

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	No. 4:25-CR-448-CMS-JMB
)	
ALFRED MONTGOMERY,)	
Defendant.)	

**MOTION TO DISMISS THE INDICTMENT
FOR SELECTIVE AND VINDICTIVE PROSECUTION**

Sheriff Alfred Montgomery (“Montgomery”), by and through undersigned counsel, Justin K. Gelfand and the law firm Margulis, Gelfand, DiRuzzo & Lambson, respectfully moves this Court to dismiss the indictment (Doc. 1) and the superseding indictment (Doc. 34) for selective and/or vindictive prosecution.

This criminal prosecution is the product of both selective and vindictive prosecution in violation of the Fifth Amendment. Because this prosecution is unconstitutional, this Court should dismiss the indictments with prejudice. *In the alternative*, Montgomery moves this Court to compel production of discovery related to: (1) the review, approval or declination, and presentation of charges against Montgomery; and (2) the review, approval or declination, and presentation of charges of other sitting democratically elected officials for a single misdemeanor offense. Montgomery further moves, following production of that discovery, for this Court to set an evidentiary hearing on this motion to dismiss.

Introduction

It has become an increasingly familiar concern: weaponization of the U.S. Department of Justice influenced by politics instead of justice. But the most fundamental precepts of our criminal justice system demand otherwise. “Justice requires that ‘like cases be treated alike’ and that ‘there

not be one rule for Democrats and another for Republicans.” *United States v. Judd*, 579 F. Supp. 3d 1, 9 (D.D.C. 2021) (quoting Attorney General Merrick Garland, Remarks to DOJ Employees on His First Day, Mar. 11, 2021). Indeed, this commitment to keeping politics out of prosecutorial decisions was reinforced by former Attorney General Pam Bondi, who was in office when this case was charged, on January 15, 2025: “If confirmed, I will fight every day to restore confidence and integrity to the Department of Justice and each of its components. The partisanship, the weaponization will be gone. America will have one tier of justice for all.” *See* S. Hrg. 119-113 (“Confirmation Hearing on the Nomination of Hon. Pamela Jo Bondi to be Attorney General of the United States”).

Yet here we are. Sheriff Montgomery is a partisan Democrat who won two free and fair elections to become the Sheriff of the City of St. Louis: an August 2024 primary election and a November 5, 2024 general election.

On June 25, 2025, Republican Missouri Attorney General Andrew Bailey filed a *quo warranto* petition seeking to remove Sheriff Montgomery from office—and he did so only after demanding that Sheriff Montgomery resign. At that time, the Attorney General’s lead allegation was that Sheriff Montgomery violated nepotism laws by hiring his “brother”—a black man named Malik Taylor. But Malik Taylor was not Sheriff Montgomery’s sibling. In what was unquestionably a public embarrassment for the Attorney General’s Office, that count was dismissed when a court order and a birth certificate established the two were not siblings. The Attorney General’s Office attempted to excuse its mistake by explaining that Sheriff Montgomery purportedly used the word “brother” to describe Taylor in informal settings.

On August 18, 2025, Attorney General Bailey announced his resignation, effective September 8, 2025, to become Co-Deputy Director of the FBI, a position he currently holds. The

FBI remains the sole investigative agency that investigated this federal criminal case. On August 27, 2025—9 days after Bailey announced his new position at the FBI—Sheriff Montgomery was indicted in this case for a single misdemeanor count of deprivation of rights under color of law, in violation of 18 U.S.C. § 242. (Doc. 1). The FBI brought this misdemeanor prosecution approximately 6 months after the crime allegedly occurred—and only after Sheriff Montgomery refused to resign at Bailey’s request and made clear he would defend the will of the voters by opposing the *quo warranto* petition.

When this Court set Sheriff Montgomery’s initial conditions of release on the misdemeanor count, this Court prohibited him from possessing a firearm, even in connection with his continued duties as the elected Sheriff. Thus, on September 16, 2025, Sheriff Montgomery appealed that bond condition as violative of his rights under the Second Amendment to the U.S. Constitution. (*See* Doc. 22). The Government filed a response in opposition on October 3, 2025 (*see* Doc. 27), but before the district court had sufficient time to rule on Sheriff Montgomery’s constitutional challenge, the Government obtained a superseding indictment on October 8, 2025, now charging him with felonies arising out of employment decisions at the Sheriff’s Office before even obtaining evidence of what transpired from the Sheriff’s Office. (*See* Doc. 34). In connection with the superseding indictment, the Government successfully sought Sheriff Montgomery’s detention pending trial (*see* Doc. 31), after opposing his request to put on evidence of his actual innocence at the detention hearing, and thereby mooted the constitutional claim (*see* Doc. 61).

