



Written by [Alex Newman](#) on February 17, 2016

Feds Jail Radio Host, Sparking Free Speech Outcry

After arresting and charging radio host Pete Santilli (shown) with [“conspiracy”](#) in connection with his reporting on the occupation of the Oregon wildlife refuge, the federal government has sparked an outcry that is making headlines across America and [even overseas](#). Indeed, the growing concerns over the free-speech implications have united critics ranging from the statist American Civil Liberties Union (ACLU) to the liberty-oriented Rutherford Institute. The biggest concern, activists and critics of the case say, is that the federal government is trampling on the rights to free speech and freedom of the press guaranteed in the First Amendment to the U.S. Constitution. Critics of the prosecution also contend that the case is an ominous sign that the federal government is going off the rails.



Santilli, who hosts a popular talk-radio show on [Talk Network News](#), reported live from the Bundy ranch amid the standoff with federal agents, and more recently, from the Malheur National Wildlife Refuge in Oregon occupied by protesters. Media reports noted that he was the first journalist to report on the fatal shooting by law enforcement of occupation spokesman and rancher LaVoy Finicum. Santilli was also among the numerous individuals at the occupation who were [ultimately arrested in recent weeks](#). Like a dozen of the “occupiers,” Santilli was charged with “conspiracy” to “impede federal officers,” a vague and controversial Civil War-era charge that has been criticized — especially when applied to a radio host serving as an embedded journalist amid the protest against the [persecution of two local ranchers and the broader federal assault on liberty, property, and the Constitution](#).

When Santilli was asked about his role in relation to the occupation, he made clear that speech was at the center of it. “My role is the same here that it was at the Bundy ranch. To talk about the constitutional implications of what is going on here. The Constitution cannot be negotiated,” he was [quoted](#) as saying. “What we need, most importantly, is one hundred thousand unarmed men and women to stand together. It is the most powerful weapon in our arsenal.... 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 on YouTube and watch this.” The county sheriff even wrote a note thanking Santilli for going on air and urging spectators across the country to stop making threats.

A [video of Santilli’s January 26 arrest](#) that was posted to YouTube sparked alarm early on. The clip shows Santilli calmly and respectfully speaking with law enforcement officers while attempting to negotiate a peaceful exit of women and children from the occupied federal compound. “There are women and children there, we know this — quite a few,” Santilli says. “Please allow us to go up there and get them,” he tells the officers. One of the officers responds: “We appreciate the offer ... give us a



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few minutes to discuss it.” Seemingly without provocation, the officers eventually grab the journalist and inform him that he is under arrest. Despite repeated questioning about the reason, no charge is offered, either to Santilli or to the cameraman who filmed the incident, though the existence of a federal warrant was the likely cause.

Eventually, Santilli ended up being held in Portland, Oregon, and was denied bail. His defense attorney argued that Santilli has a pattern of complying with police orders and no history of violence. “Everything the government is claiming against him is based upon either his speech or his using speech to assemble people,” said his attorney, Thomas Coan. However, according to media reports, U.S. District Chief Judge Michael W. Mosman decided to keep Santilli behind bars pending his trial due to statements he has made on his talk show over the years. Among other controversial statements, Santilli reportedly said he would shoot anyone who came through his door in the middle of the night during a discussion on “no-knock warrants,” something that [juries have found justified in the past](#). He also reportedly said in an episode of his show that he would rather kill or be killed than allow himself to be arrested, Courthouse News Service reported without elaborating.

The federal judge spoke of the supposed difficulty in trying to determine whether the “shock jock” was making genuine threats or simply creating a media personality and spouting off. “I have to decide whether the defendant should be taken at his word or not as a shock jock, making the inflammatory statements that one would have to make to create an audience,” Mosman was quoted as saying during a hearing for Santilli earlier this month. In the end, the judge concluded that Santilli’s on-air statements showed he might pose a threat to U.S. Marshals if released while awaiting trial on the “conspiracy” charge. So, for now, Santilli remains behind bars. If convicted, he could remain in prison for six years.

But critics from across the political spectrum are speaking out. The ACLU was clear in stating that it did not agree with either the occupiers or “shock jock” Santilli. But it still expressed serious concerns about the case. “Although it may be easy to form a negative opinion about the tactics used by the people involved in the occupation, it is much harder to assess the government’s response,” the ACLU of Oregon said in a [statement posted on its website](#). “We have been watching how one of the people arrested, Pete Santilli, has been treated in court and we have real concerns. It is in this context that the ACLU of Oregon is compelled to speak out, not because we endorse the messages of the speaker or condone the tactics of the protesters.”

