

**Department of Justice Use of Certain Law Enforcement Tools to Obtain Information from,
or Records of, Members of the News Media; and Questioning, Arresting, or Charging
Members of the News Media
Annual Report: Calendar Year 2016**

The Department of Justice (Department) is committed to making public, on an annual basis, data regarding its use of certain law enforcement tools to obtain information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media, pursuant to 28 C.F.R. § 50.10. *See* United States Attorneys' Manual (USAM) 9-13.400(L)(4). This public report, which encompasses authorizations during calendar year 2016, is derived from information provided by Department Divisions and United States Attorneys' Offices.

A. Subpoenas and applications for court orders or search warrants authorized by the Attorney General (28 C.F.R. §§ 50.10(c) and (d)):

1. In an investigation concerning threats to federal law enforcement officers, obstruction of justice, extortion, the unlawful possession and use of firearms, and other offenses, the Attorney General authorized the United States Attorney's Office for the District of Nevada to apply for warrants to search the Facebook and YouTube accounts of Peter Santilli, the host of a web-based video and audio program. The investigation concerned the roles of Santilli and others in the April 2014 armed resistance to efforts by the Department of Interior Bureau of Land Management (BLM) to remove from public lands cattle owned by rancher Cliven Bundy and members of his family. Because Santilli's newsgathering-like activities were intertwined with his planning of, and participation in, the standoff, as a matter of prudence, the Criminal Division (and the News Media Review Committee) recommended that the proposed investigative steps be considered and authorized by the Attorney General pursuant to the Department's policy. *See* 28 C.F.R. § 50.10(d). Facebook and YouTube complied with, and Santilli was notified of, the warrants. *See* 28 C.F.R. § 50.10(e).
2. In the prosecution of former Los Angeles County Sheriff Leroy Baca, who was charged with, and convicted of, offenses related to his leadership of a conspiracy to obstruct an FBI investigation of civil rights violations, including prisoner abuse and corruption, occurring in the Los Angeles County Jail, the Attorney General authorized the USAO for the Central District of California to issue a trial subpoena to former *Los Angeles Times* reporter Robert Faturechi. *See* C.F.R. § 50.10(c)(4). The authorization was limited to eliciting testimony at trial related to Faturechi's September 2011 interview of Baca in connection with a subsequently-published news story. The subpoena was issued, and the *Los Angeles Times* moved to quash. The district court denied the motion, and Faturechi testified at trial.
3. In connection with an investigation into hacking of a foreign-based news blog, and with the consent of the operator of that blog, the Attorney General authorized

Department attorneys to seek, on behalf of foreign law enforcement authorities, court orders, pursuant to 18 U.S.C. § 2703(d), directing certain communication service providers to produce access logs and login details for the blog operator's social media and email accounts. *See* 28 CFR § 50.10(c)(5)(ii)-(vii). Although the account holder was cooperating with the investigation and expressly permitted law enforcement authorities to access his/her records, per corporate policy, the communication service providers required compulsory process. The communication service providers complied with the § 2703(d) orders.

B. Questioning, arrests, or charges authorized by the Attorney General (28 C.F.R. § 50.10(f)):

1. The Attorney General authorized the United States Attorney's Office for the District of Nevada to charge Peter Santilli, the host of a web-based video and audio program, with making threats to federal law enforcement officers, obstruction of justice, extortion, the unlawful possession and use of firearms, and other offenses. *See* 28 C.F.R. § 50.10(f). The charges stemmed from Santilli's role in an armed resistance against federal law enforcement officers that followed efforts by the Department of Interior Bureau of Land Management (BLM) to remove from public lands cattle owned by rancher Cliven Bundy and members of his family. Because Santilli's newsgathering-like activities were intertwined with his planning of, and participation in, the standoff, as a matter of prudence, the Criminal Division (and the News Media Review Committee) recommended that the proposed charges be considered and authorized by the Attorney General pursuant to the Department's policy. In February and March 2016, a federal grand jury charged Santilli (and 18 others) with offenses relating to their roles in the standoff. In October 2017, Santilli pleaded guilty to conspiracy to injure or impede federal officers.
2. The Attorney General authorized the United States Attorney's Office for the District of Oregon, pursuant to 28 C.F.R. § 50.10(f), to arrest Peter Santilli, the host of a web-based video and audio program, and charge him with conspiring to impede officers of the United States, in violation of 18 U.S.C. § 372. The charges stemmed from Santilli's participation in an armed occupation of the Malheur National Wildlife Refuge (MNWR) in Harney County, Oregon. Because Santilli's newsgathering-like activities were intertwined with his involvement in the occupation, federal prosecutors sought and obtained the Attorney General's authorization to arrest and charge Santilli. On February 3, 2016, a federal grand jury returned an indictment charging Santilli (and 15 others) with the same offense. On September 6, 2016, the district court dismissed the charges against Santilli.

