

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS.

SUPERIOR COURT

State of New Hampshire

v.

Anna Barbara Hantz Marconi

No. 217-2024-CR-01167

**ORDER ON THE DEFENDANT'S MOTION TO DISMISS ALL INDICTMENTS ON
FIRST AMENDMENT, RIGHT OF REDRESS, AND JUDICIAL IMMUNITY GROUNDS**

The Defendant, Anna Barbara Hantz Marconi, stands indicted on two Class B Felony charges of Criminal Solicitation and Attempt of Improper Influence, and five Class A Misdemeanor charges of Criminal Solicitation of Official Oppression and Misuse of Position, Official Oppression, and Obstructing Government Administration. See Doc. 1–7. The Defendant has moved to dismiss all indictments against her, arguing that she has judicial immunity and her conduct is otherwise protected by her right to free speech and to petition her government. Doc. 14. The State objected. Doc. 30. The Defendant replied, Doc. 33–34, to which the State surreplied, Doc. 35. The Defendant also filed a notice of supplemental authority. Doc. 38. The Court held a hearing on this motion on February 3, 2025.

As explained below, the Defendant's motion to dismiss is DENIED.

BACKGROUND

As stated in this Court's December 17, 2024 order, the Defendant is an Associate Justice of the New Hampshire Supreme Court and is married to Geno Marconi, Director of the Division of Ports and Harbors of the Pease Development

Authority (the “PDA”) who, at all relevant times, was under investigation by the New Hampshire Attorney General’s office. Doc. 25 at 1–2.

On October 16, 2024, the Defendant was indicted by a Merrimack County grand jury on seven charges relating to alleged attempts to interfere with the investigation into her husband. Id. The first indictment, Charge ID 2257290C, alleges the Defendant committed the crime of Attempt to Commit Improper Influence, on or about June 6, 2024, at or around Concord,

by telling [then-]Governor Christopher Sununu that an investigation into Geno Marconi was the result of personal, petty, and/or political biases; that there was no merit to allegations against or subsequent investigation into Geno Marconi; and/or that the investigation into Geno Marconi needed to wrap up quickly because she was recused from important cases pending or imminently pending before the New Hampshire Supreme Court; or words to that effect.

Doc. 1. The indictment alleges that the Defendant acted “with a purpose that the crime of Improper Influence be committed.” Id.

The second indictment, Charge ID 2257291C, alleges the Defendant committed the crime of Criminal Solicitation of Improper Influence, on or about June 6, 2024, at or around Concord, “by soliciting [then-]Governor Christopher Sununu to improperly influence a member and/or members of the New Hampshire Department of Justice regarding an investigation into Geno Marconi, or words to that effect.” Doc. 2. The indictment alleges that the Defendant acted “with the purpose that another engage in conduct constituting the crime of Improper Influence.” Id.

The third indictment, Charge ID 2257292C, alleges the Defendant committed the crime of Official Oppression, on or about June 6, 2024, at or around Concord, “by interfering with, attempting to interfere with, and/or soliciting another to interfere with an

investigation into Geno Marconi; and/or violating the New Hampshire Code of Judicial Conduct (New Hampshire Supreme Court Rule 38) (specifically, Rules 1.1, 1.2, 1.3, 2.4, 2.10, 3.1, 3.2, and/or 3.3).” Doc. 3. The indictment alleges that the Defendant acted “with a purpose to benefit herself or another or to harm another.” Id.

The fourth indictment, Charge ID 2257293C, alleges the Defendant committed the crime of Criminal Solicitation of Official Oppression, on or about June 6, 2024, at or around Concord, “by soliciting [then-]Governor Christopher Sununu to misuse his position and/or otherwise interfere with an investigation into Geno Marconi, or words to that effect.” Doc. 4. The indictment alleges that the Defendant acted “with the purpose that another engage in conduct constituting the crime of Official Oppression.” Id.

