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8 *Attorneys for the United States*

9  
 10 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ERIC J. PARKER,  
 15 O. SCOTT DREXLER,  
 16 RICKY R. LOVELIEN,  
 STEVEN A. STEWART,  
 17 TODD C. ENGEL, and  
 GREGORY P. BURLESON,

18 Defendants.

2:16-CR-00046-GMN-PAL

19  
 20 **GOVERNMENT'S MOTION FOR**  
**PROTECTIVE ORDER REGARDING**  
**UNDERCOVER EMPLOYEE**

21 **CERTIFICATION:** This Motion is timely filed.

22 The United States of America, through undersigned counsel, respectfully  
 23 submits this Motion for a Protective Order authorizing certain measures to protect  
 24 the identity and security of an undercover employee (UCE) when he testifies at trial.

1 In support of its Motion, the government submits the following Points and  
2 Authorities and a supporting declaration from a FBI undercover coordinator setting  
3 out the basis for the needed protection. See Declaration filed separately under Seal  
4 at Exhibit 1.

### 5 INTRODUCTION

6 At trial the government intends to call as a witness a UCE who was involved  
7 in the investigation that led to the arrest and prosecution of the defendants. As part  
8 of that testimony, the government may also play recordings of conversations  
9 between the defendants and the UCE.

10 Public disclosure of the UCE's true identity or physical images would  
11 jeopardize other investigations in which the UCE is active and may pose a risk of  
12 danger to the UCE. See Declaration at Ex. 1. As such, in order to protect the UCE's  
13 true identity and appearance, the government requests certain security measures,  
14 consistent with measures approved in other cases. Further, the government moves  
15 to prevent any cross-examination as to the UCE's true identity or other operations.  
16

### 17 BACKGROUND

18 On May 3, 2016, the government filed a motion requesting a protective order  
19 for discovery information, stating that it had "reason to believe that a witness would  
20 be subject to physical or economic harm if his identity is revealed." Advisory  
21 Committee notes to the 1974 amendments to Rule 16. ECF Nos. 354 & 357. In its  
22 Motion, the government compiled a list of examples of such harassment and  
23 intimidation, examples that included the public posting of names and faces of  
24

1 agents and witnesses, together with comments that included putting a bullet in the  
2 head of one victim/witness.

3 One such example is an April 13, 2014, post on the “Stand with the Bundys”  
4 Facebook page. There, a supporter posted an image of a BLM Ranger involved in  
5 impoundment operations together with his home telephone number and the  
6 message: “A participant in this week’s Bundy escapade . . . BLM Ranger [name  
7 redacted] Home [address redacted].” ECF No 357, Exhibit 2, Example # 5.

8 Thereafter, others posted the following to the same page:

9 [poster name redacted]: Call him from a land line

10 [name redacted/different poster]: Do a reverse look up of his number you  
will be surprised

11 [name redacted/different poster]: St. George UT is where this number is  
from

12 [name redacted/different poster]: I know my people in St. George won’t be  
13 happy about that. I will definitely share this!!!!

14 Supporters of the Bundys used social media to discover information about a  
15 law enforcement officer and then released the information to others, calling for  
16 others to harass their victim with pointless and threatening telephone calls, and  
17 seeking still others (“my people in St. George”) who lived near their victim to join in  
18 their bullying tactics to intimidate and make it uncomfortable for the victim. The  
19 tactics employed by Bundy supporters were not limited to law enforcement officers,  
20 but extended as well to civilians involved in the impoundment as well, as shown in  
21 an April 2, 2014, posting to a Facebook page associated with a Bundy supporter:

22 EVERYONE PLEASE CALL [redacted personal identifying information  
23 of civilian contractor] They need to know what they are doing is NOT right  
and that we notices (sic) it and we are a shamed (sic) of them! I was taught  
24

1 to be honest in all my dealings! idk what they were taught! CALL THEM!  
2 AND PASS THIS ONE (sic)!!!