C. Subpoenas, applications for court orders, search warrants, questioning, arrests, or charges authorized by a Deputy Assistant Attorney General for the Criminal Division (28 C.F.R. §§ 50.10(d)(4) and (g)):

1. In an investigation concerning the abduction of an American journalist overseas, Deputy Assistant Attorneys General (DAAGs) for the Criminal Division authorized a United States Attorney's Office to apply for court orders and a search warrant to obtain certain of the journalist's communications records, to issue subpoenas for certain of his/her business records (i.e., her credit card records), and to conduct a physical search of his/her residence overseas, which search federal investigators intended to coordinate with foreign law enforcement authorities. *See* 28 C.F.R. § 50.10(g)(1). Investigators sought authorization to use these tools to determine the journalist's location, and to identify his/her captors as well as any persons with whom the journalist's captors may have been communicating and/or any persons who may have been in a position to negotiate his/her release. The authorizations specifically instructed investigators to avoid reviewing or retaining records or information that related to the journalist's newsgathering and that did not relate to his/her abduction. *See* 28 C.F.R. §§ 50.10(c)(5)(viii) and (d)(7). Although federal prosecutors did seek and obtain the court orders and a search warrant for the journalist's communications records, because federal investigators had not yet issued subpoenas for the journalist's credit card records or searched his/her residence by the time the journalist escaped his/her captors, federal investigators did not use those tools. Upon the journalist's return to the United States, federal investigators notified him/her of the DAAGs' authorizations. *See* 28 C.F.R. 50.10(e).
2. In an investigation concerning cyberstalking, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for a warrant to search the email accounts of a member of the news media. *See* 28 C.F.R. § 50.10(d)(4). Investigators used search protocols intended to minimize intrusion into the target's newsgathering activities, *see* 28 C.F.R. § 50.10(d)(7), and employed safeguards to ensure that information or records related to newsgathering were not retained, *see* USAM 9-13.400(H).
3. In an investigation concerning the unlawful transportation, possession, and distribution of firearms, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for a warrant to search the home, vehicles, computer, and cellular telephone of a member of the news media. *See* 28 C.F.R. § 50.10(d)(4). Investigators used search protocols intended to minimize intrusion into the target's newsgathering activities, *see* 28 C.F.R. § 50.10(d)(7), and employed safeguards to ensure that any information or records related to newsgathering were not retained, *see* USAM 9-13.400(H).
4. In an investigation concerning the receipt, possession, or distribution of child pornography, a Deputy Assistant Attorney General for the Criminal Division authorized a United States Attorney's Office to apply for a warrant to search the

residence of the subject of the investigation, who cohabitated with a member of the news media. *See* 28 C.F.R. §§ 50.10(d)(4). Investigators used search protocols intended to minimize intrusion into the target's newsgathering activities, *see* 28 C.F.R. § 50.10(d)(7), and employed safeguards to ensure that any information or records related to newsgathering were not retained, *see* USAM 9-13.400(H).

D. Subpoenas and applications for court orders authorized by Assistant Attorneys General or United States Attorneys (28 C.F.R. § 50.10(c)(3)):

1. In an investigation concerning a proposed corporate acquisition, an Assistant Attorney General authorized the issuance of civil investigative demands (CIDs) to two media entities for commercial, financial, and other records unrelated to the entities' newsgathering activities. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). Both entities produced documents in response to the CIDs.
2. In litigation against Betty and Hughston Brinson to enforce the Fair Housing Act, the Principal Deputy Assistant Attorney General for the Civil Rights Division authorized the issuance of a subpoena to the *Nevada Appeal* for records related to the placement of classified advertisements. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The newspaper expressly agreed to provide the requested records in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
3. In an investigation concerning wire and mail fraud and other offenses, an Assistant Attorney General authorized federal prosecutors to issue a subpoena to a news media entity for financial information unrelated to the entity's newsgathering activities, which information the news media entity expressly agreed to provide in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i), (ii)(A), and (iii). The Assistant Attorney General also authorized federal prosecutors to issue subpoenas to two employees of news media entities for testimony unrelated to the entities' newsgathering activities, which information the employees and the news media entities expressly agreed to provide in response to subpoenas. *See id.* In addition, in an abundance of caution, the Assistant Attorney General also authorized federal prosecutors to issue a subpoena to an individual who may be engaging in newsgathering activities for testimony unrelated to such activities. *See* 28 C.F.R. § 50.10(c)(3)(ii)(C) and (iii).
4. In the prosecution of Jesse Benton, John Tate, and Dimitrios Kesari for causing false filings to the Federal Election Commission and related offenses, the Assistant Attorney General for the Criminal Division authorized the issuance of a subpoena to Fox News for copies of broadcast footage of two interviews as well as documentation regarding the authenticity of the footage. Fox News expressly agreed to provide the requested footage and authentication documentation in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).

