitor in Washington DC that you have these two ranchers in Harney County jail, that they will remain there indefinitely under your protective custody and the protection of We the People of Harney County and We the People of the United States of America.

I suggest an Evidentiary Hearing or a Grand Jury be formed by We the People.

I feel that this action is immediately important, that it should be taken place before 10:00 am Saturday, January 2, 2016. I will hold these suggestions private until that time then I will release this letter to those having state and county jurisdiction and to the media.

Cliven D. Bundy

Despite Bundy's efforts otherwise, the Hammonds reported for their federal sentence as directed to do so on January 4, 2016. However, on January 2, 2016, Ammon Bundy, Ryan Bundy, Ryan Payne and others took over the MNWR, occupying it with guns and openly stating their intention to prevent federal officers from returning to do their work on the refuge.

Bundy made statements in the media, linking the April 12, 2014, assault to the MNWR occupation. In a video and article from a Las Vegas television channel website, titled "Rancher responds to calls for his arrest," posted on or about January 19, 2016, Bundy stated, "I'm not gonna ever let the federal government come here and abuse me, and my ranch, and my cattle and the public again. . . . We have really enjoyed our freedom and liberty out here and enjoyed the land, and that's what the Bundy standoff was all about. It was to give access to the people, and I would be able to continue ranching and tradition. . ." With respect to the

MNWR takeover, Bundy stated, “Somebody has to stand up, and it happened to be my sons that stood, and they will stand. They’re not going to give up.”

<http://www.lasvegasnow.com/news/rancher-responds-to-calls-for-his-arrest> (last visited February 13, 2016).

On January 22, 2016, weeks into the MNWR occupation, in a video and an article from another Las Vegas television channel website, titled “Activists call on government to arrest Cliven Bundy, sons,” Bundy stated about the MNWR occupation, “They did something they had to do. It has been extreme but the world has been listening.” In the same interview, addressing the April 12 assault, Bundy stated, it was “very much a success. We are standing in the freest place on earth. . . . Quit worrying about the Bundys, and if we’re terrorists, so what? We’re terrorists We the People are enjoying freedom here.”

<http://www.fox5vegas.com/story/31036532/activists-call-on-government-to-arrest-cliven-bundy-sons> (last visited February 13, 2016).

On January 26, 2016, in a video and a caption from a Las Vegas newspaper article titled “Rancher Cliven Bundy responds to sons’ arrests in Oregon standoff,” Bundy stated “What’s going to happen tomorrow, I don’t know. You know there’s going to be a rally across America, maybe around the world. I don’t know what side they are going to take. You know, this will be a wakeup call to America. This whole battle is over a constitutional issue, where the Federal Government has no rights within the state, or at least rights within a sovereign state. . . .”

<http://www.reviewjournal.com/news/nation-and-world/rancher-cliven-bundy-responds-sons-arrests-oregon-standoff-video>) (last visited February 15, 2016).

On January 30, 2016, in a video and article on a local Utah news website titled “Cliven Bundy: It was murder,” Bundy stated:

[S]omebody had to make a stand. Well, if you make a stand without guns, what kind of stand do you make? You know, the government just come in there with bangs and smoke bombs and you don't you don't have no strength. . . . You know, I hate to see me sons and anybody suffer and I don't believe that Federal Government has any jurisdiction authority, I believe it's up to the public. It's going to be a public opinion and I don't even know at this point if the public opinion makes any difference. Those people are murderers; they threatened Dwight Hammond to the point that he was scared. They basically had the community scared and they proved how powerful they was when they assassinated LaVoy Finicum, and I don't think there is any limit to the Federal government's wickedness . . . You sign contracts with the Federal Government giving them unlimited power. You wind up in their Federal courts and you never win. Why don't you stand up for your preemptive grazing right? Why don't you stand up for property rights? That's what LaVoy would tell you today

<https://www.stgeorgeutah.com/news/archive/2016/01/30/tds-cliven-bundy-it-was-murder/> (last visited February 13, 2016).