3 ECF No. 357, Exhibit 2, Example # 19. The evidence shows that following this and  
4 similar posts, the contractor was inundated with anonymous, threatening and  
5 intimidating telephone calls, calling the contractor foul names, hanging up, and  
6 threatening death. Other civilians associated with the impoundment suffered  
7 similar treatment. See Id. Exhibit. 2, Examples # 20 and 21

8 The government noted additional examples in its response to Proposed  
9 Intervenors' Motion to Intervene (ECF No. 428). For example, government counsel  
10 received threats of violence. On May 10, 2016, after the Court denied defendant  
11 Santilli's detention appeal, a user on Facebook posted an article referencing the  
12 Court's ruling along with the following message: "Remember the name [name of  
13 government attorney] .. it will be a joy to see this treasonous nazi hang or burn for  
14 treason ... or to read about the lone wolf attack that put this rabid dog down for a  
15 dirt nap." This appears to call for a lone wolf attack -- there have been instances of  
16 violence and threats carried out by lone wolf followers and supporters of the  
17 defendants.

18 For example, on June 8, 2014, Jared and Amanda Milled in a supposed lone  
19 wolf attack, ambushed, shot, and killed two Las Vegas Metropolitan Police Officers  
20 while they were innocently eating lunch in a local restaurant. After killing the  
21 officers, they draped one of the officer's bodies in a Gadsen flag and yelled to other  
22 restaurant patrons that it was the start of "a revolution." They fled to a nearby  
23 store, where the Millers then shot and killed a good Samaritan attempting to  
24

1 confront them. The Millers held strong anti-government and anti-law enforcement  
2 views.

3 Before committing their murders, the Millers had celebrated with Bundy and  
4 his Followers at Bundy Ranch in the aftermath of the lawless assault and extortion  
5 of federal officers. Even before the assault, the Millers were present in Bunkerville  
6 on April 9, 2014, when defendants Santilli and Ammon Bundy ambushed a BLM  
7 convoy using force and violence. Associating themselves even further with Bundy  
8 and his Followers, Amanda Miller uploaded to Youtube, video interviews of  
9 Margaret Houston and Ryan Bundy that related to the ambush.

10 After the April 12 assault, Jared and Amanda Miller were present at Bundy  
11 Ranch again. Jared Miller gave an interview to a reporter on April 16, 2014, after  
12 completing “guard duty” and while wearing full camouflage and carrying his AK-47  
13 and a 9 millimeter Smith and Wesson. See  
14 <http://america.aljazeera.com/articles/2014/6/9/al-jazeera-interviewlvshooters.html>.

15 Jared Miller also stated the following while at Bundy Ranch: “I feel sorry for any  
16 federal agents that want to come in here and try to push us around or anything like  
17 that. I really don't want violence toward them, but if they're going to come bring  
18 violence to us, well, if that's the language they want to speak, we'll learn it.” In  
19 April and May, 2014, Jared Miller posted numerous postings onto Facebook  
20 supporting Bundy Ranch and the April 12 assault.  
21

22 On May 21, 2014, an individual named Brent Cole posted on Facebook an  
23 article describing how an independent organization classified Operation Mutual Aid  
24

1 as a terrorist group. As set forth in the Superseding Indictment in this case,  
2 defendant Ryan Payne co-founded the group known as Operation Mutual Aid. Cole,  
3 apparently taking issue with the article, posted along with the article on Facebook  
4 the following message: “They (traitors who are in their offices) should be very  
5 afraid.” On June 14, 2014, Brent Cole approached a BLM officer and California  
6 Highway Patrol officer working on clearing a campsite on public lands. Cole  
7 approached and fired multiple rounds at the officers, striking and wounding both of  
8 them. Cole was convicted following a jury trial of assault on a federal officer with a  
9 deadly weapon which inflicted bodily injury and discharge of a firearm during and  
10 in relation to a crime of violence, among other counts, in February 2015. *See*  
11 *Eastern District of California Case No. 2:14-cr-00269.*

12 Bundy followers, including defendants in this case, publically posted (on  
13 social media and the internet) photographs, office address, and email address  
14 information of a BLM Chief Ranger who had participated in the impoundment of  
15 Bundy’s cattle. On April 14, 2014, defendant Eric Parker shared a post on his  
16 Facebook page that included a picture of the Chief Ranger, stating that he worked  
17 out of BLM Portland and encouraging people to share his photo and information.  
18 Parker posted: “The final straw... for a lot of people.” Defendant Steven Stewart  
19 shared the same post on April 23, 2014.

