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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff-Appellee v. JOHN C. SEARS, Defendant-Appellant.	CR 14-00667-RGK (14-tk-0412-PLA) (CVB NO. 1060412/13/14) **DEFENDANT-APPELLANT'S OPENING BRIEF**

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INTRODUCTION

After walking all day for many miles, appellant John C. Sears and the two mules accompanying him needed to rest. He had no idea that he had entered a National Park, or that he would be committing a federal offense merely by sleeping there. At approximately 9 p.m., he was startled awake by two park rangers. The rangers informed Mr. Sears that he had two choices: leave or be arrested. Because it was dark by this time, and leaving the area would be unsafe for Mr. Sears and the mules, he had no choice but to be arrested.

Mr. Sears was charged with violating a lawful order of a government employee in violation of 36 C.F.R. § 2.32(a)(2) and camping outside designated sites or areas in violation of 36 C.F.R. § 2.10(b)(10). On November 6, 2014, Mr. Sears, defending himself, was tried before a magistrate judge, without a jury. In less than two hours, Mr. Sears was tried, convicted, and sentenced on both counts.

Mr. Sears now appeals both convictions based on the following grounds: (1) Mr. Sears's constitutional right to travel was impermissibly infringed upon; (2) the evidence presented at trial clearly established by the preponderance of the evidence that he was entitled to an acquittal based on his necessity defense; (3) he was entitled to a jury trial; and (4) he lacked the required *mens rea* to support a conviction for illegal camping.

STATEMENT OF FACTS

On May 9, 2014, John C. Sears, age 66, walked approximately 15 to 20 miles accompanied by two mules. Needing rest after walking for so long, Mr. Sears sought a place where he and the mules could sleep. He came upon some hills with no houses on them and decided that this was a good place for him and the mules to spend the night.

Mr. Sears and his two animal companions walk all day every day. To them, walking is a way of life and the way they survive. They don't live in houses and they don't use automobiles, nor do they wish to. Mr. Sears considers this way of life, which has been around for hundreds of thousands of years, to be sacred.

Unknown to Mr. Sears at the time, he had entered federal land — land that had not been specifically designated by the National Park Service for camping. There were not any "no trespassing" or "no camping" signs, or anything else to notify Mr. Sears that camping was not allowed in the area. The only such signs were at the entrance of the Administrative Road, but Mr. Sears and the mules did not enter via that road.

At approximately 9 p.m. that night, after the sun had set, two park rangers came upon Mr. Sears while he was asleep in a sleeping bag in the Santa Monica Mountains National Recreational Area. The rangers woke Mr. Sears and told him that he was not allowed to stay overnight in that area and that he needed to move to

another location. Mr. Sears stated, "I'm a traveler and wherever I lay my head, that's where I'm going to sleep that evening."

The rangers informed Mr. Sears that if he did not leave, he would be arrested. They told him to go to the Danielson Ranch, a ranch with equestrian facilities, miles away. However, Mr. Sears did not believe that he would be allowed in the private campground in the middle of the night. Moreover, Mr. Sears knew that it would be unsafe for him and the mules to leave the area and walk miles through the wilderness in the darkness. Accordingly, he refused to leave the area. The rangers then placed him under arrest and transported the mules to an animal control facility.

Mr. Sears was charged with violating a lawful order of a government employee in violation of 36 C.F.R. § 2.32(a)(2); camping outside designated sites or areas in violation of 36 C.F.R. § 2.10(b)(10); and violating the park superintendent's compendium by tying a pack animal to a tree in violation of 36 C.F.R. § 2.16(g). The government dismissed the § 2.16(g) charge prior to the trial.

On November 6, 2014, Mr. Sears was tried for the remaining two offenses. Because Mr. Sears was not entitled to appointed counsel, he represented himself. And because Mr. Sears was not given the choice of being tried by a jury of his peers, he was tried by a magistrate judge. He was convicted on both counts.

Mr. Sears now appeals both convictions.

ARGUMENT

I. The Regulations Under Which Mr. Sears Was Convicted Violate His Constitutional Right to Travel

Mr. Sears lives outside at all times. Accompanied by two mules, Mr. Sears walks all day every day. He does not want to live in a house or use an automobile. It is literally impossible for Mr. Sears to live this way, which he has every right to do, and not be able to sleep when he and the mules need rest. There are not enough designated campsites in the national park system for someone who travels by foot to be able to get from one designated campsite to another before nightfall. Thus, 36 C.F.R. § 2.10(b)(10) (camping outside designated sites or areas) infringes Mr. Sears's right to travel.

