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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLIVEN D. BUNDY,

Defendant.

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S RESPONSE IN
OPPOSITION TO DEFENDANT
CLIVEN BUNDY'S MOTION TO
REVOKE DETENTION ORDER
(C.R. 220)**

The United States, by and through the undersigned, respectfully submits its Response in Opposition to defendant Cliven Bundy's ("Bundy") Objections To The Magistrate Judge's order of Detention And Bundy's Motion For Revocation of the Magistrate's Order of Detention Order (C.R. 220) ("Motion" or "Motion to Revoke"). Specifically, the Motion seeks to revoke Magistrate Judge Hoffman's Detention Order of March 18, 2016 (hereinafter "Judge Hoffman's Detention Order" or "Judge Hoffman's Order") (C.R. 149) (Attached at Exhibit ("Ex") 1).

The Motion should be denied. Bundy is charged in a sixteen-count Superseding Indictment with numerous crimes of violence, including assaulting federal officers with a deadly weapon, obstructing justice using force and violence,

1 extorting federal officers by force and violence, threatening federal law enforcement
2 officers with force and violence, using and brandishing a firearm in relation to a
3 crime of violence, and conspiring to commit the same. The charges arise from a
4 massive and violent armed assault against federal law enforcement officers that
5 occurred on April 12, 2014, near Bunkerville, Nevada, an assault led, organized,
6 and executed by Bundy. Having been charged with four counts of Section 924(c)
7 violations, Bundy submits nothing in his Motion to rebut the presumption of
8 detention that attaches under the Bail Reform Act. Further, the government has
9 shown by clear and convincing evidence that all of the Section 3142(g) factors weigh
10 in favor of detention, showing that no condition or combination of conditions will
11 ensure the safety of the community or mitigate the risk of non-appearance at future
12 proceedings.

13 **FACTS**

14
15 Bundy was arrested in the District of Oregon on February 10, 2016, and
16 charged by a Complaint filed in the District of Nevada on February 11, 2016. The
17 Complaint charged six felony counts arising from events that occurred at or near
18 Bunkerville, Nevada, between March 2014 and the date of the Complaint. On
19 February 11, 2016, and pursuant to Rule 5, Fed.R.Crim.P., Bundy made his initial
20 appearance on the Complaint in the District of Oregon before United States
21 Magistrate Judge Janice M. Stewart.

22 On February 16, 2016, Judge Stewart held a detention hearing pursuant to
23 the Bail Reform Act, Title 18, United States Code, Sections 3142-3156. In support
24 of its motion for detention, the government filed a detailed Memorandum

1 containing its proffer of evidence in support of detention. C.R. 24, pp. 38-71,
2 Docket Entry 24; Attached at Exhibit 5.

3 Represented by counsel, Bundy elected to proceed with the detention
4 hearing in Oregon and proffered evidence and argued in support of his release
5 prior to trial. *See* C.R. 24, p. 3, Docket Entry 7 (Minutes of Proceedings).
6 Thereafter, and after considering the information presented by both Bundy and
7 the government, Judge Stewart ordered that Bundy be detained pending trial,
8 stating:

9 I agree with the government: If he [Bundy] is released and goes back
10 to his ranch, that's likely the last the Court will see of him.

11 * * *

12 I find there is no evidence to overcome the presumption in this case
13 that he poses a danger to the community, and I cannot conceive of any
14 sort of restriction that I can impose on him that will assure he will
15 make his court appearances.

16 Transcript Oregon Detention Hearing, p. 16, attached at Ex. 2.

17 Judge Stewart thereafter entered a written Order of Detention, finding that
18 Bundy failed to rebut the presumption of detention under Title 18, United States
19 Code, Section 3142(e) – Bundy having been charged by Complaint with two felony
20 counts in violation of Title 18, United States Code, Section 924(c) – and that no
21 conditions or combination of conditions could either assure his appearance at trial
22 (citing Bundy's previous failures to follow court orders) or reasonably assure the
23 safety of other persons or the community (citing the Section 3142(g) factors). *See*
24 Order of Detention After Hearing (18 U.S.C. § 3142(i)) (C.R. 24, p. 75) (Attached

1 as Exhibit 3) (hereinafter “Judge Stewart’s Order” or “Judge Stewart’s Detention
2 Order”). Bundy did move to revoke Judge Stewart’s Order.

3 On February 17, 2016, Bundy was charged in a sixteen-count Indictment
4 arising from the events in and around Bunkerville, Nevada, the same events that
5 were the subject of the Complaint. The Indictment charged four felony counts in
6 violation of Title 18, United States Code, Section 924(c). On February 18, 2016,
7 Magistrate Judge Stewart vacated Bundy’s Preliminary Hearing on the Complaint
8 and entered an Order committing him to the District of Nevada to stand trial on
9 the Indictment.

10 Bundy was transferred to the District of Nevada. On March 2, 2016, Bundy
11 was charged in a sixteen-count Superseding Criminal Indictment, charging him
12 with violations of Title 18, United States Code, Section 371 (Conspiracy to Commit
13 an Offense Against the United States), 372 (Conspiracy to Impede and Injure a
14 Federal Officer), 111 (a) and (b) (Assault on a Federal Officer); 115(a)(1)(B) (Threat
15 Against a Federal Officer); 1503 (Obstruction of Justice); 1951 (Interference with
16 Interstate Commerce by Threat); and 1952 (Interstate Travel in Aid of
17 Racketeering). The charges arising from the same events charged in the initial
18 Complaint and Indictment, the Superseding Indictment against Bundy again
19 charging him with four counts in violation of Title 18, United States Code, Section
20 924(c) (use and carry a firearm in relation to a crime of violence).

22 Appearing before United States Magistrate Judge Hoffman on March 10,
23 2016, Bundy was arraigned on the charges in the Superseding Indictment, a plea of
24 Not Guilty being entered on all counts. On March 17, 2016, Judge Hoffman granted

1 Bundy's motion to re-open his detention hearing, allowing Bundy to proffer
2 additional evidence regarding his standing in the community, the evidence
3 consisting principally of letters from supporters attesting to their views of Bundy's
4 reputation in the community, the letters referenced by Bundy in the instant Motion.
5 See Judge Hoffman's Order, Ex. 1 at 2; Transcript Nevada Re-Opened Detention
6 Hearing, attached at Exhibit 4 at pp. 9-13.

7 After re-opening the detention hearing and considering the evidence and
8 argument presented, Judge Hoffman ordered Bundy's continued detention. Ex. 1 at
9 4. Finding, among other things, that "there is no question that Bundy is the leader,
10 organizer, and primary beneficiary of the conspiracy charged in the complaint and
11 indictment" (id. at 3), that there is "a roughly 20-year history of continuous
12 violations of court orders," and that "Bundy will take the same action again and 'do
13 whatever it takes,' even at the cost of substantial injury to person in this
14 community" (id. at 4), Judge Hoffman, like Judge Stewart before him, weighed the
15 Section 3142(g) factors and found that Bundy presented both a risk of
16 nonappearance and a danger to the community under the appropriate evidentiary
17 standards. *Id.* at 3 and 4.

18 19 LEGAL STANDARD

20 This Court reviews Judge Hoffman's Detention Order *de novo*. *United States*
21 *v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990); *see also United States v. King*, 849
22 F.2d 485, 491 (11th Cir. 1988); *United States v. Maull*, 773 F.2d 1479, 1481 (8th Cir.
23 1985) (*en banc*); *United States v. Leon*, 766 F.2d 77, 80 (2d Cir. 1985). Accordingly,
24 the Court may review the evidence presented to the Magistrate Judge and make its

1 own independent determination. *Koenig*, 912 F.2d at 1193 (“clearly, the district
2 court is not required to start over in every case, and proceed as if the magistrate’s
3 decision and findings did not exist...”). Or, it may take additional evidence and
4 consider further argument. *Id.*

5 Under the Bail Reform Act, a charge of a violation of Title 18, United States
6 Code, Section 924(c), provides a presumption, subject to rebuttal, that no condition
7 or combination of conditions will reasonably assure the appearance of the defendant
8 as required, and the safety of the community. *See* 18 U.S.C. § 3142(e)(3)(B). The
9 presumption “remains in the case as an evidentiary finding militating against
10 release, to be weighed along with other evidence relevant to factors listed in §
11 3142(g).” *See United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (*quoting*
12 *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986)).

13 The government may proceed in a detention hearing by proffer or hearsay, as
14 a defendant has no right to cross-examine adverse witnesses who have not been
15 called to testify. *See United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986).
16 “Neither the Ninth Circuit nor Congress intends the detention hearing to serve as a
17 mini-trial on the ultimate question of guilt.” *United States v. Bibbs*, 488 F. Supp.
18 925, 926 (N.D.Cal., 2007) (citing *Winsor* and overruling the objection to the
19 government’s proffer at detention hearing). Accordingly, the Court may “rely upon
20 investigatory descriptions of evidence (and similar hearsay) where the judicial
21 officer reasonably concludes that those descriptions, reports, and similar evidence,
22 in the particular circumstances of the hearing, are reliable.” *United States v.*
23 *Acevedo-Ramos*, 755 F.2d 203, 207 (9th Cir. 1985).
24

ARGUMENT

Given the *de novo* nature of the Court's review, the government adopts and incorporates by reference all of the evidence proffered and arguments advanced in the Oregon and Nevada detention hearings. Specifically, it references the "Government's Memorandum In Support of Its Motion for Pretrial Detention" (hereinafter "Opening Memorandum") (C.R. 24, pp. 38-71) (Attached at Exhibit 4), and the detention hearing in Oregon (Tr. at Ex. 2) and the re-opened detention hearing in Nevada (Tr. at Ex. 4).