20 Following that posting, the Chief Ranger received over 500 threatening and  
21 harassing phone calls. Will Michael left a profanity-laced phone message for the  
22 Chief Ranger, stating: “You’re a f\*\*\*ing piece of shit, [chief Ranger]. We’re gonna  
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1 find you; we're gonna kill you, you f\*\*\*\*ing BLM thug, you f\*\*\*\*ing f\*\*\*." Michael  
2 pleaded guilty to threatening a federal law enforcement officer and transmitting a  
3 threatening communication. *See* Eastern District of Pennsylvania Case No. 5:15-cr-  
4 00086. Michael admitted having left the threatening voice mail message on the  
5 Chief Ranger's telephone line after having seen a "support Bundy Ranch" page on  
6 Facebook, which published the Chief Ranger's contact information and encouraged  
7 visitors of the page to call the victim to voice their opinions of the BLM's conduct in  
8 connection with their enforcement of federal court orders.

9       After Michael pleaded guilty, Defendant Parker took to Facebook and posted  
10 the following: "So who pressed the charges? This jerk off that through (sic) the old  
11 lady got 500 threats. But they're going to hang this kid out to dry. Parker further  
12 posted, "I'm just as angry as I was a year ago. I didn't call anybody I got in the truck  
13 and drove 13 hours to tell them to f\*\*\* off in my own special way." Parker further  
14 commented "I hope all these men [BLM Agents] spent the next few months  
15 wondering in the back of their heads if its worth it. Are you sons of bitches prepared  
16 to kill to take my country? Because I'm prepared to Die to keep it..." Defendant  
17 Cliven Bundy made the following comment regarding Michael's guilty plea: "If  
18 they're going to hang him [Michael], we all need to be hung, because we all have the  
19 same feelings."  
20

21       In December 2015, Schuyler Barbeau, whose images are captured in photos  
22 and video at the Staging Area at Bundy Ranch, was arrested in Washington for  
23 possessing an unregistered firearm. *See* Western District of Washington Case No  
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1 2:15-cr-00391. Several defendants and others interpreted Barbeau's arrest as a  
2 payoff for Bundy Ranch as Barbeau was present in Bunkerville and assisted the  
3 Bundys in April 2014. On December 9, 2015, an associate of defendant Ryan Payne  
4 posted the name and home address of one of the FBI special agents involved in the  
5 arrest of Barbeau. The special agent's address then began to appear on Facebook.  
6 In addition, people also posted the name of a person they believe cooperated against  
7 Barbeau. Bundy followers, including several of the defendants in this case, opined  
8 that Barbeau's arrest was related to Bundy Ranch.

9 In February 2016, following the indictment and arrests in the Malheur  
10 National Wildlife Refuge (MNWR) armed takeover case, a person mailed the  
11 following threat to a Nevada BLM office: "It is time for retribution. Anyone working  
12 for [name of city] BLM is not fair game. God Bless LaVoy and Cliven."

13 On May 3, 2016, the same person posted the name and phone number of a  
14 BLM law enforcement employee who participated in the April 2014 impoundment  
15 and also named two of the civilian witnesses in this case and referred to them as  
16 cattle rustlers. The same person posted the names and phone numbers of  
17 numerous members of federal law enforcement officers and contractors who  
18 participated in the 2014 cattle impoundment, claiming to have obtained the  
19 information "through Patriot Intelligence sources." On May 10, 2016, this same  
20 person also shared specific and detailed information on the internet about the  
21 structure of the impoundment officers' security teams, information this individual  
22 stated was taken directly from official BLM documents relating to the impoundment  
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1 – documents that the defendants’ followers potentially had access to after the BLM  
2 left the impoundment site.

3 Events subsequently in the courtroom and in the *United States v. Ammon*  
4 *Bundy, et al.* case in Oregon have shown that the danger to the lone UCE witness  
5 in the government’s case is particularly great. Although the discovery information  
6 in *United States v. Bundy* was restricted due to a protective order, an associate of  
7 the defendants (including some of the seven common defendants in the Nevada  
8 case), Gary Hunt, posted discovery material to “out” confidential human sources to  
9 his webpage. Litigation is ongoing in the District of Oregon to remove the  
10 information from the web. *See, e.g.,* Order Granting in Part Government’s Motion  
11 to Enforce Protective Order, *United States v. Bundy*, Case No. 3:16-cr-00051-BR (D.  
12 Or. Jan. 11, 2017).

