SUPREME COURT OF THE UNITED STATES

No.

RIAN G. WATERS,

Plaintiff - Applicant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Respondents,

KATHERINE PETER; JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

To The Honorable Stephen G. Breyer, Associate Justice of the United States Supreme Court, and Circuit Justice for the First Circuit

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION PENDING DISPOSITION OF PETITION FOR WRIT OF CERTIORARI RELIEF

Respectfully submitted,

Pro se /S/ Rian Waters dated March 15, 2022

199 Allen St E. Longmeadow MA 01028

(530)739-8951 Watersrian@gmail.com

I. PARTIES

Applicant is Rian Waters,

Respondent is Aidan Kearney, he is the only one I am seeking relief from.

Nominal Respondents, Google LLC, Facebook INC. et al, Katherine Peter

II. DIRECTLY RELATED PROCEEDINGS

Waters V. Facebook Inc. et al 3:20-cv-30168 Mass. District Court.

Waters v. Facebook, Inc., et al 0:21-civil-01582 First Circuit. Injunction and En Banc reconsideration denied February 14th 2022

Waters v. Facebook, Inc., et al 0:22-civil-01054 First Circuit. Defendant mooted most of the appeal by identifying and threatening the witness.

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V. INTRODUCTION

Pursuant to Supreme Court Rules 20, U.S.C. § 1651, Applicant Rian Waters, ("I" or "me,") hereby move the Court for an emergency writ of injunction in aid and pending disposition of his forthcoming petition for writ of certiorari. Kearney's consistent attacks on parties, witnesses, and lawyers, makes it too dangerous for a lawyer to take the case without an injunction, I no longer have the mental health to effectively argue this case. The Lower courts' decisions have become extreme sources of trauma, and I cannot read them without causing severe distress to my health. The Exhibits proving Kearney is guilty are even worse, so I cannot cite them appropriately without doing extreme damage to my health. Every time a court approves of the crimes my health gets worse. Relief is necessary to address the merits.

Alternatively, I hereby move the court to appoint counsel pursuant to its inherent power, or whatever appropriate rule.

On February 17th 2022, three days after the Appellate court denied the Second Emergency injunction, Kearney said presenting evidence against him is the dumbest thing anyone could do, because everyone knows he is extremely vindictive. I kept telling the court it was too dangerous for me

to present evidence, the court dismissed my fears without comment. I foolishly named a witness without protection, so Kearney created a fake Facebook account in my name (Exhibit E) and threatened to rape and murder my child Id., and at the same time he tried to frame me for threatening his child. A witness presented evidence proving that Kearney orchestrated the conspiracy. (Exhibit A) Kearney threatened and extorted her, (ADD 14-15 at 10-11) and publicly revealed that he had conspired with her to commit witness intimidation for her criminal court case. (ADD 13 at 2) Kearney admitted to the holden police department that he was the only person with access to the Facebook account Clarence Woods Emerson, (ADD 42 at 1, 2, and 4; ADD 14 at 7) that was in his conspiracy group chat #BlogDat. (ADD 40 at 2) I asked both the District Court, and the appellate court to protect the witnesses, both courts refused. On February 17th 2022 Kearney followed through with his extortion threat against the witness, and tried to send her to jail.

Respondent Kearney's conspiracies are not only intimidating witnesses and lawyers, but it is also triggering the adjustment disorder that Kearney is legally aware that he is the identified cause and stressor

of, which is critically impairing my ability to represent myself, and causing permanent damage to my physical and mental health.

VI. RELIEF SOUGHT

I seek an injunction until a lawyer can file a Petition for Writ of Certiorari and this Court has the opportunity to consider it. The limited relief sought would make it safe for an attorney to represent me and properly argue the issues.

I therefore respectfully move this Court for an injunction pending disposition of my forthcoming Petition for Writ of Certiorari, restraining and enjoining Defendant–Appellee Kearney, (and only Kearney) from contacting witnesses, and from mentioning lawyers, witnesses, and parties of this case, on any of his social media accounts that are associated with Turtleboy Sports. (His "weaponized public shaming" blog.)

VII. JURISDICTION AND TIMING

I filed this action in the District Court October 26, 2020. I filed for a temporary restraining order and preliminary injunction in the District Court on December 1st, 2020. The Court did not deny the injunction until

it surprise sua sponte dismissed the entire complaint on May 11th 2021. I asked the court to consider granting an injunction pending appeal in my motion for reconsideration, which was denied.

On December 8th, 2021, I filed a motion for an injunction pending appeal in the First Circuit, I tried to finish and file the injunction before the Appellate brief, but it was taking me too long. On December 16th 2021 I filed a motion to investigate the November 19th 2021 obstruction conspiracy. On December 23rd, 2021, the Appellate court sua sponte dismissed the Appeal, and denied the motions. I filed a Second Emergency motion for an Injunction pending appeal on January 29th 2022, the court denied that motion on February 14th 2022, the same day that the court denied a petition for rehearing En banc,

I took a two week break from working on the case because my health was collapsing from only sleeping 3-4 hours a night, this is the fastest I could reasonably file this.

