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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 UNITED STATE OF AMERICA,
14 Plaintiff,
15 vs.
16 O. SCOTT DREXLER,
17 Defendant.

18 Case No.: 2:16-CR-00046-GMN-PA;
19 PETITION FOR WRIT OF ERROR OF
20 CORAM NOBIS BASED ON THE
21 GOVERNMENT’S PURPOSEFUL
22 WITHHOLDING, SUPPRESSION/NON-
23 DISCLOSURE AND DESTRUCTION OF
24 EXCUPLATORY BRADY EVIDENCE

25 **I. STATEMENT OF THE CASE**

26 On March 2, 2016, Defendant, O. SCOTT DREXLER was indicted, and an arrest warrant
27 was issued for his arrest. He was charged with 18 U.S.C.§ 371 - Conspiracy to Commit an
28 Offense against the United States (Count 1); 18 U.S.C. § 372 - Conspiracy to Impede and Injure
Federal Officer (Count 2); 18 U.S.C. § 924 (c) and §2 - Use and Carry of a Firearm in Relation
to a Crime of Violence and Aiding & Abetting (Counts 3, 6, 9 and 15); 18 U.S.C. § 111(a)(1)
and (b) and §2 - Assault on a Federal Officer and Aiding & Abetting (Count 5); 18 U.S.C. §
115(a)(1)(B) and §2 - Threatening a Federal Law Enforcement Officer and Aiding & Abetting
(Count 8); 18 U.S.C. § 1503 and §2 - Obstruction of the Due Administration of Justice and
Aiding & Abetting (Count 12); 18 U.S.C. § 1951 and §2 - Interference with Interstate Commerce

1 by Extortion and Aiding & Abetting (Count 14); and 18 U.S.C. §1952 and §2 - Interstate Travel
2 in Aid of Extortion and Aiding & Abetting (Count 16).

3 On March 16, 2016, while in custody, Mr. Drexler appeared before Magistrate Judge Cam
4 Ferenbach and CJA panel attorney was appointed for him. Through his appointed counsel, Mr.
5 Drexler pleaded not guilty to all the counts against him. The court heard arguments regarding
6 Mr. Drexler's custody status and the court continued the matter of detention until March 23, 2016.
7 At the hearing, after hearing arguments from the parties regarding Mr. Drexler's detention,
8 Magistrate Judge Ferenback ordered that he remain detained until the trial date.
9

10 On April 22, 2016, the court held a discovery hearing regarding the defenses' opposition
11 to complex case designation. The court granted the government's request to designate a complex
12 case and the Defendants were separated into three groups identified as Tier 1, Tier 2, and Tier 3
13 Defendants.
14

15 After hearing arguments and setting discovery deadlines, the court issued a case
16 management order and set the case for a jury trial to commence on February 6, 2017. Mr. Drexler
17 was ordered to remain in custody until then. After conducting the trial for several months, the
18 jury came back deadlocked as to the charges against Mr. Drexler. On April 24, 2017, Judge
19 Gloria Navarro declared a mistrial and rescheduled a jury trial to commence on June 26, 2017.
20 A calendar call was held on May 25, 2017, at which time the court and the parties discussed the
21 setting of the new trial.
22

23 On June 26, 2017, Judge Gloria Navarro issued a minute order scheduling the jury trial
24 to begin on July 10, 2017. After the retrial was concluded, Mr. Drexler was found not guilty as
25 to Counts 1, 2, 8, 9, 12, 14, 15 and 16. The jury was deadlocked as to Counts 5 and 6 as to Mr.
26 Drexler. Shortly thereafter, Mr. Drexler was released on bond having been in custody for over a
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III. DREXLER QUALIFIES FOR WRIT OF CORAM NOBIS

