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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
TUCSON DIVISION

USA

V NO. 4:07-CR-00575-TUC-HCE  
STEPHEN M. KELLY

USA

V NO. 4:07-CR-00576-TUC-HCE  
LOUIS VITALE

Response to Government Motion in Limine to Admit Res Gestae Evidence of Other Acts  
of Fr. Louis Vitale

Defendant Louis Vitale, through undersigned counsel, advises this court that the Motion to Admit Res Gestae should be denied as immaterial and/or premature. The Government seeks permission of this Court to admit these acts during its case in chief. Defendant opposes introduction of these acts during the government's case in chief as a violation of Rule 404(b) and Rule 403.

Rule 403 states:

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Rule 404(b) states:

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.”

These other acts do show that Fr. Vitale is an experienced non-violent social justice protestor and experienced in being charged and convicted of trespass. Fr. Vitale will explain when, how, and why these prior acts occurred when he testifies.

However, the existence of prior convictions alone do not satisfy the principle the Government is trying to advance.

Defendants agree that U.S. v Ayers, 924 F.2d 1468 (9th cir. 1991) requires this court to find, among other things, that “the other acts must be introduced to prove a material issue in the case. At 1473.

The Government indicates, on page 11, of its motion that “Under the Government’s theory, the prohibited purpose was his [Fr. Vitale’s] willful refusal to stop and comply with the installation order directing verification of identities of all persons entering the Fort, as noted in the Bill of Information.”

The Government further explains that it seeks to offer these prior acts, on pages 11-12, “to rebut any argument about the authority of military police to issue orders to stop or the specific boundaries of Fort Huachuca, that the notice was insufficient, or that he lacked specific knowledge of the prohibition.”

These prior acts do not demonstrate the boundaries of Fort Huachuca. These prior acts do not prove anything about the issue of notice or specific intent. These prior acts do not prove anything about the authority of military police to issue orders to stop.

As indicated above, Fr. Vitale does not deny the accuracy of the Government’s identified prior acts, however, introduction of these acts as evidence is not supported at this time because these acts do not prove the material issues in this case and will only cause confusion in the mind of the jurors.

While discussion of these prior acts is appropriate when Fr. Vitale takes the stand – the rules of evidence do not permit them to be introduced into evidence during the Government’s case in chief.

Respectfully submitted,

s/ William P. Quigley, Pro Hac Vice  
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**Certificate of Service**

I certify that I electronically filed this pleading with the Clerk of Court so that copies will be served on all counsel this day and I emailed this pleading to opposing counsel Evan R. Seamone. s/ William P. Quigley