The fifth indictment, Charge ID 2257294C, alleges the Defendant committed the crime of Obstructing Government Administration, on or about April 19 and June 6, 2024, at or around Concord, “by unlawfully interfering with, attempting to interfere with, and/or soliciting another to interfere with an investigation into Geno Marconi.” Doc. 5. The indictment alleges that the Defendant acted “with a purpose to hinder or interfere with a public servant performing or purporting to perform an official function and/or to retaliate for the performance or purported performance of such a function.” Id.

The sixth indictment, Charge ID 2257397C, alleges the Defendant committed the crime of Criminal Solicitation of Misuse of Position, on or about April 19, 2024, at or around Concord, “by soliciting Pease Development Authority Chairperson Steve Duprey to secure a governmental privilege and/or advantage for her to which she was not otherwise entitled regarding the employment of Geno Marconi and/or investigation into Geno Marconi, or words to that effect.” Doc. 6. The indictment alleges that the

Defendant acted “with the purpose that another engage in conduct constituting the crime of Misuse of Position.” Id.

Finally, the seventh indictment, Charge ID 2257398C, alleges the Defendant committed the crime of Criminal Solicitation of Misuse of Position, on or about June 6, 2024, at or around Concord, “by soliciting [then-]Governor Christopher Sununu to secure a governmental privilege and/or advantage for her to which she was not otherwise entitled regarding an investigation into Geno Marconi, or words to that effect.” Doc. 7. The indictment alleges that the Defendant acted “with the purpose that another engage in conduct constituting the crime of Misuse of Position.” Id.

In sum, all the charges stem from conversations the Defendant had with Chairman Duprey and then-Governor Sununu on April 19 and June 6, 2024, respectively.

ANALYSIS

The Defendant argues all indictments against her should be dismissed because she is entitled to judicial immunity, her alleged conduct is protected by her rights to free speech and to petition the government, and the statutes under which she has been charged are vague and overbroad.

The State contends that the motion should be denied because the Defendant relies on unverified factual assertions,¹ the Defendant has failed to thoroughly brief vagueness and overbreadth, and the relevant statutes do not encompass protected conduct because the Defendant acted with a criminal purpose.

¹ While the Court references additional assertions made within the parties’ arguments, the Court limits its analysis to the facts alleged in the indictments. See United States v. McGlashan, 78 F.4th 1, 3 (1st Cir. 2023).

A. Judicial Immunity

The Defendant argues that she is entitled to judicial immunity because she was acting in her official capacity when she met with then-Governor Sununu and explained to him how her recusal would impact the New Hampshire Supreme Court's docket and her judicial tenure. The States contends that the Defendant was not performing a judicial act but, even if she was, she is not immune from criminal conduct.

“As a class, judges have long enjoyed a comparatively sweeping form of immunity, though one not perfectly well-defined.” Forrester v. White, 484 U.S. 219, 225 (1988). “Judicial immunity apparently originated, in medieval times, as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error.” Id. Judicial immunity also serves to protect the independence of judicial decision-making. Id. As the Forrester Court explained,

If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication.

Id. at 226–27. In light of these concerns, courts have repeatedly found judges immune from civil liability for judicial acts. See Mireles v. Waco, 502 U.S. 9, 11–12 (1991); Dennis v. Sparks, 449 U.S. 24, 28 (1980); Pierson v. Ray, 386 U.S. 547, 553–54 (1967); Gould v. Dir., N.H. Div. of Motor Vehicles, 138 N.H. 343, 346 (1994).

Criminal conduct, however, has rarely been protected by judicial immunity. See 48A C.J.S. Judges, Criminal Responsibility § 223 (December 2024 Update) (“There is no judicial immunity from criminal liability, and a judicial officer, violating a criminal

statute, is held to the same responsibility as any citizen.”); Dennis, 449 U.S. at 31 (stating that judges “are subject to criminal prosecutions as are other citizens.”); O’Shea v. Littleton, 414 U.S. 488, 503 (1974) (“[T]he judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct . . .”); Ex Parte Commonwealth of Virginia, 100 U.S. 339, 348–49 (1879) (holding that a state court judge was not immune from criminal prosecution for discriminatory conduct in jury selection); United States v. Hastings, 681 F.2d 706, 711 (11th Cir. 1982) (allowing federal bribery indictment against a federal judge and rejecting a rule of absolute immunity). Even when courts have found judges immune from criminal conduct, they have applied an additional element of good faith on behalf of the judge. See Braateli v. United States, 147 F.2d 888, 895 (8th Cir. 1945) (“[A] judge cannot be held criminally liable for erroneous judicial acts [d]one in good faith.”).

