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FEB 13 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. GREGORY LEE RODVELT, Defendant - Appellant.	No. 23-4182 D.C. No. 1:19-cr-00454-MC-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, Chief District Judge, Presiding

Submitted February 3, 2025**
Portland, Oregon

Before: BEA, KOH, and SUNG, Circuit Judges.

Defendant-Appellant Gregory Lee Rodvelt ("Rodvelt") was sentenced to 150-months imprisonment after a jury found him guilty of assaulting a federal officer, in violation of 18 U.S.C. § 111(a)(1), (b), and using and discharging a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i), (iii). Rodvelt appeals the district court's denials of his motions for judgment of acquittal, denial of his motion to dismiss for violation of his speedy trial rights, denial of his motion to dismiss for violation of his Fifth and Sixth Amendment rights, and denial of his motion to suppress. Because the parties are familiar with the facts, we recite them only as necessary to explain our decision. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

1. A district court's ruling on a motion for judgment of acquittal is reviewed de novo. *See United States v. Juv. Female*, 566 F.3d 943, 945 (9th Cir. 2009). On appeal, the reviewing court must "determine whether 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Nevils*, 598 F.3d 1158, 1163-64 (9th Cir. 2010) (en banc) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Under federal law, "[w]hoever … forcibly assaults … any [officer or employee of the United States] while engaged in or on account of the performance of official duties" shall be fined or imprisoned. 18 U.S.C. § 111(a)(1). *See* 18 U.S.C. § 1114(a). "[F]or purposes of 18 U.S.C. § 111, the test of a Government agent's conduct is whether he is acting within the scope of what he is employed to do, as distinguished from engaging in a personal frolic of his own." *Juv. Female*,

566 F.3d at 949-50 (internal quotation marks and alteration omitted). The Ninth Circuit has approved jury instructions stating, "the test for determining whether an officer is engaged in the performance of official duties is whether the officer is acting within the scope of his employment, that is, whether the officer's actions fall within his agency's overall mission, in contrast to engaging in a personal frolic of his own," and "that the question was not whether the officer is abiding by laws and regulations in effect at the time of the incident or whether the officer is performing a function covered by his job description." *United States v. Ornelas*, 906 F.3d 1138, 1149 (9th Cir. 2018) (internal quotation marks and alteration omitted).

Viewing the evidence in the light most favorable to the prosecution, there is sufficient evidence for a rational trier of fact to have found beyond a reasonable doubt that Special Agent Bomb Technician Andrew Sellers ("Agent Sellers") was engaged in official duties, rather than engaged in a personal frolic, at the time he was injured on Rodvelt's property. Several witnesses testified that FBI bomb technicians regularly work with state law enforcement on public safety missions to clear potential hazards. Agent Sellers had previously worked with state law enforcement on such missions on 50-100 occasions. There is no indication that Agent Sellers engaged in a personal frolic when he assisted state law enforcement in clearing Rodvelt's property. The district court correctly denied Rodvelt's motions for judgment of acquittal.

2. A district court's ruling on a motion to dismiss an indictment for Speedy Trial Act ("STA") and Sixth Amendment violations is reviewed de novo. *See United States v. Olsen*, 21 F.4th 1036, 1040 (9th Cir. 2022); *United States v. Myers*, 930 F.3d 1113, 1118 (9th Cir. 2019). The district court's factual findings are reviewed for clear error. *See Myers*, 930 F.3d at 1118.

"Only a federal arrest triggers the running of the thirty day time period set forth in [STA] § 3161(b)." *United States v. Benitez*, 34 F.3d 1489, 1493 (9th Cir. 1994) (internal quotation marks omitted). "Although the law provides that a federal arrest does not occur when no formal federal charges are filed, this rule is not absolute. The [STA] would lose all force if federal criminal authorities could arrange with state authorities to have the state authorities detain a defendant until federal authorities are ready to file criminal charges. For this reason, [STA] time periods may be triggered by state detentions that are merely a ruse to detain the defendant solely for the purpose of bypassing the requirements of the [STA]." *Id.* at 1494. Similarly, the Ninth Circuit has "indicated speedy trial rights under the Sixth Amendment might be so implicated even in a state arrest, if there was evidence of collusion between state and federal authorities." *United States v. Cepeda-Luna*, 989 F.2d 353, 357 (9th Cir. 1993). "The district court's finding that there was no collusion or ruse on the part of the Government" is reviewed for clear error. *United States v. Pena-Carrillo*, 46 F.3d 879, 883 (9th Cir. 1995).