As Mr. Sears explained at trial, "If you're going to move freely in this country, if you're going to be able to walk, do something besides sit in a car, you need to have access to public space. You have to go to sleep at night, and public space is the space where you can do this. And so we were claiming our right to do just that. This is public space." Trial Transcript at 47:8-13.

A. The Constitutional Right to Travel is a Fundamental Right

The constitutional right to travel has been recognized repeatedly by the United States Supreme Court as a fundamental right. See Saenz v. Roe, 526 U.S. 489, 501 (1999); Shapiro v. Thompson, 394 U.S. 618, 629 (1969). Although not explicitly mentioned in a particular constitutional provision, it has been found to be

grounded, *inter alia*, in the Privileges and Immunities Clause, the Due Process Clause, and the Equal Protection Clause. See Shapiro, 394 U.S. at 630 n. 8; Mem'l Hosp. v. Maricopa Cnty., 415 U.S. 250, 269–70 (1974).

> The right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . . In Anglo-Saxon law that right was emerging at least as early as the Magna Carta. Chafee, Three Human Rights in the Constitution of 1787 (1956), 171-181, 187 *et seq*., shows how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values. "Our nation," wrote Chafee, "has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases."

Kent v. Dulles, 357 U.S. 116, 125-26 (1958) (emphasis added) (citations omitted).

"Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." Edwards v. California, 314 U.S. 160, 179 (1941) (Douglas, J., concurring) (quoting Chief Justice Fuller in Williams v. Fears, 179 U.S. 270, 274 (1900)).

At trial, Mr. Sears testified regarding how important he considers his fundamental right to travel to be:

> We live on our feet. We don't live in houses; we don't use automobiles. Walking is a way of life for us and that's the way we survive. It enables us to live. It makes us want to live; it gives our life meaning. This is what we are.
> . . . .
> This way of life is sacred really. It's been here for thousands — hundreds of thousands of years, this way of life we live. We consider it sacred. And to deny us the right to sleep is a bullet to our head. This is not a petty case. This is an important case for us. To deny us the right to go to sleep on public space is a bullet to the head. And the National Park Service is about the open spaces, about human beings relating to those spaces in the old ways naturally; not driving in $300,000 motor homes and having parties. And instead, these laws and regulations are going after this old, sacred way of life, this much-respected way of life. And that has to be addressed, it has to be continually addressed because it's not — it's going to be wiped out. And our ability to be human beings is disappearing fast. We're being closed up in these buildings. We spend most of our time in buildings and automobiles in this manmade inside world. And it's not a place — it's a place, but it's not a place to be all day every day. You have to be with nature to survive, to want to live. We all need it, and it's disappearing very fast.

Trial Transcript at 41:11-14; 69:12-70:6.

B. The Constitution Protects the Fundamental Right to Both Interstate and Intrastate Travel

Although the Supreme Court and the Ninth Circuit have not yet decided whether the Constitution protects a fundamental right to intrastate travel, see

Mem'l Hosp., 415 U.S. at 255–56; Nunez v. City of San Diego, 114 F.3d 935, 943, n. 7 (9th Cir. 1997), several circuits have recognized this constitutional right. See Selevan v. New York Thruway Auth., 584 F.3d 82, 100 (2d Cir. 2009) ("[W]e have recognized the Constitution's protection of a right to intrastate as well as interstate travel."); Johnson v. City of Cincinnati, 310 F.3d 484, 498 (6th Cir. 2002) ("In view of the historical endorsement of a right to intrastate travel and the practical necessity of such a right, we hold that the Constitution protects a right to travel locally through public spaces and roadways."); Lutz v. City of York, 899 F.2d 255, 266–68 (3d Cir. 1990) (recognizing that an "anti-cruising" ordinance implicated the right to intrastate travel, a right derived from principles of substantive due process); King v. New Rochelle Mun. Hous. Auth., 442 F. 2d 646, 648 (2d Cir. 1971) ("It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state."); Cole v. Hous. Auth. of Newport, 435 F.2d 807 (1st Cir. 1970) (implicitly recognizing right to intrastate travel by invalidating city's two-year residency requirement for public housing applicants in challenge brought by one plaintiff who had moved from out of state and another who had moved from within state to the city). Moreover, after an extensive search, defense counsel could not find a single case where a court held that there is no constitutional right to intrastate travel.

