

Ryan Bundy, *Pro Se*  
 Inmate: Swis# 795070  
 Multnomah County Detention Center  
 1120 SW 3<sup>rd</sup> Avenue  
 Portland, OR 97204  
 Telephone: (503) 988-3689  
*Defendant*

---

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF OREGON

---

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

RYAN BUNDY,

*Defendant.*

Case No. 3:16-cr-00051-BR-05

DEFENDANT'S RESPONSE TO  
 GOVERNOR BROWN'S MOTION TO  
 QUASH SUBPOENA

Judge: Hon. Anna J. Brown

---

*Comes Now Pro Se* Defendant Ryan Bundy and responds to Governor Kate Brown's Motion to Quash his subpoena:

**I. Governor Brown has Direct Personal Knowledge Relevant to the Defense**

The extraordinary circumstances test may be met when high-ranking officials "have direct personal factual information pertaining to material issues in an action," and "the information to be gained is not available through any other sources," *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007). Governor Brown chose to directly involve herself in this case by actively managing the law enforcement response to the occupation of the Malheur National Wildlife Refuge. She held a press conference January 20, 2016 to urge federal law enforcement authorities to act immediately and prosecute:

Brown said inaction by federal officials is costing Harney County and the state of Oregon \$100,000 per week. To help pay those costs for law enforcement and other personnel, Brown told reporters she would seek appropriations from state lawmakers, with the expectation that federal lawmakers will eventually reimburse the state. "Federal authorities must move quickly to end the occupation, and hold all of the wrong doers accountable," Brown said. "This spectacle of lawlessness must end."

OPB, <http://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/governor-amplifies-criticism-of-fbis-passive-approach-to-militants/>

Courts have allowed depositions when there are allegations that the official acted with improper motive or acted outside the scope of his official capacity. See, e.g., *Bagley v. Blagojevich*, 486 F. Supp. 2d 786, 789 (C.D. Ill. 2007) (permitting deposition where plaintiffs alleged that the Governor ordered their jobs eliminated in retaliation for their attempt to organize on behalf of a union that was a rival to a group that had contributed heavily to his election campaign); *Detoy v. City and County of San Francisco*, 196 F.R.D. 362, 370 (N.D. Cal. 2000) (permitting deposition where the chief of police took the "unusual" step of intervening personally in disciplinary proceedings against a police officer to ensure lighter discipline for the officer); *Virgo Corp. v. Paiewonsky*, 39 F.R.D. 9, 10 (D.V.I. 1966) (permitting deposition of a Governor accused of taking arbitrary actions as a result of Congressional pressures and personal friendships). At least one district court has permitted depositions regarding the official acts of a mayor when the court was satisfied that he had "pertinent, admissible, discoverable information which [could] be obtained only from him." *Atlanta Journal & Constitution v. City of Atlanta Dep't of Aviation*, 175 F.R.D. 347, 348 (N.D. Ga. 1997).

Here, Governor Brown was subpoenaed to appear, testify and produce documents of her communications with law enforcement, FBI, or any other agencies regarding the

refuge occupation not already provided by the Government as discovery in this case. She objects to being required to testify or submit to deposition, but has not opposed the production of requested emails and communications.

In this case, the Governor personally made statements to the media and communicated directly with law enforcement agencies about the occupation. Although she may have also communicated through intermediaries, she chose to give press conferences and was included or carbon-copied on email chains (produced in discovery) discussing the perceived threat (and costs) presented by the occupiers. Further, since she has not opposed production of her emails and communications, defendant Bundy requests that if the Court is reluctant to permit her to be subpoenaed to testify without further showing, the emails should be produced and evaluated so that the defense can determine whether another witness can serve the same purpose and give admissible testimony to cover the same subjects.

## **II. Testimony Will Not Cause Undue Burden or Disruption of State Government**

Governor Brown's primary office is a one-hour drive from the United States District Court. Her testimony in this matter is estimated to take less than 2 hours total time. As with any witness, the defense will arrange witness order to minimize inconvenience to the witness, in coordination with the Court.

### **III. Date Error Can be Corrected**

Since the Motion to Quash was served, Mr. Abrams has contacted investigator Courtney Withycombe to indicate that if the Motion to Quash is not granted, he will accept service of a corrected subpoena directing the Governor to appear on court day.