By any fair measure, this prosecution reeks of selective enforcement as it is clear Montgomery would not be under indictment in the first place if he were not a Democrat elected to office in St. Louis City and if he had resigned as the Republican Attorney General insisted. Most glaringly, while Sheriff Montgomery maintains the arrest of Tammy Ross was lawful pursuant to

the applicable Missouri statutes, the elephant in the room is that two deputies, at least one of whom was POST-certified, actually carried out the arrest and neither of them has been prosecuted. And as to the superseding indictment, it is clear the Government charged him with felony counts to retaliate against him for asserting his Constitutional rights. This is most evidenced by the fact that the allegedly criminal conduct all arose from personnel decisions carried out by the Sheriff's Office, and the Government did not even wait to obtain evidence of what actually transpired from the Sheriff's Office.

To preserve the foundational tenets of due process and equal protection under the law—words that sadly used to mean more in the hallowed halls of the Justice Department—Sheriff Montgomery respectfully asks this Court to dismiss this case with prejudice.

I. This Indictment Should Be Dismissed Based on Selective Prosecution

While a “presumption of regularity applies to prosecutorial decisions . . . the Government cannot base its decision to prosecute on some unjustifiable standard, such as a defendant’s ‘political beliefs.’” *United States v. Judd*, 579 F. Supp. 3d 1, 4 (D.D.C. 2021) (quoting *Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15, 21 (D.D.C. 1999), *aff’d* 211 F.3d 137 (D.C. Cir. 2000)). Indeed, in *Oyler v. Boles*, the Supreme Court explained: “the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation” unless “the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.” 368 U.S. 448, 456 (1962). Bringing charges based on an unjustifiable standard, such as political affiliation or the fact that an individual was elected in a partisan election to hold a political office, amounts to a “‘practical denial’ of equal protection of law” under the Due Process Clause of the Fifth Amendment. *United States v. Armstrong*, 517 U.S. 456, 465 (1996)

(citations omitted). This method of selecting defendants and bringing charges gives rise to a claim of selective prosecution. *Id.*

In that respect, the Fifth Amendment prohibits the Executive Branch from abridging free speech, due process, and equal protection—not to mention interfering with a free and fair election—by undertaking vindictive or selective prosecutions. Prosecutors have broad discretion to make judgment calls about the charges they bring, but “selectivity in the enforcement of criminal laws is ... subject to constitutional constraints.” *United States v. Batchelder*, 442 U.S. 114, 125 (1979). “[J]ust as discrimination on the basis of religion or race is forbidden by the Constitution, so is discrimination on the basis of the exercise of protected First Amendment activities, whether done as an individual or, as in this case, as a member of a group unpopular with the government.” *United States v. Falk*, 479 F.2d 616, 620 (7th Cir. 1973). *See also United States v. Haggerty*, 528 F. Supp. 1286, 1292 (D. Colo. 1981) (finding selective prosecution based on political affiliations). While selective prosecution claims most commonly arise from discrimination against an individual for their participation in a protected class, a defendant may also show that he is a “class of one,” meaning that he has been “been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

Ultimately, the question before this Court is whether the law enforcement decision in this case “had a discriminatory effect” and was “motivated by a discriminatory purpose.” *Armstrong*, 517 U.S. at 465. In other words, the focus is on whether this defendant—Sheriff Montgomery—was “singled out.” *United States v. Fares*, 978 F.2d 52, 59 (2d Cir. 1992). Here, the evidence of both discriminatory effect and purpose is strong.

