

SOME THOUGHTS ON THE ARREST OF JUDGE HANNAH DUGAN

On April 18, six law enforcement officers – one ICE officer, one CBP officer, two FBI agents, and two DEA agents; they were supported by an unknown number of surveillance personnel – showed up outside the courtroom of Wisconsin Judge Hannah Dugan to arrest Eduardo Flores-Ruiz.

Flores-Ruiz was charged on March 18 with three counts of domestic battery, and was due to appear for a pre-trial hearing.

Flores-Ruiz, a Mexican national, reportedly had been deported once before and one day earlier, “an authorized immigration official” had attested an administrative warrant – but not a judicial warrant – authorizing Flores-Ruiz’s arrest.

After Judge Dugan interacted with the arresting officers and, upon learning that they only had an administrative warrant and after telling them they needed a judicial warrant, she directed them to go meet with the Chief Judge (who wasn’t at the courthouse, but who spoke with the ICE officer on the phone). Then, Judge Dugan apparently adjourned Flores-Ruiz’ scheduled hearing and directed him and his attorney to leave via the jury door.

Defense counsel and Flores-Ruiz then walked toward each other and toward the public courtroom exit. The courtroom deputy then saw Judge DUGAN get up and heard Judge DUGAN say something like “Wait, come with me.”

Flores-Ruiz appears to have gone, via back hallways, *to the same sixth floor public hallway* via which he had entered the court room. According the complaint, *both* DEA officers saw

Flores-Ruiz in the public hallway before he entered the elevator.

After leaving the Chief Judge's vestibule and returning to the public hallway, DEA Agent A reported that Flores-Ruiz and his attorney were in the public hallway. DEA Agent B also observed Flores-Ruiz and his attorney in the hallway near Courtroom 615 and noted that FloresRuiz was looking around the hallway. From different vantage points, both agents observed Flores-Ruiz and his counsel walk briskly towards the elevator bank on the south end of the sixth floor.

Rather than arresting Flores-Ruiz, whom the officers knew was unarmed, there on the sixth floor, one of them rode down the elevator with him and his attorney and the other alerted the other officers. Four of them convened outside of the courthouse and chased him down the street and arrested him, just 22 minutes after he entered Judge Dugan's courtroom at 8:43.

Having received the above-referenced information from DEA Agent A, other members of the arrest team scrambled to locate Flores-Ruiz and arrest him. DEA Agent B and FBI Agents A and B took another elevator down to one of the bottom floors of the courthouse and quickly exited the building onto 9th Street. After DEA Agent A notified the team that Flores-Ruiz was in the front of the courthouse near the flagpole, the agents ran towards the front of the courthouse. FBI Agent B and DEA Agent A approached Flores-Ruiz and identified themselves as law enforcement. Flores-Ruiz turned around and sprinted down the street. A foot chase ensued. The agents pursued Flores-Ruiz for the entire length of the courthouse and ultimately apprehended him near the intersection of W. State Street and 10th Street. Flores-

Ruiz was handcuffed and detained. Around 9:05 a.m., or approximately 22 minutes after the arrest team first spotted FloresRuiz on the sixth floor of the courthouse, FBI Agent A communicated to the surveillance team that Flores-Ruiz had been arrested.

In a criminal complaint, the government charged Judge Dugan with 18 USC 1505, obstruction of a proceeding, and 18 USC 1071, concealing a person from arrest. [docket] The FBI arrested Judge Dugan at the courthouse on Friday amid a deliberate media frenzy, up to and including the FBI Director posting a picture of Judge Dugan's arrest in violation of DOJ guidelines designed to prevent prejudice.

DOJ personnel should not encourage or assist news media in photographing or televising a person held in custody. DOJ personnel should not voluntarily disclose a photograph of a defendant unless it serves a law enforcement function or unless the photograph is already part of the public record in the case.



FBI Director Kash Patel @FBI DirectorKash · Apr 26
No one is above the law



Both Pam Bondi and Stephen Miller also made comments that arguably violate rules prohibiting comments that prejudice a proceeding (remember that Judge Dale Ho already found that Pam Bondi's public comments about the Eric Adams

case likely violated local rules).

