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Attorney for Defendant

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

United States of America,

Plaintiff,

v.

Defendant.

Case No.: _____

**MOTION FOR THE RETURN OF
PROPERTY PER FEDERAL RULE OF
CRIMINAL PROCEDURE 41(g)**

**DATE:
TIME:
LOCATION:**

**TO THE UNITED STATES OF AMERICA (“USA”), DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY, UNITED STATES MARINE CORP (“USMC”);
COMMANDING OFFICER COLONEL JASON G. WOODWORTH, MCAS
MIRAMAR (“CO”) AND THEIR AGENTS:**

On or about January 16, 2016, approximately forty-five (45) Mountain Bike Riders (“CYCLISTS”) were cited for alleged violations of 18 U.S.C. § 1382 (Trespassing on a Military Installation). This area has a long history of public use, and is known as the “Stowe Trail” in Sycamore Canyon¹.

At various times during the day in question, these CYCLISTS were safely riding on or near what is alleged to be military property (“Subject Property”), for recreational purposes. The

¹ This property has a long history, dating back to the 1800’s. It was a main public travel corridor from Santee to Ramona. San Diego County Supervisor Diane Jacobs started advocating for increased public access to the “Stowe Trail” in Sycamore Canyon in 1993. In 2001, Major General Boden agreed to work out an “in kind swap” with the County of San Diego via a memorandum of understanding signed by the Marines. Legislation passed in 2006, to implement the deal, but the new Miramar Commanding Officer declined to finalize the deal. Then, Supervisor Jacobs offered a “license agreement,” similar to those in place at Camp Pendleton, so the Marines do not have to surrender the land. The Marines declined.

1 Subject Property abuts and adjoins property owned by the County of San Diego, and held in
2 trust for its citizens for public use. This public property is undeveloped, rural, terrain well suited
3 for mountain biking. It has numerous unmarked entrances and exits. Defendant [name]
4 (“DEFENDANT”), one of the CYCLISTS, was at least three canyons away from any rifle range
5 and rode on a public, non-military dirt trail. Defendant did not see any posted signs demarking
6 military property or warning against trespassing.

7 DEFENDANT was detained by several armed Military Police (“MP’s”) using jeeps,
8 ATV’s and trucks, who were performing a “roving patrol type checkpoint.” Defendant was
9 questioned, was issued a misdemeanor citation for allegedly violating 18 U.S.C. § 1382, and
10 his \$5,000.00 bicycle was seized, all without a warrant. Nevertheless, Defendant cooperated
11 and accurately identified himself, and signed a promise to appear in Court with the following
12 language:

13
14 **My signature signifies that I have received a copy of this**
15 **violation notice. It is not an admission of guilt. I promise to**
16 **appear for the hearing at the time and place instructed or pay**
17 **the total collateral due.**

18 (A copy of said citation and DEFENDANT’S photo identification card are attached as Exhibit
19 ‘__.’)

20 By signing the promise to appear, DEFENDANT subjected himself to warrant and arrest
21 if he failed to appear. In doing so, he did not admit guilt or consent to the seizure or retention
22 of his mountain bike. Importantly, DEFENDANT was never previously warned or cited by the
23 USMC, or any of its agents, that he was prohibited from using this busy and frequently used
24 dirt trail. The citation does not provide an exact date and time to appear in Court to contest the
25 charge. Instead, an unknown future date, likely 30 – 90 days is anticipated. (Exhibit ‘__.’)

