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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. CLIVEN D. BUNDY, et al, Defendants	CASE NO. 2:16-cr-00046–GMN-PAL

DEFENDANT CLIVEN BUNDY'S OBJECTIONS TO THE MAGISTRATE'S ORDER OF DETENTION AND BUNDY'S MOTION FOR REVOCATION OF THE MAGISTRATE'S ORDER OF DETENTION

Comes now, the Defendant, Cliven Bundy, by and through his attorney, Joel F. Hansen, Esq., and files with the District Court his objections to the Magistrate Judge's Detention Order of March 18, 2016 and moves that the Detention Order be revoked and vacated.

I. THE MAGISTRATE'S ORDER IS IN ERROR BECAUSE IT IS BASED UPON AN ERRONEOUS INTERPRETATION OF THE DEFENDANT'S HISTORY AND CHARACTER, AND FAILS TO RECOGNIZE THE FACT THAT CLIVEN BUNDY POSES NO RISK OF HARM TO THE COMMUNITY BECAUSE HE HAS NO CRIMINAL HISTORY, HE HAS NEVER COMMITTED A VIOLENT ACT, HE HAS NEVER HARMED ANYONE, AND HE HAS SUCH SIGNIFICANT TIES TO HIS FAMILY, HIS RANCH, HIS CHURCH, AND HIS COMMUNITY THAT HE POSES ABSOLUTELY NO FLIGHT RISK

A. The Facts Presented to the Magistrate Show That the Requirements to Detain a Defendant Pending Trial Have Not Been Met by the Government

Attached hereto and incorporated herein by reference are the Defendant's "MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY (see **Exh. A**) and the SUPPLEMENT TO DEFENDANT'S MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY (see **Exh. B**). These two Memoranda show, beyond any doubt, that:

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1. A defendant should only be denied bail in rare circumstances, and that doubts should be resolved in favor of the accused. Pretrial release should be denied only for the strongest reasons.

2. The government has failed to show that Cliven Bundy has ever committed any violent act. The only violent acts committed during the "standoff" were committed by the government agents. Mr. Bundy was never present on the scene of any confrontation, never brandished a weapon, was never armed with any firearm, never directed anyone to assault a federal officer, and never assaulted anyone or committed any battery in his life .

3. Mr. Bundy has never been accused of or committed any crime of violence in his life.

4. The government's burden of proof in establishing a risk of flight is by a preponderance of the evidence. Only in rare cases should release be denied, and doubts regarding the propriety of release are to be resolved in favor of the defendant.

5. The many letters from his friends, acquaintances, and family show that Mr. Bundy:

a. Is a caring and compassionate family man who loves God, his family, his country and his state. He is a hard worker and an honest man. He has always tried to settle things peacefully.

b. He is an active and faithful member of his church.

c. He is a beloved man and a large part of our community in Bunkerville, Nevada.

d. He is an amazing Father, Husband, Grandfather, Friend, Cousin, and Neighbor.

e. He is a good honest man. He should be allowed to be home with his family, because he serves people in his community on a daily basis and contributes a great deal of kindness and love for his community.

f. Cliven is a man of integrity, honesty, and love.

g. "He is one of the most honest, upright, decent man we have ever known. He is no threat for anyone." Statement by Rulon H. Spencer and Wendy S. Spencer.

B. The Magistrate's Order Is Erroneous

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B. The government has presented no evidence to support Probable cause

1. No probable cause that Bundy will commit crimes of violence has been presented.

All that the government has presented to this Court are allegations and innuendos. There is no probable cause to believe the Cliven Bundy has committed offenses that are crimes of violence. There is, in fact, no evidence whatsoever that Cliven Bundy has ever committed any act of violence at all. There is no evidence that Cliven even carried a firearm during the "standoff." No one who was opposing the efforts of the BLM did anything violent. No shots were fired. No agent of the government was even touched. Had there been a "conspiracy" to do violence against the government, this conspiracy to commit violence would undoubtedly have led someone to pull a trigger or to attack someone. No such thing happened.

