

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF DISTRICT OF COLUMBIA**

UNITED STATES,

v.

RYAN TAYLOR NICHOLS

Defendant.

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Case No. 21-cr-117-1(TFH)

**DEFENDANT’S REPLY TO THE GOVERNMENT’S OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

Defendant Ryan Nichols, through his undersigned counsel, hereby submits this Reply to Government’s Opposition to Defendant’s Motion to Dismiss (ECF No. 165).

ARGUMENT

This case is distinguishable from all high-profile prosecutions in our nation’s history because in this case, unlike any other time in history, the United States President has demonized a specific class of people to which the Defendant belongs.

Defendant’s motion argues that President Joe Biden’s infamous “Red Speech” on September 1, 2022, was unprecedented because there is no comparable speech in our Nation’s history. Defendant also argues that the President of the United States imputed collective guilt by association on a class of American Citizens he referred to as “MAGA Republicans” which effectively includes all January 6th Defendants who are indelibly branded as “MAGA Republicans.” Furthermore, the Government, through the bully pulpit of the United States President, has presented its opening statement to any potential juror, and by doing so, has irreparably prejudiced the Defendants such that it is impossible to impanel an impartial jury.

The Government in its opposition argues that there is precedent for this kind of Presidential behavior and points to five high-profile prosecutions as examples: (1) the Boston Marathon bomber (*In re Tsarnaev*, 780 F.3d 14 (1st Cir. 2015)); (2) the Enron scandal (*Skilling v. United States*, 561 U.S. 358 (2010)); (3) the terrorist attacks on the World Trade Center in 1993 and 2001 (*United States v. Yousef*, 327 F.3d 56 (2d Cir. 2003); *United States v. Moussaoui*, 43 F. App'x 612 (4th Cir. 2002)); (4) the Watergate prosecution of former Attorney General John Mitchell and other Nixon aides (*United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976)); and (5) the Oklahoma City bombing (*United States v. McVeigh*, 918 F. Supp. 1467 (W.D. Okla. 1996)).¹

What the Government fails to mention, and what the Defendant respectfully asks this Honorable Court to consider, is that these cases, like all cases in our Nation's history, are distinguishable from the current case, because the President of the United States has never before made a prime-time televised speech declaring that a specific class of people that can be easily identified by their political support for former President Donald Trump “represent an extremism that threatens the very foundations of our republic.”

The case of Watergate is obviously inapposite because the President at the time, Richard Nixon, did not make a speech like President Biden's Red Speech. Similarly, the Boston Marathon Bomber, the Oklahoma City Bomber, and the Enron executive are also inapposite. Those prosecutions were of individuals and the individuals were not targeted by the president as being part of a greater movement that sought to destroy our country. On the contrary, in the case of the Boston Marathon bomber, President Obama, who was the president at the time, was careful to

¹ The Government fails to address the case of Oliver North whose criminal conviction was overturned because the jury pool was tainted by his televised immunized testimony.

narrowly direct his remarks to “those who carried out this and anyone who would do harm to our people.”²

If, for instance, President Obama had given a speech demonizing all immigrants from Chechnya as a threat to democracy, then perhaps the cases would be analogous. But President Obama did no such thing. Neither did President Clinton give a speech demonizing all Gulf War veterans in the wake of the Oklahoma City bombing. Nor did President Bush demonize all employees of energy companies in the wake of the Enron scandal. In each of these cases, the individual being prosecuted could not claim that the sitting United States President had prejudiced the jury against them by demonizing an identifiable class of citizens to which they indisputably belonged.

Here, the January 6th Defendants are indisputably part of the “MAGA Republican” class that President Biden demonized in the Red Speech. As such, January 6th Defendants, including Mr. Nichols, are prejudiced beyond repair because they have been permanently characterized as domestic extremists whose very existence threatens the stability of American Democracy. “These are hard things. But I’m an American President... It is my duty to level with you, to tell you the truth, no matter how difficult, no matter how painful. And here, in my view, is what is true: MAGA Republicans do not respect the Constitution. They do not believe in the rule of law. They do not recognize the will of the people... And they’re working right now, as I speak, in state after state...to undermine democracy itself.” The conclusion from this speech, therefore, is that the Defendants are already guilty, and the only question is what is the punishment that fits their crimes.

² Boston Marathon Bombings: President Obama’s Speech In Cathedral Of The Holy Cross (FULL-TEXT) (ibtimes.com), www.ibtimes.com/boston-marathon-bombings-president-obamas-speech-cathedral-holy-cross-full-text-1202625.

The terrorist attacks on the World Trade Center are the perfect counterexample. That case would have been analogous to Mr. Nichols's if the President of the United States delivered an address declaring a war on the religion of Islam. We could compare that case to this one if following the attacks of September 11, 2001, President George W. Bush gave a speech from the White House, in front of an American Monument like Independence Hall in Philadelphia, or perhaps even in front of the rubble that was the World Trade Center, and, with an American flag draped in the background, flanked by marines, spoke about the "threats we face" from Islam.

Imagine if President Bush delivered the same speech as President Biden's Red Speech, but had inserted Islam for "MAGA Republicans." The speech would read as follows:

There is no question that the religion of Islam today is dominated, driven, and intimidated by Osama Bin Ladin and the radical Islamists, and that is a threat to this country...Muslim citizens do not respect the Constitution. They do not believe in the rule of law. They do not recognize the will of the people...Islamic forces are determined to take this country backwards – backwards to an America where there is no right to choose, no right to privacy, no right to contraception, no right to marry who you love. They promote authoritarian leaders, and they fan the flames of political violence that are a threat to our personal rights, to the pursuit of justice, to the rule of law, to the very soul of this country.