C. Because the Right to Travel Is a Fundamental Right, Any Regulation Infringing That Right Must Survive Strict Scrutiny, and the Regulations at Issue Fail to Do So

When a fundamental liberty interest protected by the substantive due process right is involved, the government cannot infringe on that right unless it survives strict scrutiny, that is "unless the infringement is narrowly tailored to serve a compelling state interest." Washington v. Glucksberg, 521 U.S. 702, 721 (1997) (citation omitted). A court must evaluate whether the regulation is the least restrictive means to accomplish the government's goal, and determine whether any other methods exist to achieve the desired result.

In Johnson v. City of Cincinnati, the Sixth Circuit was faced with deciding the constitutionality of an ordinance excluding an individual for up to ninety days from the "public streets, sidewalks, and other public ways" in all drug-exclusion zones if the individual is arrested or taken into custody within any drug-exclusion zone for one of several enumerated drug offenses. Johnson, 310 F.3d at 487-88. Applying strict scrutiny, the Johnson court held that the ordinance was unconstitutional both on its face, and as applied to the plaintiffs.

The Code of Federal Regulations' anti-camping law fails to survive strict scrutiny analysis. Here, 36 C.F.R. § 2.10(b)(10) makes it a crime to camp anywhere on National Park Service property that is not a specifically designated camping site or area. Even assuming that whatever interest such a regulation is

meant to address is a compelling one, a regulation criminalizing camping everywhere in a National Park except for those relatively few designated campgrounds is not narrowly tailored to achieve that interest, nor is it the least restrictive means. In fact, this regulation completely abolishes the fundamental right to travel to those who, like Mr. Sears, travel by foot. There are not enough designated campsites for these travelers to be able, every time, to reach a new one before nightfall.

"[W]hen constitutional rights are at issue, strict scrutiny requires legislative clarity and evidence demonstrating the ineffectiveness of proposed alternatives." Johnson, 310 F.3d at 504 (citing Grutter v. Bollinger, 288 F.3d 732, 749-51 (6th Cir. 2002)). Here, the government could easily promulgate a less-restrictive regulation to achieve its goals, such as allowing camping everywhere except where there was a particular compelling reason not to allow it rather than a blanket prohibition.

Accordingly, this regulation is unconstitutional both on its face and as applied to Mr. Sears. Likewise, an order from a federal employee that violates this fundamental right is not a lawful order. The rangers' order that Mr. Sears leave or be arrested was not lawful because threatening someone with arrest for exercising a fundamental right impermissibly infringes upon that right.

Thus, 36 C.F.R. § 2.32(a)(2) (violating a lawful order of a government employee), as applied to Mr. Sears, is also unconstitutional.

II. The Trial Court Should Have Found Mr. Sears Not Guilty on Both Charges Based on the Overwhelming Evidence Supporting Mr. Sears's Necessity Defense

To succeed on a necessity defense, a defendant must show: (1) that he was faced with a choice of evils and chose the lesser evil; (2) that he acted to prevent imminent harm; (3) that he reasonably anticipated a causal relation between his conduct and the harm to be avoided; and (4) that there were no other legal alternatives to violating the law. United States v. Arellano-Rivera, 244 F.3d 1119, 1125-26 (9th Cir. 2001); see also Ninth Circuit Model Jury Instruction 6.6 Necessity (Legal Excuse). The application of the necessity defense is reviewed de novo. Id. at 1125.

When a statute is silent on the question of an affirmative defense and the affirmative defense does not negate an essential element of the offense, the burden is on the defendant to prove the elements of the defense by a preponderance of the evidence. Dixon v. United States, 548 U.S. 1, 7 (2006). Based on the evidence presented at trial, Mr. Sears proved by a preponderance of the evidence that he was entitled to an acquittal based on his necessity defense.

> The first prong of the necessity defense requires a showing that [the Defendant] was faced with a choice between two evils and chose the lesser one. This prong reflects the underlying utilitarian principle of the

> necessity defense. We have explained that the necessity defense "justifies criminal acts taken to avert a greater harm, maximizing social welfare by allowing a crime to be committed where the social benefits of the crime outweigh the social costs of failing to commit the crime."

