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In Pro Per

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
Plaintiff)

v.)

GEORGE MANLY,)
Defendant.)

Case NO.: 1982008 (RCF)

**NOTICE OF MOTION; MOTION
TO DISMISS CITATION;
EXHIBITS**

**Hearing Date:
September 15, 2010**

**Hearing Time:
1:30 p.m.**

TO: UNITED STATES ATTORNEY ANDRÉ BIROTTE, JR AND ASSISTANT UNITED STATES ATTORNEY SHARON McCASLIN:

PLEASE TAKE NOTICE that I, defendant George Manly, on September 15, 2010, in the courtroom of the Honorable Rita C. Federman, United States Magistrate Judge, will bring on for hearing the following motion:

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MOTION

I, defendant George Manly, hereby move this Honorable Court to dismiss the citation issued in this case in the interest of the First Amendment right to freedom of speech and expression and the Fourth Amendment protection of privacy, and on the basis of arbitrary and capricious conduct by the base commander in ordering my ban and barmment from the Vandenberg Air Force Base.

This motion is based upon the attached memorandum of Points and Authorities, Exhibits, all files and records in this case, and any further evidence as may be adduced at the hearing of this motion.

Respectfully submitted,
George Manly
Defendant

DATED: August __, 2010

By _____
George Manly
Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 STATEMENT OF FACTS

4
5 I, George Manly, was arrested by military police at Vandenberg Air Force Base
6 while participating in an orderly protest against the development, maintenance, and
7 potential use of nuclear and space-based weapons on January 31, 2010, and was issued
8 citation: #1981237 for alleged violation of 50 U.S.C. § 797 for failure to follow a security
9 regulation (dismissed on motion by the Government on May 20, 2010); #2576509 for
10 alleged violation of 50 U.S.C. § 797 for failure to follow a security regulation (dismissed
11 on motion by the Government on May 7, 2010); and #2576510 for alleged violation of 18
12 U.S.C. §13 for failure to identify (dismissed on motion by the Government on May 7,
13 2010). I was arrested on January 31, 2010, and issued all three citations for my failure to
14 present government-issued identification when requested to do so by military police
15 during my orderly protest.
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18 I was again arrested by military police at Vandenberg Air Force Base while
19 participating in an orderly protest on February 3, 2010 and was issued citation #1981177
20 for alleged violation of 50 U.S.C § 797 for failure to follow a security regulation (dismissed
21 on motion by the Government on May 7, 2010). I was arrested on February 3, 2010 and
22 issued this citation for my failure to present government-issued identification when
23 requested to do so by military police during my orderly protest.
24

25 On March 3, 2010 I was issued a ban and barment order by the base commander
26 of Vandenberg Air Force Base, which I received by mail. (See **Exhibit H.**) The ban and
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1 barment states the basis for barring me from Vandenberg Air Force Base in paragraph 2
2 as:

3 **“On 31 January 2010 and 3 February 2010 you were involved in**
4 **protest activities. You refused to abide by the Protest Advisory by refusing to**
5 **provide identification on both dates. After refusing to provide identification, you**
6 **also refused to leave the area when requested to do so by Security Forces.”**

7
8 I was again arrested by military police at Vandenberg Air Force Base while
9 participating in an orderly protest on April 7, 2010, and was issued citation #1982008 for
10 alleged violation of 18 U.S.C. § 1382. On April 7, 2010 I was advised by the military
11 police that I was being arrested and cited because I was present on Vandenberg Air
12 Force Base property while under an active ban and barment order from the base
13 commander. The arrest and citation on April 7, 2010 were carried out solely on the basis
14 of my alleged violation of the ban and barment order of March 3, 2010.
15

16
17 On all three dates, January 31, 2010, February 3, 2010, and April 7, 2010, I was
18 arrested and cited while standing inside an area designated by the Vandenberg Air Force
19 Base commander for orderly protest. (See **Exhibit A** for a copy of the Protest Advisory
20 Fact Sheet published on the website of Vandenberg Air Force Base at:
21 www.vandenberg.af.mil/library/factsheets/factsheet.asp?id=4562.) The Protest Advisory
22 describes the designated protest site as the following:
23

24 **“The installation commander has granted permission to peacefully protest in**
25 **the area adjacent to the intersection of State Highway 1 and the Lompoc-Casmalia**
26 **Road at the Main Gate (Santa Maria Gate) of Vandenberg Air Force Base when**
27 **such activity is adequately coordinated. The painted green line and temporary**
28

