

**EXHIBIT 2**

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9 IN THE UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11

12 UNITED STATES OF AMERICA,  
13 Plaintiff,  
14 v.  
15 ERIC MCDAVID,  
16 Defendant.  
17

CASE NO. 2:06-CR-0035 MCE EFB P

DECLARATION OF NASSON WALKER  
IN SUPPORT OF GOVERNMENT'S  
OPPOSITION TO DEFENDANTS  
SECTION 2255 MOTION AND  
REQUEST FOR DISCOVERY

18 I, Nasson Walker, declare as follows:

19 1. I am a Special Agent with the Federal Bureau of Investigation and was the case agent on  
20 the McDavid case throughout the investigation and subsequent trial.

21 2. After receiving the defendant's 2255 motion, I conducted a review of FBI files and U.S.  
22 Attorney files to determine if material referenced in the 2255 motion had been provided to the  
23 defense. The results of my review are set forth below.

24 Polygraph

25 3. FBI Philadelphia requested a polygraph examination by way of an EC (Electronic  
26 Communication) dated 11/3/2005 (Exhibit 4 Part 1, pg 11). The request was approved as evidenced  
27 by the document being serialized to the case file. However, after receiving this approval, the  
28

1 source's handler, SA Rick Torres, decided not to proceed. The source was never administered a  
 2 polygraph examination.

3 Jailhouse Recordings

4 4. The defense alleges that the government illegally recorded conversations between  
 5 McDavid and Jenson while they were in custody at Sacramento County Main Jail. The evidence,  
 6 documented as items 1D104-107, consists of recorded conversations involving Jenson and McDavid  
 7 at the jail. They do not involve McDavid and Jenson talking to one another but rather separate  
 8 conversations involving either McDavid or Jenson and other parties. For reference, items 104 and  
 9 107 involved McDavid and other parties; and items 105 and 106 involved Jenson and other parties.  
 10 The conversations were recorded by the Sacramento County Jail pursuant to its standard practice.  
 11 Such recordings are not illegal; prisoners are routinely warned that their conversations are monitored  
 12 and can be recorded. Members of the FBI listened to some of these conversations but ceased doing  
 13 so when it became apparent that they contained nothing of interest.

14 Miami Source Reports

15 5. In response to a request from FBI Sacramento, FBI Miami provided copies of 51 reports  
 16 containing information provided by Anna. Many of these reports show cities other than Miami  
 17 because Anna traveled extensively to attend anarchist gatherings or perform functions in other parts  
 18 of the country. Of the 51 reports, 35 make no mention of McDavid. The remaining 16 contain  
 19 reporting about McDavid but no exculpatory information. Most contain information about  
 20 McDavid's intentions and plans to engage in illegal activity. Five of the 16 reports were produced in  
 21 discovery. (Bates numbers 46, 47, 50-51, 58-61) The table below provides summary information  
 22 for each of the 16 Miami reports that mention McDavid. The five reports that were produced in  
 23 discovery are reflected in **bold**:

Num	File	Serial	Date	Type	Topic	McDavid Reference
1	137C-MM-103682-A	22	8/21/04	FD302	Crimethinc Des Moines	"Dee" among those who admonished another person not to openly discuss making bombs