VIII. URGENCIES JUSTIFYING EMERGENCY RELIEF

Death and rape threats

Evidence proves that on November 19th 2021 Kearney intentionally stressed my adjustment disorder to obstruct the appeal by creating a fake Facebook account in my name, and threatening me three times saying,

1 "[Rian, Rian, Rian], you never seem to learn. Don't forget I know where you[r daughter] live[s], and I know what is most precious to you..."

(Kearney does know where my daughter lives.)

2 "Better watch what you say about me [Rian,] wouldn't want anything to happen to your daughter now would we"

3 "Is this your house? are these your kids? I bet you like them a lot, they're really cute. Do they like candy? Maybe it's about time they meet their Uncle [Turtleboy] and I can take them out for some fun and games. Don't worry I'll return her in one piece, after we have a little fun and I show her what a piece of **** their father is." (Exhibit A 1-3 & Exhibit E pg. 2)

I corrected the names so that they read it as I read them. I did not get evidence proving it was Kearney until January, but it was obvious that it was Kearney right away to me, because he has consistently attacked me whenever there is action with a court case, and he admits that he is uncontrollably vindictive.

My health is collapsing.

Kearney knows that I was diagnosed with adjustment disorder. (R.A. 84 at 38) "[T]he decision, if made by a professional, is presumptively valid" Youngberg v. Romeo, 457 U.S. 307, 323 (1982) The Defendants know that "stressor events may include both traumatic events, such as exposure to actual or *threatened death*," as well as non-traumatic events, (RA 44) and the Defendants know that Adjustment disorder causes "significant impairments in social, occupational or other domains of functioning." (R.A. 46) The Defendants also know that "the symptoms typically resolve within 6 months, unless the stressor persists for a longer duration." Each party to litigation is deemed bound by the acts of his attorney-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney." Link v. Wabash R. Co., 370 U.S. 626, 627 (1962) The Defendants are exploiting my mental health.

I have repeatedly told the courts that Kearney's death threats are disturbing my sleep and that I've been having a hard time eating ever since Kearney threatened to rape and murder my daughter on November 19th, 2021. Kearney has made it worse by taunting me and bragging that

the courts agree that he is justified in sending rape and murder threats. I have been unable to get to the doctors because of I am too stressed, and Kearney made me unemployable by threatening to harass anyone that works with me. Halfway through December I started feeling sharp pains in my hands and my feet. (I told my therapist, and she keeps telling me to go to the doctor.) Throughout January the pains kept getting more frequent, and by mid-February I was having difficulty sleeping from pain, and I started taking ibuprofen twice a day. I now know it is nerve pain, probably from me not eating or sleeping right since the threats. I cannot continue living under this much stress, my safety prosperity and happiness depend on immediate action.

IX. FACTUAL BACKGROUND

New obstructive crimes

1. On November 19th, 2021, Kearney told his inner circle that, "in order to win a lawsuit against me (Kearney) he (Rian Waters) needs to prove I caused him to have a disorder." (Kearney knows he caused me to have adjustment disorder, he was saying I need a witness.)

2. On November 19th, 2021, Kearney had a member of his "inner circle" Cristine Gagne, identify my therapist's new name on his weaponized public shaming Facebook profile, Clarence Woods Emerson.

3. At or around 6pm on November 19th, 2021, I replied to Cristine Gagne comment identifying my therapist, and stated that I intended to use the comment thread and any resulting threats to show the courts why Kearney's Facebook profiles need to be unpublished.

4. The rape and murder threats caused me not to contact my old therapist, as I was ashamed that Kearney was attacking her.

5. Kearney was one of four members in a Facebook group named #BlogDat, and the alias he used was a Facebook profile named "Clarence Woods Emerson." (Exhibit C pg. 3 at 2; pg. 5 at 2; pg. 4) The same profile he used to conspire in the Exhibit G attached to the complaint.

6. On or around January 3rd, 2022, Kearney told the Holden Police that he was the only person with access to his public shaming Facebook account, Clarence Woods Emerson. (Exhibit C pg. 5 at 1)

7. Kearney asked his accomplices in the Facebook group chat #BlogDat to publicly alert him of the fake threats. (Exhibit A 4)

8. Kearney was worried his plan failed after I reported the account and Facebook shut it down. But a member of Kearney's inner circle Cristine Gagne, had already got screenshots of the threats, (Exhibit A 4)

9. At Kearney's direction, another conspirator turned witness Cristina Yakimowsky, sent the threats to Kearney from multiple Facebook profiles (Exhibit A 4-6)

10. Kearney's accomplices noted (Exhibit A 7) that Kearney needed to crop the screenshots in (Exhibit A1-2) because they showed that he liked a comment by "Wendy Simpson Harrington."

11. Kearney filed for a malicious harassment order in Leominster District Court. (2161RO358) Kearney and I had a hearing for the matter on December 1st, 2022.

12. Aidan Kearney committed perjury on December 1st, 2021, trying to convince the judge that he was sure that the fake threats (that he sent) were sent by me because when he clicked on the threats they led to my profile with our past messages.

