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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER SANTILLI,

Defendant.

Case No. 3:16-cr-00051-BR

**MOTION TO DISMISS COUNT 1 –
CONDUCT IS
CONSTITUTIONALLY
PROTECTED**

I. Certificate of Counsel

Counsel for Mr. Santilli conferred with AUSA Ethan Knight about this motion. The Government opposes the motion and the relief sought.

II. Motion

Pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure and the First Amendment to the Constitution, defendant Peter Santilli, through his attorney Thomas Coan, moves the Court for an order dismissing Count One against him for the reason that the conduct underlying the charge is all constitutionally protected by the First Amendment rights of free speech, press and assembly.

III. Introduction and Background

The charge against Santilli in this case arises out of his presence in Harney County, Oregon in January 2016, his speech as a new media journalist covering the occupation by protesters of the Malheur National Wildlife Refuge (MNWR), and his calls for assembly. As an alternative to mainstream media, Santilli broadcasts news, current events, a talk show and opinions by way of The Pete Santilli Show on various Internet outlets. Santilli provides unfiltered coverage of events by live streaming. He is a “shock jock” who at times publishes controversial views using colorful language and an in-your-face style that some people find offensive and others find entertaining.

Over the past few years, and as part of producing content for his news show, Santilli has traveled to protests throughout the country including the Bundy Ranch matter in Nevada in April 2014, the May 2015 protests in Baltimore relating to the police shooting death of Freddie Gray, the 2015 protests in the streets of Cleveland relating to police shootings there, and the July 2014 protests relating to immigration and border issues in Murrieta, California. At each of these protests, Santilli published rallying calls for others to come join him in support of the protesters. As in Harney County, Santilli’s rallying calls at these other protests were always encouraging lawful, constitutional and peaceful assembly. Never did any law enforcement officer inform Santilli that his rallying calls were in violation of any law.

At the end of December 2015, Santilli drove to Burns, Oregon to cover the rally in support of Dwight and Steven Hammond that was scheduled to take place on Saturday January 2, 2016. He and his team booked rooms at the Silver Spur Hotel in Burns for three nights. Several hundred people gathered in the parking lot of the Safeway grocery store in Burns and from there they marched to the Hammond residence to show their support for them. During the march, a

smaller group of protesters splintered off and drove out to the MNWR take a stand by occupying the property there. Santilli chose not to participate. To the contrary, Santilli expressed his disagreement with the tactics taken by this splinter group of occupiers, but rather than leave and return to his studio Cincinnati, he stayed in Burns and Harney County to cover and publish the continuing and developing story of the protesters' occupation of the MNWR.

IV. The factual allegations against Santilli

The allegations against Santilli set forth in the Complaint all relate to his calls for people to come out to Oregon. A copy of the relevant part of the Complaint is attached as Exhibit A.

The allegations pertaining to Santilli can be summarized as follows:

On December 27, 2015, Santilli published an "all-call" encouraging all patriots and other people to come to Oregon no later than January 2, 2016. (Paragraph 42)

On January 2, 2016, in the Safeway parking lot, Ammon Bundy tells Santilli that a group is going to the MNWR right after the rally. (Paragraph 42)

On January 5, 2016, Santilli publishes a rallying call saying, "This is what we need, ... one hundred thousand, unarmed, men and women, to stand together. It is the most powerful weapon in our arsenal." (Paragraph 47)

On January 6, 2016, Santilli publishes a similar rally call during his broadcast of "The Pete Santilli Show." Again he calls for one hundred thousand, unarmed men and women to come join them. (Paragraph 49)

On January 27, 2016, Santilli repeats his call for one hundred thousand people to some stand shoulder to shoulder, unarmed. (Paragraph 50)

Santilli publishes a similar call on January 12, asking for one hundred thousand people standing shoulder to shoulder with flowers and determination to crush communism in Burns. (Paragraph 52)

On January 17, 2016, Santilli shames and criticizes the main stream media for filtering their information and not providing their viewers with information about the core issues involved in the protest. (Paragraph 53)

On January 21, 2016, Santilli covered a meeting between Ammon Bundy and the FBI, and while driving back to Burns, the person holding the camera says that “they’re amping up their camp.... They have built a very large triage in the hospital.... and they’re starting to get closer to the refuge.” In response, Santilli calls for all good patriots to “staff up.” He continues,