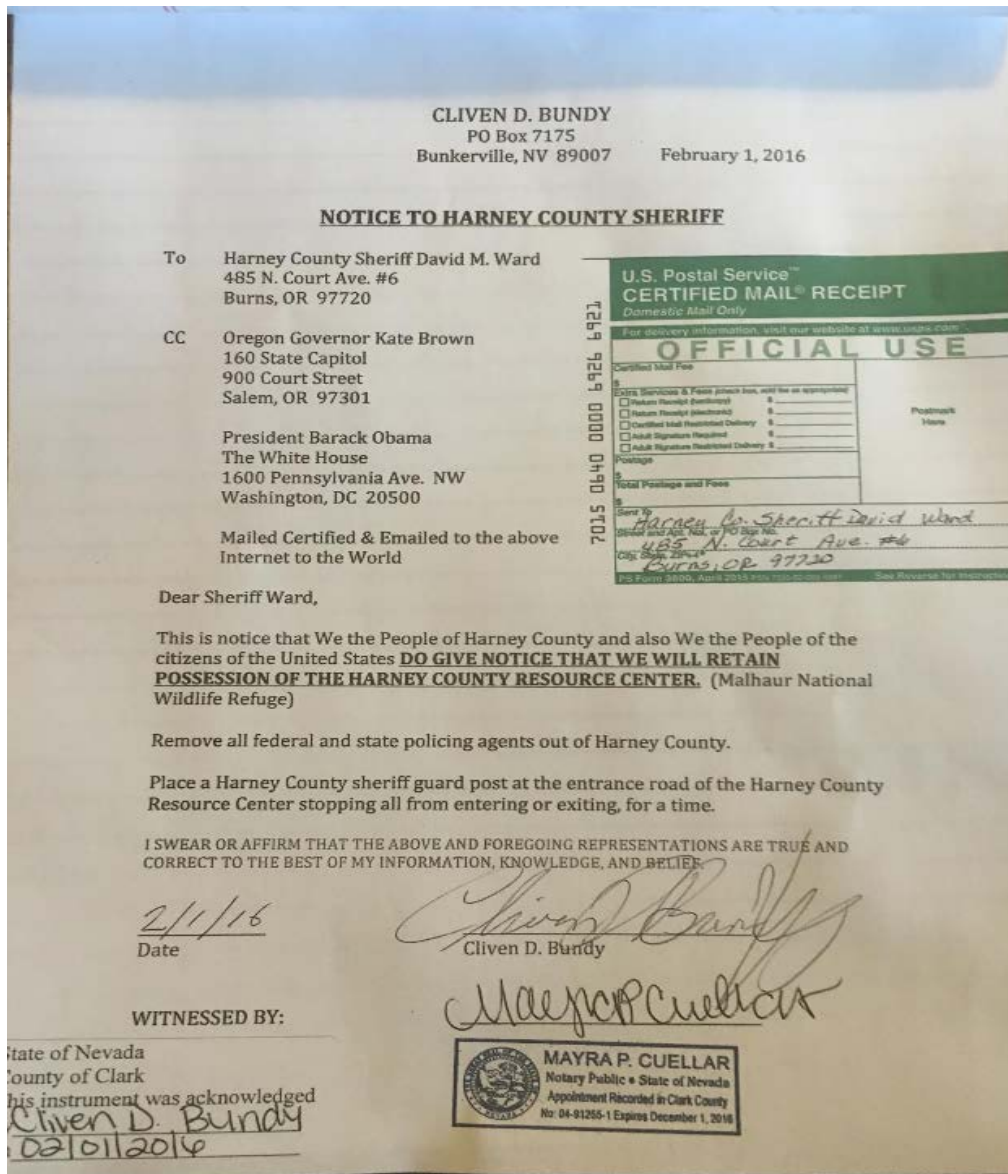
In a national media online article dated on or about January 31, 2016, titled “Bundy clan leader unrepentant even as Oregon protest collapses,” Bundy stated:

“They're leaving me alone . . . In this part of Clark County and on Bundy Ranch, we say we're the freest place on Earth . . . They [the federal government] have no jurisdiction or authority, and they have no policing power . . . They have no business here . . .”

<https://www.washingtonpost.com/national/health-science/bundy-clan-leader-unrepentant-even-as-oregon-protest-collapses/2016/01/30/>

[842a4750-c6c5-11e5-8965-0607e0e265ce_story.html](https://www.washingtonpost.com/national/health-science/bundy-clan-leader-unrepentant-even-as-oregon-protest-collapses/2016/01/30/842a4750-c6c5-11e5-8965-0607e0e265ce_story.html) (last visited February 15, 2016).