1	2	137C-MM-103682-A	23	8/23/04	FD302	Crimethinc Des Moines	"D (Eric)" a leader/organizer of the event. He had drugs in his backpack. Plans to attend RNC protest.
2	3	137C-MM-103682-A	26	8/28/04	FD302	RNC protest	"D" discussed holding up and destroying a Starbucks
3	4	137C-MM-103682-A	28	8/28/04	FD302	RNC protest	"Eric (LNU)" attended a direct action planning meeting
4	5	137C-MM-103682-A	44	6/2/05	FD302	Hugs for Puppies meeting	McDavid scared away from Philadelphia due to police activity
5	6	137C-MM-103682-A	49	6/16/05	FD302	Bio protest	McDavid expressed violent rhetoric against police.
6	7	137C-MM-103682-A	50	6/17/05	FD302	Bio protest	McDavid expressed violent rhetoric against police.
7	8	137C-MM-103682-A	51	6/18/05	FD302	Bio protest	McDavid expressed violent rhetoric against police.
8	9	137C-MM-103682-A	52	6/19/05	FD302	Bio protest	McDavid expressed violent rhetoric against police, presented video on how to make molotov cocktails
9	10	137C-MM-103682-A	53	6/20/05	FD302	Bio protest	McDavid disappointed at turnout, was involved in something big in California and had to leave.
10	11	137C-MM-103682-A	55	6/22/05	FD302	McDavid's temporary residence in Philadelphia	McDavid living at Weiner's house, plans to attend Rainbow Gathering, eats out of dumpsters
11	12	137C-MM-103682-A	42	7/11/05	FD302	McDavid's recent travels	description of his recent travels around the country and associates
12	13	137C-MM-103682-A	47	7/18/05	FD302	Crimethinc Bloomington	McDavid's participated in urban warfare discussion, advocated attacking federal buildings. He described the Ryan Lewis case and his own plans to make homemade C4 to attack the USFS site and others. Plans to attend Feral Visions
13	14	137C-MM-103682-A	56	8/18/05	FD302	McDavid travel and bombing plans	McDavid asks for source's assistance with gas mask and chemical equivalency list

15	137C-MM-103682-A	59	9/29/05	FD302	Weiner traveling West	Weiner to assist McDavid with his plans on the West Coast
16	137C-MM-103682-A	58	9/29/05	FD302	McDavid travel to Seattle	McDavid traveling to Panda House in Seattle

6. The 11 reports that were not produced in discovery summarize Anna's activity at the following anarchist convergences/protests: Crimethinc, Des Moines, IA; Republican National Convention; and Biotechnology Conference 2005. In substance, these reports state that McDavid attended the Crimethinc convergence in Des Moines where he used drugs and assumed a leadership role, that he attended the RNC, and that he attended the BioTech protest where he provided training to others on the construction of Molotov cocktails and advocated violence against police officers. All of this information is contained in other documents that were provided to the defense as described below.

Bates Number	Description
00035	FD302 – McDavid attended the Des Moines and Bloomington Crimethinc convergences; he demonstrated leadership abilities and is a drug user.
00029	FD302 – McDavid said he wished he were involved in the protest that resulted in the death of a Philadelphia police officer
00061	FD302 – Timeline of McDavid's travels: He attended the Des Moines Crimethinc, RNC, OAS, Bio 2005 (where he advocated violence), and he planned to attend the Bloomington Crimethinc convergence
00088-000104	Affidavit for Search Warrant – Describes, among other things, McDavid's lifestyle, Des Moines Crimethinc, RNC, Biotech protest (advocating violence, desire to kill police officer, construction of Molotov cocktails), Bloomington Crimethinc (disclosing plans for bombing campaign), Pointless Fest in Philadelphia (more discussion of explosives), and a chronicle of the conspiracy.

Redacted McDavid FOIA Reports

7. The defense alleges that the government failed to turn over several documents that were relevant to McDavid's defense, which the defense discovered through a recent FOIA request. To support this argument, defense presents Exhibit 4 (parts 1 – 3), which consists of redacted FBI documents obtained through FOIA. A review of the non-redacted versions of these documents revealed they fit into the following categories:



Description	#
FBI internal memos, evidence form, and receipt documenting work on McDavid case, enclosing investigative reports from other FBI offices, or tasking other FBI offices for assistance	42
Investigative reports from Anna with no mention of McDavid	7
Investigative reports from Anna mentioning McDavid with no exculpatory information	9
Investigative reports from confidential informant (not Anna) with no mention of McDavid	2
Investigative reports from confidential informant (not Anna) that mention McDavid with no derogatory or exculpatory information	3
Investigative reports documenting interviews of non-witnesses or other irrelevant information. No exculpatory information.	12
Total	75

Of the 16 investigative reports from Anna referenced above, 13 are among the reports already discussed above that were among the 51 reports from Miami. The three remaining reports contain only inculpatory information about McDavid or no mention of McDavid at all. One report (Def. Exh. 4, part 3, page 19) contains an account of McDavid threatening to stab Anna to death. That information is recounted in the affidavit in support of the search warrant. Another report (Def. Exh. 4, part 2, page 3) reports on Lauren Wiener's Philadelphia associates and makes no mention of McDavid. The last report (Exh. 4 part 2, page 4) contains information about McDavid having confided to her and others about the Ryan Lewis arsons. It also references McDavid's and Jenson's comments about attacking a federal building.