1 **fencing, as well as Highway 1 and the Lompoc-Casmalia Road, mark the**
2 **boundaries for peaceful protest activity at this location.”**

3
4 A satellite image map of the area designated for protest by the base commander
5 at Vandenberg Air Force Base (where I was arrested) from Google Map is provided in
6 **Exhibit B.**

7 The area designated for protest by the base commander at Vandenberg Air Force
8 Base is on the southwest side of the roadway of California Highway 1 under concurrent
9 jurisdiction between the U.S. Air Force and the State of California. A copy of Document
10 No. 81-40910 filed October 5, 1981 with the Santa Barbara County Recorder’s Office is
11 provided in **Exhibit C.** The document includes a letter from Edmund G. Brown, Jr.,
12 Governor of California, to Joseph C. Zengerle, Assistant Secretary of the U.S. Air Force,
13 written on July 21, 1981, stating that the State of California accepts concurrent
14 jurisdiction with the United States for specific parcels on Lompoc Casmalia Road (also
15 known as California Highway 1) at Vandenberg Air Force Base. The parcels of the
16 roadway depicted in the attachments to the letter include the area designated for protest
17 (parcel 2) by the base commander at Vandenberg Air Force Base.

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20 Two civil actions originally made this area under concurrent jurisdiction available for
21 orderly protest and the exercise of First Amendment rights. The first action resulted in a
22 Stipulation for Compromise Settlement in Fahrner, et al. v. Col. Ronald Oliverio, et al.,
23 Case no. CV-88-05627-AWT (Bx), in 1989, in which Judge Tashima concluded: “**The**
24 **attached policy statement is incorporated by reference herein and will be issued as**
25 **of the effective date of this Stipulation.”** That policy statement, adopted by Col.
26 Oliverio (then the Commander of Vandenberg Air Force Base), states:
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28

1 **“People involved in peaceful protest demonstrations will be permitted to**
2 **assemble and protest in the concurrent jurisdiction areas adjacent to the**
3 **intersection of State Highway 1 and Lompoc-Casmalia Road at the Main Gate**
4 **(Santa Maria Gate) of Vandenberg Air Force Base, California. The Air Force is**
5 **obligated to insure that peaceful protests do not result in unsafe vehicle and**
6 **people congestion around the Main gate. If necessary, restrictions may be**
7 **placed on peaceful protestors who encumber the roadways or engage in**
8 **activities which can result in unsafe conditions for themselves or others.**
9 **Protest demonstrations may be curtailed in this area when they materially**
10 **interfere with or have a significant impact on the conduct of the military**
11 **mission of the U.S. Air Force.”**

12 This conclusion was ratified by Judge Lew in the second action, Vandenberg Action
13 Coalition, et al. v. Col. Robert M. Worley, II, Case no. CV-01-10526 RSWL. While
14 granting the defendants’ motion for summary judgment, Judge Lew accepted their
15 representation that the concurrent jurisdiction area was available for peaceful First
16 Amendment activities and acknowledged that conclusion in his order.

17 The Vandenberg Air Force Base has placed a green painted line on the road
18 pavement at the entrance of the Santa Maria Gate to mark the point where the
19 concurrent jurisdiction ends and exclusive military jurisdiction begins. The area behind
20 this green line is west and contiguous to the area designated for orderly protest. (See the
21 map in **Exhibit B.**) There are no barriers to traffic or pedestrians at this green line or on
22 the roadway that proceeds through the gate entrance until the roadway meets an inner
23 gate with a barricade and guard shack approximately 200 yards inside the green line on
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1 property under exclusive military jurisdiction. During the orderly protests in which I was
2 arrested and cited, traffic flowed freely on California Highway 1 and across the green line
3 marking the border between concurrent and exclusive jurisdiction. A DVD, accompanied
4 by affidavits, can be found in **Exhibit G**. This DVD contains three video clips taken
5 during the protest at Vandenberg Air Force Base on January 31, 2010. The video clips
6 illustrate that numerous unmarked, civilian vehicles were flowing freely along California
7 Highway 1, past the protest site and across the green line at the entrance to the Santa
8 Maria Gate at Vandenberg Air Force Base during the protest.
9