1
2 The writ of error coram nobis is a “judicially created extra-statutory proceeding”
3 available for challenging federal criminal convictions under the federal All Writs Act, 28 U.S.C.
4 §1651. *Yasui v. United States* (9th Cir. 1985) 772 F.2d 1496, 1498. Federal courts have authority
5 to issue a writ of error coram nobis under the All Writs Act, 28 U.S.C. §1651(a). The writ of
6 error coram nobis is an extraordinary remedy of last resort available only in compelling
7 circumstances where necessary to achieve justice. A court’s jurisdiction over coram nobis
8 petitions is limited to the review of errors “of the most fundamental character.”... In addition,
9 courts may consider coram nobis petitions only where no other remedy is available, and the
10 petitioner presents sound reasons for failing to seek relief earlier. *United States vs. Mills* (11th
11 Cir. 2000) 221 F.3d 1201, 1203-04. Specifically, the writ of coram nobis provides a remedy for
12 those suffering from the lingering collateral consequences of an unconstitutional or unlawful
13 conviction based on errors of fact and egregious legal errors. *Estate of McKinney By and 23*
14 *Through McKinney v United States* (9th Cir. 1995) 71 F.3d 779, 781.

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16
17
18 A writ of error coram nobis is a remedy available to vacate a conviction when the
19 petitioner has served his sentence and is no longer in custody, as is required for post-conviction
20 relief under 28 U.S.C. § 2255. As the Supreme Court explained in *United States v Morgan* (1954)
21 346 U.S. 502 [74 S.Ct. 247, 98 L.Ed. 248] coram nobis relief is available after sentence has been
22 served because “the results of the conviction may persist. Subsequent convictions may carry
23 heavier penalties, civil rights may be affected.” *Id.* at 512-13. “Continuation of litigation, after
24 final judgment and after exhaustion or waiver of any statutory right of review should be allowed
25 through the extraordinary remedy of coram nobis only under circumstances compelling such
26 action to achieve justice.” *Id.* at 511.
27
28

1 In order to determine whether Drexler is entitled to relief, the court must determine
2 whether the error comprised by a district court's acceptance of his plea was of such a
3 "fundamental character" as to have "rendered the proceeding itself irregular and invalid."
4 *Morgan* 346 U.S. at 509 n.15. Because the writ of coram nobis is extraordinary and hence
5 disfavored, the writ of coram nobis is available only where the following conditions are met: "(1)
6 a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction
7 earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or
8 controversy requirement of Article III; and (4) the error is of the most fundamental character."
9 *Hirabayashi v United States* (9th Cir. 1987) 828 F.2d 591, 604.
10
11

12 Mr. Drexler satisfies all the requirements for a writ of coram nobis to issue. There is no
13 other remedy available for Mr. Drexler to challenge his conviction from 2018. He is not in
14 custody and has long served his sentence, therefore satisfying another requirement for a writ of
15 coram nobis to issue.
16

17 Mr. Drexler has valid reasons for not attacking the conviction earlier and is only barred
18 from coram nobis eligibility if he fails to show that he had valid reasons for delaying his attack.
19 *United States v Kwok Chee Kwan* (9th Cir. 2005) 407 F.3d 1005,1012. "Because a petition for
20 writ of error coram nobis is a collateral attack on a criminal conviction, the time for filing a
21 petition is not subject to a specific statute of limitations. In lieu of a specific statute of limitation,
22 courts have required coram nobis petitioners to provide valid or sound reason explaining why
23 they did not attack their sentences or convictions earlier." *Telink, Inc. v United States* (9th Cir.
24 1994) 24 F.3d 42, 45.
25

26 Mr. Drexler's Petition is timely. After entering his guilty plea in October 2017, he
27 returned to Idaho to await his sentencing hearing that didn't occur until the next year. During
28

1 that time, he was not made aware of the information that was coming out in the case pending in
2 this court. (**See Exhibit A** - Declaration of Scott Drexler). Subsequently, the case against the
3 Tier 1 Defendants was dismissed by this court. With the new evidence of government
4 misconduct and *Brady* violations coming to light, the prosecution voluntarily moved to have the
5 case against the Tier 2 Defendants dismissed which was granted by the court. Mr. Drexler later
6 learned about the dismissals but did not learn the specific reasons for the court’s rulings. When
7 he appeared before this court at the sentencing hearing, he was not informed by his attorney or
8 the court regarding the reasons for the dismissal of the cases against the co-defendants. By the
9 time he was made aware of the new evidence coming forward regarding the Government’s
10 handling of the case, Mr. Drexler was sentenced in his case in late 2018. However, to this date,
11 the Government has not disclosed all the materials and evidence that would have resulted in a
12 different outcome had Mr. Drexler gone to trial.
13
14