Rodvelt argues that his arrest on September 8, 2018, for violating the conditions of his pretrial release in a separate state case was a ruse. The district court did not clearly err in finding that Rodvelt's September arrest on a state warrant was not a ruse. The district court acknowledged the substantial amount of federal coordination in Rodvelt's arrest. However, the district court found that the state had an independent justification for the warrant, acted on the warrant, and held a bond hearing pursuant to the warrant, irrespective of the federal investigation.

3. A district court's ruling on a motion to dismiss an indictment for Fifth and Sixth Amendment violations is reviewed de novo. *See United States v. Marcucci*, 299 F.3d 1156, 1158 (9th Cir. 2002); *United States v. Miller*, 953 F.3d 1095, 1105 (9th Cir. 2020); *United States v. Danielson*, 325 F.3d 1054, 1066 (9th Cir. 2003). The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall … have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

Rodvelt argues that the indictment should be dismissed because the district court inadvertently disclosed his confidential defense strategy to the government. "[I]mproper interference by the government with the confidential relationship between a criminal defendant and his counsel violates the Sixth Amendment only

if such interference substantially prejudices the defendant." *Danielson*, 325 F.3d at 1069 (internal quotation marks omitted). For cases involving the prosecution obtaining a defendant's trial strategy, the Ninth Circuit employs a two-step analysis. *See id*. at 1071. "First, the defendant must make a prima facie showing of prejudice." *Id*. (internal quotation marks omitted). "It is not enough to establish a prima facie case to show that the government informant was involuntarily present at a meeting and passively received privileged information about trial strategy. Rather … the government informant must have acted affirmatively to intrude into the attorney-client relationship and thereby to obtain the privileged information." *Id*. "Second … once the prima facie case has been established, the burden shifts to the government to show that there has been ... no prejudice to the defendant as a result of these communications." *Id*. (internal quotation marks and alteration omitted). To meet its burden, "the government … must show by a preponderance of that evidence, that all of the evidence it proposes to use, and all of its trial strategy, were derived from legitimate independent sources." *Id*. at 1072 (internal quotation marks and citation omitted).

The district court's accidental disclosure to the prosecution of Rodvelt's motive for setting the rat-trap shotgun device did not violate Rodvelt's Fifth or Sixth Amendment rights. Rodvelt voluntarily gave this ex parte testimony at an evidentiary hearing on his motion to dismiss for speedy trial violations. Rodvelt

fails to show that the Fifth Amendment privilege against self-incrimination applies. Further, Rodvelt fails to show a Sixth Amendment violation because the prosecution did not affirmatively intrude into his attorney-client relationship when it passively received the district court's accidental disclosure. Moreover, Rodvelt cannot show prejudice from the district court's disclosure because Rodvelt's expert disclosure disclosed the same information and thus was a legitimate, independent source for any change in the prosecution's trial preparation or strategy.

4. A district court's ruling on a motion to suppress is reviewed de novo. *See United States v. Washington*, 490 F.3d 765, 769 (9th Cir. 2007). The district court's underlying factual findings are reviewed for clear error. *Id*. The Fifth Amendment requires "that a confession be voluntary to be admitted into evidence." *Dickerson v. United States*, 530 U.S. 428, 433 (2000). "In implementing this bedrock constitutional value, our focus is on whether the defendant's will was overborne by the circumstances surrounding the giving of the confession, an inquiry that takes into consideration the totality of all the surrounding circumstances – *both* the characteristics of the accused *and* the details of the interrogation." *United States v. Preston*, 751 F.3d 1008, 1016 (9th Cir. 2014) (en banc) (internal quotation marks and alterations omitted).

"The government must prove by a preponderance of the evidence that the statement was voluntary." *United States v. Harrison*, 34 F.3d 886, 890 (9th Cir.

1994). "[T]here are *no* circumstances in which law enforcement officers may suggest that a suspect's exercise of the right to remain silent may result in harsher treatment by a court or prosecutor." *Id*. at 891-92.

Looking at the totality of the circumstances, Rodvelt's statement to Special Agent Jay Henze ("Agent Henze") in the afternoon of September 8, 2018, was voluntary. The night before, outside a grocery store, Rodvelt had a non-custodial interview where he was read his *Miranda* rights and made inculpatory admissions. Earlier that day, in the desert, Rodvelt was arrested, read his *Miranda* rights, engaged in a custodial interview, and made further inculpatory comments. After about two hours in a holding cell, Rodvelt voluntarily asked to speak to Agent Henze and made statements about his property.