### 13 **PROTECTIVE MEASURES SOUGHT**

14 Based on the need to prevent disclosure of the UCE’s identity, to protect the  
15 UCE, and to avoid compromising other investigations, the government respectfully  
16 requests the adoption of certain security measures for the testimony of the UCE at  
17 trial. The proposed measures, based on similar ones endorsed by other courts, are  
18 narrowly tailored: they assure that the identity of the UCE and the integrity of  
19 other undercover investigations will not be compromised without impairing the  
20 defendants’ confrontation rights under the Sixth Amendment. Specifically, the  
21 government requests the Court implement the following measures:  
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24



1 right to a fair and public trial. That precedent readily justifies the reasonable  
2 security measures proposed here.

3         The Confrontation Clause of the Sixth Amendment gives a defendant the  
4 right to confront and cross-examine the government’s witnesses who testify against  
5 the defendant. *See Maryland v. Craig*, 497 U.S. 836, 846 (1990); *Smith v. Illinois*,  
6 390 U.S. 129, 132-34 (1968). The “elements of confrontation—physical presence,  
7 oath, cross-examination, and observation of demeanor by the trier of fact—serves  
8 the purposes of the Confrontation Clause by ensuring that evidence admitted  
9 against an accused is reliable and subject to rigorous adversarial testing that is the  
10 norm of Anglo-American criminal proceedings.” *Craig*, 497 U.S. at 846. “The rule is  
11 that once cross-examination reveals sufficient information to appraise the  
12 witnesses’ veracity, confrontation demands are satisfied.” *United States v. Falsia*,  
13 724 F.2d 1339, 1343 (9th Cir. 1983); *see also Hayes v. Ayers*, 632 F.3d 500, 518 (9th  
14 Cir. 2011) (“No Confrontation Clause violation occurs as long as the jury receives  
15 sufficient information to appraise the biases and motivations of the witness.”).

16  
17         The Confrontation Clause does not require that a jury hear a witness’s true  
18 name, as the Supreme Court recognized in *Delaware v. Van Arsdall*, 475 U.S. 673,  
19 679 (1986), when it held that “trial judges retain wide latitude insofar as the  
20 Confrontation Clause is concerned to impose reasonable limits on such cross-  
21 examination based on concerns about, among other things, harassment, prejudice,  
22 confusion of the issues, the witness’s safety, or interrogation that is repetitive or  
23 only marginally relevant.”

1 In a similar vein, courts have observed that “where there is a threat to the  
2 life of the witness, the right of the defendant to have the witness’s true name,  
3 address, and place of employment is not absolute.” *United States v. Palermo*, 410  
4 F.2d 468, 472 (7th Cir. 1969) (citing *United States v. Varelli*, 407 F.2d 735 (7th Cir.  
5 1969)); *see also Clark v. Ricketts*, 958 F.2d 851, 855 (9th Cir.1991); *Siegfriedt v. Fair*,  
6 982 F.2d 14, 18 (1st Cir. 1992); *United States v. Contreras*, 602 F.2d 1237, 1238-40  
7 (5th Cir. 1979) (where there was reasonable fear the disclosure of DEA agent’s home  
8 address and frequented locations would endanger him and his family, no error in  
9 precluding cross-examination as to home address and other background  
10 information even though agent was “instrumental in defendant’s arrest”); *United*  
11 *States v. Maso*, No. 07-10858, 2007 WL 3121986, \*4 (11th Cir. Oct. 26, 2007) (*per*  
12 *curiam*) (unpublished) (“The district court did not violate [the defendant’s] right to  
13 confront witnesses by allowing the [cooperating witness] to testify using a  
14 pseudonym.”); *Brown v. Kuhlman*, 142 F.3d 529, 532 n.3 (2d Cir. 1998) (undercover  
15 detective who testified in closed courtroom due to safety concerns was permitted to  
16 testify using his badge number instead of his true name).