The table below provides a more detailed description of the remaining 59 documents. The first three items in the table have already been addressed above. The remaining items consist of routine administrative documents (EC stands for "Electronic Communication") such as internal memos (e.g., requests for authorization for a variety of things, investigative leads to other FBI offices, responses to leads), work product, notification of significance case events, and the like. As noted in the date column, many of these documents were generated post-indictment.

Section	Page	File	Serial	Date	Type	Description
4 part 1	11	266H-SC-39675	70	11/3/05	EC	Memo requesting polygraph exam of Anna
4 part 1	13	266H-SC-39675	327	6/20/05	EC	Memo documenting late entry of 4 jail calls: items 104,105,106,107
4 part 1	14	266H-SC-39675	439	3/9/07	EC	Miami memo enclosing 51 reports from Anna
4 part 1	16	266H-SC-39675	9	7/20/05	EC	Miami memo enclosing 1 report from Anna
4 part 1	19	266H-SC-39675	10	7/26/05	EC	Miami reply to SC lead, tasking Anna to gather intel on McDavid in Tennessee.
4 part 1	26	266H-SC-39675	440	3/8/07	EC	Last page of EC notifying Little Rock of Sacramento's intent to interview Zach Jenson about Lily LNU. No mention of McDavid
4 part 1	27	266H-SC-39675	52	9/30/05	EC	Philadelphia request for BAU analysis of 1 letter and 10 emails from McDavid
4 part 1	29	266H-SC-39675	49	10/6/05	EC	Philadelphia EC enclosing 1 letter and 10 emails to CHS from McDavid
4 part 1	30	266H-SC-39675	1	8/2/05	EC	Opening memo of McDavid case
4 part 1	35	266H-SC-39675	83	11/9/05	EC	Request for audio/video consensual monitoring
4 part 1	38	266H-SC-39675	137	12/30/05	EC	Request for audio/video consensual monitoring
4 part 1	41	266H-SC-39675	3	7/18/05	IIR	Intelligence dissemination report
4 part 1	44	266H-SC-39675	44	10/5/05	EC	Memo to West Coast offices, Philadelphia, Miami, and HQ to canvass sources and request assistance
4 part 1	51	266H-SC-39675	7	7/7/05	EC	Memo to Miami to request debrief of Anna re: Eric McDavid
4 part 1	55	266H-SC-39675	23	8/30/05	EC	Case strategy memo