On February 1, 2016, Bundy sent the following notarized "Notice to Harney County Sheriff" which was addressed also to the Governor of Oregon and the President of the United States, indicating that "We the People," intended to retain possession of the "Harney County Resource Center," the name given to the MNWR by the occupiers.



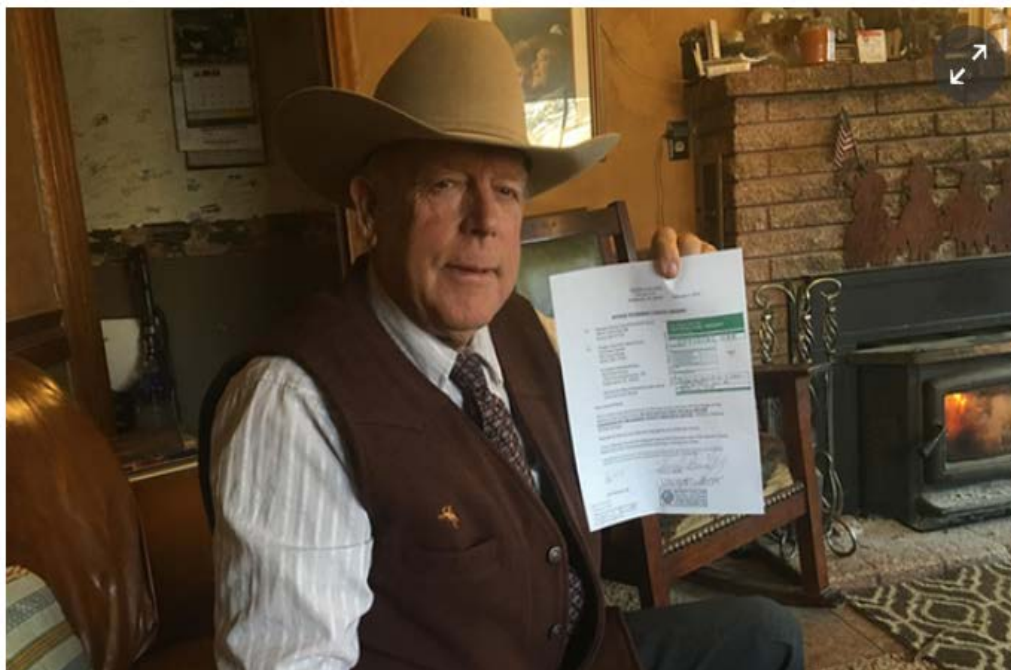
In an interview quoted in an article posted to a news website, Bundy explained the letter as follows, “What this is saying is that Cliven Bundy is taking control of things . . . If we don’t retain it, then we’ve lost everything that we’ve done in the last two months. We’re not gonna give up.” He added: “This is not Ammon’s message. This is my message . . . We’ve made a decision to retain it . . . The feds are going to get out of there.” Bundy once again reiterated his stance that “the federal government doesn’t have any jurisdiction or authority.” http://www.theguardian.com/us-news/2016/feb/01/oregon-armed-militia-standoff-cliven-ammon-bundy-malheur-national-wildlife-refuge?CMP=share_btn_tw (last visited February 13, 2016).

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Cliven Bundy defies son Ammon in call for Oregon militia to stand their ground

After Ammon Bundy called on final occupiers to [leave refuge](#), his father sent a letter to government officials declaring armed militia would not back down



📷 'What this is saying is that Cliven Bundy is taking control of things,' he said of the Oregon standoff in an interview from his ranch in Bunkerville, Nevada. Photograph: Sam Levin for the Guardian