Had President Bush given such a speech after September 11, it would be an analogous case.

But President George W. Bush did the opposite. On September 17, 2001, six days after the attack on the World Trade Center, President George W. Bush, addressed America from the Islamic Center of Washington D.C., and delivered a speech, in front of a Muslim audience, that was the exact opposite of President Biden's Red Speech.³ President Bush implored his fellow Americans to resist judging all Muslims based on "what we saw on our TV screens." He asked Americans to "understand that ... America counts millions of Muslims amongst our citizens, and Muslims make an incredibly valuable contribution to our country. Muslims are doctors, lawyers,

³ "Islam is Peace" Says President (archives.gov), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010917-11.html>

law professors, members of the military, entrepreneurs, shopkeepers, moms, and dads. And they need to be treated with respect. In our anger and emotion, our fellow Americans must treat each other with respect.” President Bush asked Americans to recognize that the shocking images they saw on September 11 should not cast a perception of guilt by association upon millions of Muslim American citizens.

Unlike President Bush who adamantly insisted that Islam is a religion of peace, President Biden’s infamous Red Speech declares all MAGA Republicans as a “threat to our nation,” Biden also distinguishes between ordinary Republicans and “MAGA Republicans.” “Not every Republican, not even the majority of Republicans, are MAGA Republicans. Not every Republican embraces their extreme ideology.” This purposeful targeting of MAGA Republicans, and by extension, Mr. Nichols, is designed to provoke fear, anger, and anxiety from the American Public. President Biden even goes as far as to quote the Hon. Michael Luttig, a Federal Judge, to corroborate the proposition that MAGA Republicans represent a “clear and present danger” to the American Public, and by doing so, suggests to the American Public that the Courts have already declared the MAGA Republicans guilty of sedition, insurrection, and terrorism.

President Bush and President Biden both gave calls to action. President Bush, however, gave a call to action to reach out to Muslims in peace, even “encouraging school children to write letters of friendship to Muslim children in different countries.” The only call to action in the Red Speech was a call to join him in “defending our democracy” against MAGA Republicans, the enemy of the state.

I will not stand by and watch — I will not — the will of the American people be overturned by wild conspiracy theories and baseless, evidence-free claims of fraud.

I will not stand by and watch elections in this country stolen by people who simply refuse to accept that they lost. (Applause.)

I will not stand by and watch the most fundamental freedom in this country — the freedom to vote and have your vote counted — and — be taken from you and the American people. (Applause.)

Look, as your President, I will defend our democracy with every fiber of my being, and I'm asking every American to join me. (Applause.)

President Biden did not specify what actions he intends to take to “defend our democracy” against the MAGA Republicans, or what he expects “every American” to do to “join” him, but at the very least, he told the American people – not law enforcement – that “it’s in our hands – yours and mine – to stop the assault on American democracy.”

For well over a year, Congress has been investigating the attack on the United States Capitol, and while doing so, has consistently advanced the theory that a singular speech given by the President of the United States can inspire members of his political party to disrupt a governmental process, and even break the law.

For instance, on June 13, 2022, at a hearing of the January 6th Committee, Rep. Pete Aguilar’s opening statement asserted that President Donald Trump’s speech directly led to the Capitol riot. “We witnessed firsthand what happened when the president of the United States weaponized this theory. The Capitol was overrun, police officers lost their lives, and the vice president was taken to a secure location because his safety was in jeopardy.” Rep. Aguilar then proceeded to play two video clips – a clip of President Trump saying he would be “disappointed” with Vice President Pence, followed immediately by a clip of Defendant Nichols walking to the Capitol and expressing his anger about Mike Pence. Rep. Aguilar’s opening statement succinctly set forth the underlying fundamental premise that forms the basis of the January 6th Committee; namely, American citizens will break the law if they perceive that they were called to do so by a sitting American President.

If the Court accepts Congress' rule that an American President's speech can influence a group of American citizens to break the law, the Court must also apply the same rule here, and recognize that President Biden's Red Speech demonizing MAGA Republicans, including Ryan Nichols, has likewise been perceived by American Citizens as a call to action, to "defend democracy" in the juror's box. This is particularly acute in the District of Columbia where 95% of the potential jurors voted for President Biden. If the call to action on January 6th was to disrupt the sacred tradition of a peaceful transfer of power, then the call to action here is to break the sacred tradition of a fair and impartial jury.

In addition to this Motion for Dismissal, Defendant seeks in the alternative, a change of venue on the basis that the DC jury pool has been irreparably tainted even more so than the rest of the country, from compounding prejudice stemming primarily from the Red Speech, the January 6th Committee's actions, and the unprecedented negative media coverage. *See* ECF No. 157. When considering these Motions, the Defendant respectfully asks the Court to consider the theoretical impact on a trial if the Red Speech were given by the prosecution as an opening or closing statement. There is little doubt that this Honorable Court would find that the Government's words prejudiced Mr. Nichols to the extent that the case would be dismissed. In that vein, Defendant respectfully asks this Honorable Court to consider the actual impact of the Red Speech to Defendant's trial and to justly remedy the prejudice by granting this Motion to Dismiss.

Dated: September 28, 2022
Washington, DC

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on the 28th day of September 2022, a copy of the foregoing was served upon all parties as forwarded through the Electronic Case Filing (ECF) System.

/s/ Jonathan S. Gross, Esq

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