

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, .
 .
Plaintiff, .
 . Case No. 25-mj-11131
vs. .
 . Newark, New Jersey
RAS BARAKA, . May 21, 2025
 .
Defendant. .

TRANSCRIPT OF MOTION TO DISMISS
BEFORE THE HONORABLE ANDRÉ M. ESPINOSA
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared via video conference):

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1 (Commencement of proceedings)

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3 THE COURT: This is Judge Espinosa. We're together
4 for a short hearing in this matter, United States of America
5 versus Ras Baraka. It's Magistrate Number 25-mj-11131.

6 Let's start with appearances from counsel.

7 MR. DEMANOVICH: Good afternoon, Your Honor.
8 Stephen Demanovich on behalf of the United States.

9 THE COURT: All right.

10 Good afternoon, Mr. Demanovich.

11 MR. BROWN: Good afternoon, Your Honor. Raymond
12 Brown appearing on behalf of Mayor Baraka.

13 THE COURT: All right.

14 Good afternoon, Mr. Brown.

15 MR. AGARWAL: Good afternoon, Your Honor. Rahul
16 Agarwal, also appearing on behalf of Mayor Baraka.

17 THE COURT: Good afternoon, Mr. Agarwal.

18 MS. AKIN: Good afternoon, Your Honor. Wanda Akin,
19 appearing on behalf of Mayor Ras Baraka.

20 THE COURT: All right, Ms. Akin. Good afternoon to
21 you.

22 All right. I see that Mayor Baraka is also
23 present. So we will proceed.

24 I asked for this hearing after receiving a proposed
25 order for dismissal in this matter from the Government.

1 Before I received that proposed order, I became aware of
2 press reports about the purported dismissal of this matter.
3 And only after, did I received the proposed order for
4 dismissal.

5 I don't want to belabor the proceeding today. I
6 want to begin by just addressing the prosecutor.

7 Mr. Demanovich, the public press accounts of the
8 basis for this motion to dismiss the complaint against the
9 mayor include the rationale that the office, your office,
10 seeks to "move forward."

11 What does that mean?

12 MR. DEMANOVICH: Your Honor, we believe, just in
13 the interests of justice in this case and considering all
14 factors, that it's the most appropriate resolution in the
15 interests of justice to move forward beyond this charge and
16 dismiss.

17 We weighed all factors and took it under careful
18 consideration, and after considering all that, the decision
19 was made to dismiss the charges and with prejudice.

20 THE COURT: All right.

21 Mr. Brown, I, in part, convened this hearing to
22 give you an opportunity to convey your client's position
23 concerning this new development. I suspect strongly that
24 your client has no objection to the Government's motion to
25 dismiss the complaint.

1 Is that a fair guess?

2 MR. BROWN: That's absolutely correct, Your Honor.
3 We -- and as I've said before, "He stands who well stands
4 silent." Dismissal in the interests of justice suits us, and
5 we think it's fair, and we join with the Government.

6 THE COURT: One other reason why I convened this
7 hearing -- and it's, perhaps, in a very small way, unusual --
8 but the Government speaks through charging documents. The
9 Government accuses defendants of criminal conduct in the form
10 of a formal charging document which expresses allegations of
11 that misconduct.

12 And when a defendant appears in court for an
13 initial appearance or otherwise on such a criminal complaint
14 or charging instrument, the magistrate judge in the case, in
15 every instance, warns the defendant of his right to remain
16 silent to protect himself from making statements that might
17 be used against him.

18 And very frequently defendants make no response,
19 offer no response to direct accusations of criminal conduct
20 against them by the Government.

21 Well, the criminal charges in this case are going
22 to go away today, but the allegations remain.

23 And I want to give you, Mr. Brown, Mr. Agarwal,
24 Ms. Akin -- and to the extent Mayor Baraka would like to say
25 anything -- an opportunity to rebut those accusations. We're

1 | not having a trial. There won't be a trial. But to the
2 | extent you want to offer any additional comments, I'll give
3 | you the opportunity to do so now, Mr. Brown.

4 | MR. BROWN: Your Honor, I think it's clear that the
5 | mayor is not guilty of the offenses with which he is charged.
6 | He has said so publicly. The lawyers in this case have also
7 | made an invited response to earlier Government statements,
8 | asserting his non-guilt. And, indeed, we would maintain that
9 | he's innocent of the charges.

10 | It is for that reason that we welcome the
11 | Government's action because a just government never loses
12 | when justice is done.