13. As I kept pressing to get the threats investigated, Cristina Yakimowsky was getting nervous because Kearney made her "an

accomplice once again." (Exhibit A 12) Kearney said there was nothing to worry about because "I'm the one who did it" (Exhibit A 13)

14. Cristina Yakimowsky provided evidence that Kearney conspired to frame me for the fake threats, (Exhibit A) and she "honestly" told the police that she shared the evidence because she did not like Kearney hurting people. (Exhibit C pg. 3 at 2)

15. On January 15th, 2022, Kearney told his followers that he found out someone was leaking messages from his group chat, and he threatened and extorted Cristina Yakimowsky on Facebook. The video has been deleted, but I have it recorded. In the video Kearney stated;

a. "I hope she is scared because she should be, cause did you forget who the f*** I am, and what the f*** I could do? Did you Hun? Did you? Are you shiting your pants yet? Because you should be. What on earth would make you think, because you knew I was going to find out, when the screenshots came out and they're from your perspective..." He was talking about the screenshots in Defendant Katherine Peter's blog that has screenshots from the same conversation as Exhibit A but redacted.

https://www.massholereport.com/2022/01/09/turtleboy-lies-about-hacking-to-cover-up-his-own-misdeeds/

b. "The other people I that I have gone to war with they have nothing to lose, you have a lot to lose, you own a business... you live in a $600,000 house in Oxbridge, you have a fiancé who does not know that we talk. He is not going to like to see the messages..."

c. "I am going to still give you a chance to get out of this, you can call me whenever you want, if you don't, February 17th I will be there at your court date."

16 On January 20th, 2022, Kearney punished Cristina Yakimowsky by proving he conspired with her on Facebook to commit witness intimidation for her court case. (Exhibit B)

17. Cristina Yakimowsky told the Holden police she is scared because she shared messages from the #BlogDat group. (Exhibit C pg. 3 at 2)

18. Laura Hakes, Cristina Yakimowsky, and I believe Kearney confirmed to the Holden police that the screenshots from Exhibit A are genuine. (Exhibit C pg. 3 at 1-3) Laura told a police officer she is getting threats

(Exhibit C pg. 4) because of her leaked messages in screenshots Exhibit A9-13.

19. Kearney lied to an officer claiming that he had never sent specific pictures and information to anyone, (Exhibit C 2 and Exhibit C 5 at 1&4) when he had in fact shared the information in the #BlogDat group. The officer decided it was reasonable for Kearney to lie to him about who had access to the pictures, as Kearney trusted his "inner circle." (Exhibit C pg. 3 at 1 & pg. 3 at 3)

20 On February 17th, 2022, Kearney, had a live show on YouTube and he;

a. claimed that Cristina Yakimowsky's lawyer was expecting a continuance without a finding, but because he was there the prosecutors asked for jail time.

b. said, "if you're listening Chrissy right now, and I'm sure you are, I'm sure you got your puppies in here and they're listening. What were you thinking? **Why didn't you just wait?** If you wanted to burn me like this, why didn't you just wait like three months two months? You couldn't wait **until after the God damn trial**? I mean, and then whatever, **then I wouldn't be able to**

turn you in and rat on you and stuff like that. You did it right before the court. Is this the stupidest ******* decision a human being has ever made in their life? What were you thinking? Like I'm a, I've told, **everybody knows that I am a vindicative c*****,** everybody knows that.

c. Kearney discussed putting Cristina Yakimowsky's boyfriend's phone number on his public shaming blog, after several followers talked Kearney out of it, Kearney said "I wasn't really going to put his number up there, **I just wanted her to think I would**."

Kearney's Conspiracy Facts

21 Katherine Peter conspired with Kearney by allowing him to publish several harassing articles intimidating me in her name on the days leading up to court hearings. (R.A. 10 at 40-41; 98 at 125) She could provide intricate details of the conspiracy if she is protected. "[H]earsay statements of co-conspirators may constitute a part of the evidentiary fabric from which a threshold conspiracy finding is made — individual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it." Earle v. Benoit, 850 F.2d 836, 843 (1st Cir. 1988)

22 Aidan Kearney has trained his followers to use virtual private networks and fake names on Facebook and Google to hide their identity when harassing his targets. (R.A. 89 at 77) "An illustration provided in the Restatement section 876(b) suggests that a defendant who specifically advises another party to commit conduct constituting a particular tort may be subject to liability under a substantial assistance theory even if he is unaware of whether the tort was accomplished." Taylor v. American Chemistry Council, 576 F.3d 16, 36 (1st Cir. 2009)

23. Aidan Kearney sent pictures and recordings he took during one of our court hearings to a woman in Illinois named Michelle Olson and conspired by asking her to post them on Facebook so that he could use them without the pictures being traced back to him. (R.A. 33 at 8; 40-43)

24. "Aidan Kearney, and several currently unknown parties conspired using secret groups on Facebook, (Like Exhibit A) and or Discord. (R.A 89 at 74; R.A. 125) Exhibit G of the SAC is a screen shot of Aidan Kearney using a secret group on Facebook, "The Big 8" to say he didn't care if his blog led to the death of me or my witnesses because our participation in court hearings caused him "psychological effects."