I’m gonna say this right now, loud and clear, and I want to put it out to every one of you patriots out there right now. This is to provoke constitutionality only! That's it. So don't say ‘oh my goodness lo lo lo, shut your cake hole!’ If you’re a patriot, ok, and you believe in what we're doing here as to ah protecting our god given rights, ok, you need to get in your car and come out here ok. Good patriots will do good things. Now’s the time, time to staff up, ok. Time to staff up. I saw a compound that is so [video skips] ... alright, that's what I'm calling for, that’s what I'm provoking here, alright! We have a Second Amendment right uh to do that, to keep and bear arms. So those patriots that do keep and bear arms lawfully constitutionally, it's time to staff up now! Right now.

Based on these allegations, the Government charged Santilli with knowingly conspiring and agreeing with others to prevent officers and employees of the United States Fish and Wildlife Service and Bureau of Land Management from discharging their duties. The Superseding Indictment alleges that these calls were used to recruit and encourage others to participate in the conspiracy.

V. The charge against Santilli is based on constitutionally protected speech.

Under FRCrP Rule 12, a “party may raise by pretrial motion and defense, objection, or request that the court can determine without a trial on the merits.” For purposes of this motion, Santilli accepts as facts the allegations in the Complaint in this case.

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.” “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002). As Justice William Brennan wrote, the First Amendment represents a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co.*, 376 U.S. at 270. “[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it . . . stirs people to anger.” *Terminiello v. Chicago*, 337 U.S. 1, 4, 93 L. Ed. 1131, 69 S. Ct. 894 (1949).

“Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution.” *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937). “The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.” *Id.*

While the First Amendment prohibits any law “abridging the freedom of speech,” the Supreme Court has carved out some limited categories of “unprotected” speech, including “obscenity, defamation, fraud, incitement, and speech integral to criminal conduct.” *United States v. Stevens*, 559 U.S. 460, 468-69 (2010).

A. Incitement

As to this case, the only exceptions the Government could argue are incitement and speech integral to criminal conduct. “Nothing should be clearer at this stage in the development of first amendment jurisprudence than ‘the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy ... of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.’” *United States v. Dahlstrom*, 713 F.2d 1423, 1428 (9th Cir. 1983) (quoting *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (per curiam)). Thus, four elements must be met for the speech to be unprotected as incitement: The speech must be (1) directed to causing (2) imminent (3) lawless action and (4) the action must be likely to occur.

The key *Brandenburg* factor is timing: The speaker must intend to cause *imminent* action; advocating for “illegal action at some indefinite future time” is protected speech. *Hess v. Indiana*, 414 U.S. 105, 108 (1973). Speech that may look like incitement is merely “abstract advocacy” if it is not intended to cause imminent lawless action. Relatedly, the fact that no one actually took imminent lawless action based on a defendant’s speech is evidence that the speech was merely abstract advocacy. *McCoy v. Stewart*, 282 F.3d 626, 632 n.6 (9th Cir. 2002) (reversing conviction based on defendant’s advice to potential gang members about gang activities being only abstract advocacy).

Here, Santilli never advocated for any lawless action. All of his calls were for peaceful, lawful assembly. When he encouraged people to “staff up” and exercise their Second Amendment rights, he told them to do so lawfully and constitutionally. His calls for assembly were not calls for incitement to lawless action but for lawful assembly of “we the people.”

B. Speech Integral to Criminal Conduct

Speech integral to criminal conduct (“integral speech”) is a First Amendment exception separate from incitement. This exception first arose in *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490 (1949), in which the Supreme Court upheld a state court ruling that prevented unions from picketing to force a distributor to enter an agreement that violated state anti-trade law. The Supreme Court found that First Amendment protection does not extend to speech “used as an integral part of conduct in violation of a valid criminal statute.” *Id.* at 498. The question becomes “whether defendants merely encouraged [others to commit crime], or if their speech was integral to the crime.” *United States v. Meredith*, 685 F.3d 814, 820 (9th Cir. 2012).

