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

8 UNITED STATES OF AMERICA,)
 9)
 Plaintiff,)

10 v.)

2:16-CR-00046-GMN-PAL

11 CLIVEN D. BUNDY,)
 12 RYAN C. BUNDY,)
 AMMON E. BUNDY,)
 13 RYAN W. PAYNE,)
 PETER T. SANTILLI, Jr.,)
 14 MEL D. BUNDY,)
 DAVID H. BUNDY,)
 15 BRIAN D. CAVALIER,)
 BLAINE COOPER,)
 16 GERALD A. DELEMUS,)
 ERIC J. PARKER,)
 17 O. SCOTT DREXLER,)
 RICKY R. LOVELIEN,)
 18 STEVEN A. STEWART,)
 TODD C. ENGEL,)
 19 GREGORY P. BURLESON,)
 JOSEPH D. O'SHAUGHNESSY,)
 20 MICAH L. McGUIRE, and)
 21 JASON D. WOODS,)

PROPOSED COMPLEX CASE
SCHEDULE

22 Defendants.)

23 Pursuant to Local Rule 16-1 and this Court's Order of March 25, 2016, the
 24 parties have met and conferred regarding whether the case should be declared

1 complex and have attempted to reach agreement as to a complex case schedule.
2 Per the Court’s Order, and in anticipation of the hearing on this matter for April
3 22, 2016, the United States, by and through the undersigned, and with the
4 concurrence of counsel for the defendants, submits a Proposed Complex Case
5 Schedule setting out the points on which the parties agree and those on which
6 they do not. The positions set forth below are intended to reflect those as stated
7 and understood during the informal conferences between counsel for the
8 government and counsel for the defendants and are intended to present the most
9 current position of the defendants and the government as of the time of filing of
10 this pleading.

11 **1. Complex Case.** The government has moved that the Court declare
12 the case as complex within the meaning of that term under the Speedy Trial Act
13 (“STA”), Title 18, United States Code, Section 3161(h)(7)(B)(ii), the case involving
14 19 defendants joined for trial and voluminous evidence.

15 **a. Agree.** The following defendants agree that the case should
16 be designated as complex:
17

18 Cliven D. Bundy	O. Scott Drexler	Joseph D. O’Shaughnessy
19 Mel D. Bundy	Ricky R. Lovelien	Micah L. McGuire
20 David H. Bundy	Steven A. Stewart	Jason D. Woods
21 Blaine Cooper	Todd C. Engel	
22 Gerald A. Delemus	Gregory P. Burleson	

1 **b. Defer Decision or Take No Position.** The following
2 defendants have indicated that they defer the decision to agree or disagree,
3 pending further consultation with counsel and/or have taken no position as of the
4 filing of this pleading.

5 Ammon E. Bundy

 Peter T. Santilli

 Brian D. Cavalier

6
7 **c. Disagree.**

8 Ryan Bundy: Disagrees to the extent time is excluded under the STA
9 as a complex case and to the extent that a complex case designation denies timely
10 disclosure to him personally. He further seeks unedited versions of all telephonic
11 recordings produced in discovery.

12 Eric J. Parker: Disagrees with no further position stated.

13 Ryan Payne: Payne contends that the case is not complex and wishes
14 to preserve his right to a speedy trial on the Superseding Indictment.

15 **d. Government's Position.** The case should be declared
16 complex due to the volume of the evidence/information to be disclosed and the
17 number of defendants joined for trial. The nature of this case is such that
18 hundreds of persons were present for, or participated in, the events that gave rise
19 to the charges in the Superseding Indictment. Being well-versed in the use of
20 social media and smartphones, many of the participants recorded events as they
21 happened and/or commented on them later on Facebook or other social media,
22 sharing photographs and video or audio recording they took, blogging or
23 podcasting about events as they happened or shortly thereafter, and/or copying
24

1 photographs and recordings made by others and posting them to YouTube or
2 Facebook.

3 Thus, part of the investigation of this case involved reviewing the public
4 posting of many social media accounts and, where appropriate, obtaining search
5 warrants for the content of the accounts, seeking evidence relevant to the offense
6 conduct. The social media portion of the investigation adduced hundreds of hours
7 of video and audio recordings and hundreds of photographs.