25. Kearney threatened my roommate (R.A. 13 at 54) and used his blog to harass the first person willing to be my witness. (R.A. 33-35)

Kearney also threatened to harass anyone that hired me. (R.A. 102 at 157)

26. On October 29th 2020, Aidan Kearney attacked the credibility of potential witnesses Michelle Olson, Amanda Sawyer, and Michael Gaffney using YouTube [Google,] (R.A. 32-35) On or about November 12th 2020, Aidan Kearney said he was done playing nice, and in a threatening tone he said that if you sue him, he will burn your family to the ground.

27. In February 2021, the Defendants filed motions to dismiss, I made note in my oppositions that the impairment was preventing me from presenting my best argument. (R.A. 55)

28. I filed a motion pursuant to Local Rule 83, to limit extrajudicial statements by parties. In the affidavit I showed how Aidan Kearney consistently uses social media to harass lawyers that take cases against him, (R.A. 71-73 at 7-13,16)

29. On, December 8th 2021, Kearney explained that he would never be able to have a job outside of Turtleboy as his victims would do to him what Turtleboy did to them, and harass any company that hired him.

30. On November 7th 2021 Kearney said, "People don't like victims, they like winners. They like people who punch the cancel mob in the face instead of playing defensive. What your fans want is for you to sink to your enemy's level. That's the Turtleboy philosophy at least. Principles get you nowhere against these people they want to make you destitute and harm your families and for that they must be destroyed, nothing is off limits. Find out everything about them. Learn what their vulnerabilities are. Attack that. Don't even go after them **go after their employers, friends, and people they love.** Those unrelated parties won't want to deal with it and will begin to pressure them to stop ruin their lives as best as you can and make them regret the day, they ever thought it was a good idea to poke you." https://tbdailynews.com/dave-portnoy-finally-fires-back-atbusiness-insider-for-hit-piece-smearing-him-as-sex-predator-momfiles-police-report-after-daughter-coerces-sister-into-sleeping-withhim/

31. During an interview on December 20th, 2021, Aidan Kearney admitted that he recently filed for a malicious harassment order (hearing was in September 2021) against party and primary witness of this case, Katherine Peter, "just to f*** with her." Date will be listed when ascertained.

32. All of Kearney's ex-employees can testify they conspired with Kearney to obstruct my cases, and they have all either went into hiding after quitting or after they quit they publicly claimed Kearney is dangerously mentally unstable.

Kearney's State Action facts in Second Amended Complaint.

33. The police have refused to protect me according to the standing laws. My witnesses were silenced, the courts were impotent, the laws were annulled, the real criminals went free, while I exhausted all available remedies for redress in vain. (R.A. 77 SAC at 1)

34. Aidan Kearney sent and received *emails* discussing the criminal allegations against me and or complaints against him with multiple state agents and or police officers. SAC 15

35. Aidan Kearney has bragged while being interviewed that he has police and state agents in every department across Massachusetts that feed him information. Aidan Kearney has also bragged on social media and in his book "I am Turtleboy," that police send him information that they do not send to the traditional media. SAC 16

36. Aidan Kearney wrote in his book that being supported and followed by several police departments including Boston has been a big help to him growing his audience and reach. SAC 17

37. Aidan Kearney routinely harasses victims of police corruption on his "weaponized" social media account's and portrays the victims as culprits. SAC 18

38. Aidan Kearney has bragged about getting police officers to bring criminal charges against multiple citizens. Including but not limited to Lorrayna Calle and Katherine Peter. SAC 19

39. Police officers have routinely refused to hold Aidan Kearney accountable for crimes. Mass GL 268 13b, is one example where Aidan Kearney bragged that he not only had intent to cause emotional and financial harm to punish for participation in court hearings, but that he

took pleasure in seeing me petrified of him, and he celebrated that the blogs published before court hearings "destroyed" me, and would prevent me from getting a job. Springfield police, East Longmeadow police, Mass. State Police, and the Mass. Attorney General's office, all refused to hold him accountable. SAC 20

40. On December 8th, 2019 Aidan Kearney stated that if I didn't drop the criminal complaint against him that he would coordinate with the Hampden County DA's office to reopen the criminal case against me that was dismissed. SAC 21

41. A Springfield district court clerk cited outdated elements of Mass GL 268 13b when denying probable cause for Aidan Kearney. I filed a consolidated motion for a judge to redetermine both criminal complaints, it was denied by Hon. John M. Payne. I filed a motion for an explanatory memorandum, asked that the court at least cite which element he thought I failed to satisfy. Hon. John M. Payne denied that motion too, even though Aidan Kearney regularly brags that he was successful at causing emotional and financial damage. Judge Jane Mulqueen also prevented me from listing death threats, and ignored the ones listed in my affidavits. SAC 22

42. Current and former police officers have harassed and intimidated me on Turtleboy's Facebook and YouTube social media accounts and used Turtleboy's slogan "don't poke the turtle" Sac 23

"For the reasons set forth above, and reasons currently unknown the Defendants should be considered as acting under the color of the law as the Defendants have received significant support/encouragement both overtly and covertly, and the state has willingly accepted the benefits of the Defendants' schemes, and the State has intentionally tolerated the illegal conduct." SAC 25

New State Action Facts

These facts have been recently presented to and rejected by the district court without explanation. An injunction is the only way they can be preserved, as I do not have the requisite mental health to file any more filings in any court that has approved of the threats to rape and murder my daughter, or the extortion and threats directed at those that tried to help expose the conspiracy.