2. The BLM committed the only violence.

The BLM shot Cliven Bundy's bulls and buried them in a secret grave, trying to hide their acts. The BLM violently threw Margaret, Cliven's sister, to the ground. The BLM tazed Ammon twice–and the Court is well aware that being tazed is a horrible, painful experience in which one's entire body is paralyzed by a powerful and painful electric shock. And when Davey Bundy was on a County road, with an iPod, taking a video of what the BLM was doing in preparation to take Bundy's cattle, they told Davey to stop taking that video. When Davey said he was on a county road, and that the BLM had no jurisdiction over a county road, and no authority to tell him to stop taking a video of their actions, and that he had a first amendment right to be taking that video–the BLM approached him, violently took his iPod and destroyed it, and then handcuffed Davey behind his back, threw him to the ground, stomped on the back of his head, and left him very uncomfortably handcuffed behind his back for hours. They took him to jail, left him there overnight, and then released him, without ever charging him with any crime, and then destroying or hiding any documents showing that he had been incarcerated there.

3. Cliven Bundy committed no act of violence

No act of violence occurred on account of Cliven Bundy, even as an alleged "conspirator." The government contends that Cliven is guilty of a crime of violence, but it has not presented a shred of evidence to support that position. And it is ludicrous to suppose that Mr. Bundy is going to harm

anyone if he is released from detention. There is no evidence that he has ever done such a thing, and there is no evidence that he is going to enter into a conspiracy to go out and hurt someone in his community. Of course he is not going to do that. He's never done it. He knows the people in Bunkerville. It is a small town, and they are his friends.

4. The present case is criminal; any order for release will carry with it penalties which may include the imposition of incarceration; this is vastly different from a civil order

The Magistrate and the government make much of the fact that Mr. Bundy has violated past Court orders by refusing to remove his cattle from the ranch. Therefore, it is reasoned, why would he obey the orders of this Court to appear for hearings and trial? But the Magistrate and the government have ***conflated*** two separate issues. The prior orders to stop grazing his cattle were issued in a civil case. The orders were not orders that if he didn't stop, he would be imprisoned. Judge George never ordered any such thing. Those orders were about removing cattle from the land, and actually no money judgment has ever been entered against Mr. Bundy. No finding of contempt of court has ever been entered. The government obtained injunctions only, and failed to enforce those injunctions until the standoff in question of April 2014. ***United States v. Bundy*****,** No. 2:12 CV 0804©LDG©GWF, 2013 WL 3463610, at *1 (D. Nev. July 9, 2013). The trouble is, the United States a/k/a the BLM never attempted to enforce these injunctions. And so Mr. Bundy stayed on the land. There was nothing in the injunction that said that if he didn't obey them that he would be imprisoned. That is entirely different from the present situation.

In the present situation, any order for release which would be issued would impose travel and other restrictions on Mr. Bundy, and require him to appear for all Court hearings and trial, and would result in him being sent back to detention and imprisoned if he were to violate the order–that is very different from an injunction that was never enforced. He knows this will be enforced, because it will say right in the order that if he violates it, he may be incarcerated. The Court can obviously see how different injunctions are from an order imposing restrictions on Mr. Bundy's freedom of movement and

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other actions, the violation of which will bring upon him the severe judgment of this Court–probable incarceration in solitary confinement. He is familiar with solitary confinement, because he has been in solitary confinement ever since he was sent to Nevada after being arrested in Oregon. So obviously he knows he certainly doesn't want to go back there.

This all means that there is nothing in Mr. Bundy's history which would show that he will not appear before this Court when told to do so. Nothing. He has always been an honest, law abiding, hard working citizen, father, husband, and grandfather, who has been a pillar of goodness and respect in his community. Why a man like this needs to be imprisoned is beyond comprehension. Cliven Bundy is about as likely to hurt someone or to flee Nevada as a desert tortoise. It just isn't going to happen.

5. The government has presented a paucity of evidence that Cliven Bundy "is the leader, organizer, and primary beneficiary of the conspiracy charged in the . . . indictment." See Magistrate's Order, Pg. 3:25-27

In its rambling "MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRETRIAL DETENTION", filed with the Court in Oregon, the government baldy asserts that "Based on the evidence adduced from its investigation to date, the government proffers the following in support of its motion for pretrial detention." The government then fills up 34 pages with accusations, innuendoes, and unsupported allegations, but seldom presents any actual evidence of what it asserts. The government must know that the standards of the Bail Reform Act require it to prove by "clear and convincing" evidence that the Defendant poses a dangerous threat to the community, and that it must prove by a preponderance of the evidence that the Defendant is a flight risk. If one accepts at face value everything the government claims in these 32 pages of empty, vacuous arguments, almost entirely devoid of anything besides bald assertions by the DOJ, then Cliven Bundy could be characterized as the Bad Bart of Bunkerville. The trouble is, although the government asserts that its investigation has proven all of these accusations, in fact the DOJ hasn't presented this mystery evidence to this Court. The government can't just make assertions. It must present actual evidence to back up its assertions. This the government has failed to do.