10
11 There is a visitor control center located approximately 100 yards behind the green
12 line at the Santa Maria Gate on property under exclusive military jurisdiction. (See the
13 map in **Exhibit B**.) A public transit bus operated by the Department of Public Works of
14 the City of Santa Maria, CA, known as the “Breeze,” has a regular stop behind the south
15 side of the visitor control center, on property under exclusive military jurisdiction behind
16 the green line at the Santa Maria Gate, where it loads and discharges civilian
17 passengers. A letter of April 9, 2010 from Austin O’Dell, Transit Services Manager for the
18 City of Santa Maria, obtained through the California Public Records Act request of April 5,
19 2010 by Scott Fina, can be found in **Exhibit D**. The letter from Mr. O’Dell states in part in
20 paragraph 1:
21

22
23 **“The Breeze is a public transportation service between the Cities of Santa**
24 **Maria and Lompoc, and Vandenberg Air Force Base. The Breeze has one bus stop**
25 **located behind the Visit Control Center outside the security gate.”**

26
27 The letter from Mr. O’Dell then refers to an attached “Exhibit A” (which can also be
28 found in **Exhibit D** of this motion) which provides a Google map of the bus stop location.

1 The map indicates that the bus stop is behind the green line at the entrance to the Santa
2 Maria Gate on property under exclusive military jurisdiction. The website for the Breeze
3 Bus, found at <http://www.breezebus.com/schedule.php>, indicates that the bus loads and
4 discharges passengers 16 times daily at the bus stop located behind the green line at the
5 Santa Maria Gate at Vandenberg Air Force Base on property under exclusive military
6 jurisdiction.
7

8 The April 5, 2010 California Public Records Act request by Scott Fina to the
9 Department of Public Works of the City of Santa Maria requests the following in
10 paragraph 2:
11

12 **“All written documentation in effect on January 31, 2010 originating from**
13 **officials of the City of Santa Maria or the Vandenberg Air Force Base, that**
14 **addresses the requirement of passengers sitting on, waiting for, or exiting the**
15 **Breeze Bus to present government issued identification to military security**
16 **officials from Vandenberg Air Force Base.” (See Exhibit D.)**
17

18 The response to this request by Austin O’Dell in his letter of April 9, 2010 is as
19 follows (in paragraph 2):
20

21 **“There is no requirement and no documentation. The Breeze is available to**
22 **the public and is not limited to government personnel.” (See Exhibit D.)**
23

24 The Vandenberg Middle School is located on property under exclusive military
25 jurisdiction east and contiguous to the area designated for orderly protest at Vandenberg
26 Air Force Base. (See the map in **Exhibit B.**) Vandenberg Middle School is a public
27 school that is part of the Lompoc Unified School District. The school district rents the
28 school facilities and campus from the Vandenberg Air Force Base. A copy of the lease

1 agreement between the Lompoc Unified School District and the U.S. Air Force for the use
2 of the facilities of the Vandenberg Middle School (obtained through the California Public
3 Records Act request of Scott Fina on April 5, 2010) is provided in **Exhibit E**. Item #26 of
4 the lease agreement states in part: **“Lessee’s educational program shall be carried
5 on in accordance with the Constitution of the State of California and the Education
6 & California Administrative Codes of the State of California, and shall not be
7 subject to any rules and regulations other than those hereinabove enumerated.”**

8
9 Item #30 of the lease agreement states: **“That the District Superintendent, with
10 the approval of the lessee, may require any child resident in the school district to
11 attend the leased premises regardless of whether the child lives in the Vandenberg
12 Air Force Base area or not.”** (See **Exhibit E**.)

13
14 Scott Fina submitted a follow-up California Public Records Act request to the
15 Lompoc Unified School District concerning Vandenberg Middle School in his letter of May
16 10, 2010 to Sheldon K. Smith, the Assistant Superintendent of the school district. (See
17 **Exhibit E**.) In his letter of May 10, 2010, Mr. Fina notes that the web page of
18 Vandenberg Middle School (<http://vms.lusd.org/>) states:

19
20 **“Please note: Vandenberg Air Force Base no longer requires a special pass
21 to enter the housing area where Vandenberg Middle School is located. This will
22 make it easier for parents to drop off or pick up their children from our site.”**

23
24 In his letter of May 10, 2010, Mr. Fina also requests clarification on the existence
25 of any requirement of **“individuals working at, attending, or visiting the Vandenberg
26 Middle School or its premises or vicinity, to present government issued
27**

1 **identification to military security officials from Vandenberg Air Force Base.” (See**
2 **Exhibit E.)**

3 Responding to Mr. Fina’s request for clarification on this matter, Assistant
4 Superintendent Smith states in his letter of May 20, 2010:
5