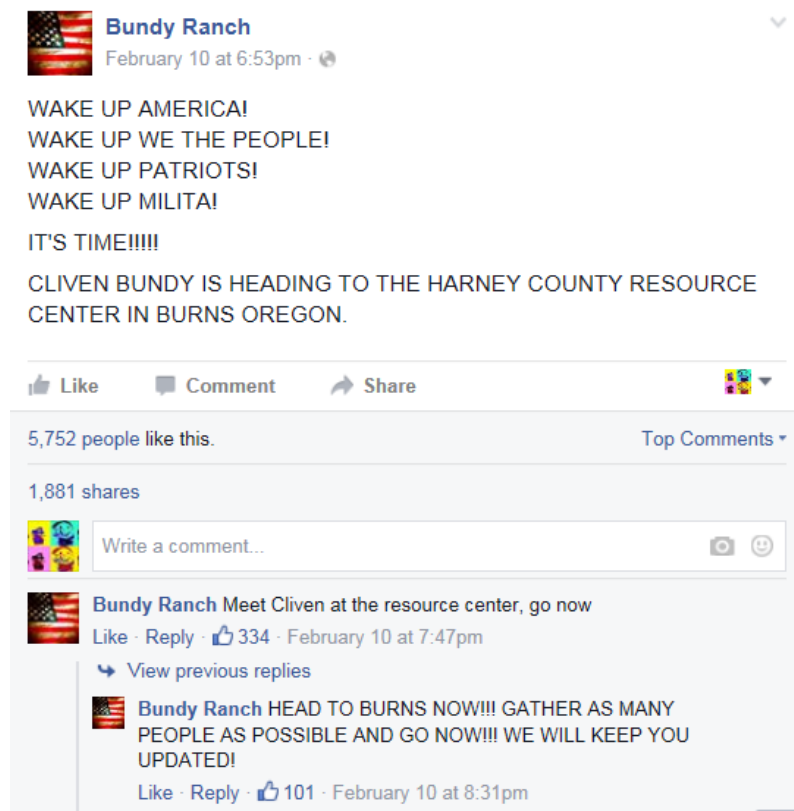
In a video posted to Youtube titled, "Cliven Bundy speaks after Kanab funeral for LaVoy Finicum," published on February 6, 2016, by a local Utah newspaper, Bundy stated:

It don't matter who we elect to the President of the United States, it don't matter who we elect for Congress, it don't matter who we elect for our Judges or the appointed Judges, the legal part don't work and political part don't work, and do you know why? It's because the bureaucrat has got so fat and so healthy, that he is the one that prospers, he is the one that has life liberty and the pursuit of happiness, we are feeding him, and when you get to this point, I've

been to this point for twenty years. I said no, I'm not going to sign contracts with you and I'm not going to pay you anymore, but I said twenty years ago, if ten ranchers would follow me, we would have had this thing beat a long time ago. Today we still don't have it beat. . . . You [ranchers] you have terms and conditions you have to follow, and if you don't follow them, you know what happens? You [ranchers] end up in a federal court and where in federal court did anyone ever win? Where in a federal court did a rancher, a resource user, ever win in a Federal court. You can't win at that Federal court, and it's their court."

<https://www.youtube.com/watch?v=BHvCLZTrRGc> (last visited February 13, 2016).

On February 10, 2016, Bundy Ranch Facebook page posted the following status update:



When other Facebook users commented on the post, Bundy Ranch continually reiterated its call to “head to Burns now!” and advised others to “meet Cliven at the resource center, go now.” That same night, Bundy flew

unaccompanied by his bodyguards to Portland, Oregon, where he was taken into federal custody at the airport.

While Bundy was traveling, another subject who had days earlier traveled from MNWR to Mesquite, Nevada, posted a status update to his Facebook page, stating, “Need contacts in PORTLAND to PM me ASAP!!!! [subject name] Safety is why I need contacts!!! I need some Warfighters if at all possible.”

A subject who was questioned following his/her arrest in connection with his/her activities at MNWR told law enforcement officers that MNWR occupiers had made their way to Bundy Ranch and were staying there. According to this person, an individual armed with an AR-15 was providing security for MNWR occupiers who were staying at Bundy Ranch.

II. ARGUMENT

The Bail Reform Act provides that a judicial officer shall detain a defendant pending trial where “no conditions or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Detention is appropriate where a defendant poses either a danger to the community or a risk of non-appearance and it is not necessary to prove both. *See United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). The Government must establish by clear and convincing evidence that the defendant presents a danger to the community and by a preponderance of the evidence that the defendant is a risk of non-appearance. *Id.*

In determining whether pretrial detention is appropriate, Section 3142 provides four factors for the Court to consider: (1) the nature and circumstances of the offense charged, including whether the offense charged is a crime of violence; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant; and (4) the nature and seriousness of the danger posed by the defendant's release. *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990); 18 U.S.C. § 3142(g).

Where, as here, there is probable cause to believe that the defendant has committed an offense under Title 18, United States Code, Section 924(c), the court shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community. 18 U.S.C. § 3142(e)(3)(B).

