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5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA,

CASE NO. 2:16-cr-00046-GMN-PAL

9 Plaintiff,

10 vs.

11 CLIVEN D. BUNDY, et al,

12 Defendants

13 **DEFENDANT CLIVEN BUNDY’S OBJECTIONS TO THE MAGISTRATE’S ORDER OF**
14 **DETENTION AND BUNDY’S MOTION FOR REVOCATION OF THE MAGISTRATE’S**
15 **ORDER OF DETENTION**

16 Comes now, the Defendant, Cliven Bundy, by and through his attorney, Joel F. Hansen, Esq.,
17 and files with the District Court his objections to the Magistrate Judge’s Detention Order of March 18,
2016 and moves that the Detention Order be revoked and vacated.

18 **I. THE MAGISTRATE’S ORDER IS IN ERROR BECAUSE IT IS BASED UPON AN**
19 **ERRONEOUS INTERPRETATION OF THE DEFENDANT’S HISTORY AND**
20 **CHARACTER, AND FAILS TO RECOGNIZE THE FACT THAT CLIVEN BUNDY**
21 **POSES NO RISK OF HARM TO THE COMMUNITY BECAUSE HE HAS NO**
22 **CRIMINAL HISTORY, HE HAS NEVER COMMITTED A VIOLENT ACT, HE HAS**
NEVER HARMED ANYONE, AND HE HAS SUCH SIGNIFICANT TIES TO HIS
FAMILY, HIS RANCH, HIS CHURCH, AND HIS COMMUNITY THAT HE POSES
ABSOLUTELY NO FLIGHT RISK

23 **A. The Facts Presented to the Magistrate Show That the Requirements to Detain a**
24 **Defendant Pending Trial Have Not Been Met by the Government**

25 Attached hereto and incorporated herein by reference are the Defendant’s “MEMORANDUM
26 IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY (see **Exh. A**) and the SUPPLEMENT
27 TO DEFENDANT’S MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN
28 BUNDY (see **Exh. B**). These two Memoranda show, beyond any doubt, that:

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1 1. A defendant should only be denied bail in rare circumstances, and that doubts should be
2 resolved in favor of the accused. Pretrial release should be denied only for the strongest reasons.

3 2. The government has failed to show that Cliven Bundy has ever committed any violent
4 act. The only violent acts committed during the “standoff” were committed by the government agents.
5 Mr. Bundy was never present on the scene of any confrontation, never brandished a weapon, was never
6 armed with any firearm, never directed anyone to assault a federal officer, and never assaulted anyone
7 or committed any battery in his life .

8 3. Mr. Bundy has never been accused of or committed any crime of violence in his life.

9 4. The government’s burden of proof in establishing a risk of flight is by a preponderance
10 of the evidence. Only in rare cases should release be denied, and doubts regarding the propriety of
11 release are to be resolved in favor of the defendant.

12 5. The many letters from his friends, acquaintances, and family show that Mr. Bundy:

13 a. Is a caring and compassionate family man who loves God, his family, his
14 country and his state. He is a hard worker and an honest man. He has always
15 tried to settle things peacefully.

16 b. He is an active and faithful member of his church.

17 c. He is a beloved man and a large part of our community in Bunkerville, Nevada.

18 d. He is an amazing Father, Husband, Grandfather, Friend, Cousin, and Neighbor.

19 e. He is a good honest man. He should be allowed to be home with his family,
20 because he serves people in his community on a daily basis and contributes a
21 great deal of kindness and love for his community.

22 f. Cliven is a man of integrity, honesty, and love.

23 g. “He is one of the most honest, upright, decent man we have ever known. He is
24 no threat for anyone.” Statement by Rulon H. Spencer and Wendy S. Spencer.

25 B. The Magistrate’s Order Is Erroneous

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1 **B. The government has presented no evidence to support Probable cause**

2 **1. No probable cause that Bundy will commit crimes of violence has been**
3 **presented.**

4 All that the government has presented to this Court are allegations and innuendos. There is no
5 probable cause to believe the Cliven Bundy has committed offenses that are crimes of violence. There
6 is, in fact, no evidence whatsoever that Cliven Bundy has ever committed any act of violence at all.
7 There is no evidence that Cliven even carried a firearm during the “standoff.” No one who was
8 opposing the efforts of the BLM did anything violent. No shots were fired. No agent of the government
9 was even touched. Had there been a “conspiracy” to do violence against the government, this
10 conspiracy to commit violence would undoubtedly have led someone to pull a trigger or to attack
11 someone. No such thing happened.