1	4 part 1	60	266H-SC-39675	69	11/9/05	EC	Memo summarizing social networking information that corroborates Anna's reporting
2							
3	4 part 1	65	266H-SC-39675	82	11/30/05	EC	Memo from Philadelphia enclosing unidentified number of Anna 302's and EC's
4							
5	4 part 1	66	266H-SC-39675	131	10/11/05	FD302	Interview of Joe Van Buskirk, probation officer of Sarah Strayer. No mention of McDavid
6							
7							
8	4 part 1	67	266H-SC-39675	132	10/13/05	FD302	Interview of Joe Van Buskirk, probation officer of Sarah Strayer. Strayer met an acquaintance named "D" at a Denny's. No further information.
9							
10							
11	4 part 1	68	266H-SC-39675	201	2/13/06	EC	Documents Trap and Trace order
12	4 part 1	69	266H-SC-39675	202	2/13/06	EC	Documents Trap and Trace order
13							
14	4 part 1	70	266H-SC-39675	209	2/15/06	EC	Documents legal authority and request for use of trap and trace capability to retrieve web sites visited by subjects using FBI laptop
15							
16							
17	4 part 1	72	266H-SC-39675	212	1/18/06	FD302	Interview of Sarah Strayer. Describes traveling with McDavid with no derogatory information, no discussion of politics or violent action.
18							
19							
20	4 part 1	74	266H-SC-39675	210	1/20/06	FD302	Interview of Vern Callantine, boyfriend of Sarah Strayer. He called the FBI in response to Strayer's interview. Nothing of value. No mention of McDavid
21							
22							
23	4 part 1	75	266H-SC-39675	211	1/24/06	FD302	Interview of Sarah Strayer. Describes traveling with McDavid with no derogatory information, no discussion of politics or violent action.
24							
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1	4 part 1	76	266H-SC-39675	213	1/19/06	FD302	Interview of Sarah Strayer. Describes traveling with McDavid with no derogatory information, no discussion of politics or violent action.
2							
3							
4	4 part 1	77	266H-SC-39675	214	1/26/06	EC	Memo from Seattle enclosing 302's from interviews of Sarah Strayer
5							
6	4 part 2	2	266H-SC-39675	129	8/24/06	FD302	Interview of Katie Larson, King Co Sheriff's Office, about contact with Jenson and McDavid. No derogatory information.
7							
8							
9	4 part 2	5	266H-SC-39675-1D	26	1/19/06	FD192	Evidence sheet of jailhouse recording between McDavid and other parties
10							
11	4 part 2	6	266H-SC-39675-302	11	9/27/05	FD302	CHS report (not Anna) stating McDavid was in town briefly and other non-derogatory information.
12							
13							
14	4 part 2	8	266H-SC-39675	34	9/20/05	EC	Request for aerial photos of the USFS bldg and McDavid's house
15							
16	4 part 2	11	266H-SC-39675-Fisur	3	9/28/05	EC	Request for surveillance of McDavid in Seattle
17							
18	4 part 2	16	266H-SC-39675	68	11/9/05	EC	Sacramento request for surveillance
19							
20	4 part 2	20	266H-SC-39675-302	8	8/17/05	FD302	CHS report (not Anna) stating CHS met McDavid twice in casual setting. No derogatory information.
21							
22	4 part 2	21	266H-SC-39675-302	16	10/6/05	FD302	CHS report (not Anna). no mention of McDavid
23							
24	4 part 2	22	266H-SC-39675-302	17	10/11/05	FD302	CHS report (not Anna). no mention of McDavid
25							
26	4 part 2	23	266H-SC-39675-302	25	11/7/05	FD302	CHS report (not Anna). Rumor that McDavid is living at his parents' home
27							
28	4 part 2	24	266H-SC-39675-302	53	1/14/06	FD302	Review of jail recording between McDavid and Sacramento Prisoner Support

1	4 part 2	26	266H-SC-39675-302	114	5/17/06	FD302	Interview of Brenda Anderson re: her contact info in Jenson's address book. no mention of McDavid
2							
3							
4	4 part 2	28	266H-SC-39675-302	100	4/17/06	FD302	Interview of Erik Gonzalez, friend of McDavid. No derogatory information.
5							
6	4 part 2	30	266H-SC-39675-302	99	4/14/06	Insert	Contact with Leo Gonzalez, father of Erik Gonzalez, who provided his son's address. No derogatory information about McDavid
7							
8							
9	4 part 2	31	266H-SC-39675-302	107	4/20/06	Insert	Eric McDavid's father, George McDavid, seen at 24 hr Fitness in Roseville.
10							
11	4 part 3	20	266H-SC-39675	273	4/25/06	EC	Description of website for McDavid's friend, Erik Fritts-Davis
12							
13	4 part 3	23	266H-SC-39675	431	1/3/07	EC	ELSUR late entry for 3 CD containing recordings of McDavid calls/visits.
14							
15	4 part 3	24	266H-SC-39675	438	3/2/07	EC	Lead to Miami requesting all reports concerning Anna's participation at protests/convergences
16							
17	4 part 3	27	0		1/25/06	Other	Payment receipt for \$2,000 covering Anna's expenses from 12/27/05 - 1/24/06
18							
19	4 part 3	28	266H-SC-39675		5/24/06	EC	Last page of memo requesting Eureka RA to locate Erik Betzschmidt
20							
21	4 part 3	29	266H-SC-39675	275	4/28/06	EC	Report from Kansas City about Midge Potts, who had been corresponding with McDavid in jail. No derogatory information.
22							
23							
24	4 part 3	31	266H-SC-39675	274	5/2/06	EC	Memo documenting efforts to direct FBI source (not Anna) to Sacramento Indymedia
25							
26	4 part 3	33	266H-SC-39675	348		UR	Urgent Report to FBIHQ advising of Jenson's guilty plea
27							
28							

