

LIKE TAYLOR TARANTO, TRUMP TRIES TO EXCUSE THREATS BY INVOKING THE FIRST AMENDMENT

The government responded to Trump's motion to stay Judge Tanya Chutkan's gag order.

As many people note, it cites the *new* threats Trump has made – against Judge Arthur Engoron's clerk (for which the judge fined Trump \$10,000 yesterday), against Mark Meadows – since Chutkan temporarily stayed her own order. DOJ used those examples to show that as soon as Chutkan stayed her own gag, Trump resumed his normal incitement.

I find two footnotes raising things that happened months ago more telling. First, a footnote describing the Trump supporter charged with making death threats against Judge Chutkan herself, along with Sheila Jackson Lee, presented as yet another example of how Trump's attacks lead to credible threats.

Such risks are far from speculative here, the Court found, given uncontradicted facts submitted by the Government showing that when the defendant “has singled out certain people in public statements in the past,” it has “led to them being threatened and harassed.” ECF No. 103 at 66-67.1

1 Shortly after being assigned to the case, the Court itself received a racist death threat explicitly tied to the Court's role in presiding over the defendant's case. See *United States v. Shry*, No. 4:23-cr-413, ECF No. 1 at 3 (Criminal Complaint) (S.D. Tex. Aug. 11, 2023) (caller stating, among other

things, “‘If Trump doesn’t get elected in 2024, we are coming to kill you, so tread lightly, b***h. . . . You will be targeted personally, publicly, your family, all of it.’”). This incident, like many of the others the Government cited, was widely publicized and surely well known to the defendant.

And then, a footnote describing how Jan6er Taylor Taranto, a Navy veteran with long-standing mental health issues, invoked the First Amendment after he responded to Trump’s publication of Barack Obama’s DC address by stalking the former President’s Kalorama neighborhood in a van with (locked) weapons.

7 The Government’s submissions, while extensive, did not purport to be a comprehensive account of every occasion when the defendant’s public targeting of perceived adversaries has resulted in threats, harassment, or intimidation. The public record is replete with other examples. See, e.g., *United States v. Taranto*, No. 1:23-cr-229, ECF No. 27 at 4-6 (D.D.C. Sep. 12, 2023) (affirming detention order for Taranto and explaining that, after “‘former President Trump posted what he claimed was the address of Former President Barack Obama’ on Truth Social,” Taranto—who had previously entered the Capitol on January 6, 2021—reposted the address, along with a separate post stating, “‘See you in hell, Podesta’s and Obama’s’” [sic], and then proceeded, heavily armed, to the area the defendant had identified as President Obama’s address, while livestreaming himself talking about “getting a ‘shot’ and an ‘angle,’” adding, “‘See, First Amendment, just say First Amendment, free speech’”) (quoting Taranto, ECF No. 20).

Here's more of the Taranto detention memo from which DOJ cited.

Taranto parked his van on the street and began walking around the neighborhood, continuing to film. Taranto made several references to "the Podestas" and stated several times that he was trying to get an interview. Taranto's continued narration made it clear that he intended to access or enter the private residences of his subjects. For example, Taranto panned the camera to show several sewer grates on the street – calling them "entrance points," and stating that the grates were an "entrance" to reach "them." Throughout the video he also stated,

"So if you go down there, there's obviously tunnels down there. I don't know how close they'll get you in terms of access;"

"We're gonna find a way to the tunnels, underneath their houses;" and,

"We're looking for tunnel access so we can get the interview, in case they try to weasel their way out. No in or out now! See, First Amendment, just say First Amendment, free speech. Free, it's free."

Throughout the video, Taranto repeatedly attempted to couch his actions in terms of "First Amendment" or free speech, as if he believed that simply saying the words, "First Amendment" absolved him from any trespass. When initially approached by Secret Service, Taranto stated, "Hello, just trying to get an angle, for First Amendment, free speech. Thanks. That's Secret Service, she's alright." He also said, "See how it works? Just say, 'First Amendment.'" "

Taranto made additional concerning statements during the video including the following statements about getting a "shot":

"Gotta get the shot, stop at nothing to get the shot. This is where other people come to get the shot;"

"We're gonna see what we can get, as a shot. If I were them, I'd be watching this, watching my every move;" and,

"This is where everyone goes to get the shot. It's just me today though. This is an easy way around. Yeah, they can't stop me from walking through here. Just don't step foot on the street."

Regarding getting an "angle," Taranto states several times, "Let's see what angles we can get," and, "Just trying to get an angle, for First Amendment, free speech." Additional concerning statements included:

"I don't have any ID, so in case I get detained or something, they're just going to have to use their cellphone to figure out who I am."

"So yeah, more than likely, these guys also all hang for treason. See how I said that? You gotta be very safe and careful. Someone warned me."

"I control the block, we've got 'em surrounded."

"Oh, is this intimidating? I don't think so."