As demonstrated in its Opening Memorandum, the government showed that Bundy failed to rebut the presumption of detention that attaches in this case under the Bail Reform Act and that the Section 3142(g) factors weighed heavily in favor of detention, the proffered evidence showing, among many other things:

- Bundy is lawless and violent, having defied federal court orders for over twenty years and violently assaulting law enforcement officers on April 9 and April 12, 2014, while those officers were enforcing the same orders that Bundy had recalcitrantly defied.
- Bundy and his conspirators pledged to use force and violence again in the event the federal government sought to enforce federal court orders against him.
- Bundy and his conspirators used threats of force and violence to prevent any enforcement actions against him following the April 12 assault.

1 Bundy presents nothing new in his Motion either to rebut the presumption in
2 this case or undercut the findings of two United States Magistrate Judges who, in
3 two separate predicate hearings, specifically found that Bundy was a danger to the
4 community and presented a risk of non-appearance.

5 As he did in his two previous detention hearings, Bundy urges here that his
6 family ties, church membership, reputation for honesty, and standing within his
7 community – as purportedly demonstrated by letters of support submitted on his
8 behalf – rebut the presumption and weigh in favor of his release. Mot. 2-3. Yet, all
9 of these same factors were in place when Bundy, according to the Superseding
10 Indictment, organized, led and executed the conspiracy to use armed violence to
11 assault, obstruct and impede federal law enforcement officers while they were
12 impounding his cattle. Bundy does not explain how these factors outweigh his
13 violent conduct on April 12, or how these factors make him less of danger now than
14 he was on April 12 when he chose to command hundreds of Followers to assault law
15 enforcement officers with deadly weapons. Nor does he explain what, if anything,
16 has changed between then and now to demonstrate to the Court that he would not
17 keep his promise to “do it again” if and when law enforcement officers execute
18 federal Court Orders against him in the future.

19 Bundy also contends that the government has not advanced probable cause to
20 believe that Bundy committed crimes of violence. Mot. at 3. This contention is
21 simply untrue. A federal grand jury sitting in Las Vegas heard evidence and
22 returned a Superseding Indictment in this case, finding probable cause to believe
23 that Bundy committed 16 counts worth of violent crimes. At the time of his initial
24

1 detention hearing in Oregon, Bundy had been charged by Complaint supported by a
2 32-page affidavit, a United States Magistrate Judge in Nevada finding probable
3 cause to believe that Bundy committed at least the four crimes of violence charged
4 in the Complaint, all arising from April 12 assault. No further evidence of probable
5 cause is necessary or required at this stage of the proceedings.

6 Bundy speciously complains that there is “nothing” in the record to show that
7 he will not appear before this Court if ordered to do so and that he is, indeed, “law
8 abiding.” Mot. 4-5. Bundy completely ignores his twenty-year long refusal to follow
9 federal court orders – orders that issued from this Court – requiring him to remove
10 his cattle from the public lands. Bundy ignores his refusal to follow this Court’s
11 order not to interfere with any action taken to impound his cattle. And he ignores
12 his numerous public statements that do not recognize federal authority: e.g., “these
13 feds, I don’t recognize their jurisdiction or authority, so no, I won’t go with them.”
14 (referencing the possibility of his arrest). Ex. 5, p. 12. Or, “they [the federal
15 government] have no jurisdiction or authority, and they have no policing power . . .
16 they have no business here.” *Id.* Choosing to follow laws of his choosing does not
17 transform Bundy into a supposed law abiding citizen.

18
19 Nor is his claim of being a law-abiding citizen consistent with Bundy’s use of
20 body guards and armed patrols in the aftermath of the assault and extortion of
21 cattle. *Id.* at 20. Nor is it consistent with his post-assault involvement in the
22 unlawful takeover and armed occupation of the Malheur National Wildlife Refuge,
23 telling his Followers in February 2016 (after the arrest of his sons and before the
24 arrest of the remaining occupiers) that they should oust federal authorities from the

1 area: “This is not Ammon’s message. This is my message. . . We’ve made the
2 decision to retain it (the Wildlife Refuge) . . . the feds are going to get out of there.”

3 *Id.* at 22. Bundy’s words and deeds betray any claim of being law-abiding.

4 None of his remaining claims rebuts the presumption in this case; they
5 simply quibble with the government’s proffer. Mot. 8-12. A detention hearing is not
6 a mini-trial and the government may appropriately proffer evidence in support of
7 detention. *See Winsor*, 785 F.2d at 756 (“the government may proceed in a detention
8 hearing by proffer or hearsay”). As both Magistrate Judges Stewart and Hoffman
9 found, the evidence in this case was adduced following over 22 months of
10 investigation and the photographs and sourced quotations and evidence set forth in
11 the government Memorandum bear all the indicia of reliability. Bundy’s claim that
12 the government must present more than what has been proffered to support Judge
13 Hoffman’s detention order has no basis in law. When considering the Section
14 3142(g) factors, the evidence proffered in this case overwhelmingly supports
15 Bundy’s continued detention both as a risk of nonappearance – based on his history
16 of refusing to recognize federal courts or federal court orders – and as a danger to
17 community based on the numerous crimes of violence charged in this case.
18

19 ////

20 ////

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CONCLUSION

WHEREFORE, for all the foregoing reasons, the government respectfully requests that the Court enter an Order denying Bundy's Motion and continuing his detention until the trial of this matter.

DATED this 19th day of April, 2016.

Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney

//s//

STEVEN W. MYHRE
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Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **Government's Response in Opposition to Defendant Cliven Bundy's Motion to Revoke Detention Order (C.R. 220)** was served upon counsel of record, via Electronic Case Filing (ECF).

DATED this 19th day of April, 2016.

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

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLIVEN D. BUNDY, a/k/a Cliven Bundy, *et al.*,

Defendants.

Case No. 2:16-cr-00046-GMN-PAL

FINDINGS AND DETENTION
ORDER

BACKGROUND

Defendant Cliven D. Bundy (“Bundy”), a/k/a Cliven Bundy, was arrested in the District of Oregon pursuant to a warrant issued from a complaint filed in the District of Nevada on February 11, 2016. See Doc. # 1; Doc. # 2. On that same date, Bundy made his initial appearance before Magistrate Judge Janice M. Stewart (“Judge Stewart”) in the District of Oregon. Thereafter, Judge Stewart held a detention hearing and, after considering the information presented to the court, ordered that Bundy be detained prior to trial. Bundy did not appeal Judge Stewart’s detention order.

On February 17, 2016, Bundy was charged in a sixteen-count indictment that was later superseded. See Doc. # 5; Doc. # 27. The superseding indictment charges Bundy with conspiracy to commit an offense against the United States (18 U.S.C. § 371), conspiracy to impede and injure a federal officer (18 U.S.C. § 372), assault on a federal officer (18 U.S.C. § 111(a)(1) and (b)), threatening a federal law enforcement officer (18 U.S.C. § 115(a)(1)(B)), use/carry of a firearm in relation to a crime of violence (18 U.S.C. § 924(c)), obstruction of the due administration of justice (18 U.S.C. § 1503), interference with interstate commerce by extortion (18 U.S.C. § 1951), and

1 interstate travel in aid of extortion (18 U.S.C. § 1952). See Doc. # 27.

2 Bundy was arraigned on March 10, 2016, at which time a plea of “not guilty” was entered as
3 to all counts of the superseding indictment. See Doc. # 107. During the arraignment, the Court asked
4 the government for its position regarding the continued detention of Bundy. The government, in
5 response, stated that Judge Stewart’s detention order remained in effect because Bundy neither moved
6 to reopen the detention hearing, nor appealed Judge Stewart’s detention order. Bundy then requested
7 a continuance to conduct a detention hearing before this Court, which was set on March 17, 2016. Id.

8 On March 15, 2016, the government filed a motion to vacate the detention hearing, claiming
9 that a detention hearing had already been conducted in the District of Oregon before Judge Stewart.
10 See Doc. # 124. The Court subsequently directed Bundy to file a response, and stated that it would
11 address the issues and arguments raised by the parties at the hearing set on March 17th. See Doc.
12 # 125.

13 At the March 17th hearing, this Court asked Bundy if he sought to reopen the detention
14 hearing, under 18 U.S.C. § 3142(f), or if he sought to appeal Judge Stewart’s order, under 18 U.S.C.
15 § 3145. Bundy responded that he was seeking to reopen the detention hearing before this Court in
16 light of new and material evidence, along with evidence that Judge Stewart purportedly failed to
17 consider in the District of Oregon. The Court granted Bundy’s request to reopen the detention hearing,
18 finding that new information existed for this Court’s consideration that was not previously available
19 to Judge Stewart, and that this new information was material to Bundy’s release conditions.
20 Thereafter, the Court heard arguments from the parties.

