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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA

3:16-CR-00051-BR-02

v.

JON RITZHEIMER,

Defendant.

**GOVERNMENT'S RESPONSE
IN OPPOSITION TO DEFENDANT
RITZHEIMER'S SUPPLEMENTAL
MOTION AND MEMORANDUM
FOR PRETRIAL RELEASE**

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and Ethan D. Knight, Geoffrey A. Barrow, and Craig Gabriel, Assistant United States Attorneys, provides its response in opposition to Defendant Ritzheimer's supplemental motion and memorandum for pretrial release.

I. Procedural History

On January 26, 2016, Magistrate Judge Stacie Beckerman authorized a complaint charging defendant with Conspiracy to Impede Officers of the United States from Discharging their duties through the Use of Force, Intimidation, or Threats in violation of Title 18, United States Code,

Section 372. Defendant was arrested by the FBI on January 26, 2016, after negotiating his self-surrender.¹ That same day, defendant made his initial appearance on the complaint in the District of Arizona. He was temporarily detained at his initial appearance.

On February 2, 2016, Magistrate Judge Eileen Willett held a detention hearing and ordered defendant detained as a danger to the community and a risk of flight. (Gov't Exhibit A, Detention Order, ECF No. 14). Judge Willet expressly noted that the nature and circumstances of the charged offense, which included his possession of weapons during the commission of the offense, reflect the danger defendant presents to the safety of others and the community. (*Id.*) She also found that defendant's statements in social media reflected a propensity for violence. (*Id.*) She noted that defendant had a history of mental health issues. (*Id.*) She found that the weight of the evidence against defendant was great. (*Id.*) Finally, she noted that defendant's urinalysis test was positive for marijuana and that he had no ties to the District of Oregon. (*Id.*)

On February 3, 2016, a grand jury in the District of Oregon charged defendant with a single count of Conspiracy to Impede Officers of the United States from Discharging their duties through the Use of Force, Intimidation, or Threats in violation of Title 18, United States Code, Section 372. On March 8, 2016, the grand jury returned a superseding indictment: Count One again charges defendant with a violation of Title 18, United States Code, Section 372; Count Two charges him with Possession of Firearms and Dangerous Weapons in Federal Facilities in violation of Title 18, United States Code, Sections 930(b) and 2; and, Count Three charges defendant with Use and Carry of a Firearm in Relation to a Crime of Violence in violation of Title 18, United States Code,

¹ Defendant objects to the government's claim that he surrendered to the FBI. (Def's Mot. 10). Defendant's Facebook posts reflect the fact that he knew that he was wanted by the FBI. The calls between defendant and Peoria Police Detective Michael Griffin were facilitated by the FBI. Defendant was arrested and transported by FBI agents.

Sections 924(c)(1)(A) and 2. Defendant is not named in Counts Four and Five. Defendant was arraigned on March 9, 2016.

Defendant has now moved this Court for an Order revoking Judge Willett's February 4, 2016, Order of Detention. Defendant's motion is set for a hearing before this Court on Thursday, March 17, 2016, at 11:30 am.

II. Factual Background and Legal Standard

Defendant was one of the leaders of the armed takeover of the Malheur National Wildlife Refuge (MNWR). According to the group's website, defendant is also a member of the Advisory Board of Operation Mutual Defense, a militia group.

On December 26, 2015, defendant appeared in a video with co-defendants Joseph O'Shaughnessy and Jason Patrick. They described the video as a "call out" to all "patriots" to meet in Burns, Oregon, to support Dwight and Steven Hammond, two Oregon ranchers ordered to serve federal sentences for arson. On December 31, 2015, Ritzheimer appeared in a video titled "Breaking Message Marine Jon Ritzheimer." In the video defendant called on "real men and women . . . to take a stand." He explained that he "had to do a lot of soul searching" and he is "one hundred percent willing to lay down my life, to fight against tyranny in this country." In the video he told his family, "I love you, no matter what happened, no matter what lies are pushed out, just know I stood for something, don't let it be in vain."