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6. How Bundy ranches is irrelevant

On the fourth page of its diatribe, the government describes in detail its opinion of Rancher Bundy's cattle operation–without any affidavits or pictures or anything else to prove what it is saying. Is the prosecutor a rancher? Does he know whether Mr. Bundy's operation is unorthodox? Has he ever ridden a horse or roped a calf? Has he ever conducted a round-up? Bald assertions about immaterial facts by someone without knowledge are worthless.

Besides, this whole scenario is irrelevant. Whether or not Mr. Bundy vaccinates his cattle has absolutely nothing to do with the indictment. It doesn't prove anything. It is just the government's way of making Mr. Bundy look like a bad guy. Maybe the way he ranches is unorthodox, but so far no one has shown that his cattle are inferior to anyone else's cattle. It is all a tempest in a teapot, designed to throw immaterial dirt on Cliven. The government should be ashamed of its shabby tactics.

7. Cliven Bundy has a First Amendment right to his views about the government and its alleged ownership of 90% of Nevada's land. He cannot be prosecuted for his views. This appears to be nothing but a political prosecution.

The government accuses Mr. Bundy on pg. 5 of having "strong anti-federal government views" and that his views are not "principled." Mr. Bundy, in studying the US Constitution, found in the First Amend- ment that he had freedom of speech and that the government can't take that away. And where in all of Anglo-American or Constitutional law is it held that someone's views must, in the government's opinion, be "principled?" Are we now in a fascist state where one's opinions must be, in the opinion of the government, "principled?" This is dangerous talk, to say the least.

The government is trying Cliven Bundy in these motions, rather than before a jury of his peers. The government is holding Mr. Bundy in solitary confinement, a man who has never hurt a fly. The government seems to be afraid that it might lose in a jury trial, so it wants to keep him in prison, in solitary confinement, as long as it can, because he, like Nelson Mandela, is a political prisoner. And the government is seeking to have this case declared complex, so that it may lengthen out the time it holds Mr. Bundy in solitary confinement. That Mr. Bundy is certainly out of favor with the current administration is clearly shown in a VIDEO entitled: Obama Disses Rand Paul, Cliven Bundy at WHCA Dinner found at https://www.youtube.com/watch?v=rveNp7f57H. The President threatens Cliven

Bundy by stating that if he makes similar statements again like he did at Bunkerville, "things won't end well." Is that why Mr. Bundy, a man who has never hurt a fly, is being held in solitary confinement? There is nothing in the U.S. Constitution allowing the federal government to hold political prisoners without a trial. Nothing.

8. Unreasonable restrictions on grazing have destroyed ranching in Clark County

When the BLM "restricted both the number of head he could graze and the seasons during which he could graze them" (see pg. 5), Cliven fired the BLM, because the BLM is supposed to encourage ranching in order to produce food for the American people. Its job is not to destroy ranching. The original purpose of the BLM and the Taylor Grazing Act was to encourage grazing on "federal" lands–not to destroy it. See 43 U.S.C.A. § 1751, which provides for the "betterment" of the grazing lands in the 16 Western States. There is nothing in the act which authorizes the BLM to engage in a calculated program to drive ranchers off the land by raising grazing fees and restricting the number of cattle and the grazing seasons to the point that the ranchers are driven off the land. Yet the BLM has shut down every ranching operation in Clark County–except Cliven Bundy's. So who is violating the law here? Doesn't Mr. Bundy have the right to raise a Constitutional question about the legality of the high handed tactics of the BLM? Of course he does–and particularly by making statements about the actions of the BLM and by the exercise of people's First Amendment right to peaceably assemble, and the people's Second Amendment right to keep and bear arms. No person demonstrating in favor of Cliven Bundy ever fired a weapon. No person supporting Cliven Bundy ever hurt any BLM agent. No person raising a Constitutional and legal question about who owns the land in Nevada ever physically assaulted anyone in the employ of the Federal government. Only the BLM agents assaulted and battered people–Ammon, Margaret, and Davey.

