

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT

CASE No. 23-cr-60173 (Graham)

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAROLYN D. WADE,

Defendant.

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**DEFENDANT WADE’S SUPPLEMENTAL AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS DUE TO PROSECUTORIAL MISCONDUCT**

The Defendant, CAROLYN D. WADE, files this her Supplemental Authorities in
Support of Motion to Dismiss Due to Prosecutorial Misconduct, as follows:

Legal Standard

**I. This Court Has The Authority To Dismiss The Indictment Based On The Government's
Substantial Interference With A Defense Witness.**

A district court is empowered to dismiss an indictment upon a finding of certain
constitutional violations. *See, e.g., United States v. Caruto*, 663 F. 3d 394, 397 (9th Cir,
2010);

and *United States, Linder*, 2013 WK 812382, No. 12r22 (N.D. Ill. March 5, 2013). The
constitutional provisions at issue in this case are the Sixth Amendment right to
compulsory process and the Fifth Amendment right to due process of law.

To warrant dismissal of the indictment for these violations, “[t]he defendant bears

the burden of proving that the government's conduct interfered substantially with a witness's free and unhampered choice to testify.” *Linder*, 2013 WL 81238 (citation and internal quotations omitted). “Even if the defendant can satisfy his burden of proving that the government substantially interfered with a witness's decision to cooperate with the defendant, there can be no constitutional violation unless the defendant can also make some plausible showing that the witness's testimony would have been both material and favorable to the defendant; in other words, that the defendant suffered prejudice as a result of the witness's choice not to cooperate with the defendant.” *Id.* (citing *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)).

II. An Evidentiary Hearing Is Required To Determine Whether Dismissal Of The Indictment Is Required.

There is substantial precedent for resolving this due process question pretrial. Various courts, including the Eleventh Circuit, have considered the question when it was raised pursuant to a defendant's pre-trial motion to dismiss and have found that it requires an evidentiary hearing. *See, e.g., In United States v. Holloway*, 778 F. 2d 653, 658 (11th Cir. 1985), the Eleventh Circuit stated “the showing required to entitle a defendant to a hearing... is that if defendants ‘raise a material fact which, if resolved in accordance with the defendants’ contentions, would entitle them to relief, they would be entitled to a hearing. ““(citation omitted). *See also, United States v. Roach*, 502 F. 3d 425 (6th Cir. 2007). At that hearing, defendant bears the burden of proving, based upon a preponderance of the evidence, that dismissal of the indictment is warranted. *See, e.g., United States v.*

Vavages, 151 F. 3d 1185, 1188 (9th Cir. 1998). Upon a finding of substantial interference with a favorable, material defense witness, this Court should dismiss the indictment: Government interference with potential defense witnesses requires dismissal of an indictment where a substantial right of the defendant has been jeopardized, such as the right to due process of law secured by the Fifth Amendment or the right to compulsory process of defense witnesses secured by the Sixth Amendment. *See United States v. Wilson*, 715 F. 2d 1164, 1169 (7th Cir. 1169). The Court should hold an evidentiary hearing to determine if such a right has indeed been jeopardized when the defendant provides sufficient facts of misconduct to justify the basis for a meaningful evidentiary hearing. *See Id. United States v. Linder*, 2012 WL 3264924 (N.D. Ill 2012).

As discussed herein, Ms. Wade has set forth sufficient facts concerning the government's interference with crucial and singularly important, defense witnesses, Mr. Eduardo Rivero and Haydee Granados, his wife, to justify a pretrial evidentiary hearing to determine the facts and that, upon such hearing, this Court should dismiss the indictment with prejudice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 17, 2024, I electronically filed the foregoing motion/document with the Clerk of the Court using CM/ECF. I also certify that the foregoing motion/document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not

authorized to receive electronic Notices of Electronic Filing, on this 16th day of May, 2024.

/s/ Johnny L. McCray, Esq.

Johnny L. McCray, Jr., Esq.

Respectfully submitted,

/s/ **Johnny L. McCray, Jr.**

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