8 Further, the events giving rise to the Superseding Indictment involved at
9 least one-hundred law enforcement officers and agents from many different law
10 enforcement agencies: the BLM and National Park Service, the Las Vegas
11 Metropolitan Police, Nevada Highway Patrol, the Mesquite Police Department,
12 the FBI, and others. Thus, another part of the investigation involved obtaining
13 and reviewing hundreds of hours of recording made by law enforcement officers
14 and agents, comprised of, in part, body camera recordings, dashboard camera
15 recordings, recorded statements of defendants, ground and aerial surveillance
16 recordings, consensual telephonic recordings, among many others.

17
18 Further, these events garnered significant national media attention when
19 they occurred, attracting conventional and unconventional broadcast and print
20 news media, bloggers, podcasters, and independent filmmakers. As further part of
21 its investigation, therefore, the government obtained hundreds of hours of
22 recordings from these sources as well.

23 To meet its discovery obligations, the government intends to produce and
24 disclose the great bulk of this information. The prosecution team devoted

1 hundreds of hours reviewing, analyzing and organizing this information – which
2 digitally occupies in excess of 1.4 terabytes of disk space – in advance of
3 indictment. The government anticipates that post-indictment, the defense will
4 require an equivalent amount of time to likewise review, analyze, and organize.
5 To mitigate the duplication of effort as much as possible, the government intends
6 to produce an index so the defendants may, to the extent they chose to do so,
7 “pony” on the work accomplished by the prosecution team. By no means, however,
8 does the government represent that its index is consistent with what the
9 defendants may or may not view as relevant or material to their cases. Rather, it
10 is intended merely as a roadmap to help guide the defense through the discovery.

11 The government intends to produce all recordings in the format in which it
12 obtained them. That said, depending on the manner in which it was obtained, a
13 particular recording may have been a second, third, fourth, or greater generation
14 copy when it was captured/obtained by a government agent. For example, a video
15 recording obtained from a third-person and posted by yet another third-person to
16 a YouTube channel belonging to yet another third-person and, thereafter,
17 downloaded by a government agent. Or, a video posted to a Facebook user’s page
18 that is later shared with another Facebook user where it was discovered by a
19 government agent and later downloaded. The government has no way of knowing
20 whether the copy of a recording it captured/received from a downstream source
21 was either edited beforehand or whether it was cast into the digital stream in
22 native format.
23
24

1 To the extent the government has converted the format of a recording to
2 accommodate a computer program by which to view them, it will produce both the
3 converted-format recording and the as-obtained format. Further on this point,
4 many of the recordings of certain events obtained from different sources are very
5 lengthy – some as long as three or four hours, or longer – and may contain only a
6 minute or two (or sometimes less) that is, from the government’s perspective,
7 relevant to the charges.

8 In addition to the 1.4 terabytes of digital recordings, another large portion
9 of the volume of discovery is comprised of hundreds of thousands of pages of
10 documents/communications produced to the government by Facebook pursuant to
11 court-authorized search warrants relating to various defendants’ and third-party
12 Facebook accounts. These documents/communications have been maintained in
13 the format as received from Facebook and searched pursuant to the scope and
14 limitations set forth in the warrants, only warrant-authorized documents being
15 seized and potentially used as evidence in the case. The selective seizure of
16 documents notwithstanding, the government is nonetheless required by Rule 16 to
17 provide the defendants with the opportunity to inspect and copy any documents or
18 papers in the government’s possession that were obtained from or belong to the
19 defendants. Accordingly, it intends to produce all documents/communications
20 received from relevant Facebook accounts. To the extent the defendants wish to
21 undertake a review of all the information contained in the accounts, the review
22 will require a substantial amount of time. Further on this point, the government
23 will be producing dozens of search warrant applications and supporting affidavits,
24

1 each of which is extensive and will require significant time for review.

2 Further adding a layer of complexity is the fact that 19 defendants have
3 been joined for trial. Although the government is obligated only to make the
4 evidence available to the defendants for inspection and copying (*see* Fed. R. Crim.
5 P. 16), the government agrees to produce the above-described information to the
6 defendants under a complex case regime as proposed herein. As discussed below,
7 many of the parties agree that the Court should appoint a discovery coordinator to
8 facilitate the efficient production of evidence. But even with such an appointment,
9 past experience informs that numerous issues will inevitably arise regarding the
10 accessibility of digitally stored data and/or whether digital files were copied
11 correctly, or files were corrupted, and the like, all adding to the time required to
12 review the discovery and prepare for trial. Further, if the government is required
13 to produce this information individually to 19 separate defendants, the time for
14 production will increase exponentially.

