

Exhibit 2

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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->

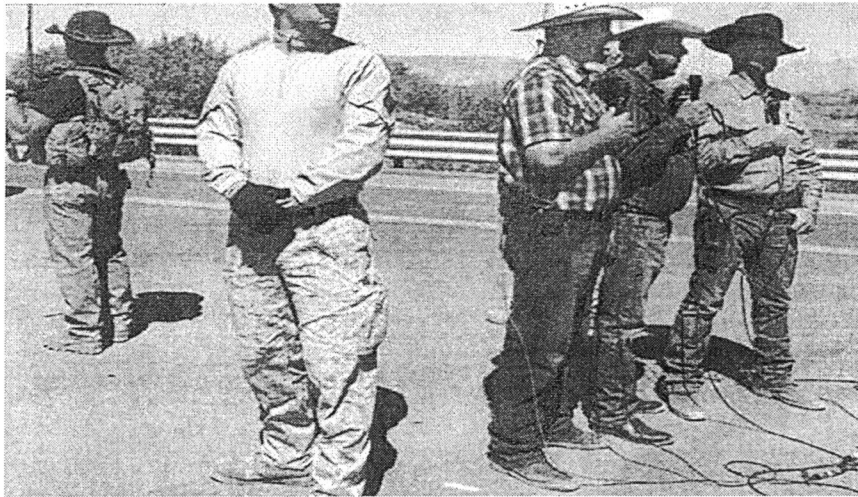
3qYTMGgU (last visited February 11, 2016). In the same interview, Bundy expressed dismay that the BLM officers were allowed to leave with their weapons on April 12: “we haven’t won the war, we’ve just won one chapter of it.” *Id.* Bundy’s characterization of the assault as part of a larger “war” makes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