15 In late October to early November 2017, during the Government’s prosecution of the Tier
16 1 Defendants, a Whistleblower Complaint authored by Bureau of Land Management (“BLM”)
17 Special Agent and Lead Investigator Larry Wooten (“Wooten I”) surfaced – one acknowledging
18 multiple violations of the Bundy Defendants’ civil and constitutional rights by law enforcement
19 officers in connection with the United States’ arrest, detention, and prosecution of the Bundy
20 Defendants, including Mr. Drexler. This along with other disclosures and revelations of the
21 Government’s conduct in prosecuting the Bundy Defendants, lead to Judge Navarro dismissing
22 all the charges against the Tier 1 Defendants with prejudice. To this date, the only Defendants
23 who have been convicted from this case are the Tier 3 Defendants, who unfortunately, had their
24 trials commenced prior to the trials involving Tier 1 and Tier 2 Defendants, whom the
25 Government had determined were the more culpable when it had moved the court for an order
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1 separating the designated Defendants.

2 It has been recently learned that there Mr. Larry Wooten had prepared a follow-up
3 memorandum that he had authored in which he further detailed among other things: multiple
4 civil and constitutional law violations against the Bundy Defendants; the United States
5 intentional withholding/non-disclosure of exculpatory *Brady* information (e.g., surveillance-
6 camera evidence, FBI “302” investigative reports regarding snipers, Tactical Operations Center
7 or “TOC” log records and threat assessments); and flagrant misconduct by the Government
8 agents, including, without limitation, the prosecutors assigned to the case (**See Exhibit B -**
9 Declaration of Warren Markowitz, Esq.). Mr. Drexler just recently learned of this new
10 memorandum from Mr. Wooten and believes that the evidence it may present would render his
11 judgement of criminal conviction an error of the most fundamental character.
12
13

14 The law does not require a coram nobis petition to challenge his conviction at the earliest
15 opportunity, it only requires the petitioner to have sound reasons for not doing so. *United States*
16 *v. Kwok Chee Kwan* (9th Cir. 2005) 407 F.3d, 1005, 1014.
17

18 The Federal Bureau of Investigation had designated him a “domestic terrorist” and with
19 this conviction, he has lost his second amendment right to purchase a firearm. With the loss of
20 his second amendment rights, he is barred from seeking employment with law enforcement, or
21 any other type of position that would require a background check. Having been convicted,
22 knowing that many of the original Bundy Defendants, including the Bundy family, had all the
23 charges dismissed against them as result of the evidence of the Government’s egregious conduct,
24 has caused irreparable harm to his reputation and his mental health. These adverse consequences
25 from his conviction are sufficient to satisfy the case or controversy requirement of Article III.
26

27 ///

1 It cannot be disputed that being convicted in this case and being labeled by the Federal
2 Bureau of Investigation as a “domestic terrorist” is sufficient to satisfy Article III’s case or
3 controversy requirement, the third prong of the coram nobis analysis. *Parks. California* (9th Cir.
4 2000) 202 F.3d 1146, 1148.

5
6 “Article III standing requires the following: (1) a threatened or actual distinct palpable
7 injury to the Plaintiff; (2) a fairly traceable causal connection between the injury and the
8 defendant’s challenged conduct; and (3) a substantial likelihood that the requested relief will
9 redress or prevent the injury.” *Estate of McKinney* 71 F.3d at 782 n.4.

10
11 As argued herein and set forth in Mr. Drexler’s declaration, this conviction has had lasting
12 consequences in his personal life, his ability to exercise his 2nd Amendment right to purchase a
13 gun, and his ability to seek certain employment. He now seeks to have that conviction vacated
14 through this Petition. Should the conviction be vacated by this Petition, Mr. Drexler can have
15 his 2nd Amendment rights restored to him and the designation by the Federal Bureau of
16 Investigation be withdrawn so this ability to work will not be limited by said designation.

