No. 23-1092

In The
Supreme Court of the United States

Sean M. Donahue,
Petitioner,

v.

Commonwealth of Pennsylvania,
Respondent.

On Petition For A Writ Of Certiorari
To The Superior Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

Sean M. Donahue
625 Cleveland Street
Hazleton, PA 18201
(570) 454 5367
seandonahue630@gmail.com
pro se

QUESTIONS PRESENTED

In states that allow unitary review, remand for state court review and/or federal *habeas corpus* review *nunc pro tunc* is appropriate when counsel wrongly impose a Hobson's choice between either forfeiting the right to counsel or accepting the inappropriate imposition of mutual exclusivity of direct appeal and post conviction issues. This case arises from Pennsylvania, which allows unitary review. The precedents established by the second impeachment of President Trump and by *Counterman v. Colorado, 143 S. Ct. 2106, 600 U.S. 66, Pp. 4–14, 216 L. Ed. 2d 775 (2023)* require that the Petition be granted.

1. Does Pennsylvania's allowance of unitary review require a grant of relief *nunc pro tunc* to individuals whose counsel wrongly imposed a Hobson's choice to either forfeit representation entirely or accept a false mutual exclusivity of direct appeal and post conviction relief issues?

Suggested Answer: Yes

QUESTIONS PRESENTED—Continued

2. Does Pennsylvania's bold rejection of the "good faith exception to the exclusionary rule" require a grant of relief *nunc pro tunc* to individuals who were convicted on evidence admissible only under a "good faith exception"? **Suggested Answer: Yes**

3. Does *Coffin v. United States, 156 U.S. 432, 457, 15 S. Ct. 394, 39 L. Ed. 481 (1895)* require that relief be granted *nunc pro tunc* to individuals who were convicted in state trials in which the trial court judge removed the presumption of innocence prior to opening arguments and/or prior to the presentation of evidence? **Suggested Answer: Yes**

QUESTIONS PRESENTED—Continued

4. Does the fact that many years after a state sentence was served, police officers gave testimony in federal court proving that the Petitioner was, more probably than not, unknowingly and involuntarily intoxicated by carbon monoxide at and around the time of events for which he was found culpable entitle him to relief *nunc pro tunc*?

Suggested Answer: Yes

5. Are individuals entitled to relief *nunc pro tunc* from true threats convictions on the grounds that the alleged victims and the state willfully forfeit their previous claim of a "true threat" if it is later discovered that law enforcement officers and the alleged victims intentionally waited until after four day weekends, holidays and several months had passed prior to initiating criminal action?

Suggested Answer: Yes

QUESTIONS PRESENTED—Continued

6. Does the fact that the U.S. Senate's finding in the *Trump II* impeachment proceedings that the speech used by President Trump during January 2020 is constitutionally protected require the grant of relief *nunc pro tunc* to the Petitioner because the Senate's constitutional and statutory findings regarding alleged "true threats" are both precedential and binding on the judiciary? **Suggested Answer: Yes**

7. Is the Petitioner entitled to relief *nunc pro tunc* on the grounds that Pennsylvania failed to show that the alleged "true threat" in the case below met the standard of "recklessness" defined by *Counterman v. Colorado, 143 S. Ct. 2106, 600 U.S. 66, Pp. 4–14, 216 L. Ed. 2d 775 (2023)*? **Suggested Answer: Yes**

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED CASES

- Commonwealth v. Donahue, No. 1168 MDA 2018, (Pa. Super. Ct. Mar. 9, 2023)
- Commonwealth of Pennsylvania v. Sean M. Donahue, No. CP-22-CR-3716-2015, (Court of Common Pleas of Dauphin County, Pennsylvania)
- Donahue v. DAUPHIN COUNTY, No. 20-2997 (3d Cir. Mar. 24, 2021)
- Commonwealth v. Donahue, No. 1876 MDA 2018, (Pa. Super. Ct. Mar. 9, 2023)
- Commonwealth Of Pennsylvania vs. Sean Donahue, No. CP-40-CR-3501-2012, (Court of Common Pleas Of Luzerne County, Pennsylvania)
- Donahue v. City of Hazleton, Civil No. 3:14-1351, (M.D.Pa.)

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

APPENDIX—Continued PAGE

TABLE OF CONTENTS—Continued

APPENDIX—Continued PAGE

TABLE OF CONTENTS—Continued

APPENDIX—Continued PAGE

TABLE OF CONTENTS—Continued

APPENDIX—Continued PAGE

TABLE OF CONTENTS—Continued

APPENDIX—Continued PAGE

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

[1] The transcript is misdated, Jan 14, 2022.