9. The government has presented no evidence that Cliven Bundy organized anything

The DOJ claims that Cliven Bundy "organized and led over 400 Followers to assault the BLM officers as they guarded the Impoundment site." See pg. 7. But where is the proof that he did this? The government presents no proof that Cliven was even at or near the impoundment site. The government has presented no affidavit, picture, or anything else to show that Cliven Bundy "led" anyone to the

impoundment site. He simply wasn't there. And where is the proof that the were "over 400 Followers." Who counted them? Where is his/her affidavit or declaration? Incredibly and amazingly, the government cites to its own Complaint for proof of all of this. But as the Court well knows, the Complaint is just allegations. It proves absolutely nothing.

The government say Bundy "mustered more than 60 firearms. . . ." See pg. 8. Again, where is the proof of this? The government presents none. Who counted the firearms? What did Cliven do to "muster" them. And suddenly the number of people present is reduced to 270. Who is doing this counting? Where is his/her declaration?

The government further baldly asserts: "Many of these officers . . . remain profoundly affected emotionally by this event to this day." What are the names of these officers? Where are their statements that they are profoundly affected? Where are their psychologists' statements that they are profoundly affected? If they are profoundly affected, is it because they concluded that they were like Redcoats attacking patriots? Do they believe that they were in the wrong because of what they did? Why does the government continue endlessly to make these broad and bald statements without anything but the word of a government ghost writer that they are true?

At pg. 9, the government asserts that "[T]he complaint alleges and the investigation shows that Bundy was responsible for recruiting the gunmen to come to Nevada to confront the BLM." It doesn't amount to a hill of beans what the Complaint alleges. The Complaint can allege anything that someone in the DOJ with a fertile imagination can think up. What matters in this proceeding is clear and convincing proof–not bald statements and gaseous allegations. Where is there any proof and where is the credible evidence that Cliven Bundy recruited anyone? In clear violation of law, the government presents none.

10. The evidence does not show that this was an unprecedented act

At page 9 the unsupported assertions continue. "The evidence shows that this was an unprecedented act." But the government does not show that this was an unprecedented act. What does it mean by an "unprecedented act." Is the government unaware of the Whiskey Rebellion? How about the Everett Massacre? How about the Haymarket Riot or the Ludlow massacre? What comes to mind

is the stand that the minute men made against the British at Bunker Hill. Or at Concord Bridge. Or at Lexington green.

But the difference between all of these "standoffs" and the Bunkerville standoff is this–no one who was there on Cliven Bundy's side committed any act of violence. It was all done by the government. So yes, in this, it was unprecedented. The Bundy supporters exercised incredible restraint in face of violent acts by the BLM.

11. Hearsay quotations from unidentified persons are not "clear and convincing evidence.

The government allegedly quotes Mr. Bundy at the foot of pg 9 that he made a statement "to another person." Who is this person? Where is his declaration or affidavit? How does the government know this? Are we and the Court supposed to just believe whatever the government says? No, we're not. The government must prove that Cliven Bundy is dangerous by "clear and convincing evidence." A hearsay statement by an unidentified person which is supported by nothing but words some unidentified law clerk wrote on a computer screen is not "clear and convincing evidence." The government fails again. See ***United States v. Scales***, 344 F.Supp. 213 (D. Me. 2004).

At pg. 10 the DOJ quotes what Ammon Bundy said, which the DOJ doesn't like. Well, the question which comes immediately to mind is whether Cliven Bundy is guilty by association here. The government presents no evidence that Cliven Bundy told Ammon to say this. Guilt by association is not clear and convincing.

12. These unsupported hearsay allegations and innuendoes go on for another 24 pages and mostly present completely immaterial accusations

The government alleges, without presenting any actual evidence, that Cliven Bundy established a firing range, stated that he obeys the laws of the State of Nevada, quotes an unidentified television news report, alleges that two of Cliven's sons stopped a truck (so what?), that Ammon followed a fire truck too closely (so what?), that Ryan asked what plants the BLM was counting (so what?), that an unidentified BLM agent heard Cliven say that he was there to fix a leaky pipe, that the same unidentified BLM agents heard "gunshots" or "a popping sound" in the night and heard several unidentified male voices, that Ryan and Dave said the BLM should stay away from Bunkerville, that Cliven Bundy asked the sheriff of Harney County in Oregon to take the Hammonds into custody, that

Cliven said he was enjoying his freedom now that the BLM had departed, that Cliven called the wanton killing of LaVoy Finnicum "murder," that Cliven wouldn't sign contracts with the BLM, that another unidentified "subject" posted something on Facebook (as if Cliven were responsible for someone else exercising his freedom of speech), and that an another unidentified subject said that some of the MNWR "occupiers" had made their way to the Bundy ranch. None of these allegations are backed up or proven by anything.