15
16 Lastly, under U.S. Department of Justice Policy, any digital information
17 produced to the defense by the government must be encrypted before it leaves the
18 United States Attorney's Office. The encryption process adds to the time it takes
19 to produce this information.

20 Notwithstanding whether a defendant disagrees, defers, or takes no
21 position – Payne, Cavalier, Santilli, Parker, and Ryan and Ammon Bundy – the
22 Court in its discretion may declare the case complex based on the government's
23 showing above as well as considering the agreement of thirteen of the nineteen
24 defendants. Further on this point, the defendants who disagree or take no

1 position are all joined for trial with those who agree that the case is complex,
2 indicating that, at least as to those who agree, the volume of evidence prohibits
3 them from being prepared for trial within the seventy (70) days allotted under the
4 STA. This being the case, the Court may properly exclude time under other
5 exclusions provided for in the STA, properly maintaining the joint-trial status and
6 setting a realistic trial date. See discussion below, Section 3.

7 **2. Trial Date.**

8 **a. Agree.** The government and the following parties agree that
9 the current trial setting of May 2, 2016, should be vacated and that the trial of
10 this matter be set on the first available trial stack beginning in or around
11 **February 2017.**

12 Cliven D. Bundy	O. Scott Drexler	Joseph D. O'Shaughnessy
13 Mel D. Bundy	Ricky R. Lovelien	Micah L. McGuire
14 David H. Bundy	Steven A. Stewart	Jason D. Woods
15 Blaine Cooper	Todd C. Engel	
16 Gerald A. Delemus	Gregory P. Burleson	

17
18 **b. Defer Decision or Take No Position.** The following
19 defendants have deferred the decision to agree or disagree about a trial date,
20 pending further consultation with counsel or have not taken a position.

21 Ammon E. Bundy	Peter T. Santilli	Brian D. Cavalier
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22
23 **c. Disagree and Position.**

24 Ryan Bundy: Disagrees to the extent that a February 2017 trial date

1 will deny him a right to speedy trial under the STA.

2 Eric J. Parker: Disagrees with no further position stated.

3 Ryan Payne: Disagrees to the extent that a February 2017 trial date
4 will deny him a right to speedy trial under the STA.

5 **d. Government's Position.**

6 All of the defendants having been joined for trial, the Court should
7 set the trial date for a setting in February 2017 with time excluded under the STA
8 and consistent with the ends of justice, allowing all defendants sufficient time to
9 prepare for trial. See Section 3 below.

10 **3. Exclusion of time under the STA.**

11 **a. Agree.** Having agreed that the case should be designated
12 complex, the following parties stipulate that all time from the entry of defendant's
13 pleas in this case until the trial of this matter is excluded for the purposes of the
14 STA pursuant to Title 18, United States Code, Section 3161(h)(7)(A), as the ends
15 of justice outweigh the interest of the public and the defendants in a speedy trial.

16 Cliven D. Bundy Gerald A. Delemus Joseph D. O'Shaughnessy

17 Gregory P. Burleson O. Scott Drexler Micah L. McGuire

18 Mel D. Bundy Ricky R. Lovelien Jason D. Woods

19 David H. Bundy Steven A. Stewart

20 Blaine Cooper Todd C. Engel

21
22 **b. Defer Decision or Take No Position.** The following defendants
23 have deferred the decision to agree or disagree about the exclusion of time,
24

1 pending further consultation with counsel or have taken no position on the
2 matter.

3 Ammon E. Bundy Peter T. Santilli Brian D. Cavalier

4
5 **c. Disagree and Position.**

6 Ryan Bundy: Disagrees to the extent any exclusion of time denies him the
7 right to a speedy trial under the STA.

8 Eric J. Parker: Disagrees with no further position stated.

9 Ryan Payne: Disagrees with the exclusion of time to the extent it denies
10 him the right to a speedy trial under the STA.

11 **d. Government Position Regarding Exclusion of Time.**

12 The government contends that the Court in its discretion may designate the
13 case as complex based on the government's showing above and the stipulation of
14 thirteen of the nineteen defendants. In the event the Court deems the case
15 complex, it may exclude the time as reasonably necessary for the parties
16 (including the government) to conduct discovery and prepare for trial as consistent
17 with the ends of justice under 18 U.S.C. Sections 3161(h)(7)(A), considering the
18 complexity of the case under 18 U.S.C. Section 3161(h)(7)(B)(ii). A proposed trial
19 date of February 2017 is not an unreasonable delay given the volume of discovery
20 in this case and the fact that 19 defendants are currently joined for trial, a factor
21 that will most likely result in the filing of at least 19 pretrial motions following a
22 review of discovery. Thus all time between arraignment and a projected trial date
23 of February 2017 may be excluded as to all defendants, including those defendants
24

1 who do not agree/stipulate to the exclusion.