12 **2. The BLM committed the only violence.**

13 The BLM shot Cliven Bundy’s bulls and buried them in a secret grave, trying to hide their acts.
14 The BLM violently threw Margaret, Cliven’s sister, to the ground. The BLM tazed Ammon twice—and
15 the Court is well aware that being tazed is a horrible, painful experience in which one’s entire body is
16 paralyzed by a powerful and painful electric shock. And when Davey Bundy was on a County road,
17 with an iPod, taking a video of what the BLM was doing in preparation to take Bundy’s cattle, they told
18 Davey to stop taking that video. When Davey said he was on a county road, and that the BLM had no
19 jurisdiction over a county road, and no authority to tell him to stop taking a video of their actions, and
20 that he had a first amendment right to be taking that video—the BLM approached him, violently took his
21 iPod and destroyed it, and then handcuffed Davey behind his back, threw him to the ground, stomped
22 on the back of his head, and left him very uncomfortably handcuffed behind his back for hours. They
23 took him to jail, left him there overnight, and then released him, without ever charging him with any
24 crime, and then destroying or hiding any documents showing that he had been incarcerated there.

25 **3. Cliven Bundy committed no act of violence**

26 No act of violence occurred on account of Cliven Bundy, even as an alleged “conspirator.” The
27 government contends that Cliven is guilty of a crime of violence, but it has not presented a shred of
28 evidence to support that position. And it is ludicrous to suppose that Mr. Bundy is going to harm

1 anyone if he is released from detention. There is no evidence that he has ever done such a thing, and
2 there is no evidence that he is going to enter into a conspiracy to go out and hurt someone in his
3 community. Of course he is not going to do that. He's never done it. He knows the people in
4 Bunkerville. It is a small town, and they are his friends.

5 **4. The present case is criminal; any order for release will carry with it**
6 **penalties which may include the imposition of incarceration; this is vastly**
7 **different from a civil order**

8 The Magistrate and the government make much of the fact that Mr. Bundy has violated past
9 Court orders by refusing to remove his cattle from the ranch. Therefore, it is reasoned, why would he
10 obey the orders of this Court to appear for hearings and trial? But the Magistrate and the government
11 have *conflated* two separate issues. The prior orders to stop grazing his cattle were issued in a civil
12 case. The orders were not orders that if he didn't stop, he would be imprisoned. Judge George never
13 ordered any such thing. Those orders were about removing cattle from the land, and actually no money
14 judgment has ever been entered against Mr. Bundy. No finding of contempt of court has ever been
15 entered. The government obtained injunctions only, and failed to enforce those injunctions until the
16 standoff in question of April 2014. *United States v. Bundy*, No. 2:12 CV 0804©LDG©GWF, 2013 WL
17 3463610, at *1 (D. Nev. July 9, 2013). The trouble is, the United States a/k/a the BLM never attempted
18 to enforce these injunctions. And so Mr. Bundy stayed on the land. There was nothing in the injunction
19 that said that if he didn't obey them that he would be imprisoned. That is entirely different from the
20 present situation.

21 In the present situation, any order for release which would be issued would impose travel and
22 other restrictions on Mr. Bundy, and require him to appear for all Court hearings and trial, and would
23 result in him being sent back to detention and imprisoned if he were to violate the order—that is very
24 different from an injunction that was never enforced. He knows this will be enforced, because it will
25 say right in the order that if he violates it, he may be incarcerated. The Court can obviously see how
26 different injunctions are from an order imposing restrictions on Mr. Bundy's freedom of movement and

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1 other actions, the violation of which will bring upon him the severe judgment of this Court—probable
2 incarceration in solitary confinement. He is familiar with solitary confinement, because he has been in
3 solitary confinement ever since he was sent to Nevada after being arrested in Oregon. So obviously he
4 knows he certainly doesn't want to go back there.

5 This all means that there is nothing in Mr. Bundy's history which would show that he will not
6 appear before this Court when told to do so. Nothing. He has always been an honest, law abiding, hard
7 working citizen, father, husband, and grandfather, who has been a pillar of goodness and respect in his
8 community. Why a man like this needs to be imprisoned is beyond comprehension. Cliven Bundy is
9 about as likely to hurt someone or to flee Nevada as a desert tortoise. It just isn't going to happen.

