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7 Attorney for Ryan W. Payne

8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10  
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RYAN W. PAYNE,

15 Defendant.

Case No. 2:16-cr-046-GMN-PAL

**DEFENDANT RYAN PAYNE'S**  
**PROPOSED ALTERNATIVE**  
**SCHEDULING STATEMENT**

16  
17 The undersigned met with the government's attorney, as well as the attorneys for four  
18 of his client's codefendants. The purpose of this meeting was to confer, and then stipulate if  
19 possible, to a joint discovery plan and a complex case schedule. At the time of that meeting,  
20 counsel had not met, nor conferred with his client regarding this proposal. On Thursday, April  
21 14, 2015, the government circulated their draft of a proposed scheduling Order. At that time,  
22 counsel for Payne were at the contract facility in Pahrump, Nevada meeting their client for the  
23 first time. On Friday counsel were otherwise engaged in pre-planned mandatory training.  
24 Lacking notice, counsel was unaware that Mr. Payne would be arraigned during an initial  
25 appearance that same afternoon, that is, April 15, 2016.  
26

1 Now, client is informed that most, if not all, counsel for codefendants in this case, have  
2 agreed to the proposed complex case designation and scheduling Order. Nonetheless, counsel  
3 for Payne do not agree, and have so informed the clerk circulating the government's document,  
4 he does not agree. Therefore, his proposal for an alternative case management follows.

5 DATED this 18<sup>th</sup> day of April, 2016.

6 RENE L. VALLADARES  
7 Federal Public Defender

8 By: /s/ William Carrico

9 WILLIAM CARRICO  
10 Assistant Federal Public Defender  
11 Attorney for Ryan W. Payne  
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1 **THE CASE IS NOT COMPLEX AND WAIVER OF SPEEDY TRIAL SHOULD NOT**  
2 **BE COMPELLED**

3 **I. The case is not complex under the act.**

4 Title 18 of the United States Code, contains a provision that is intended to make it  
5 possible to enforce Mr. Payne's Constitutional Right to a Speedy and Public Trial. Those rights  
6 include a guarantee that Mr. Payne be free from "oppressive pretrial incarceration," the anxiety  
7 and concern that incarceration engenders and the possibility that his defense will be impaired,  
8 by "dimming memories and loss of exculpatory evidence." *See: Doggett v. United States*, 505  
9 U.S. 647 654 (1992), *citations omitted*. These protections should rightly attach after a defendant  
10 is "indicted, arrested, or otherwise officially accused." *Dillingham v. United States*, 423 U.S.  
11 64, 65 (1975).

12 Section 3161(h)(7)(B), contains an exception to the statutory enactment of the Speedy  
13 Trial Act, that is at issue here. Under that section, a case may be considered complex due to  
14 the number of defendants, the nature of the prosecution or the existence of novel questions of  
15 law or fact. Mr. Payne opposes designation of the case as complex, in as much as it is being  
16 controlled, and hence compelled by the government for its strategic benefit. At minimum, the  
17 designation in this case will infringe upon Mr. Payne's right to a speedy trial.

18 **A. The number of defendants is artificially inflated.**

19 Although the Superseding indictment in this case names nineteen defendants, the  
20 government could have never hoped to conduct a joint trial of all of them at the same time- that  
21 is unless they were considering a trial at the convention center. In fact, the government's wish  
22 is it tune up their prosecution, perhaps provoke some pleas in the process, and then try the top  
23 6 or 7 codefendants, who include anyone named Bundy. Adding to the flexibility of the  
24 numbers, the government has elected to cause the arrest and detention of at least seven of the  
25 same defendants in a separate case in the District of Oregon. At some point, the government  
26 must consent to a trial of the *non-Oregon* defendants, before the proceedings there are

1 concluded, or confess that they mean to re-start the trial preparations for all defendants in the  
2 distant future when those proceedings are ultimately concluded.

3 **B. This is a reactionary case in more ways than one.**

4 The nature of this case is not complex, however complex the nature of the government's  
5 prosecution of it may be. In a reactive case, the defendant is typically apprehended shortly after  
6 the crime, because the commission of that crime is fairly notorious and the evidence locally  
7 available near the scene, victim or defendant. Although the government's superseding  
8 indictment contains nineteen separate charges, the gravamen of the accusations is simply that  
9 the defendants conspired to lead a group of men, many armed with guns, to resist the taking of  
10 the Bundy cattle and/or their transport. The substantive counts all refer to simple, definable  
11 acts that were committed in isolation or in relation one to another. For example:

12 Count One is an alleged conspiracy to commit the other charged offenses.

13 Count Two is an alleged conspiracy to impede or injure a federal officer, but the  
14 indictment refers to the actual efforts to remove trespass cattle. The number of those efforts, to  
15 remove cattle, are finite, and the number of witnesses to each effort easily identifiable.