TABLE OF AUTHORITIES—Continued

CASES PAGE

TABLE OF AUTHORITIES—Continued

CASES PAGE

TABLE OF AUTHORITIES—Continued

CASES PAGE

TABLE OF AUTHORITIES—Continued

CASES PAGE

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

RULES PAGE

PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully petitions for a writ of *certiorari* to review two closely related judgments of the Superior Court of Pennsylvania. *Rule 12.4*

OPINIONS BELOW

The consolidated opinions of the Superior Court of Pennsylvania are filed at *Commonwealth v. Donahue, No. 1168 MDA 2018 (Pa. Super. Ct. Mar. 9, 2023)* and *Commonwealth v. Donahue, No. 1876 MDA 2018, (Pa. Super. Ct. Mar. 9, 2023).* They are unpublished and reproduced at App. 1 and App. 53.

JURISDICTION

The Supreme Court of Pennsylvania issued its decisions on September 12, 2023. (App. 49 and App. 99 - 102) Justice Alito then granted the Petitioner an extension of the time at Applications Nos. 23A461 and 23A460 to February 9, 2024 to file petitions for a writ of *certiorari.* On February 5, 2024, the Petitioner mailed two timely petitions, *"to the same court* [that] *involve identical or closely related questions" Rule 12.4*, along with *in forma pauperis* applications to this Court. The Clerk received and returned the Petitions on February 8 and 9, 2024, along with letters indicating that the Petitioner must

correct the deficiency and refile no later than 60 days after the date of those letters. *Rule 14.5* This *"single petition for a writ of certiorari covering all the judgments"* is submitted in accordance with *Rule 12.4* and *Rule 29.2.* The jurisdiction of this Court is invoked under *28 U.S.C. §1257(a).*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. I. (App. 114)
2. U.S. Const. Amend. IV. (App. 115)
3. U.S. Const. Amend. V. (App. 116)
4. Pa. Const. Art I, §8. (App. 117)
5. 18 Pa. C.S. §2709. (App. 118)
6. 18 Pa. C.S. §2706. (App. 119)
7. 42 Pa. 18 C.S. §9543 (Pennsylvania Post Conviction Relief Act (PCRA)). (App. 120)
8. NY Penal L §240.30 (2012). (App. 123)
9. NY Penal L §240.30 (2023). (App. 124)
10. NY Penal L §240.26 (2023). (App. 125)

INTRODUCTION AND STATEMENT OF THE CASE

The Petitioner was twice wrongly convicted in two counties in Pennsylvania, a state that allows two paths to unitary review, one path is at the discretion of the trial court and the other is at the discretion of the appellant. (*Com. v. Holmes, 79 A.3d 562, 621 Pa. 595 (2013))* In both cases, the Petitioner instructed appointed appellate counsel to simultaneously appeal both direct appeal and collateral issues. Also in both cases, appointed counsel refused to take on the "Herculean task" of unitary review. (*Holmes supra BAER Concurring p591, TODD Concurring p593*) Both counsel forced upon the Petitioner a Hobson's choice of either forfeiting representation or accepting the inappropriate imposition of mutual exclusivity of pursuing direct appeal issues by constitutional right or collateral review issues under 42 Pa. C.S. §9543, the Pennsylvania Post Conviction Relief Act (PCRA). (App. 120)

In both cases, the sentences were too short to allow time for collateral attack after the conclusion of direct appeal. Knowing this, the Petitioner informed both counsel that he wanted to pursue both direct appeal issues and collateral attack issues in a single simultaneous appeal. Both counsel wrongly admonished the Petitioner by insisting that that no such path of unitary review even existed.

In Dauphin County, Pennsylvania, appointed appellate counsel stated;

> "I consciously chose not to pursue the process set forth in Commonwealth v. Holmes to include one or more ineffectiveness claims in your direct appeal...." *(Email from Karl, James J Wed, Apr 10, 2019 at 10:26 AM To: Sean Donahue)*
>
> ***
>
> "I believed that your sufficiency claim – which was based on reading the statute in light of First Amendment standards – was a relatively strong issue. In other words, it was not a case where there were no other relatively strong issues." *(id)*

The Petitioner then asked;

> "Why did you not raise all of the issues? Why did you not raise all of the relatively strong issues?" *(Email from Sean Donahue Wed, Apr 10, 2019 at 11:10 AM To: "Karl, James J")*

Counsel responded;

> "There were no other preserved issues to raise." *(Email from Karl, James J Wed, Apr 10, 2019 at 11:14 AM To: Sean Donahue)*

Counsel was clearly well aware of the PCRA constraints that existed in the Petitioner's short sentence circumstance.