The only New Hampshire case cited by the parties that discusses judicial immunity for criminal conduct is Sargent v. Little, 72 N.H. 555 (1904). There, the New Hampshire Supreme Court stated that “[n]o action, civil or criminal can be maintained against a judicial officer for any mistake he may make in the performance of his official duties” Id. at 556–57. Sargent, however, was a civil suit against license commissioners. Thus, the mention of criminal liability was dicta. Further, the court based its reasoning on an 1898 case from the New York Court of Appeals, which involved a civil case against a judge for plainly judicial acts. Given that courts have rarely found judges immune from prosecution since Sargent was decided and criminal liability was not central to that case, the isolated statement in Sargent likely does not reflect how the New Hampshire Supreme Court would rule on the issue today.

Regardless of the civil or criminal nature of a case, courts tend to employ a functional approach to determine whether judicial immunity applies under the circumstances. The functional approach seeks to balance the tension between protecting the judicial need of independent decision-making and the public need of ensuring that no one is above the law. See Forrester, 484 U.S. at 228; Surprenant v. Mulcrone, 163 N.H. 529, 532 (2012); Belcher v. Paine, 136 N.H. 137, 144 (1992). “Under this approach, it is necessary to examine the nature of the functions with which a particular official . . . has been lawfully entrusted, and to seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions.” Belcher, 136 N.H. at 144 (quotation omitted). In other words, “[t]o determine the scope of immunity to be afforded in a specific situation, [the Court] examine[s] the act complained of, not merely the title of the actor.” Surprenant, 163 N.H. at 532.

The Defendant argues that this Court should apply the same reasoning employed in United States v. Chaplin, 54 F. Supp. 926 (S.D. Cal. 1944). There, a judge was indicted for “acts performed by him in judicial proceedings pending in his court and within the jurisdiction thereof” Id. at 927. The Court declines to follow Chaplin because the conduct alleged here is distinguishable. Unlike the defendant judge in Chaplin, the Defendant is not charged for acts she committed during a judicial proceeding in a case pending before her. Rather, she is alleged to have had conversations with Chairman Duprey and then-Governor Sununu regarding an investigation into her husband.

At this juncture, the Court is not persuaded that such acts are entitled to judicial immunity. While the Defendant argues that she was acting, at least in part, in her official capacity as a judge to discuss the New Hampshire Supreme Court's docket with then-Governor Sununu, there are no facts within the indictments for the Court to conclude she was acting squarely within her judicial role. Had the Defendant been charged for making deliberative statements involving recusal, the outcome might be different. However, the Court does not understand this to be the substance of the Defendant's conversations as alleged. Rather, the indictments allege the Defendant sought to influence an investigation into her husband by telling then-Governor Sununu that the investigation was "the result of personal, petty, and/or political biases," and that "there was no merit to allegations against or subsequent investigation into Geno Marconi; and/or that the investigation . . . needed to wrap up quickly because she was recused from important cases pending or imminently pending before the New Hampshire Supreme Court." Doc. 1 (emphasis added).

Applying the functional approach, the Court determines that the balance between protecting judicial independence and ensuring that no one is above the law swings in favor of the State under these circumstances. As an Associate Justice, the Defendant has been entrusted to make judicial decisions on cases pending before her. The Court does not find it objectionable that the Defendant has to defend herself from criminal liability for statements unrelated to any pending case before her that she asserts was, at least in part, made in her capacity as the wife of someone subject to a criminal investigation. In addition, because the Defendant is currently on administrative leave and is not actively sitting in on cases before the New Hampshire Supreme Court, the

resulting effect on the Defendant's ability to exercise independent and reasoned judgment due to her criminal exposure is non-existent.

Accordingly, the Court determines that the Defendant is not judicially immune from criminal prosecution for her alleged conduct.

