

FOR PUBLICATION**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

<p>UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i></p> <p>v.</p> <p>JOHN DENNIS APEL, <i>Defendant-Appellant.</i></p>	<p>No. 11-50003</p> <p>D.C. No. 2:10-cr-00830- JFW-1</p>
<p>UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i></p> <p>v.</p> <p>JOHN DENNIS APEL, <i>Defendant-Appellant.</i></p>	<p>No. 11-50004</p> <p>D.C. No. 2:10-cr-00869- JFW-1</p>
<p>UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i></p> <p>v.</p> <p>JOHN DENNIS APEL, <i>Defendant-Appellant.</i></p>	<p>No. 11-50005</p> <p>D.C. No. 2:10-cr-00831- JFW-1</p> <p>ORDER AND AMENDED OPINION</p>

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UNITED STATES V. APEL

On Remand From The United States Supreme Court

Filed August 14, 2014
Amended September 22, 2014

Before: Barry G. Silverman and Johnnie B. Rawlinson,
Circuit Judges, and John R. Tunheim, District Judge.*

Per Curiam Opinion

COUNSEL

Erwin Chemerinsky, Selwyn Chu (argued) and Matthew Plunkett (argued), law students, University of California, Irvine School of Law, for Defendant-Appellant.

André Birotte Jr., United States Attorney, Robert E. Dugdale and Mark R. Yohalem (argued), Assistant United States Attorneys, Los Angeles, California, for Plaintiff-Appellee.

ORDER

Appellant John Apel's Petition for Panel Rehearing is **GRANTED**. The Per Curiam Opinion filed on August 14, 2014 is amended to conform to the attached Amended Opinion.

* The Honorable John R. Tunheim, United States District Judge for the District of Minnesota, sitting by designation.

OPINION

PER CURIAM:

On February 26, 2014, the United States Supreme Court vacated our opinion at 676 F.3d 1202 and remanded the case to us for further proceedings consistent with its opinion. *United States v. Apel*, ___ U.S. ___, 134 S.Ct. 1144 (2014). Appellant John Apel was barred from Vandenberg Air Force Base, a “closed base,” after he twice trespassed beyond the designated protest area, including one incident where he threw blood on a sign for the base, and he has conceded that he does not challenge the validity of the barment order.¹ In light of the Supreme Court’s decision, Apel’s challenge to the applicability of 18 U.S.C. § 1382 to the facts of his case is denied. As to Apel’s defense that his conviction violates the First Amendment, we agree with the district court’s conclusion that “whether or not the designated protest area at Vandenberg Air Force Base is a public forum, the military may properly exclude recipients of valid bar letters, such as Mr. Apel, without violating the First Amendment.” See *United States v. Albertini*, 472 U.S. 675, 687–89 (1985); *United States v. Walsh*, 770 F.2d 1490, 1493 (9th Cir. 1985) (“*Albertini* indicates that whether or not a base is a public forum, the military may exclude recipients of bar letters without violating the First Amendment.”).

The judgment of the district court is **AFFIRMED**.

¹ S. Ct. Oral Arg. at 36, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-1038_d18f.pdf