43. Kearney successfully used Facebook to search peoples' information using their license plate number on April 16th 2019, May 17th 2020, January 8th, 2021, and November 15th 2021.

44. On or about December 7th 2021, Kearney estimated that about 40% of people in Massachusetts know who he is, but he estimated that 99% of police and 90% of court clerks support him.

X. LEGAL ARGUMENT

Legal Standard

I argue, that before this court even considers the traditional legal standard for granting an injunction, that this court should decide if failing to grant the injunction would violate my constitutional rights. All courts are bound by the Constitution, including this one. Marbury v. Madison, 5 U.S. 137, 180 (1803) "No court should condone the unconstitutional and [~~possibly~~] criminal behavior of those who planned and executed" this obstruction scheme. United States v. Payner, 447 U.S. 727, 733 (1980)

The normal factors to consider are, (1) whether the [injunction] applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent [an injunction]; (3) whether issuance of the [injunction] will substantially

injure the other parties interested in the proceeding; and (4) where the public interest lies. Hilton v. Braunskill, 481 U.S. 770, 776 (1987)

My witnesses and I have a right to protection in Federal courts

Section 1985(2) (clause i) grants parties and prospective witnesses a substantive federal right to be free of conspiracies to deter or retaliate against them for their testimony or attendance at federal court proceedings. "Protection of the processes of the federal courts was an essential component of Congress' solution to disorder and anarchy in the Southern States." Kush v. Rutledge, 460 U.S. 719, 727 (1983) see Sen Edmunds Cong. Globe, 42d Cong., 1st Sess., 567 (1871)

I also have a Ninth Amendment and or Fourteenth Amendment right to protection in the courts. The Massachusetts constitution says that this specific right was already included in the Massachusetts Constitution, even though it had not yet been specifically mentioned. "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right

of access to and *protection in courts of justice...*; Mass Const. Article XLVIII. II sec 2 Because this right was included by implication in the Mass. Constitution, its safe to say it was one of the obvious rights that "were retained by the people" that are protected by the Ninth Amendment.

"The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta. It is the concern not merely of the immediate litigants. Its assurance is everyone's concern, and it is protected by the liberty guaranteed by the Fourteenth Amendment. That is why this Court has outlawed mob domination of a courtroom, mental coercion of a [Plaintiff and his witnesses"] Bridges v. California, 314 U.S. 252, 282 (1941) citations omitted. "The dependence of society upon an unswerved judiciary is such a commonplace in the history of freedom that the means by which it is maintained are too frequently taken for granted without heed to the conditions which alone make it possible. The role of courts of justice in our society has been the theme of statesmen and historians and constitution makers. It is perhaps best expressed in the Massachusetts Declaration of Rights: 'It is essential to the preservation of the rights of every individual, his life, liberty,

property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.'" Id at 283

Kearney admitted on January 20th 2022 that he intentionally uses his blog to intimidate people before court hearings, as he has consistently done to me. (RA 10 at 40-41)

I should succeed on the merits

Because both dismissals were sua sponte, I only need a small chance of success against a party in default to win the appeal.

The First Circuit was supposed to "uphold a sua sponte order of dismissal only if the allegations contained in the complaint, taken in the light most favorable to the plaintiff, are patently meritless and beyond all hope of redemption." Gonzalez-Gonzalez v. United States, 257 F.3d 31, 37 (1st Cir. 2001) If this court thinks a lawyer might be able to save the complaint, or that there may be a hint of state action, or that Kearney may have conspired like he did in (Exhibit A), or that "Social Justice

Warrior" could be a class under 1985, or that a class is not required for the first part of 1985(2), then this court should not affirm.

Kearney did not defend the Lower court's sua sponte decision for my 59e motion, and he did not file an Appellee brief, and Kearney never opposed an injunction in either court. "Where the facts are not in dispute an appellate court is not bound by the trial court's finding of ultimate fact or conclusions of law." Teamsters, Chauffeurs, L.U. 524 v. Billington, 402 F.2d 510, 512 (9th Cir. 1968) "[B]ecause there were different claims against [Kearney and the other] defendants, based on different alleged acts and omissions, different determinations as to either liability or damages would not necessarily be inconsistent with one another." Brockton Sav. B. v. Peat, Marwick, Mitchell, 771 F.2d 5, 13 (1st Cir. 1985) (See generally, 6 J. Moore, W. Taggart J. Wicker, Moore's Federal Practice ¶ 55.06, at 55-41-42 (1985)) Applying "the same analysis" to a defaulted Defendant as the court used with non-defaulted Defendants, has no support in law. See Libertad v. Sanchez, 215 F.3d 206, 207-08 (1st Cir. 2000) see also U.S. v. Rogers, 121 F.3d 12, 16 (1st Cir. 1997) ("A not guilty verdict against one co-conspirator is not the equivalent of a finding that the evidence was insufficient to sustain the conspiracy conviction of

a second co-conspirator."); Instituto Nacional De Comercializacion Agricola v. Continental Illinois National Bank & Trust Co., 858 F.2d 1264, 1271 (7th Cir. 1988) ("Any argument by Indeca regarding Bell's appeal will not figure into our decision.")