The reference to the threat against Chutkan puts that example into the record before the DC Circuit hears this appeal. DOJ provided the

reference to Taranto (Judge Carl Nichols' affirmation of his detention order post-dates when DOJ initially submitted this motion on September 5) to support this passage, in which DOJ notes that the catalog of past incitement it has presented thus far is in no way comprehensive:

The defendant does not meaningfully dispute the accuracy of any of these findings. Instead, he first argues (ECF No. 110 at 8-10) that they lacked adequate evidentiary support. But the Government's uncontradicted filings (ECF No. 57 at 2-13; ECF No. 64 at 9-12) documented a long history of targeted tweets as well as a litany of individuals who have described (sometimes in sworn testimony) the repeated and foreseeable effects of his targeting. E.g., ECF No. 57 at 3 (quoting congressional testimony stating, "After the President tweeted at me by name, calling me out the way he did, the threats became much more specific, much more graphic, and included not just me by name but included members of my family by name, their ages, our address, pictures of our home. Just every bit of detail you could imagine. That was what changed with that tweet."); *id.* at 5 (quoting congressional testimony stating, "[W]hen someone as powerful as the President of the United States eggs on a mob, that mob will come.").⁷ As the Court explained, these citations to public statements and testimony were "[u]ndisputed," ECF No. 105 at 2, and there was no need to submit the same material as part of an affidavit, ECF No. 103 at 57. Cf. *United States v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996) (per curiam) (holding that the parties may proceed by proffer at a detention hearing). The factual findings here were adequately supported and

readily distinguish this case from Ford. Cf. Ford, 830 F.2d at 597 (noting that the order was issued sua sponte); id. at 603 (Krupansky, J., concurring) (noting the absence of factual findings). And the defendant will not be able to demonstrate that they are clearly erroneous on appeal.

The Chutkan and Taranto examples reinforce the overall point DOJ makes with this filing: Trump has not contested the proof in their original submission that after he targets people, the mob soon follows.

He has simply ignored that evidence.

Indeed, I called John Lauro out for ignoring that evidence in real time.

Lauro ignores the multiple cases, cited in prosecutors' filing, where people told Trump directly that his incitement had ratcheted up threats against people like Jeff Duncan, Chris Krebs, and Ruby Freeman.

Trump's lawyers have now established a pattern.

In the recusal fight, prosecutors pointed out that the two sentencing hearings which Trump cited to justify recusal included one, that of Robert Palmer, where a January 6 defendant stated that he went to the Capitol, where he serially assaulted some cops, "at the behest" of Trump because Trump and others had convinced him he had to take action to stop the vote certification. Trump ignored that discussion in his reply.

When Trump complained that Jack Smith improperly claimed that Trump, "fueled . . . an unprecedented assault on the seat of American democracy," DOJ laid out that, in fact, the indictment did show how Trump riled up the mob, of which this paragraph is just one example:

Finally, on the afternoon of January 6, after “a large and angry crowd—including many individuals whom the [d]efendant had deceived into believing the Vice President could and might change the election results—violently attacked the Capitol and halted the proceeding,” the defendant exploited the disruption in furtherance of his efforts to obstruct the certification, *id.* at ¶10e.

Trump ignored this reply in his bid for a stay.

Both Trump’s motion to dismiss for absolute immunity and for Constitutional grounds ignore the actual charges and overt acts of which he is accused and instead tell a tale of protected speech. His motion to dismiss on statutory grounds, meanwhile, completely ignores how he mobilized the mob and thereby successfully obstructed the vote certification (which, as noted, DOJ had laid out in this underlying dispute), choosing instead to ask that those allegations be stricken from the indictment and then, assuming that will work, claiming that nothing he did actually did obstruct the vote certification.

That is, in over 130 pages of filings attempting to make his prosecution go away, Trump tried to simply remove all overt acts showing how he sent the mob on January 6 from his indictment, rather than contesting the veracity of those allegations.

As DOJ notes, by appealing this, Trump will have another opportunity to dispute Chutkan’s findings of fact that his attacks do, in fact, result in targeted threats.

The Court’s Order was premised on three well-supported factual findings.⁶ First, the defendant has a long history of using his social media account and public statements to target perceived adversaries by singling them out and using inflammatory and disparaging

language that “vilif[ies] and implicitly encourage[s] violence against” them. ECF No. 103 at 84. Second, when the defendant does so, harassment, threats, and intimidation reliably follow. ECF No. 105 at 2. Third, such harassment, threats, and intimidation “pose a significant and immediate risk that (1) witnesses will be intimidated or otherwise unduly influenced by the prospect of being themselves targeted for harassment or threats; and (2) attorneys, public servants, and other court staff will themselves become targets for threats and harassment.” Id.

6 Although the Court of Appeals will review the propriety and scope of the Order de novo, it will review questions of “historical fact” such as these for clear error. See *Thompson v. Hebdon*, 7 F.4th 811, 819 (9th Cir. 2021); *Keister v. Bell*, 879 F.3d 1282, 1287 (11th Cir. 2018); *Green v. Haskell Cnty. Bd. of Comm’rs*, 568 F.3d 784, 796 (10th Cir. 2009); *Gustafson v. Jones*, 290 F.3d 895, 906 (7th Cir. 2002).

That’ll provide DOJ yet another opportunity to lay out evidence supporting this formula, and yet another opportunity for Trump to try to ignore it to make it just go away.

“See, First Amendment, just say First Amendment, free speech,” prosecutors cite Taylor Taranto in the footnote, prowling Obama’s neighborhood after having been sent there by a Trump Truth Social post.

There’s no better embodiment of Trump’s formula for violence than a mentally disturbed man invoking the First Amendment – just as Trump does here – even as he stalks someone Trump has invited him to target.

And I’m sure, if asked to on appeal, prosecutors would be all too happy to provide more examples

showing how Trump mobilized people like Robert Palmer and Taylor Taranto.