2 The government further contends that as to the non-stipulating parties –
3 Payne, Ammon and Ryan Bundy, Cavalier, Parker and Santilli – time may
4 properly be excluded for the additional reason that the STA affords for a
5 reasonable delay when the defendant is joined for trial with a codefendant as to
6 whom the time for trial has not run and no motion for severance has been granted.
7 18 U.S.C. Section 3161(h)(6). Here, none of these defendants has been severed
8 from those defendants who seek the delay and as to whom the STA has not run.

9 Further as to Payne, Ammon and Ryan Bundy, Cavalier and Santilli, time
10 may properly be excluded under the STA for any delay resulting from other
11 proceedings concerning the defendant. 18 U.S.C. Sections 3161(h)(1)(A) and (B).
12 These defendants are currently pending trial in the District of Oregon on case
13 3:16-cr-00051-BR and were transported to the District of Nevada pursuant to
14 Writs Habeas Corpus *ad Prosequendum*, on or around April 13, 2016, and were
15 arraigned on the charges in this case on April 15, 2016. Following their
16 arraignment and per the Court's Order in the Oregon case, these defendants are
17 to be returned to the District of Oregon on April 25, 2016, to continue preparation
18 for the trial scheduled in that matter for later in 2016. *See United States v.*
19 *Ammon Bundy, et al.*, 3:16-cr-00051-BR (D. Oregon) (C.R. 334) (order transferring
20 defendants to District of Nevada and return to the District of Oregon).
21

22 **4. Pretrial Motions.**

23 **a. Agree.** The government and the following parties propose
24 that all Rule 12 pretrial motions be filed on or before October 3, 2016, with

1 government Responses due on or before November 2, 2016, with any Replies due
2 on or before 7 days after the filing of a Response.

3	Cliven D. Bundy	Gerald A. Delemus	Todd C. Engel
4	Blaine Cooper	O. Scott Drexler	Joseph D. O'Shaughnessy
5	Mel D. Bundy	Ricky R. Lovelien	Gregory P. Burleson
6	David H. Bundy	Steven A. Stewart	Jason D. Woods

7
8 **b. Defer Decision or Take No Position.** The following
9 defendants have deferred the decision to agree or disagree about the filing of
10 pretrial motions, pending further consultation with counsel.

11	Ammon E. Bundy	Peter T. Santilli	Brian D. Cavalier
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12
13 **c. Disagree and Defendants' Position.**

14 Ryan Bundy: Disagrees to the extent that taking a position waives his right
15 to a speedy trial or results in an exclusion of time under the STA.

16 Ryan Payne: Disagrees to the extent that taking a position waives his right
17 to a speedy trial or results in an exclusion of time under the STA.

18 Eric J. Parker: Disagrees with no further position stated.

19 Micah McGuire: Seeks a pretrial motion deadline of October 31, 2016, with
20 Government Responses in Opposition due November 30, 2016, and optional
21 Replies in Support due on or before December 7, 2016.

22 **5. Scope, timing and method of disclosure.**

23 **a. Discovery Coordinator.** The following parties agree that
24 the designation of a discovery coordinator would best facilitate the efficient and

1 timely production of discovery.

2 Cliven D. Bundy	O. Scott Drexler	Joseph D. O'Shaughnessy
3 Mel D. Bundy	Ricky R. Lovelien	Micah L. McGuire
4 David H. Bundy	Steven A. Stewart	Jason D. Woods
5 Blaine Cooper	Todd C. Engel	
6 Gerald A. Delemus	Gregory P. Burleson	

7
8 **Government's Position:** In the event the Court designates
9 a discovery coordinator, the government intends to produce the discovery once to
10 the coordinator for further dissemination to defense counsel by a manner and
11 means determined by the discovery coordinator and counsel for the defendants.
12 The government further anticipates working with the discovery coordinator to
13 resolve any issues regarding the readability of digital files.

14 **Defendants' Position:**

15 Ryan Bundy: Disagrees with the appointment of a discovery coordinator to
16 the extent it deprives him of a right to a speedy trial and/or the timely disclosure
17 of discovery to him.