10 **5. The government has presented a paucity of evidence that Cliven Bundy "is**
11 **the leader, organizer, and primary beneficiary of the conspiracy charged**
in the . . . indictment." See Magistrate's Order, Pg. 3:25-27

12 In its rambling "MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRETRIAL
13 DETENTION", filed with the Court in Oregon, the government baldy asserts that "Based on the
14 evidence adduced from its investigation to date, the government proffers the following in support of its
15 motion for pretrial detention." The government then fills up 34 pages with accusations, innuendoes,
16 and unsupported allegations, but seldom presents any actual evidence of what it asserts. The
17 government must know that the standards of the Bail Reform Act require it to prove by "clear and
18 convincing" evidence that the Defendant poses a dangerous threat to the community, and that it must
19 prove by a preponderance of the evidence that the Defendant is a flight risk. If one accepts at face value
20 everything the government claims in these 32 pages of empty, vacuous arguments, almost entirely
21 devoid of anything besides bald assertions by the DOJ, then Cliven Bundy could be characterized as the
22 Bad Bart of Bunkerville. The trouble is, although the government asserts that its investigation has
23 proven all of these accusations, in fact the DOJ hasn't presented this mystery evidence to this Court.
24 The government can't just make assertions. It must present actual evidence to back up its assertions.
25 This the government has failed to do.

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1 Bundy by stating that if he makes similar statements again like he did at Bunkerville, “things won’t end
2 well.” Is that why Mr. Bundy, a man who has never hurt a fly, is being held in solitary confinement?
3 There is nothing in the U.S. Constitution allowing the federal government to hold political prisoners
4 without a trial. Nothing.

5 **8. Unreasonable restrictions on grazing have destroyed ranching in Clark**
6 **County**

7 When the BLM “restricted both the number of head he could graze and the seasons during which
8 he could graze them” (see pg. 5), Cliven fired the BLM, because the BLM is supposed to encourage
9 ranching in order to produce food for the American people. Its job is not to destroy ranching. The
10 original purpose of the BLM and the Taylor Grazing Act was to encourage grazing on “federal”
11 lands—not to destroy it. See 43 U.S.C.A. § 1751, which provides for the “betterment” of the grazing
12 lands in the 16 Western States. There is nothing in the act which authorizes the BLM to engage in a
13 calculated program to drive ranchers off the land by raising grazing fees and restricting the number of
14 cattle and the grazing seasons to the point that the ranchers are driven off the land. Yet the BLM has
15 shut down every ranching operation in Clark County—except Cliven Bundy’s. So who is violating the
16 law here? Doesn’t Mr. Bundy have the right to raise a Constitutional question about the legality of the
17 high handed tactics of the BLM? Of course he does—and particularly by making statements about the
18 actions of the BLM and by the exercise of people’s First Amendment right to peaceably assemble, and
19 the people’s Second Amendment right to keep and bear arms. No person demonstrating in favor of
20 Cliven Bundy ever fired a weapon. No person supporting Cliven Bundy ever hurt any BLM agent. No
21 person raising a Constitutional and legal question about who owns the land in Nevada ever physically
22 assaulted anyone in the employ of the Federal government. Only the BLM agents assaulted and battered
23 people—Ammon, Margaret, and Davey.

24 **9. The government has presented no evidence that Cliven Bundy organized**
25 **anything**

26 The DOJ claims that Cliven Bundy “organized and led over 400 Followers to assault the BLM
27 officers as they guarded the Impoundment site.” See pg. 7. But where is the proof that he did this? The
28 government presents no proof that Cliven was even at or near the impoundment site. The government
has presented no affidavit, picture, or anything else to show that Cliven Bundy “led” anyone to the

1 impoundment site. He simply wasn't there. And where is the proof that the were "over 400 Followers."
2 Who counted them? Where is his/her affidavit or declaration? Incredibly and amazingly, the
3 government cites to its own Complaint for proof of all of this. But as the Court well knows, the
4 Complaint is just allegations. It proves absolutely nothing.

5 The government say Bundy "mustered more than 60 firearms. . . ." See pg. 8. Again, where
6 is the proof of this? The government presents none. Who counted the firearms? What did Cliven do
7 to "muster" them. And suddenly the number of people present is reduced to 270. Who is doing this
8 counting? Where is his/her declaration?

9 The government further baldly asserts: "Many of these officers . . . remain profoundly affected
10 emotionally by this event to this day." What are the names of these officers? Where are their
11 statements that they are profoundly affected? Where are their psychologists' statements that they are
12 profoundly affected? If they are profoundly affected, is it because they concluded that they were like
13 Redcoats attacking patriots? Do they believe that they were in the wrong because of what they did?
14 Why does the government continue endlessly to make these broad and bald statements without anything
15 but the word of a government ghost writer that they are true?

16 At pg. 9, the government asserts that "[T]he complaint alleges and the investigation shows that
17 Bundy was responsible for recruiting the gunmen to come to Nevada to confront the BLM." It doesn't
18 amount to a hill of beans what the Complaint alleges. The Complaint can allege anything that someone
19 in the DOJ with a fertile imagination can think up. What matters in this proceeding is clear and
20 convincing proof—not bald statements and gaseous allegations. Where is there any proof and where is
21 the credible evidence that Cliven Bundy recruited anyone? In clear violation of law, the government
22 presents none.