In *Meredith*, a tax protester case, the defendants were charged with causing another person, Spatola, to mail false tax returns. The court considered “whether defendants merely encouraged their customers to evade taxes, or if their speech was integral to the crime.” *Meredith*, 685 F.3d at 820. Evidence at trial showed that Spatola attended two seminars where the defendant discussed how to avoid paying taxes and that the defendant’s book and newsletters instructed readers on how to make false filings. Two co-defendants told Spatola that they had success using the instructions, and Spatola testified that he would not have amended his returns without these assurances from the co-defendants.

The court concluded that the defendant and co-defendants were not engaging in protected speech, because their actions were more than simply encouraging Spatola to file the false returns. They gave Spatola specific instructions in the literature and seminars. The co-defendants had detailed conversations with Spatola about the plan. Since the co-defendants were participants in

the scheme, the defendant was liable for the reasonably foreseeable actions even though she had never had a direct interaction with Spatola.

Here, there is no allegation that Santilli is encouraging or instructing anyone on committing a criminal offense. To the contrary, his words are directly at encouraging people to exercise their First Amendment right to assembly and their Second Amendment right to bear arms. This exception does not apply.

C. True Threats

“True threats” are another, separate category of speech that the First Amendment does not protect. True threats generally consist of statements made by the defendant indicating that they themselves will take some action. There is no requirement of immanency like there is for incitement. *United States v. Vaksman*, 472 F. App’x 447, 449 (9th Cir. 2012) (“The government need only prove immanency where a speaker incites others to commit violence.”). There is also no requirement that the speaker intends to follow through on the threat. *United States v. Keyser*, 704 F.3d 631, 638 (9th Cir. 2012).

The Supreme Court has held that the government can punish threatening expression only if the “speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). In other words, the First Amendment prohibits the criminalization of pure speech unless the government proves that the speaker specifically intended to threaten. Thus, this subjective test must be read into all threat statutes that criminalize pure speech. *United States v. Bagdasarian*, 652 F.3d 1113, 1117 (9th Cir. 2011). It is this element of intent that separates protected expression from unprotected criminal behavior. *Id.*

However, for some threat statutes (but not all), the purported threat must also meet an objective standard. *See, e.g., Doe v. Pulaski County Special Sch. Dist.*, 306 F.3d 616, 624 (8th Cir. 2002) (en banc) (discussing objective analysis). Some statutes also require that a reasonable person would foresee that his statement would be perceived as a threat in order for the statement to be criminal.

In most cases where courts have found that speech constituted a true threat, the threatening speech was targeted against specific individuals or was communicated directly to the subject of the threat. *See, e.g., United States v. Dinwiddie*, 76 F.3d 913, 925 (8th Cir.1996) (finding a true threat when the defendant sent more than fifty threatening messages to an abortion clinic director by name); *United States v. Bellrichard*, 994 F.2d 1318, 1320–23 (8th Cir.1993) (finding a true threat when the defendant sent letters to public officials describing violence he hoped they would suffer if they failed to act as he directed). In contrast, speech that can reasonably be characterized as political rhetoric or hyperbole, particularly such speech not directed at specific individuals, is protected. In *Clairborne Hardware*, 458 U.S. 886, 902, 928 (1982), the Supreme Court held that the statement “If we catch any of you going in any of them racist stores, we're gonna break your damn neck” was protected by the First Amendment. *See also Fogel v. Collins*, 531 F.3d 824, 830 (9th Cir. 2008) (discussing examples of threats directed to specific individuals versus more generalized rants).

In *United States v. Keyser*, 704 F.3d 631, 635 (9th Cir. 2012), the defendant had mailed hundreds of packets of sugar that he had labeled as Anthrax. He argued that he could not be prosecuted for his acts because they were acts of speech to promote his self-published book on the dangers of Anthrax. The court first found that the mailings were objectively a threat: “A reasonable sender would foresee that recipients would understand the mailings to be threats to

injure them. Given the broad media coverage of actual anthrax being sent through the mail in 2001, a reasonable person would understand that a recipient would perceive a packet of powder with the word ‘Anthrax’ and a biohazard symbol printed on it as a threat.” *Id.* at 638. The court further concluded that the defendant subjectively intended to make a threat. Although he testified that he was not trying to scare people, he knew that some people “might at least briefly be concerned that maybe this is real anthrax.” He also stated that he intended the packets to be “provocative” and wanted people to have “a reaction” and be “concerned about the danger we're in.” *Id.* at 639. Accordingly, the court found the mailing to be true threats unprotected by the First Amendment.