The First Circuit erred by sua sponte raising waived defenses after briefing was closed. Breaking Local Rule 45(b)

The First Circuit did not explain why it broke its own Local rule. "When a cause is in default as to the filing of the brief for appellee or respondent, the cause **must** be assigned to the next list and the appellee will not be heard at oral argument except by leave of the Court." 1st Circuit Local Rule 45(b) "Those rules have the force of law... Even where a rule is amended based on immediate need, however, the issuing court must "promptly thereafter afford ... notice and opportunity for comment." Hollingsworth v. Perry, 558 U.S. 183, 191 (2010)

The First Circuit normally considers "an appeal solely on the brief of the appellant when the appellee failed to file a brief." Casco Indem. v. R.I. Interlocal Risk Mgt., 113 F.3d 2, 3 (1st Cir. 1997) see also Thompson v. Barr, 959 F.3d 476, 490 n.11 (1st Cir. 2020) "We agree with the position

of other circuits that the courts should "decide the appeal on the appellant's brief alone when the appellee fails to file a brief."" Schmidt v. Gray, 399 F. App'x 925, 926 n.2 (5th Cir. 2010) The Fourth Circuit the same, but they will in rare occasions allow an Appellee to rest their argument on the "district court's well founded rationale." United States v. Cloud, 994 F.3d 233, 245 n.2 (4th Cir. 2021) However, that at least allows the Appellant a chance to respond before judgment. The 7th Circuit considers the arguments in the Lower Court's decision waived wherever the Appellee fails "to defend the district court's decision." Miller v. Civil City of South Bend, 904 F.2d 1081, 1103 (7th Cir. 1990)

"The Courts' general refusal to consider arguments not raised by the parties, for example, is founded in part on the need to ensure that each party has fair notice of the arguments to which he must respond." Office of Personnel Management v. Richmond, 496 U.S. 414, 441 (1990) "Mindful of our role as a neutral arbiter, this Court typically does not 'venture beyond the confines of the case on appeal to address arguments the parties have deemed unworthy of orderly mention.'" Manning v. Caldwell, 930 F.3d 264, 271 (4th Cir. 2019) "[A] litigant has an obligation to spell out its arguments squarely and distinctly, or else forever hold its

peace." Fernández-Salicrup v. Figueroa-Sancha, 790 F.3d 312, 327 (1st Cir. 2015) "[C]ourts look to litigants' and their attorneys' words and actions as objective manifestations..." Hamer v. Neighborhood Hous. Servs. of Chi. , 897 F.3d 835, 840 (7th Cir. 2018) "When a party persistently sleeps upon its rights, waiver almost inevitably results." Bennett v. City of Holyoke, 362 F.3d 1, 6 (1st Cir. 2004) "It would be reckless to affirm on a ground that the appellant had never had a chance to address because the appellee had failed to raise it." Frederick v. Marquette Nat. Bank, 911 F.2d 1, 2 (7th Cir. 1990)

"[Filed] briefs should be read liberally to ascertain the issues raised on appeal" Regions Bank v. Legal Outsource PA, 936 F.3d 1184, 1200 (11th Cir. 2019) Kearney never argued that misconduct was an issue not properly preserved, and he would not be able to after briefing was closed. "[Invoking] such defenses at the eleventh hour, without excuse and without adequate notice to [me is unfair."] Davignon v. Clemmey, 322 F.3d 1, 16 (1st Cir. 2003) E.g. Oklahoma City v. Tuttle, 471 U.S. 808, 815 (1985) This court should not sua sponte raise a waived defense to avoid the merits. "our precedents often recognize an exception to waiver rules — namely, when a reviewing court decides the merits of an issue even

though a procedural default relieved it of the duty to do so" Thomas v. Arn, 474 U.S. 140, 157 (1985) Had Kearney argued misconduct was not properly preserved, I could have noted misconduct was argued in the SAC, see OB at 40, and I could have argued that misconduct is not an argument that should be waivable in this context "it is contradictory to argue that a [Appellant] may be incompetent, (with crippling adjustment disorder) and yet knowingly or intelligently `waive' his right[s]" United States v. Figueroa-González, 621 F.3d 44, 47 n.3 (1st Cir. 2010) "[B]ecause [Kearney] does not advocate for plain error review" the court should not assume any issues related to him were unpreserved. Hoolahan v. IBC Advanced Alloys Corp., 947 F.3d 101, 115 (1st Cir. 2020) Besides, "courts should endeavor, within reasonable limits, to guard against the loss of pro se claims due to technical defects." Rodi v. Southern New England School of Law, 389 F.3d 5, 20 (1st Cir. 2004)

"Appellees must know that they risk forfeiture if they fail to respond to the appellants' properly-presented arguments. If we always undertook a complete review of the appellant's argument when the appellee had declined to respond, we would dull appellees' incentives to participate in the process. Modesty about our own abilities also counsels against

reaching issues that the appellee has failed to brief: our capacity to err is higher when deciding issues without the benefit of argument from both sides. Finally, an appellee's failure to address an issue conspicuously presented in the appellant's brief might well reflect a conscious choice, and we should not lightly wade into issues a party has voluntarily chosen to concede." W.Va. Coal Workers' Pneumoconiosis Fund v. Bell, No. 18-1317, at *22 (4th Cir. Aug. 6, 2019)

