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

9 UNITED STATES OF AMERICA,)

10 Plaintiff,)

11 v.)

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

22 Defendants.)
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2:16-CR-00046-GMN-PAL

**GOVERNMENT'S MOTION FOR
INTERIM PROTECTIVE ORDER**

1 The United States, by and through the undersigned, respectfully moves the
2 Court to issue an interim protective order (“Motion”) until such time as the Court
3 determines whether a protective order will permanently be entered in this case.
4 In support of its Motion, the Government submits the following.

5 On April 26, 2016, the Court entered a Case Management Order, which
6 among other things, required the Government to produce Phases I and II of
7 discovery on or before May 6, 2016. (C.R. 321) This order directed the
8 Government to produce discovery to the Federal Public Defender’s (FPD) office,
9 which would serve as a repository for the discovery and make it available to the
10 other defendants’ counsel, including standby counsel for defendant Ryan Bundy.

11 *Id.*

12 On April 29, 2016, the Government filed its Motion for Protective Order
13 under Fed. R. Crim. P. 16. (C.R. 354) In its motion, the Government set out the
14 basis for seeking the Order and lodged with the Court a Proposed Protective Order
15 for the Court’s consideration. Nearly all defendants filed an opposition to the
16 protective order. Also on April 29, 2016, two third-party media entities filed a
17 motion to intervene in the criminal case (C.R. 355) and stated their opposition to
18 the protective order. An amended motion to intervene was filed May 3, 2016 (C.R.
19 358), to which the Government’s response is due on May 20, 2016. *Id.* The
20 Government intends to timely respond to the motion to intervene.

21 On May 3, 2016, the Court issued an Order Appointing a Coordinating
22 Discovery Attorney (CDA) as to thirteen of the nineteen defendants: Cliven
23 Bundy, Mel Bundy, Dave Bundy, Blaine Cooper, Gerald DeLemus, O. Scott
24

1 Drexler, Ricky Lovelien, Steven Stewart, Todd Engel, Gregory Burleson, Joseph
2 O'Shaughnessy, Micah McGuire and Jason Woods ("May 3 Order"). (C.R. 363)
3 Among other things, the May 3 Order directed the Government to provide
4 discovery to the CDA and the CDA to then distribute the government-produced
5 discovery to the thirteen listed defendants. *Id.*

6 In compliance with the Court's Orders, the Government produced the initial
7 discovery to the FPD, counsel for Ryan Payne, on May 6, 2016, which the FPD is
8 responsible for disseminating to the five other defendants not covered by the May
9 3 Order. The Government also shipped by Federal Express, a hard drive
10 containing the discovery to the CDA for dissemination to the thirteen defendants
11 named in the May 3 Order.

12 Given that litigation relating to the protective order, including the motion
13 to intervene, will extend for weeks, and that the Government continues to provide
14 discovery to the defendants pursuant to the schedule provided in the Court's Case
15 Management Order, the Government respectfully requests that its proposed
16 protective order be entered on an interim basis until the matter can be fully
17 litigated. To that end the Government attaches as Exhibit 1 a Proposed Interim
18 Protective Order.

19 The Government further requests that the proposed interim order be
20 extended to all discovery disseminated pursuant to the Court's April 26, 2016
21 Order. The Government has requested this relief because the discovery in this
22 case is replete with information that identifies third parties, including witnesses
23 and victims. C.R. 354 at 9. The Government has a reasonable fear that the
24

1 defendants, or other supporters will further disseminate this information into the
2 public domain for the purpose of harassing and intimidating these third parties,
3 including victims and witnesses.

4 In the Government's motion for a protective order, it identified several
5 instances where these third parties have previously been cyberbullied and where
6 their personal information has been posted to the web, in at least one case
7 resulting in a criminal conviction of one individual for threatening to kill an officer
8 involved in the impoundment. C.R. 354 at 5-7. Attached to the Government's
9 motion for Protective Order are examples, such as one person posting the faces
10 and license plates of BLM officers involved in the impoundment operation of
11 Bundy's cattle. C.R. 354, Ex. 2 at 1. This post was widely shared on the internet
12 in an effort to identify the officers. As the Government has previously indicated,
13 the discovery material includes numerous pictures and videos of the events
14 surrounding the April 12, 2014 assault, which includes visual depictions of
15 officers. If images depicting the officers involved in these events are widely
16 circulated, past practices strongly support the conclusion that such disclosures
17 will lead to harassment and intimidation of these victim-witnesses.

18
19 Another social media post included in the Government's motion for
20 protective order identified a BLM officer as wanted "for capture," making that
21 officer the target of potential violence. C.R. 354, Ex. 2 at 11. Another discussed
22 putting a bullet in the head of an identified officer. C.R. 354, Ex. 2 at 12. Not only
23 have law enforcement officers been targeted, but the personal information of a
24 civilian contractor who was involved in the impoundment has also been posted to

1 the internet. C.R. 354, Ex. 2 at 15.