The allegations against Santilli do not constitute true threats. There is no allegation that he is targeting anyone for harm, nor is there any allegation that Santilli is encouraging anyone else to truly threaten another. Indeed, there is no allegation that he threatened anyone. Santilli was in Harney County to cover the story and to encourage constitutionality only.

VI. Conclusion.

The allegations in this case against Santilli are all based on constitutionally protected conduct. Based on this, the Court should dismiss Count One against him.

Dated this 27th day of April 2016.

Thomas K. Coan
Thomas K. Coan, OSB 89173
Attorney for Defendant Santilli¹

¹ Attorney Emily Elison provided substantial support in drafting this memo.



SANTILLI

42. Law enforcement became aware SANTILLI has been in Harney County, Oregon, since January 2, 2016, but the exact date of his arrival in the area is unknown. SANTILLI operates a channel on YouTube called “Pete Santilli Show.” Details of the channel indicate it is categorized as entertainment under a standard license for YouTube. SANTILLI has posted video to the channel concerning the Hammond family and has been calling for people to come to Oregon since at least December 27, 2015. SANTILLI often streams live video from his YouTube channel. All video referred to in this affidavit has been preserved by law enforcement agents. In the referenced videos, SANTILLI often wears a vest which says “PRESS” with his name below it. SANTILLI has identified himself as a member of the Oath Keepers and wears insignia which indicates his affiliation with the III% group, detailed below. According to open source information, the Oath Keepers and III%ers have been identified as organizations associated with the anti-government patriot movement.

43. On December 27, 2015, a video was posted on SANTILLI’s YouTube channel “Pete Santilli Show” titled “Operation Hammond Ranch – Patriot ALL-CALL Deployment to

Oregon.” In the video, SANTILLI mentions known armed occupiers RITZHEIMER and O’SHAUGHNESSY and states they have “put out an all call for all patriots to respond. It was a call to action, all patriots to respond no later than January 2 to Oregon.” SANTILLI also states:

There’s going to be a lot of updates coming, ok. Ah, a lot of stuff that’s going to be happening out there, I can’t go into the exact details, because a, I don’t have all the details. I ah, I, let’s call it, um, I’m not a, I need to be on a need to know basis. 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 to, bringing you as to what’s happening, ah, at Hammond Ranch. So, ah, we are calling it initially here Operation Hammond Ranch. That may change, ah, but we want to bring awareness to Hammond Ranch.

SANTILLI continued in the video by stating:

What it’s about, it’s in Oregon, ah, and we need you to get out there, ah, this is an all call, ah, it’s been green lighted, for all patriots to respond to Oregon on or before January 2, ah there’s going to be a patriot convoy on January 2. You’ll be getting those exact details. So I’m Pete Santilli. Be sure to like, comment, subscribe, and share the heck outta this thing. Get the word out, ah, to all patriots that can get out there, especially in the Pacific Northwest. Ah, you must get out there, ah what is happening here

SANTILLI continues:

Ok, ah, we got the Federal government running around as if they’re trying to protect us from terrorism. No, they’re trying to shut down patriots like me, Schuyler Barbeau, throw them in jail, throw the Hammonds in jail, call them terrorists, and, ah, let all the Syrian refugees come in. We’re not going to let it happen. We’re going to take a stand Ok, I’m sure they had original intentions to be extremely peaceful. Ah, of course, ah, we, ah, we must get the Federal government to comply with our peaceful demands, ah, otherwise we have to explore all opportunities that we have made available to us through our founding fathers. So, ah, um, be prepared, be alert, um, and definitely respond to this call of action, call to action folks, all call, all patriots get out there. Thank you. Alright, here we are.