The government presents no evidence to the Court or to the Defendant. It is impossible to refute a quote from someone who is "unidentified." This is the rankest sort of hearsay. It smacks of Star Chamber. The accused doesn't get to know who is saying what about him. He has no opportunity to confront the witnesses against him, or even find out who they are, or even see their statements. This is not due process of law. It is guilt by accusation. The government has presented no clear and convincing evidence that Mr. Bundy is a danger to the community, nor has it presented a preponderance of evidence that he is a flight risk. The government has presented nothing but hearsay and unidentified newspaper articles, Utube quotes that could have been posted by anyone, including the DOJ, and assertions that the government's investigation revealed this evidence--but the government hasn't bothered to present any evidence to the Court or to the Defendant that any of this is anything but the flights of fancy of an over zealous prosecutor.

The Court will remember the old TV ad, (which is particularly appropriate here), "Where's the beef?" The government has presented no beef–no meat–no evidence. It has presented objects which look like hamburgers, but the hamburger patty is missing. The government says that "by some accounts" there was a "50 caliber machine gun" in the militia camps. Who gave these accounts? Were they eyewitnesses? Did they hear it third or fourth hand? Do they know what a 50 caliber machine gun looks like? Does the prosecutor know that the proper designation of such a gun is .50 caliber, meaning 50 millimeters of barrel diameter? The government claims that it has conducted hundreds of witness interviews–yet not one quotation from these alleged interviews is presented to this Court. As one doubting Thomas said, "If you believe what the U.S. government says, just ask the American Indians." We don't have to believe what the government says unless the government proves it, and the Bail

Reform Act of 1984 requires PROOF. Clear and convincing doesn't include bald assertions and unsupported innuendos.

II. THIS COURT REVIEWS THE MAGISTRATE'S ORDER DE NOVO

When a defendant seeks review of a magistrate judge's order of detention, the district court is bound to review the matter de novo, and undertake a complete review of the matter for the purpose of arriving at its own independent conclusion. See United States v Duncan, 897 F. Supp. 688, 689-690 (N.D.N.Y. 1995) (citing United States v Leon, 766 F.2d 77, 80 (2d Cir 1985)); see also United States v King, 859 F.2d 485, 489-491 (11th Cir. 1988); United States v. Williams, 753 F.2d 329, 331 (4th Cir. 1985. 18 U.S.C. Sec. 3145 (a)-(c). The above points and authorities clearly show that the decision of the Magistrate Judge was erroneous and should be reversed.

CONCLUSION

The government has failed to comply with the requirements of the Bail Reform Act of 1984. It has clearly violated the law, which holds them to a "clear and convincing" standard of evidence to show danger to the community and a "preponderance of evidence" to show the Mr. Bundy is a flight risk. The Defendant has presented 34 statements signed by people who are personally acquainted with Cliven. The government claims to have hundreds of interviews, but hasn't quoted a single one. All of its references are vague or unidentified, or are from hearsay sources such as newspapers or Utube. And evidence presented "by some accounts" is completely worthless. Anybody can say anything if it's "by some accounts." The government has seemingly put together a strong case against Mr. Bundy–but when it is seen for what it really is, it is a collection of unsupported allegations, inconceivable innuendoes, bald assertions, and unproven allegations. The government has failed in its burden of proof. Thus, Mr. Bundy

must go free.

It is respectfully moved that this Court vacate the Magistrate's Order of Retention and instead direct the Marshals to set Mr. Bundy free. He has stated in his original points and authorities that he is willing to obey this Court's travel restrictions, firearms restrictions, requirements for appearance, the wearing of a GPS tracking device, and any other reasonable restriction the Court wishes to impose.

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Thus, there is absolutely no legal reason why Mr. Bundy should remain in solitary confinement until the time of trial.

DATED this 4th day of April, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that on this 4th day of April, 2016, I served a copy of the foregoing **DEFENDANT CLIVEN BUNDY'S OBJECTIONS TO THE MAGISTRATE'S ORDER OF DETENTION AND BUNDY'S MOTION FOR REVOCATION OF THE MAGISTRATE'S ORDER OF DETENTION** as follows:

X Electronic Service - via the Court's electronic service system; and/or

☐ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile – By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery – By hand - delivery to the address listed below.