21 DISCUSSION

22 The Bail Reform Act (“Act”) governs the detention of a defendant pending trial. 18 U.S.C.
23 § 3142. The Act mandates the release of a person pending trial unless the court finds that “no
24 condition or combination of conditions will reasonably assure the appearance of the person as required
25 and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Where, as here, there
26 is probable cause to believe the defendant has committed offenses that are “crime[s] of violence,”¹

27
28 ¹ See 18 U.S.C. § 16 (definition); U.S.S.G. 4B1.2 (definition); 18 U.S.C. §924(c) (penalties). Bundy has been charged with, among others, conspiracy to impede and injure a federal officer (18 U.S.C. § 372), assault on a federal officer (18 U.S.C. § 111(a)(1) and (b)), threatening a federal law enforcement officer (18 U.S.C. § 115(a)(1)(B)), and use/carry of a firearm in relation to a crime of violence (18 U.S.C. § 924(c)).

1 there is a rebuttable presumption that “no condition or combination of conditions will reasonably
 2 assure the appearance of the person as required and the safety of the community.” 18 U.S.C. §
 3 3142(e). A finding that a defendant is a danger to any other person or the community must be
 4 supported by “clear and convincing evidence.” 18 U.S.C. § 3142(f)(2)(B).

5 The court considers four factors in determining whether the pretrial detention standard is met:
 6 (1) the nature and circumstances of the offense charged, including whether the offense charged is a
 7 crime of violence; (2) the weight of the evidence against the defendant; (3) the history and
 8 characteristics of the defendant, including the defendant’s character, physical and mental condition,
 9 family and community ties, employment, financial resources, past criminal conduct, and history of
 10 drug or alcohol abuse; and (4) the nature and seriousness of the danger to any person or the community
 11 posed by the defendant’s release. 18 U.S.C. § 3142(g); see also United States v. Winsor, 785 F.2d 755,
 12 757 (9th Cir. 1986); United States v. Motamedi, 767 F.2d 1403, 1407 (9th Cir. 1985). The
 13 presumption is not eliminated when a defendant presents evidence to rebut the presumption of
 14 dangerousness, but rather the presumption “remains in the case as an evidentiary finding militating
 15 against release, to be weighed along with other evidence relevant to the factors listed in § 3142(g).”
 16 United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986).

17 In this case, Bundy has consistently failed to abide by prior court orders. Rather than comply
 18 with those court orders, Bundy has continued to generate income from the use of federal lands without
 19 paying fees that have been authorized by law. Federal law enforcement officers were forced to de-
 20 escalate a confrontation with Bundy and his followers, on April 12, 2014, by retreating because of the
 21 high likelihood that a serious loss of life would occur if the officers were to stay and engage with
 22 Bundy and his followers. Thus far, it appears that Bundy has “do[ne] what it takes” to prevent federal
 23 officers from enforcing the law, even if it means “hav[ing] to be more physical.” Doc. # 27 at 20.

24 As to the weight of the evidence, the government has conducted an extensive investigation of
 25 Bundy (and his co-defendants) over the last twenty-two (22) months. There is no question that Bundy
 26 is the leader, organizer, and primary beneficiary of the conspiracy charged in the complaint and
 27 indictment.

28 As to the history and characteristics of Bundy, the Court notes significant family ties in the
 community, steady employment, ownership of property in the community, and no criminal history.

1 There is, however, a roughly 20-year history of continuous violations of court orders. This history is
 2 relevant because the decision to release a defendant requires a good faith assurance to the court that
 3 its orders will be obeyed. Given Bundy's consistent failure to comply with prior federal court orders,
 4 it does not appear that Bundy will comply with this Court's orders.

5 Finally, as to the nature and seriousness of the danger posed by releasing Bundy, this Court
 6 notes that Bundy confronted federal officers on April 12, 2014 while these officers were attempting
 7 to enforce court orders. The Court believes, based on Bundy's history, that Bundy will take the same
 8 action again, and "do what it takes," even at the cost of substantial injury to persons in this community.

9 Based on information contained in the parties' briefs, information provided to the Court by U.S.
 10 Pretrial Services, along with the arguments presented by the parties at the hearing, the Court finds, by
 11 a preponderance of the evidence, that no condition or combination of conditions will reasonably assure
 12 the appearance of Bundy in this case. The Court also finds by clear and convincing evidence that no
 13 condition or combination of conditions will reasonably assure the safety of other persons and the
 14 community if Bundy were released.

15 CONCLUSION AND ORDER

16 Accordingly, **IT IS HEREBY ORDERED** that Bundy is **detained** pending trial.

17 **IT IS FURTHER ORDERED** that Bundy is committed to the custody of the Attorney General
 18 or a designated representative for confinement in a corrections facility separate, to the extent
 19 practicable, from persons awaiting or serving sentences or held in custody pending appeal. Bundy
 20 must be afforded a reasonable opportunity to consult privately with defense counsel. On order of the
 21 United States Court or on request of an attorney for the government, the person in charge of the
 22 corrections facility must deliver Bundy to the United States Marshal Service for a court appearance.

23 DATED: March 18, 2016

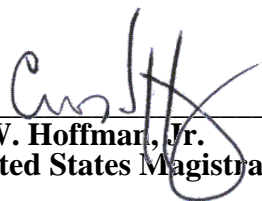
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 25
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 27 C.W. Hoffmar, Jr.
 28 United States Magistrate Judge

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 3:16-mj-00014
)	
vs.)	February 16, 2016
)	
CLIVEN D. BUNDY,)	Portland, Oregon
)	
Defendant.)	

DETENTION HEARING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JANICE M. STEWART
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES

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United States District Courthouse
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1 P R O C E E D I N G S

2 THE CLERK: Please be seated.

3 MR. GORDER: Good afternoon, Your Honor, Charles
4 Gorder for the United States. The first matter on the
5 calendar is United States versus Cliven Bundy, which in this
6 court is Case No. 3:16-mj-00014. Mr. Bundy is in custody,
7 with Mr. Noel Grefenson representing him.

8 Your Honor, I'd like to introduce you to Steven
9 Myhre, who is the First Assistant United States Attorney for
10 the District of Nevada; and he'll be representing the
11 Government in this hearing today.

12 MR. MYHRE: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 I see that you have submitted a memorandum in support
15 of your motion to detain Mr. Bundy. I have read that and am
16 familiar with its contents. There also has been a pretrial
17 services interview of Mr. Bundy, also recommending detention.
18 Is there anything further you wanted to add to your
19 memorandum?

20 MR. MYHRE: Not unless the Court has other questions,
21 Your Honor. We just would -- we have a few highlights, if you
22 will, but certainly we'll proceed however the Court directs.

23 THE COURT: I don't need you to repeat everything
24 that's in your memorandum, but if there are certain things you
25 want to argue, you certainly may.

1 MR. MYHRE: Thank you, Your Honor.

2 As our memorandum sets forth -- and our position is
3 detailed within that memorandum -- the Government is relying,
4 obviously, on the presumption of detention in this case
5 because of the acts of violence that have been charged in this
6 case, particularly the 924(c). And as we point out, there is
7 no evidence to rebut that presumption. Mr. Bundy, by his
8 actions and by his deeds, has shown that he's lawless and he's
9 a violent man. The actions of April the 12th, 2014
10 demonstrate that very fully.

11 The assault on April 12th, it's difficult to find
12 words to describe the level of violence, but the Government
13 would represent to the Court that over 270 people, mustered by
14 Mr. Bundy and his conspirators, converged on the impoundment
15 site on April the 12th, 2014, and assaulted federal officers.
16 More than 60 guns were in the wash, guns that were raised,
17 pointed, brandished in front of these officers. The officers
18 were there fulfilling their duties, performing their duties in
19 accordance with two federal court orders issued in 2013.
20 Those court orders allowed those officers to be where they
21 were, when they were supposed to be there. They were lawfully
22 there.

23 Almost to a person, Your Honor, those officers in
24 that wash thought they were going to die that day. That's how
25 high the level of violence was. And as the Complaint sets out

1 and as we set out in our memorandum, Mr. Bundy was the chief
2 architect and orchestrator of that conspiracy to assault that
3 day.

4 The record shows that Mr. Bundy is subject to no less
5 than four court orders. Three district judges have ordered
6 him to follow their orders, to remove his cattle from the
7 public lands. He hasn't paid fees in over 20 years. He
8 hasn't followed grazing rights.

9 And this case, the case the Government has, is not
10 about grazing rights. It's not about whatever dispute he has
11 with the federal government. It's about violence. It's about
12 raising guns. But we raise this issue in this venue, Your
13 Honor, about the court orders because it shows that Mr. Bundy
14 does not recognize the federal courts, does not recognize
15 federal court orders. He has said repeatedly, as we pointed
16 out in our memorandum, he does not recognize the jurisdiction
17 of federal courts. He has said he's going to do this very
18 same thing again if the federal government comes back out to
19 this land to execute federal court orders or to enforce any
20 laws or regulations on the public lands where his ranch sits.

