

Syllabus

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SUPREME COURT OF THE UNITED STATES

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UNITED STATES *v.* APELCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 12–1038. Argued December 4, 2013—Decided February 26, 2014

Vandenberg Air Force Base has been designated a “closed base,” meaning that civilians may not enter without express permission. The Air Force has granted an easement over two areas of the Base, with the result that two public highways traverse the Base. Adjacent to one of those highways is an area that the Government has designated for peaceful protests. The Base commander has enacted several restrictions to control the protest area and has issued an advisory stating that anyone who fails to adhere to the protest area policies may be barred from entering the Base.

Petitioner Apel was barred from the Base for trespassing and vandalism, but continued to enter the protest area. A Magistrate Judge convicted him of violating 18 U. S. C. §1382, which makes it a crime to reenter a “military . . . installation” after having been ordered not to do so “by any officer or person in command.” On appeal, the Federal District Court rejected Apel’s defense that §1382 does not apply to the designated protest area. The Ninth Circuit reversed. It held that because the easement through Vandenberg deprived the Government of exclusive possession, §1382 did not cover the portion of the Base where Apel’s protest occurred.

Held: A “military . . . installation” for purposes of §1382 encompasses the commanding officer’s area of responsibility, and it includes Vandenberg’s highways and protest area. Pp. 6–14.

(a) Contrary to Apel’s argument, §1382 does not require exclusive possession and control. The statute is written broadly to apply to many different kinds of military places, and nothing in its text defines those places in terms of the access granted to the public or the nature of the Government’s possessory interest. See *United States v. Albertini*, 472 U. S. 675, 682. Nor have military places been defined

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historically as land withdrawn from public use. The common feature of the places described in §1382 is that they have defined boundaries and are subject to the command authority of a military officer. This conclusion is confirmed by *United States v. Phisterer*, 94 U. S. 219, 222, which defined the term “military station” as a place “where military duty is performed or military protection afforded.” And while some Executive Branch documents have said that §1382 requires exclusive possession, those opinions are nonbinding, and this Court has never held that the Government’s reading of a criminal statute is entitled to any deference. Pp. 7–10.

(b) Section 1382 applies to any place with a defined boundary that is under the command of a military officer. Apel contends that the highways and protest area are outside the Base because they lie outside fenced areas on the Base, but this argument assumes the conclusion. The United States has placed the entire Vandenberg property under the administration of the Air Force. The Air Force’s choice to secure a portion of the Base more closely does not alter its boundaries or diminish its commander’s jurisdiction. Apel’s further contention that the highways and protest area are uncontrolled spaces where military operations are not performed is contrary to the record: The Base commander has enacted rules to restrict the manner of protests in the designated area and has publicly stated that persons barred from Vandenberg may not enter the Base to protest; the District Court found that the Government exercises substantial control over the protest area; the easement itself reserves to the Base commander the authority to restrict access to the entire Base when necessary and reserves to the United States rights of way for all purposes; and the Base commander has occasionally closed the highways to the public for security purposes or when conducting a military launch. In any event, §1382 does not require base commanders to make continuous, uninterrupted use of a place within their jurisdiction, lest they lose authority to exclude certain individuals. Such a use-it-or-lose-it rule would frustrate the administration of military facilities, raise difficult questions for judges, and discourage commanders from opening portions of their bases for public convenience. Pp. 10–13.

(c) Apel’s argument that the statute was unconstitutional as applied was not reached by the Ninth Circuit and, thus, is not addressed here. P. 13.

676 F. 3d 1202, vacated and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court. GINSBURG, J., filed a concurring opinion, in which SOTOMAYOR, J., joined. ALITO, J., filed a concurring opinion.

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SUPREME COURT OF THE UNITED STATES

No. 12–1038

UNITED STATES, PETITIONER *v.* JOHN DENNIS
APEL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February 26, 2014]

CHIEF JUSTICE ROBERTS delivered the opinion of the
Court.