17
18 Mr. Drexler also meets the fourth prong of the coram nobis analysis by establishing that
19 he would never have been convicted of any of the original counts if the evidence of the
20 government’s egregiousness conduct and *Brady* violations have been provided to this defense.
21 The result of his case would have been the same as that of the Tier 1 and Tier 2 Defendants who
22 had all of their charges dismissed prior to going to trial. Had Mr. Drexler been aware of the
23 evidence coming out against the prosecutors, he would have discussed options for case resolution
24 with Mr. Leventhal, his attorney. Mr. Leventhal would have been able to file the appropriate
25 motions for dismissal with said evidence or reached a resolution with the prosecutors to have the
26 case dismissed as they did with the Tier 2 Defendants.
27
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1 It is Mr. Drexler's position that the evidence that has been made known by the Wooten II
2 Memo after he entered his guilty plea before this court rises to the level of rendering the
3 judgement an error of the most fundamental character. In her ruling, Judge Navarro made
4 findings that the conduct of the United States showed a reckless disregard for its Constitutional
5 obligations in prosecuting the Bundy case. She also found that there existed flagrant
6 prosecutorial and outrageous conduct that amounted to a due process violation.
7

8 As part of the evidence that the United States failed to provide to the Bundy defendants,
9 it was revealed that the Government's 2014 Cattle Impoundment Operation was unauthorized
10 and unlawful in that it failed to comply with 43 CFR 4150, in providing written notice of intent
11 to impound via certified mail. In Mr. Drexler's trial, witnesses misled the jury in testifying that
12 the notice given was proper and complied with 43 CFR 4150. After two jury trials wherein, he
13 was found not guilty for the majority of the original charges and the jury deadlocked on the
14 remaining, Mr. Drexler agreed to resolve the criminal case against him by pleading to obstruction
15 of a court order, that order being the 2014 Cattle Impoundment Operation, not knowing that said
16 order was unauthorized and unlawful.
17
18

19 If Mr. Drexler had been made aware of the evidence of the United States' flagrant and
20 outrageous conduct in not disclosing vital *Brady* evidence prior to his entering a guilty plea, he
21 would have chosen not to do so. Also, the fact the United States violated 43 CFR 4150 by not
22 providing proper notice of intent to impound Mr. Bundy's cattle, thus rendering the 2014 Cattle
23 Impoundment Operation unauthorized and unlawful, there would have been no basis for him to
24 agree to plea to the charge of Obstruction of a Court Order under 18 U.S.C. §1509, when the
25 federal agents that he may have interacted with on April 12, 2014 were not acting under a valid
26 court order.
27
28

CONCLUSION

For the foregoing reasons, Mr. Drexler has established that at the time of his entering a guilty plea in this case, there existed substantial evidence that would render his conviction a fundamental error. As such, Mr. Drexler has satisfied all four requirements for coram nobis relief. Mr. Drexler requests this court to grant his petition for Writ of Error Coram Nobis and vacate his conviction.

RESPECTFULLY SUBMITTED this 26th day of March, 2024.

LAW OFFICE OF KEVIN R. HANSEN

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O. Scott Drexler

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that I am an employee of THE LAW OFFICES OF KEVIN R. HANSEN, and on the 26th day of March, 2024, the foregoing **PETITION FOR WRIT OF ERROR OF CORAM NOBIS** was served via CM/ECF and/or depositing a true and correct copy into the United States Mail, postage prepaid, addressed to:

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/s/ Alex Gomez

An Employee of the
LAW OFFICE OF KEVIN R. HANSEN

EXHIBIT A

EXHIBIT A

DECLARATION OF O. SCOTT DREXLER

1. Sometime in April of 2014, I was living and working in Idaho with my family. A friend informed me about a protest that was happening down in Nevada at the Bundy Ranch. I did not know who the Bundys were or what was happening. My friend sent me some video links of what was happening with the protestors in the area and a picture of an area they were calling a First Amendment Area.
2. I decided to go down to Nevada with some friends to see what was happening firsthand. On a Friday, we drove down to Bunkerville, Nevada. The next morning, we spent time fixing breakfast and wandering over to a stage area that had been set up for speeches.
3. Cliven Bundy and his sons gave speeches and at one point the Clark County Sheriff was on the stage and informed the crowd that the BLM was ceasing the roundup operations and the cattle already taken by the government would be returned to the Bundy family.
4. At this point the crowd decided to go watch the cattle be turned loose and returned the Bundy ranch. When I arrived at what is referred to as the wash area and the crowd gathered near there, I saw a woman running down the freeway shouting “they” are pointing guns at the prayer group. I did not know who “they” were she was referring to or where the prayer group was located. Several of us followed her back down to the freeway near the overpass.
5. Once on the overpass, I looked around at the situation and noticed a few vehicles down in the wash beyond the other overpass. There were men dressed in combat