26 On February 1, 2016, the San Diego Mountain Bike Association (SDMBA) held a
27 public meeting with government representatives to discuss the mass citations and seizure of
28 numerous valuable mountain bikes. At that meeting, [name] stated it was MCAS Miramar’s
official position that the mountain bikes will not be released until the Defendants appear in

1 Court and pay fines, or until a judge “clears” their release. ² (See Transcript of SDMBA
2 Meeting, 1:12:42-1:16:15, attached as Exhibit ‘__.’) A military representative also
3 acknowledged the need for more and better signage to demark military property in the area, and
4 that current warnings are inadequate. (*Id.*, 0:7:46 – 0:10:14; 1:12:42 – 1:16:15; 1:12:42-
5 1:16:15.)³

6 USMC spokespersons were questioned about their decision to retain the mountain bikes,
7 and whether the CYCLISTS would get them back. The spokespersons unequivocally refused
8 to return the mountain bikes unless: (1) the CYCLISTS appeared at the citation hearing(s)
9 (notwithstanding their written promise to do so); (2) the CYCLISTS paid any court imposed
10 fine; and (3) the USMC is convinced there is no chain of custody issue with releasing the
11 mountain bikes, which they viewed, perhaps anecdotally, as evidence. (Exhibit ‘__,’ 1:12:42-
12 1:16:15.)

13 To address the chain of custody issue, USMC spokespersons were presented with an
14 option to photograph and release the mountain bikes, instead of retaining them until the
15 Defendants plead guilty or a court issues an order.

16 At the February 1, 2016 SDMBA meeting, Mr. Duquette, Esq. counsel for
17 DEFENDANT, explained the retention of the mountain bikes for evidentiary purposes was
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19 ² SDMBA meeting video transcript 1:12:42-1:16:15 Once that’s clear the bike which is sitting with our
20 military police officers right now impounded as evidence will be returned to you once the citation is
21 cleared. We don’t keep it, we don’t sell it, we don’t do anything with it until you’re ready to come back
22 with it.

23 As it is right now, until the citation is cleared with the judge we hold it as evidence, that’s the process.

24 ³ SDMBA meeting video transcript 0:7:46 – 0:10:14 **I’m well aware of the calls for signage and more
25 signage and that is something we are looking into right now.** With the MTB Association to help point
26 out those places that get used more often and maybe could use more signage.

27 SDMBA meeting video transcript 1:12:42 – 1:16:15 - **I realize that it’s almost impossible to reach
28 everybody. Signs, signs are not a perfect solution. They are a good solution, but not a perfect solution
because they get torn down, they get trashed. People might not see them, may be they are covered by
a bush due to growth, not a perfect solution.**

SDMBA meeting video transcript 1:12:42-1:16:15 We’re still going to do more with the media, we’re
still going to do more internally, and **we’re going to put up more signs because the word has not
filtered out to everybody yet.** There is no stopping point to get the word out to everybody, there no
stopping point trying to educate people to what is right and what is wrong, where they can and can’t go
for safety reasons.

1 unnecessary.⁴ The mountain bikes obviously contain no real or legitimate evidentiary value, as
2 compared to a biological sample of evidence subject to retesting, where this type of issue
3 frequently arises. A simple photograph of the mountain bikes will sufficiently document the
4 chain of custody. Furthermore, the fact that the CYCLISTS were riding mountain bikes is not
5 relevant to any material issue for purposes of an alleged violation of 18 U.S.C. § 1382. The
6 CYCLISTS' alleged physical presence on the purported military property is relevant, not the
7 fact that they were riding mountain bikes. It would be truly surprising if anyone disputes that
8 the CYCLISTS were riding mountain bikes at the time of the incident.

9 The USMC also cannot contend that retaining the mountain bikes is necessary to ensure
10 the M.P.s can locate the CYCLISTS after they were cited and released. The M.P.s collected the
11 personal information of each CYCLIST, presumably to their satisfaction.

12 As a result of the unreasonable seizure of his mountain bike, DEFENDANT, like many
13 other CYCLISTS, walked 2.5 miles (in cleated shoes) back to his car.

14 Last, requiring a guilty plea and the payment of a fine as a condition of releasing the
15 mountain bikes from impound is illegal and taints any possible future guilty plea. Such a
16 coerced plea is involuntary and illegal for the legal reasons demonstrated below.

