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MEMORANDUM

TO: Thomas K. Coan, Esq,
FROM: John W. Whitehead, President
The Rutherford Institute
RE: United States v. Pete Santilli et al.
DATE: February 2, 2016

Pete Santilli stands charged along with seven other individuals with conspiracy to impede federal officers from discharging their duties by use of force, intimidation, or threats. 18 U.S.C. § 372. Santilli, a new media journalist who broadcasts his news reports over YouTube and streaming internet radio, is the only journalist among those charged.

- 1. The government's prosecution of this new media journalist is consistent with a growing tactic by the government to intimidate members of the press who portray the government in a less than favorable light.**

By singling this new media journalist out for arrest and prosecution, the government through its actions presents a grave danger to the First Amendment's protections of freedom of speech

and the press. The basis of the allegations against Santilli as articulated in the criminal complaint and which form the basis of his prosecution consist of actions and expression by him in his capacity as a journalist.

Santilli's arrest and prosecution are a clear example of a growing government tactic to silence and intimidate members of the press who are, in carrying out their journalistic duties, informing the public about citizen unrest, especially unrest that is sparked by instances of government abuse and infringement of civil liberties.

Not only does this tactic silence individual journalists, but it has a chilling effect on the press as a whole, signaling that they will become the target of the government if they provide reporting on these events with a perspective that casts the government in a bad light. Santilli should not be another victim of this tactic and should not only be free to continue to report on the events that led to his arrest but should be at liberty to continue exercising his First Amendment right as a member of the press to report on issues of public concern.

2. As a new media journalist, Santilli's lack of affiliation with any mainstream, institutional media does not render him any less entitled to protection under the First Amendment.

In the modern internet age, anyone who seeks to reach a mass audience through social networking and alternative media outlets is functioning as the press for First Amendment purposes and is entitled to the full protection of that provision of the Constitution.

Despite any lack of affiliation with the institutional media, Santilli as a new media journalist who broadcasts his news reports over YouTube and streaming internet radio is protected by the

First Amendment’s fundamental guarantees to freedom of the press and of speech. Santilli’s protection under the First Amendment does not depend on any particular training, connection with the institutional press, or attempts to cover “both sides” of the story of the occupation at Malheur National Wildlife Refuge. *Obsidian Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir. 2014).

3. The FBI has made it clear through its own complaint that it is charging Santilli solely as a reporter of information and not as an accomplice to any criminal activity.

The government itself makes the case in its Criminal Complaint against Santilli that he was acting solely as a reporter of information and not as an accomplice to any criminal activity.

By highlighting Santilli’s statements within its complaint—statements which repeatedly affirm the principles of nonviolence, free speech and the importance of news delivered by non-mainstream journalists—the government undermines its own understanding of the scope of the First Amendment and the extent to which it protects journalists and citizens alike.

For example, the following statements made by Santilli were cited by the government as reasons for charging him as an accomplice to criminal activity:

- “I’m going to be, as a member of the media, ah. Exercising my First Amendment rights to cover this stuff for the American public cause the main stream media is not going to be bringing you what we are going to be bring [sic] to you[.]” (¶ 43);
- “I give you my word from this point forward, I will be lawful, I will be constitutional, ok[.]” (¶ 52).

4. Santilli has been adamant about his commitment to exercising his First Amendment rights in a nonviolent, peaceful fashion and urging others to do so as well.

Again, as cited by the government in its complaint, Santilli went so far during one of his broadcasts to emphasize that the only weapon he is using is the First Amendment:

- “[B]ut here is what we need, most importantly, ok, this is what we need, how I’m gonna say this and I am going to be talking about it throughout the day: one hundre thousand, unarmed, me and women, to stand together. It is the most powerful weapon in our arsenal[.]” (¶ 47);
- “Here is what we need. I’m gonna tell you something right now. Captain Joe, myself, I’m not armed. I am armed with my mouth. I’m armed with my live stream. I’m armed with a coalition of like-minded individuals who sit at home and on YouTube watch this.” (¶ 48);
- “Here is what we need. I’m gonna tell you something right now. Captain Joe, myself, I’m not armed. I am armed with my mouth. I’m armed with my live stream. I’m armed with a coalition of like-minded individuals who sit at home and on YouTube watch this.” (¶ 48)
- “We need to join together, one hundred thousand unarmed men and women, one hundred thousand of them, whether they be from outside, or they be from here in this local county.” (¶ 49);
- “I want one hundred thousand people out here, should to shoulder, uh, unarmed. That’s what I am calling for.” (¶ 50);

- 5. Santilli's statements are consistent with our nation's rich heritage of patriots who were passionate about their rights and vocal in their views of government.**

Santilli's statements are consistent with our nation's rich heritage of patriots who were passionate about their rights and vocal in their views of government.

Thomas Paine declared, "It is the duty of the patriot to protect his country from its government."

Said Benjamin Franklin: "Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech."

- 6. Santilli's use of the pronoun "we" throughout his broadcasts was offered in the same spirit as the first three words of the Constitution: "We the people."**

Santilli consistently called for nonviolent action on the part of "we", meaning "we the people," wholly negating the idea that he intended to join in any force, intimidation or threats against the government.

- 7. The government's tactic of arresting and charging Santilli is one that has been employed previously by other law enforcement entities of arresting journalists to prevent the public from knowing about civil unrest and the conditions that spawn that unrest. This has happened as recently as during the protests in Ferguson, Missouri, and Baltimore, Maryland.**

The government's own allegations demonstrate that Santilli was acting as a source of news and information for the public about an event that illuminates one of the most important issues of our time—the encroachment of governmental power into the lives and liberties of citizens and the attempts of citizens to reclaim their freedom.

The government's decision to charge and arrest Santilli in the face of this evidence contradicting his involvement in any conspiracy as defined in 18 U.S.C. § 372 illustrates that it has seized upon a tactic employed by other law enforcement entities of arresting journalists to prevent the public from knowing about civil unrest and the conditions that spawn that unrest.

For example, in August 2014, there were numerous cases of journalists covering the riots and civil disobedience in reaction to police violence against minorities in Ferguson, Missouri, an effort that was described as a concerted, top-down effort to restrict the fundamental First Amendment rights of the public and the press. See <http://www.cnn.com/2014/08/19/us/ferguson-journalists-arrested/>. Ironically, in light of the arrest and charge of Santilli, President Obama stated in response to the journalists' arrest: "Let me also be clear that our constitutional rights to speak freely, to assemble, and to report in the press must be vigilantly safeguarded, especially in moments like these." *Id.* More recently, journalists were subjected to arrests and assaults as they attempted to cover the uprising in Baltimore, Maryland, after an African-American died while in police custody. See <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-protest-journalists-20150426-story.html> and <https://photographyisnotacrime.com/2015/05/04/journalist-arrested-trying-to-record-baltimore-police-making-arrest/>.

These events, which were described as a "top-down effort" to prevent the public from knowing what was occurring, have more than a isolated impact on a single event of public

concern. They create a chilling effect on reporters such as Santilli, warning them that they will be subjected to government retribution if they provide information that either reflects poorly on the government (particularly law enforcement) or shows citizens standing up against the government and demanding change. The ideals of the First Amendment demand a vigorous press that is able to report fully and fairly about the government. But the tactics employed in Ferguson, Baltimore and here against Santilli are inimical to a free press and will result in stifling freedoms protected by the First Amendment.