The arrest has rightly been viewed as an attempt, at a time when Trump and his minions are already making wildly inappropriate attacks on judges, to bully the judiciary.

The criminal charges

There has been a lot of blather about the strength or weakness of the criminal charges. Much of that is, in my opinion, premature, and premature precisely because FBI chose to arrest Dugan on a criminal complaint.

The elements of offense for 18 USC 1505 require the government prove:

- **Existence of an Investigative Proceeding:** There is, or was, an ongoing proceeding, inquiry, or investigation before a federal department, agency, or any committee of Congress.
- **Defendant's Knowledge:** You were aware of the pending proceeding.
- **Obstructive Action:** You engaged in one or more of the obstructive actions outlined in the statute, such as withholding or falsifying documents or using threats or force and
- **Corrupt Intent:** You did so with corrupt intent, meaning the actions were taken with a wrongful purpose to disrupt, impede, or

influence the proceeding. This 'corrupt intent' refers to a deliberate and dishonest motive to interfere with the investigation or proceeding rather than a legitimate or lawful purpose.

The elements of offense for 18 USC 1071 require the government prove:

- a federal warrant had been issued for the person's arrest;
- the person concealing them knew that a warrant was issued;
- the person actually concealed the fugitive from law enforcement;
- the person acted with intent to prevent fugitive's discovery or arrest.

For obstruction, it will be contested whether an immigration removal counts as an investigative proceeding. For concealment, it will be contested whether the administrative warrant qualifies, and whether directing Flores-Ruiz via a back hallway to the very same public hallway where the officers had planned to arrest him and *had* a chance to arrest him amounts to concealment.

Both charges will pivot on Judge Dugan's intent: whether she had corrupt intent and the intent of helping him evade arrest entirely, or whether she wanted to protect the sanctity of her own courtroom.

Key to her intent is her belief, which she made clear to the officers, that they needed a

judicial warrant.

Judge DUGAN asked if Deportation Officer A had a judicial warrant, and Deportation Officer A responded, "No, I have an administrative warrant." Judge DUGAN stated that Deportation Officer A needed a judicial warrant. Deportation Officer A told Judge DUGAN that Deportation Officer A was in a public space and had a valid immigration warrant. Judge DUGAN asked to see the administrative warrant and Deportation Officer A offered to show it to her. Judge DUGAN then demanded that Deportation Officer A speak with the Chief Judge. Judge DUGAN then had a similar interaction with FBI Agent B and CBP Officer A. After finding out that they were not present for a court appearance and that they were with ICE, Judge DUGAN ordered them to report to the Chief Judge's office.

Administrative warrants don't mandate assistance.

It may also matter that, by description, she didn't actually look at the administrative warrant, because it might matter if she knew whether Flores-Ruiz had been deported before. In a report published before the arrest, Dugan is quoted as stating that "a warrant was not presented in the hallway on the 6th floor," and by description, she was not shown one.

Thus far, the complaint seems to want to suggest that Dugan had corrupt intent because she was angry.

DUGAN became visibly angry, commented that the situation was "absurd," left the bench

Witnesses uniformly reported that Judge DUGAN was visibly upset and had a confrontational, angry demeanor.

Judge DUGAN appeared visibly angry and was walking quickly

But judges get angry for lots of reasons, including that someone showed up outside her courtroom to surprise someone with business in it.

The affidavit also makes much of the fact that, after exiting the non-public hallway, Flores-Ruiz and his attorney walked to the elevators furthest away from Judge Dugan's courtroom.

I am familiar with the layout of the sixth floor of the courthouse and know that the south elevators are not the closest elevators to Courtroom 615, and therefore it appears that Flores-Ruiz and his counsel elected not to use the closest elevator bank to Courtroom 615.

It's entirely unclear why this would be suspicious in any case, because the affidavit suggests that Dugan thought all the officers were in the Chief Judge's chambers; walking to the further elevators *increased* the chance they'd encounter the officers in the hallway. But as the Chair of the WI Election Commission Ann Jacobs noted in a long thread, there's a completely innocent explanation for this: that Flores-Ruiz and his attorney were headed to the street, not the parking garage.