uniforms with weapons gathered around some vehicles beyond a barricade telling people assembled nearby that they were authorized to use deadly force.

6. I also saw a helicopter dropping men off on the top of butte off to the right and above us. Suddenly, it appeared that the armed men down in the wash were taking up an offensive position as more men arrived behind them.
7. Eventually, officers from the Sheriff's office told the armed men down in the wash, whom I believed to be BLM officers, to move back from their position. After a while, the Sheriff officers escorted a group of horseback riders through the barrier and to the impoundment area to retrieve the cattle.
8. I watched as the cattle were driven down through the wash and returned to the Bundy Ranch. All of this was done with no shots fired and no one was harmed as a result of the Sheriff's office intervening and deescalating the situation with the armed men who had taken an offensive position and informed the crowd that they were authorized to use deadly force.
9. After returning to where we had camped the night before, my friends and I decided to drive back home to Idaho. I was there for only a couple of days to watch what was happening and to witness the federal officers conduct the impoundment of the Bundy cattle.
10. Around a year later, I was getting gas at a local gas station near my home in Idaho when a Forest Service Law Enforcement truck pulled up near me. The officer exited the truck and turned to face me.
11. The officer then dropped his hand to his pistol and said something to the effect he was glad we weren't standing off while caressing his gun. I was very taken aback and


quite concerned about his behavior as we were in a public place. Later during my incarceration, I learned that he had been part of the night security on the Bundy Ranch.

12. In March of 2016, almost two years after I spent those few days in Nevada at the protest, I was approached and placed under arrest in the town of Salmon, Idaho, by multiple FBI agents who had all drawn their long guns at me along with dogs. Accompanying them were the Lemhi County Sheriff officers.
13. I was transported to the Ada County jail to await the court hearings regarding my custody. I was held without bail and spent the first week in solitary confinement and a few weeks later was transported down to Nevada.
14. Upon my arrival in Nevada, I was again placed in solitary confinement as I was considered an extreme threat due to being labeled by the FBI as a domestic terrorist. While in custody, I was denied adequate time to prepare a defense as time in the law library was restricted and there was so much discovery to try and go through and understand.
15. I went through two jury trials that resulted in mistrials and I was found not guilty on most of the charges after the second trial. I was finally released on bond in late 2017 to await the start of the third jury trial. I had been in jail for eighteen months.
16. I was approached by the prosecution with a plea deal for a misdemeanor charge, but it was contingent on Eric Parker taking a deal as well. I knew that he was the father of a young family, and his family desperately needed him back home, so I decided to accept the plea deal and take the conviction.

17. After agreeing to the misdemeanor conviction of obstructing a valid court order, I later learned that all the remaining co-defendants, including the Bundy family and the original organizers of the protest, were going to have all of their charges dismissed with prejudice.
18. From the time I entered my plea before the court until I was sentenced ten months later, I never learned why their cases were being dismissed or dropped. I had heard on the news about what was happening with their cases, but it was never fully explained the specific reasons why.
19. I later learned that an officer with the BLM had released a memo setting forth allegations of corruption and withholding of evidence by the federal government. His memo set forth the reasons why the governments' cases against the Bundy defendants were falling apart. Had I been aware of this new evidence that was coming to light at the time I entered my plea, I would have decided against accepting the plea agreement.
20. Just in the past few months, I became aware of a second memo from the Mr. Wooten who was the officer from BLM that presented evidence of the government's corruption and withholding evidence in the cases. I believe that if this evidence had been presented in my trials, that the juries would have found me not guilty on all counts.
21. This conviction has detrimentally affected my private and professional life in many ways. I decided to run for sheriff during a recent election cycle and there were a few newspapers that printed stories about my court case and conviction, and I believe this had an adverse effect on the election results.