23 **10. The evidence does not show that this was an unprecedented act**

24 At page 9 the unsupported assertions continue. "The evidence shows that this was an
25 unprecedented act." But the government does not show that this was an unprecedented act. What does
26 it mean by an "unprecedented act." Is the government unaware of the Whiskey Rebellion? How about
27 the Everett Massacre? How about the Haymarket Riot or the Ludlow massacre? What comes to mind
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1 is the stand that the minute men made against the British at Bunker Hill. Or at Concord Bridge. Or at
2 Lexington green.

3 But the difference between all of these “standoffs” and the Bunkerville standoff is this—no one
4 who was there on Cliven Bundy’s side committed any act of violence. It was all done by the
5 government. So yes, in this, it was unprecedented. The Bundy supporters exercised incredible restraint
6 in face of violent acts by the BLM.

7 **11. Hearsay quotations from unidentified persons are not “clear and
8 convincing evidence.”**

9 The government allegedly quotes Mr. Bundy at the foot of pg 9 that he made a statement “to
10 another person.” Who is this person? Where is his declaration or affidavit? How does the government
11 know this? Are we and the Court supposed to just believe whatever the government says? No, we’re
12 not. The government must prove that Cliven Bundy is dangerous by “clear and convincing evidence.”
13 A hearsay statement by an unidentified person which is supported by nothing but words some
14 unidentified law clerk wrote on a computer screen is not “clear and convincing evidence.” The
15 government fails again. See *United States v. Scales*, 344 F.Supp. 213 (D. Me. 2004).

16 At pg. 10 the DOJ quotes what Ammon Bundy said, which the DOJ doesn’t like. Well, the
17 question which comes immediately to mind is whether Cliven Bundy is guilty by association here. The
18 government presents no evidence that Cliven Bundy told Ammon to say this. Guilt by association is
19 not clear and convincing.

20 **12. These unsupported hearsay allegations and innuendoes go on for another
21 24 pages and mostly present completely immaterial accusations**

22 The government alleges, without presenting any actual evidence, that Cliven Bundy established
23 a firing range, stated that he obeys the laws of the State of Nevada, quotes an unidentified television
24 news report, alleges that two of Cliven’s sons stopped a truck (so what?), that Ammon followed a fire
25 truck too closely (so what?), that Ryan asked what plants the BLM was counting (so what?), that an
26 unidentified BLM agent heard Cliven say that he was there to fix a leaky pipe, that the same
27 unidentified BLM agents heard “gunshots” or “a popping sound” in the night and heard several
28 unidentified male voices, that Ryan and Dave said the BLM should stay away from Bunkerville, that
Cliven Bundy asked the sheriff of Harney County in Oregon to take the Hammonds into custody, that

1 Cliven said he was enjoying his freedom now that the BLM had departed, that Cliven called the wanton
2 killing of LaVoy Finnicum “murder,” that Cliven wouldn’t sign contracts with the BLM, that another
3 unidentified “subject” posted something on Facebook (as if Cliven were responsible for someone else
4 exercising his freedom of speech), and that an another unidentified subject said that some of the MNWR
5 “occupiers” had made their way to the Bundy ranch. None of these allegations are backed up or proven
6 by anything.

7 The government presents no evidence to the Court or to the Defendant. It is impossible to refute
8 a quote from someone who is “unidentified.” This is the rankest sort of hearsay. It smacks of Star
9 Chamber. The accused doesn’t get to know who is saying what about him. He has no opportunity to
10 confront the witnesses against him, or even find out who they are, or even see their statements. This
11 is not due process of law. It is guilt by accusation. The government has presented no clear and
12 convincing evidence that Mr. Bundy is a danger to the community, nor has it presented a preponderance
13 of evidence that he is a flight risk. The government has presented nothing but hearsay and unidentified
14 newspaper articles, Utube quotes that could have been posted by anyone, including the DOJ, and
15 assertions that the government’s investigation revealed this evidence--but the government hasn’t
16 bothered to present any evidence to the Court or to the Defendant that any of this is anything but the
17 flights of fancy of an over zealous prosecutor.

