

SDNY News Clips

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Public Corruption

Avenatti

Avenatti Argues Litigation Privilege Bars Prosecution on Nike Extortion Charges

NY Law Journal
By Tom McParland
8/19/19

Lawyers for Michael Avenatti on Monday asked a Manhattan federal judge to dismiss a criminal indictment accusing the embattled attorney of waging a multimillion-dollar extortion plot against athletic apparel company Nike Inc., saying their client had been acting in his legitimate capacity as an attorney.

The filing, in the U.S. District Court for the Southern District of New York, continued a multipronged attack from Avenatti's Florida-based attorneys, Scott A. Srebnick and Jose M. Quinon, who last week accused federal prosecutors of carrying out a political witch hunt against their client.

Avenatti, who is best known for his representation of adult-film star Stormy Daniels, was arrested earlier this year on charges that he had threatened to go public with supposedly damaging information if Nike didn't agree to pay his client a \$22.5 million settlement or hire him and an unnamed co-conspirator to conduct an internal investigation of alleged wrongdoing at the company.

On Monday, Avenatti's attorneys said he was trying to settle claims by his client, California basketball coach Gary Franklin Sr., who said he had evidence Nike had funneled money to college basketball recruits in violation of National Collegiate Athletic Association rules. Avenatti's demand, his lawyers argued, was protected under the First Amendment because the information Avenatti threatened to release at a news conference was true and related to Franklin's litigation claims.

"Courts have largely exempted such threats from the extortion statutes as a matter of law because, by its very nature, litigation is inherently threatening and poses a risk of economic loss to all parties," the motion said.

"In light of this well-recognized carve-out for litigation threats, it plainly was acceptable (i.e., not extortion) for Mr. Avenatti to threaten to file a lawsuit against Nike in the public record, exposing the very same misconduct he threatened to first make public in a press conference, if Nike did not satisfy the two components of his settlement demand," the attorneys wrote.

Last week, Avenatti said in a separate filing that his representation of Daniels, who had accused President Donald Trump of engaging in an extramarital affair with her (Trump has repeatedly denied having an affair with the adult entertainer), made him a target of malicious prosecution in the Southern District, and that prosecutors never investigated his claims against Nike.

The U.S. Attorney's Office for the Southern District of New York on Monday declined to comment on the filings. But U.S. Attorney Geoffrey Berman in March said the scheme amounted to an illegal "shakedown" of a public company.

"When lawyers use their law licenses as weapons, as a guise to extort payments for themselves, they are no longer acting as attorneys," he said at the time.

In addition to the alleged extortion plot against Nike, Avenatti is also accused in Manhattan federal court of stealing \$300,000 from Daniels, whose real name is Stephanie Clifford, by diverting two payments she received on a book deal.

Meanwhile, Avenatti also faces charges in the U.S. District Court for the Central District of California, where he is accused of embezzling millions of dollars from other clients. An attorney for Avenatti had asked to have those two cases combined in federal court.

A status conference is set for Thursday afternoon in Avenatti's extortion case.

Avenatti Rips Extortion Charges, Says He Was Doing His Job

Law 360

By Kevin Penton

8/19/19

Embattled attorney Michael Avenatti on Monday urged a New York federal court to toss a criminal indictment that alleges he sought to extort Nike Inc. for millions of dollars, arguing he was simply doing his job as a lawyer representing the interests of his client.

Avenatti argued he was protected by the First Amendment when he threatened Nike with going public with facts about the apparel giant's alleged attempts to make illicit payments to amateur basketball players in violation of NCAA rules, all as part of settlement negotiations for a potential lawsuit by a California youth coach, according to his memorandum accompanying his motion to dismiss.

Avenatti argued that legal precedent establishes that instilling fear of economic injury in a party as part of a threat of litigation is not equivalent to extortion, particularly when there is a factual basis for the threatened suit, as opposed to it being frivolous, according to the memorandum.

"There is a societal danger inherent in criminalizing threats to reputation, or the exploitation of fear, by attorneys pursuing settlements during agreed-upon settlement discussions," Avenatti's memorandum said.

Prosecutors say Avenatti threatened to extort Nike by revealing the misconduct allegations on the eve of its quarterly earnings call if Nike didn't pay his client \$1.5 million and hire Avenatti and another attorney to conduct an internal investigation costing between \$15 million and \$25 million.

Avenatti challenged the government's arguments in his bid to toss the criminal indictment, asserting it doesn't make sense for prosecutors to contend that it was wrong for him to threaten the release of information through a press conference that preceded the lawsuit, but it would not have been wrong for him to file a lawsuit and then release the information, according to Monday's memorandum.

