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

9 UNITED STATES OF AMERICA, )  
 ) 2:16-CR-00046-GMN-PAL  
10 Plaintiff, )  
 ) **GOVERNMENT’S RESPONSE IN**  
11 v. ) **OPPOSITION TO DEFENDANT**  
 ) **RYAN BUNDY’S OBJECTION TO**  
12 RYAN BUNDY, ) **MAGISTRATE JUDGE’S**  
 ) **FINDINGS AND ORDER (ECF No.**  
13 Defendant. ) **367)**

14 **CERTIFICATION:** Pursuant to Local Rule 12-1, this response is timely filed.

15 The United States, by and through the undersigned, respectfully submits  
16 its Response in Opposition to Defendant Ryan Bundy’s Objection to Magistrate  
17 Judge’s Findings and Order (ECF No 367). The Court should overrule the  
18 Objection as moot because R. Bundy is currently detained in Oregon pending trial  
19 there and is not available for a rehearing in the District of Nevada. To the extent  
20 the Court rules on the merits, the Objection should be overruled.

21 **BACKGROUND**

22 On February 17, 2016, Ryan Bundy (“R. Bundy”) was charged by  
23 Indictment in Nevada with numerous crimes of violence in connection with his  
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1 alleged participation in a conspiracy to use force, violence and firearms to assault  
2 and extort federal officers on April 12, 2014, near Bunkerville, Nevada. ECF No.  
3 5. The charges included assault with a deadly weapon on a federal law  
4 enforcement officer, threatening a federal law enforcement officer, obstruction of  
5 justice, extortion of federal officers, and use and brandish a firearm in relation to  
6 a crime of violence, and conspiracy to commit same, all in violation of Title 18,  
7 United States Code, Sections 111(a)(1) and (b), 115, 924(c), 1503, 1951 and 371,  
8 respectively. *Id.*

9 Before the return of the Nevada Indictment, which joined R. Bundy and  
10 four (4) other co-defendants, R. Bundy had been charged by Indictment in the  
11 District of Oregon, for felony violations arising from his alleged involvement in an  
12 armed takeover of the Malheur National Wildlife Refuge (MNWR) in Harney  
13 County, Oregon, in and around January 2016. R. Bundy was arrested on January  
14 27, 2016, ordered detained, and remains detained pending trial in the Oregon  
15 case. Trial in that case is set for September 2016.

16 On March 2, 2016, the Superseding Indictment in this case was returned in  
17 the District of Nevada, joining R. Bundy with 14 additional defendants, bringing  
18 the total number of joined defendants to 19. ECF No. 27. That same day, the  
19 Court issued a writ of habeas corpus *ad prosequendum* requiring the United  
20 States Marshal Service (USMS) to transport R. Bundy from Oregon to Nevada so  
21 that he could be arraigned on the Superseding Indictment. ECF No. 56.

22 R. Bundy was transferred to the District of Nevada on April 13, 2016, and  
23 made his initial appearance in this case on April 15, 2016. ECF No. 247. On  
24

1 April 19, 2016, Magistrate Judge Peggy Leen held a hearing to conduct a *Faretta*  
2 canvas of R. Bundy on his motion. ECF No. 285. After advising R. Bundy of the  
3 difficulties attenuating to self-representation and the fact that special  
4 considerations would not be made for him based on his *pro se* status, Judge Leen  
5 granted his motion.

6 On April 20, 2016, a detention hearing was held before Magistrate Judge  
7 George Foley, Jr. ECF No. 288. At the detention hearing, R. Bundy made an oral  
8 motion to continue the hearing so that he could gather additional evidence to  
9 support his argument that he should be released pending trial in this case. *Id.*  
10 Judge Foley denied the motion without prejudice to R. Bundy's ability to move to  
11 reopen and ordered R. Bundy detained as a risk of nonappearance and danger to  
12 the community. ECF Nos. 288 and 298.