6 **“The sentry gate is no longer at the Timber Lane entrance to check**
7 **identification for those entering the area surrounding Vandenberg Middle School.**
8 **However, as Vandenberg Middle School and the surrounding area are on**
9 **Vandenberg Air Force Base property any visitor may be stopped by military**
10 **personnel and asked to show proper identification– current driver’s license,**
11 **vehicle registration and proof of insurance.” (See Exhibit E.)**

12 The correspondence between Mr. Fina and Mr. Smith indicates that no sentry gate
13 or other security barrier inhibits members of the public from visiting Vandenberg Middle
14 School or its premises located on property under exclusive military jurisdiction. In fact,
15 arrangements have been made to alleviate members of the public from having to
16 regularly present identification when they visit Vandenberg Middle School or its premises.
17 Special passes (presumably to be obtained from the base visitor control center) that were
18 once required for visiting the school are no longer required, albeit visitors to Vandenberg
19 Middle School and its premises are warned to be prepared to present proper
20 identification if directly requested to do so by military personnel. The revised and current
21 website of Vandenberg Middle School qualifies the notation concerning the requirement
22 for the special pass, stating: **“However, military personnel may request to see your**
23 **driver’s license, vehicle registration and proof of insurance at any time.”**
24 (<http://vms.lusd.org/>) (See also **Exhibit E.**)
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1 Vandenberg Air Force Base hosts another educational facility on property under its
2 exclusive jurisdiction. The website of Allan Hancock College states that the college offers
3 courses at the Hancock College Vandenberg Air Force Base Center located at 144
4 Wyoming Ave., Vandenberg AFB, CA
5 (<http://www.hancockcollege.edu/Default.asp?page=560>) . (See also **Exhibit F.**) The
6 website indicates that these courses and the Hancock College Vandenberg Air Force
7 Base Center itself, are open to the public. The location of this center, as depicted in the
8 Google satellite map also found in **Exhibit F**, is on property under exclusive military
9 jurisdiction well behind the sentry gate near the Santa Maria Gate entrance at the base.
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11
12 As stated above, a DVD, accompanied by affidavits, can be found in **Exhibit G**.
13 This DVD contains three video clips taken during the protest at Vandenberg Air Force
14 Base on January 31, 2010 in the designated protest site during which I was arrested for
15 failing to present government-issued identification during my orderly participation in the
16 scheduled protest. In fact, the video clips illustrate that military police confronted each
17 and every protestor and ordered them to present government-issued identification—even
18 though every protestor was acting orderly. The video clips also illustrate that base
19 personnel were filming the protestors as they were confronted by military police. The
20 video clips show at least two orderly protestors who, prior to their arrest, state clearly to
21 the military police that they are exercising their right to free speech under the First
22 Amendment and refusing to present identification under the protection of the Fourth
23 Amendment., and that they have no intention of harming base personnel, equipment or
24 property or interrupting base operations. The video clips also demonstrate that, in effect,
25 the actions by the military police terminated the protest on January 31, 2010, where every
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1 protestor was either arrested or chose to leave the protest rather than present
2 government-issued identification.

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5 II.

6 THIS COURT SHOULD DISMISS THE CITATION IN THIS CASE
7 BASED ON FIRST AND FOURTH AMENDMENT GROUNDS AND THE
8 ARBITRARY AND CAPRICIOUS CONDUCT OF THE BASE COMMANDER IN
9 ORDERING MY BAN AND BARMENT FROM VANDENBERG AIR FORCE BASE.
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11
12 This Court should grant the requested relief because: 1) the area of protest where
13 I was arrested and cited for allegedly violating 18 U.S.C. § 1382 was a designated public
14 forum; 2) the ban and barment order underlying the citation cannot Constitutionally be
15 applied to peaceful, protected speech in a designated public forum; 3) the basis for the
16 ban and barment order was invalid as per the prescriptions of federal law constraining
17 military police from requiring orderly individuals to present identification and commanders
18 of military installations from arbitrarily and capriciously barring individuals from their
19 installations; and 4) the actions by the military police violated my protection to privacy
20 inherent in the Fourth Amendment.
21

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23 III.