Politically motivated conspiracies

The Supreme court implied that with more "evidence of congressional intention", they would allow classes not racially based. Carpenters v. Scott, 463 U.S. 825, 836-37 (1983) Social Justice Warrior is a more specific class than basic political affiliation. However, the Sixth Circuit has since reaffirmed that animus based on political affiliation is entitled to protection under § 1985(3). See Conklin v. Lovely, 834 F.2d 543, 549 (6th Cir. 1987) I listed numerous examples of intent to include political discrimination in the Globe, (OB 42-47) most notably 1) Shellabarger said he modeled parts of the KKK act off of the 1866 civil rights act, "except that the deprivation under color of State law must,

under the [1866] act, have been on account of race, color, or former slavery." 42nd Globe Appendix at 68 (March 28 1871) He would have used the same words as the 1866 Act if he wanted to include a requirement of race. 2) Mr Barry of the house stated that the Klu Klux divided their targets into three classes, and two of them are political. (Supplementary Record Appendix "SRA" at 6) (OB 45) 3) Mr. Williams of the house listed the names of thirty-one white people who were attacked or killed for supporting the Republican party. (SRA 2-3) (OB 46) 4) Mr. Stevenson of the House listed the same three classes as Barry, and detailed numerous incidents in the reports of political violence, Id. 283-299 including an incident where Sheriff a judge were killed because they were Republicans, and an old black man was killed because he was a "radical." (Radical at the time seemingly meant the same as what Kearney calls a "social justice warrior.") OB at 46 (SRA at 7)

The Court held my pro se brief to an unattainable standard.

The court decided after briefing was closed that my 55-page Appellate brief citing over 80 cases, that I spent over 1,000 hours working on, was too perfunctory to warrant review. Notably, if any court granted any of

the effectively unopposed injunctions, a lawyer could have written a more professional brief. The panel did not identify the offending arguments, making it difficult to respond to. The lower court normally considers arguments with far less support. see United States v. Gray, 780 F.3d 458, 464 (1st Cir. 2015) (finding that argument not waived where defendant cited only one case but "offered a short but on-point argument..." and "further developed her argument in her reply brief, and during oral argument") Regardless, a document filed pro se is 'to be liberally construed,'" Erickson v. Pardus, 551 U.S. 89, 94 (2007) The panels reliance on Zannino is misplaced, I cited case law for every legal theory, unlike "in a cursory reference in his appellate brief, Zannino [who was represented by 2 attorneys] [sought] to 'adopt all of the arguments made on behalf of co-defendants'" U.S. v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) Ironically the Lower courts' have been sua sponte adopting all of Kearney's co-defendants' arguments as Kearney's.

Dismissal with prejudice is a clear abuse of discretion.

It is impossible that the District court and the First circuit believe Kearney has never conspired given all the evidence. Kearney and his

inner circle conspired to obstruct the First Circuit appeal. (A3 -A8) (A13) When discussing my motion for a subpoena Kearney said, "think of all the s*** they would have on me if they had access" A 13

"Indeed, this Court has suggested that a trial court might abuse its discretion by dismissing an IFP suit with prejudice if "frivolous factual allegations [can] be remedied through more specific pleading." Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1726 (2020) quoting Denton v. Hernandez , 504 U.S. 25, 34, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992)

"[I]t will often be difficult for a plaintiff to plead with specificity when the facts that would support her claim are solely in the possession of a defendant, we held in New England Data Services, Inc. v. Becher,829 F.2d 286 (1st Cir. 1987), that a court faced with an insufficiently specific claim may permit limited discovery in order to give a plaintiff an opportunity to develop the claim and amend the complaint. Cordero-Hernandez v. Hernandez-Ballesteros, 449 F.3d 240, 244 (1st Cir. 2006)

State Action

"It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling."

Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974) Regardless, it is improper to deny state action at this stage, "This inquiry is typically factbound." Jarvis v. Vill. Gun Shop, Inc., 805 F.3d 1, 8 (1st Cir. 2015) (OB 15) but it can properly be the subject of summary judgment." Rodriguez-Garcia v. Davila, 904 F.2d 90, 94 (1st Cir. 1990) see also Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288 (2001) ("necessarily fact-bound inquiry")

State Joint Action

"[A]n otherwise private person acts "under color of" state law when engaged in a conspiracy with state officials to deprive another of federal rights," Tower v. Glover, 467 U.S. 914 (1984) "The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful. Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983." Adickes v. Kress Co., 398 U.S. 144, 152 (1970) "In the present case, the participation by law enforcement officers, as alleged in the

indictment, is clearly state action, as we have discussed, and it is therefore within the scope of the Fourteenth Amendment." United States v. Price, 383 U.S. 787, 799-800 (1966) Fact 34 (R.A. 81 at 23) Fact 42 (R.A. 101 at 145) see also (R.A. 80 at 15) "unlike statements by media commentators or even a single trial witness, statements by counsel for the parties bears an imprimatur of official and informed opinion that statements by others do not." United States v. Bulger, Crim. Action No. 99-10371-DJC, at *10 (D. Mass. July 1, 2013) Comments by police and state agents have greater impact. Dr. MSB is the vet that was contracted by the state to do a necropsy on my dog. Aidan Kearney alleges that she was the first person to contact him about my story. (SAC 146) Contracted state agents hold just as much weight for state action as full-time state employees. E.g. West v. Atkins, 487 U.S. 42, 56 (1988) Aidan Kearney's extra friendly relationship with the police clerks, and the District Attorney should add weight for state action. Eg. Wagenmann v. Adams, 829 F.2d 196, 20910 (1st Cir. 1987) see Fact 40 and 44.