18 The Court will remember the old TV ad, (which is particularly appropriate here), “Where’s the
19 beef?” The government has presented no beef--no meat--no evidence. It has presented objects which
20 look like hamburgers, but the hamburger patty is missing. The government says that “by some
21 accounts” there was a “50 caliber machine gun” in the militia camps. Who gave these accounts? Were
22 they eyewitnesses? Did they hear it third or fourth hand? Do they know what a 50 caliber machine gun
23 looks like? Does the prosecutor know that the proper designation of such a gun is .50 caliber, meaning
24 50 millimeters of barrel diameter? The government claims that it has conducted hundreds of witness
25 interviews--yet not one quotation from these alleged interviews is presented to this Court. As one
26 doubting Thomas said, “If you believe what the U.S. government says, just ask the American Indians.”
27 We don’t have to believe what the government says unless the government proves it, and the Bail
28

1 Reform Act of 1984 requires PROOF. Clear and convincing doesn't include bald assertions and
2 unsupported innuendos.

3 **II. THIS COURT REVIEWS THE MAGISTRATE'S ORDER DE NOVO**

4 When a defendant seeks review of a magistrate judge's order of detention, the district court is
5 bound to review the matter de novo, and undertake a complete review of the matter for the purpose of
6 arriving at its own independent conclusion. See *United States v Duncan*, 897 F. Supp. 688, 689-690
7 (N.D.N.Y. 1995) (citing *United States v Leon*, 766 F.2d 77, 80 (2d Cir 1985)); see also *United States*
8 *v King*, 859 F.2d 485, 489-491 (11th Cir. 1988); *United States v. Williams*, 753 F.2d 329, 331 (4th Cir.
9 1985. 18 U.S.C. Sec. 3145 (a)-(c). The above points and authorities clearly show that the decision of
10 the Magistrate Judge was erroneous and should be reversed.

11 **CONCLUSION**

12 The government has failed to comply with the requirements of the Bail Reform Act of 1984.
13 It has clearly violated the law, which holds them to a "clear and convincing" standard of evidence to
14 show danger to the community and a "preponderance of evidence" to show the Mr. Bundy is a flight
15 risk. The Defendant has presented 34 statements signed by people who are personally acquainted with
16 Cliven. The government claims to have hundreds of interviews, but hasn't quoted a single one. All of
17 its references are vague or unidentified, or are from hearsay sources such as newspapers or Utube. And
18 evidence presented "by some accounts" is completely worthless. Anybody can say anything if it's "by
19 some accounts." The government has seemingly put together a strong case against Mr. Bundy—but
20 when it is seen for what it really is, it is a collection of unsupported allegations, inconceivable
21 innuendoes, bald assertions, and unproven allegations. The government has failed in its burden of
22 proof. Thus, Mr. Bundy
23 must go free.

24 It is respectfully moved that this Court vacate the Magistrate's Order of Retention and instead
25 direct the Marshals to set Mr. Bundy free. He has stated in his original points and authorities that he
26 is willing to obey this Court's travel restrictions, firearms restrictions, requirements for appearance, the
27 wearing of a GPS tracking device, and any other reasonable restriction the Court wishes to impose.

28 ///

1 Thus, there is absolutely no legal reason why Mr. Bundy should remain in solitary confinement until
2 the time of trial.

3 DATED this 4th day of April, 2016.

4 Respectfully submitted,

5 BY: /s/ Joel F. Hansen
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7 Nevada Bar # 1876
8 1835 Village Center Circle
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10 Attorney for Defendant

11 **CERTIFICATE OF SERVICE**

12 Pursuant to NRCP 5 (b), I hereby certify that on this 4th day of April, 2016, I served a copy
13 of the foregoing **DEFENDANT CLIVEN BUNDY’S OBJECTIONS TO THE**
14 **MAGISTRATE’S ORDER OF DETENTION AND BUNDY’S MOTION FOR**
15 **REVOCAION OF THE MAGISTRATE’S ORDER OF DETENTION** as follows:

- 16 Electronic Service - via the Court’s electronic service system; and/or
- 17 U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage
18 prepaid and addressed as listed below; and/or
- 19 Facsimile – By facsimile transmission pursuant to EDCR 7.26 to the facsimile
20 number(s) shown below and in the confirmation sheet filed herewith. Consent to
21 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
22 facsimile transmission is made in writing and sent to the sender via facsimile within
23 24 hours of receipt of this Certificate of Service; and/or
- 24 Hand Delivery – By hand - delivery to the address listed below.

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EXHIBIT A

EXHIBIT A

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

8 UNITED STATES OF AMERICA,

CASE NO. 2:16-cr-00046-GMN-PAL

9 Plaintiff,

10 vs.