Twenty minutes later, Rodvelt again asked to speak to Agent Henze. In this conversation, Agent Henze told Rodvelt that Rodvelt would be held accountable if additional people were hurt, and if Rodvelt did not tell Agent Henze, it would come back on Rodvelt. Rodvelt then confessed incriminating information to Agent Henze. Agent Henze's comments in this second conversation are the only source of coercion challenged by Rodvelt on appeal.

Agent Henze's statement did not suggest that Rodvelt may receive harsher treatment by a court or prosecutor by staying silent. *Compare United States v. Tingle*, 658 F.2d 1332, 1334 (9th Cir. 1981) (officer told defendant he would

"inform the prosecutor that she was 'stubborn or hard-headed' if she refused" to cooperate), *Harrison*, 34 F.3d at 890 (agent asked defendant "whether she thought it would be better if the judge were told that she had cooperated or had not cooperated"), *Tobias v. Arteaga*, 996 F.3d 571, 578 (9th Cir. 2021) (officer told juvenile suspect that "when we take the case to court … [i]t's going to look like you're down – you're so down for the hood that you didn't want to speak. So they might throw the book at you."). Under the totality of the circumstances, taking into account both the characteristics of the accused and the details of the interrogation, we agree with the district court that Rodvelt's statement to Agent Henze was voluntary.

AFFIRMED.

From: info@ord.uscourts.gov
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U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered on 5/23/2023 at 2:12 PM PDT and filed on 5/23/2023
Case Name: USA v. Rodvelt
Case Number: 1:19-cr-00454-MC
Filer:
Document Number: 166(No document attached)

Docket Text:
ORDER: Denying [159] Motion to Dismiss as to Gregory Lee Rodvelt (1). A brief opinion and order will follow. The Court has reviewed the Government's Supplemental 404(b) Notice at ECF No. [152] and finds that all of the statements are admissible. Ordered by Judge Michael J. McShane. (plb)

1:19-cr-00454-MC-1 Notice has been electronically mailed to:

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1:19-cr-00454-MC-1 Notice will <u>not</u> be electronically mailed to:

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY LEE RODVELT,

Defendant.

Case No. 1:19-cr-00454-MC

ORDER

MCSHANE, District Judge:

Defendant moves to dismiss this action, arguing a comment made by the Court during the pretrial conference alerted the Government to the Defendant's defense theory. ECF No. 159. Specifically, Defendant points to the Court's statement that: "In prior hearings, Mr. Rodvelt kind of shrugged off the danger of the device at issue as nothing more than a device to deter rats or other vermin. I mean, really, the manual and some of these other items show an interest well beyond, you know, the extermination of pests. . . . If his intent is at issue—you know, the traps being set for instance, for vermin, as he's testified in the past—then past attempts to set similar traps aimed at people would become relevant."

Defendant argued that up to this point, the Government was in the dark as to his alleged defense. Only after these comments, Defendant argues, did the Government move to admit Defendant's previous statements regarding his opposition to shooting animals. ECF No. 159, 7. Defendant argues "The Court's inadvertent disclosure of constitutionally-protected information regarding the theory of defense . . . irremediably tainted the prosecution." ECF No. 159, 7. As noted, Defendant argues the Government "has already taken advantage of the constitutional

violations by altering its presentation of the case . . . by seeking to admit evidence regarding Mr. Rodvelt's attitude toward hunting and animals." ECF No. 159, 7-8.

Defendant provides several cases in support, but none of those cases remotely approach supporting the requested relief sought here. The Court first notes that it, not the Government, made the inadvertent disclosure. The Government here did not act, in any way, innapropriately. Additionally, and likely more importantly, Defendant suffered no prejudice from the Court's statements. The morning after the Court made the statements at issue, Defendant disclosed expert reports, pursuant to Rule 16(b), indicating Defendant specifically requested the traps at issue be tested for animal DNA. ECF No. 162 Ex. 1. Additionally, the Court disagrees that its statements were as prejudicial as alleged. The Court referenced the statements in a discussion regarding 404(b). Any harm or prejudice resulting from the Court's rather ambiguous statements was mitigated through Defendant's own required disclosures the very next day. Defendant's motion to dismiss, ECF No. 159, is DENIED. Additionally, as no Government attorney acted inappropriately or gained any inherent advantage, there is no reason to sequester or wall off any Government attorney.

DATED this 25th day of May, 2023.

