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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. ROBERT L WEST, Defendant - Appellant.	No. 25-5601 D.C. No. 3:25-cr-00118-IM-1 MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Karin J. Immergut, District Judge, Presiding

Submitted October 26, 2026[**]
Seattle, Washington

Before: M. SMITH, CHRISTEN, and MILLER, Circuit Judges.

Robert L. West appeals from a district court ruling that affirmed his three convictions arising from two violations of 41 C.F.R. § 102-74.385 and one violation of 41 C.F.R. § 102-74.420 during an incident in the Portland, Oregon,

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Social Security Hearings Office. He was originally tried in a bench trial before a magistrate judge. At the district court and on appeal to this court, West raised three challenges to his convictions: (1) a non-delegation challenge to the constitutionality of the regulations he was convicted of violating; (2) a Federal Rule of Evidence 404(b) admissibility challenge; and (3) a sufficiency of the evidence challenge. Because the parties are familiar with the facts, we do not recount them here, except as necessary to provide context for our ruling. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

1. Whether a regulation or statute is unconstitutional is a question of law reviewed de novo. *United States v. Kelly*, 874 F.3d 1037, 1046 (9th Cir. 2017); *United States v. Bartley*, 9 F.4th 1128, 1131 (9th Cir. 2021). The nondelegation doctrine enshrines the separation of powers principle that "Congress generally cannot delegate its legislative power to another Branch" of government. *Mistretta v. United States*, 488 U.S. 361, 372 (1989). A legislative action survives a nondelegation challenge as long as Congress has laid down "an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform[.]" *Id.* (alteration in original) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)). The intelligible principle test is "not demanding." *United States v. Melgar-Diaz*, 2 F.4th 1263, 1267 (9th Cir. 2021) (quoting *Gundy v. United States*, 588 U.S. 128, 146 (2019)).

West challenges 40 U.S.C. § 1315(c), the statute enabling the regulations he was convicted of violating, as an unconstitutional delegation of legislative power to the executive branch.

The district court correctly applied the intelligible principle test to find limitations in Congress's delegation of authority via Section 1315(c). The district court found that Section 1315(c) provided multiple limitations satisfying the intelligible principle test, including that "regulations must be 'necessary for the protection and administration' of federal property."[1] Far broader delegations than the one at issue here have been upheld by the Supreme Court and this court. *See, e.g.*, *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472–76 (2001) (upholding a delegation allowing the setting of standards "requisite to protect the public health"); *Melgar-Diaz*, 2 F.4th at 1267–68 (upholding a delegation allowing the executive branch to determine the times and places of lawful entry into the United States). Indeed, the intelligible principle test is "routinely applied . . . even when the challenged statute authorize[s] regulations backed by criminal penalties." *United States v. Pheasant*, 129 F.4th 576, 583 (9th Cir. 2025). West's

[1] Because this limitation is sufficient to satisfy the intelligible principle test and survive the nondelegation challenge, we need not address West's arguments regarding Congress's power to regulate leased office space under the Property Clause of the U.S. Constitution. *See* U.S. Const., art. IV, sec. 3, cl. 2. Additionally, we need not address West's arguments based on the major questions doctrine, as he did not raise them before the district court. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

nondelegation challenge therefore fails.

2. Federal Rule of Evidence 404(b) prohibits the introduction of evidence of a person's prior crimes, acts, or wrongs for purposes of proving a person's character to show that the person acted in accordance with the character. However, under Rule 404(b)(2), such evidence may be admitted for other purposes, including to show knowledge. West challenges the admission of evidence of a probation condition associated with a previous state court conviction, which stipulated that West not possess audio or video recording equipment in a municipal government building. We review de novo "whether evidence is other act evidence within the meaning of Fed. R. Evid. 404(b)" but review "the admission of this evidence for abuse of discretion." *United States v. Carpenter*, 923 F.3d 1172, 1180–81 (9th Cir. 2019) (citation omitted). "Where a district court errs in admitting other act evidence, we review for harmless error." *Id.* at 1181. The district court conducted such a review and concluded that while the admission of the evidence was in error, the error was harmless.

On appeal from the district court, West challenges only the finding that the error was harmless. He argues that the district court wrongly concluded that the improper admission was likely less prejudicial due to the evidence's use only in closing arguments. This argument mischaracterizes the district court's holding. The district court held that the error was harmless because "[t]he

conviction . . . appears to have only been used to prove a fact [Defendant's knowledge that rules about recording existed] that Defendant acknowledges he did not dispute." The district court found that West's knowledge and intent was proven by the "strong evidence" provided in the video he recorded, such that it was "more likely than not that the admission of the prior conviction did not materially affect the verdict." West does not challenge these conclusions on appeal. Given the strength of the video evidence, we find that the admission of the probation condition was in fact harmless error.

3. West additionally challenges whether there was sufficient evidence to support each of his three convictions. Claims of insufficient evidence are reviewed de novo. *United States v. Luong*, 965 F.3d 973, 980–81 (9th Cir. 2020). There is sufficient evidence to support a conviction if, "viewing 'the evidence in the light most favorable to the prosecution[,] . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* (citations omitted).

West first argues that there was not sufficient evidence to support his conviction under 41 C.F.R. § 102-74.385 for failure to comply with a lawful directive of a federal officer (specifically, Officer Carpenter). West argues that Officer Carpenter did not give him directions in such a way as to meet all four elements of a lawful directive as provided in *United States v. Huizar*, 762 F.

App'x 391, 392 (9th Cir. 2019). This argument is unpersuasive. A rational trier of fact could find that Officer Carpenter instructed West to stop recording, which West heard and understood, even if he disagreed with it. A rational trier of fact could also find that the roughly 19 minutes of video after Officer Carpenter directed West to stop filming illustrates that West had sufficient time to comply. Accordingly, there is sufficient evidence to sustain a conviction on this count.

Second, West argues that the evidence was not sufficient to support to his conviction under 41 C.F.R. § 102-74.385 for failure to comply with a posted sign because the video showing West reviewing and discussing the signs indicates neither that he understood them in the same manner as the government officials nor intended to purposefully disobey them. However, disagreement with the law does not equate to lack of knowledge or intent. West was immediately directed to the signs by Officer Carpenter and argued with both him and Supervisor Witt about their meaning and purview before continuing to record. A rational factfinder could conclude that the video alone is sufficient evidence to sustain a conviction on this count, as West clearly reviewed the posted signs and disregarded information from relevant government officials regarding their meaning.

Finally, West argues that the evidence was not sufficient to support his conviction for unlawful recording under 41 C.F.R. § 102-74.420 by arguing both

that there was not a rule prohibiting recording on the property and that he did not know that the reception area was not a lobby where recording was permitted until Witt told him. As West acknowledges, the government was only required to prove that "'[s]ecurity regulations, rules, orders or directives' prohibited photography on the federal property." He argues that the posted signs prohibiting recording do not count as evidence of a rule.

As the district court noted, both 41 C.F.R. § 102-74.420 and a separate Social Security Administration sign prohibiting recording were posted on the wall, providing notice to West that there were multiple "regulations, rules, orders, or directives" in place barring recording. Furthermore, the district court correctly ruled that any distinction between a reception area and a lobby is irrelevant in this case, as West also recorded the interior of several hearing rooms, including one where a hearing was actively in progress. Any rational trier of fact could therefore find sufficient evidence to support the conviction under 41 C.F.R. § 102-74.420.

AFFIRMED.