21 Therefore, Your Honor, the Government fails to see
22 what court order the Court could possibly fashion that would
23 demonstrate that Mr. Bundy now, all of a sudden, would decide
24 to follow court orders. Certainly any order that would issue
25 from this Court for release would require terms and conditions

1 that, among other things, would require him to follow all the
2 laws of the land, including the court orders.

3 Well, every day he's loose, every day he's back on
4 his ranch, he's in violation of a federal court order. Every
5 day that he is allowed to be free, he will be in violation of
6 federal court orders. He has no intention -- he has
7 demonstrated that repeatedly, that he's not going to follow
8 those orders. And it was the execution of those orders that
9 has brought us here today.

10 But most -- perhaps most significantly, Your Honor,
11 is the fact that Mr. Bundy and his conspirators were
12 very -- were able, in a very short period of time, to muster
13 and recruit and bring gunmen to Nevada to engage in this
14 assault. They came from as far away as 10 states. They
15 traveled, in some cases, well over 14, 1500 miles to get
16 there, many of them driving straight through, two or three
17 days, to get to this man's property so that they could chest
18 up with BLM officers and assault them and raise their weapons
19 at them.

20 This investigation has been going on, Your Honor,
21 for, lo, almost 20 months now. Many of these same people who
22 came to the Bundy ranch on the 12th, between the 10th and the
23 12th, actually, 2014, they're still at large. Many of them
24 still pledge support and loyalty to Mr. Bundy. There is no
25 indication from any of the evidence adduced during the course

1 of this investigation to suggest that Mr. Bundy would not
2 again do the very same thing, that he could not muster the
3 support, the armed support, that he could not muster armed
4 gunmen to support him in his continued defiance of any rules
5 and regulations federally that apply to him.

6 In particular, Your Honor, we would again emphasize
7 that on the 10th of February of this year, during the --
8 what's been known as the standoff in Harney County at the
9 wildlife refuge, Mr. Bundy, on his Facebook page and in other
10 media, had indicated support for what was -- for the
11 lawlessness that was going on in Harney County during the
12 course of the occupation of the wildlife refuge. On the 10th
13 of April he traveled from Nevada to Oregon, during the course
14 of that, while officers, agents, were struggling mightily to
15 resolve that situation peacefully.

16 On the Bundy Ranch Facebook page -- this is the very
17 same Facebook page that he used during the course of the
18 events in April of 2014 -- the following post was there. This
19 is on the 10th of February: "Wake up, America. Wake up, We
20 the People. Wake up, patriots. Wake up, militia. It's time.
21 Cliven Bundy is heading to the Harney County Resource Center
22 in Burns, Oregon."

23 Your Honor, there are posts like this in connection
24 with what happened at the Bundy ranch. When he uses the term
25 "militia," he's talking about guns. This is exactly what he

1 was up to on the 10th of April -- excuse me, the 10th of
2 February of this year when he was arrested.

3 Mr. Bundy, when he was back in Nevada, back at his
4 ranch, usually moves with bodyguards. In the immediate
5 aftermath of the assault on April 12th, he set up armed
6 checkpoints in and around his property and on public lands.
7 He set up armed patrols. He had what they referred to as
8 militia training camps, where gunmen who had come to Nevada
9 were being trained by his conspirators on how to conduct
10 operations.

11 All of this was done for the purpose of keeping the
12 federal government away from him, preventing the government --
13 excuse me, agents from arresting him or otherwise enforcing
14 the laws as to him. He moved on the 10th of April. He did
15 not have a bodyguard. He was arrested when he landed at
16 Portland. But his intentions and his actions were -- are
17 fairly well spelled out here in his Facebook postings and in
18 the myriad number of postings that we cite in our memorandum
19 before the Court.

20 So, Your Honor, we -- based on that, we would submit
21 that there are no conditions or restrictions that could
22 adequately assure the safety of the community and other
23 persons nor assure his appearance at the court in further
24 proceedings. If he were to go back to Bundy ranch, there's no
25 doubt he's not -- he's not going to leave Bundy ranch. The

1 Government's fear is he'll hunker down, muster more gunmen.
2 And he's not going to follow court orders. He's demonstrated
3 he's not -- he doesn't care about that.

4 So unless the Court has further questions, Your
5 Honor, we'll submit it at this point.

6 THE COURT: All right. Let me hear from the
7 defendant.

8 MR. GREFENSON: Your Honor, may I approach and submit
9 some exhibits?

10 THE COURT: You may.

11 MR. GREFENSON: I've shown these to counsel, Your
12 Honor. They are Defense Exhibits 101 through 116 (handing).

13 I wish to call a witness, Your Honor, by telephone.

14 THE COURT: You can simply proffer. You don't need
15 to submit actual testimony. Why don't you just proffer and
16 tell me what the testimony will be.

17 MR. GREFENSON: I have submitted a letter from the
18 same witness. I had hoped that she could personally address
19 the Court, and I would like to do that. But if the Court is
20 indicating otherwise, then I'll go with the proffer.

21 THE COURT: Go with the proffer.

22 MR. GREFENSON: All right. Well, then I'll reverse
23 order, Your Honor, and start at the end.

24 One has to wonder why, if Mr. Bundy is Public Enemy
25 No. 1, that the State of Nevada has taken 22 months after the

1 incident for -- which is at issue in his criminal complaint,
2 to bring him into custody, why the State of Nevada waited
3 until Mr. Bundy, who is supposedly lawless and a violent man,
4 was allowed to board a plane, just like any other citizen, in
5 the state of Nevada and fly to Oregon, where he was arrested.

6 Mr. Bundy came here, Your Honor, with -- with the
7 intention of seeing his sons, with the intention -- who were
8 detained at that time; with the intention of driving to Boise,
9 Idaho to visit with his grandchildren; and also, Your Honor,
10 to visit with the witness who I would be calling by telephone,
11 but who has submitted 116, and that is a legislator in the
12 Nevada legislature. And her name is Michelle Fiori, Your
13 Honor. She's an assemblywoman. She knows Cliven Bundy and
14 she knows his family very well. She's been in contact with
15 him.

16 In fact, several weeks before February 11th, when he
17 came here and was arrested, Ms. Fiori was at the Bundy home on
18 Bunker Hill Road, meeting with Cliven Bundy and Carol Bundy,
19 his wife, looking about, talking with them about things. And
20 she had mentioned that she was coming to Oregon with the
21 Western Coalition of States. The Western Coalition of States
22 essentially are elected officials that have particular concern
23 with Western states. She had no intention whatsoever in
24 becoming embroiled in the Malheur County incident.

25 And, actually, Mr. Bundy and Assemblywoman Fiori were

1 supposed to take the same flight from Nevada and come here,
2 but he missed that flight, and she ended up coming here ahead
3 of him. It was then her plan to go to the Portland
4 International Airport and pick Mr. Bundy up and then visit
5 with his sons and assist -- or gain the assistance of the
6 attorneys who were representing the sons to visit with them.
7 Mr. Bundy, as I said, missed the flight; and therefore they
8 lost connection.

9 Before she landed, she received word that things were
10 coming to a head in Malheur County. And I believe that her
11 services were ultimately enlisted by the Federal Bureau of
12 Investigation to help resolve that conflict, so she was not at
13 the Portland International Airport to pick up Mr. Bundy when
14 he landed; and she had no clue that the FBI, as it was
15 enlisting her services to take people into custody in Malheur
16 County and to bring that to a peaceful resolution, were also
17 intending to arrest her friend, Mr. Bundy, and take him into
18 custody for the events of 2014, 22 months before -- before
19 now, Your Honor.

20 So that's something which is glaringly absent from
21 any of the materials submitted to the Court.

22 THE COURT: I fail to see how it's relevant.

23 MR. GREFENSON: Well, the Government, Your Honor, is
24 suggesting that Mr. Bundy is a dangerous and a lawless man and
25 that Mr. Bundy can't be trusted out of custody because he

1 blatantly and flagrantly violates court orders; and yet over
2 the last 22 months Nevada has done nothing with respect to
3 what happened in 2014. We don't even have an order of
4 contempt on the injunctions that were the subject of the 2014
5 standoff.

6 THE COURT: If you read the Government's memo,
7 there's an explanation for what's been happening in the last
8 22 months and why he wasn't arrested earlier. Have you read
9 the memorandum?

10 MR. GREFENSON: Well, I got it, Your Honor -- No, I
11 haven't. I received it five minutes before I left Salem to
12 come up here and make this appearance. But I'm happy to sit
13 down and read it if the Court would suggest that I do so.

14 THE COURT: All right. Well, you made your point,
15 22 months. What else?

16 MR. GREFENSON: I fail to agree -- I disagree that
17 Mr. Bundy is a danger to the public, Your Honor. Mr. Bundy is
18 a quiet man who has strong beliefs, and he is in custody
19 because of those beliefs at this time.

20 And the Government is now asking this Court to do
21 what Nevada didn't do, to take him into custody in Oregon,
22 where he doesn't live -- he has nobody, no family here, other
23 than his sons who have been arrested -- and send him in chains
24 back down to Nevada to face these charges and litigate there.
25 He has no criminal record.