Compulsion

"[A] private party is fairly characterized as a state actor when the state...has provided such significant encouragement, either overt or covert, that the challenged conduct must in law be deemed to be that of the State." Estades-Negroni v. CPC Hospital San Juan Capestrano, 412 F.3d 1, 5 (1st Cir. 2005) quoting Blum v. Yaretsky, 457 U.S. 991, 1004 (1982) Police departments give significant encouragement to the scheme. Kearney gets access to police officer computers See Fact 35 (R.A. 80 at 16) and access to registry of motors vehicle information. Fact 43) The rationing of State property and interdependence adds weight to State action, E.g. Fortin v. Darlington Little League, Inc., 514 F.2d 344, 347 (1st Cir. 1975) see also Facts 35, 38-42.

State inaction.

Kearney bragged that he got sexual pleasure causing me financial and emotional damage and made it clear to his followers that I was punished for my court participation. The courts knew Kearney's conduct was criminal, so they consistently dismissed the unappealable orders without comment. (Facts 33, 39 and 41) (R.A. 80-81 at 20 & 22) "[T]he action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth

Amendment" Shelley v. Kraemer, 334 U.S. 1, 14 (1948) "Immunity does not change the character of the judge's action or that of his co-conspirators." Dennis v. Sparks, 449 U.S. 24, 28 (1980) In many cases there is "no quarrel with the state laws on the books, instead, the problem is the way those laws are or are not implemented by state officials." Zinermon v. Burch, 494 U.S. 113, 124-25 (1990) The Defendants should be considered as acting under the color of the law as... the State has intentionally tolerated the illegal conduct." (R.A 81 SAC at 25) "Denying includes inaction as well as action. And denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection. These views are fully consonant with this Court's recognition that state conduct which might be described as 'inaction' can nevertheless constitute responsible 'state action' within the meaning of the Fourteenth Amendment." Bell v. Maryland, 378 U.S. 226, 309-11 (1964) One of the reasons Congress passed the Klu Klux Klan act was "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice." Zinermon v. Burch, 494 U.S. 113, 124 (1990)

Supplant state action

"There appear to be three possible forms for a state action limitation on § 1985(3) — that there must be action under color of state law, that there must be interference with or influence upon state authorities, or that there must be a private conspiracy so massive and effective that it supplants those authorities and thus satisfies the state action requirement." Griffin v. Breckenridge, 403 U.S. 88, 98 (1971) see also Collins v. Hardyman, 341 U.S. 651, 662 (1951) The third form of State action has not yet had its pleading standards defined, although I argue that my complaint is satisfactory for this form of state action, as it alleges an "effective" conspiracy involving "hundreds" of citizens and police in every police department in Massachusetts. Facts 33 43 and 44 (R.A. 77 at 1) When the State's conduct is thus arrogated, state action is clearly implicated, and rights protected only against official infringement are likewise implicated." Libertad v. Welch, 53 F.3d 428, 450 (1st Cir. 1995)

I will be irreparably injured absent immediate relief.

I am not eating proper or getting decent sleep because of Kearney's crimes. I have an extremely difficult time trying to read the Lower court's decisions, or the Tech Defendants briefs because they have become a

source of trauma. There is no medicine the doctor can provide for threats and extortion. (Facts 15C and 20)

Kearney makes it too dangerous to have a drivers license because he has promised to attack anyone that lets me live with them, and he has access to both the Registry of motor vehicles data and police computers.

Additionally, currently there is five witnesses that with an injunction they would be able to testify they conspired with Kearney to obstruct justice in my cases. These witnesses are under stress as well.

An injunction would not harm Aidan Kearney

Kearney has no interest in the injunction as my Ninth Amendment right to protection in the court nullifies Kearney's right to free speech. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Ninth Amendment

Additionally, Kearney fraudulently cancelled his businesses that legally should still own the "weaponized public shaming" accounts. Kearney has also stated that my articles do not make him money.

Safety of the Public

On October 5th 2021, Kearney said that he welcomed being called a domestic terrorist, "I am definitely a threat to the establishment, and I'm not going anywhere." The message Kearney sends the public is if you join the far-right, and you defend police, you can commit unlimited crimes with impunity.

"For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered." United States v. Rabinowich, 238 U.S. 78, 35 S.Ct. 682, 59 L.Ed. 1211 (1915)

Respectfully submitted by Rian Waters 199 Allen st. E. Longmeadow MA. 01028