At the detention hearing, the Court may properly rely upon a proffer by counsel in determining a defendant's danger to the community or risk of flight. *See United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986) (“[T]he government may proceed in a detention hearing by proffer or hearsay.”)

A. The Offenses Charged Are Based on Bundy's On-Going Defiance of Federal Court Orders and Include Crimes of Violence

Crimes of violence for purposes of the Bail Reform Act include any offense that has as “an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another,” and is a felony that “by its nature, involves a substantial risk that physical force against the person or

property of another may be used in the course of committing the offense.” See 18 U.S.C. § 3156(a)(4)(A). Here, five of the Counts contained in the Criminal Complaint against Bundy are crimes of violence: assault on a federal officer with a firearm and deadly weapon; extortion by force and violence; Section 924(c) counts as to each; and conspiracy to commit same.

Bundy’s charges are grounded not only in violence and his lawless acts, but also in his continued refusal to abide by federal court orders and other laws. Bundy continues to be in violation of no less than four federal Court Orders and each day enjoy the proceeds of his criminal activity, generating income through grazing over a thousand head of cattle on federal lands for free and selling these cattle for thousands of dollars each as he deems necessary.

Every day that Bundy is loose on Bundy Ranch is a day that he is in violation of the law. He continues to run his cattle in violation of federal law. He continues to flout the authority of federal law enforcement officers and threaten violence if they try to enforce the law.

Bundy’s rhetoric and his conduct relating to these charges makes clear that he has not changed his mind about the BLM or the federal government. As demonstrated above, Bundy has declared a personal war against the BLM and the federal government and there has been no evidence adduced during this massive investigation to suggest that he has changed his mind about any of that.

In the past, he has used gunmen to man checkpoints and conduct security patrols to prevent his arrest. His threats of force and past use of force have, to date,

prevented law enforcement officers from carrying out the court orders to remove Bundy's cattle from the public lands and kept them from patrolling and enforcing the laws and regulations pertaining to the large swath of public lands known in the Gold Butte area.

If Bundy were allowed to return to Bundy Ranch, the continued absence of a law enforcement presence in the Gold Butte area directly threatens the safety of others who wish to enjoy or use the same land that Bundy now has free reign over.

If released, Bundy would pose a significant risk of non-appearance, allowing him to bunker down at his ranch, fortify it with armed guards and thereby requiring federal officers to face the dangerous task of apprehending him.

Thus, there are no conditions or combination of conditions that any federal court could impose to protect the community from his lawless activity, whether that community is comprised of the citizens using the public lands or federal law enforcement officers and civilian employees attempting to manage the resources and enforce the laws. All are subject to Bundy's threats of violence.

B. Substantial Evidence Exists Establishing Bundy's Guilt

In the immediate aftermath of the April 12 assault, federal law enforcement officers were forced to abandon the impoundment site, precluding them from conducting an immediate investigation. Out of safety concerns and the need to deescalate the violence and restore order, the remaining local law enforcement officers – who themselves were outnumbered by Bundy's Followers – allowed the gunmen and the conspirators simply to leave the site without making any arrests,

conducting any interviews, taking any statements, or obtaining any identification of the gunmen and other assaulters.

Absent contemporaneous arrests and identifications, the investigation became purely historical in nature. The presence of many gunmen in and near the area of Bundy Ranch, the armed checkpoints and patrols, the presence of assault weapons in the militia camps, including (by some accounts) a .50 caliber machinegun, further increased the difficulty of conducting a physical investigation of Bundy Ranch or the impoundment site.

All of that said and despite those obstacles, the investigation began the day after the assault and continues to this day, identifying the assaulters, where they came from, how they got to Nevada, their connections to Bundy and others and their role in the assault and the aftermath.

To date, the government has conducted hundreds of witness interviews; executed over 40 search warrants; reviewed, organized and analyzed hundreds of thousands of pages of documents (mostly from social media); reviewed, organized and analyzed thousands of pages of telephone records; and organized, reviewed and analyzed hundreds of hours of audio and video recordings.

In addition to his numerous statements captured on social media, Bundy is captured on video directing his followers to go get his cattle on April 12. Numerous witnesses describe his involvement in the conspiracy and the ongoing activities at Bundy Ranch both during and after the assault. The evidence overwhelmingly establishes that Bundy was the leader, organizer and main beneficiary of the

conspiracy to impede and assault the federal officers conducting impoundment operations on April 12.