13 On May 4, 2016, R. Bundy filed his objection to Judge Foley's factual  
14 findings and detention order. ECF No. 367.

### 15 ARGUMENT

16 The Bail Reform Act provides two clear avenues for review of a detention  
17 order: either appeal to the District Court pursuant to Title 18, United States Code,  
18 Section 3145(c), or else move to reopen the detention hearing before the magistrate  
19 judge based on new and material information that was unavailable to the movant at  
20 the time of the original hearing. 18 U.S.C. § 3142(f)(2). R. Bundy's May 4, 2016,  
21 appears to be a combination of both and yet offers no argument as to either.  
22

23 The pleading is captioned as R. Bundy's "objection" to Judge Foley's findings  
24 and detention order and cites to Local Rule 1B 3-1. ECF. No. 367 at 3:18-21. Yet,

1 elsewhere R. Bundy refers to the document as a “motion,” *id.* at 3:12, and then  
2 separately as an “appeal.” *Id.* at 3:18. Yet it appears to be an appeal only to the  
3 extent that the Court is willing to overturn the order of detention on the record and  
4 otherwise if the Court is unwilling to do so, then seeks to reopen the detention  
5 hearing before Judge Foley. *See id.* at 9:13-18 (R. Bundy asks that the Court  
6 “reverse” Judge Foley’s detention order, or else “remand the matter” back to Judge  
7 Foley for a new detention hearing.) Additionally, R. Bundy fails to submit any  
8 argument applying the four factors articulated in the Bail Reform Act, 18 U.S.C.  
9 § 3142(g)(1)-(4), that would support revocation of the detention order on appeal.  
10 Nor does he proffer any new and material evidence that would allow for the hearing  
11 to be reopened before Judge Foley. Instead, R. Bundy asserts that Judge Foley  
12 erred in denying his oral motion to continue the hearing and erred in weighing the  
13 Bail Reform Act factors. ECF No. 367.

14  
15 As an initial matter, even if it was clear whether R. Bundy seeks to appeal or  
16 to reopen the detention hearing, the issue is moot at this point. R. Bundy is  
17 detained in Oregon pending trial there. He will remain in federal custody in that  
18 case regardless of the detention order at issue in this case. Unless R. Bundy’s  
19 detention status changes in the Oregon case it would make little sense to order his  
20 transfer back to Nevada for either a hearing before this Court on appeal or for a  
21 reopened detention hearing before Judge Foley when the outcome of either hearing  
22 will ultimately have no effect on his pretrial detention status at this time.

1 In any event, for the reasons discussed below, R. Bundy provides no basis for  
2 release or reopening the hearing and the Court should therefore affirm Judge  
3 Foley's order of detention on the record before it.

4 **A. Judge Foley Properly Denied the Motion to Continue the**  
5 **Detention Hearing**

6 R. Bundy appears to assert that he was entitled to additional time to prepare  
7 for the detention hearing and that Judge Foley's denial of his oral motion to  
8 continue violated his due process rights. ECF No. 367 at 3-4. R. Bundy asserts that  
9 he needed more time to prepare for the detention hearing because he "had not had  
10 any significant time with his attorney, had not been provided with any materials to  
11 research, draft, write and had not been given any discovery or other notice of the  
12 government's intended proffer." *Id.* at 4:17-19.

13 The Bail Reform Act specifically provides that a hearing shall be held  
14 immediately upon the person's first appearance before a judicial officer unless a  
15 party seeks a continuance. 18 U.S.C. § 3142(f)(2)(B). A defendant may be granted  
16 a continuance of up to five days, or more for *good cause*. *Id.* Detention hearings are  
17 routinely held without a defendant being privy to the Government's specific  
18 evidence or arguments prior to the hearing. To the extent evidence unknown to the  
19 defendant emerges after the hearing that might dispute the government's proffer,  
20 the Bail Reform Act provides an avenue for reopening the detention hearing at any  
21 time. *Id.*

22 At the April 20 detention hearing, R. Bundy stated there was evidence that  
23 he needed but that could not be obtained and that he needed more time to prepare.  
24

1 See Exhibit A (Audio recording of R. Bundy's April 20, 2016 Detention Hearing).  
2 Both at the hearing and in his written objection, R. Bundy failed to articulate the  
3 particular evidence, materials, or information that would have been available to  
4 him had the court granted his motion to continue or how much additional time  
5 would have been needed to obtain it. *Id.* and ECF No. 367 at 4-5.

