

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

DAVID ESRATI *pro se*

Plaintiff - Appellant

v.)

U.S. DEPARTMENT OF JUSTICE,
Southern District of Ohio; FEDERAL
BUREAU OF INVESTIGATION

Defendants - Appellees

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Case No. 22-3679

Originating Case No. 3:21-cv-00218

APPENDED APPEAL

Appendment, 29 August 2022:

In light of the release of a Federal Search Warrant Affidavit in pursuit of classified documents illegally stored in the former president's home, it appears the Department of Justice and the FBI can be compelled to divulge records concerning the highest levels of National Security.

The Glomar-Response was originally created to protect National Security, and yet, there has been no mention of it in the case of the search of Mar-a-Lago. It has been used in this case. Members of Congress have ignored the needs for confidentiality, or the safety and security of classified information and demanded a response.

I as a citizen, do not have their bully pulpit, and have been jerked around for over a year.

Considering the Former President of the United States has made repeated false claims of election tampering, and I base the justification of my filing on actual election tampering by the FBI and the DOJ, I am wondering if “all men are created equal” no longer applies in this country?

I beseech the court, to carefully consider delays and excuses by the FBI and the DOJ in this case. The fact that they have already once violated the trust of Americans by allowing a candidate to run for office, despite having committed felony crimes in office, and as part of a deal was allowed to stand for re-election with an agreement to resign if he prevailed, furthers the case that the FBI and DOJ shouldn't be allowed to do it again.

Voters must know that the candidates they donate to, support, and possibly elect, are actually viable candidates and that withholding information collected in a criminal case called “Operation Demolished Integrity” to showcase the “Culture of Corruption” is not only relevant, but essential for voters to make well informed decisions.

The integrity of our government depends on trust.

Any further delays in the release of these tapes, which I know to exist, violates the trust of all Americans in our institutions that protect our rights as Americans.

End append.

The dismissal of the FOIA request for tapes that were played by the government in the “Culture of Corruption” investigation in Dayton Ohio to the grand jury are important and relevant to voters who will decide if Nan Whaley should be the future governor of the State of Ohio or not.

Telling me that facts don't exist because I didn't ask for them properly is in fact a defense that facts don't matter.

This is not a law school exam

This is a citizen questioning his government on a question of if his government is legitimate.

Before the constitution - the founding fathers wrote a Declaration of Independence suggesting that the government by a distant king was wrong- for the very same reason that I question the process and procedure this decision fails.

They were speaking of King George III, I'm talking about our own Justice system:

“He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.”

And much like King George, who couldn't be bothered with a response, they've dismissed this request for records of significant importance to the people they work for.

The FBI and the DOJ are hiding behind rules of law to avoid being subject to the law.

This case takes us from being a government of the people for the people to a government of the lawyers for the lawyers that only protests the wealthy, the corporations, the politicians for the benefit of an elite class of people, lawyers.

Lawyers who specialize in FOIA requests get reimbursed \$690 an hour for their expertise in navigating a system that has been purposefully manipulated to make it almost impossible for even a well-educated American to petition their government for information that belongs to the public. The access to this information was to protect the people from a government becoming what the founding fathers were afraid of- a government that no longer was a government of the people, by the people, for the people.

Part of the confusion is that the agency you request information from, is not always the respondent. Why NARA and OGIS aren't the place all requests for all agencies begin, since they seem to be the people in charge of the final appeal, adds to the confusion.

The FOIA process should not be a law school final exam to separate the lawyers from the rest of the population.

The government refuses to acknowledge that there would be zero change in their position on the release of the requested tapes had the appeal of the much-delayed refusals been perfected. I could have started the process again, perfected it, and still been refused in the time that they took to respond to my initial filing.

“The Plaintiff ‘s last filing, September 14, 2021 urged the court to act swiftly. Instead, the government took its time to deliver a motion for summary judgement on Feb 25, 2022- 164 days later.”- *Plaintiff's 2nd response to partial motion to dismiss*

To continue the argument that the FBI and the DOJ are effectively different organizations instead of two fingers on the same hand of a body of government as a fatal flaw of a citizen's pursuit of justice, effectively negates justice.

A government that cannot be held accountable to its citizens is not a government that instills faith, trust or respect of the general public, and de-legitimizes the government and its agents.

In a time when we already have had a president who claims our elections to be illegitimate, and a large number of our population no longer respecting our established rules of law, the decision to dispose of this case as a matter of failing to follow policies that have been refined to hide behind. This attempt to avoid the FOIA laws, that were established to restore the trust in a government that can and may run amok with people drunk with power, is a perfect example of what people drunk with power will do to cover up their illegal activities- like allowing a corrupt elected official to not only stay in office, but stand for re-election with an agreement to step down if elected. Our elections are only legitimate if our government is.

Our entire system is built on a principle of “e pluribus unum” - out of many, one, to create a “more perfect Union” that counts on a population that thinks because it says “in god we trust”

our money is good, our country is good and our leaders are no different than us, God fearing, of virtuous internet, and trusted.

If this order to dismiss is not overturned and this case heard based on the merits of all arguments made;

- regardless of filing deadlines or procedural dance steps,
- untimely responses from my government,
- illogical indiscriminate definitions of branches of government being somehow separate nations,
- the rules of law preempting the promise of justice,

Our country and its laws have become a farce in the face of the intentions and aspirations of the men who founded this nation.