11 CLIVEN D. BUNDY, et al,

12 Defendants

13 **MEMORANDUM IN SUPPORT OF PRETRIAL RELEASE OF CLIVEN BUNDY**

14 **I. INTRODUCTION**

15 As shown below, there is no good reason to keep Cliven Bundy in detention until the time of
16 trial. The Court will remember that the tradition of federal law is that one arrested for a noncapital
17 offense shall be admitted to bail and only in rare circumstances should release be denied, and that
18 doubts regarding propriety of pretrial release should be resolved in favor of the defendant. Fifth and
19 Eighth Amendments' prohibitions of deprivation of liberty without due process and of excessive bail
20 require careful review of pretrial detention orders to ensure that mandate of Bail Reform Act of 1984
21 for release under the least restrictive conditions that will reasonably assure appearance has been
22 respected. Pretrial release should be denied only for the strongest of reasons. *United States v.*
23 *Motamedi*, 767 F.2d 1403 (9th Cir. 1985). In that case, the Court ruled against the government, because
24 the determination that the defendant possessed a serious risk of flight, warranting denial of pretrial bail,
25 was not established by preponderance of the evidence, notwithstanding that the defendant, an Iranian
26 citizen, was charged with exporting military items without a license and after being warned that it was
27 illegal to do so, where the defendant had been admitted for permanent residence, the defendant had been
28 living in Los Angeles area since 1976 and had applied for citizenship, defendant had approximately 85

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1 relatives in Los Angeles area, many of whom were citizens, his immediate family all resided in the area,
2 the defendant's parents had posted their residence as security on a bond and the defendant had no prior
3 criminal record and no history of alcohol or drug abuse. *Id.* at

4 **II. MR. BUNDY MEETS ALL OF THE CRITERIA IN ORDER TO GRANT A RELEASE**
5 **PENDING TRIAL**

6 The Government has made a lot of accusations about Cliven Bundy having engaged in
7 violent activity. But the only physical violence which occurred during the standoff was tazing a
8 man, knocking a woman to the ground, and stomping on another man's head after he was knocked
9 to the ground. All of these depredations were committed by the government. By contrast, during
10 the standoff Mr. Bundy was never present on the scene of any confrontation. He stayed in his
11 house. He never brandished a weapon at any federal officer. He never stood in the way of any
12 federal officer. He never supplied any weapons to any of the people who had voluntarily come to
13 his ranch. He never directed anyone to assault a federal officer. He never ordered or advised
14 anyone to do anything during the standoff. He never assaulted a federal officer himself. He has
15 never assaulted anyone in his life nor has he ever committed a battery on anyone. He has no
16 criminal history. He has no felonies and no misdemeanors except traffic offenses on his record. He
17 never asked anyone to come there and when they did he told them that they were their own agent.
18 He has never pointed a gun at any federal officer. During the standoff he never physically
19 committed any battery on any federal officer. He never told anyone to point a gun at any federal
20 officer. He has never ever been accused of or committed any crime of violence in the past.

21 As far as his activities in Oregon, he advised the Hammonds to check themselves into the
22 Harney County Jail. He did not advise them to do anything violent. He never advised them to do
23 violence to any federal officers. He just advised them to keep the peace by checking themselves
24 into the jail there.

25 When he is released he is going to go back to the ranch and take care of his chores there. He
26 has no plans after he is released to organize any armed resistance to the BLM or any other federal
27 officers. If he is released, he will go peacefully back to his ranch house and he will not try to flee
28 and/or hide. It has been nearly two years since the standoff, and Cliven Bundy has simply stayed at

1 his ranch. He is not a flight risk. If he were, he would have fled already. He has not. And
2 he will not.

3 He has no plans to run away and leave Clark County if he is released. He will show up
4 whenever there is a hearing before this court. He does not intend to hurt anyone in Bunkerville or
5 its environs. He will comply with a Court Order to have no firearms in his ranch house and he will
6 not carry a firearm himself.

7 The Government's burden of proof in establishing a risk of flight is by clear
8 preponderance of the evidence; and although the defendant was charged with
9 unlawful exportation of arms and was an Iranian citizen, the Government failed to
10 meet its burden of showing a risk of flight.

11 *United States v. Motamedi*, 767 F.2d 1403 (9th Cir. 1985).¹ That *Motamedi* is still good law is
12 shown by this quotation from a 2015 case: "Only in rare cases should release be denied, and doubts
13 regarding the propriety of release are to be resolved in favor of the defendant." Citing *United States*
14 *v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir.1985). *United States v. Santos Flores*, 794 F.3d 1088,
15 1090 (9th Cir. 2015).

16 Mr. Bundy is willing to accept as conditions of his release that he will not travel more than
17 100 miles from his home (i.e. basically to Las Vegas and to St. George). He will not be gone from

18 ¹ The Court explained the difference between the burden of proof for danger to the community
19 and for flight risk in this passage:

20 Differential treatment comports with the congressional recognition of danger to another or
21 to the community as a discrete, independent basis for the denial of pretrial release. Since
22 bail was determined under the former law by the likelihood of defendant's appearance at
23 trial, and without explicit recognition of the need to protect the community, it is reasonable
24 to subject the Government to a higher standard of proof when the second purpose is added
25 as an explicit statutory category. Further, a finding of danger to the community is likely to
26 involve more specific and quantifiable evidence than is a finding of risk of flight. For
27 instance, prior convictions, police reports, and other investigatory documents are, as a
28 matter of course, used to show past histories of violence. From these objective sources, trial
judges may infer a present danger to the community. Such data is not often available
regarding the risk of flight. Thus, it is wholly feasible for the Government to satisfy the
higher burden in showing danger to the community.