24 APPLICABLE LAW

25 The charge in this case is for alleged violation of 18 U.S.C. § 1382, after I
26 previously received a ban and barment order on instruction of the commander of
27 Vandenberg Air Force Base. 18 U.S.C. § 1382 provides:
28

1 **“Whoever, within the jurisdiction of the United States, goes upon any**
2 **military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station,**
3 **or installation, for any purpose prohibited by law or lawful regulation; or**
4 **whoever reenters or is found within any such reservation, post, fort, arsenal,**
5 **yard, station, or installation, after having been removed therefrom or ordered**
6 **not to reenter by any officer or person in command or charge thereof—Shall**
7 **be fined under this title or imprisoned not more than six months, or both.” “**

10 Additional law relevant to the case includes 32 C.F.R.. § 809a.1 that provides:

11 **“The Installation commander determines when, where, and how to**
12 **implement random checks of vehicles or pedestrians. The commander**
13 **conducts random checks to protect the security of the command or to**
14 **protect government property.”**

17 And 32 C.F.R. § 809a.2 that provides:

18 (a) **“Air Force installation commanders are responsible for protecting**
19 **personnel and property under their jurisdiction and for maintaining order**
20 **on installations, to ensure the uninterrupted and successful**
21 **accomplishment of the Air Force mission.”**

22 (b) **“Each commander is authorized to grant or deny access to their**
23 **installations, and to exclude or remove persons whose presence is**
24 **unauthorized. In excluding or removing persons from their installation,**
25 **the installation commander must not act in an arbitrary or capricious**
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1 **manner. Their action must be reasonable in relation to their**
2 **responsibility to protect and to preserve order on the installation and to**
3 **safeguard persons and property thereon. As far as practicable, they**
4 **should prescribe by regulation the rules and conditions governing**
5 **access to their installation.”**

7 Section I above, Statement of Facts, cites Item #26 of the lease agreement
8 between Lompoc Unified School District and Vandenberg Air Force Base for the use of
9 the premises of Vandenberg Middle School, which states in part: **“Lessee’s educational**
10 **program shall be carried on in accordance with the Constitution of the State of**
11 **California and the Education & California Administrative Codes of the State of**
12 **California, and shall not be subject to any rules and regulations other than those**
13 **hereinabove enumerated.” (See Exhibit E.)**

15 Section 48907 (a) of the California Education Code provides:

17 **“Pupils of the public schools shall have the right to exercise freedom of**
18 **speech and of the press including, but not limited to, use of bulletin boards,**
19 **the distribution of printed materials or petitions, the wearing of buttons,**
20 **badges, and other insignia, and the right of expression in official**
21 **publications, whether or not the publications or other means of expression**
22 **are supported financially by the school or by use of school facilities, except**
23 **that expression shall be prohibited which is obscene, libelous, or**
24 **slanderous. Also prohibited shall be material that so incites pupils as to**
25 **create a clear and present danger of the commission of unlawful acts on**
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1 **school premises or the violation of lawful school regulations, or substantial**
2 **disruption of the orderly operation of the school.”**

3 Section 48907 (g) of the California Education Code provides: **“An employee shall**
4 **not be dismissed, suspended, disciplined, reassigned, transferred, or**
5 **otherwise retaliated against solely for acting to protect a pupil engaged in**
6 **the conduct authorized under this section, or refusing to infringe upon**
7 **conducted that is protected by this section, the First Amendment to the**
8 **United States Constitution, or section 2 of Article I of the California**
9 **Constitution.”**

10 Section 2.(a) of Article 1 of the California Constitution provides: **“Every person**
11 **may freely speak, write and publish his or her sentiments on all subjects,**
12 **being responsible for the abuse of this right. A law may not restrain or**
13 **abridge liberty of speech or press.”**

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17 IV.

18 ARGUMENT

19 The First Amendment guarantees freedom of speech. U.S. Const. amend. I The
20 U.S. Supreme Court recognized this right when it overturned the conviction of the
21 defendant for a violation 18 U.S.C. § 1382 in Flower v. United States, 407 U.S. 197,
22 (1972). Other defendants arrested and cited for violation of 18 U.S.C. § 1382 at
23 Vandenberg Air Force Base, in standing before U.S. Magistrate Judge Rita Coyne
24 Federman, have relied upon Flower in arguing that the designated protest area at
25 Vandenberg Air Force Base is a public forum or at least a designated public forum, where
26 First Amendment rights prohibit exclusion of protestors by base commanders through
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1 ban and barmment orders (CVB Cases 1981283-RCF, 276523-RCF, 1982007-RCF,
2 1981239-RCF, 2576524-RCF, and 1982006-RCF.)