Ultimately, this country was founded to give citizens rights to control those who have been privileged to represent us, as our employees, to protect us from the very dangers of a government. The defendant in this case, has puts its procedural rigamarole over the rights and deference to the people who make this country great.

Suggesting that my response, to the untimely filings of the government in delaying their responses, is inadmissible via court rules, is sort of like allowing the fox to guard the hen house, deny it's a hen house, and how dare you ask if it's a hen house.

“¹Mr. Esrati also filed a “2d response to partial motion to dismiss.” (ECF No. 19.) However, the Court will not consider this 2d response because the Local Rules prohibit “additional memoranda beyond those enumerated . . . except upon leave of court for good cause shown.” S.D. Ohio Civ. R. 7.2(a)(2); *De Angelis v. Nat’l Ent. Grp. LLC*. No. 2:17-cv-924, 2019 WL 1024954, at *2 (S.D. Ohio Mar. 4, 2019) (Marbley, J.).

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So, my 2d response is ignored by local rules, after 3 judges refused me access to PACER because of a local rule- and yet this judge made a variance to the local rules and granted me PACER access, only to toss the case for other reasons, ignoring a filing that spelled out procedure that wasn't followed?

Which is it? Are local rules rules? Or are they just judicial power run amok?

The difficulties in navigating multiple systems by a layman citizen, working against a government system built for obfuscation and intentional confusion, all built to negate the law at question: namely the Freedom of Information Act.

The issue is not a legal question- but a constitutional one. What we have is a question of if the Federal Government is tampering with elections. The release of the tapes would prove that.

To recap:

It is unfortunate that the Government, to include the Federal Bench, the FBI and the DOJ, seem to be working in cahoots to cover up their criminal errors using procedural and legal maneuvers to hide the fact that they have already tampered with an election, by catching an elected official involved in bribery in office (Joey D. Williams) who planned to set up a criminal operation with a city employee (Roshawn Winburn) to defraud the taxpayers at the direction of a dishonorably discharged Army veteran (Mike Marshall) who was serving as a Confidential Human Source, running a fake company established with the backing of the Federal Government (United Demolitions).

In exchange for a deal to delay his public embarrassment and to continue their sting, the Federal Government, had Williams making tapes of other city staff, elected officials, including then Mayor Whaley, that were played to the grand jury.

The denial that these tapes exist is an insult to the public, because the Federal Government has said there is not an ongoing investigation, and unfortunately for them, a member of the Grand Jury confirmed the existence of these tapes- saying that "Nan Whaley is dirty" and that the tapes were played as if they were going to prosecute her, before dropping all mention of her toward the indictments.

It is the plaintiffs educated guess that Whaley also agreed to become a Confidential Human Source to supply evidence that the "culture of corruption"- basically pay to play arrangements in the City of Dayton and the region were common, normal, and well entrenched. Williams said as much in his unsealed files.

That the Feds allowed Williams to stand for reelection despite being ineligible to hold office if they would prosecute him for his criminal act of promising demolition contracts in exchange for building a patio enclosure on his home, qualifies the Feds for charges of both Election Tampering and Fraud. Williams had agreed to step down if re-elected, which happened, and cost the city another expensive political race, in which the man who came in third, had to run yet again to win the seat (Darryl Fairchild).

It was the plaintiff's exposure of this heinous "Manchurian Candidate" action of the Feds that caused Whaley to drop out of her re-election campaign for Mayor at the last minute. The run for Governor, may be the continuation of a concurrent and ongoing investigation in which she had been involved in during her previous run for Governor.

While it may be a noble goal of the Feds to ensnare a large-number of big political donors/power brokers who have corrupted contracting and development in the State of Ohio, it cannot be at the price of destabilizing and illegitimizing the election process which is supposed to be a primary principle of our democracy.

The fact that 3 Federal Judges recused themselves from this case, delaying the reveal of these very real and critically important documents is just as criminal as the actions of Mr. Williams.

Trying to blame the plaintiff for not properly following administrative rules created by an overly complicated system of “whack a mole” in the request process is yet another way the government fails to build trust and respect with the people who are governed by it.

While the government failed to follow any normal case timeline and delayed multiple times- the plaintiff could have again requested the same documents, appealed them properly, and still gotten a Glomar response or denial of the facts presented.

When I became a soldier, I swore my life to protect the US Constitution and agreed to take orders from my superiors. The idea that the FBI and the DOJ are somehow different and requiring different appeals processes is tantamount to an Army Private refusing orders from a Navy Admiral, because they don’t wear the same uniform. I can assure you, that scenario would never stand up in a military tribunal and it shouldn’t stand up here.

The fact that the dismissal of this case came within a few weeks of the assignment of the fourth judge, with no trial, no jury, and no consideration of stare decisis by taking into account any of the arguments that I’ve presented- and only addressing the responses of the government, call for reconsideration.

The Judge in this matter, ignores all facts presented in the original filing as well as in my **Plaintiff’s 2nd response to partial motion to dismiss**

It is for these reasons, I believe an appeal on the issue is just and correct and that despite my legal limitations as a pro se litigator, the facts in this case must be considered critically important to the continuation of our form of government, and our trust in our systems.

Respectfully Submitted

/s/ David Esrati, *Pro Se*
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