18 Courts have approved alias testimony in multiple contexts. *See United States*  
19 *v. Neuner*, No. 4:12-CR-050-A, 2014 WL 4493631, at \*2 (N.D. Tex. Sept. 11, 2014)  
20 (permitting an FBI UCE to testify under a pseudonym in a gun case); *United States*  
21 *v. Dumeisi*, Case No. 03-cr-664, Doc. 83 at 1 (N.D. Ill. Jan. 2, 2004) (permitting  
22 government witness to testify under a pseudonym and appear in light disguise, and  
23 prohibiting questioning about the witness’s current or former address); *United*  
24

1 *States v. El-Mezain*, 664 F.3d 467, 492 (5th Cir. 2011) (finding a “serious and clear  
2 need to protect the true identities” of the two Israel Security Agency witnesses who  
3 testified by pseudonym); *United States v. Abu Ali*, 395 F. Supp. 2d 338, 344 (E.D.  
4 Va. 2005) (permitting use of pseudonyms by witnesses who testified during a pre-  
5 trial Rule 15 deposition that was conducted via satellite real-time video from Saudi  
6 Arabia to the federal courthouse in Alexandria, Virginia); *United States v. Calderon*,  
7 Case No 2:14-cr-103, Doc. 58 (C.D. Cal. April 23, 2015) (authorizing the complete  
8 withholding from the defense of identifying information as to multiple undercovers).  
9 As in the cited cases, in the instant case, disclosing the UCE’s identity would pose  
10 a risk to the safety of the UCE and undermine the security of other investigations  
11 and the integrity of the government’s investigative procedures.

12  
13 The use of a pseudonym is appropriate in this case. As the attached  
14 declaration of the FBI Undercover Coordinator (filed under seal), the danger of  
15 public disclosure of the UCE’s name or image is high. Unlike in years past, an image  
16 or name can easily be publicly searched for the true identifying information of the  
17 UCE. In this case particularly, supporters of the defendants have been more than  
18 willing—eager—to find law enforcement witnesses names and harass and threaten  
19 them. If the UCE’s name and image become public, he will no longer be able to  
20 function as a UCE. He will also be subject to threats and harassment. Moreover,  
21 given his unique role as the lone testifying FBI UCE, the UCE may become a  
22 particular target for the defendants’ supporters.

1           Balanced against these interests, the use of a pseudonym by the UCE will  
2 not prejudice the defendants' confrontation rights. It is the UCE's interactions with  
3 the defendants—not his personal identity—that makes his testimony relevant at  
4 trial. Because the defendants have only known the UCE by his pseudonym  
5 throughout the investigation, withholding the UCE's true identity will not detract  
6 from substance of the questioning on cross-examination and will not impair the  
7 defendants' Sixth Amendment right to confront the witnesses against them. The  
8 UCE will be present in the courtroom, so the defendants will be able to confront  
9 him. The jury, moreover, will be able to observe and assess the UCE's demeanor  
10 while testifying.

11           Along those same lines, the defendants should be restricted from eliciting  
12 questions that would publically reveal any personal information about the UCE  
13 that would disclose the UCE's identity. Personal information about the UCE is not  
14 relevant to the charges; it is the UCE's contacts and communications with the  
15 defendants that matter. Public disclosure of personal information about the UCE,  
16 such as name and address, will compromise the UCE's safety, as well as  
17 substantially impact other investigations. Cross-examination into personal  
18 information not directly relevant to the charges should therefore be prohibited.

19           Further, eliciting any information about other investigations in which the  
20 UCE may be involved could identify him and may place him in grave danger as  
21 some of those investigations are ongoing. The government will provide all known  
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1 *Giglio* on the UCE to the defense for cross-examination, but any questioning  
2 regarding other operations is irrelevant to the investigation of this case.

3 **CONCLUSION**

4 **WHEREFORE**, for all the foregoing reasons, the government requests that  
5 the Court grant the government's Motion and enter a Protective Order preventing  
6 disclosure of the true identity of the UCE and adopting the government's proposed  
7 protective measures.

8 **DATED** this 27<sup>th</sup> day of January, 2017.

9 Respectfully,

10 DANIEL G. BOGDEN  
11 United States Attorney

12 //s//

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14 STEVEN W. MYHRE  
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18 ERIN M. CREEGAN  
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20 *Attorneys for the United States*

1 **CERTIFICATE OF SERVICE**

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

6 DATED this 27<sup>th</sup> day of January, 2017.

7  
8 */s/ Steven W. Myhre*

9 \_\_\_\_\_  
10 STEVEN W. MYHRE  
11 Assistant United State Attorney  
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