C. Bundy's History and Characteristics Demonstrate the Danger and Risk of Non-Appearance He Poses

For two decades, Bundy has grazed his cattle on federal lands without complying with BLM regulations or paying any grazing fees or other penalties, despite four federal court orders directing him to cure these violations. When Bundy was presented with the impending court-authorized impoundment of his cattle, he fomented and recruited his own army who expressed a willingness to raise weapons against federal law enforcement officers.

Bundy's rhetoric and his conduct relating to these charges makes clear that he has not changed his mind about the BLM or the federal government. As demonstrated above, Bundy has declared a personal war against the BLM and the federal government and there has been no evidence adduced during this massive investigation to suggest that he has changed his mind about any of that.

Further, there simply is no indication in any of the evidence that an Order for less restrictive conditions from this Court will get Bundy to do what three previous Courts could not: follow federal law. He does not recognize federal law and has said so repeatedly. He does not follow federal law or federal court orders and has demonstrated that repeatedly. There is no assurance that Bundy will in the least adhere to pretrial restrictions contained in yet another court order, which restrictions will no doubt include that he comply with and follow all federal laws

which would include federal court orders that require him to remove his cattle from public lands.

D. Bundy Poses A Significant Danger to the Community

Bundy's conduct in April, 2014, risked hundreds of people's lives – he incited and directed approximately four hundred people to travel to the BLM impoundment site to face off with federal law enforcement officers. But for the courageous restraint of these officers, this violent assault would likely have met with violent and deadly ends.

Bundy continues to put federal law enforcement officers, civilian employees, and community members at risk with his conspiracy to impede BLM in performing their duties around the country. Bundy was willing to put these people at risk in April 2014 when faced with the impoundment of cattle. He continued to do so with his patrols of the Gold Butte region and with his involvement in the MNWR takeover, ostensibly over lands rights issues. That Bundy now faces a lengthy incarceration if convicted of the charges can only bode more dangerous conduct if he is released.

E. Only Pretrial Detention Will Reasonably Assure the Safety of Others and the Community and Bundy's Future Appearance

A presumption applies that Bundy shall be detained and Bundy cannot overcome that presumption. The charges, the evidence, Bundy's history and the danger posed establish that there are no conditions or combination of conditions that can address these risks. As already discussed, any terms of release would have

to include Bundy's adherence to all laws. He has demonstrated and stated that he will not follow federal court orders.

Even the most stringent of conditions are insufficient to assure the safety of the community or Bundy's appearance, given that ultimately, they must rely on Bundy's good faith compliance. *See United States v. Hir*, 517 F.3d 1081, 1092 (9th Cir. 2008) (Noting that although the defendant and pretrial services proposed "strict conditions," "they contain[ed] one critical flaw. In order to be effective, they depend on [the defendant's] good faith compliance."); *see also United States v. Tortora*, 922 F.2d 880, 886 (1st Cir. 1990) (concluding that an extensive set of release conditions contained "an Achilles' heel ... virtually all of them hinge[d] on the defendant's good faith compliance"). In *Tortora*, an alleged member of a prominent mafia family stood trial for crimes under the racketing and organized crime statute. The First Circuit considered the elaborate conditions proposed that would restrict any communications with the defendant's cohorts. Ultimately, the court rejected those conditions, recognizing that "the conditions as a whole are flawed in that their success depends largely on the defendant's good faith-or lack of it. They can be too easily circumvented or manipulated." *Tortora*, 922 F.2d at 886.

Such considerations are doubly present here, given that Bundy's crimes in this case are rooted in his defiance of federal court orders directed specifically to him, and that his commitment to flouting federal authority has been maintained in word and deed through the present.

CONCLUSION

For the reasons stated herein, Bundy is a danger to the community and poses a risk of non-appearance. Bundy cannot overcome the presumption that he should be detained and no conditions or combination of conditions will reasonably assure the safety of others or his appearance at future proceedings. Accordingly, the Government respectfully requests that the Court order Bundy detained pending trial.

DATED this 16th day of February 2016.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the **GOVERNMENT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRETRIAL DETENTION** was emailed to Defendant Cliven Bundy's attorney Noel Grefenson on February 16, 2016, at [ngrefenson@aol.com](mailto:norefenson@aol.com).

s/Charles F. Gorder, Jr.
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ASSISTANT U.S. ATTORNEY

CERTIFICATE OF SERVICE