Here's why this is absurd – there are 2 banks of elevators in the courthouse: 1 goes to the ground floor, and 1 goes to the 9th street exit which is where the parking structure is. In fact, there are even SIGNS telling you which bank of elevator goes where.

So – yes – you sometimes walk past one set of elevators so you can get where you want to go. If you are not going to the parking structure (which most people are), you take the other set of elevators because they are less crowded.

Suspicious? No – literally something hundreds of people do daily in the courthouse. This attempt to make it into something is just dumb (especially since they claim to be familiar with the elevators – clearly not).

The biggest problem with these charges is that, by charging this via criminal complaint rather than grand jury, the government has not probed several issues relating to intent before charging Judge Dugan.

The witnesses cited in the complaint include the six officers, Dugan's courtroom deputy, two other lawyers present in the courtroom that day (an Assistant DA and a different defendant's attorney), a Victim Specialist working with Flores-Ruiz' alleged victims, along with the FBI officer affiant.

The most incriminating thing in the affidavit comes from the deputy.

These events were also unusual for two reasons. First, the courtroom deputy had previously heard Judge DUGAN direct people not to sit in the jury box because it was exclusively for the jury's use. Second, according to the courtroom deputy, only deputies, juries, court staff, and in-custody defendants being escorted by deputies used the back jury door. Defense attorneys and defendants who were not in custody never used the jury door.

The deputy was clearly quite concerned about being implicated and actually alerted the officers that Judge Dugan was "pushing" Flores-Ruiz' case.

Judge DUGAN's courtroom deputy then approached the remaining arrest team members and stated that the courtroom deputy was not the one who had notified Judge DUGAN about their arrest plans.

The courtroom deputy also made a comment about Judge DUGAN “pushing” Flores-Ruiz’s case through, which the arrest team interpreted to mean that Judge DUGAN was attempting to expedite Flores-Ruiz’s hearing.

The officers seem to have misinterpreted the comment; rather than expediting the hearing, it appears Judge Dugan instead adjourned the hearing.

But there are several key witnesses that have not been interviewed (or if they have, their testimony is not mentioned in the complaint): It appears the FBI didn’t ask Flores-Ruiz’ attorney and Flores-Ruiz himself about whether Judge Dugan alerted them that ICE was there to arrest him (and some of their behavior is inconsistent with having any warning). They don’t even know whether Flores-Ruiz’ attorney drove to the courthouse; if not, she would know well to take the elevator that went to street level.

Nor does the affidavit note any interview with the Chief Judge. His testimony would be critical for several reasons. First, the complaint describes that the Chief Judge told the ICE officer *he was working on a policy* about ICE presence in the courthouse but had not yet completed it.

During their conversation, the Chief Judge stated he was working on a policy which would dictate locations within the courthouse where ICE could safely conduct enforcement actions. The Chief Judge emphasized that such actions should not take place in courtrooms or other private locations within the building. Deportation Officer A asked about whether enforcement actions could take place in the hallway. The Chief Judge indicated that hallways are public areas. When the Chief Judge expressed interest in talking to ICE ERO management about this policy,

Deportation Officer A provided him with contact information for ICE ERO's Assistant Field Office Director.

If the Chief Judge had not yet crafted a policy, then the government can't cite it regarding what Judge Dugan should have done, and indeed her instruction to go to his office may have been consistent with the unsettled policy. There's another judge who interacted with the officers who may also attest to the uncertainty about what to do in this situation.

That the Chief Judge had not yet spoken to ICE is important because the affiant includes a limitation ICE had adopted on their own arrests: to target defendants but not witnesses.

the Milwaukee ICE ERO Task Force was focusing its resources on apprehending charged defendants making appearances in criminal cases – and not arresting victims, witnesses, or individuals appearing for matters in family or civil court.

But if the Chief Judge had not yet spoken to ICE, then neither he nor Dugan could be expected to know that. Judges have very well-founded concerns about the way ICE arrests at courthouses can chill access to justice for everyone (including defendants); but the concern about witnesses and victims is particularly acute.