/s Michael McShane
Michael J. McShane
United States District Judge

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U.S. District Court

District of Oregon

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Case Name: USA v. Rodvelt
Case Number: 1:19-cr-00454-MC
Filer:
Document Number: 190(No document attached)

Docket Text:
Order as to Gregory Lee Rodvelt: For the same reasons stated on the record in denying Defendant's previous motion for Judgment of Acquittal [174], Defendant's renewed motion for Judgment of Acquittal [188] is DENIED. Motion for Judgment of Acquittal [175] is denied as moot based on the Court's order granting the Government's motion to dismiss charges based on the alleged destructive device. Ordered by Judge Michael J. McShane. (cp)

1:19-cr-00454-MC-1 Notice has been electronically mailed to:

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Sarah Barr sarah.barr@usdoj.gov, CaseView.ECF@usdoj.gov, ethan.bodell@usdoj.gov

1:19-cr-00454-MC-1 Notice will <u>not</u> be electronically mailed to:

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY LEE RODVELT, Defendant.	)	Case No. 1:19-cr-00454-MC May 31, 2023, 9:24 AM

JURY TRIAL DAY 5

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL J. MCSHANE

UNITED STATES DISTRICT COURT JUDGE

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* * *

INDEX

device, and the surplusage in Count 2 as to the allegation that there's a destructive device. The Defense has prepared two written motions. I can email those, right now, to the Court and to the Government. And I can request that they be filed by my office at this time.

THE COURT: Okay.

MR. HUSEBY: And if the Court would give me about 30 seconds, I can accomplish the emailing.

THE COURT: All right. I -- well, I'll reserve ruling, having not seen the written memo.

MR. HUSEBY: And who at the court would you like me to send it to?

THE COURT: Probably David will get it to me.

On the issue of official capacity, I'm denying the motion. I don't want to spend much more time on that. I think, quite frankly, I could instruct the jury as a matter of law that Agent Sellers was acting in his official capacity at the time he was injured. I'll certainly let you attempt to make that argument in front of the jury, but it doesn't strike me as a strong one.

MR. HUSEBY: Your Honor, you know, we have submitted -- we will be submitting written materials on that. And, you know, I do think we are correct on the law, odd as it may seem in this case. And we certainly would object to the Government -- to the Court -- instructing the jurors that the

Government has proved one of the elements in this case as a matter of law.

THE COURT: I said I probably could. I didn't say I would.

MR. HUSEBY: Okay.

THE COURT: I said I would let you, I guess, argue that.

MR. HUSEBY: Okay.

THE COURT: I just don't think it has any legs.

The destructive device issue is more troubling to me. I'll read your memo. You'll see, in the instructions, I am giving a definition of "destructive device." We'll talk more about it. Are we not prepared to make an argument about it now?

MR. HUSEBY: Oh, I'd certainly be prepared to make an argument about it now. I didn't know if the Government wanted to review our pleading or if the Court wanted to review our pleading before we argued. But, certainly, you know, we'd be prepared to argue.

THE COURT: Well, let me ask you this: We're going to come back at 1:30. Do you have some witnesses ready to go?

MR. HUSEBY: Yes.

THE COURT: Okay. And are you going to be able to complete your case this afternoon, do you believe?

MR. HUSEBY: I believe so.

C E R T I F I C A T E

United States of America v. Gregory Lee Rodvelt

Case No. 1:19-cr-00454-MC

Jury Trial Day 5

5/31/2023

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Steppler, RPR, CRR
Official Court Reporter

Signature Date: 7/3/2023

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY LEE RODVELT, Defendant.	Case No. 1:19-cr-00454-MC June 2, 2023, 9:17 AM

JURY TRIAL DAY 6

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MICHAEL J. MCSHANE

UNITED STATES DISTRICT COURT JUDGE

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United States District Courthouse
District of Oregon
405 E. 8th Avenue, Room 2100
Eugene, OR 97401

* * *

that, that...

THE COURT: All right. I think I'll just tell them that the issue of the destructive device is no longer before them for consideration, and that they'll be deciding only Counts 1 and 2.

MR. KIM: That's fine with the Defense, Your Honor. I was concerned that --

THE COURT: Thank you for reminding me, though.

MR. KIM: Well, that doesn't matter. At this point, we're happy with that.

THE COURT: Okay.

Anything else from the Government?