To establish a discriminatory effect, a defendant must show that “similarly situated” individuals were not prosecuted. *Armstrong*, 517 U.S. at 465. Similarly situated requires “some degree of commonality among the indictable group, such that the defendant challenging his indictment may make a supportable demonstration that those unindicted persons are, in fact, similarly situated, and consequently, there must be an improper motive behind the selected individual’s prosecution.” *United States v. Blackley*, 986 F. Supp. 616, 619 (D.D.C. 1997). In this case, the Government decided to prosecute Montgomery initially under the theory that, as a law enforcement officer (let alone the *elected sheriff*), he and his deputies made a questionable arrest of Tammy Ross. Indeed, the evidence in this case is undisputable that two other law enforcement officers, at least one of whom was POST-certified, literally executed this particular arrest of Tammy Ross. Yet they were not prosecuted. And law enforcement officers throughout the country, let alone the City of St. Louis, regularly make arrests that are later determined to be questionable (or, in some cases, even illegal)—and they are not federally prosecuted. The truth is, Sheriff Montgomery was “singled out.” *Fares*, 978 F.2d at 59. He is in a “class of one.” *Vill. of Willowbrook*, 528 U.S. at 564. And it is because of who he is, not because of what he allegedly did.

Furthermore, this decision to prosecute a sitting elected official for a single misdemeanor count arising out of an alleged civil rights violation stands out as an anomaly by any objective measure—generally and especially in an era in which the Justice Department has gutted the Civil Rights and Public Integrity divisions. Sheriff Montgomery is the only known similarly situated person to be prosecuted for this crime, and it reeks of selective prosecution that he was a Democrat holding elected office and did not resign at the insistence of the then-sitting Republican Attorney

General who is now the second in charge of the only law enforcement agency that investigated this case.

Because “direct evidence of motive or intent is rarely available,” the defendant may establish discriminatory purpose either with direct evidence of discriminatory intent or with “statistical disparities or other indirect evidence” regarding the unequal application of the law. *Branch Ministries, Inc. v. Richardson*, 970 F. Supp. 11, 17 (D.D.C. 1997) (ordering discovery because while “Plaintiffs’ evidence is by no means strong at this stage of litigation . . . without some discovery Branch Ministries could not be expected to have access to internal IRS documents, witness statements or other direct evidence of discriminatory intent”).

In this case, even with the limited discovery that has been disclosed, certain facts stand out: the actual arrest of Tammy Ross was carried out by two other law enforcement officers, Sheriff Montgomery did not take out handcuffs, and Sheriff Montgomery did not place handcuffs on Tammy Ross. The two individuals who did that are identical to Sheriff Montgomery in all respects—other than being a democratically elected official—and, to the extent a crime was committed, those two individuals engaged in more egregious actions than those alleged in the indictment. To be clear, Montgomery’s position is *not* that they should have been prosecuted; rather, nobody should have been prosecuted for the arrest of Tammy Ross because it was lawful. However, the fact that Sheriff Montgomery is being singled out is made hauntingly evident by the fact that those two deputy Sheriffs has not been prosecuted for the arrest they personally carried out. The only difference is that, unlike Sheriff Montgomery, the two deputies who actually arrested Tammy Ross were not partisan Democrats elected to political office having engaged in protected speech and activities as a candidate and as a sitting elected official. The prosecution of Sheriff Montgomery alone out of this group is clear evidence of discriminatory effect.

II. This Case Should Be Dismissed for Vindictive Prosecution

This is also a textbook case of vindictive prosecution: Sheriff Montgomery exercised his statutory and constitutional rights by refusing to resign his elected office when the then-sitting Republican Attorney General of Missouri insisted he do so, and Sheriff Montgomery exercised his statutory and constitutional rights under the Bail Reform Act of 1984 and the Second Amendment to challenge a court order prohibiting him from possessing a firearm when only charged with a misdemeanor. The consequences of his protected actions are this prosecution and the addition of five felony counts.

“Vindictive prosecution” is a term of art; in the prosecutorial context, “the underlying concern is not whether a prosecutor has acted maliciously or in bad faith,” as everyday English might suggest, “but whether the fear of prosecutorial vindictiveness may unconstitutionally deter a defendant’s exercise of a constitutional or statutory right.” *Maddox v. Elzie*, 238 F.3d 437, 446 (D.C. Cir. 2001) (internal quotation and citation omitted). Indeed, while the “great majority of prosecutors will be faithful to their duty,” *Newton v. Rumery*, 480 U.S. 386, 397 (1987) (plurality opinion), “occasional misuse” of prosecutorial power “is by no means inconceivable.” *United States v. Adams*, 870 F.2d 1140, 1145 (6th Cir. 1989) (internal quotations omitted). And for this reason, a prosecutor’s charging decisions are not absolute; they are still bound by the Fifth Amendment. Thus, to charge a person “because he has done what the law plainly allows him to do is a due process violation of the most basic sort.” See *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978) (citation omitted) (contrasting unconstitutional prosecutorial retaliation with constitutional plea-bargaining tactics). And “while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right,” such as engaging in protected speech, or exercising a statutory and/or constitutional right. *United*

States v. Goodwin, 457 U.S. 368, 372 (1982). See also *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (“[T]he First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out”) (citation omitted). Such vindictive prosecutions have “no place in our system of justice.” *United States v. Ball*, 18 F.4th 445, 454 (4th Cir. 2021).