22. Part of my job duties with the company I work for is to assist local firefighters when they need assistance in fighting wild forest fires. On several occasions, I have been pulled off this work due to rumors about myself which has spread throughout the local governments. This has resulted in my losing additional income that I used to obtain in fighting forest fires.

23. To this day, I am denied the ability to purchase a firearm from any store as I have been designated a domestic terrorist by the FBI. When gun sellers do a search of my background, I am tagged, and they are advised not to sell to me. This has happened even though I am not a convicted felon.


O. Scott Drexler

STATE OF IDAHO)

COUNTY OF Custer)

SUBSCRIBED and SWORN to before me

This 12 day of March, 2024



TAMRA GIAMPEDRAGLIA
NOTARY PUBLIC - STATE OF IDAHO
COMMISSION NUMBER 20224404
MY COMMISSION EXPIRES 9-12-2028

EXHIBIT B

EXHIBIT B

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9 Attorney for Plaintiff

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 JOSEPH O'SHAUGHNESSY, et al.
13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA et al.,
16 Defendants.

Case No.: 2:20-cv-01039-WQH-EJY

17 TODD C. ENGEL,

18 Plaintiff,

19 v.

20 UNITED STATES OF AMERICA et al.,
21 Defendants.

Case No.: 2:20-cv-01040-WQH-EJY

**DECLARATION OF WARREN
MARKOWITZ, ESQ. IN SUPPORT
OF:**

**PLAINTIFFS' OPPOSITIONS TO
DEFENDANT'S MOTIONS TO
DISMISS**

**PLAINTIFFS' REQUESTS FOR
JUDICIAL NOTICE**

&

**PLAINTIFFS' REQUESTS FOR
FED.R.CIV.P. 56(D) RELIEF**

22 I, Warren Markowitz, Esq., declare and state as follows:

23 1. I am an attorney licensed to practice in all Courts within the State of New York and
24 also before the Ninth and Tenth Circuit Court of Appeals; I previously had the privilege of
25 representing Plaintiff Todd Engel *pro hac vice* in connection with his post-trial / pre-sentencing

1 motion practice and his appeal before the Ninth Circuit which resulted in a unanimous panel
2 decision vacating Mr. Engel's conviction.

3 2. I have personal knowledge of the facts and circumstances set forth in this
4 Declaration, and I respectfully submit same in support of Plaintiffs' Oppositions to Defendant's
5 Motions to Dismiss, Plaintiffs' Requests for Judicial Notice and 56(d) Relief in *Engel v. United*
6 *States*, 2:20-cv-01040 ("Engel Action") and the related action of *O'Shaughnessy v. United States*,
7 2:20-cv-01039 ("O'Shaughnessy Action").

8 3. In late October to early November 2017, during the United States' prosecution of
9 the Tier 1 Defendants (i.e., Cliven Bundy, Ryan Bundy, Ammon Bundy, Peter Santilli and Ryan
10 Payne), a Whistleblower Complaint authored by Bureau of Land Management ("BLM") Special
11 Agent and Lead Investigator Larry Wooten ("Wooten I") surfaced – one acknowledging multiple
12 violations of the Bundy Defendants' civil and constitutional rights by law enforcement officers in
13 connection with the United States' arrest, detention and prosecution of the Bundy Defendants,
14 including Mr. Engel.

15 4. Although the United States ultimately produced a copy of Mr. Wooten's
16 Whistleblower Complaint in a redacted format and under seal, that document was subsequently
17 filed unsealed by Cliven Bundy in connection with his Excerpts of Record on Appeal (Volume I)
18 following the United States appeal to the Ninth Circuit of Judge Navarro's Dismissal with
19 Prejudice of the Government's claims against the Tier 1 Defendants for "flagrant prosecutorial
20 misconduct." See Wooten I attached hereto as Exhibit 1; see also Transcript of Proceedings
21 regarding the Bundy Defendants' Motion to Dismiss attached hereto as Exhibit 2.