44. On January 2, 2016, a video was posted on YouTube channel “Pete Santilli Show” titled “[Live feed 2] Operation Hammond Ranch.” The video appeared to be filmed in the parking lot of the Safeway grocery store in Burns, Oregon, prior to a scheduled protest at

noon the same day. In the video, SANTILLI states, "Hey ladies and gentlemen, I just want you guys to know, I want it stated for the record here on the Pete Santilli Show." SANTILLI then turns and faces the camera directly and states: "Hey Stewart Rhodes, I tore up my membership card. I'm still an Oath Keeper, homey, huh, how does that work? I don't need your card. I don't need to pay your membership dues." SANTILLI then turns away from camera and addresses others and says: "I tore up my card. I tore up my card. I tore up my card. I'm still an Oath Keeper. See how that works?" SANTILLI then turns back to camera and says: "You know what, sue me. I got nothing. I got a freaking, I got an ash tray and a freaking pocket a hole. That's it. Sue me. Sue me. I'm an Oath Keeper. Can you imagine that? I tore up my card. I didn't blow up. It's amazing."

45. On January 2, 2016, a video was posted to YouTube channel "Pete Santilli Show" titled "Live feed Hammond ranch." The following conversation was heard on video but took place off-camera:

Ammon BUNDY: Hey we're continuing the stand. We're continuing the stand [at/out] the MNWR.

SANTILLI: Ok.

Ammon BUNDY: Let everybody know that.

SANTILLI: Ok.

Ammon BUNDY: They're to go to the MNWR . . . [inaudible] . . . after the rally . . . MNWR right after.

SANTILLI: [Coming back on microphone]: Ok, here we go [Returns to protest].

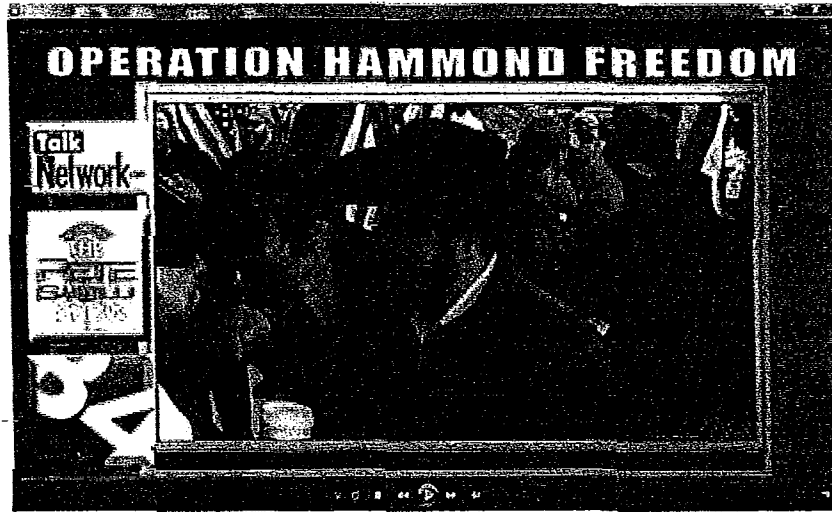
Also captured in the same video, an unidentified male greets A. BUNDY, and states he was with A. BUNDY in Nevada. The following conversation was then captured on video:

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Ammon BUNDY: We're continue the stand . . . [becomes inaudible as SANTILLI's cameraman moves away, and bumps into someone].

Cameraman: I was trying to get away from that conversation.

Below is a still frame shot from the above conversation as A. BUNDY speaks to the unidentified man.



46. Later, on the same video, the camera pans back as A. BUNDY leans in to SANTILLI and says, "Malheur, Malheur." The below still shot captures the moment A. BUNDY is talking to SANTILLI (SANTILLI is facing away from camera with mesh vest and black baseball cap). SANTILLI appears to acknowledge A. BUNDY and then pulls A. BUNDY in for a public speech on SANTILLI's live stream.



47. On January 5, 2016, a video was posted on YouTube channel “Pete Santilli Show” titled “Live update Burns Oregon #aslongasittakes.” In the video, SANTILLI states: “We want a constitutional sheriff, constitutional peace officers, but here is what we need, most importantly, ok, this is what we need, now I’m gonna say this and I am going to be talking about it throughout the day: one hundred thousand, unarmed, men and women, to stand together. It is the most powerful weapon in our arsenal, those guns that we were talking about, those that were carrying guns” SANTILLI then talks to a gas station attendant and repeats the same call for one hundred thousand people.