Counsel further stated;

> "I believed at that time that the sentence of two years' probation was not particularly brief. A two- year sentence is involved in many of the appeal cases that I handle." *(Email from Karl, James J Wed, Apr 10, 2019 at 10:26 AM To: Sean Donahue)*

Rather than perform the "Herculean task" of unitary review, counsel instead planned for the Appellant to violate probation in order to get a lengthy resentence in order to preserve PCRA rights.

Counsel stated;

> "There are two basic routes that your case can take at the end of your supervision period: (1) you will be treated as a probation violator for non-payment of fines & costs,[] brought before the judge, and the judge will impose a new probation sentence; or (2) your probation will be terminated, the case referred to the collections unit of Probation/Parole, and it is possible in the future for you to be cited with contempt of court for non-payment of fines & costs.

I posed your question to lawyers who are assigned to Judge Curcillo's courtroom. In the majority of cases, Judge Curcillo proceeds under Option #1, i.e., you will be treated as a probation violator, and a new probation sentence will be imposed. However, some probation officers will proceed with Option #2.

You, yourself, can request Option #2 by filing a motion near the end of your supervision period.

You should be aware, however, that your right to file a Post-Conviction Relief Act petition is dependent on the fact that you are still serving a sentence. If your probation is terminated, you will no longer be serving a sentence. You would have no standing to initiate a PCRA proceeding at that point. Also, if you initiated a PCRA prior to the termination of your probation and that PCRA was still pending when your probation is terminated, the judge can dismiss your PCRA on the ground that you have no standing." *(Email from Karl, James J, Tue, Apr 25, 2017 at 11:16 AM To: Sean Donahue)*

The Appellant explicitly requested a modified "Option 1" in the form of Appeal Bail or a stay of sentence but the request was denied. (See App. 32; *Commonwealth v. Donahue, No. 1168 MDA 2018, n.1, (Pa. Super. Ct. Mar. 9, 2023))* (App. 4) In contrast, the same was not true for Citizen Kane.[2]

The Petitioner was approved for appointed appellate counsel two days after trial. The Petitioner immediately met with counsel and informed him of trial and pretrial counsel ineffectiveness.

> *"A defendant will only raise a claim of his or her trial counsel's ineffectiveness on direct appeal if he or she obtains new counsel on appeal, since it is 'unrealistic to expect trial counsel on direct appeal to raise his own ineffectiveness.' (Commonwealth v. Dancer, 460 Pa. 95, 100, 331 A.2d 435, 438 (1975)." (Com. v.*

---

[2] Kathleen Kane is a former Attorney General of Pennsylvania who was forced to leave office, criminally convicted and imprisoned.

((**1**) Comm v. Kane, Docket Number: CP-46-CR-0006239-2015, Montgomery County Pennsylvania;

(2) Comm v. Kane, Docket Number: CP-46-MD-0002457-2015, Montgomery County Pennsylvania;

(3) Comm v. Kane, Docket Number: CP-46-CR-0008423-2015, Montgomery County Pennsylvania)

Kimball, 724 A.2d 326, 555 Pa. 299, 311-312, (1999))

In Luzerne County, Pennsylvania, the Petitioner explicitly told the trial court, on the record, that he wanted to appeal both direct appeal issues and collateral matters in the same appeal. The Petitioner also told the trial court that he wanted to appeal the rule that prevented unitary review from being pursued.

> "THE DEFENDANT:
> Well, there is one concern. How can we appeal the rule that says many of these issues are to be raised on PCRA rather than in direct appeal? How is that, that issue alone where many of these issues I raise Your Honor has said, well, that may be valid, may not be valid, but it would be on PCRA, how do we appeal the issue of whether those issues should be raised on PCRA and -- how do we appeal that rule so that they could instead be raised on direct appeal and how do we deal -- suppose the sentence is done before the U.S. Supreme Court has a chance to decide whether they'll hear the case and --
>
> THE COURT: You have a problem there.

> THE DEFENDANT: And that's the issue.
>
> THE COURT: I suppose I could amend the sentence to give you 120 days to 5 years, but you don't want me to do that.