1 The Government's -- the criminal complaint is
2 painfully thin on any reference to the exact things that
3 Mr. Bundy did that caused him to be charged down in Nevada.
4 There's no statement in there that Mr. Bundy himself ever had
5 a firearm in his possession. It's the other individuals that
6 were there. Mr. Bundy supposedly used deceit and was
7 conniving in his recruitment of all these other individuals
8 and was orchestrating them as one, and that's simply not the
9 case. He's innocent until he's proven guilty.

10 And there are any number of conditions that this
11 Court can impose upon him to make sure he complies with court
12 orders. He'll go to court. If the Court tells him -- if this
13 Court tells Mr. Bundy to report to the District Court in
14 Nevada, he will do so. His failure to abide with orders -- if
15 that, in fact, is what took place, Your Honor -- hasn't been
16 decided yet, but that's a completely different matter. It
17 concerns his cattle grazing on lands. It wasn't a criminal
18 action against him.

19 So I disagree strongly that Mr. Bundy is a risk of
20 flight, that he's a danger to the community. He's a
21 69-year-old man who is sitting here, in custody, with high
22 blood pressure, who flew here to Oregon. Everybody knew he
23 was coming, apparently the Government as well. And they had
24 no problem letting him come here, and apparently there was a
25 design to arrest him from the beginning. But I don't

1 understand that, because I haven't had the time or an
2 opportunity to read the memorandum which the Court has
3 considered in this matter.

4 So yes, I believe Mr. Bundy should be released from
5 custody. He should be given an opportunity to go to Nevada
6 and defend himself out of custody.

7 THE COURT: You've handed me exhibits. What do you
8 want me to do with these?

9 MR. GREFENSON: I want you to review them, please,
10 Your Honor, because they show Mr. Bundy as he really is, with
11 his family, on his ranch, taking care of his chores, exactly
12 what he should be doing right now, because nobody else is
13 doing it.

14 THE COURT: Have you shown these exhibits to the
15 Government?

16 MR. GREFENSON: I provided all of them to the
17 Government.

18 THE COURT: Any objection by the Government?

19 MR. MYHRE: No, Your Honor.

20 THE COURT: All right. I'll take a look at them.
21 Anything else you want to argue?

22 MR. GREFENSON: Not unless the Court has questions
23 for me.

24 THE COURT: Anything else from the Government?

25 MR. MYHRE: Nothing further, Your Honor.

1 THE COURT: All right. Well, as you know, in
2 determining whether pretrial detention is appropriate, there
3 are certain factors the Court has to consider. One of them is
4 the nature and the circumstances of the offense charged,
5 including whether the offense charged is a crime of violence.
6 Here, the offenses charged are based on Mr. Bundy's ongoing
7 defiance of federal court orders, and they do include crimes
8 of violence. In fact, five of the counts are crimes of
9 violence, and they support an actual presumption of danger in
10 this case that it's the obligation of Mr. Bundy to rebut.

11 Certainly based on the information the Government has
12 provided to me, it's clear that that factor heavily favors
13 detention in this case.

14 Another factor is the weight of the evidence against
15 the defendant. Again, the Government provided substantial
16 evidence to establish Mr. Bundy's guilt. You're absolutely
17 right, he is presumed innocent until proven guilty. But based
18 on the one-sided presentation of evidence that I have, there
19 certainly is sufficient evidence of guilt to proceed on that
20 factor to detention.

21 Also, the Court can consider the history and
22 characteristics of the defendant. You're quite right. He has
23 no criminal history. But certainly based on what the
24 Government has provided, it's clear that Mr. Bundy does not
25 comply with federal court orders. And I have no assurance

1 that he will adhere to any sort of pretrial restrictions I may
2 impose on him in another court order to make sure that he
3 makes his appearances and that he does not pose a danger.

4 I agree with the Government: If he is released and
5 goes back to his ranch, that's likely the last the Court will
6 see of him.

7 Also, I have to consider the nature and seriousness
8 of the danger posed by his release. And again, the Government
9 has provided quite a bit of information here that persuades me
10 that Mr. Bundy poses a significant danger to the community, in
11 particular to federal law enforcement officers, also to
12 civilian employees and other community members at risk, who
13 are doing things that he doesn't agree with.

14 I find that there is no evidence to overcome the
15 presumption in this case that he poses a danger to the
16 community, and I cannot conceive of any sort of restrictions
17 that I can impose on him that will assure he will make his
18 court appearances.

19 So I am detaining him both as a flight risk and as a
20 danger to the community and will order him to appear, of
21 course in detention, for his pretrial hearing that is set in
22 this case -- I'm trying to remember what date we set on that.

23 MR. GORDER: It's Friday, the 19th.

24 THE COURT: Friday, the 19th, at 1:30.

25 MR. GREFENSON: Your Honor, I would take exception to

1 the Court's findings and decision, and I will discuss with
2 Mr. Bundy the next step in appealing that decision.

3 THE COURT: You may do that.

4 Do you want your exhibits returned?

5 MR. GREFENSON: Please, Your Honor. May I approach?

6 THE CLERK: (Hanging).

7 THE COURT: And just so the record is clear, I agree
8 with everything that the Government has submitted in the
9 memorandum. So if you need that as a basis for arguing any
10 appeal, you can rely on what's set forth in the memorandum.

11 MR. MYHRE: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. GREFENSON: Thank you, Your Honor.

14

15

16 (Proceedings concluded.)

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

/s/ Nancy M. Walker

2-17-16

NANCY M. WALKER, CSR, RMR, CRR
Official Court Reporter
Oregon CSR No. 90-0091

DATE

Exhibit

3

ORP DET ORD (1/15/16)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 3:16-mj-00014

v.

CLIVEN D. BUNDY

ORDER OF DETENTION AFTER HEARING (18
USC § 3142(i))

☒ On motion of the Government involving an alleged:

☒ risk to the safety of any other person or the community for cases involving crimes described in 18 USC § 3142(f)(1)

☒ serious risk defendant will flee;

☐ serious risk defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror or attempt to do so,

☐ Upon consideration by the court *sua sponte* involving a:

☐ serious risk defendant will flee;

☐ serious risk defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror or attempt to do so,

Having considered the nature and circumstances of the offense charged, the weight of evidence against the defendant, the history and characteristics of the defendant, and the nature and seriousness of the danger to any person and to the community that would be posed by the defendant's release, the court finds that:

☒ The offense charged creates a rebuttable presumption in 18 USC § 3142(e) that no combination of conditions will reasonably assure the safety of the community.

☒ No condition or combination of conditions will reasonably assure the appearance of defendant as required due to:

☐ Foreign citizenship and/or illegal alien

☐ In custody/serving sentence

☐ Substance use/abuse

☐ ICE Detainer

☐ Outstanding warrant(s)

☐ Unknown family/
employment/community ties

☐ Deportation(s)

☐ Prior failure(s) to appear

☐ Unstable/no residence available

☐ Multiple or false identifiers

☐ Mental health issues

☐ Information unverified/unverifiable

☐ Aliases

☐ Prior criminal history, ☐ including drug/drug related offense, ☐ including alcohol/alcohol related offense

☐ Prior supervision failure(s), ☐ Including illicit drug use, ☐ including alcohol abuse

☒ Other: Previous failures to follow federal court orders

☒ No condition or combination of conditions will reasonably assure the safety of other persons and the community due to:

☒ Nature of offense

☐ Prior supervision failures

☐ Arrest behavior

☐ Substance use/abuse

☐ Possession of weapon(s)

☐ Mental health issues

☐ Violent behavior

☐ Alleged offense involves child pornography on the internet

☐ Prior criminal history, ☐ including drug/drug related offense,

☐ including alcohol/alcohol related offense

☐ Prior supervision failure(s), ☐ Including illicit drug use,

☐ including alcohol abuse

☒ Other: Public statements & threats; armed bodyguards

☐ Other (writ/serving federal or state sentence): _____

☒ Defendant has not rebutted by sufficient evidence to the contrary the presumption provided in 18 USC § 3142(e).

☐ The defendant is detained without prejudice to further review by the court at a later date.

THEREFORE, IT IS ORDERED that:

1. Defendant is detained prior to trial;
2. Defendant is committed to the custody of the Attorney General for confinement in a corrections facility separated, as far as practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
3. Defendant shall be afforded a reasonable opportunity for private consultation with his counsel;
4. The superintendent of the corrections facility in which defendant is confined shall make the defendant available to the United States Marshal for the purpose of appearance in connection with any court proceeding.

DATED: Feb 16, 2016

Janice M. Stewart
United States Magistrate Judge Janice M. Stewart

Exhibit

4

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE CARL W. HOFFMAN, MAGISTRATE JUDGE

4 UNITED STATES OF AMERICA, :
5 Plaintiff, :
6 vs. : No. 2:16-CR-00046-GMN-PAL-1
7 CLIVEN D. BUNDY, :
8 Defendant. :
9

10
11 TRANSCRIPT OF DETENTION HEARING

12 March 17, 2016

13
14 Las Vegas, Nevada

15
16
17 FTR No. 3C/20160317 @ 10:33 a.m.
18

19
20 Transcribed by: Donna Davidson, CCR, RDR, CRR
21 (775) 329-0132
22 dodavidson@att.net
23
24

25 (Proceedings recorded by electronic sound recording,
transcript produced by mechanical stenography and computer.)