48. Also on January 5, 2016, a video entitled “#aslongasittakes” was live-streamed for several hours. The video started on January 5, 2016, continued into January 6, 2016, and was posted on YouTube channel “Pete Santilli Show.” The video is filmed at or just outside the MNWR. The location of the video outside the MNWR was confirmed by a Federal Wildlife Officer of the U.S. Fish and Wildlife Service. During the video, SANTILLI stated, “We’re not fucking going nowhere.” SANTILLI later stated, “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 and watch this.”

49. On January 6, 2016, a video was posted on YouTube channel “Pete Santilli Show” titled “press conference.” In the video, SANTILLI states, “We need to join together, one hundred thousand, unarmed men and women, one hundred thousand of them, whether they be from the outside, or they be from here in this local county.”

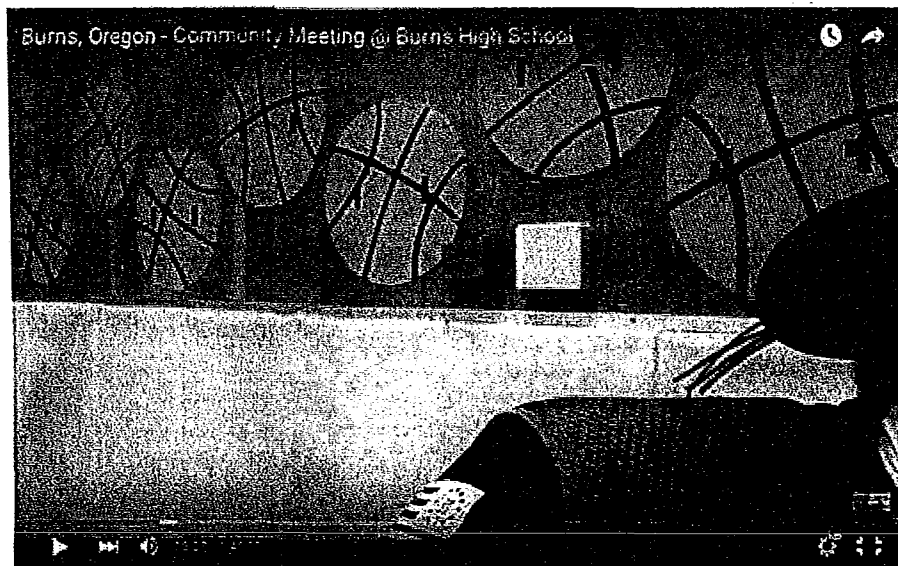
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50. On January 7, 2016, a video was posted on YouTube channel "Pete Santilli Show" titled "Live From Burns, Oregon - #aslongasittakesoregon." In the video, SANTILLI states:

I want one hundred thousand people out here, shoulder to shoulder, uh, unarmed. That's what I am calling for. Out here, between, and and to learn, ok, and to also protect the good souls that are inside, uh, if the Sheriff's department is telling you not to come out here, ok, uh, that means that they are trying to keep you away from the truth. . . . Ok, this learning experience that is going to take place here in the coming days, you guys are going to be blown away as this thing starts to unravel, uh, but you need to come out here, ok, you need to come out and not cower in fear

51. On January 11, 2016, a video was posted on YouTube channel "Pete Santilli Show" titled "Burns, Oregon – Community Meeting @ Burns High School." In the video, SANTILLI can be seen wearing III% on the sleeve of his shirt, shown below.



52. On January 12, 2016, a video was posted to YouTube channel "Pete Santilli Show" titled "1/12/16 Day 11 – Update [1] from Malheur Wildlife Refuge in Burns, Oregon - #OregonFront." In the video, SANTILLI states:

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I give you my word from this point forward, I will be lawful, I will be constitutional, ok, but I want to stand with you shoulder to shoulder, in opposition to what is happening here in Burns, and I want to crush communism here in Burns, and I want to crush socialism here in Burns, and I want to call upon everyone, if we can get one hundred thousand people standing shoulder to shoulder with me with flowers and determination, to take a stand against what's happening here in Burns. I want you to join me at this meeting. Please join me at this next meeting. Please. I'm going to go