6 In denying the motion, Judge Foley stated, orally on the record, and in the  
7 written detention order, that the denial was without prejudice should R. Bundy  
8 become aware of new information with a material bearing on the issue of pretrial  
9 detention. ECF Nos. 288 and 298 at 2. In so doing, he acted well within his  
10 discretion and R. Bundy can establish no prejudice as a result. *See Ungar v.*  
11 *Sarafite*, 376 U.S. 575, 589 (1964) (affirming denial of motion to continue contempt  
12 hearing where party needed additional time to gather evidence, and noting that  
13 '[t]he matter of continuance is traditionally within the discretion of the . . . judge,  
14 and it is not every denial of a request for more time that violates due process even if  
15 the party fails to offer evidence or is compelled to defend without counsel.")

16  
17 **B. Judge Foley Correctly Weighed the Factors Outlined in the  
Bail Reform Act**

18 R. Bundy raises three issues with Judge Foley's detention order, but each are  
19 without merit.

20 First, R. Bundy disputes Judge Foley's application of the "rebuttable  
21 presumption" in favor of detention in this case, describing it as "conclusory." ECF  
22 No. 367 at 5-6. The detention order specifically states that "Based on the  
23 allegations in the Superseding Indictment, there is a rebuttable presumption that  
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1 the defendant poses a substantial risk of nonappearance and a danger to the  
2 community.” ECF No. 298 at 2(2). It is clear both from the record and from the  
3 written order that Judge Foley was referencing the rebuttable presumption  
4 provided in the Bail Reform Act based on R. Bundy having been charged with a  
5 violation of Title 18, United States Code, Section 924(c). 18 U.S.C. § 3142(e)(3)(B).  
6 Judge Foley correctly acknowledged the grand jury’s finding of probable cause in  
7 charging R. Bundy with four counts of 924(c) violations and properly invoked the  
8 presumption. *See United States v. Ward*, 63 F. Supp. 2d. 1203, 1209 (C.D. Cal.  
9 1999) (“Various circuits have uniformly held that a judicial officer does not have to  
10 make an independent determination of probable cause; a grand jury indictment  
11 itself is sufficient to establish probable cause for purposes of invoking the Section  
12 3142(e) presumption.”)

13  
14 R. Bundy further contends that Judge Foley failed to provide a sufficient  
15 basis for his conclusion that R. Bundy will not appear at future proceedings and  
16 presents a danger to the community. ECF No. 367 at 6-8. Both the oral record and  
17 written order prove otherwise.

18 Judge Foley’s written order specifically referenced the rebuttable  
19 presumption applicable to the issue of the risk of nonappearance and danger to the  
20 community. ECF No. 298 at 2(2). It also referenced the allegations regarding R.  
21 Bundy’s conduct in the April 12 assault and in traveling with arms to Oregon to  
22 participate in the armed takeover of the Malheur National Wildlife Refuge  
23 (MNWR). *Id.*

1 Judge Foley noted R. Bundy's significant family and community ties, his  
2 history of employment and his prior record. He also noted that although the prior  
3 criminal record did not necessarily indicate R. Bundy was a danger to others, it did  
4 "indicate, however, that Defendant will not obey court orders." *Id.*

5 However, Judge Foley ultimately found that the nature and character of the  
6 offenses charged in the Superseding Indictment, the weight of the evidence against  
7 R. Bundy, and his participation in Oregon established that no conditions or  
8 combination of conditions would reasonably ensure R. Bundy's future appearance.  
9 *Id.*

10 Additionally, Judge Foley's written order specifically provided in the  
11 "Statement of the Reasons for Detention" that the court found the information  
12 submitted at the hearing established by clear and convincing evidence that R.  
13 Bundy was a danger to the community and by a preponderance of the evidence that  
14 he posed a risk of flight and that no condition or combination of conditions will  
15 reasonably assure the safety of the community or the appearance of R. Bundy. *Id.*  
16 at 2, Part II.