B. Right to Free Speech and to Petition the Government

The Defendant argues that her alleged conduct is protected by her right to free speech and to petition the government under Part I, Articles 14, 15, 22, and 32 of the New Hampshire Constitution and the First Amendment to the United States Constitution. The Defendant further asserts that the statutes under which she has been charged are vague and overbroad.

The State contends that the Defendant has failed to support her factual assertions² and otherwise failed to sufficiently develop her vagueness and overbreadth challenges. Alternatively, the State asserts that the Defendant's speech is not protected because she acted with a criminal purpose, and disputes that the operative statutes are vague or overbroad.

Because the New Hampshire Constitution is at least as protective as the federal constitution under these circumstances, the Court addresses the Defendant's claims under the State Constitution, citing federal opinions only for guidance. See State v. Hynes, 159 N.H. 187, 202, 205 (2009).

The Court first addresses the Defendant's vagueness argument. The Defendant contends that "no ordinary citizen of New Hampshire would have a 'reasonable opportunity to understand what conduct' is prohibited in the context of a meeting which

² See Note 1, *supra*, at 4.

involved no threats, bribes, promises, or ‘asks’ for any action,” and that “permitting such prosecutions endorses arbitrary and discriminatory enforcement because the Attorney General alone decides when to prosecute citizens for exercising their constitutional rights to inform government officials about matters of public concern.” Doc. 14 at 12.

The Defendant’s argument, however, makes no reference to the particular statute, statutes, or statutory language that she claims are vague. Because the Court analyzes a vagueness challenge based on the language of the statute alone, the Court finds the Defendant’s argument insufficient to meet her high burden of overcoming the presumption of constitutionality. See State v. Pike, 128 N.H. 447, 451 (1986) (“[T]he vagueness doctrine is rested on . . . due process . . . and is applicable solely to legislation which is lacking in clarity and precision.”); Hynes, 159 N.H. at 199–200 (“In reviewing a legislative act, [the Court] presume[s] it to be constitutional and will not declare it invalid except upon inescapable grounds.”).

The Defendant also argues that the law is overbroad. “The purpose of the overbreadth doctrine is to protect those persons who, although their speech or conduct is constitutionally protected, may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression.” Id. at 202 (quoting State v. Gubitosi, 157 N.H. 720, 726–27 (2008)). “In other words, ‘[a] statute is void for overbreadth if it attempts to control conduct by means which invade areas of protected freedom.’” Id. (quoting State v. MacElman, 154 N.H. 304, 310 (2006)). “While the Constitution gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere, the application of

the overbreadth doctrine is strong medicine to be employed only as a last resort.” Id. (quotation omitted).

Like her vagueness argument, the Defendant’s overbreadth argument does not specify which statute or statutes are overbroad or how they sweep in protected conduct, and is therefore underdeveloped. See Doc. 14 at 11 n.1.³ However, the Court understands the core of the Defendant’s current overbreadth argument to be the same as her argument regarding her right to free speech and to petition her government—that the conduct alleged in the indictments is constitutionally protected. See Doc. 14 at 5-11. The State, on the other hand, asserts that the Defendant’s conduct is not protected because it was committed with a criminal purpose, namely, to interfere with an ongoing investigation. See Doc. 30 ¶¶ 28–30.

Free speech is an essential part of both the New Hampshire and United States Constitutions. “Part I, Article 22 of the New Hampshire Constitution provides: ‘Free speech and Liberty of the press are essential to the security of Freedom in a State: They ought, therefore, to be inviolably preserved.’” State v. Lilley, 171 N.H. 766, 780 (2019) (quoting N.H. CONST. pt. I, art. 22). “Similarly, the First Amendment prevents the passage of laws ‘abridging the freedom of speech.’” Id. (quoting U.S. CONST. amend. I).

Like the right to free speech, the right to petition the government for redress of grievances is an essential part of First Amendment protections, see Borough of Duryea v. Guarnieri, 564 U.S. 379, 387 (2011), which is further protected by the New

³ In her memorandum supporting her motion to dismiss, the Defendant stated that she will provide further arguments on overbreadth and vagueness in subsequent motions. The Court reserves detailed analysis on these issues until they are fully briefed.