53. On January 17, 2016, a video was posted to an Internet video sharing website by user "Veritas 13 Fox" titled "Press Brief, FBI Cam#, & Calling BS on ABC News." In the video SANTILLI can be seen standing behind Finicum, with RITZHEIMER and another occupier, at the main entrance to the MNWR. The vest SANTILLI is wearing has a clearly visible Oath Keeper patch on front. The vest also reads "PRESS" on the back. The video depicts that just prior to the press conference, SANTILLI whispered something in Finicum's ear and patted him on the back. After Finicum stated that the property does not go back to the BLM and then stated, "It does not return to the federal government," SANTILLI put his arm around the individual standing next to him. After Finicum spoke, SANTILLI addressed the media and said:

LaVoy's ah, offered me the opportunity to come up and speak to the members of the press. Uh, my name is Pete Santilli, uh for those of you that don't know me, uh I've accumulated approximately fifteen million uh minutes of viewing time, on the stream total combined uh worldwide, and I want to uh let the main stream media know uh that those that are not watching the stream or haven't been tuned in to my show, shame on each and every one of you. For those people that have been following the main stream media . . . [inaudible] . . . still asking the question. After twelve, thirteen days of being out here people are still wondering what the core issues are here, on this land. Shame on each and every one of you, millions of dollars being spent, you have an obligation to communicate to the public, and unfortunately your filtering [inaudible] . . . the public is not well informed.

A screen shot of the video is shown below:

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54. On January 21, 2016, a video was posted to YouTube channel "Pete Santilli Show" titled "BREAKING: Ammon Bundy Meets & Negotiates With FBI [EXCLUSIVE]." In the video, A. BUNDY can be seen and heard speaking with FBI personnel over a speaker on a cell phone. CAVALIER is standing beside A. BUNDY. SANTILLI introduced himself to several people as he filmed what was going on. Approximately thirteen minutes after leaving the meeting and while driving away, SANTILLI had the following conversation with a second person in his vehicle, who is off-screen, operating the video camera:

Camera person: They're amping up their uh little camp there. You know they are building, they have built a uh very large triage in the hospital. We have, we've confirmed that, we have, and we've also noticed in the last week that they're starting to uh get closer and closer to the refuge.

SANTILLI: Can I say something? Can I add something?

Camera person: Well of course.

SANTILLI: This is what I wanna tell, and good patriots will do good things, that's what I'm calling for. All you good patriots out there, it's time to staff up. Ok.

Camera person: Staff up? Yes.


SANTILLI: I'm gonna say this right now, loud and clear, and I want to put it out to every one of you patriots out there right now. This is to provoke constitutionality, ok, only! That's it. So don't say 'oh my goodness lo lo lo, shut your cake hole!' If you're a patriot, ok, and and you believe in what we're doing here as to ah protecting our god given rights, ok, you need to get in your car and come out here ok. Good patriots will do good things. Now's the time, time to staff up, ok. Time to staff up. I, I saw a compound that is so [video skips] . . . alright, that's what I'm calling for, that's what I'm provoking here, alright! Uh, we have a Second Amendment right uh to do that, to keep and bear arms. So those patriots that do keep and bear arms lawfully and constitutionally, it's time to staff up now! Right now.

55. In addition to social media posts made by individuals noted above, multiple news reports, interviews, and videos have reported or shown the occupiers of the MNWR to be armed with pistols and long guns.

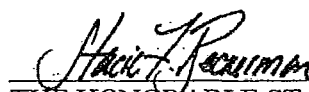
56. On January 26, 2016, A. BUNDY, O'SHAUGHNESSY, PAYNE, R. BUNDY, CAVALIER, COX, and SANTILLI were taken into custody.

Conclusion

57. This affidavit and the requested arrest warrants were all reviewed by two Assistant United States Attorneys (AUSAs) prior to being submitted to the Court. The AUSAs informed me that in their opinion, the affidavit is legally and factually sufficient to establish probable cause to support the issuance of the requested warrants. I respectfully request the Court to authorize the proposed arrest warrants based on this complaint.


KATHERINE ARMSTRONG
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this 26th day of January 2016.


THE HONORABLE STACIE F. BECKERMAN
U.S. Magistrate Judge, District of Oregon