In this case, direct evidence of vindictiveness is strong: Sheriff Montgomery was prosecuted federally only after he refused to resign at the request of the Republican Attorney General of the State of Missouri and only after he indicated an intention to challenge the *quo warranto* petition—including, at the time, the absurd and objectively false allegation that he hired his brother, Malik Taylor. And the Government only sought felony charges against Sheriff Montgomery when he exercised his statutory and constitutional rights under the Bail Reform Act of 1984 and the Second Amendment by challenging a court order prohibiting him from possessing a firearm even though he was only charged with a misdemeanor.

Retaliating against Sheriff Montgomery in this case sets a perilous precedent for chilling an elected official’s exercise of his statutory duties—as Sheriff Montgomery promised he would do on the campaign trail and as the voters of St. Louis elected him to office to carry out. In this respect, the First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office,” *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971), and Sheriff Montgomery’s campaign statements and promises are protected speech. See *Garten Trucking LC v. Nat’l Lab. Rels. Bd.*, 139 F.4th 269, 277 (4th Cir. 2025) (noting that the First Amendment “exists in large part to protect political speech and preserve the sanctity of public discourse”). Being targeted based on the way in which he ran his office—including employment decisions made by a board of three people with Sheriff Montgomery not even in the room—is the

exact type of retaliation against protective activities that the vindictiveness prosecution doctrine seeks to protect against. *United States v. P.H.E. Inc.*, 965 F.2d 848, 853 (10th Cir. 1992) (“[A] prosecution motivated by a desire to discourage expression protected by the First Amendment is barred and must be enjoined or dismissed, irrespective of whether the challenged action could possibly be found to be unlawful”).

In this case, the pattern is clear: the spree of venomous statements and actions against Sheriff Montgomery beginning just *weeks* after he took office demonstrate that this prosecution was just one aspect of punishment for the promises he made concerning how he intended to approach the office, the way in which he exercised his statutory rights governing what the Sheriff of the City of St. Louis can and cannot do, the way in which he exercised his statutory duties by empowering well-qualified members of his staff including a retired state judge to carry out legitimate employment determinations, and the way in which he exercised his statutory and constitutional rights during the early stages of this case including the Bail Reform Act of 1984 and the Second Amendment.

To be clear, this Court does not have to find that the United States Attorney and/or Assistant United States Attorneys who initiated this prosecution themselves articulated or harbored animus toward Sheriff Montgomery. *See United States v. Monsoor*, 77 F.3d 1031, 1035 (7th Cir. 1996) (explaining that animus may be “imputed to federal prosecutors” by showing that an external force “in some way prevailed upon the prosecutor in making the decision to seek an indictment”); *Adams*, 870 F.2d at 1140; *P.H.E.*, 965 F.2d at 860; *United States v. Aviv*, 923 F. Supp. 35, 37 (S.D.N.Y. Apr. 22, 1996) (finding “unusually strong” case for imputed animus where federal agents called defendant “dishonest, unreliable and unpatriotic, asked for information regarding all

matters on which [defendant] was doing work” and “suggested that [the agency] terminate its relationship with him”).

III. The Irregularity of What Transpired Here

In this case, the irregularity of the Government’s procedures in prosecuting Sheriff Montgomery provides the final puzzle piece for a finding of selective and vindictive prosecution. Indeed, one of the most telling aspects is the fact that Sheriff Montgomery was initially charged with a single misdemeanor, a lightweight indictment reflecting further evidence that animus—not evidence—motivated this prosecution.

Indeed, it is no secret that it was this prosecution that derailed any chance at a fair *quo warranto* proceeding because Sheriff Montgomery, as would be the case with any person facing federal criminal charges even if unwarranted, could no longer meaningfully defend himself the way he could without being under the “gun” so to speak of a federal prosecution. And even then, the *quo warranto* trial did not result in any judicial findings of any wrongdoing that would amount to any of the crimes charged in this case even though the State sought precisely those factual findings.

