

Chairman Hasim & Members of the Judiciary Committee

After watching the recording of further testimony given on Friday, Jan 23 by Mr. Drescher and his former colleagues, including his reference to my letter, I ask for your further consideration of this brief response.

I reject the suggestion that I misunderstand the distinction between the civil defense to a habeus petition, and the prosecution of a deportation determination. Mr Drescher was called upon to respond to habeus petitions. But contrary to his enumerated options, he was duty bound to consider others. If there was no meritorious defense to the claim that the arrests were unconstitutional, as Mr. Drescher's presentation implicitly concedes, he ought to have filed an answer in court forthrightly acknowledging that as the correct legal posture of the case.

Would he have been fired? Quite conceivably, but it is doubtful his answer on behalf of the Government, signed as the Acting US Attorney for Vermont, could have been collaterally attacked. And the citizens of VT would have been rewarded by the realization that the highest representative of the Justice Department in our state was willing to stand against the wanton usurpation of illegal authority by agencies acting brazenly beyond rightful police powers.

To justify the failure to make such a stand on the claim that it would have damaged the functioning integrity of the US Attorneys office ignores that the arguments he made on behalf of that office effectively sanctioned the challenged detentions. This is particularly demonstrated, as Sen. Vyhovsky has noted, since if Mr Drescher actually believed the arrests were illegal, what was his legitimate basis for opposing release while the courts considered his thinly based jurisdictional challenges?

Mr. Drescher found himself called to represent the US Government against undeniable claims of abuse of governmental authority in derogation of fundamental individual liberties. His decisions while undertaking that representation raise insurmountable questions as to how liberty and justice would fare by his rulings as a Justice of the Vermont Supreme Court.

Respectfully  
John P Wesley  
Vermont Superior Judge (Ret. 2015)