18 Ryan Payne: Disagrees with the appointment of a discovery coordinator to
19 the extent it deprives him of a right to a speedy trial.

20 Eric J. Parker: Disagree with no further position stated.

21 Santilli, Ammon Bundy, and Cavalier have not indicated a position and
22 therefore are designated herein as taking none.
23
24

1 **b. Timing of Disclosures.**

2 **Government's Position.** Consistent with its discovery
3 obligations and because of the volume of discovery, the government intends to
4 produce discovery in phases as follows:

5 **Phase I**

6 All search warrants, applications and affidavits relating to the search and
7 seizure of documents, property or things belonging to the defendants.

8 All statements, documents, and objects, including audio or video recordings,
9 required to be disclosed under Rules 16(a)(1)(A)-(B) and (D), Federal Rules of
10 Criminal Procedure.

11 **Phase II**

12 All documents, property, or things required to be disclosed under Rules
13 16(a)(1)(E).

14 **Phase III**

15 All police or investigative reports that relate to the charges in the
16 Indictment, except for reports, memoranda, or other internal government
17 documents that relate to interviews of prospective witnesses.

18 The government intends to begin production of Phase I immediately upon
19 the entry of the Scheduling Order. The government anticipates that it will have
20 produced through Phase III within 30 days of the entry of the Scheduling Order.
21 The government further represents that the investigation of this matter continues
22 and recognizes that its discovery obligations extend beyond the anticipated Phase
23 III of discovery and through trial.
24

1 **Defendants' Position.**

2 Ryan Bundy: Disagrees with discovery being produced in phases with no
3 further position on the matter.

4 Ryan Payne: Disagrees with discovery being produced in phases.

5 Eric J. Parker: Disagrees with discovery being produced in phases with no
6 further position on the matter.

7 **c. Jencks.**

8 **Government's Position.** Under the Jencks Act, the
9 government is not required to disclose the statements or reports of the witnesses it
10 intends to call at trial until after the witness testifies. *See* 18 U.S.C. § 3500.
11 Nevertheless, in the interest of efficiency, the government will consent to disclose
12 *Jencks* materials no later than 30 days before trial with the caveat that it does not
13 consent to any remedy for any violation of the disclosure deadline that would
14 preclude the government from calling a witness at trial.

15 **Defendants' Position.** The defendants disagree and seek
16 disclosure of *Jencks* material no later than 90 days before trial.

17 **d. Expert Witnesses.**

18 The government agrees to provide expert witness disclosures as
19 required under Rules 16(a)(1)(G), Federal Rules of Criminal Procedure, no later
20 than 30 days before trial, provided the defendants agree to the same schedule
21 under Rule 16(b)(1)(C).
22

23 **Defendants' Position.**

24 Cliven Bundy: Disagrees. The minimum time for such disclosure should be

1 90 days, and it should be done in phases, not simultaneously. The government
2 should disclose its expert witnesses at least 90 before trial, and then the
3 defendants should get 30 or 45 days to find and disclose their experts.

4 **e. Reciprocal Disclosures.**

5 The government's agreement to the schedule above is contingent on
6 the entry of an Order that triggers defendants' reciprocal discovery obligations
7 under Rule 16(b). The government seeks an Order that no later than 60 days
8 before trial, defendants will disclose to the government, all documents, objects,
9 and reports of examinations required under Rules 16(b)(1)(A) and (B), and provide
10 notice of any defenses under Rule 12.1, Federal Rules of Criminal Procedure.

11 **f. Protective Order.**

12 Out of concerns for witness safety and security, the government intends to
13 seek a Protective Order, preventing the further disclosure or dissemination of
14 evidence produced in this case beyond the defense team, except by further order of
15 this Court and for good cause shown.

16 **Defendants' Position.**

17 Defendants generally disagree with the entry of a protective order as being
18 overly broad. In advance of the hearing, the government will provide counsel with
19 a proposed protective order for their consideration.
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JOEL F. HANSEN
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MATTHEW LAY
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Faretta Hearing Pending
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BRIAN J. SMITH
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CRAIG W. DRUMMOND
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Motion to Withdraw Pending
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KRISTINE M. KUZEMKA
Attorney for Jason D. Woods

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **PROPOSED COMPLEX CASE SCHEDULE** was served upon counsel of record, via Electronic Case Filing (ECF).

Dated this 18^h day of April, 2016.

/s/ Mamie A. Ott
MAMIE A. OTT
Legal Assistant

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