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EXHIBIT A

EXHIBIT A

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. CLIVEN D. BUNDY, et al, Defendants	CASE NO. 2:16-cr-00046–GMN-PAL

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MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY

I. INTRODUCTION

As shown below, there is no good reason to keep Cliven Bundy in detention until the time of trial. The Court will remember that the tradition of federal law is that one arrested for a noncapital offense shall be admitted to bail and only in rare circumstances should release be denied, and that doubts regarding propriety of pretrial release should be resolved in favor of the defendant. Fifth and Eighth Amendments' prohibitions of deprivation of liberty without due process and of excessive bail require careful review of pretrial detention orders to ensure that mandate of Bail Reform Act of 1984 for release under the least restrictive conditions that will reasonably assure appearance has been respected. Pretrial release should be denied only for the strongest of reasons. ***United States v. Motamedi,*** 767 F.2d 1403 (9th Cir. 1985). In that case, the Court ruled against the government, because the determination that the defendant possessed a serious risk of flight, warranting denial of pretrial bail, was not established by preponderance of the evidence, notwithstanding that the defendant, an Iranian citizen, was charged with exporting military items without a license and after being warned that it was illegal to do so, where the defendant had been admitted for permanent residence, the defendant had been living in Los Angeles area since 1976 and had applied for citizenship, defendant had approximately 85

relatives in Los Angeles area, many of whom were citizens, his immediate family all resided in the area, the defendant's parents had posted their residence as security on a bond and the defendant had no prior criminal record and no history of alcohol or drug abuse. ***Id.*** at

II. MR. BUNDY MEETS ALL OF THE CRITERIA IN ORDER TO GRANT A RELEASE PENDING TRIAL

The Government has made a lot of accusations about Cliven Bundy having engaged in violent activity. But the only physical violence which occurred during the standoff was tazing a man, knocking a woman to the ground, and stomping on another man's head after he was knocked to the ground. All of these depredations were committed by the government. By contrast, during the standoff Mr. Bundy was never present on the scene of any confrontation. He stayed in his house. He never brandished a weapon at any federal officer. He never stood in the way of any federal officer. He never supplied any weapons to any of the people who had voluntarily come to his ranch. He never directed anyone to assault a federal officer. He never ordered or advised anyone to do anything during the standoff. He never assaulted a federal officer himself. He has never assaulted anyone in his life nor has he ever committed a battery on anyone. He has no criminal history. He has no felonies and no misdemeanors except traffic offenses on his record. He never asked anyone to come there and when they did he told them that they were their own agent. He has never pointed a gun at any federal officer. During the standoff he never physically committed any battery on any federal officer. He never told anyone to point a gun at any federal officer. He has never ever been accused of or committed any crime of violence in the past.

As far as his activities in Oregon, he advised the Hammonds to check themselves into the Harney County Jail. He did not advise them to do anything violent. He never advised them to do violence to any federal officers. He just advised them to keep the peace by checking themselves into the jail there.

When he is released he is going to go back to the ranch and take care of his chores there. He has no plans after he is released to organize any armed resistance to the BLM or any other federal officers. If he is released, he will go peacefully back to his ranch house and he will not try to flee and/or hide. It has been nearly two years since the standoff, and Cliven Bundy has simply stayed at

his ranch. He is not a flight risk. If he were, he would have fled already. He has not. And he will not.

He has no plans to run away and leave Clark County if he is released. He will show up whenever there is a hearing before this court. He does not intend to hurt anyone in Bunkerville or its environs. He will comply with a Court Order to have no firearms in his ranch house and he will not carry a firearm himself.

> The Government's burden of proof in establishing a risk of flight is by clear preponderance of the evidence; and although the defendant was charged with unlawful exportation of arms and was an Iranian citizen, the Government failed to meet its burden of showing a risk of flight.

United States v. Motamedi, 767 F.2d 1403 (9th Cir. 1985).[1] That ***Motamedi*** is still good law is shown by this quotation from a 2015 case: "Only in rare cases should release be denied, and doubts regarding the propriety of release are to be resolved in favor of the defendant." Citing *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir.1985). ***United States v. Santos Flores***, 794 F.3d 1088, 1090 (9th Cir. 2015).