United States v. Bibbins, 637 F.3d 1087, 1094 (9th Cir. 2011) (citations omitted).

Here, Mr. Sears was faced with a choice between risking his life and limb and that of his mule companions, on the one hand, and going back to sleep in his sleeping bag in an area not designated for camping, on the other. There is no question that the latter choice was the lesser evil.

By violating a lawful order of a government employee by refusing to leave in the middle of the night, Mr. Sears reasonably anticipated a causal relation between his conduct and the harm to be avoided, and he acted to prevent that imminent harm.

Furthermore, there were no other legal alternatives to violating the law. The rangers claimed that he could go to the Danielson Ranch, a ranch that allows horses, and presumably mules. But Mr. Sears was never made aware that he would be allowed to stay the night there. And based on his experience, he in fact believed that he would not be allowed to stay the night there.

More importantly, there was absolutely no evidence produced at trial that the rangers would assist Mr. Sears and the mules with getting to this campground, a campground that was miles away. Thus, even if Mr. Sears believed that he would

be allowed to stay the night at this ranch, he would still have to risk his life and the lives of the mules to get there, by walking for miles in complete darkness (there was no moon) through the wilderness with two mules.

Mr. Sears, who appeared pro se, was obviously presenting a necessity defense and provided all of the evidence necessary to prove such a defense. Mr. Sears explained at length that it was not safe for him and the mules to move from their resting place while it was pitch dark. He also explained that he did not believe that going to the Danielson Ranch was a realistic option. "My experience with state parks and all the rest of it is — especially for equestrians — no dice, no deal, you can't come in here and it's dawn to dusk closure, open at dawn, closed at dusk, and so that had been my experience. And when he told me I could go there, it was not believable." Trial Transcript at 47:23-48:3.

Mr. Sears also explained that he was never informed that the ranger made a special arrangement for him: "I have no recollection of the officer informing me that he made a special call to get me a special entry for the night. I wasn't informed of that. I assumed that when I got there, it was going to be closed, just like it usually is. And under those conditions, I said no, I'm not going to leave. . . . And so I was arrested." Trial Transcript at 48:4-9. Furthermore, the Danielson Ranch is on state land, so there would be no reason for Mr. Sears to believe that a federal employee would be able to arrange his stay at a facility on state land.

Based on the magistrate judge's ruling, it appears that he never even considered Mr. Sears's necessity defense. The magistrate judge stated, "Some of the evidence really isn't all that relevant to whether you are in violation or not. For example, whether or not they told you about this Daniels [*sic*] Ranch, whether you believed them, whether they made the call is sort of irrelevant." Trial Transcript at 66:20-24.

Not only were these facts relevant, they were crucial to Mr. Sears's necessity defense. The judge further stated, "I don't get to consider whether you felt it was a good idea for you to leave the site at that point or not." Trial Transcript at 67:10-11. However, the judge was not only allowed to consider whether it was safe leave the site at that point, he was required to consider this evidence in order to rule on Mr. Sears's affirmative defense.

Furthermore, in order for Mr. Sears to exercise his right to travel, he needs to be able to sleep after traveling all day. As he explained at trial,

> We'd been walking all day long. It was time to stop. You walk all day, a most necessary part of that is to go to sleep at night and stop and rest your bones so you can get up in the morning and do it again. So we did that. And we did not plan to come here. We didn't even know it was there. We simply looked down the street; and as we looked down the street, we could see hills. And it was obvious there weren't any houses on them, and so we proceeded there as a potential place to where we could stop for the night and go to sleep.

Trial Transcript at 41:17-42:1

At trial, Mr. Sears clearly established by a preponderance of the evidence that he was entitled to a not guilty verdict because he was faced with a choice of evils and chose the lesser evil; he acted to prevent imminent harm; he reasonably anticipated a causal relation between his conduct and the harm to be avoided; and there were no other legal alternatives to violating the law. Accordingly, both convictions should be reversed.

III. Mr. Sears's Conviction Should Be Reversed, Because, Based on the Maximum Punishment Allowed, He Was Entitled to a Jury Trial

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . ." U.S. Const. Sixth Am. Similarly, Article III of the United States Constitution provides that "the Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." U.S. Const., Article III, § 2, cl. 3.

> Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. . . . [T]he jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power – a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges.

Duncan v. Louisiana, 391 U.S. 145, 156 (1968). "The primary purpose of the jury in our legal system is to stand between the accused and the powers of the State.

Among the most ominous of those is the power to imprison." Lewis v. United States, 518 U.S. 322, 334 (1996) (Kennedy, J., concurring in judgment). "[T]he jury interposes between the accused and his accuser the judgment of laymen who are less tutored perhaps than a judge or panel of judges, but who at the same time are less likely to function or appear as but another arm of the Government that has proceeded against him." Baldwin v. New York, 399 U.S. 66, 72 (1970).

Mr. Sears was never given the option to be tried by a jury. In its Trial Memorandum, the government stated that the right to a jury trial for Mr. Sears was "unavailable." Government's Trial Memorandum at 2:24-26 (citing Fed. R. Crim. P. 58(d)(2)(F); United States v. Stanfill El, 74 F.3d 1150 (9th Cir. 2013)). Presumably, the government and the trial court believed that Mr. Sears had no right to a jury trial because, even though the plain language of the Constitution could not be clearer, it is well-settled that a criminal defendant is only entitled to a jury trial when the charged offense is deemed "serious." Offenses carrying a maximum punishment of only six months or less in jail are considered "petty."

However, courts must consider not only the length of the authorized prison or jail sentence but also whether "'the seriousness of other punishment is enough in itself to require a jury trial.'" Blanton v. North Las Vegas, 489 U.S. 538, 542 (1989) (quoting Duncan, 391 U.S. at 161 (emphasis in Blanton)).

As the Ninth Circuit held in United States v. Ballek,

> [T]here clearly comes a point where potential punishment other than incarceration may be so severe that the offense will no longer be considered petty. This is especially true if the punishment may be imposed in addition to a term of imprisonment. . . . The question is how intrusive or severe the additional punishment may be. Where the additional punishment could involve the imposition of a very large fine, or a very long period of probation, or the forfeiture of substantial property, the severity of the total punishment may be sufficiently great so as to turn what would otherwise be a petty offense into a serious one.

United States v. Ballek, 170 F.3d 871, 876 (9th Cir. 1999) (citations omitted).

In such circumstances, a defendant is entitled to a jury trial "if he can demonstrate that any additional statuary penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one." Blanton at 543. Accord Lewis, 518 U.S. at 326; United States v. Nachtigal, 507 U.S. 1, 3-4 (1993).

The Supreme Court has recognized that the possibility or imposition of a term of probation will not render an otherwise "petty" offense into a "serious one" where such a penalty is an alternative to the term of incarceration. Nachtigal, 507 U.S. at 5. However, the analysis changes when the authorized term of probation is in addition to the authorized period of incarceration, as it is in this case. Here, the maximum punishment for each violation Mr. Sears faced is six months in jail, a $5,000 fine, and a term of five years supervised probation. See 36 C.F.R. § 1.3(a).

For example, an offense has been deemed serious for the right-to-jury purposes when the defendant faces the possibility of losing his or her driver's license for a significant period of time. Richter v. Fairbanks, 903 F.2d 1202, 1204-05 (8th Cir. 1990) (possible revocation of driver's license for fifteen years, considered along with maximum authorized six-month term of incarceration, rendered third-offense DWI a serious crime).

Pursuant to 36 C.F.R. § 1.3(a), a person convicted of violating § 2.10(b)(10) or § 2.32(a)(b) "shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings." Moreover, a defendant who has been found guilty of a petty offense misdemeanor can also be sentenced to a term of probation up to five years in addition to the term of incarceration. 18 U.S.C. § 3561(a)(1)(c) ("A defendant who has been found guilty of an offense may be sentenced to a term of probation unless— . . . (3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense that is not a petty offense.") (emphasis added).

Nachtigal is distinguishable. In that case, the Court held that there is no right to a jury trial when the maximum punishment is either six months in jail or five years probation. In 1994, a year after Nachtigal was decided, however, 18 U.S.C. § 3561(a)(3) was amended to add the phrase "that is not a petty offense."