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1 LAS VEGAS, NEVADA, MARCH 17, 2016, 10:33 A.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Good morning. Please be seated.

7 COURTROOM ADMINISTRATOR: This is the time set

8 for United States of America versus Cliven D. Bundy,

9 Case No. 2:16-cr-46-GMN-PAL.

10 Counsel, please enter your appearances.

11 MR. MYHRE: Good morning, Your Honor. Steve
12 Myhre, Nadia Ahmed, and Nicholas Dickinson on behalf of the
13 United States.

14 THE COURT: Good morning.

15 MR. HANSEN: Good morning, Your Honor. Joel
16 Hansen on behalf of Mr. Bundy.

17 THE COURT: Good morning, sir. Good morning,
18 Mr. Bundy.

19 THE DEFENDANT: (Inaudible.)

20 THE COURT: When we left off, we decided, at the
21 request of the defense, to hold a hearing today on the
22 question of detention.

23 And since then the government has filed
24 Document No. 24. And it is a motion to vacate a detention
25 hearing in this case based upon the notion that the

1 detention hearing was already conducted in Oregon and that
2 there's no right to a second detention hearing.

3 Mr. Hansen, I tend to agree with that, that
4 there's no right for serial detention hearings. There
5 are -- there is one, I think, important exception to that,
6 and that is that the defense can, in this situation,
7 request that the Court reconsider the detention hearing
8 that's been conducted under 18 U.S.C. 3142(f), and that
9 reconsideration can be had, and the Court would approve
10 that, if you demonstrated that you had new information that
11 was not previously available and that that information
12 would be material to the question of whether or not
13 detention ought to occur.

14 And although you didn't cite those provisions of
15 the statute, you made -- you did provide some affidavits or
16 some statements, I should say, from a variety of people.
17 And so I would construe what you have sent as a request for
18 reconsideration. You've done that.

19 But then you also requested, in the alternative,
20 an appeal under 18 U.S.C. 3145. You have that right.

21 But I will put you to your election now. I have
22 no authority to review the order of another magistrate
23 judge, but I do have the authority to reconsider if you can
24 make the proper findings.

25 So that's my first question is, what is your

1 election?

2 MR. HANSEN: To move to have you reconsider.

3 THE COURT: All right. What's the government's
4 position --

5 MR. HANSEN: Your Honor, I did cite the statute
6 at the very end of my pleading that I filed earlier this
7 morning. U.S.C. -- 18 U.S.C. 3142 --

8 THE COURT: Right.

9 MR. HANSEN: -- says that you have the authority
10 to do -- pardon me. I should be standing up.

11 Anyway, that's -- I did cite that. You probably
12 didn't have a chance to read all that because it was
13 submitted about 10:00.

14 THE COURT: I did have a chance to read all the
15 documents that you've produced, and I've reviewed all the
16 exhibits. I've also read all of the exhibits that were
17 presented from the District of Oregon that are now on the
18 docket. And I've seen all of those. So I've reviewed the
19 government's memorandum that it submitted there and
20 everything that's in there. So I think I have everything.

21 MR. HANSEN: Well, I would appreciate it, I'm
22 sure the government -- it's their motion, so they had to
23 get -- they get to argue first, but I would appreciate the
24 chance to present my argument to the Court about why it
25 should be reopened.

1 THE COURT: All right.

2 Mr. Myhre, what's your view?

3 MR. MYHRE: Your Honor, we would object to
4 reopening the hearing. We don't believe that material
5 evidence has been -- new and material evidence has been
6 presented with respect to the issue of detention.

7 In fact, many of the documents that were
8 submitted in support of the defendant's latest pleadings
9 were documents that were presented and considered by the
10 magistrate judge in Oregon at the time of the first
11 detention hearing.

12 As the Court is -- knows from all the pleadings
13 filed in this case, is that that court found that the
14 presumption applied; that it was un rebutted; that the
15 government also showed by clear and convincing evidence
16 that he's a danger to the community; and that no terms or
17 conditions would suffice to guarantee the safety of the
18 community or ensure his appearance for trial.

19 So we don't -- we don't believe that that burden
20 has been met in terms of new and material evidence to
21 detention hearing. We see nothing in this record -- and
22 I've yet to hear from counsel what he believes is material
23 and relevant, but letters of support from people who say
24 that Mr. Bundy's a nice man and is a pillar in their
25 community don't go to the issue of rebutting the

1 presumption of dangerousness in this case.

2 Documents from his lawyers saying he didn't have
3 time -- or his lawyer in Arizona, saying that he didn't
4 have time to prepare for the trial don't go to the issue of
5 material evidence toward -- to rebut the presumption to
6 otherwise show he's not a danger to the community.

7 Those aspects with respect to whether he was
8 prepared or not prepared in the first trial is an issue for
9 the district court to decide upon appeal.

10 And, Your Honor, so for that reason we don't
11 believe he's met his burden to show new material evidence
12 to reopen the detention hearing.

13 And we would just add, Your Honor -- and I
14 apologize because I don't think the government was as clear
15 as it could have been at the first hearing. I did say
16 that -- there was a prior hearing. I should have perhaps
17 been a little more clear as to what the government's
18 position was at the time.

19 But the reason we're taking that position is not
20 that we don't want to have hearings, it's that we have 11
21 other defendants who are in similar situations. We've all
22 had fully adjudicated hearings, detention hearings, and
23 these are, I would represent to the Court, detention
24 hearings that are beyond what normally occurs.

25 I mean, we filed extensive briefing. There have

1 been extensive hearings. Some have taken as long as two
2 days, even longer.

3 So it's just a serial rehashing of the same
4 issues and the same arguments and hearing the same thing
5 that we believe is wasteful of judicial resources and
6 further delays the time it takes to get this case to trial.

7 So that's why the government is taking the
8 position it is taking. It's certainly not meant to any
9 disrespect on the Court or on the affidavits or the letters
10 that Mr. Bundy has proffered; meaning no disrespect to
11 those people who have filed letters of support.

12 We just feel that in the interest of efficiency
13 and judicial economy that this -- the showing has not been
14 made -- the hearing should not be reopened, and Mr. Bundy
15 may pursue whatever recourse he desires with respect to
16 appeal to the district court.

17 So thank you, Your Honor.

18 THE COURT: Thank you.

19 Mr. Hansen, what's new and material that was not
20 available at the prior hearing?

21 MR. HANSEN: May I state, before I answer your
22 question, Your Honor, that the government has the burden to
23 show by clear and convincing evidence that Mr. Bundy is a
24 threat to other people, that he will do violence if he's
25 released.

1 THE COURT: Mr. Hansen, I want you to answer my
2 question.

3 MR. HANSEN: Okay.

4 THE COURT: Because what you're arguing is the
5 merits of the detention hearing which has already been
6 conducted.

7 MR. HANSEN: That's why the -- that's why the
8 evidence that I have presented is material to that issue.
9 And it's also material to the issue of whether or not he's
10 a flight risk.

11 None of that was available up in Oregon. The
12 attorney up there did not have an opportunity or time to
13 gather this.

14 I presented 33 different letters from people who
15 have known Mr. Bundy for many years. And the issue here is
16 whether he's a flight risk, that's number one, which the
17 government has to prove by a preponderance of the evidence;
18 and, number two, that they have to prove by clear and
19 convincing evidence that he is a danger to the community,
20 he's going to hurt somebody if they let him go, like he's
21 going to shoot somebody or beat somebody up or something,
22 you know, that he'll do that.

23 And those letters that I have submitted were not
24 submitted at the Oregon hearing. And they are exactly
25 material to this issue.

1 The Court didn't have those up there. And all
2 these people have stated, number one, that he's an honest
3 man, that he is a man of integrity, and that he keeps his
4 word, and, you know, he's a religious man, he believes that
5 he has to tell the truth.

6 And so if he says that he's not going to run
7 away, he's not going to flee to Mexico or something, then
8 that's evidence that wasn't before the Court before that
9 he's going to keep his word, that he's going to obey the
10 orders of the Court.

11 And I also presented in my pleadings that I had
12 interviewed both Mr. Bundy and his family members. And
13 I and they are satisfied that he is not a flight risk and
14 that he's not a danger to anybody.

15 Those two issues are what are before you, and
16 those are the things that I presented in those letters,
17 those emails by 33 different people. And they all said
18 basically the same thing: He's a good man, he's honest,
19 and he is not going to run away, and he's not going to hurt
20 anybody.

21 So those things are very material. That's --
22 those are the issues here.

23 THE COURT: So why wasn't that information
24 presented by counsel in Oregon?

25 MR. HANSEN: Well, he had less than five days to

1 get ready. He got as ready as he could. He didn't have 24
2 hours -- 24/7 available to him to do that. And he did the
3 best he could.

4 He got those pictures together that you've seen.
5 He got one letter from Michele Fiore. And he was denied
6 the opportunity up there to have her testify.

7 I -- as I presented in my pleadings, I don't
8 think he had due process up there. His lawyer was
9 unprepared. Because the government sandbagged him at the
10 last moment with that long 30-page memo of theirs. He
11 didn't have an opportunity to argue that.