17 In an attempt to meet and confer with the USMC over the seized mountain bikes,
18 DEFENDANT, through his counsel, presented the Miramar C.O. representatives with a
19 stipulation to the chain of custody, identification of the mountain bike's ownership, and a
20 proposed agreement to pick up the mountain bike at his own expense, via Retired Brigadier
21

22 ⁴ SDMBA meeting video transcript 1:16:14 Attendee Richard Duquette, Esq. called on by Ben Stone
23 to question Lieutenant Mathew K. Gregory Public Relation's officer MCAS Miramar.

24 "To keep the bikes, just to keep the bikes like this gentleman said is not a very equitable solution. I
25 think if you want to keep the bikes for evidentiary purpose you can take a photograph of the bike and
26 return the bikes and have them sign a receipt. Holding on to the bike to get people to plead guilty is
27 (crowd shouts: "punitive") I think if you want a solution and to build equity among the people, just
28 take pictures of the bike, write down the serial number and return the bikes. The message has been
made. There is no real purpose to hold the bikes for evidentiary purpose, holds serve no purpose. I
think you can build a lot of good will as a solution if you just return them and take a picture. Thank
you."

27 Crowd cheers. Kristine Camper stands up and says the bikes we held for chain of custody. Law
28 enforcement effort. Evidence. Hand was forced. Etc.

Richard politely responds "we'll stipulate that the bike was seized" crowd starts interrupting.

1 General (and licensed attorney) David Brahms, Esq.. The stipulation was rejected. Now that
2 informal attempts to resolve the dispute have failed, DEFENDANT is forced to petition this
3 court for the return of his mountain bike.

4 DEFENDANT, who is identified in citation No. _____ is the valid and lawful
5 owner of a mountain bike seized by the Government. (See Declaration of Ownership by [name],
6 ¶¶ ____, attached as Exhibit ‘__.’)

7 **POINTS AND AUTHORITIES**

8 **A. The Court is Authorized to Order The Bicycle’s Release**

9 The Federal Rule of Criminal Procedure 41(g) provides that “[a] person aggrieved by
10 an unlawful search and seizure of property or by deprivation of property may move for the
11 property’s return.” The Ninth Circuit holds that “[i]f a Rule [41(g)] motion is filed where no
12 criminal proceeding is pending the motion is treated as a civil complaint seeking equitable
13 relief.” United States v. Ritchie, 342 F.3d 903, 906 (9th Cir. 2003); see also United States v.
14 Kama, 394 F.3d. 1236, 1238 (9th Cir. 2005). The plain language of Rule 41(g) does not permit
15 a court to defer its decision on the merits or engraft an irreparable harm requirement that is not
16 set out in the text of Rule 41 itself; doing so would be an unjustified barrier to relief. Doane v.
17 United States, 08 Mag. 0017 (HBP), 2009 U.S. Dist. LEXIS 61908 (S.D.N.Y. June 1, 2009)
18 (Providing an extensive history of Rule 41(e)).

19 **B. Impounding the Mountain Bike Serves no Legitimate Purpose**

20 There is no legitimate basis justifying a warrantless seizure and retention of
21 DEFENDANT’S mountain bike. Even assuming there is an evidentiary or chain of custody
22 issue, photographing the mountain bike and confirming ownership are sufficient. Further, the
23 denial of a chain of custody stipulation amounts to a display of the USMC’s disregard of the
24 defendants’ constitutional rights, including the rights guaranteed by the Fifth and Sixth
25 Amendments to the United States Constitution (i.e., taking and retaining property without Due
26 Process of law in an attempt to force a guilty plea).