In bringing this case, the U.S. Department of Justice effectively overturned the results of a free and fair election in the City of St. Louis by filing a single misdemeanor count and the timing speaks volumes. This prosecution was initiated in August 2025, six months after the February 2025 crime allegedly occurred—underscoring that this prosecution was not simply a prosecutorial reaction to an incident in February 2025. And when the superseding indictment was obtained, the Government opposed an express request at the detention hearing by the defense to put on evidence of actual innocence. Why a fair prosecutor would *ever* oppose the introduction of evidence of actual innocence at any stage in the proceeding begs serious questions, but in this case it would

have actually given the prosecutor a pretrial opportunity to cross-examine possible defense witnesses likely to testify at trial—a strategic benefit to any prosecutor. In the ordinary case, prosecutors would jump at that opportunity and, bluntly speaking, prosecutors pursuing a valid case should not be afraid that evidence of actual innocence could exonerate a defendant from further prosecution for crimes he did not commit. But that is precisely what happened in this case. Courts frequently find, where the “government ha[s] followed unusual discretionary procedures in deciding to prosecute,” the prosecution is based on an impermissible purpose. *United States v. Greene*, 697 F.2d 1229, 1236 (5th Cir. 1983). That principle applies with full force here.

IV. Conclusion

Based on the foregoing, Sheriff Montgomery respectfully requests that this Court dismiss this case for selective prosecution and vindictive prosecution. In the alternative, Sheriff Montgomery respectfully moves this Court to compel production of discovery related to: (1) the review, approval or declination, and presentation of charges against him; and (2) the review, approval or declination, and presentation of charges of other sitting democratically elected officials for a single misdemeanor offense. Montgomery further moves, following production of that discovery, for this Court to set an evidentiary hearing on this motion to dismiss.

Ultimately, the bottom line is that Sheriff Montgomery has provided clear evidence that his indictment has a discriminatory effect and motivation, violates his Fifth Amendment rights, constitutes retaliation for exercising his constitutional and statutory rights, and should therefore be dismissed.

As to vindictive prosecution, this Court should first determine whether what is effectively a presumption of unconstitutionality applies and order the Government to meet its burden of proving a lack of vindictiveness. If that does not resolve this motion in Sheriff Montgomery’s

favor, this Court should set this matter for an evidentiary hearing to give him the opportunity to adduce evidence of actual vindictiveness.

The voters of St. Louis put Sheriff Montgomery into office—and he had every right to reject the demand by the opposing political party’s Attorney General to resign his office and every right to exercise his statutory and constitutional rights throughout this process—including by pleading not guilty and indicating an intention of proceeding to trial on the one-count misdemeanor indictment. But as a result of this assertion of rights—and, in this case, his attempt to give voice to the electorate who put him into office—Sheriff Montgomery is now sitting behind bars fighting for his freedom and for the office he won after a free and fair election. Just as the United States Court of Appeals for the Fifth Circuit explained, “[f]rom the defendant’s vantage point, the prosecutor is attempting to turn a successful” exercise of his rights “into a pyrrhic victory,” giving rise to a “chilling, even arctic effect” on defendants’ decisions to avail themselves of their rights. *United States v. Krezdorn*, 693 F.2d 1221, 1231 (5th Cir. 1982).

This prosecution was wrong from the outset and should never have been initiated. And the advent of felony charges when Sheriff Montgomery asserted his constitutional rights based on a theory that was not even meaningfully investigated only deepened the constitutional violations.

This Court not only has the power to remedy these wrongs. The law requires it.

Respectfully submitted,

Margulis Gelfand DiRuzzo & Lambson, LLC

/s/ Justin K. Gelfand
JUSTIN K. GELFAND
7700 Bonhomme Ave., Suite 750
Clayton, MO 63105
Telephone: 314.390.0234
Facsimile: 314.485.2264
justin@margulisgelfand.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically with the Clerk of Court and that all counsel of record received notice.

/s/ Justin K. Gelfand
JUSTIN K. GELFAND
7700 Bonhomme Ave., Suite 750
Clayton, MO 63105
Telephone: 314.390.0234
Facsimile: 314.485.2264
justin@margulisgelfand.com