12 So a lot of the stuff that ought to have been
13 argued up there wasn't argued. Didn't have due process of
14 law. And --

15 THE COURT: Why didn't he --

16 MR. HANSEN: -- this is new stuff.

17 THE COURT: Why didn't he ask for a continuance?

18 MR. HANSEN: The -- it appears to me that the
19 court had given him the five days. I don't -- I don't know
20 that. I can't answer that. I wasn't there.

21 But I know this, that he said to the court, "I
22 haven't read that memo. I need time to read the memo."
23 You'll see that in the -- it's in the transcript.

24 THE COURT: It's in the transcript.

25 MR. HANSEN: I haven't read this. It was served

1 on me five minutes before I had to leave to come down here.

2 Personally, this is just my opinion, I think the
3 government did that on purpose so he wouldn't have a chance
4 to review it. They knew where his office was.

5 And so he was -- he didn't know what they'd said
6 in there.

7 So now that I have seen it, now I've been able
8 to make arguments against it in my presentation -- which he
9 didn't know to make, because he had never seen their memo.

10 I read it carefully, and I -- and in the stuff
11 that I presented, I presented evidence that refutes what
12 they said. They've never shown that he's violent. In the
13 indictment they've never shown that he's violent.

14 He never -- he never pointed a gun at anybody.
15 He's never beaten anybody up and so on.

16 THE COURT: You're arguing merits again.

17 MR. HANSEN: Well, but that --

18 THE COURT: On this --

19 MR. HANSEN: But what I'm saying is that that's
20 new -- that's new evidence that I have to --

21 THE COURT: All right.

22 MR. HANSEN: -- to support the opening of the
23 hearing again.

24 THE COURT: All right. Well, I --

25 MR. HANSEN: That's my argument.

1 THE COURT: Okay. I understand your argument.

2 I take no position on your due-process arguments
3 that you've made as to the proceedings in Portland.

4 The standard that I'm going to apply is whether
5 or not there is new and material evidence that wasn't
6 previously available.

7 And under the circumstances, since Mr. Bundy was
8 in Oregon, not here where he lives, I think it's reasonable
9 to accept your position that this is new information that
10 was not previously available. And you've taken advantage
11 of the time you needed by producing those documents.

12 So the -- the request to reopen the detention
13 hearing is granted.

14 MR. HANSEN: Thank you very much, Your Honor.

15 THE COURT: And so now we'll move on to the
16 question of whether or not Mr. Bundy ought to be detained.

17 MR. HANSEN: Okay.

18 THE COURT: Now, I have received a pretrial
19 services report. I've seen the report from the government
20 that was submitted in Oregon. And I've seen your documents
21 as well. And so I'm going to consider all of that.

22 I think at this point, Mr. Myhre, what I will do
23 is ask you if you have any additional information in
24 addition to what's in that brief?

25 MR. MYHRE: May I have just one moment, Your

1 Honor?

2 THE COURT: Of course.

3 MR. MYHRE: Your Honor, we have nothing further
4 to present by way of proffer other than what's been
5 presented to the Court in our pleadings.

6 THE COURT: All right. Thank you very much.

7 Mr. Hansen?

8 MR. HANSEN: Your Honor, no, I don't have
9 anything further except one thing. I spoke with Mr. Bundy
10 this morning about security to guarantee his appearance.

11 And, first of all, I -- in consideration of what
12 I presented to the Court about his integrity, his honesty,
13 and his willingness, I told the Court that he would be
14 willing to do whatever conditions that you imposed, as long
15 as they were reasonable, and I outlined that in great
16 detail, what he would -- what he would accept.

17 And so, number one, I would request that the
18 Court release him on his own recognizance. If that is not
19 satisfying to the Court, the Bundys, Mr. Bundy, owns a
20 piece of land up in Bunkerville that is worth probably
21 \$20,000. And he could put that up.

22 So -- or he can have, I believe it's called, an
23 unsecured personal bond from other people who say, "Yeah,
24 we will pay it if he doesn't show up." Those are the
25 options that I would ask the Court to consider.

1 Considering the fact that Mr. Bundy has been
2 vouched for by numerous people that he's honest and he will
3 do what the Court orders him to do, I would think that he
4 should be released, and whatever security the Court needs,
5 I've offered several options to the Court.

6 So that's what's new that you haven't seen yet.

7 THE COURT: All right. All right. Thank you
8 very much.

9 Anything further from the government?

10 MR. MYHRE: Not unless the Court wants to hear
11 argument from the government, Your Honor. Otherwise, we
12 rest on our -- submit on our pleadings.

13 THE COURT: I think -- I understand your papers.
14 I don't think additional argument is necessary.

15 All right. So, Mr. Bundy, let me give you some
16 background. And you can sit down. I'm going to read
17 through my findings and explain what I've decided here.

18 The Bail Reform Act, which is the act that
19 really describes what should happen in this situation, when
20 there's a question of detention, it provides that the Court
21 should detain a defendant pending trial where no condition
22 or combination of conditions will reasonably assure your
23 appearance or the safety of the community.

24 So in deciding whether or not to detain an
25 individual, these are the standards that the Court applies.

1 First of all, the nature and circumstances of the offense
2 charged, including whether or not the offense charged is a
3 crime of violence.

4 Second, the weight of the evidence against the
5 defendant.

6 Third, the history and characteristics of the
7 defendant.

8 And, four, the nature and seriousness of the
9 danger posed by the defendant's release.

10 As to the nature and circumstances of the
11 offense -- offenses charged, I note that the grand jury has
12 determined that there is probable cause to believe that
13 several offenses that have been charged were crimes of
14 violence. That's a term of art in the case law, a crime of
15 violence; the assault on a federal officer with a firearm,
16 Section 924 violations, which are the firearm offenses;
17 and, importantly, the conspiracy to commit those offenses
18 are violent crimes.

19 Under the law conspirators are responsible for
20 the acts of co-conspirators, of their co-conspirators
21 undertaken in the furtherance of the conspiracy.

22 And so as to each of these offenses, the law
23 establishes a rebuttable presumption, the presumption that
24 no condition or combination of conditions will reasonably
25 assure the appearance of the person, in this case yourself,

1 and the safety of the community.

2 That's a presumption that the law imposes under
3 the Bail Reform Act. And the citation is 18 U.S.C.
4 3142(e) (3) (b) .

5 The government alleges that you continuously
6 failed to obey four prior court orders. Rather than comply
7 with those orders, they argue, you continued to generate
8 income from the use of federal lands without paying fees
9 that have been approved by law.

10 That series of events dealing with the use of
11 the federal land finally came to a head on April 12th,
12 2014. That was a dangerous day.

13 And on that day federal law enforcement
14 officers, in an effort to try to enforce the court's
15 orders -- and those court orders had been issued from this
16 court and had been appealed and had been fully processed --
17 the officers, attempting to enforce those court orders,
18 were confronted with a group. And the federal officers
19 decided to deescalate that confrontation, and they backed
20 down.

21 They backed down because of the possibility of a
22 serious loss of life. And I've noted in the papers that
23 the government has provided that you say that you will
24 continue to do whatever it takes to prevent federal
25 officers from trying to enforce the law.

1 So on the first issue I've considered the nature
2 and circumstances of the offense charged.

3 Secondly, I've considered the weight of the
4 evidence against you. The government has investigated this
5 issue for a long time. It's taken a long time to get here,
6 about 22 or 23 months. And the investigation has been
7 extensive. The indictment is more detailed, I think, than
8 almost any indictment I've ever seen in terms of the amount
9 of information that has been collected.

10 There were a lot of individuals involved in this
11 case. It's a broad case. And it took a long time to
12 investigate. But it appears to me that there's no serious
13 question that you were the leader, organizer, and primary
14 beneficiary of the conspiracy that they allege.

15 Third, I've considered the history and
16 characteristics of yourself. Your defense counsel has done
17 a good job of presenting information. You have strong ties
18 to the community. You have strong family ties. You own
19 property in the community. And I note that you have no
20 criminal history at all. And so I've considered that.

21 There are, however, about 20 years of continuous
22 violations of court orders. Now, that point is relevant to
23 me here because the decision that I have to make to release
24 a defendant requires some good faith assurance to the Court
25 that its orders will be obeyed. In other words, an order,

1 for example, to appear at court.

2 And I do not believe, Mr. Bundy, that you would
3 comply with my court order any more than you refuse to
4 comply with other court orders, at least as far as the
5 government alleges.

6 Finally, I've considered the nature and
7 seriousness of the danger that's been posed by releasing
8 you.

9 In April 2014 you and your co-conspirators
10 confronted officers who were simply attempting to enforce
11 court orders that had run the entire legal gamut. It seems
12 undeniable to me that if released you would take the same
13 action again, resulting in unnecessarily placing others at
14 risk.

15 Based upon the information that's been provided
16 by the government, by pretrial services, and in
17 consideration of the information that your counsel has
18 presented, I find by a preponderance of the evidence that
19 no condition or combination of conditions will reasonably
20 assure your appearance and, by clear and convincing
21 evidence, that no condition or combination of conditions
22 will reasonably assure the safety of the community.