Hampshire Constitution, see N.H. CONST. pt. I, art. 32; Richard v. Speaker of the House of Representatives, 175 N.H. 262, 269–70 (2022) (“Part I, Article 32 grants citizens the right to request, by way of a formal petition or remonstrance, that the legislature right a wrong.”). The right to petition one’s government applies not just to the legislature but to all departments of the government, including the executive. See Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972).

When determining whether a particular government restriction offends the First Amendment, the Court must first address whether the speech or conduct is protected by the State Constitution. Cf. Lilley, 171 N.H. at 780 (citing State v. Bailey, 166 N.H. 537, 540-41 (2014)). Both the Supreme Court of the United States and the New Hampshire Supreme Court have held that speech integral to criminal conduct is not protected speech. See United States v. Alvarez, 567 U.S. 709, 717 (2012); S.D. v. N.B., 176 N.H. 44, 51 (2023).

The cases listing “speech integral to criminal conduct” as not protected speech derive from Giboney v. Empire Storage and Ice Co., 336 U.S. 490 (1949). See, e.g., Alvarez, 567 U.S. at 717; S.D., 176 N.H. at 51. There, labor union protestors argued that a Missouri law prohibiting any person from coordinating with others to restrain trade or competition in commercial activity within the state violated their right to free speech. Giboney, 336 U.S. at 491, n.1. Even though the protests were peaceful, the Court reasoned that the protests were purposed to compel the Empire Storage and Ice Company to “stop selling ice to nonunion peddlers.” Id. at 498. In rejecting the protestors First Amendment argument, the Court stated, “[i]t rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or

writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.” Id.

“[S]peech is not protected by the First Amendment when it is the very vehicle of the crime itself.”). United States v. Varani, 435 F.2d 758, 762 (6th Cir. 1970). Thus, while the Defendant has the right to express her concerns to government officials, she does not have the right to do so with the purpose of interfering with a government investigation. See State v. Briggs, 147 N.H. 431, 435 (2002) (“[T]he defendants do not have a protected freedom to interfere with an officer performing an official function”). In Counterman v. Colorado, 600 U.S. 66 (2023), the Supreme Court of the United States explained that a law’s scienter (or mental state) requirement is vital to prevent the law from punishing what is otherwise protected speech. Id. at 76-77. Counterman involved alleged threats of physical harm to another. The Court said, “the First Amendment precludes punishment, whether civil or criminal, unless the speaker’s words were ‘intended’ (not just likely) to produce imminent disorder.” Id. at 76.

The statutes under which the Defendant has been charged here have scienter requirements that likewise prevent them from punishing otherwise lawful speech. See RSA 629:1 (defining Attempt as a substantial step taken “with a purpose that a crime be committed”); RSA 629:2 (defining Criminal Solicitation as soliciting another “with a purpose that another engage in conduct constituting a crime”); RSA 642:1 (defining Obstructing Government Administration as engaging in unlawful conduct “with a purpose to hinder or interfere with a public servant”); RSA 643:1 (defining Official Oppression as committing an unauthorized act which purports to be an official act “with a purpose to benefit himself or another”).

The grand jury determined that there was enough evidence to find probable cause that the Defendant acted with the intent to interfere with the investigation into her husband. While the State will have to prove that intent beyond a reasonable doubt at trial, at this stage the Court must defer to the grand jury's determinations. See St. Arnault, 114 N.H. at 218.

The Defendant points to several cases where courts have overturned convictions based on laws that were deemed to violate the First Amendment's guarantees of freedom of speech, assembly, and the right to petition for redress of grievances. See Doc. 14 ¶¶ 18–20 (citing United States v. Cruikshank, 92 U.S. 542 (1875); Edwards v. South Carolina, 372 U.S. 229 (1963); Brown v. Louisiana, 383 U.S. 131 (1966); De Jonge v. Oregon, 299 U.S. 353 (1937); State v. Haugen, 392 N.W.2d 799 (N.D. 1986); United States v. Pendergraft, 297 F.3d 1198 (11th Cir. 2002); United States v. Hylton, 710 F.2d 1106 (5th Cir. 1983)).