3 U.S. Magistrate Judge Rita Coyne Federman found the argument (relying on
4 Flower) of these previous defendants who were arrested and similarly cited at
5 Vandenberg Air Force Base, to be unpersuasive. In her thoughtful and technical ruling
6 on the matter in denying the defendants' Motion to Dismiss in CVB Cases 1981283-RCF,
7 276523-RCF, 1982007-RCF, 1981239-RCF, 2576524-RCF, and 1982006-RCF, the
8 Magistrate Judge concluded that the cases of protestors arrested at Vandenberg Air
9 Force Base are distinguishable from Flower for several reasons, the most fundamental
10 being that Flower involved a military base that was deemed to be "an open post" with no
11 sentry post or guard, and containing streets that were heavily used by the public as
12 important arteries. Flower, 407 U.S. at 198. The Vandenberg Air Force Base
13 commander, on the other hand, has declared the base to be a "closed" base.
14

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17 I respectfully request the Magistrate Judge to reweigh certain facts at Vandenberg
18 Air Force Base in determining this key distinction between the case at Vandenberg and
19 Flower. Here I ask: Does the fact that a base commander declares the installation that is
20 under his/her control to be "closed," fully and authentically make the base "closed" in the
21 consideration of First Amendment protections, or must the actions by the base
22 commander also be consistent with his/her declaration to fully and authentically make the
23 base "closed" in the consideration of First Amendment protections?
24

25 I argue that in important aspects and in certain areas, the base commander very
26 much treats Vandenberg Air Force Base as an "open" base. There is a guard sentry
27 post located on Vandenberg Air Force Base in the vicinity of the designated protest area.
28

1 This guard post, however, is sited at a substantial distance from the designated protest
2 area and has no impeding effect on vehicular or pedestrian traffic on California Highway
3 1 for its full length of many miles on base property. Without question, the base
4 commander treats the military property behind the sentry post as “closed.” But there is
5 valid doubt on whether the base commander treats the area outside this sentry gate,
6 including the designated protest area located along the often busy California Highway 1,
7 as closed. The easement granted to the State of California for the public traverse of
8 Highway 1 does not prohibit the base commander from constructing a sentry gate at the
9 northern and southern points where California Highway 1 enters base property, so that
10 he can control traversing traffic when necessary in the interest of base security and
11 operations. Why doesn’t the base commander do so?
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13
14 Additionally, why does the base commander allow for a public school to be
15 operated with unabated public access on property under exclusive military jurisdiction
16 (and contiguous to the designated protest area) on Vandenberg Air Force Base if he has
17 designated the base as a “closed base?” Why does the base commander at Vandenberg
18 Air Force Base also host a site for Allan Hancock College that is open to the public and
19 located **behind** the sentry gate on property under exclusive jurisdiction of the military,
20 when he intends the base to be “closed?” (See **Exhibit F.**)
21
22

23 If one concludes that a base commander can legitimately treat certain areas of
24 his/her closed base as “open,” such as a public school, then one must also conclude that
25 he/she has in fact designated such an area as a public forum—created a “designated
26 public forum” in that area, to employ the language and findings of the Ninth Circuit Court
27 in Hopper, 241 F.3d. In the case of Vandenberg Middle School, the base commander
28

1 has entered into a lease agreement with the Lompoc Unified School District that compels
2 him to respect the California Education Code, which explicitly protects free speech. (See
3 the copy of the lease agreement in **Exhibit E**, Item #26.)
4

5 It seems that the base commander at Vandenberg Air Force Base does indeed
6 maintain a “designated public forum” at Vandenberg Middle School, despite his
7 declaration that the base is “closed” and the fact that the school is located on property
8 under exclusive jurisdiction of the military. These facts mandate First Amendment
9 scrutiny of the actions taken by the base commander on orderly protestors participating in
10 scheduled protests in the designated protest area at Vandenberg Air Force Base.
11

12 The designated protest area at Vandenberg Air Force Base was established
13 through civil action in the U.S. District Court of the Central District of California. Fahrner,
14 et al. v. Col. Ronald Oliverio, et al. The protection of free, political speech expressing
15 critical sentiment toward military policy was central to the stipulation for settlement in the
16 case. If this civil action has not created a “designated public forum” in the designated
17 protest area at Vandenberg Air Force Base, then when can a designated public forum
18 ever be established at a military base? Moreover, in failing to recognize the designated
19 protest area at Vandenberg Air Force Base as a designated public forum, is not the
20 District Court in effect, gutting and overturning the stipulation for settlement of Fahrner, et
21 al. v. Col. Ronald Oliverio, et al.?
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24 The different manner in which the base commander treats visitors to the
25 Vandenberg Middle School than he does protestors in the designated protest area, raises
26 other issues concerning First Amendment rights and of the protection of privacy inherent
27 in the Fourth Amendment, and points to arbitrary and capricious conduct on part of the
28