THE DEFENDANT: No, I do not. So in this circumstance, it seems as if the Pennsylvania Judicial System has allowed itself to let cases go into the history books knowing full well there may have been errors that are of material value maybe even to the point that it's an injustice." (*Commonwealth Of Pennsylvania vs. Sean Donahue, No. 3501 Of 2012, In The Court Of Common Pleas Of Luzerne County Pennsylvania, Hearing Transcript of October 23, 2027, pp 26-27,* App. 96)

Regarding Luzerne County, the Superior Court of Pennsylvania opined

> "On March 15, 2019, Attorney Deady filed a response to the RTSC, stating that pursuant to *Commonwealth v. Holmes, 79 A.3d 562 (Pa. 2013)*, Appellant was entitled to unitary review of both his direct appeal and PCRA issues as he met the exception of a short sentence, and therefore, a claim that Attorney Kelly was ineffective had arguable merit, but did not satisfy the

> remaining requirements for obtaining ineffective assistance of counsel relief. [n.11]
>
> ***
>
> [n.11] Counsel is presumed effective, and to overcome that presumption, a petitioner must plead and prove: (1) the underlying claim has arguable merit; (2) counsel lacked a reasonable basis for his act or omission; and (3) petitioner suffered actual prejudice. *Commonwealth v. Treiber,* 121 A.3d 435, 445 (Pa. 2015). A claim will be denied if the petitioner fails to meet any one of these prongs. *See id.*" (*Commonwealth v. Donahue, No. 1876 MDA 2018, pp9-10, (Pa. Super. Ct. Mar. 9, 2023),* App. 64)

Both Dauphin and Luzerne Counties presented the Petitioner with the identical and inappropriate *Hobson's choice.* In both cases, the Superior Court of Pennsylvania opined;

> "To be eligible for [PCRA relief], the petitioner must plead and prove by a preponderance of the evidence" they are "currently serving a sentence of imprisonment, probation or parole for the crime[.]" 42 Pa.C.S. §9543(a)(1)(i). [See App. 120]

Additionally,

> Pennsylvania law makes clear the trial court has no jurisdiction to consider a subsequent PCRA petition while an appeal from the denial of the petitioner's prior PCRA petition in the same case is still pending on appeal. A petitioner must choose either to appeal from the order denying his prior PCRA petition or to file a new PCRA petition; the petitioner cannot do both, . . . "prevailing law requires that the subsequent petition must give way to a pending appeal from the order denying a prior petition." If the petitioner pursues the pending appeal, then the PCRA court is required . . . to dismiss any subsequent PCRA petitions filed while that appeal is pending.
>
> *Beatty,* 207 A.3d at 961 (citations omitted & paragraph break added)." (*Commonwealth v. Donahue, No. 1168 MDA 2018, (Pa. Super. Ct. Mar. 9, 2023)* (App. 10-11)*; Commonwealth v. Donahue, No. 1876 MDA 2018, (Pa. Super. Ct. Mar. 9, 2023),* App. 73-74)

Pennsylvania's PCRA is unconstitutional in short sentence circumstances. (*Holmes supra*)

42 Pa. C.S. §9543(a)(1)(i);

> "§9543. Eligibility for relief. (a) General rule.--To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following: (1) That the petitioner has been convicted of a crime under the laws of this Commonwealth and is at the time relief is granted: (i) currently serving a sentence of imprisonment, probation or parole for the crime;" (*42 Pa. C.S. §9543(a)(1)(i)*, App. 120)

In both counties, the Petitioner was wrongly convicted based on evidence that could only be admitted via a "good faith exception" to the exclusionary rule. (*United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984)*; *U.S. Const. Amend. IV, V,* App. 115 - 116) Pennsylvania rejects the good faith exception. (*Pa. Const. Art I, §8,* App. 67; *Com. v. Edmunds, 586 A.2d 887, 526 Pa. 374, 402, 411, (1991); Com. v. Diego, 119 A.3d 370 (Pa. Super. Ct. 2015)*)

> "[G]iven the strong right of privacy which inheres in Article 1, Section 8 [See App. 117], as well as the clear prohibition against the issuance of warrants without probable cause, or

> based upon defective warrants, the good faith exception to the exclusionary rule would directly clash with those rights of citizens as developed in our Commonwealth over the past 200 years. *(Edmunds supra 402)*
>
> ***
>
> Article I, Section 8 of the Pennsylvania Constitution does not incorporate a "good faith" exception to the exclusionary rule." *(Edmunds supra 411)*