Mat dos Santos, who serves as legal director for the ACLU of Oregon, also expressed concerns about the government’s actions in the Santilli case. After the obligatory remarks distancing himself from Santilli’s “politically polarizing” statements which are “downright offensive” to some, Dos Santos noted that there were bigger issues at stake. Among other concerns, he noted that Santilli’s press coverage “was the basis for his arrest warrant as well as a threadbare indictment on a charge of conspiracy to impede federal officers by use of force, intimidation and threats.”

Santilli “challenges government authority through brazen, political statements,” Dos Santos said. “But does he pose a real threat? That’s the question asked of a federal judge last week: Should Pete Santilli remain in custody while awaiting his criminal trial for charges related to the Malheur Refuge takeover? While many people might disagree with statements made by those involved in the Malheur takeover, Americans have a fundamental right to freedom of speech. Law enforcement can and should differentiate between controversial statements and real threats. What’s at stake here could indeed be larger than a radio personality’s career, Malheur and Oregon.”

“Situations like this — where words alone are used to label a speaker so dangerous or somehow



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threatening as to warrant the deprivation of his liberty — demand the highest caution,” Dos Santos continued. “Where there is any question, we should err on the side of the speaker.” He added that it was especially troubling to see the prosecution use statements made months or even years ago to make a case against the radio host. “If all of our statements can be cherry-picked and strung together over a number of years to label us a ‘danger,’ we risk silencing our civil discourse,” the state ACLU legal director said, adding that respecting the line between beliefs and criminal activity strengthens security.

Speaking out more forcefully in defense of Santilli’s right to free speech was constitutional attorney John Whitehead with the liberty-minded Rutherford Institute. In a [piece lambasting the prosecution and the growing federal assaults on protected rights](#), Whitehead said Santilli’s viewpoint — that government has overstepped its bounds — is what landed him in jail. And that is not acceptable. The civil-liberties lawyer also pointed out that Santilli was the only journalist charged with conspiracy despite not participating in the takeover of the refuge, never spending the night there, and never representing himself as anything other than a journalist.

“Of course, the government doesn’t actually believe that 50-year-old Santilli is an accomplice to any criminal activity,” Whitehead wrote. “Read between the lines and you’ll find that what the government is really accusing Santilli of is employing dangerous speech. As court documents indicate, the government is prosecuting Santilli solely as a reporter of information. In other words, they’re making an example of him, which is consistent with the government’s ongoing efforts to intimidate members of the media who portray the government in a less than favorable light.”

All of these developments should be troubling to all Americans, with Whitehead saying that the targeting of Santilli “signals a broadening of the government’s efforts to suppress what it considers dangerous speech and stamp out negative coverage.” “The message is clear: whether a journalist is acting alone or is affiliated with an established news source, the government has no qualms about subjecting them to harassment, arrest, jail time and trumped up charges if doing so will discourage others from openly opposing or exposing the government,” the attorney said, pointing to the arrest of establishment media journalists covering protests in recent years. Whitehead also cited speech by America’s founders, including violent rhetoric in defense of liberty, to show how mild Santilli’s comments were by comparison.

“You see, the powers-that-be understand that if the government can control speech, it controls thought and, in turn, it can control the minds of the citizenry,” the prominent freedom-defending attorney continued. “Where the government has gone wrong is in hinging its case against Santilli based solely on his incendiary rhetoric, which is protected by the First Amendment and which bears a striking resemblance to disgruntled patriots throughout American history. What we’re dealing with today is a government that wants to suppress dangerous words — words about its warring empire, words about its land grabs, words about its militarized police, words about its killing, its poisoning and its corruption — in order to keep its lies going.”

As Americans of goodwill across the political spectrum can agree, it does not matter what people think of the content of somebody’s speech — in America, government has a constitutional duty to protect everyone’s right to speak freely. That is a bedrock American principle. In fact, even the Big Government-supporting Supreme Court [ruled](#) in 1969 that speech, even if it generally advocates violence, cannot be criminalized. Obama, though, has long been [waging a war on journalism](#). From [illegally spying on the Associated Press](#) and [charging a Fox News journalist with being a “co-conspirator”](#) to [threatening media outlets](#) and [raiding the home of a reporter](#) who exposed an out-of-



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control bureaucracy, the trend is becoming [more and more alarming](#). For the sake of the Bill of Rights and the free-speech rights of all, Americans must demand that the federal government protect rather than trample people's rights.

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