1 base commander in excluding and removing orderly protestors from the base. Here I
2 specifically refer to the requirement to present government-issued identification to military
3 police, which was the basis for the issuance of my ban and barment order by the base
4 commander at Vandenberg Air Force Base. (See **Exhibit H.**)

5
6 I was arrested and cited on both January 31, 2010 and February 3, 2010 during
7 my orderly participation in scheduled protest at Vandenberg Air Force Base for failing to
8 present identification to the military police. The video clips contained in **Exhibit G**
9 demonstrate that the military police confronted every protestor on January 31, 2010 in the
10 designated protest area and required them to present government-issued identification
11 under the threat of arrest and expulsion from the base. The correspondence between
12 Scott Fina and Assistant Superintendent Sheldon K. Smith in **Exhibit E** indicates that
13 military police do not require every visitor to Vandenberg Middle School to present
14 government-issued identification. Vandenberg Air Force Base more stringently requires
15 orderly protestors in the designated protest area on property under concurrent jurisdiction
16 to present government-issued identification, than it does visitors to Vandenberg Middle
17 School which is located on property under exclusive jurisdiction of the military that is
18 contiguous with the designated protest area. One questions the basis for this difference
19 in this treatment.
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23 The differentiation, to be legal as per the prescriptions of 32 C.F.R.. § 809a.2, must
24 be based on security grounds and not be “arbitrary and capricious.” However, how are
25 orderly protestors who announce themselves by standing in a designated area at a
26 designated time, under numerous restrictions (such as the size of containers and bags
27 they may have on their person as required by the Protest Advisory in **Exhibit A**), and
28

1 within the full view of military police (as demonstrated in the video clips in **Exhibit G**), a
2 greater threat to base security than visitors to a school campus housing children and
3 teachers on adjacent property?
4

5 One reasonably concludes that the more stringent requirement for protestors to
6 present government-issued identification and its exhaustive enforcement by military
7 police during the orderly protest of January 31, 2010 constitutes a non-content neutral
8 restriction on the protestors. One reasonable assumes that being filmed by, and having
9 to register with, military authorities while critiquing military policy is intimidating to
10 protestors. In fact, several protestors decided to leave the protest on January 31, 2010
11 rather than comply with the order to present their identification. (See the video clips in
12 **Exhibit G**.) The more stringent requirement for orderly protestors to present identification
13 and its exhaustive enforcement, when held in light of the different manner in which
14 Vandenberg Air Force Base treats visitors to Vandenberg Middle School, amounts to
15 arbitrary and capricious conduct by base security forces that serves to discourage
16 protest.
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19 Moreover, why aren't the military police at Vandenberg Air Force Base more
20 concerned with the numerous vehicles and their occupants that drive by the designated
21 protest site on California Highway 1, that could potentially conceal large quantities of
22 explosives? In fact, as demonstrated in the video clips in **Exhibit G**, unidentified persons
23 are allowed to drive vehicles across the green line designating the protest area, to further
24 penetrate Vandenberg Air Force Base for some distance before they are stopped and
25 checked at the inner gate with the sentry post. Additionally, as demonstrated by the
26 correspondence between Scott Fina and Austin O'Dell, Transit Services Manager for the
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1 City of Santa Maria in **Exhibit D**, passengers are allowed to ride the Breeze transit bus
2 across the green line designating the protest area, further penetrating the base for
3 significant distance without being confronted and required to present government-issued
4 identification.
5

6 The different treatment by Vandenberg Air Force Base of orderly protestors
7 participating in scheduled protests in the designated protest area, from visitors to
8 Vandenberg Middle School, and passengers on board or waiting for the Breeze bus
9 behind the green line on property under exclusive jurisdiction of the military, and
10 occupants of private vehicles that are allowed to cross the green line without being
11 stopped and checked – indicates that Vandenberg Military Base is especially targeting
12 protestors in its requirement to present identification and its enforcement. Such targeting
13 is problematic on several fronts.
14

15 First, 32 C.F.R.. § 809a.1 calls for the checks of vehicles and pedestrians ordered
16 by the base commander to be “**random**” and have the purpose of protecting “**the**
17 **security of the command or to protect government property.**” The different
18 treatment of orderly protestors concerning the requirement to present identification at
19 Vandenberg Air Force is not **random** but targeted. Its purpose does not seem to be
20 driven by security concerns, since the base allows other visitors to further penetrate
21 property under exclusive military jurisdiction before they are stopped and checked,
22 including a public school with a very vulnerable constituency. One also questions how
23 orderly protestors participating in a scheduled protest in a designated protest area
24 constitute a security threat to the base? Such protestors are not loitering outside the
25 Santa Maria Gate of Vandenberg Air Force Base (which is very obvious in the video clips
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1 in **Exhibit G**); they are in the right place at the right time, making their purpose of protest
2 obvious.