Mr. Bundy is willing to accept as conditions of his release that he will not travel more than 100 miles from his home (i.e. basically to Las Vegas and to St. George). He will not be gone from

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[1] The Court explained the difference between the burden of proof for danger to the community and for flight risk in this passage:

> Differential treatment comports with the congressional recognition of danger to another or to the community as a discrete, independent basis for the denial of pretrial release. Since bail was determined under the former law by the likelihood of defendant's appearance at trial, and without explicit recognition of the need to protect the community, it is reasonable to subject the Government to a higher standard of proof when the second purpose is added as an explicit statutory category. Further, a finding of danger to the community is likely to involve more specific and quantifiable evidence than is a finding of risk of flight. For instance, prior convictions, police reports, and other investigatory documents are, as a matter of course, used to show past histories of violence. From these objective sources, trial judges may infer a present danger to the community. Such data is not often available regarding the risk of flight. Thus, it is wholly feasible for the Government to satisfy the higher burden in showing danger to the community.
>
> ___ In concluding that the Government's burden in denying bail on the basis of flight risk is that of the preponderance of the evidence, we are not unmindful of the presumption of innocence and its corollary that the right to bail should be denied only for the strongest of reasons.
>
> ***United States v. Motamedi***, 767 F.2d 1403, 1407 (9th Cir. 1985)

his ranch for more than 24 hours without permission from the Court's designee. Mr. Bundy is willing to report to any detention officer as often as is required and he is willing to wear a GPS monitor.

Attached hereto as are letters from friends, neighbors, and family members with regard to Cliven Bundy's reputation, his integrity, his honesty, his standing in his community as a good citizen, his activity in his church, and other comments about his character which should help assure the Court of Mr. Bundy's good character and that he does not need to be retained in detention during these proceedings. See Exhibit A (Doc. Nos. 0001-0033). He is not a felon and he should be presumed innocent until and unless proven guilty beyond a reasonable doubt. Furthermore, his wife has volunteered to be the third party custodian.

III. CONCLUSION

Considering the above, there is absolutely no reason to detain Mr. Bundy pending the trial of this case. He is a good family man with eleven children who needs to be home with his family and with his wife so he can do his chores and take care of his family.

DATED this 16th day of March, 2016.

Respectfully submitted,

BY: /s/ Joel F. Hansen
JOEL F. HANSEN, ESQ.
Nevada Bar # 1876
1835 Village Center Circle
Las Vegas, NV 89134
Attorney for Defendant

DECLARATION OF JOEL F. HANSEN IN SUPPORT OF THE PRETRIAL RELEASE OF CLIVEN BUNDY

As an officer of the court, I hereby declare and certify that I have gleaned the factual information above in conversations with Mr. Bundy's family members and/or conversations with Mr. Bundy himself. And being personally acquainted with Mr. Bundy and his family for many years, I believe implicitly in his sincerity and integrity in making these commitments to the Court.

/s/ Joel F. Hansen
Joel F. Hansen, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that on this 16th day of March, 2016, I served a copy of the foregoing MEMORANDUM IN SUPPORT OF RELEASE OF CLIVEN BUNDY as follows:

X Electronic Service - via the Court's electronic service system; and/or

☐ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile – By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery – By hand - delivery to the address listed below.

DANIEL G. BOGDEN
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/s/ Lisa M. Sabin
An Employee of HANSEN ◊ RASMUSSEN

EXHIBIT B

EXHIBIT B

JOEL F. HANSEN, ESQ.
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Attorney for Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. CLIVEN D. BUNDY, et al, Defendants	CASE NO. 2:16-cr-00046–GMN-PAL

HANSEN RASMUSSEN, LLC
1835 Village Center Circle
Las Vegas, NV 89134
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SUPPLEMENT TO DEFENDANT'S MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY

Comes now, the Defendant, Cliven Bundy, by and through his attorney, Joel F. Hansen, Esq., and files with the Court this Supplement to his Memo in Support of his Pretrial Release.

Due process" means that there should be a hearing in front of a neutral fact–finder, and an opportunity to be heard at a meaningful time and in a meaningful manner, before an individual is deprived of a fundamental right. U.S.C.A. Const.Amend. 5. ***United States v. Karper***, 847 F. Supp. 2d 350 (N.D.N.Y. 2011). Carol Bundy presented in her declaration her impressions of her telephone conference with Mr. Bundy's defense attorney in Oregon, Mr. Noel Grefenson. Her impressions were derived from a short phone conference with Mr. Grefenson. Now the Defendant's local attorney, Mr. Hansen, has had an opportunity to consult with Mr. Grefenson by phone and ask him to submit a declaration as to what actually happened at the hearing before the magistrate in Oregon. A review of the attached declaration, **Exh. B** shows that indeed, due process of law was denied to the Defendant. The hearing was scheduled for 1:30 pm, and Mr. Grefenson lived approximately one hour and 15 minutes away from the Court House. He was about to leave to drive to the Court, when he received the government's lengthy Memorandum in Support of Detention. Mr. Grefenson had to leave within five