In Dauphin County, the Petitioner informed appellate counsel that he was convicted based on hardcopy printouts of emails that were wrongly admitted by the trial court. (Trial Exhibits on record with the Clerk of Courts of Dauphin County, Pennsylvania) The letterhead on the alleged email evidence contains the names of the individuals who first printed out the hardcopies of the emails before giving them to the alleged victims, who then read the emails in hardcopy and handed them back to police as alleged evidence of illegal communications. (*Commonwealth v. Cugnini, 307 Pa. Super. 113, 452 A.2d 1064 (1982)*) Trial Exhibits 3 and 4 contain the Letterhead of "Budman, Gregory L.", who is a police officer and to whom the emails were not sent. (Evidenced by the email address lists in the Trial

Exhibits on record with the Clerk of Courts of Dauphin County, Pennsylvania)

In Luzerne County, the Petitioner was also convicted based on hardcopy printouts of emails that were wrongly admitted by the trial court. (Evidence in the trial court record with the Clerk of Courts of Luzerne County, Pennsylvania) The letterhead of state exhibit CX-2 contains the Petitioner's name, which means the Petitioner would have had to print the email out and then give it to police so that they could produce it at trial. The Petitioner did not print out CX-2, nor did he give a printout of CX-2 to anyone.

Also in Luzerne County, the police lost custody and control of all evidence, which means the alleged evidence was thenceforth forever inadmissible. (*U.S. Const. Amend. IV, V,* Attachments J & K; *Com. v. Alarie, 547 A.2d 1252, 378 Pa. Superior Ct. 11, 378 Pa. Super. 11, 17, (1988); Cugnini supra*)

> "MR. ANDERSON: I do not, Your Honor. Although I haven't been told this specifically, **I've got a sneaking suspicion that they're lost.** I asked the Hazleton Police Department, you know, where is the evidence in this case and where is the file, and they switched over computer systems or something at

some point, you know, and he was arrested in 2012 so a lot of time went by and at some point they switched over either their computer system or their file room or something and a bunch of files got lost. His apparently is one of them. I've never seen anything that they seized. I don't--I know that they took a couple of computers. I think there may have been some rudimentary analysis of those. I saw a few pages of reports which were provided to Mr. Matangos, those reports which honestly made no sense to me whatsoever and they certainly weren't used during the trial as Your Honor knows. In fact, the defendant stipulated at trial that he sent the subject email.

THE DEFENDANT: No, I did not.

THE COURT: Well, Mr. Matangos did.

THE DEFENDANT: I specifically told him not to, Your Honor, and I remember there was-

THE COURT: Okay. I understand...

***

...Mr. Anderson just said, it's because there's something screwy about the cases. And now after all this time Mr.

> Anderson is telling us they can't even find the files and the evidence in your case which, you know, raises some suspicion about what's going on... " (*Hearing Transcript of October 23, 2027, pp5-7,* App. 95)

Without getting a new warrant, police re-collected the evidence a second time. The re-collected evidence is only admissible via the "good faith exception" to the exclusionary rule, which Pennsylvania rejects. (*Edmunds supra*)

The Superior Court of Pennsylvania noted that, in addition to raising the issue in briefs, the Petitioner also raised the matter of the state's illegally obtained trial exhibits in applications for relief. *(Donahue, No. 1168 MDA 2018 supra, pp10-11)* (App. 13); *Donahue, No. 1876 MDA 2018 supra* App 57, 85)

The Petitioner informed appellate counsel in Dauphin County that the trial court removed the presumption of innocence prior to the beginning of opening arguments.

> "... the Commonwealth has to prove the elements of each of these charges to you beyond a reasonable doubt. And whether the Commonwealth **does so or -- does so** is your decision when you go

> out to render the verdict ..." (*N.T. April 18-19, 2016, p8)* (App. 31)

The trial court failed to instruct the jury that the appropriate standard of proof in such a trial is "beyond doubt", not merely "beyond [a reasonable] doubt", as was standard practice in the United States prior to 1895. In 1895, the United States Supreme Court ruled that the presumption of innocence must be charged to the jury in every trial in which the standard of proof is "beyond a reasonable doubt". (*Coffin v. United States, 156 U.S. 432, 15 S. Ct. 394, 39 L. Ed. 481 (1895)*) In that same opinion, the court also found that

> "[I]t has been held not error to refuse to charge the presumption of innocence where the charge actually given was, "that the law required that the State should prove the material elements of the crime **beyond doubt**." *Morehead* v. *State,* 34 Ohio St. 212". (*Coffin supra p457*)

In 2022, several police officers testified at federal trial that in 2012 they discovered the presence of carbon monoxide gas in the living space of the Petitioner's family's home, which is the same location from which police in both cases alleged that the Petitioner drafted and sent emails to government officials. This discovery proves that the Petitioner,

more probably than not, was involuntarily and unknowingly suffering from varying degrees of carbon monoxide intoxication in the days, and during the events, for which he was ultimately wrongly charged and wrongly convicted in two separate Pennsylvania counties.