3 The question of the motivation of the military police in requiring orderly protestors
4 to present identification raises a problem with the right to privacy inherent in the Fourth
5 Amendment. The Supreme Court set the standard for the authority of police to stop and
6 check individuals for identification in Terry v. Ohio, 392 U.S. 1 (1968). That standard
7 relies on a “**reasonable suspicion**” to believe the individual being stopped and checked
8 is involved in criminal activity. Several Supreme Court cases have qualified the findings
9 in Terry , Hiibel v Sixth Judicial District Court of Nevada, 542 U.S. 177 (2004), being the
10 most prominent among them. None (including Hiibel), however, has overturned or
11 nullified the central tenet of Terry: the necessity of a “**reasonable suspicion**” on part of
12 police in stopping and requiring individuals to present identification. Applying the
13 standards of a “Terry stop” to my case, if the military police at Vandenberg Air Force
14 Base state that protest activity (conducted in an orderly manner at designated time and
15 place) itself is reasonable suspicion, then they are admitting non-content neutral conduct
16 in the exercise of their police powers.

17 The government may argue that the Fifth Circuit Court loosened Fourth
18 Amendment protections in cases of stops and checks for identification on military bases
19 in US v Green, 293 F.d 855 (2002). There is, however, a critical distinction in Green from
20 my case at Vandenberg Air Force Base. The facts of Green center on a vehicle stop and
21 check for identification by military police at Fort Sam Houston on a street traversing
22 military property. The stop and check was part of a systematic checkpoint in which
23 military police were stopping every sixth car. Because the stop and check in Green was
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1 random (by virtue of being systematic) and not targeted, the Fifth Circuit found the stop
2 and check reasonably based on security measures at the base. Vandenberg Air Force
3 Base also has a systematic checkpoint in place: the sentry post and inner gate behind
4 the green line at the Santa Maria Gate on property under exclusive military jurisdiction. If
5 the base moved that systematic checkpoint up to the green line at entrance to the Santa
6 Maria Gate near the designated protest area and stopped and checked vehicles and
7 pedestrians at that point for security measures, and if the base required and checked
8 every visitor to Vandenberg Middle School to present identification, then its treatment of
9 orderly protestors in requiring them to present identification would be reasonable—as
10 would my ban and barment by the base commander for my failure to present identification
11 during my orderly protest.

12
13
14 Not surprisingly, the government moved to dismiss all of the charges related to my
15 failure to present identification during my orderly protest on January 31, 2010 and
16 February 3, 2010. There are no convictions of any crime committed on my part that
17 serve as the basis of the ban and barment order issued to me on March 3, 2010 by the
18 commander of the Vandenberg Air Force Base. The ban and barment order cites only
19 that I failed to provide identification. The order does not indicate that I was creating a
20 security threat to base personnel, property, or operations, or acting in an disorderly
21 fashion, or that I had entered the base for a **“purpose prohibited by law or lawful
22 regulation”** (18 U.S.C. § 1382).

23
24
25 32 C.F.R.. § 809a.2 states that:

26
27 **“In excluding or removing persons from their installation, the installation
28 commander must not act in an arbitrary or capricious manner. Their action must**

1 **be reasonable in relation to their responsibility to protect and to preserve order on**
2 **the installation and to safeguard persons and property thereon.”**

3
4 The issuance of my ban and barment order by the commander of the Vandenberg
5 Air Force Base was based upon his arbitrary and capricious application of restrictions on
6 my protest that violate my First Amendment right to free speech, and the unreasonable
7 arrest for my failure to present identification, which violated my protection to privacy
8 inherent in the Fourth Amendment.

9
10 V.

11 CONCLUSION

12 For the reasons stated above, the Court should dismiss, with prejudice, the charge
13 against me, George Manly.

14
15 Respectfully submitted,
16 George Manly
17 Defendant

18 DATED: August __, 2010

19 By _____
20 George Manly
21 Defendant

22
23 VI.

24 EXHIBITS