13 | THE COURT: Right. Do any of your colleagues,
14 | Mr. Brown, care to share any additional thoughts?

15 | Mr. Agarwal? Ms. Akin?

16 | MR. AGARWAL: Your Honor, thank you, first of all,
17 | for convening this hearing, given both the nature of this
18 | case and the publicity that it has received. I think we're
19 | appreciative that you're convening a hearing rather than, you
20 | know, simply signing the dismissal order.

21 | With respect to our client, I echo Mr. Brown's
22 | thoughts. If this matter had proceeded to trial, we felt
23 | confident that Mayor Baraka would be vindicated. We have
24 | believed from the outset that these charges did not and would
25 | not survive scrutiny by Your Honor and by the public and,

1 | therefore, you know, agree wholeheartedly with the AUSA's and
2 | with the Government's decision to dismiss.

3 | THE COURT: All right.

4 | Ms. Akin.

5 | MS. AKIN: Your Honor, I concur with both Mr. Brown
6 | and Mr. Agarwal and want to join with them in thanking the
7 | Court for convening this hearing so that we could put on the
8 | record that the mayor is not guilty of these charges and so
9 | has said.

10 | THE COURT: All right.

11 | Finally --

12 | MR. AGARWAL: Can I say one more thing, Judge.

13 | THE COURT: Sure.

14 | MR. AGARWAL: Judge, the only other thing I'd say
15 | and I think it's worth noting publicly is, you know, the fact
16 | of this dismissal 10 days after the charges were lodged -- or
17 | nearly two weeks after the charges were lodged -- does not
18 | undo the things that happened over the last two weeks;
19 | namely, the fact that the mayor was detained for five hours
20 | in custody and the fact that he's been under these criminal
21 | charges. We can't erase those things. And I think it's
22 | worth noting that, notwithstanding this dismissal, the mayor
23 | had to undergo, you know, public scrutiny and interrogation
24 | and detention all because of charges that are now being
25 | dismissed.

1 THE COURT: Right.

2 Mr. Brown, I'm going to sign the order for
3 dismissal. So your client's concerns, Fifth Amendment
4 concerns related to those charges, are diminished.

5 Does he want to offer any comments?

6 MR. BROWN: Your Honor, I turn to the mayor, who
7 can speak for himself.

8 Mr. Mayor, did you want to say anything today?

9 THE DEFENDANT: Thank you, Your Honor, for the
10 opportunity to speak. I think that counsel has said
11 everything eloquently enough. I don't have much else to
12 offer.

13 Thank you.

14 THE COURT: All right. Then we're going to wrap
15 up.

16 I'm going to conclude, though, with some final
17 remarks.

18 In order to ensure clarity of my thoughts, I have
19 made some notes, and I apologize for looking down at those
20 notes as I deliver these comments.

21 Mr. Demanovich, I'll start with you. I'm aware
22 that you are not the last word in charging decisions at the
23 U.S. Attorney's Office generally or in this case
24 specifically.

25 And you've behaved appropriately in this matter in

1 | all the proceedings in which you've appeared, as has your
2 | colleague, Ms. Grace, who appeared at the initial appearance
3 | in this matter.

4 | Nevertheless, Mr. Demanovich, you are here today on
5 | behalf of the United States and by extension on behalf of the
6 | U.S. Attorney's Office. Therefore, it falls upon you to
7 | receive this message on behalf of those decision-makers.
8 | Please consider sharing with your colleagues this modest
9 | reminder of your unique duty as federal prosecutors.

10 | Your Office serves the 9.5 million people who live
11 | in the District of New Jersey, and your colleagues are
12 | charged with working to protect those people and the
13 | interests of the Constitution under which we all live and
14 | that you and every one of your colleagues swore to uphold
15 | when you joined that Office. This is an immense
16 | responsibility with which comes an imperative for meticulous
17 | diligence and unwavering integrity.

18 | Almost a hundred years ago the Supreme Court
19 | articulated with decisive clarity the unique role of a
20 | prosecutor. Writing for the majority in Berger v. United
21 | States, Justice George Sutherland stated, "The United States
22 | attorney is a representative not of an ordinary party to a
23 | controversy but of a sovereignty whose obligation to govern
24 | impartially is as compelling as its obligation to govern at
25 | all and whose interests, therefore, in a criminal prosecution

1 is not that it shall win a case but that justice shall be
2 done."

3 Indeed, Mr. Demanovich, beyond those 9.5 million
4 constituents and above any individual or agency interests,
5 federal prosecutors serve a singular paramount client:
6 Justice itself.