23 And so you are ordered detained pending trial.

24 You'll be committed to the custody of the United
25 States Marshal for confinement.

1 You may appeal my decision to the district court
2 judge.

3 COURTROOM ADMINISTRATOR: All rise.

4 (The proceedings concluded at 10:57 a.m.)

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I certify that the foregoing is a correct
transcript from the electronic sound recording
of the proceedings in the above-entitled matter.



4/12/16

Donna Davidson

Date

Exhibit

5

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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.

////

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Post-Assault: April 13 and thereafter.

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

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

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

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

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

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



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

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

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

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

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

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

turning on to Gold Butte Rd, the two-person BLM fire crew noticed that they were being followed closely by a vehicle. When they attempted to allow the car to pass, it stopped and the firemen observed Ryan Bundy as a passenger in the vehicle. Bundy asked questions in an aggressive tone and the fire crew, feeling the tension, decided to drive on. Ryan Bundy's vehicle followed them for over ten miles until the terrain made it difficult for the vehicle to do so. The fire crew contacted law enforcement and were safely escorted out of the area.

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

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

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

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

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

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

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

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

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

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

The Bundy Family

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

FOR IMMEDIATE PRESS RELEASE:

CLIVEN D. BUNDY

PO Box 7175

Bunkerville, NV 89007

702-346-5564

January 1, 2016

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

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

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

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

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

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

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

Cliven D. Bundy

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

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

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

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

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

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

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

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

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

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

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

In a national media online article dated on or about January 31, 2016, titled “Bundy clan leader unrepentant even as Oregon protest collapses,” Bundy stated: “They're leaving me alone . . . In this part of Clark County and on Bundy Ranch, we say we're the freest place on Earth . . . They [the federal government] have no jurisdiction or authority, and they have no policing power . . . They have no business here . . . ” https://www.washingtonpost.com/national/health-science/bundy-clan-leader-unrepentant-even-as-oregon-protest-collapses/2016/01/30/842a4750-c6c5-11e5-8965-0607e0e265ce_story.html (last visited February 15, 2016).

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

CLIVEN D. BUNDY
PO Box 7175
Bunkerville, NV 89007 February 1, 2016

NOTICE TO HARNEY COUNTY SHERIFF

To Harney County Sheriff David M. Ward
485 N. Court Ave. #6
Burns, OR 97720

CC Oregon Governor Kate Brown
160 State Capitol
900 Court Street
Salem, OR 97301

President Barack Obama
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Mailed Certified & Emailed to the above
Internet to the World

Dear Sheriff Ward,

This is notice that We the People of Harney County and also We the People of the citizens of the United States **DO GIVE NOTICE THAT WE WILL RETAIN POSSESSION OF THE HARNEY COUNTY RESOURCE CENTER.** (Malheur National Wildlife Refuge)

Remove all federal and state policing agents out of Harney County.

Place a Harney County sheriff guard post at the entrance road of the Harney County Resource Center stopping all from entering or exiting, for a time.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

2/1/16
Date

Cliven D. Bundy

WITNESSED BY:

State of Nevada
County of Clark
his instrument was acknowledged
Cliven D. Bundy
02/01/2016

MAYRA P. CUELLAR
Notary Public • State of Nevada
Appointment Recorded in Clark County
No: 04-91265-1 Expires December 1, 2016

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee \$
Postage \$
Total Postage and Fees \$

Send to
Harney Co. Sheriff David Ward
485 N. Court Ave. #6
Burns, OR 97720

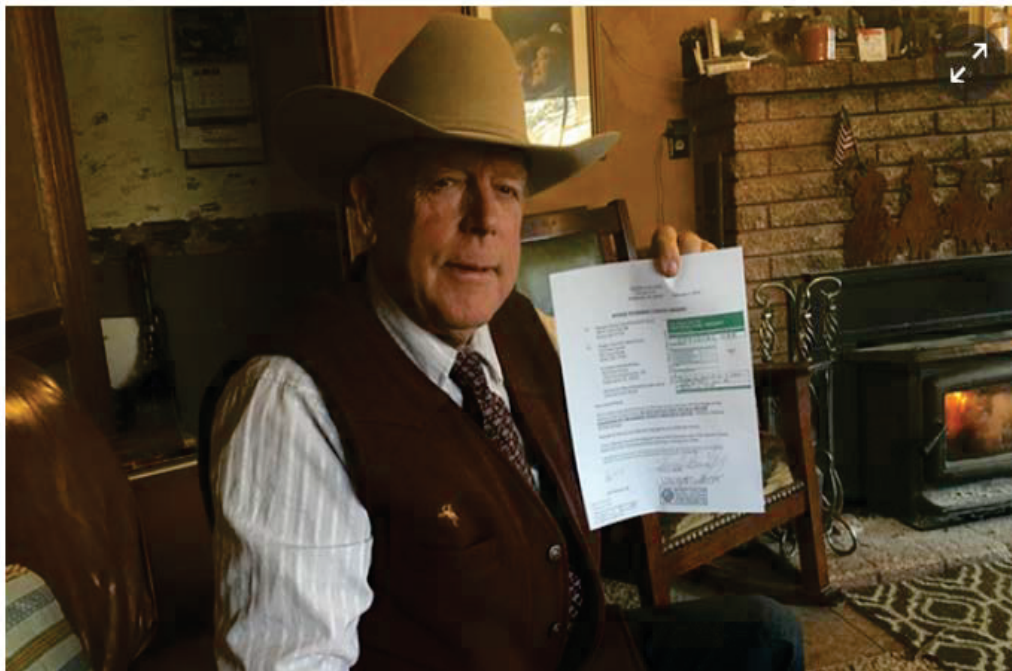
In an interview quoted in an article posted to a news website, Bundy explained the letter as follows, “What this is saying is that Cliven Bundy is taking control of things . . . If we don’t retain it, then we’ve lost everything that we’ve done in the last two months. We’re not gonna give up.” He added: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

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

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



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

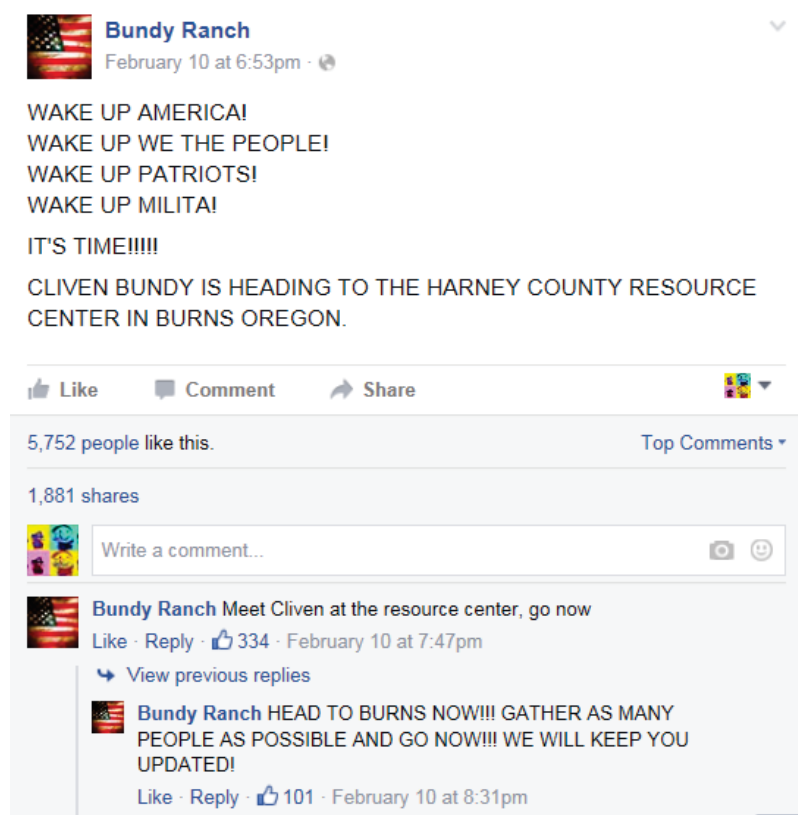
In a video posted to Youtube titled, "Cliven Bundy speaks after Kanab funeral for LaVoy Finicum," published on February 6, 2016, by a local Utah newspaper, Bundy stated:

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

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

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

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



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

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

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

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

II. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Substantial Evidence Exists Establishing Bundy's Guilt

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

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

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

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

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

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

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

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

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

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

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

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

D. Bundy Poses A Significant Danger to the Community

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

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

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

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

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

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

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

CONCLUSION

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

DATED this 16th day of February 2016.

Respectfully Submitted,

BILLY J. WILLIAMS
United States Attorney
District of Oregon

s/Charles F. Gorder, Jr.
CHARLES F. GORDER, JR.
Assistant United States Attorney

DANIEL G. BOGDEN
United States Attorney
District of Nevada

s/Steven W. Myhre
STEVEN W. MYHRE
NICHOLAS D. DICKINSON
Assistant United States Attorneys
NADIA J. AHMED
ERIN M. CREEGAN
Special Assistant United States Attorneys

CERTIFICATE OF SERVICE

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

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

CERTIFICATE OF SERVICE