27 The loss of use of the mountain bikes for 30 to 90 days is also a serious interference
28 with the CYCLISTS’, including DEFENDANT’S, property rights. In modern society, the use

1 of a bicycle provides healthy recreation and stress relief from day to day activities of life.
2 Further, the continued and unjustified retention impedes this moving DEFENDANT'S
3 livelihood because it prevents him from his duties as a cross-country mountain bike coach.
4 Moreover, conditioning the mountain bike's return on DEFENDANT entering a guilty plea and
5 paying a fine interferes with his right to be free from a coerced pretrial plea offer. Boykin v.
6 Alabama, 395 US 238, 242-243 (1969).⁵

7 If instead of entering a guilty plea, defendant has to take time off work, and appear in
8 Federal Court and admit to a forfeiture of a "negotiated collateral" of \$525.00 (\$500.00 fine +
9 \$25.00 administrative fee), it still offends the Due Process principals of voluntariness
10 delineated in Boykin v. Alabama, "Id." This is because a failure to enter into such an
11 adhesion contract subjects him/her to criminal prosecution and further unjust delay in the
12 return of his/her mountain bike. Doing the math at \$525.00 per person times 45 cited cyclists,
13 totals fines of \$23,625.00, which is a cruel and unusual fine.

14 Even though defendant (and all cyclists) dearly admire and respect the USA, USMC,
15 and C.O., few Americans would recognize these tactics as justice in a system we all call our
16 own.

17 Here, the coercive effect of the USMC's actions is undeniable. DEFENDANT was
18 confronted by armed military personnel, issued a *misdemeanor* citation punishable by jail and
19 a fine, and had his \$5,000 mountain bike seized. His only hope of getting the bike returned,
20 according to the USMC, is to forfeit his right to a trial, admit guilt, be convicted of a federal
21 misdemeanor, and succumb to whatever punishment the court deems fit. This is not just a subtle
22 threat, but a blatant one that infringes on DEFENDANT'S most basic constitutional rights. Id.
23 at 242-243.

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25 _____
26 ⁵ Justice William O. Douglas succinctly defined the law of the land relating to voluntary pleas: "[A]s
27 we have said, a plea of guilty is more than an admission of conduct, it's a conviction. Ignorance,
28 incomprehension, subtle or blatant threats might be a perfect cover-up of unconstitutionality." (emphasis
added).

1 Where, as here, rational alternatives exist to eliminate implication of constitutional Due
2 Process violations, but are ignored – a fair interpretation is that the seizure of the bikes is
3 punitive. Perhaps acknowledging this potential for governmental abuse, Congress provided a
4 remedy in Rule 41(g).

5 Accordingly, DEFENDANT respectfully asks this Court to exercise its equitable
6 jurisdiction over this matter, and order the prompt return of DEFENDANT’S mountain bike.
7 Kama, supra, 394 F.3d. at 1238.

8 **C. Defendants did not knowingly and unlawfully enter onto Military Property.**

9 In order for a trespass to occur, per 18 USC 1382, the cyclists must have adequate and
10 conspicuous signage that amounts to notice they were entering upon a prohibited military
11 installation. United States v. Madrigal-Valadez 561 F.3d 370 (4th Cir. April 1, 2009).

12 Citing United States v. Bonilla 648 F2d 1373, 1382-3 (1st Cir. 1981) a similar trespass
13 case was reversed, in part, because there were no verbal warnings, the reservation had no fences,
14 and no warning signs were posted that entry was prohibited.

15 The Court held in “Bonilla” it must be shown that the defendant had knowledge or
16 notice that entry was in fact prohibited.

17 Accordingly, as in “Madrigal” and “Bonilla” there was a lack of conspicuous signage,
18 fencing and warnings to impute legal notice of trespassing. Knowing this, the USMC’s citing
19 the cyclists and impounding of their bikes was clearly illegal.

20 **Prayer:**

21 DEFENDANT prays for the immediate release of his mountain bike. Notwithstanding
22 the above circumstances, DEFENDANT remains willing to pick up the mountain bike from a
23 reasonable location of the USMC’s choosing. DEFENDANT further agrees to comply with
24 reasonable and timely requests to produce the mountain bike for inspection and at any hearing
25 or trial.

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1 Last, defendant requests reasonable attorney fees and costs for the investigation,
2 preparation and presentation of this motion, a portion of which with consent, will be charitably
3 contributed to SDMBA to improve the signage and boundary markers near the "subject
4 property" in an attempt to engender respect for all the parties.

5 Respectfully submitted,

6 Dated: _____

Attorney for Defendant

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