MR. SWEET: Thank you, Your Honor. One thing. The Defense filed a motion regarding Count 1 and the FBI not having legal authority. I understand the Court has ruled on that. But we would move to preclude the Defense from claiming, in closing, that making that argument -- a legal argument -- that the FBI did not have legal authority -- they did not submit statutory authority to you -- that is purely a legal argument that the Court would decide.

It's one thing to say he wasn't acting -- they can argue factual matters. But that legal argument shouldn't be presented to the jury.

THE COURT: Does the Defense want to be heard on that?

MR. HUSEBY: Yes, Your Honor. Agent Gray testified that Congress tells the FBI what it can do. Agent Gray testified that he received -- you know -- thinks he received some training on that at his initial schooling in Quantico. And he was asked if he was aware of any statute that authorized the FBI to get involved in a civil property dispute, and he said he didn't know. And so, you know, I think that's all evidence before the jury. And I think --

THE COURT: There's a difference between jurisdiction and being on the job; right? I mean, Article III defines my jurisdiction and my powers. But if I'm sitting at my desk writing a recommendation letter for a clerk, I'm on the job. That's -- nobody would say I'm off on a frolic, at that point. I'm actually working a computer and doing the stuff that judges sometimes have to do that have nothing to do with their constitutional authority.

And this isn't really any different. Nobody can argue, with a straight face, that the FBI agents here weren't -- weren't working -- weren't on their job.

MR. HUSEBY: I am not --

THE COURT: Official duties is not constitutional duties. There's a difference. And one of -- I forget which witness testified he was mandated to do this work.

MR. HUSEBY: Can I be heard very briefly on that, Your Honor?

THE COURT: Yeah.

MR. HUSEBY: That was Agent Biggs down in Arizona. And he testified that he was mandated to do that. Agent Sellers did not similarly testify. You know, the current Supreme Court is a bit more hostile to the administrative state and the expansion of the administrative state.

You know, I find it to be a curious thing that when we have state law enforcement officers, employed by state agencies, working on a federal task force, they are considered federal officials for purposes of this statute. And, here, we have Agent Sellers essentially working on a state task force. And not faulting Agent Sellers for agreeing to do that, but there's not a federal investigation. The FBI does have statutory authority to help out local law enforcement with certain functions.

And, you know, our contention isn't -- you know -- he's not on the job. We're not saying he's on a personal frolic of his own. But we are saying he's functionally working as a state agent at that point in time. And the reason we have a federal case here is because, you know, you're supposed to have both the federal employee and the federal duties. And we don't think these are federal duties.

THE COURT: Mr. Sweet?

MR. SWEET: Thank you, Your Honor. Your Honor, this is a legal argument. If the Defense had wanted to file a

motion to dismiss this count as a legal matter, that would be one thing. But basically the Defense is asking the jury to make a legal decision without the law or the facts regarding that in front of them.

If Agent Gray happened to testify about a traffic stop, that doesn't mean the Defense can present a motion -- a search and seizure issue to the jury and ask them to chuck the case for that. So just because there was discussion of it by Agent Gray, which the Defense solicited, doesn't raise the legal issue and put it in the domain of the jury. This is -- this would strictly be a legal issue that should have been raised with other ones and decided as a matter of law, not a fact matter for the jury.

THE COURT: I agree. I think it's a legal issue.

Mr. Huseby, I'm going to respectfully disagree with your analysis that this is -- that somehow the FBI agents here were acting outside the scope of their legal duties as their official duties at federal agents. You are making a legal argument for the jury to decide. The Court decides those issues. And if it's being presented to me as a motion for judgment of acquittal on that count, that motion will be denied.

MR. SWEET: Thank you, Your Honor. And so then the Defense is precluded from raising that argument in their closing?

C E R T I F I C A T E

United States of America v. Gregory Lee Rodvelt

Case No. 1:19-cr-00454-MC

Jury Trial Day 6

6/2/2023

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Steppler, RPR, CRR
Official Court Reporter

Signature Date: 7/3/2023

FILED

JUL 9 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. GREGORY LEE RODVELT, Defendant - Appellant.	No. 23-4182 D.C. No. 1:19-cr-00454-MC-1 District of Oregon, Medford ORDER

Before: BEA, KOH, and SUNG, Circuit Judges.

The panel unanimously voted to deny the petition for panel rehearing. Judge Koh and Judge Sung have voted to deny the petition for rehearing en banc. Judge Bea so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the Court has requested a vote on the petition. Fed. R. App. P. 40. The petition for panel rehearing and rehearing en banc (Dkt. 42) is **DENIED**.