5. In an investigation concerning the sale of controlled substances, an Acting United States Attorney authorized the issuance of a subpoena to a member of the news media for video and audio recordings, as well as other written records, related to a broadcast investigative report about an undercover informant. The member of the news media expressly agreed to provide the requested material in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
6. In an investigation concerning visa fraud and making false statements, a United States Attorney authorized the issuance of a subpoena to a news media entity for information related to correspondence provided to the station. The news media entity expressly agreed to provide the requested information in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
7. In an investigation concerning a threat to a federal employee through a news media website, a United States Attorney authorized the issuance of a subpoena to a news media entity for information identifying the website user who posted threats. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A), (ii)(B) and (iii). The news media entity expressly agreed to provide the requested information in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
8. In the prosecution of former Member of Congress Melvin Reynolds for failure to file tax returns, the United States Attorney for the Northern District of Illinois authorized the issuance of a trial subpoena to Nate Clay, a former on-air radio personality at WLS, a station broadcasting out of Chicago, to authenticate an aired interview of Reynolds. Both WLS and Clay expressly agreed that Clay would testify in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
9. In an investigation concerning insider trading, a United States Attorney authorized the issuance of a subpoena to a news media entity for information related to the dates certain articles were published. The news media entity expressly agreed to provide the requested information in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
10. In an arson investigation, a United States Attorney authorized the issuance of a subpoena to a news media entity for video footage of, and aired segments reporting on, the fire at issue. The news media entity expressly agreed to provide the requested material in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
11. In the prosecution of police officer Steven Blakeney for violating the civil rights of a political candidate by orchestrating a false arrest, the United States Attorney for the Eastern District of Missouri authorized the issuance of a trial subpoena to Lindsay Katz, a television reporter who previously had worked for KMOV-TV in St. Louis, who captured the false arrest and “perp walk” on camera. Although the USAO initially understood that Katz expressly had agreed to provide the information and to testify in response to a subpoena, *see* 28 C.F.R. §

50.10(c)(3)(i)(A), after issuance of the subpoena, KMOV indicated that it intended to challenge the subpoena. The USAO then withdrew the subpoena.

12. In connection with defending the United States against a Federal Tort Claims Act medical malpractice action brought by the estate of a part-time security guard who worked at the office of the *Newark Star Ledger*, the Acting United States Attorney for the District of New Jersey authorized the issuance of a subpoena to the *Star Ledger* for the decedent's pay, performance, and other employment records. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The newspaper complied with the subpoena.
13. In an investigation concerning bribery, fraud, and tax offenses, a United States Attorney authorized the issuance of subpoenas to four news media entities for employment records and for records related to the purchase of advertisements. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The news media entities complied with the subpoenas.
14. In an investigation concerning the misappropriation of funds in connection with certain entertainment events, a United States Attorney authorized the issuance of a subpoena to a media entity for contracts, payment records, and other documents and correspondence related to business and financial dealings. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The media entity complied with the subpoena.
15. In an investigation concerning threats made on a news website, a United States Attorney authorized the issuance of a subpoena to a news media entity for the identifying information of the website user who posted threats. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A), (ii)(B) and (iii). The news media entity expressly agreed to provide the requested information in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
16. In an investigation concerning securities fraud and other offenses, a United States Attorney authorized the issuance of a subpoena to a former employee of a news media entity for testimony regarding certain expenditures. *See* 28 C.F.R. §§ 50.10(c)(3)(ii)(A) and (iii). The former employee complied with the subpoena.
17. In the prosecution of Steve Jabar and Deborah Bowers for misuse of United Nations grant money, the United States Attorney for the Western District of New York authorized the issuance of a trial subpoena to WIVB television for the recording of an interview of the defendant. The television station expressly agreed to provide the requested recording in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
18. In an investigation concerning a threat to an aircraft, a United States Attorney authorized the issuance of a subpoena for video footage capturing the incident. The news media entity expressly agreed to provide the requested footage in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).

19. In the prosecution of Wilson Clow, Jr., for selling firearms to a convicted felon and for falsifying paperwork related to that transaction, the United States Attorney for the District of Oregon authorized the issuance of a subpoena to Sharon Ko, a former reporter for KDRV, a television news station in Medford, Oregon, for authentication of Ko's televised interview of Clow. Ko expressly agreed to testify in response to a subpoena, and KDRV offered no objection. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
20. In an investigation concerning breach of security during a political protest, a United States Attorney authorized the issuance of a subpoena to a news media entity for broadcast footage of the security breach. The news media entity expressly agreed to provide the requested footage in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
21. In an investigation concerning a shooting of an armed fugitive by a federal law enforcement officer, a United States Attorney authorized the issuance of subpoenas to two news media entities for recorded footage of the incident. The news media entities expressly agreed to provide the requested footage in response to subpoenas. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).
22. In an investigation concerning a series of commercial arsons, a United States Attorney authorized the issuance of a subpoena to a news media entity for unaired footage of a suspected arson. The news media entity expressly agreed to provide the requested footage in response to a subpoena. *See* 28 C.F.R. § 50.10(c)(3)(i)(A).