___ In concluding that the Government's burden in denying bail on the basis of flight risk is
that of the preponderance of the evidence, we are not unmindful of the presumption of
innocence and its corollary that the right to bail should be denied only for the strongest of
reasons.

United States v. Motamedi, 767 F.2d 1403, 1407 (9th Cir. 1985)

1 his ranch for more than 24 hours without permission from the Court's designee. Mr. Bundy is
2 willing to report to any detention officer as often as is required and he is willing to wear a GPS
3 monitor.

4 Attached hereto as are letters from friends, neighbors, and family members with regard to
5 Cliven Bundy's reputation, his integrity, his honesty, his standing in his community as a good
6 citizen, his activity in his church, and other comments about his character which should help assure
7 the Court of Mr. Bundy's good character and that he does not need to be retained in detention during
8 these proceedings. See Exhibit A (Doc. Nos. 0001-0033). He is not a felon and he should be
9 presumed innocent until and unless proven guilty beyond a reasonable doubt. Furthermore, his wife
10 has volunteered to be the third party custodian.

11 **III. CONCLUSION**

12 Considering the above, there is absolutely no reason to detain Mr. Bundy pending the trial of
13 this case. He is a good family man with eleven children who needs to be home with his family and
14 with his wife so he can do his chores and take care of his family.

15 DATED this 16th day of March, 2016.

16 Respectfully submitted,

17 BY: /s/ Joel F. Hansen
18 JOEL F. HANSEN, ESQ.
19 Nevada Bar # 1876
20 1835 Village Center Circle
Las Vegas, NV 89134
Attorney for Defendant

21 **DECLARATION OF JOEL F. HANSEN IN SUPPORT OF
22 THE PRETRIAL RELEASE OF CLIVEN BUNDY**

22 As an officer of the court, I hereby declare and certify that I have gleaned the factual
23 information above in conversations with Mr. Bundy's family members and/or conversations with
24 Mr. Bundy himself. And being personally acquainted with Mr. Bundy and his family for many
years, I believe implicitly in his sincerity and integrity in making these commitments to the Court.

25 /s/ Joel F. Hansen
26 Joel F. Hansen, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that on this 16th day of March, 2016, I served a copy of the foregoing MEMORANDUM IN SUPPORT OF RELEASE OF CLIVEN BUNDY as follows:

- Electronic Service - via the Court's electronic service system; and/or
- U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or
- Facsimile – By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- Hand Delivery – By hand - delivery to the address listed below.

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/s/ Lisa M. Sabin
An Employee of HANSEN ◊ RASMUSSEN

EXHIBIT B

EXHIBIT B

1 **JOEL F. HANSEN, ESQ.**
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2 **HANSEN RASMUSSEN, LLC**
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3 Las Vegas, Nevada 89134
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4 Attorney for Defendant

5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA,

CASE NO. 2:16-cr-00046-GMN-PAL

9 Plaintiff,

10 vs.

11 CLIVEN D. BUNDY, et al,

12 Defendants

13
14 **SUPPLEMENT TO DEFENDANT’S MEMORANDUM IN SUPPORT OF PRETRIAL**
RELEASE OF CLIVEN BUNDY

15 Comes now, the Defendant, Cliven Bundy, by and through his attorney, Joel F. Hansen, Esq.,
16 and files with the Court this Supplement to his Memo in Support of his Pretrial Release.

17 Due process” means that there should be a hearing in front of a neutral fact-finder, and an
18 opportunity to be heard at a meaningful time and in a meaningful manner, before an individual is
19 deprived of a fundamental right. U.S.C.A. Const.Amend. 5. *United States v. Karper*, 847 F. Supp. 2d
20 350 (N.D.N.Y. 2011). Carol Bundy presented in her declaration her impressions of her telephone
21 conference with Mr. Bundy’s defense attorney in Oregon, Mr. Noel Grefenson. Her impressions were
22 derived from a short phone conference with Mr. Grefenson. Now the Defendant’s local attorney, Mr.
23 Hansen, has had an opportunity to consult with Mr. Grefenson by phone and ask him to submit a
24 declaration as to what actually happened at the hearing before the magistrate in Oregon. A review of
25 the attached declaration, **Exh. B** shows that indeed, due process of law was denied to the Defendant.
26 The hearing was scheduled for 1:30 pm, and Mr. Grefenson lived approximately one hour and 15
27 minutes away from the Court House. He was about to leave to drive to the Court, when he received the
28 government’s lengthy Memorandum in Support of Detention. Mr. Grefenson had to leave within five

