



1616 BEVERLY BOULEVARD LOS ANGELES CA 90026-5711 T: 213 977 9500 F: 213 250 3919 WWW.ACLU-SC.ORG

Chair
Jarl Mohn

February 15, 2008

President
Douglas Mirell

Chief of Security Forces (30 SFS/SFAR)
108 Colorado Avenue, Building 13675
Vandenberg AFB CA 93437
Attention: Colonel Stephen Tanous, Base Commander

Chairs Emeriti
Danny Goldberg
Allan K. Jonas
Burt Lancaster[†]
Irving Lichtenstein, MD[†]
Laurie Ostrow[†]
Stanley K. Sheinbaum

Re: Michael S. Wisniewski's Barment Order

[†]DECEASED

Dear Colonel Tanous:

Chief Executive Officer
Ramona Ripston

I am writing on behalf of Michael S. Wisniewski, who received a barment order not to enter or reenter Vandenberg AFB property on October 22, 2007 (enclosed). I am writing to request that you modify the order to the extent it prohibits Mr. Wisniewski from engaging in peaceful protest in the designated protest area outside the Santa Maria Gate adjacent to the intersection of State Highway 1 and the Lompoc-Casmalia Road. It appears, based on my review of documents pertaining to that land and cases interpreting 18 U.S.C. § 1382, that the military does not have the authority to prohibit public entry or reentry onto that land.

Chief Operating Officer
Heather Carrigan

Communications Director
Celeste Durant

Development Director
Lindsay Rachelefsky

Based on my review of relevant documents, it appears that the land which you call the designated protest area is owned by the military, but that in 1962 the military granted to the County of Santa Barbara an easement on that land for purposes of road construction, use, and maintenance. My review of relevant documents also reveals that the easement remains in effect.

Director of Finance &
Administration
Brenda Maull

Director of Investments &
Gift Planning
Harold Gunn

Legal Director
Mark D. Resenbaum

Eighteen U.S.C. § 1382 does prohibit both entry onto a military base "for any purpose prohibited by law or lawful regulation" and reentry on a base after having been "ordered not to reenter by any officer or person in command or charge thereof." *Id.* at §§ (a) & (b). However, court cases make clear that a person does not violate that statute by entering or reentering military base land, if the United States does not "have a right of sole ownership or possession in those areas against the defendant." *United States v. Holmes*, 414 F.Supp. 831, 838 (D.Md. 1976)(emphasis added); *accord*, *United States v. Watson*, 80 F.Supp. 649, 651 (E.D. Va. 1948)(government cannot show violation of 18 U.S.C. 1382 where it does not "show an absolute ownership, or an exclusive right to the possession," of the land on which the defendant is alleged to have improperly entered or re-entered). Where there is an easement benefitting the public, the government cannot show the requisite level of ownership or exclusive possession. *See Watson*, 80 F.Supp. at 651. In a case arising out of the United States Court of Appeal for the Ninth Circuit, the Circuit in which California is located, the Court cited *Watson* and upheld convictions under 18 U.S.C. § 1382 only because the defendant did not and could not show that the land he or she

Managing Attorney &
Manheim Family Attorney
for First Amendment Rights
Peter J. Eliasberg

Director of Program Support
Elizabeth Schroeder

Colonel Stephen Tanous, Base Commander
February 15, 2008

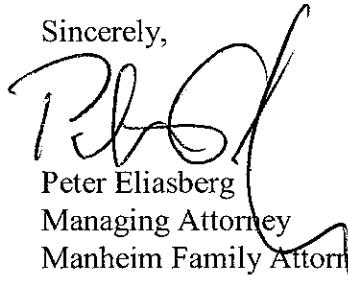
Page 2

was alleged to have improperly entered or re-entered was subject to an easement benefitting the public. *See United States v. Douglas*, 579 F.2d 545, 547 (9th Cir. 1978).

Because the designated protest zone is subject to an easement that benefits the public, the government lacks authority to bar Mr. Wisnewski and others subject to a barment order from engaging in peaceful protests in that zone. Accordingly, I request that you modify Mr. Wisnewski's order, as well as the base's protest policy (posted on the web at <http://www.vandenberg.af.mil/shared/media/document/AFD-060906-012.pdf>) as soon as possible so that they are consistent with 13 U.S.C. § 1382.

I look forward to your prompt response. Please contact me at 213-977-9500 ext 228 if you have any questions or concerns.

Sincerely,



Peter Eliasberg
Managing Attorney
Manheim Family Attorney
for First Amendment Rights

cc: MSW
Enc.