17 The information proffered by government counsel included not only R.  
18 Bundy's role in the April 12 assault but also the following: R. Bundy's refusal to  
19 disavow violent interference with the BLM's impending impoundment in February  
20 2014; R. Bundy's involvement in the March 28, 2014 interception of BLM's hired  
21 contractors' convoy; his April 2, 2014, disruption of a Richfield, Utah sale barn that  
22 had contracted with the BLM to auction the impounded cattle, including R. Bundy's  
23 statement to the local sheriff on scene that if he could not stop the cattle at the  
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1 border, he would take them by force at the sale barn; and R. Bundy's public  
2 statements including that they needed to go to the BLM compound and that a few of  
3 them may "have bullets drilled through us . . . and then we will have to turn around  
4 and drill bullets through them. . ." and that the local law enforcement would not  
5 help the Bundys so they were gathering their own private law enforcement force.

6 *See Exhibit A.*

7         Additionally, the government proffered the details of R. Bundy's involvement  
8 in the April 12 assault following Cliven Bundy's call to go get his cattle from the  
9 BLM impoundment. R. Bundy along with his brothers led the assault at the  
10 impoundment site, delivered the Bundy family's demands that BLM leave  
11 immediately, and announced to the Bundy followers that "the west has now been  
12 won!" as the BLM prepared to leave.

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14         Government counsel also proffered information regarding R. Bundy's conduct  
15 after the April 12 assault, including his interference with BLM employees in the  
16 Gold Butte area and his participation in the armed takeover of MNWR. Finally, the  
17 government noted that at issue ultimately were federal court orders that R. Bundy  
18 failed to comply with that remained in effect, remained unenforced and that the  
19 proceeds of R. Bundy's criminal conduct remained at large on the public lands. *See*  
20 *Exhibit A.*

21         Judge Foley made oral findings regarding the information proffered by the  
22 government, including that R. Bundy was a leader and organizer in the events and  
23 also R. Bundy's participation in efforts to thwart any law enforcement efforts  
24

1 relating to the April 12 events thereafter. *Id.* Judge Foley also noted that R. Bundy  
2 posed a risk of nonappearance given the allegations regarding his refusal to obey  
3 and rejection of court orders. *Id.*

4         Given Judge Foley’s oral and written findings and acceptance of the extensive  
5 proffer provided by the government, R. Bundy’s assertions that Judge Foley  
6 provided no basis for finding by a preponderance of the evidence that he posed a  
7 risk of flight and by clear and convincing evidence that he presents a danger to the  
8 community is belied by the record.

9         As discussed above, the bases for R. Bundy’s objections lack both factual  
10 and legal support. Additionally, R. Bundy makes no showing as to the four Bail  
11 Reform Act factors to support an argument for release on appeal and fails to  
12 articulate any new and material information supporting the reopening of his  
13 detention hearing before Judge Foley. *See* ECF No. 367. Accordingly, the Court  
14 lacks any basis for treating the objection as an appeal and granting it or as a  
15 motion to reopen and ordering that the hearing be reopened.

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**WHEREFORE**, for all the foregoing reasons, the Court should overrule R. Bundy’s objection and uphold the detention order issued in this case.

**DATED** this 23<sup>rd</sup> day of May, 2016.

Respectfully,

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*//s//*

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**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'S OBJECTIONS TO MAGISTRATE'S FINDINGS AND ORDER (ECF No. 367)** was served upon the following persons via Fed Ex:

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Dated this 23<sup>rd</sup> day of May, 2016.

*/s/ Mamie A. Ott*  
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