> "[Donahue:]Q. Were you one of the officers who complained of carbon monoxide poisoning?
>
> [King]A. I was evaluated by E. M. S. and provided oxygen after entering into your home, yes.
>
> Q. Would you please describe any symptoms that you felt that required you to be evaluated by E. M. S. and getting oxygen?
>
> A. Didn't really have symptoms per se. The fire department notified us there were high levels of C.O. detected in there and we should be evaluated by E. M. S." (N.T., Jan 18, 2022[3] trial transcript, p49 at *Donahue v. City of Hazleton, Civil No. 3:14-1351, (M.D. Pa.)*) (App. 128)
>
> "[Donahue:]Q. And is it true that at some point the officers who were in the

[3] The transcript is misdated, Jan 14, 2022.

house who had arrested me had indicated that they felt dizzy or nauseous or affected by carbon monoxide?

[Ledger:]A. Yes, I was aware of that." (Jan 18, 2022 trial transcript, p68 at *Donahue No. 3:14-1351, (M.D. Pa.) supra*) (App. 128)

"[Donahue:]Q. Okay. Do you remember that the fire department took over the scene at some point because of carbon monoxide?

[Gallagher:]A. I know the fire department came to the scene. I won't say they necessarily took over our scene... I believe as soon as you were taken into custody all officers exited the interior of the residence.

***

[Gallagher]: I believe you were taken out rather quickly due to the environment within the residence. We were unsure whether or not it was safe for us or you to be inside. You were removed along with police personnel so the fire department can come up and

deem the residence safe..." (Jan 18, 2022 trial transcript, p88 at *Donahue No. 3:14-1351, (M.D. Pa.) supra*) (App. 129)

"[Donahue:]Q. Okay. And were you among the officers who was treated for carbon monoxide?

[Coffman:]A. Yes.

Q. Did the carbon monoxide symptoms occur right then at that time or shortly thereafter?

A. I don't remember. I just remember when it was over I was feeling a little bit nauseous and they gave me oxygen." (Jan 18, 2022 trial transcript, pp95-96 at *Donahue No. 3:14-1351, (M.D. Pa.) supra*) (App. 130)

"[Donahue:]Q. How do you know the carbon monoxide intoxication inside the home or the carbon monoxide gas ...really occurred?

***

[DeAndrea:]A. I was informed that there was." (Jan 19, 2022 trial

> transcript, p58 at *Donahue v. City of Hazleton, Civil No. 3:14-1351, (M.D. Pa.)*) (App. 134)

In 2015, an officer also testified that the Petitioner had been exposed to carbon monoxide intoxication in the days prior to his arrest.

> "[Thompson:]Q. Okay. So there was no indication upon entry that there might be carbon monoxide —.
>
> [Jason Zola:]A. Oh, there definitely was. You could smell — I mean, I immediately upon entry — we almost actually backed out of the house originally because when we went in, after encountering the kitchen chairs, I had said, something's not right here. There's a smell in this house. Something's not right. And sure enough, upon contacting the fire company, there was a presence of carbon monoxide in there. There was a smell coming from the stoker."(March 19, 2015 deposition transcript p31, *Donahue v. City of Hazleton, Civil No. 3:14-1351, (M.D. Pa.)*) (App. 135)

At other hearings, similar testimonies regarding the Petitioner's involuntary exposure to carbon monoxide intoxication were given. This evidence proves that in both cases below, the Petitioner was involuntarily and unknowingly intoxicated at the very time that he is alleged to have written and sent illegal communications. Therefore, the Petitioner cannot be held culpable for the communications. (*Counterman v. Colorado, 143 S. Ct. 2106, 600 U.S. 66, 216 L. Ed. 2d 775 (2023); Jones v. Den Norske Amerikalinje A/S, 451 F.2d 985 (3d Cir. 1971); Monumental Life Ins. Co. v. Franko, 486 N.E.2d 608, 612, (Ind. Ct. App. 1985); People v. Glenn, 599 N.E.2d 1220, 1226-1227, 233 Ill. App. 3d 666, 175 Ill. Dec. 206 (App. Ct. 1992); Seely v. State, 471 P.2d 931, 934, (Okla. Crim. App. 1970); Albanese v. N. V. Nederl. Amerik Stoomv. Maats, 346 F.2d 481, 483 (2d Cir. 1965)*)