Defendant left the January 2, 2016, protest in Burns as part of a group that led the armed takeover of the MNWR. Defendant was one of the first men to enter the MNWR. He and others proceeded to clear the refuge building by building using military-style assault rifles.

Defendant Ritzheimer appeared in a video titled, "Mililitants take to social media to recruit supporters," posted on January 4, 2016, to an Internet website. In the video, defendant stated,

“We are in my truck parked outside the Refuge,” “We need you to get here and stand with us,” “whether you are armed or unarmed,” and “Please get up here to help us.”

A photo posted on an Internet news website shows defendant Ritzheimer adjusting a sign outside the MNWR on January 5, 2016:



On January 5, 2016, in a video taken by co-defendant Peter Santilli and posted to YouTube, Ritzheimer states, “last word we got is they’re headed out here” in reference to the armed occupiers who believed they were going to be raided by the federal government. Ritzheimer further states, “We got word that they’re coming out here, uh so we are trying to plan and maintain a defensive posture” and “Right now underneath that tarp right there—Lavoy Finicum is sitting underneath that tarp, and he is not going to let them come through. We’re maintaining a defensive posture back here.” In the still shot below, Ritzheimer is carrying what appears to be an AR-15-style rifle with sling:



The following photograph of defendant appeared in a newspaper with the caption, “A member of the group occupying the Malheur National Wildlife Refuge headquarters stands guard Tuesday, Jan. 5, 2016, near Burns, Ore. Ammon Bundy, the leader of a small, armed group that is occupying a remote national wildlife preserve in Oregon said Tuesday that they will go home when a plan is in place to turn over management of federal lands to locals.”



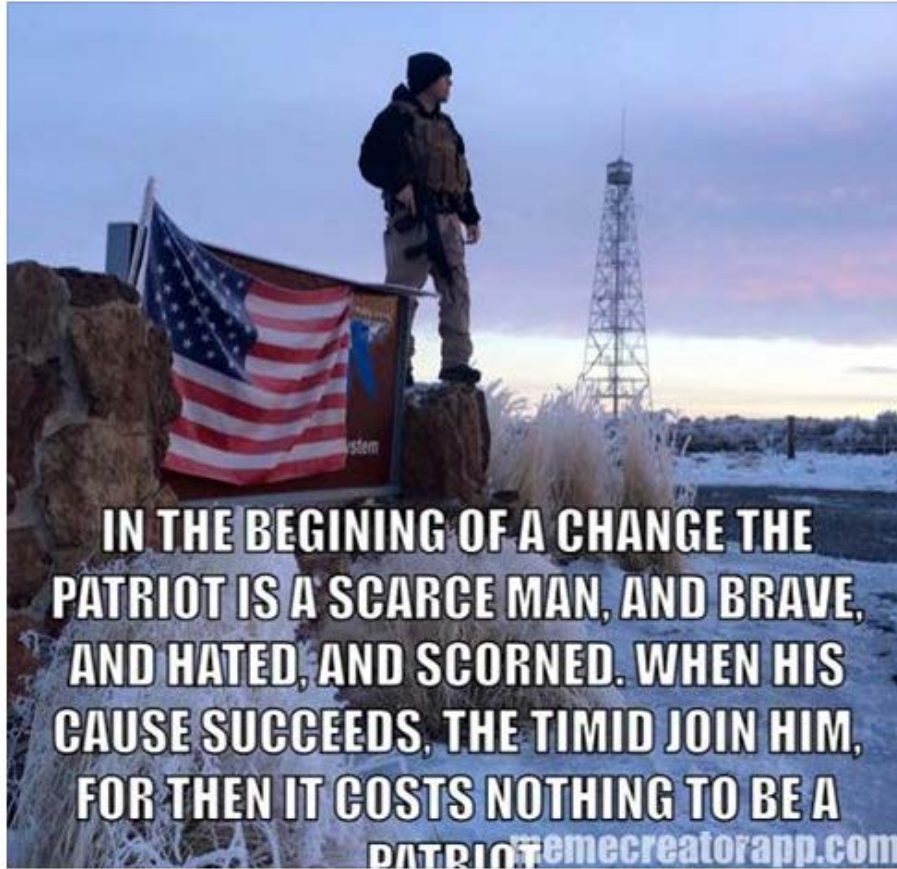
The same publication published the following photograph of defendant carrying what appears to be an assault rifle on the MNWR:



Many people responded to defendant's call. When they arrived, defendant used his military training to organize the recruits into groups. He conducted training exercises and drills to defend the occupation of the MNWR.

