

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.
2019 OCT -1 PM 2:48
CLERK C. Asbell
SO. DIST. OF GA.

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:18cr22

vs.

STEPHEN KELLY, S.J.,

Defendant.

MEMORANDUM IN SUPPORT OF NOTICE OF INTENT TO RAISE DEFENSES

Defendants are raising defenses of First Amendment, Necessity, International Law, and War Crimes. Over the years, some courts have refused to allow defenses similar to some of these being raised.¹ Importantly, none of the prior cases have addressed the issue of the Religious Freedom Restoration Act (RFRA) in any way. Indeed, many were decided before RFRA was even enacted. None of these cases should reflect in any way at all on the RFRA defenses raised by defendants.

In terms of those cases which have addressed defenses raised in this case, in addition to the specific arguments' defendants raise to support each defense, defendants believe these prior adverse decisions are no longer appropriate and should not apply to this matter for several reasons.

¹ See US v Montgomery, 772 F.2d 733 (11th Cir. 1985); US v Allen, 760 F2d 447 (2nd Cir. 1985); US v Kabat, 797 F2d 580 (8th Cir. 1986); US v Bordhead, 714 F Supp 593 (1989); US v Sicken, 223 F3d 1169 (10th Cir. 2000); US v Platte, 401 F3d 1176 (10th Cir. 2005); US v Kelly, 676 F3d 912 (9th Cir. 2012); US v Walli, (USDC ED TN 2013) 2013 WL 1773617.

First, the words and actions of the current President of the United States have made the use of nuclear weapons much more imminent. Repeated threats to use nuclear weapons and statements that all options are on the table change the calculation of the possibility of nuclear destruction.

On August 9, 2017, the President of the United States, at a White House briefing, publicly stated “North Korea best not make any more threats to the United States. They will be met with fire and fury like the world has never seen...he has been very threatening beyond a normal state. They will be met with fire, fury and frankly power the likes of which this world has never seen before.” “Trump promises North Korea ‘fire and fury’ over nuke threat,” CNN, August 9, 2017. <https://www.cnn.com/2017/08/08/politics/north-korea-missile-ready-nuclear-weapons/index.html>

Later in the same month, On August 29, 2017, the White House issued a follow up statement by President Donald J. Trump on North Korea which stated: “The world has received North Korea’s latest message loud and clear: this regime has signaled its contempt for its neighbors, for all members of the United Nations, and for minimum standards of acceptable international behavior. Threatening and destabilizing actions only increase the North Korean regime’s isolation in the region and among all nations of the world. All options are on the table.” <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-north-korea/>

The increased danger to humankind has led the Bulletin of Atomic Scientists to move its Doomsday Clock closer to midnight in 2017 and to keep it at the critical stage of 2 minutes to midnight for 2019. The scientists note the “devolving state of nuclear and climate security. It

also points to a qualitative change in information warfare and a steady misrepresentation of fact that is undermining confidence in political structures and scientific inquiry. At the same time, science is racing forward, and new global governance structures are desperately needed to manage rapidly evolving and potentially dangerous technologies.”²

Second, some prior adverse decisions have optimistically suggested defendants should not engage in direct actions because they have political options which give realistic chances for the issue of nuclear war to be addressed.

Given the fact that the Congress of the United States is in one of the worst periods of inaction due to political gridlock, such an optimistic suggestion no longer holds the weight it once may have had.

For example, the 115th Congress passed a total of 443 bills, only 3 percent of the bills introduced.³ Compare that total to the 900 public bills passed by the 80th Congress which President Harry Truman derided as the “Do Nothing Congress.”⁴

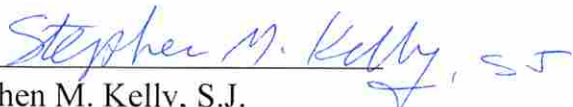
For these reasons, and the reasons spelled out in each defense, the defenses noticed by defendants should be allowed to be heard and deliberated upon by the jury in this matter.

² A new abnormal: It is still 2 minutes to midnight. 2019 Doomsday Clock Statement of the Science and Security Board of the Bulletin of Atomic Scientists. January 24, 2019. Online at: <https://thebulletin.org/doomsday-clock/current-time/#>

³ <https://www.govtrack.us/congress/bills/statistics>

⁴ Lauren Fox, “Do-Nothing’ Congress was way more productive than the current one,” U.S. News and World Report, December 1, 2013. <https://www.usnews.com/news/articles/2013/12/01/do-nothing-congress-was-way-more-productive-than-the-current-one>

Respectfully submitted this 2nd day of October, 2019.



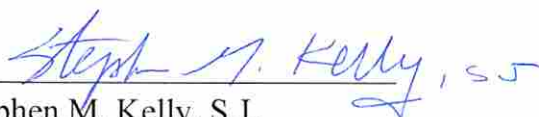
Stephen M. Kelly, S.J.
Pro Se Defendant

Glynn County Detention Center
100 Sulphur Springs,
Brunswick, GA 31520

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October 2019, I served upon all parties a copy of the foregoing **MEMORANDUM IN SUPPORT OF NOTICE OF INTENT TO RAISE DEFENSES** by having said memorandum delivered to the clerk of the Court and once stamped and accepted, scanned by the clerk after which a notice of electronic filing (NEF) will be generated and sent to all parties.

Dated this 2nd day of October 2019.



Stephen M. Kelly, S.J.
Pro Se Defendant

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