16 Count Three is an allegation that defendants carried firearms. It is an element of proof  
17 for the government, if interference with an officer is accomplished by simply carrying a firearm,  
18 but once again, the times of those encounters are easily documented, and the evidence not  
19 complex.

20 The remaining charges are equally capable of being reduced to a compact time-frame  
21 and definitive actions by the defendants. No matter that the government investigated for two  
22 years before charges were brought, or that they have gathered hours of information on the  
23 defendants from the internet. In the end, the specific acts and charges are not complex. It is  
24 the government's over-reaction to the defendants' actions that complicates an otherwise simple  
25 case.

1           **C.     Novel questions are presented chiefly by the government’s decision**  
2           **to “trail” this older case in favor of charging defendants in Oregon.**

3           To date, the only truly novel question that has been detected revolves around the  
4 propriety of the court permitting two federal cases to be prosecuted simultaneously. Mr. Payne  
5 is submitting a Memorandum, contemporaneously to this filing, which sets forth the questions  
6 provoked by the government’s action in initiating the cases against the same defendants, as well  
7 as the Court’s complicity in permitting it.

8           The defense does anticipate that a primary issue in the case will be whether the counts  
9 involving Section 924 of Title 18 are properly brought. That said however, that litigation could  
10 be handled as would be any pretrial motion within the time frame of normal case preparation.

11       **II.    THE TRIAL SHOULD PROCEED PURSUANT TO THE STANDARD**  
12       **PRETRIAL ORDER, WITH APPORPRIATE DEADLINES IMPOSED ON**  
13       **THE GOVERNEMNT FOR THE FURNISHING OF DISCOVERY, AND**  
14       **WITH ONLY THE USUAL EXCLUSIONS FOR THE TRIAL TIME,**  
15       **BEING FOR TRANSPORTING OF MR. PAYNE, CONSULTATION WITH**  
16       **COUNSEL AND FOR THE PENDENCY OF ANY PRETRIAL MOTIONS**

17           The Defense would expect to engage in pretrial motion litigation. At this time, lacking  
18 any discovery of the government’s proof, the Defense cannot fully anticipate what pretrial  
19 motions beyond the conjecture that has already been alluded to herein. Suffice to say, that this  
20 question may be answered after learning the nature of the evidence that may be used by the  
21 government and the methods used to acquire that evidence.

22           Assuming that the government does not file superseding indictments that alter the nature  
23 of the case against Mr. Payne, the Defense notes that fully seven of the defendants in this case  
24 are detained elsewhere for the time being. Under the usual order, the government would be  
25 obligated to provide discovery within 14 days of the arraignment. In this case, the government  
26 has stated that it won’t start “rolling out” any discovery until after a hearing on the case set for  
Friday, April 22, 2016.

1 Mr. Payne requests that the government be ordered to release all available discovery,  
2 and any prepared index of the same, within the usual time-frame, which would be on or about  
3 May 5, 2016. Mr. Payne has been in custody for several months already. He is being held in a  
4 county jail in Oregon, and unless this court, or the court of appeal, stays his return there, he will  
5 return to conditions that prohibit all video and recorded discovery from being examined unless  
6 in the presence of his attorney or their staff. To date, the Defense has not been notified if Mr.  
7 Payne has been the subject of electronic surveillance through the use of date taps. Accordingly,  
8 the Court is asked that the government provide such notice forthwith.

9 **III. THE COURT SHOULD SET THE USUAL DATES FOR TRIAL.**

10 It is the position of Mr. Payne, that the Court should set a date for trial within the  
11 standard speedy trial limit, or leave the current date calendared in place.

12 DATED this 18<sup>th</sup> day of April, 2016.

13 Respectfully submitted,  
14 RENE L. VALLADARES  
15 Federal Public Defender

16 By: /s/ William Carrico

17 WILLIAM CARRICO  
18 Assistant Federal Public Defender  
19 Attorney for Rayan W. Payne  
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