### **IV. Sixth Amendment Right to Present Defense**

Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973), or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, *Washington v. Texas*, 388 U.S. 14, 23 (1967); *Davis v. Alaska*, 415 U.S. 308 (1974), the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S., at 485 ; cf. *Strickland v. Washington*, 466 U.S. 668, 684 -685 (1984) ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment"). An essential component of procedural fairness is an opportunity to be heard. *In re Oliver*, 333 U.S. 257, 273 (1948); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). In the absence of any valid state justification, exclusion of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and "survive the crucible of meaningful adversarial testing." *United States v. Cronin*, 466 U.S. 648, 656 (1984).

In this case, the defense intends to present evidence and argue that the disaster of the Lavoy Finicum and Ryan Bundy shootings, the FBI misconduct in firing without authorization, and the criminal conduct of the HRT/FBI agents in picking up their casings

to conceal the shooting, then lying repeatedly to investigators, has driven the prosecution of the defendants in this case, and especially the prosecution of Ryan Bundy. Federal and State law enforcement were under enormous pressure by Governor Brown herself to end the occupation by any means, and quickly, in order to reduce the perceived costs to the State. The result was a badly mismanaged attempt to arrest the occupiers resulting in violence, a crash, and loss of life that is currently being investigated by the Office of the Inspector General and the subject of Grand Jury proceedings.

Defendant Bundy intends to show and argue that the Government is now prosecuting him for crimes that involve elements and overtones of violence in order to mitigate and distract from its own criminal, reckless and violent response to a peaceful protest. The Government is motivated to portray the occupiers as violent in order to serve their purpose of exonerating all law enforcement acting at the direction of and under pressure from Governor Brown in planning the ill-fated roadblock that left Mr. Finicum dead, and to justify the level of force that was used.<sup>1</sup>

In 1805, in the famous case of Aaron Burr for treason, Burr sought to subpoena President Thomas Jefferson. Jefferson claimed that as President he was immune from giving his testimony. Supreme Court Justice John Marshall ruled that no person—

---

<sup>1</sup> In the superseding indictment the Government charged count III, violation of 18 USC 924c alleging Use of a Firearm in the commission of Count 1, Conspiracy to Impede a Federal Officer. The application of 18 USC 924c and the potential mandatory minimum sentences depend on the defendants committing a “crime of violence”. Although the Court dismissed Count III in pretrial litigation, the charging theory and attempted bootstrapping by the Government betrays the plan by the Government to portray the occupiers as violent in order to criminalize what was otherwise trespassing during a political protest.

including the president—was too busy, powerful or important to be outside the scope of a subpoena.

Governor Brown is an important witness in this case. On January 19, 2016, Governor Kate Brown “expressed anger” at the Malheur occupiers and decreed that the occupation must be ended immediately. Brown’s proclamation was widely distributed and published.

Governor Brown’s decree reverberated through government circles, leading federal, state and local law enforcement officials to target the Bundy group with extreme prejudice. The suggestion that deadly force was acceptable to stop the Bundys was unmistakable.

The angry decree unleashed thousands of agents and mobilized hundreds of vehicles in an all-out effort to stop the Bundys with extreme prejudice. Just days later, Ryan Bundy, LaVoy Finicum and others were ambushed in a roadblock attack. Finicum was killed at roadside as officers from multiple jurisdictions opened fire on the passengers.

Word of the killing traveled quickly to those who were camping at the Malheur refuge. Some scrambled for their lives, grabbing whatever clothing they could reach and jolting for their cars. Many left their personal possessions in disarray.

Although the constitutional occupiers had labored hard to clean and fix the Malheur facilities, Governor Brown’s decree (and the resulting Finicum killing) led the people at the Malheur headquarters to flee for their lives leaving bags of trash and other items.

Governor Brown's testimony is needed to defeat the government's claims in this case. The government claims the Defendants created an atmosphere of fear; yet it was Governor Brown who did so. The government claims the Bundys are responsible for messy conditions at the end of the 41-day Defendant occupation; yet the responsibility lies with Governor Brown.

Respectfully submitted this 23<sup>rd</sup> day of August, 2016.

/s/ Ryan Bundy\*  
*Pro Se Defendant*

*\*Filed on behalf of Mr. Bundy by standby counsel Lisa J. Ludwig, OSB #953387*