In Dauphin County, Pennsylvania, law enforcement officers and the government officials, who alleged to have been victims of true threats communicated to them by email from November 26-28, 2014, waited until January 12, 2015 to file criminal charges claiming that they were threatened. By waiting until after the Thanksgiving, Christmas and New Years holidays were over prior to initiating criminal charges, both police and the alleged victims forfeited their rights to claim a "true threat" ever

existed. (Evidence by the four corners of the charging documents on record at the Clerk of Courts of Dauphin County, Pennsylvania. *Franks v. Delaware, 438 U.S. 154, 160, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978); Edmunds supra; Counterman supra pp. 4–14*)

In Luzerne County, Pennsylvania, law enforcement officials also forfeited their right to claim that they were victimized by communication. Police testified at trial on January 19, 2022 that the communication for which they arrested the Petitioner on August 21, 2012 was actually received and read by them and the Luzerne County District Attorney (DA) on August 17, 2012. It was the DA herself who ultimately alleged that she was the victim of a threatening communication on August 17, 2012. However, after initially reading the August 17, 2012 email, the DA and police collectively determined that there was no crime or threat. (*Counterman supra*) They then took a four day weekend, returned to work on August 21, 2012 and only then decided to falsely report in charging documents they first discovered the August 17, 2012 communication on August 21, 2012. They then proceeded to feign an emergency and launched a fake no-notice rapid response in the form of a heavily armed police raid to arrest the Petitioner. (*Donahue No. 3501-2012 supra)*

"[Donahue]Q. Now, is that an e-mail that **you** sent to... Salavantis?

[**DeAndrea**]A. Yes, it is.

***

THE COURT: It's admitted.

***

Q. Officer DeAndrea, would you please tell us what the date of that e-mail is?

A. It was sent Friday, August 17th, 2012 at 3:34 p.m.

Q. ...And would you please tell us what the subject of that e-mail is, the subject line?

A. The subject line refers to the subject line from the e-mail behind--below it, which is reference **harassment and conspiracy complaints against corporal Wetzel and others.**

Q. And then could you just read that--the one line you sent to ...Salavantis?
A. Do you consider this a threat.

Q. Thank you. And do you agree it's your signature block down below?

> A. That is my signature block as the chief of police.
>
> ***
>
> Q. And below is that the e-mail you were making reference to, the next one?
>
> A. Yes, it is and I did--I apologize. I did forward that e-mail from you to...Salavantis...
>
> ***
>
> Q. So my question is, **is it the exact same e-mail for which I was arrested**? That's the question.
>
> ***
>
> THE WITNESS: **Yes**, that is the e-mail." (Jan 19, 2022 trial transcript, pp31-34 at *Donahue No. 3:14-1351, (M.D. Pa.) supra* App. 132)

The information within the four corners of the charging documents (on file with Clerk of Courts of Luzerne County, Pennsylvania), claiming that the communication was first discovered on August 21, 2012 was a lie. (*Franks supra 160; Edmunds supra*)

The United States Senate found, in its adjudication of the Second Impeachment of President Trump (*Trump II*), that the black letter meaning of *U.S. Const. Amend. I* (App. 114) is that "true threats"

are indeed protected speech. *Trump II* was *"based on cold, hard facts."* (CREC[4]-2021-02-09: S590; CREC-2021-02-10: S616; CREC-2021-02-11: S665) *"*[N]*umerous officials in Washington ... have indeed used profoundly reckless, dangerous, and inflammatory rhetoric*" to harass both their political opponents and their opponents supporters. (S669)

The speech presented and accepted as evidence at *Trump II* implied, intimated, threatened, harassed, terrorized and explicitly called for criminal acts of violence. (S595-596) The US Senate ruled that such language is protected speech. (S671-675)

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." (S599; S675; S734) (App. 50)

"Turning to the text of the Constitution is... the most appropriate and the most important starting place to trying to answer a Constitution-based question." (S606; S675-677; S718-719, S730)

---

[4] Congressional Record of Trump II Impeachment Trial, page S590, hereinafter, "S...".