22 5. After securing a copy of Mr. Wooten's Whistleblower Complaint, I immediately
23 moved the District Court for a new trial on Mr. Engel's behalf and expressly requested the
24 opportunity to depose Mr. Wooten regarding the Government's abhorrent conduct referenced in
25 that memorandum.

26 6. Recognizing that Mr. Wooten was a critical witness who would refute the
27 existence of probable cause to arrest, detain and prosecute Mr. Engel, I located him and,
28

1 thereafter, spoke with him telephonically regarding his Whistleblower Complaint and the
2 underlying facts referenced therein.

3 7. During that call, Mr. Wooten identified a follow-up memorandum that he authored
4 in which Mr. Wooten further detailed, among other things: multiple civil and constitutional law
5 violations against the Bundy Defendants; the United States' intentional withholding / non-
6 disclosure of exculpatory *Brady* information (e.g., surveillance-camera evidence, FBI "302"
7 investigative reports regarding snipers, Tactical Operations Center or "TOC" log records and
8 threat assessments); and flagrant misconduct by the Government agents, including, without
9 limitation, the prosecutors assigned to the case ("Wooten II").

10 8. Thereafter, I immediately made a demand upon the United States for the
11 production of the Wooten II memorandum. Although the United States refused to provide same,
12 it ultimately allowed me to view a redacted copy of it and take notes regarding its content. I was
13 not permitted to copy the memorandum, however, and, due to its designation by the Government
14 as a document subject to the underlying Confidentiality & Protective Order, it severely limited
15 my ability to effectively use same in connection with post-trial motion practice and Mr. Engel's
16 appeal.

17 9. The Wooten II memorandum, however, went in to much greater detail regarding
18 the misconduct and unlawful acts by the United States in "working-up" the underlying criminal
19 case, including, without limitation, deviations from BLM policies / procedures regarding
20 impoundment operations; the intentional suppression of exculpatory information bearing on the
21 existence (or lack thereof) of probable cause to arrest, detain and prosecute the Bundy
22 Defendants, including, without limitation, Mr. Engel; potential crimes by governmental
23 employees in connection with their misconduct, "cover-ups," and the destruction / shredding of
24 material evidence; and the Government's concealment of their actual use of government snipers,
25 their presence on the Bundys' property, and that the Bundy cattle were actually in good physical
26 condition. Although I am willing to make my notes available to the Court for an in camera
27 inspection, the best evidence regarding these issues would be the deposition testimony of
28 Mr. Wooten himself (which has yet to occur) as supplemented by the Wooten II memorandum.

1 Notwithstanding the foregoing, it is my understanding that a copy of the Wooten II memorandum
2 was also filed unsealed by Cliven Bundy in connection with his Excerpts of Record on Appeal
3 (Volume I) and a copy of same is attached hereto as Exhibit 3.

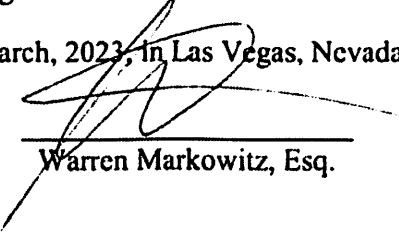
4 10. Although the Ninth Circuit Court of Appeals subsequently overturned Mr. Engel's
5 conviction and the United States ultimately dismissed its criminal complaint against him, the
6 damage done to Mr. Engel's reputation, not to mention the loss of his life and livelihood during
7 the four and one-half (4½) years he was incarcerated, merely because he was present and
8 identified, cannot be overstated.

9 11. Mr. Engel's presence at the Cattle Impoundment Operation in support of the
10 protestors and his assistance of law enforcement officers that day (attempting to de-escalate a
11 volatile situation created by the Government) was in full accord with his First Amendment rights.

12 12. Similarly, although his possession of a firearm that was, in retrospect, not the best
13 decision, it, nevertheless, was not unlawful as it was his absolute right to carry same under the
14 Second Amendment.

15 13. I declare under the penalty of perjury under the laws of the United States and the
16 State of Nevada that the foregoing is true and correct.

17 Signed this 22nd day of March, 2023, in Las Vegas, Nevada.

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20 Warren Markowitz, Esq.
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