1	4 part 3	34	266H-SC-39675	349	7/25/06	EC	Last page of EC requesting NY to interview Lauren Weiner about an anarchist house in Washington DC and about Sacramento's case
2							
3							
4	4 part 3	35	266H-SC-39675	395	9/14/06	EC	Lead from Little Rock to debrief Jenson about Lily LNU and her associates
5							
6	4 part 3	37	266H-SC-39675	424	12/18/06	EC	Lead to Santa Ana RA enclosing jail correspondence between McDavid and Carolyn Colesworth
7							
8							
9	4 part 3	39	266H-SC-39675	432	1/16/07	EC	Lead to Eureka RA to interview Kevin Dockery and Erik Betzschmidt
10							
11	4 part 3	45	266H-SC-39675	452	9/10/07	EC	FBIHQ memo identifying new address for Jenson
12							
13	4 part 3	47	266H-SC-39675	455	4/10/07	EC	To document attendance at a prisoner support meeting for McDavid
14							
15	4 part 3	49	266H-SC-39675	471	1/9/08	EC	To reset lead to Eureka RA to conduct interviews
16							
17	4 part 3	51	266H-SC-39675	437	2/1/07	EC	page 11 from a memo documenting research to respond to defense suppression motions.
18							
19	4 part 3	52	266H-SC-39675	349	7/25/06	EC	Redundant (see above p. 34)

20

21 8. Redacted Crimethinc FOIA reports

22 The defense states that the government did not turn over reporting from Anna regarding the

23 2004 Crimethinc convergence held in Des Moines and that these documents were relevant to the

24 defense. In support of its argument, defense presents Exhibit 5, which contains 7 redacted FBI

25 documents acquired through a separate FOIA request for documents related to the 2004 Crimethinc

26 convergence in Des Moines. (Crimethinc is an anarchist organization that has published material on

27 anarchist philosophy and organized gatherings for the purpose of training, networking, and

28 socialization.) As set forth in the table below, three of the documents are FD302s. These three

1 reports are among the 51 reports from Miami that have already been addressed above. The  
 2 remaining 4 items are routine Electronic Communications involving case administration and  
 3 dissemination of information to other offices regarding an Omaha investigation that involved  
 4 Crimethinc. There are a few brief references to McDavid but no exculpatory information.  
 5

Page	File	Serial	Date	Type	Description
7	2660-OM-49939	1	8/2/04	EC	Portion of memo to open case in Omaha. The memo notes that McDavid was present at the location of an FBI interview on 8/25/2004. No other references to McDavid.
10	2660-OM-49939	19	8/24/04	EC	Memo from Omaha identifying McDavid as a Crimethinc member who may be planning to travel to the Republican convention. No other McDavid references.
13	2660-OM-49939	51	8/30/04	FD302	Report from Anna describing participants at Crimethinc convergence. Provides physical description of "Dee" and his companion "Fritz", both from California. Both smoke marijuana. No other information about McDavid.
16	2660-OM-49939	52	8/23/04	FD302	Report from Anna describing participants at Crimethinc convergence. Provides physical description of "D" or Eric LNU and his companion "Fritz", both from California. Both smoke marijuana and plan to attend the RNC protest. Both described generally as Crimethinc leaders. No other information about McDavid.
19	2660-OM-49939	68	9/28/04	EC	Memo to close Omaha case. No mention of McDavid.
20	2660-OM-49939	69	8/27/04	FD302	Report from Anna identifying a person other than McDavid. No mention of McDavid.
21	2660-OM-49939	21	8/26/04	EC	Case update memo. References McDavid's presence at a location where an FBI interview occurred.

24 I declare under penalty of perjury that the foregoing is true and correct and that this  
 25 declaration was executed at Sacramento, California on October 12, 2012.



NASSON WALKER