Pub. L. 103–322, § 280004. As a result, so-called petty offenses are now punishable by six months in jail and five years probation combined. Thus, Mr. Sears faced a maximum penalty of six months of incarceration and five years probation (as well as a $5,000 fine), a much more serious punishment than either six months in jail or five years incarceration standing alone. If a defendant facing six months and a day is entitled to a jury trial, surely a defendant facing six months incarceration and five years probation is entitled to a jury trial. Mr. Sears's convictions should be reversed to allow him to be tried by a jury of his peers.

IV. Mr. Sears's Camping Violation Should Be Reversed Because He Did Not Possess the Required *Mens Rea* for the Offense Due to the Lack of Notice That He Was on Federal Land and That Sleeping in an Area Not Designated for Camping Was a Federal Offense

According to the Government's Trial Memorandum, the elements of violating a lawful order of a government employee in violation of 36 C.F.R. § 2.32(a)(2) are "(1) defendant was on National Park Service property; [and] (2) defendant violated a lawful order of a NPS ranger to leave." See Government's Trial Memorandum at 3:20-25. Similarly, the Government's Trial Memorandum lists only two elements of the offense of camping outside designated sites or areas in violation of 36 C.F.R. § 2.10(b)(10): "(1) defendant was on National Park Service property; [and] (2) defendant was camping outside a designated site or area." See Government's Trial Memorandum at 4:3-8.

Thus, according to the Government's Trial Memorandum, neither offense requires any *mens rea*. This goes against clearly established Ninth Circuit and Supreme Court precedent. In Morissette v. United States, the United States Supreme Court stated, "[T]he contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." Morissette v. United States, 342 U.S. 246, 250 (1952).

> The Morissette court made clear that strict liability crimes are an exception in our legal system and are restricted to crimes which can be termed "public welfare offenses," i.e., statutes whose purpose is regulation of "industries, trades, properties or activities that affect public health, safety or welfare." Id. at 254. But the Morissette court further emphasized that courts should be most reluctant when interpreting statutes to dispense with a *mens rea* requirement absent a clear legislative intention to do so. . . .

United States v. Launder, 743 F.2d 686, 689 (9th Cir. 1984). "The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." Dennis v. United States, 341 U.S. 494, 500 (1951).

Because strict liability crimes are generally disfavored, the Supreme Court has "suggested that some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime." Staples v. United

States, 511 U.S. 600, 605-06 (1994); see also United States v. Torres-Flores, 502 F.3d 885, 889 n. 5 (9th Cir. 2007).

Therefore, the two regulations at issue should be read to require a *mens rea* component. The government even conceded during the trial that a defendant charged under 36 C.F.R. § 2.10(b)(10) has to know that he is camping in an undesignated area. Trial Transcript at 65:23-66:4.

Moreover, a criminal defendant's mistake of fact is a valid defense if it negates the existence of a requisite *mens rea* component of the crime charged. United States v. Brooks, 841 F.2d 268, 269 (9th Cir. 1988). Here, Mr. Sears mistakenly believed that he was not on federal park land. He believed he was in public space where it was legal to camp. According to the park ranger's testimony, there is a sign at the entrance to the administrative road that states that camping is not allowed, and that the area is only accessible to park employees for administrative purposes only. Trial Transcript at 19:17-19; 31:17-19. However, it was clear that Mr. Sears never entered the park by way of this entrance and thus he did not see any sign. In fact, he did not even know he was on federal land, much less that he was at an undesignated camping area. Moreover, Mr. Sears had no notice that by going to sleep, he was violating the Code of Federal Regulations. There are tens of thousands of such regulations criminalizing behavior the vast majority of people would have no idea is against the law.

Only after the park rangers informed Mr. Sears that he was sleeping in an area not designated for camping was he aware that he was on federal land and that his sleeping was a federal offense. Once he was so informed, Mr. Sears did not continue sleeping or camping.

Thus, there was insufficient evidence that Mr. Sears had the necessary *mens rea* to be convicted for illegal camping. The sufficiency of the evidence to support such a conviction is reviewed de novo. United States v. Parker, 651 F.3d 1180, 1182 (9th Cir. 2011). Here, even viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found beyond a reasonable doubt the existence of the essential *mens rea* element of the charged offense. Accordingly, Mr. Sears's conviction for violating 36 C.F.R. § 2.10(b)(10) (camping outside designated sites or areas) should be reversed.

CONCLUSION

For the reasons set forth above, Mr. Sears respectfully requests that his convictions be reversed.

DATED: February 5, 2015

Respectfully Submitted,

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