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1 minutes after he received the memo, and therefore had no time to read the memo before the hearing.
2 He asked during the hearing if he could have a recess to read the memo, but the Judge did not afford
3 him that opportunity. Therefore, Mr. Bundy was denied due process, because his attorney was not
4 allowed to argue against the government's memo in a meaningful manner at a meaningful time. Mr.
5 Grefenson was "sandbagged" by the government, because the government obviously knew where Mr.
6 Grefenson office was located and how long it would take him to drive to the Court house, so they timed
7 the service of the memo for just a few short minutes before he had to leave to drive to Court. This is
8 outrageous conduct by the government and should not be tolerated by this Court. Mr. Grefenson was
9 asked by the magistrate judge if he had read the memo, and he then explained what had happened, to
10 no avail. He had had no opportunity to prepare a memorandum in opposition to the government's, by
11 obvious design of the federal prosecutor in Oregon. See Transcript of Hearing, **Exh. D**.

12 The 1984 Bail Reform Act requires that the Defendant "be afforded the opportunity . . . to
13 present witnesses . . ." at the detention hearing. 18 U.S.C.A. § 3142 (West). Mr. Bundy was denied
14 the opportunity to present his main witness, Michelle Fiore, current Nevada Assembly- woman and
15 candidate for Congress. The judge denied her request to appear by phone, even though the government
16 had agreed to this before the hearing. Mr. Grefenson was relegated to presenting her testimony by
17 proffer, which as this Court knows, is a much less effective way to present evidence than a live witness
18 testifying.

19 Mr. Grefenson's declaration shows that the materials he presented to the Court were not
20 reviewed by the magistrate. He was not allowed an opportunity to prepare a meaningful argument
21 against the government's lengthy memo, thus depriving Mr. Bundy of effective assistance of counsel,
22 obviously by the intentional presentation of the lengthy memorandum at a time when Mr. Grefenson
23 would have no opportunity to read it, much less prepare a memorandum in reply. The magistrate even
24 state in the hearing that she agreed with everything the government had said in its memorandum,
25 without ever giving Mr. Grefenson an opportunity to read it. That is not due process of law. And the
26 government was intentionally complicit in this denial of due process.

27 The facts the judicial officer uses to support a finding must show that no condition or
28 combination of conditions will reasonably assure the safety of any other person and the community and

1 must be supported by clear and convincing evidence. 18 U.S.C.A. § 3142 (f)(2)(B). No such clear and
2 convincing evidence has been presented. The supposed facts presented by the government in its prolix
3 memorandum are backed up by nothing but the prosecutor's bald assertions. There is no sworn affidavit
4 or other evidence to back up any of the facts put forth by the government. But they must know that they
5 must present clear and convincing evidence. Why haven't they done so? The answer is obvious: They
6 don't have any clear and convincing evidence. In fact, they don't have any evidence at all. No where
7 in their memorandum do they show that Cliven Bundy has ever done anything violent, and they could
8 not possibly have considered him to be a flight risk, because they left him at liberty to fly all over the
9 country from the time of the standoff until his arrest in of all places, Oregon. See Mr. Bundy's flight
10 itinerary attached as part of **Exh. C**.

11 Mr. Grefenson has attached to his declaration the materials which he handed to the magistrate
12 judge in open court, which she did not review before she ruled against the Defendant. See **Exh. C**. So
13 she never took the opportunity to read the letter from Michelle Fiore, contained in those exhibits, even
14 though she had denied Ms. Fiore an opportunity to testify by phone. Again, this is not due process of
15 law. And even though she said she believed everything in the government's memorandum. A pretty
16 lopsided way of making a decision.

17 CONCLUSION

18 This Court should deny the Motion to Vacate. Either the magistrate may consider this to be a
19 new hearing in Nevada, or the magistrate has authority to re-open the hearing to take additional
20 evidence at the request of Counsel. *U.S v. Gallo*, 653 F.Supp. 320 (E.D.N.Y. 1986),
21 18 U.S.C.A. § 3142.

22 DATED this 17th day of March, 2016.

23 Respectfully submitted,

24 BY: /s/ Joel F. Hansen
25 JOEL F. HANSEN, ESQ.
26 Nevada Bar # 1876
27 1835 Village Center Circle
28 Las Vegas, NV 89134
Attorney for Defendant

CERTIFICATE OF SERVICE

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