

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 07-1035(A)-RGK Date April 9, 2008

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT COURT JUDGE

Interpreter N/A

Sharon L. Williams

Not Reported

Craig Missakian, Not Present

Deputy Clerk

Court Reporter/Recorder, Tape No.

Assistant U.S. Attorney

<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
XAVIER ALVAREZ	N		X	BRIANNA FULLER, DFPD	N	X	

Proceedings: (IN CHAMBERS) ORDER DENYING DEFENDANT’S MOTION TO DISMISS

I. INTRODUCTION

On July 23, 2007, Defendant Xavier Alvarez (“Alvarez” or “Defendant”) falsely claimed to have received the Congressional Medal of Honor. Defendant made the statement while introducing himself to the Walnut Valley Water District Board as a newly elected director. According to a digital recording of the meeting, he stated, among other things: “I’m a retired Marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy. I’m still around.” (See Ex. B.)

On September 26, 2007, Defendant was indicted for violating 18 U.S.C. § 704(b), also known as the Stolen Valor Act of 2005, which makes it a crime to falsely claim receipt of military decorations or medals. Defendant now brings a Motion to Dismiss the Indictment against him, claiming that the statute violates his First Amendment right to free speech.

II. JUDICIAL STANDARD

Defendant uses the label “Motion to Dismiss Indictment” for its present filing. Such a motion relates specifically to dismissal of a grand jury indictment on procedural grounds, which Defendant does not seek. Rather, it appears that Defendant intended to file his motion under Fed. R. Crim. Proc. 12(b)(2), which allows defendants to challenge the substantive basis for the charges against them.

Similar to Fed. R. Civ. Proc. 12(b)(2), in considering a motion to dismiss under Fed. R. Crim. Proc. 12(b)(2), the court must assume the plaintiff’s allegations are true, and must construe the complaint in the light most favorable to the plaintiff. *See United States v. City of Redwood City*, 640 F.2d 963, 967 (9th Cir. 1981). However, in this case Defendant brings a constitutional challenge to the underlying law upon which he is being prosecuted. Therefore, the Court examines the validity of his arguments in the light most favorable to

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upholding the constitutionality of the law. *See Gray v. First Winthrop Corporation*, 989 F.2d 1564 (9th Cir. 1993).

III. DISCUSSION

Defendant contends that the Stolen Valor Act of 2005 violates his First Amendment right to free speech, and is unconstitutional both facially and as applied in this case. Specifically, he argues that his statement, though false, was political in nature, and thus protected under the First Amendment. For the reasons set forth below, the Court disagrees.

Defendant cites several cases in support of his assertion that his false statement about having been awarded the Congressional Medal of Honor is protected speech under the First Amendment. These cases can generally be divided into two categories. First, Defendant cites cases that address defendants who make defamatory statements against others. *Gertz v. Welsh*, 418 U.S. 323 (1974) (Defendant's article about the plaintiff negligently accuses him of being a Communist); *New York Times v. Sullivan*, 376 U.S. 254 (1964) (advertisement published by the New York Times negligently misrepresents that Montgomery, Alabama police officers took wrongful action against civil rights protesters). The second line of cases cited by Defendant address content- and/or viewpoint-based regulations. *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York*, 447 U.S. 530 (1980) (upholding the distribution of pamphlets on matters of public policy by utility companies); *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334 (1995) (concerning the distribution of leaflets expressing political views of members of the public); and *Texas v. Johnson*, 491 U.S. 397 (1989) (holding that the defendant's act of flag burning, during a political demonstration, was protected speech under the First Amendment). These cases are all inapposite, as here Defendant's false statement was made knowingly and intentionally, and not negligently; nor does Defendant claim that his statement about having received the Congressional Medal of Honor expressed a political message or viewpoint.

Garrison v. State of Louisiana is better authority. 379 U.S. 64 (1964). In *Garrison*, a District Attorney made defamatory statements about state court judges at a press conference, in violation of a Louisiana criminal defamation statute. *Id.* at 64-66. In its ruling, the U.S. Supreme Court expressly held that false statements made knowingly and intentionally are not protected under the First Amendment, even when political in nature:

That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. For the use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected . . . Hence the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection.

Id. at 75; *see also Pestrak v. Ohio Elections Com'n*, 926 F.2d 573 (6th Cir. 1991) (upholding a statute prohibiting false statements during a campaign because "false speech, even political speech, does not merit constitutional protection if the speaker knows of the falsehood or recklessly disregards the truth."). Here, as in *Garrison*, there is no dispute that Defendant made his false statement knowingly and intentionally. Thus, this statement is not protected by the First Amendment.

As *Garrison* makes clear, the mere classification of speech as "political" does not afford a defendant First Amendment protections. However, even if the analysis turned on whether the speech at issue was