"Where a client has a valid lawsuit that will become public, the merits of an extortion charge cannot turn on the sophistry of whether the lawsuit is followed by the press conference or vice versa," the memorandum said.

Avenatti last week also urged the court to toss the charges, arguing that his client, Gary Franklin Sr. — a former coach for a youth basketball team in California sponsored by Nike's Elite Youth Basketball program — had a valid legal claim against Nike and that the company was in need of an internal investigation.

The Nike extortion case is just one of three federal criminal cases Avenatti is facing. In one of those cases, Los Angeles federal prosecutors have charged him with embezzling millions from five separate clients, tax evasion and obstruction, bank fraud, and bankruptcy fraud.

Counsel for the parties could not be reached for comment on Monday.

Avenatti is represented by Scott A. Srebnick and Jose M. Quinon.

The federal government is represented by [REDACTED]
of the U.S. Attorney's Office for the Southern District of New York.

The case is U.S. v. Avenatti, case number 1:19-cr-00373, in the U.S. District Court for the Southern District of New York.

Epstein

Prosecutors move to drop Jeffrey Epstein's charges, but vow to keep investigating

CNBC

By Kevin Breuninger

8/19/19

Jeffrey Epstein may be dead, but the feds aren't done investigating.

Geoffrey Berman, the U.S. attorney for the Southern District of New York, filed a motion Monday asking a judge to quash the charges in Epstein's sex trafficking case in that federal court.

Epstein hanged himself in suicide in his Manhattan jail cell on Aug. 10, according to his autopsy report. With no one left in the case to prosecute, the federal prosecutors must request that the indictment against Epstein be dismissed by Judge Richard Berman.

But the U.S. attorney assured in a letter to the judge that his office "remains committed to doing its utmost to stand up for the victims who have already come forward, as well as for the many others who have yet to do so."

That letter echoes Attorney General William Barr's vow last week to launch new investigations in the wake of Epstein's death.

Barr, whose Department of Justice oversees the Bureau of Prisons, said that the FBI and the DOJ's internal watchdog would investigate the jail where Epstein died. "We will get to the bottom of what happened," Barr said last week, "and there will be accountability."

His prophecy, at least in part, has already come to pass: The prison warden for the Metropolitan Correctional Center at the time of the suicide was reassigned, and on Monday Barr ordered the removal of the acting director of the Bureau of Prisons, Hugh Hurwitz.

Barr had also promised "that this case will continue on against anyone who was complicit with Epstein."

"Any co-conspirators should not rest easy," Barr said. "The victims deserve justice and they will get it."

That same day, FBI agents and New York Police officers were seen raiding Epstein's private island in the U.S. Virgin Islands. They seized Epstein's computers, drone footage showed.

Epstein, a super-rich financier and former friend of Presidents Donald Trump and Bill Clinton, was accused by New York federal prosecutors of abusing dozens of underage girls in his mansions in New York City and Palm Beach, Florida, between 2002 and 2005.

His will, signed two days before his suicide, showed that Epstein was worth nearly \$580 million, The New York Post reported Monday. His money was transferred to a trust, the Post reported.

He had help carrying out this operation, court documents claim.

In lawsuits, some alleged victims have accused people who apparently worked for Epstein of scouting and grooming them before introducing them to Epstein, who would eventually sexually abuse them.

One alleged victim, [REDACTED] describes British socialite Ghislaine Maxwell as Epstein's co-conspirator, and claims she "participated with and assisted Epstein in maintaining and protecting his sex trafficking ring, ensuring that approximately three girls a day were made available to him for his sexual pleasure."

[REDACTED] now [REDACTED] alleges Epstein sexually abused her when she was 14 years old and raped her when she was 15.

Maxwell's whereabouts have largely been a mystery since Epstein's death. The Daily Mail reported that Maxwell had recently been seen at tech CEO Scott Borgerson's Massachusetts mansion — which he denied.

If she remains out of sight, Maxwell, 57, could avoid potential civil liability and prosecution related to her relationship with Epstein.

Two more alleged victims, who did not reveal their names in court documents, filed a \$100 million lawsuit against Epstein's estate and a number of his associates.

Epstein had a mile-long contacts list that included some of the most powerful figures on the planet. He had met with Bill Gates and worked with titans of business.

And some of Epstein's former associates have been accused of sexual misconduct by some alleged victims.

In a slew of recently unsealed court documents, a woman named [REDACTED] said Maxwell directed her as a teenager to have sex with former Senate Majority Leader George Mitchell, ex-New Mexico Gov. Bill Richardson, late MIT scientist Marvin Minsky, modeling company founder Jean-Luc Brunel, the owner of a large hotel chain, and another prince. Mitchell and Richardson both called the allegations "false."