Federal law makes it a crime to reenter a “military . . . installation” after having been ordered not to do so “by any officer or person in command.” 18 U. S. C. §1382. The question presented is whether a portion of an Air Force base that contains a designated protest area and an easement for a public road qualifies as part of a “military installation.”

I
A

Vandenberg Air Force Base is located in central California, near the coast, approximately 170 miles northwest of Los Angeles. The Base sits on land owned by the United States and administered by the Department of the Air Force. It is the site of sensitive missile and space launch facilities. The commander of Vandenberg has designated it a “closed base,” meaning that civilians may not enter without express permission. Memorandum for the General Public Re: Closed Base, from David J. Buck, Commander (Oct. 23, 2008), App. 51; see also 32 CFR

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§809a.2(b) (2013) (“Each [Air Force] commander is authorized to grant or deny access to their installations, and to exclude or remove persons whose presence is unauthorized”).

Although the Base is closed, the Air Force has granted to the County of Santa Barbara “an easement for a right-of-way for a road or street” over two areas within Vandenberg. Department of the Air Force, Easement for Road or Street No. DA-04-353-ENG-8284 (Aug. 20, 1962), App. 35. Pursuant to that easement, two state roads traverse the Base. Highway 1 (the Pacific Coast Highway) runs through the eastern part of the Base and provides a route between the towns of Santa Maria and Lompoc. Highway 246 runs through the southern part of the Base and allows access to a beach and a train station on Vandenberg’s western edge. The State of California maintains and polices these highways as it does other state roads, except that its jurisdiction is merely “concurrent” with that of the Federal Government. Letter from Governor Edmund G. Brown, Jr., to Joseph C. Zengerle, Assistant Secretary of the Air Force (July 21, 1981), App. 40. The easement instrument states that use of the roads “shall be subject to such rules and regulations as [the Base commander] may prescribe from time to time in order to properly protect the interests of the United States.” Easement, App. 36. The United States also “reserves to itself rights-of-way for all purposes” that would not create “unnecessary interference with . . . highway purposes.” *Id.*, at 37.

As relevant to this case, Highway 1 runs northwest several miles inside Vandenberg until it turns northeast at a 90 degree angle. There Highway 1 intersects with Lompoc Casmalia Road, which continues running northwest, and with California Boulevard, which runs southwest. In the east corner of this intersection there is a middle school. In the west corner there is a visitors’ center and a public bus stop. A short way down California

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Boulevard is the main entrance to the operational areas of the Base where military personnel live and work. Those areas are surrounded by a fence and entered by a security checkpoint. See Appendix, *infra* (maps from record).

In the south corner of the intersection is an area that has been designated by the Federal Government for peaceful protests. A painted green line on the pavement, a temporary fence, Highway 1, and Lompoc Casmalia Road mark the boundaries of the protest area. Memorandum for the General Public Re: Limited Permission for Peaceful Protest Activity Policy, from David J. Buck, Commander (Oct. 23, 2008), App. 57–58. The Base commander has enacted several restrictions to control the protest area, including reserving the authority “for any reason” to withdraw permission to protest and “retain[ing] authority and control over who may access the installation, including access to roadway easements for purposes other than traversing by vehicle through the installation.” *Ibid.* A public advisory explains other rules for the protest area: demonstrations “must be coordinated and scheduled with [B]ase Public Affairs and [Base] Security Forces at least two (2) weeks in advance”; “[a]nyone failing to vacate installation property upon advisement from Security Forces will be cited for trespass pursuant to [18 U. S. C. §1382]”; and “[a]ctivities other than peaceful protests in this area are not permitted and are specifically prohibited.” U. S. Air Force Fact Sheet, Protest Advisory, App. 52–53.

The advisory states, consistent with federal regulations, that anyone who fails to adhere to these policies may “receive an official letter barring you from entering Vandenberg.” *Id.*, at 55; see also 32 CFR §809a.5 (“Under the authority of 50 U. S. C. [§]797, installation commanders may deny access to the installation through the use of a barment order”). And for any person who is “currently barred from Vandenberg AFB, there is no exception to the

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