minutes after he received the memo, and therefore had no time to read the memo before the hearing. He asked during the hearing if he could have a recess to read the memo, but the Judge did not afford him that opportunity. Therefore, Mr. Bundy was denied due process, because his attorney was not allowed to argue against the government's memo in a meaningful manner at a meaningful time. Mr. Grefenson was "sandbagged" by the government, because the government obviously knew where Mr. Grefenson office was located and how long it would take him to drive to the Court house, so they timed the service of the memo for just a few short minutes before he had to leave to drive to Court. This is outrageous conduct by the government and should not be tolerated by this Court. Mr. Grefenson was asked by the magistrate judge if he had read the memo, and he then explained what had happened, to no avail. He had had no opportunity to prepare a memorandum in opposition to the government's, by obvious design of the federal prosecutor in Oregon. See Transcript of Hearing, **Exh. D.**

The 1984 Bail Reform Act requires that the Defendant "be afforded the opportunity . . . to present witnesses . . . ." at the detention hearing. 18 U.S.C.A. § 3142 (West). Mr. Bundy was denied the opportunity to present his main witness, Michelle Fiore, current Nevada Assembly- woman and candidate for Congress. The judge denied her request to appear by phone, even though the government had agreed to this before the hearing. Mr. Grefenson was relegated to presenting her testimony by proffer, which as this Court knows, is a much less effective way to present evidence than a live witness testifying.

Mr. Grefenson's declaration shows that the materials he presented to the Court were not reviewed by the magistrate. He was not allowed an opportunity to prepare a meaningful argument against the government's lengthy memo, thus depriving Mr. Bundy of effective assistance of counsel, obviously by the intentional presentation of the lengthy memorandum at a time when Mr. Grefenson would have no opportunity to read it, much less prepare a memorandum in reply. The magistrate even state in the hearing that she agreed with everything the government had said in its memorandum, without ever giving Mr. Grefenson an opportunity to read it. That is not due process of law. And the government was intentionally complicit in this denial of due process.

The facts the judicial officer uses to support a finding must show that no condition or combination of conditions will reasonably assure the safety of any other person and the community and

must be supported by clear and convincing evidence. 18 U.S.C.A. § 3142 (f)(2)(B). No such clear and convincing evidence has been presented. The supposed facts presented by the government in its prolix memorandum are backed up by nothing but the prosecutor's bald assertions. There is no sworn affidavit or other evidence to back up any of the facts put forth by the government. But they must know that they must present clear and convincing evidence. Why haven't they done so? The answer is obvious: They don't have any clear and convincing evidence. In fact, they don't have any evidence at all. No where in their memorandum do they show that Cliven Bundy has ever done anything violent, and they could not possibly have considered him to be a flight risk, because they left him at liberty to fly all over the country from the time of the standoff until his arrest in of all places, Oregon. See Mr. Bundy's flight itinerary attached as part of **Exh. C.**

Mr. Grefenson has attached to his declaration the materials which he handed to the magistrate judge in open court, which she did not review before she ruled against the Defendant. See **Exh. C.** So she never took the opportunity to read the letter from Michelle Fiore, contained in those exhibits, even though she had denied Ms. Fiore an opportunity to testify by phone. Again, this is not due process of law. And even though she said she believed everything in the government's memorandum. A pretty lopsided way of making a decision.

CONCLUSION

This Court should deny the Motion to Vacate. Either the magistrate may consider this to be a new hearing in Nevada, or the magistrate has authority to re-open the hearing to take additional evidence at the request of Counsel. *U.S v. Gallo*, 653 F.Supp. 320 (E.D.N.Y. 1986), 18 U.S.C.A. § 3142.

DATED this 17th day of March, 2016.

Respectfully submitted,

BY: /s/ Joel F. Hansen
JOEL F. HANSEN, ESQ.
Nevada Bar # 1876
1835 Village Center Circle
Las Vegas, NV 89134
Attorney for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that on this 17th day of March, 2016, I served a copy of the foregoing **SUPPLEMENT TO DEFENDANT'S MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY** as follows:

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/s/ Lisa M. Sabin
An Employee of HANSEN ◊ RASMUSSEN