Ex-Bill Gates adviser ‘shocked’ to be named one of Jeffrey Epstein’s executors

NY Post

By Lia Eustachewich

8/20/19

Jeffrey Epstein named Bill Gates’ former science adviser as one of three executors of his \$578 million estate — though the man said he was “shocked” to learn of the news.

Boris Nikolic, a biotech venture capitalist, distanced himself from his inclusion in Epstein’s will, filed Monday in St. Thomas.

“I was not consulted in these matters and I have no intent to fulfill these duties, whatsoever,” Nikolic told Bloomberg in a statement.

Nikolic is listed as a “successor executor” of Epstein’s estate should the executors, longtime Epstein employees Darren Indyke and ██████████ be unable to fulfill their roles.

The extent of Epstein and Nikolic’s relationship isn’t clear, but a source told Bloomberg that Nikolic funded more than a dozen gene-editing businesses after splitting from Gates in 2014 and controlled a \$42 million stake in one gene company, Editas Medicine Inc.

Nikolic, 49, was excited about financial advice that Epstein, a former hedge-fund manager who was obsessed with genetic research, shared with private bankers ahead of Editas’ public offering, the source told Bloomberg. Nikolic was part of a broad network that overlapped with Epstein, Nikolic’s spokeswoman said.

A rep for Gates said Epstein didn’t provide any services to the billionaire philanthropist.

Dupont

Feds Say Man Behind Fake Beto PAC Site Is On The Lam

Law 360
By Pete Brush
8/20/19

A California man accused of pilfering \$250,000 from web surfers who thought they were supporting the political action committees of prominent politicians like Beto O'Rourke jumped bail after appearing in Arizona and is on the lam, federal authorities in New York said Tuesday.

John Pierre Dupont was released on \$100,000 bail by U.S. Magistrate Judge James F. Metcalf on March 19 in Phoenix and ordered to appear in Manhattan federal court. But he hasn't been seen since and is considered a fugitive, the Manhattan U.S. attorney's office confirmed to Law360.

An Arizona-based lawyer who represented Dupont locally, Nora Nunez of the Arizona Federal Defenders, did not respond to requests for comment.

Prosecutors in New York say Dupont operated websites like DemocratsForSenate.org, Beto4Senate.org and SinemaForSenate.website, the latter two of which purported to back presidential candidate and former U.S. Senate candidate Beto O'Rourke of Texas and Sen. Kyrsten Sinema, D-Ariz.

Donors to the O'Rourke site provided investigators with receipts containing a message of thanks purporting to be from O'Rourke himself, the feds charged in a complaint accusing Dupont of fraud and aggravated identity theft.

Other bogus Dupont websites invoked political figures including Joe Biden and Bernie Sanders, the feds say.

One of Dupont's PACs, called the Foundation for Sanity in Politics, claimed donations would "go to help pay our volunteer attorneys', doctors', nurses' and social workers' costs and pay for transportation to unite immigrant families," prosecutors said.

Dupont began the scheme in 2015 and operated his sites and PACs until March. He received more than 1,000 donations in total, many in increments of \$100 and \$200, charging documents say.

At the time of his arrest, Dupont, who also goes by the names John Gary Rinaldo and John Gary, was 80 years old.

The government is represented by [REDACTED] and [REDACTED] of the U.S. Attorney's Office for the Southern District of New York.

The cases are U.S. v. Dupont, case number 19-mj-2493, in the U.S. District Court for the Southern District of New York and U.S. v. Dupont, case number 2:19-mj-01179, in the U.S. District Court for the District of Arizona.

White Plains

Tartaglione

Jail guards threatening former Epstein cell mate Nicholas Tartaglione: lawyer

NY Post
By Emily Saul
8/20/19

Jeffrey Epstein's former Manhattan cell mate says guards at the lockup have been threatening him since the financier's death, according to a legal filing by his attorneys Tuesday asking a judge to move him to a new prison.

Hulking ex-cop Nicholas Tartaglione — who briefly bunked with Epstein at the Metropolitan Correctional Center — has been told by various guards there to “shut up,” “stop talking” and “stop complaining,” as questions swirled about how the accused sex-trafficker was able to commit suicide in federal custody, Tartaglione attorney Bruce Barket says in a letter to White Plains federal judge Kenneth Karas.

Tartaglione was sharing a cell with Epstein during what's believed to have been the 66-year-old's first suicide attempt, on July 23. The two were separated before Epstein hanged himself on Aug. 10.