7 Your role is not to secure convictions at all
8 costs, nor to satisfy public clamor, nor to advance political
9 agendas.

10 Your allegiance is to the impartial application of
11 the law, to the pursuit of truth, and to the upholding of due
12 process for all.

13 In his seminal 1940 address, the federal
14 prosecutor, then Attorney General Robert H. Jackson,
15 articulated a truth that remains as vital today as it was 85
16 years ago. He cautioned against the temptation to prosecute
17 every conceivable offense, reminding prosecutors that "the
18 citizen's safety lies in the prosecutor who tempers zeal with
19 human kindness, who seeks truth and not victims, who serves
20 the law and not factional purposes."

21 Justice Jackson profoundly understood that the
22 prosecutor's duty extends beyond simply securing convictions.
23 It encompasses an obligation to select cases with the utmost
24 care, to ensure that the facts truly warrant the profound
25 disruption that a federal charge brings to an individual's

1 | life. Justice Jackson warned against using the immense power
2 | of the government to pursue weak cases or to make examples
3 | without sufficient cause.

4 | Your discretion, therefore, is not merely a legal
5 | tool but a moral compass guiding the exercise of immense
6 | power. It demands a judicious restraint, a deep respect for
7 | individual liberty, and an unwavering commitment to the
8 | principle that justice is never served by arbitrary or
9 | ill-conceived actions.

10 | The hasty arrest of Newark Mayor Ras Baraka,
11 | followed swiftly by the dismissal of these trespassing
12 | charges a mere 13 days later, suggests a worrisome misstep by
13 | your Office. An arrest, particularly of a public figure, is
14 | not a preliminary investigative tool. It is a severe action,
15 | carrying significant reputational and personal consequences,
16 | and it should only be undertaken after a thorough,
17 | dispassionate evaluation of credible evidence.

18 | It's precisely that commitment to rigorous
19 | investigation and thoughtful prosecution that has
20 | characterized the distinguished history of your Office,
21 | Mr. Demanovich, particularly over the last two decades. The
22 | bench and the bar have witnessed in that period, the
23 | diligence and care demonstrated by prior U.S. attorneys in
24 | New Jersey, whose leadership has consistently upheld the
25 | highest standards of prosecutorial ethics and

1 professionalism. Their legacy is one of careful deliberate
2 action where charges were brought only after exhaustive
3 evidence-gathering and a thorough consideration of all facts.
4 That bedrock principle, consistently honored by your
5 predecessors, is the foundation upon which the credibility
6 and effectiveness of your Office rests.

7 So let this incident serve as an inflection point
8 and a reminder to uphold your solemn oath to the people of
9 this District and to your client, Justice itself, and ensure
10 that every charge brought is the product of rigorous
11 investigation and earned confidence in its merit, mirroring
12 the exemplary conduct that has long defined your Office.

13 The apparent rush in this case, culminating today
14 in the embarrassing retraction of charges, suggests a failure
15 to adequately investigate, to carefully gather facts, and to
16 thoughtfully consider the implications of your actions before
17 wielding your immense power. Your Office must operate with a
18 higher standard than that.

19 Mr. Demanovich, I'll give you a chance to respond
20 however you'd like.

21 MR. DEMANOVICH: Your Honor, we understand, and we
22 endeavor to do just as you said. We conducted a thorough
23 review of the case and the circumstances and, as the United
24 States represented, in the interests of justice, arrived at
25 decision to dismiss with prejudice at the end.

1 But I do hear your message, and, again, it's the
2 endeavor and the goal of the Office at all times to uphold
3 justice and, we believe, to reach the right result in each
4 case.

5 THE COURT: All right, Mr. Demanovich.

6 Mr. Brown and your colleagues, anything else for
7 the defendant?

8 MR. BROWN: Nothing further.

9 We thank you, Your Honor, for your commentary. We
10 think it is very helpful as part of the decision.

11 THE COURT: Mr. Demanovich, anything else on behalf
12 of the Government?

13 MR. DEMANOVICH: No, Your Honor.

14 THE COURT: All right.

15 I've signed the dismissal order. The complaint is
16 dismissed with prejudice.

17 Mr. Baraka, you are free to go, and we're
18 adjourned.

19 UNIDENTIFIED SPEAKERS: Thank you.

20 (Conclusion of proceedings)

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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 14 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

May 22, 2025

Signature of Approved Transcriber

Date

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