

Chairman Hashim & Judiciary Committee Members

I urge a deeper review than has been reported as to Acting US Attorney's Michael Drescher's exercise of prosecutorial discretion during his handling of the immigration cases of Rumeysa Ozturk and Mohsen Madawi. Mr. Drescher stated that he assumed responsibility for those cases when they appeared "out of the blue", and he realized the potential that they would become high-profile matters. He claims he didn't want anyone else in the office to face the potential of being fired - though I found no explanation of why he deemed that a risk. Also, he acknowledges that his initial review of the seizure of Ms. Ozturk by masked agents who pulled her into an unmarked car was "irregular at best."

Of course, these statements made to your committee under oath are fundamentally at odds. If the arrests of Ms Ozturk and Mr. Madawi were illegal, as two different federal district judges later found, Mr. Drescher had the prosecutorial discretion, **and the ethical obligation**, to refuse to defend the unconstitutional detentions carried out by ICE agents. Indeed, such a decision whether made by him, or his assistants, might conceivably have brought on termination of employment. But going forward with the exercise of federal legal representation supporting the wanton unconstitutional actions at issue put no one's career in jeopardy, in the current administration, as Mr. Drescher had to have known.

Vermont citizens are entitled to know why a candidate for the Vermont Supreme Court refused to stand up for the constitutional rights of Ms. Ozturk and Mr. Madawi. As the acting US Attorney for Vermont, Mr. Drescher had the determinative authority to exercise prosecutorial discretion to avoid a miscarriage of justice by actions by ICE agents beyond any colorable claim of proper discharge of their duties. The breadth of the authority was made clear in multiple DOJ memos during the Biden Administration. Is it possible that had he done so, he might have lost his position? Is it possible that had he done so, the US Justice Department might have sought to take over the case? Even if the answers are likely yes, it does not excuse Attorney Drescher from rubber-stamping an unconstitutional process. He offered only weak lip service to the committee which didn't include having even considered discharging the cases. He is unfit to be a Vermont Supreme Court Justice.

The weakness of Michael Drescher's qualifications highlights another deep-seated problem with Gov. Scott's simultaneous appointments of two attorneys for the current vacancies of the Vermont Supreme Court, each of whom has no other relevant legal experience outside employment by the US Attorney's Office for Vermont. Why two candidates with almost identical legal backgrounds, principally grounded in federal, not state law? Might not the appointment of one federal prosecutor have been balanced by a different candidate with a background in family law, or juvenile justice matters, areas which comprise a sizeable proportion of the dockets of Vermont trial courts. Of course, those with the most direct experience in such cases can be found as current Vermont trial judges. Each of the two nominees will face a steep learning curve in developing expertise in areas of jurisprudence regularly addressed by the disputes which come before the Vermont Supreme Court, as to which his and her prior experience provides little

relevant guidance. I urge the Committee to take the opportunity provided by its confirmation process to shed light on the need for a broad range of expertise brought to bear by the five individuals with ultimate authority to state Vermont law.

Sincerely

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