And while the Chief Judge told the ICE officer that they could make arrests in hallways, there's no evidence in the record that the Chief Judge had told Judge Dugan that. He certainly didn't tell her that after the conversation as described. He couldn't have! That's because the ICE officer was still on the phone with the Chief Judge when the other officers arrested Flores-Ruiz.

Deportation Officer A and CBP Officer A were notified that Flores-Ruiz was in

custody while they were still inside the courthouse speaking with the Chief Judge on the phone.

There are reasons why DOJ shouldn't involve the other judges in this case. But both the Chief Judge and the other one involved that day may provide exculpatory evidence about Judge Dugan's actions and intent.

Without more, Judge Dugan has a number of strong defenses to these charges. DOJ might one day get more incriminating evidence about Dugan's intent, but they present zero real evidence of it here and her comment about the administrative warrant is exculpatory.

Trump picks up where he left off

This is not, as many people claimed, unprecedented. In fact, there's a very clear precedent: MA state judge Shelly Joseph, who was indicted, along with her Deputy, in 2019 for allegedly helping a defendant escape ICE arrest by conspiring with her Deputy and the migrant's defense attorney to let him out the back of the courthouse via a holding cell. [docket] Adam Klasfeld also wrote about this precedent at his new site.

There are number of key differences though, at least thus far.

Dugan	Joseph
Six agents	One agent
Charged via complaint	Charged via indictment
No conspiracy alleged; Deputy testified against Dugan	Alleged conspiracy with Deputy and Defense Attorney
Assisted migrant to exit to public hallway	Allegedly helped migrant to leave courthouse by non-public exit
	Claimed obstruction record
Agent encountered migrant in elevator	Migrant evaded arrest for two weeks

The most important differences are that Judge Joseph allegedly helped the migrant before her to leave the courthouse, via non-public doorway, entirely; she allegedly turned off the courtroom

recording during which the defense attorney asked for help (which was presented as evidence of corrupt intent) and her deputy allegedly lied to the grand jury; the defendant evaded arrest entirely. That was charged as a conspiracy after getting the defense attorney to testify, with immunity, against the judge.

Update: I should add a big difference between Joseph and Dugan. In the former case, the government investigated for a year – from April 2018 to April 2019 – before they charged Joseph and her deputy (during which time they flipped the defense attorney whose idea this was). In this case, FBI investigated for a week.

That is, while Judge Joseph had a number of strong defenses (and contested some of the claims laid out in the indictment), the case against her included allegations that got to corrupt intent that do not – yet, anyway – exist in the case against Judge Dugan.

The precedent matters for legal reasons. A number of the issues that would be argued here – such as any immunity due to Judge Joseph, or the applicability of 18 USC 1505 to an immigration arrest – were not resolved and likely would not be here, before trial and appeal.

But the most important precedent is the way in which the first Trump Administration – including then Acting ICE Director Tom Homan and current Acting ICE Director Todd Lyons – wanted to use Joseph's case to intimidate judges and foster a big media frenzy. Joseph's case was dismissed in 2022 after she used some FOIAed documents to show the media frenzy the White House deliberated stoked and asked (for the third time) for full discovery on it, including on how Lyons' incessant media appearances affected the ICE officers involved in the case.

From: (b)(6), (b)(7)(C)
Sent: Thursday, April 25, 2019 2:32 PM
To: Kelly, Christopher S (b)(6), (b)(7)(C) @ice.dhs.gov>; Hernandez-Winkelmann, Laura (b)(6), (b)(7)(C) @ice.dhs.gov>
Cc: (b)(6), (b)(7)(C) @ice.dhs.gov>; Blank, Thomas (b)(6), (b)(7)(C) @ice.dhs.gov>
Subject: Boston Radio Request via White House

All:

Is Matt in a place where he could (if he wanted to) do a radio call for the Howie Carr show between 5-7 to discuss the indictment of the judge in Massachusetts who let an illegal alien out the back door of the courthouse to escape an ICE arrest?

Our Boston FOD is also doing the radio show, but they were hoping to also have AD1 on. Boston SAC participated in press conference w/US Attorney.

