

**BACKUS, MEYER & BRANCH, LP**  
**Attorneys at Law**

116 Lowell St. (03104)  
P.O. Box 516 (03105-0516)  
Manchester, NH  
(603) 668-7272  
FAX (603) 668-0730

Also Admitted  
\*To Massachusetts Bar

Robert A. Backus  
Barry M. Scotch  
Jon Meyer\*  
Earl S. Carrel  
B.J. Branch  
John A. Wolkowski\*  
George T. Campbell, III\*  
Megan E. Douglass

January 10, 2014

**Via Federal Express**

Larry S. Kane, Clerk  
8th Circuit  
District Court-Keene  
3 Washington Street  
Keene, NH 03431

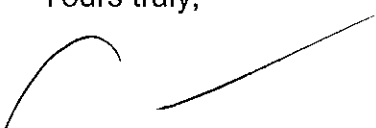
Re: State of New Hampshire v. Graham Colson  
Docket No.: 449-2013-CR-00953

Dear Clerk Lane:

Enclosed please find Defendant's Response To This Court's Addendum. Please file and docket in the usual manner.

Thank you for your courtesy and cooperation.

Yours truly,



Jon Meyer  
[jmeyer@backusmeyer.com](mailto:jmeyer@backusmeyer.com)  
/p  
Enclosure

cc: Jean M. Kilham, Esquire  
Graham Colson

# STATE OF NEW HAMPSHIRE

8<sup>th</sup> Circuit – District Division - Keene

State

v

Graham Colson

Docket No. 12-CR-953

## DEFENDANT'S RESPONSE TO THIS COURT'S ADDENDUM

NOW COMES the Defendant, by and through his attorneys, Backus, Meyer and Branch, LLP and states as follows:

It is the Defendant's position that this Court need not await the U.S. Supreme Court's decision in the case of the United States v John Dennis Apel, 12-1038, because even if the Court finds in the government's favor that would not support the State's position on this prosecution.

As quoted by this Court, 18 U.S.C. §1382 gives the commander the right to order the removal of any individual from a military installation. However, there are substantial differences between the commander's authority over a military reservation, and the authority of the City of Keene over Central Square which differences are constitutionally decisive. First, Central Square is a public square open to all persons, and the inability to enter that square and undertake the activities for which it is dedicated, including First Amendment expression, is a substantial due process deprivation. By contrast, a military

base, even if it includes a public easement, is not a traditional public forum, and being barred does not implicate an interest requiring a due process hearing. Second, a military base has legitimate security concerns far more weighty than the problem of skateboarding in Central Square. Finally, the history of constitutional law reflects a tradition of deference to military authorities, See United States v Albertini, 472 U.S. 675, 687 (“the historically unquestioned power of a commanding officer to exclude civilians from the area of his command . . .”), whereas the courts have always recognized the broader scope of constitutional rights, including due process, in the civilian context.

It is Defendant's position that his right not to be punished for an alleged infraction of a City ordinance without due process is broader than that recognized by this Court. But this Court's ruling is not inconsistent with the position taken by the government in United States v Apel or with the text of 18 U.S.C. §1382.

Respectfully Submitted,

Graham Colson  
By His Attorneys,  
BACKUS, MEYER & BRANCH, LLP

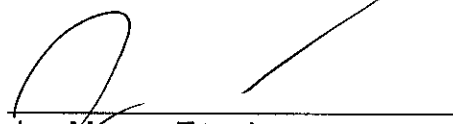
Dated: January 10, 2014

By: \_\_\_\_\_

Jon Meyer, Esq.  
NH Bar #: 1744  
116 Lowell Street  
Manchester, NH 03104  
(603) 668-7272  
[jmeyer@backusmeyer.com](mailto:jmeyer@backusmeyer.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of January 2014, a copy of the above DEFENDANT'S RESPONSE TO THE COURT'S ADDENDUM was forwarded by U.S. Postal Service first class mail to Jean M. Kilham, Esquire, attorney for the State.

  
\_\_\_\_\_  
Jon Meyer, Esquire