

Defendant attempted to address the unconstitutionality of this theory of prosecution from its very origin by filing a motion to dismiss the indictment for selective/vindictive/malicious prosecution (EDPA Case No. 16-cr-365, ECF#70) to highlight the glaring double standard inherent in how the defendant's constitutional rights were being violated. Defendant was able to submit (in his motion to dismiss for selective/vindictive prosecution) evidence already previously submitted on the civil court record before his kidnapping into pretrial detention (and thereby preserved) to prove that he was not hallucinating these threats. When faced with that proof, the court retreated from its false accusations of "delusion" and instead denied the motion (App. 11a, App. 14a-15a) by alleging that the "true threats" directed against defendant are somehow not actionable because defendant lacks employment as a federal judge. This fascinating First Amendment analysis is attached at App. 11a and App. 14a-15a is reproduced as follows:

EDPA CASE NO. 16-CR-365, ECF#108

Pg1(App. 11a) - "Mr. ██████ claims he is being singled out for prosecution when the United States will not prosecute a non-Muslim homosexual for allegedly similar threats against him. He claims the United States is applying a double standard because he threatened a federal official but will not prosecute a person who did not threaten a federal official. This claim lacks merit. The United States charges Mr. ██████ with threats against a federal judge. His litigation adversaries did not threaten a federal judge ... the United States did not selectively prosecute him for acts which he did and others did not."

Pg-4,5 (App. 14a-15a) "Mr. ██████'s ... theory is based on belief the people he has threatened ... are similarly situated to him because they also threatened him. His argument is misplaced. Assuming, arguendo, the people Mr. Kabbaj has threatened have likewise threatened him, they would still not be similarly situated. To be similarly situated, they would need to have issued a threat to a federal judge through interstate commerce ... Mr. ██████ sent the February 18th, 2016 email with threats to a federal judge. The other persons did not. There is no basis for dismissing the indictment."

The above rulings came full circle during the plea colloquy when the Court was again mandated to inquire whether defendant was threatened with violence to plead guilty, whereby defendant again affirmed that he was and the court could not openly restate its prior ruling alleging it was somehow permissible for individuals to threaten violence against defendant to induce him enter an involuntary guilty plea because he lacks employment as a judge (in order to qualify for First Amendment protection from "true threats"). When defendant was again asked if he was being threatened with violence to plead guilty as per the requirements of Rule 11, he immediately answered in the affirmative thereby resulting in the following exchange as documented on Page

20-22 in the transcripts of the plea (App. 21a-22a) as follows:

THE COURT: Has anyone forced you or physically threatened you or otherwise threatened you to sign that document?

THE DEFENDANT: Ah, to sign the document, no, but I do believe you're aware that there are threats and counter-threats being traded between the parties which results in this case.

THE COURT: Okay. Between the parties - let's be careful there. Between you -

THE DEFENDANT: Myself and the Government.

THE COURT: Okay, And you believe it's the Government because of Mr. Gabriel's involvement?

THE DEFENDANT: Of Course.

THE COURT: Okay, all right.

THE DEFENDANT: And the FBI and the people who have been ... threatening me, including the email ... you saw the email from the Department of Homeland Security Agent who threatened to kill me ... in an email.

THE COURT: Okay. Okay. Has anyone in connection with [the plea] document, I appreciate what you're talking about before leading to this incident. But has anyone threatened you, physically or otherwise, in connection with the last month, two months in connection with the guilty plea agreement?

THE DEFENDANT: Well, just I guess in connection with the dispute in general, as you're aware ... I'm incorporating the pleadings that have been filed civilly. I am a witness in a terrorism investigation. I'm pretty much being held hostage by the FBI and by terrorists and I was in the middle of that dispute between them and started being used as a hostage by both sides.

THE COURT: Okay.

THE DEFENDANT: So, in that regards, it's an ongoing matter, the FBI refuses to question me about any of it directly. I haven't been questioned since 9/11 ... and I did find evidence to corroborate my claims since that time and I've presented them to the Courts.

THE COURT: Okay. My question, though, sir, for your purposes, okay, it's really focusing on whether you believe, that someone has forced you today. In other words, today, this day, January 27th, to come forward and sign this document today.

THE DEFENDANT: Nobody has come to me today, and -

THE COURT: Or forced you to sign this? Or to sign this document? Did anybody come to you and said, sir, "if you don't sign this document something will happen to you?"

THE DEFENDANT: Well, nobody said those words to me.

THE COURT: Okay. So, are you willing to - you've signed this agreement, is that correct?

THE DEFENDANT: I did.

As documented in the testimony above, the Court could not admit that it was legal for defendant to be subject to an involuntary plea simply because he lacks employment as a federal judge (which is the logic used to deny the motion to dismiss for selective/vindictive prosecution).