January 26, 2016, the day of his arrest, Jon Ritzheimer posted a photo of himself in tactical gear with what appears to be an AR-15-style weapon. The photograph depicts Ritzheimer standing on top of the entrance sign to the MNWR with the statement: "You either defend the constitution in its entirety or expect our future generations to curse us forever."

Article 1, Section 8, Clause 17. You either defend the Constitution in its entirety or expect our future generations to curse us forever.



Jon Ritzheimer

January 22 at 4:24pm · 🌐

Follow

Article 1, Section 8, Clause 17. You either defend the Constitution in its entirety or expect our future generations to curse us forever.

The citation to the U.S. Constitution reflects the occupiers' belief that the constitution prohibits the federal government from owning lands such as the MNWR. This interpretation of the constitution was rejected by the U.S. Supreme Court 40 years ago. See *Kleppe v. New Mexico*, 426 U.S. 529, 541-42 (1976).

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III. Defendant Should be Detained Both as a Flight Risk and as a Danger to the Community

Under the Bail Reform Act, the Court shall order a defendant detained if, after a hearing, it finds that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Detention is appropriate where a defendant is either a flight risk or a danger to the community. It is not necessary to prove both. *See United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). The United States bears the burden of establishing danger to the community by clear and convincing evidence; risk of flight need only be proved by a preponderance of the evidence. *See United States v. Aitken*, 898 F.2d 104, 107 (9th Cir. 1990).

Where, as here, there is probable cause to believe that the defendant committed a violation of Title 18, United States Code, Section 924(c), there exists a rebuttable presumption that “no condition or combination of conditions of release will reasonably assure the appearance of the person as required and the safety of the community.” 18 U.S.C. § 3142(e)(3)(B).

Defendant has not and cannot rebut the presumption of detention in this case. A careful analysis of all four factors set forth in 18 U.S.C. § 3142(g) supports an order from this Court upholding Judge Willet’s February 4, 2016, Pretrial Detention Order.

A. Nature and Circumstances of the Offense

The unique nature of the underlying offense supports detention. Defendant was a leader of a sustained armed occupation of a public area that by its definition was intended to prevent federal employees from accessing their workplace. Count One of the indictment is a crime of violence for purposes of the Bail Reform Act because it “has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another” and it is a felony that, “by its nature, involves a substantial risk that physical force against the person or

property of another may be used in the course of committing the offense.” 18 U.S.C.

§ 3156(a)(4)(A). As previously noted, Count Three carries a statutory presumption that no condition or combination of conditions will reasonably assure the appearance of defendant and the safety of the community. 18 U.S.C. § 3142(e)(3)(B).

B. The Weight of the Evidence

As Judge Willet found, the weight of the evidence against defendant at this stage is strong. Defendant’s role in the offense was sustained, public, and was marked by persistent defiance of the orders of local and federal law enforcement. Defendant was repeatedly photographed carrying an assault rifle on the MNWR and he made his intentions clear through videos and Internet postings.