“The clear message Mr. Tartaglione has received is that if he conveys information about the facility or about [Epstein's] recent suicide, there will be a price to pay,” Barket's letter reads. “Whether or not the investigators into the suicide chose to interview Mr. Tartaglione about the attempted suicide to which he was witness or about how the facility is run and the conditions under which the inmates are forced to live, the correction officers know he has information potentially very damaging to the very people now charged with guarding him or their coworkers.”

The 51-year-old former Briarcliff Manor cop is facing the death penalty for his alleged involvement in four drug-related slayings upstate.

While Epstein told his lawyers Tartaglione was behind his July neck injuries, Barket fiercely denied that allegation.

Barket's letter also cites the “deplorable” conditions — including “a serious rodent and insect infestation” — at the MCC as a reason to move his client, who is due in court Wednesday for a hearing.

The MCC did not immediately return a request for comment.

Civil Division

Prado

Ex-Detainee Suing Over Care Urges Keeping ICE Suit Alive

Law 360

By Christopher Cole

8/19/19

An HIV-positive immigrant suing over how he was treated in Immigration and Customs Enforcement custody, including allegedly not getting proper medication, has urged a New York federal judge to reject the government's bid to dismiss his suit on technical grounds.

Jesus Prado, who says he was forcibly removed from his apartment by ICE agents brandishing only an administrative warrant, then denied proper care for months in detention before finally being released, said in legal papers Friday that the government cannot show that he lacks a case against the U.S. and several agents.

Prado's legal team said that in attempting to get the suit thrown out, the government has raised a "series of procedural and technical arguments," erroneously trying to shift blame from ICE for Prado's conditions.

Principally, the government has contended that according to a federal law the New York district court lacks jurisdiction over any claim by an alien "arising from" the commencement of removal proceedings. The government says this requires tossing four of the claims.

But Prado said that argument ignores both the Supreme Court's 2018 decision in *Jennings v. Rodriguez*, "which made clear the limited scope" of the statute in question as well as "recent decisions by judges in this district, who have declined to give the statute the inappropriately sweeping reading the government urges."

The four claims that the U.S. attorney wants dismissed under the argument about removal proceedings allege a constitutional tort or Bivens claim, trespass, abuse of process and negligent infliction of emotional distress.

Prado sued the U.S. and four agents in October 2018, claiming that ICE deprived him of his medication for nearly a week and administered that medicine improperly for months, causing psychological trauma and illness.

Prado, who in addition to HIV suffers from other physical and mental disorders, sued ICE alleging negligence and emotional distress for improper medical care he received while held for nearly six months at a New Jersey civil immigration detention facility. Prado says that caused him to experience daily nausea and vomiting and to develop a serious prostate condition.

Prado also accused ICE of violating his Fourth Amendment protections during his arrest by illegally entering and searching his residence and of trespassing and entering without a proper warrant under the Federal Tort Claims Act.

The government filed its motion to dismiss June 19, making an array of procedural arguments that it says require throwing out the suit.

In the brief filed Friday, Prado argued that the government is wrong to use such an expansive view of the federal statute governing review of removal proceedings and also in attempts to shift blame for what happened to him.

“The government incorrectly argues that Mr. Prado is trying to hold the United States liable for the negligence of third parties, including the [Bergen County Jail], the municipal facility that ultimately housed Mr. Prado,” he said. “But Mr. Prado alleges that ICE employees, including the individual defendants ... breached their own duty of care to Mr. Prado separate and apart from the negligence of the jail’s medical staff.”

“Specifically, Mr. Prado alleges that ICE employees failed to ensure that he received adequate and timely off-site medical care, which remained ICE’s responsibility” even under an inter-governmental service agreement on which the government is relying, according to the brief.

“The ICE agents’ blatant misuse of an administrative warrant as a pretext for invading Mr. Prado’s home to make an arrest gives rise to a valid abuse of process claim,” Prado said. “This abuse of the administrative warrant also constituted a trespass, a claim for which the government is adequately on notice and for which damages are properly alleged.”

Prado also said the contrary to the government's argument in June about the Bivens claim, “there is no need to stretch Bivens principles to apply here. The facts of this case are strikingly similar to those of Bivens itself,” referring to the 1971 Supreme Court case that established the principle under which Prado is suing.

An ICE spokesperson told Law360 in an email Monday that while ICE does not comment on pending litigation, “absence of comment should in no way be construed to suggest that ICE thinks any particular suit has merit.”

Prado is represented by Kenneth I. Schacter, Anthony P. Ferrara, Stephanie R. Reiss and John A. Cosgriff of Morgan Lewis & Bockius LLP.

The government and individual defendants are represented by [REDACTED] of the U.S. Attorney's Office.

The case is Prado v. ICE Agent Perez et al., case number 1:18-cv-09806, in the U.S. District Court for the District of New York.