The Court finds the cited cases distinguishable and unpersuasive because they were issued after trials and the relevant defendants or appellants involved were charged for lawful acts and lacked criminal purpose. See Edwards, 372 U.S. at 236–37 (stating that the petitioners “were convicted upon evidence which showed no more than the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection”); De Jonge, 299 U.S. at 362 (“His sole offense as charged, and for which he was convicted and sentenced to imprisonment for seven years, was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist party.”); Hylton, 710 F.2d at 1111 (“The record clearly

reveals that Hylton placed a high value upon her right to personal privacy and genuinely attempted to protect her rights through the orderly pursuit of justice—the filing of citizen complaints with a reasonable basis.”); Haugen, 392 N.W.2d at 806 (“It is evident that the only purpose of the alleged threat was to induce the commissioners to conform their conduct to the law as the defendants perceived the law to be and not to blackmail or extort for monetary gain or other advantage.”).

Accordingly, at this juncture, the Court is not persuaded that the conduct alleged in the indictments is protected conduct.

C. Bill of Particulars

While the Defendant moved for a bill of particulars in her written filing, see Doc. 14 ¶¶ 60–63, at the hearing Defendant’s counsel stated that such a bill is no longer necessary given the State’s disclosure of the transcripts of its interviews with then-Governor Sununu and Chairman Duprey. See Feb. 3, 2025 Hr’g at 11:02:06–09; Doc. 33–34. However, Defendant’s counsel later argued that there are no facts within the indictments sufficient to put the Defendant on notice that she acted with a criminal purpose or state of mind. The State disagrees the indictments are insufficient. To the extent the Defendant still argues for a bill of particulars, the Court addresses the issue. However, because the Defendant has not provided a tailored argument regarding each individual indictment but attacks the indictments generally, the Court applies a similar broad analysis of whether the indictments satisfy Part I, Article 15 of the New Hampshire Constitution.

As explained in State v. Carr, 167 N.H. 264, 269 (2015),

Part I, Article 15 of the State Constitution requires that an indictment describe the offense with sufficient specificity to ensure that the defendant

can prepare for trial and avoid double jeopardy. To be constitutional, the indictment must contain the elements of the offense and enough facts to notify the defendant of the specific charges. An indictment is generally sufficient if it recites the language of the relevant statute; it need not specify the means by which the crime was accomplished or other facts that are not essential to elements of the crime.

The Court determines that the indictments meet this standard. The indictments recite the elements of the offenses and provide enough facts to notify the defendant of the charges. See id. The indictments allege that the Defendant had conversations with Chairman Duprey, on or about April 19, 2024, and then-Governor Sununu, on or about June 6, 2024, and made statements regarding the investigation's improper motive, lack of merit, and her hope that it would wrap up quickly because she was recused from important cases. The State alleged that the Defendant made these statements in an attempt to improperly influence, solicit improper influence, or otherwise unlawfully interfere with an investigation into her husband. Based on these facts, the Defendant has enough information to prepare her defense and avoid double jeopardy. See id.

While the Defendant asserts that there are no facts demonstrating how she acted with a criminal purpose, the Court is not persuaded. The State does not need to provide additional facts other than to allege that the Defendant acted with the requisite mental state. The indictments satisfy this requirement. "Because persons rarely explain to others the inner workings of their minds or mental processes, a culpable mental state must, in most cases . . . be proven by circumstantial evidence." State v. Tayag, 159 N.H. 21, 24 (2009) (quoting State v. DiNapoli, 149 N.H. 514, 516 (2003)). Thus "[t]he jury is entitled to infer the requisite intent from the defendant's conduct in light of all the circumstances in the case." Id. The fact that indictments were issued in this case demonstrate that the grand jury found, based on the totality of the evidence

that was presented to them, that there was probable cause to believe that the Defendant acted with the necessary mental state.

Accordingly, the Court will not require a bill of particulars.

CONCLUSION

For the foregoing reasons, the Defendant's motion to dismiss is DENIED.

SO ORDERED.

March 19, 2025

Date


Judge Martin P. Honigberg