C. The History and Characteristics of Defendant

The history and characteristics of defendant militate against release. Defendant has no ties to Oregon. According to his mother, he left his home and family in Arizona to organize a rally to free a defendant facing federal prosecution in the Western District of Washington. (Def’s Mot. Exh. 101(I)). Based on defendant’s Internet postings, it appears that the prosecution she is referring to is that of *United States v. Schuyler Barbeau*, 2:15-CR-00391-RAJ (W.D. Wash.). According to court records, Barbeau is facing charges of possession of an unregistered firearm in violation of Title 26, United States Code, Sections 5861(d), 5845(a)(3) and 5845(a)(6), and possession of a machine gun in violation of Title 18, United States Code, Sections 922(o) and 924(a)(2). On December 8, 2015, defendant posted a video “for the sheep dogs, not the sheep.” He provided his account of the *Barbeau* case, expressed his disdain for the law that Barbeau was charged with violating, and asked how long the “treason” would be allowed to continue. He tells listeners to “be ready for movement up to Washington state” and quotes Thomas Payne “if there be

war, let it come in my time.” He closes by saying, “Semper Fi, Schuyler. We’re coming brother. We’re coming.”

In defendant’s motion, he claims that he left his home on December 19, 2015. He picked up co-defendant Blaine Cooper, stopped in Idaho, and then “passed through” Burns, Oregon, on his way to Seattle, Washington. (Def’s Mot. 8-9).² According to defendant’s mother, during his trip to Washington, “things got blurred.” (Def’s Mot, Exh. 101(I)). We know that he returned to Burns and took a leadership role in the armed occupation of the MNWR. He stayed on the MNWR, patrolling the grounds with an assault rifle, until he left sometime around January 25, 2016.

Defendant’s trip to Seattle, Washington, and to Burns, Oregon, was not the first time that he declared his intention to take the law into his own hands. On September 21, 2015, in response to the United States’ proposed nuclear agreement with Iran, an open message attributed to Ritzheimer was posted on co-defendant Blaine Cooper’s Facebook site in which he declared his intent to travel to Michigan to arrest United States Senator Debbie Stabenow for voting in favor of the agreement. The message attributed to Ritzheimer stated “[w]e are planning on arresting Senator Debbie Stabenow, who voted yes to the Iran Nuke Deal. She will be arrested for treason under Article 3 Section 3 of the Constitution. We have chosen her as our first target due to our strong ties with the Michigan State Militia and their lax guns laws that will allow us to operate in a manner necessary for an operation like this. After we successfully detain her we will continue to move across the country and arrest everyone involved with the Iran Nuke Deal. Even the President who brokered this deal. . . . I am fully prepared for whatever may come my way. Even

² Defendant presents his itinerary as an alibi for allegations that he confronted a citizen in Burns, Oregon, on December 18, 2015. At this point, it is not clear if the citizen falsely identified defendant or if the date of the incident was not accurately reported.

if that means death. Because it will at least be for a noble cause.” In his Motion, defendant appears to disavow that message. However, in late September 2015, Ritzheimer contacted the Peoria, Arizona Police Department and told a detective of his plan to travel to Michigan to arrest Senator Stabenow.

On September 24, 2015, defendant posted a video to the Internet calling for an indictment of those who supported the agreement with Iran and stated he was “armed and ready to go, to uphold the law.” On September 28, 2015, defendant also appeared telephonically on co-defendant Santilli’s show to discuss his intentions to arrest those involved with the nuclear agreement. In his motion for release, defendant responds that, despite these strong words, he did not travel to Michigan. The government believes that defendant did not travel to Michigan because he was unable to secure funding for the trip.

D. The Nature and Seriousness of the Danger to any Person or the Community if the Defendant were Released

Defendant poses a significant danger to the community. As set forth above, he responds to events that he disagrees with by calling for an armed uprising. Through his words and by his actions, he has repeatedly declared his unwillingness to accept the results of our legal and political systems. Instead, he has declared his intention to work with others to arrest a United States Senator for voting in Congress; he traveled to Washington in an effort to free a defendant facing federal charges; and he traveled to Oregon to participate in an armed takeover of a federal facility. The risk defendant would pose if released is therefore not speculative; it is supported by defendant’s words and his actions.

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IV. Conclusion

This Court should deny defendant's motion for pretrial release because he is a flight risk and a danger to the community. Defendant has not rebutted the statutory presumption that no condition or combination of conditions of release will reasonably assure his appearance and the safety of the community. He should be detained.

Dated this 15th day of March 2016.

Respectfully submitted,

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