DOJ release is below.

This request came through the WH. They asked for POTUS, who is unavailable so recommended ICE. Howie Carr is a conservative and good place for our message.

But even before she got that FOIAed evidence, she argued that Lyons' incessant attacks on judges biased ICE in this matter.

That is, the campaign against judges – Tom Homan's campaign, Todd Lyons' campaign (including his recent comment where he said he wanted to make deportations work like Amazon Prime), a White House occupied by Stephen Miller's campaign – are already a matter of judicial record. And this time around, DOJ didn't even bother convening a grand jury to find out whether there's any evidence that Judge Dugan had corrupt intent before arresting her at the courthouse and ginning up an even bigger media storm about it.

Maybe they'll find it as they move to indict her. Or maybe this case will blow up in spectacular fashion.

But until they actually look for evidence of corrupt intent, this is a media campaign against the judiciary, not a criminal prosecution.

Indeed, the media campaign – the comments from top Trump officials, some that don't even reflect the official record – may have already tainted the prosecution. The media campaign is bound to be a central matter as Dugan mounts a defense.

The fight for rule of

law

The fact that so few people know of the case against Judge Joseph is telling. Many just pointed to the arrest and proclaimed that Trump had achieved some new level of abuse.

Like so much else, including his use of the legal system to attack his adversaries, there's little truly new here.

He did all this in the first term and yet neither the Biden or Harris campaigns nor millions of others opposing Trump made this or his past abuses a sustained focus of an anti-Trump campaign, not even in the context of his attacks on judges presiding over cases against him. As I've argued, Trump's platform – the way he convinced a bunch of disaffected people to vote for him – was to claim he was *a victim* of an unfair legal system, rather than someone duly prosecuted under it, rather than the guy who weaponized it to get electoral advantage.

In the wake of Dugan's arrest, by contrast, many people did far more than staring, stupefied, at Trump's latest abuse. Many officials, both local and national Democrats, have issued statements condemning at least the manner of the arrest. Most contextualized this arrest with mention of Trump (and Stephen Miller's) direct attacks on and defiance of judges, up to and including the Trump-packed Supreme Court. Hundreds of people protested outside the federal courthouse.

Something has happened, somewhat unmentioned, since Trump opponents have started to speak out against Trump's abusive immigration policies. In the process of defending people like Kilmar Abrego Garcia, who as some noxious Democratic operative sniffed is not a "poster child" for due process, Trump's opponents have more aggressively defended just that: due process, independent courts, and rule of law.

If Abrego Garcia can be sent to Nayib Bukele's concentration camp in error, anyone can. If a US citizen toddler can be deported even as one of

the Trumpiest judges fights to give her due process, Trump's deportation campaign has illustrated the import of independent judges testing his transparently false claims.

It may be that defending the import of rule of law has helped to reverse the popularity of Trump's deportation campaign.

Whether it is or not though, the opposition to Trump has started defending rule of law as such, above and beyond the more charismatic targets of it. It has started defending the rule of law as an important protection for all citizens.

I hope to return to this, particularly as people entertain approaches – to think in terms of indictments for Trump – that failed over and over again in the past. I strongly believe that what needs to happen – what didn't happen, when Trump was busy undermining the legitimacy of the cases against him during the Biden Administration – is to promote the import of rule of law as such.

As real mobilization happens in response to Trump's attacks on rule of law, let's keep in mind that that is something worth defending in its own right.

Update: Now ICE is threatening to charge two people who asked three officers in plainclothes (one wearing a balaclava) to show a warrant. The complaint against Judge Dugin makes much of the fact that the six officers were in plainclothes, as if that helps.

The agents were generally dressed in plain clothes and intended to effectuate the arrest in as low-key and safe of a manner as possible.

Update: James Pearce, who up until January was Jack Smith's appellate guy, reviews the case and like me says it is premature to weigh the strength of the case, though he is far more sympathetic to the prosecutors' case. He does not consider whether Pam Bondi *et al*'s behavior

will endanger it. He also notes (and he may know this first hand) that the Joseph case was dismissed for reasons other than the strength of the case.