2 The court has authority to enter appropriate protective orders. *Alderman v.*
3 *United States*, 394 U.S. 165, 185 (1969) (“[T]he trial court can and should, where
4 appropriate, place a defendant and his counsel under enforceable orders against
5 unwarranted disclosure of the materials which they may be entitled to inspect.”);
6 *see also United States v. Campa*, 529 F.3d 980, 995 (11th Cir. 2008) (recognizing
7 “[t]he broad authority of the district court to regulate discovery” in a criminal
8 case); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984) (noting that the “trial
9 court is in the best position to weigh the fairly competing needs and interests of
10 the parties affected by discovery. The unique character of the discovery process
11 requires that the trial court have substantial latitude to fashion protective
12 orders.”).

13 The case law amply demonstrates that the protection of witnesses is one of
14 the foremost priorities in granting a protective order. The Advisory Committee
15 notes to the 1974 amendments to Rule 16 state, “Although the rule does not
16 attempt to indicate when a protective order should be entered, it is obvious that
17 one would be appropriate where there is reason to believe that a witness would be
18 subject to physical or economic harm if his identity is revealed.” *See also, e.g.,*
19 *United States v. Pelton*, 578 F.2d 701, 706-07 (8th Cir. 1978) (court properly issued
20 a protective order preventing defendant’s access to tape recordings in light of
21 Government’s concern for the safety of cooperating sources whose identity was
22 disclosed in the recordings); *United States v. Fuentes*, 988 F. Supp. 861, 866-67
23 (E.D. Pa. 1997) (permitting defense counsel to disclose witnesses true identities
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1 only to the extent necessary to investigate the witness in preparation for trial);
2 *United States v. Zelaya*, 336 F. App'x 355, 357-58 (4th Cir. 2009) (upholding
3 protective order permitting police officers from El Salvador to testify under
4 pseudonyms, without disclosure of their true names to the defense, where
5 Government established genuine threat to the witnesses' safety from the MS-13
6 criminal gang and defense had sufficient information about the witnesses to
7 conduct an effective cross-examination).

8 An interim protective order preserves the status quo until such time as the
9 matter can be fully and fairly litigated. If an interim protective order is not
10 entered, the defendants will be free to disclose the entirety of the discovery
11 material produced to them to third parties. While the Government continues to
12 comply with the Court's Case Management Order's discovery production
13 deadlines, it respectfully submits that such an irreparable harm should not be
14 permitted to occur given the pending status of the motion for protective order, and
15 the very real risks to witnesses and victims' safety discussed therein.

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the United States Attorney's Office. A
3 copy of the foregoing **GOVERNMENT'S MOTION FOR INTERIM**
4 **PROTECTIVE ORDER** was served upon counsel of record, via Electronic Case
5 Filing (ECF).

6 DATED this 9th day of May, 2016.

7
8 */s/ Mamie A. Ott*

9 MAMIE A. OTT
Legal Assistant

Exhibit

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**PROPOSED INTERIM
 PROTECTIVE ORDER**

1 Upon motion of the United States, the Court being advised as to the nature
2 of this case, and good cause being shown, it is hereby ORDERED that, pursuant to
3 Rule 16(d)(1) of the Federal Rules of Criminal Procedure, defense counsel may
4 provide copies of discovery only to the following individuals:

5 (1) The defendants in this case;

6 (2) Persons employed by the attorney of record who are necessary to assist
7 counsel of record in preparation for trial or other proceedings in this case;
8 and

9 (3) Persons who defense counsel deems necessary to further legitimate
10 investigation and preparation of this case.

11 IT IS FURTHER ORDERED that defense counsel shall provide a copy of
12 this Interim Protective Order to any person above who receives copies of discovery.

13 IT IS FURTHER ORDERED that any person above who receives copies of
14 discovery from defense counsel shall use the discovery only to assist the defense in
15 the investigation and preparation of this case, and shall not reproduce or
16 disseminate the discovery material to any other person or entity.

17 IT IS FURTHER ORDERED that this Interim Protective Order applies only
18 to materials and documents created or written by the government, or obtained by
19 the government through warrants or court orders. This Interim Protective Order
20 does not restrict reproduction or dissemination of discovery materials the defense
21 may otherwise obtain through open sources (e.g., social media posts by the
22 defendants or others, news accounts related to the events in this case, etc.).
23

1 IT IS FURTHER ORDERED that if there is specific discovery material that
2 defense counsel believes should be an exception to this Interim Protective Order,
3 the parties shall confer before seeking guidance from this Court. The parties shall
4 advise the Court by letter of any exceptions made to the Interim Protective Order.

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