> "A true textual analysis, as the name implies, always begins with the words of the text and only resorts to legislative history or history itself if the meaning of the text is not plain. As the Supreme Court has emphasized, '[s]tatutory interpretation, as we always say, begins with the text.' 'In interpreting this text, we are guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.' And '[w]e must enforce plain and unambiguous statutory language according to its terms.'" (S606; *Ross v. Blake, 136 S. Ct. 1850, 1856, 578 U.S. 632, 195 L. Ed. 2d 117, Part(II)(A), (2016)*)

"Close enough is for horseshoes and hand grenades, not constitutional interpretation." (Ramos v. Louisiana, 140 S. Ct. 1390, 206 L. Ed. 2d 583, 590 U.S. 1390 (2020), Justice THOMAS, concurring in the judgment, 1424, Part(II)) "The Framers didn't mince words." (S593)

The first amendment doesn't identify any form of unprotected speech. There is no mention of harsh, inflammatory, harassing, threatening, truly threatening, dangerous, terroristic, extreme and/or violent language (if language can even be violent) or

calls to violence not being protected by *U.S. Const. Amend. I.* (App. 114) There is no reference at all to the existence of any form of language that is felonious and/or a misdemeanor and beyond the protection of the First Amendment. The plain language of *U.S. Const. Amend. I* indicates that Congress' legislative intent is to protect all language, including harassing "fighting words" and "true threats". (S674-675, S681; S718-719, S727, S730-731, *Schumer* S734) (App. 114)

> "' 'Shall' means shall. The Supreme Court . . . ha[s] made clear that when a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command,' as in shall remove. Indeed, 'the mandatory 'shall' . . . normally **creates an obligation impervious to judicial Discretion**.'
>
> And "[w]herever the Constitution commands, discretion terminates.' "(S607; S669, S674-677, S681; *Anderson v. Yungkau, 329 U.S. 482, 485, 67 S. Ct. 428, 91 L. Ed. 436 (1947); Escoe v. Zerbst, 295 U.S. 490, 493, 55 S. Ct. 818, 79 L. Ed. 1566 (1935); United States ex rel. Siegel v. Thoman, 156 U.S. 353, 560, 39 L. Ed. 450, 15 S. Ct. 378 (1895))*

"The precedent [Trump] *ask*[ed Congress] *to create...* [did] *not raise[] very complicated legal issues".*(S661; S693; S727)

> "The President's... conduct was totally appropriate... Exactly what he did is the new standard for what is allowable..."(S689)

In *Trump II,* Congress clarified, with *"the clearest of responses"* (S661), that laws like 18 Pa. C.S. §2709 (App. 118) and 18 Pa. C.S. §2706 (App. 119) criminalize the very speech that is protected under *U.S. Const. Amend. I.* (App. 114) (S661-662; S669, S674-675, S681, S689; S718-719; S729-733, S739)

> "§ 2709. Harassment.
> (a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:...
> (4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;" (App. 118)

> "§ 2706. Terroristic threats.
> (a) Offense defined.--A person commits the crime of terroristic threats if the

> person communicates, either directly or indirectly, a threat to:
> (1) commit any crime of violence with intent to terrorize another;" (App. 119)

Trump II was a legislative act. *(Kilbourn v. Thompson, 103 U.S. 168, 182, 190, 191, 26 L. Ed. 377, 26 S. Ct. 377 (1881))* Because *"[I]mpeachment ... ... **reaffirm**[s] ...constitutional principles"* (S594), *Trump II* ***"establish*[ed] *a standard going forward for all time"*** (S689) The prosecution in *Trump II* enjoyed the benefits of "adverse inference" (S690) and a lower standard of proof (S691-692) than that required in the cases below. Yet, the prosecution still lost its case. *Trump II's* acquittal clarified that harassing, threatening and terroristic language and explicit calls to violence are protected by *U.S. Const. Amend. I.* (App. 114) (S658-661, S669, S675-677; S689; S718-719, S727, S730-731, *Schumer* S734) This is true even when speech successfully *"steels"* the crowd, and/or one's self to violence. (*Donahue, No. 1168 MDA 2018 supra, p18,* App. 22) The violence may be criminal but the speech is protected. (S616; S658-661, S689; *Schumer* S734, *McConnell* S735-736; *Brandenburg v. Ohio, 395 U.S. 444, 448, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969)*)

> "Every idea is an incitement, and if speech may be suppressed whenever it

> might inspire someone to act unlawfully, then there is no limit to the State's censorial power." (S677)

In the shadow of *Trump II*, either the reach of *Brandenburg* has been expanded or *Brandenberg* (S660; S670) has been overruled. (S616; S658-661, S669, S674-675, S681, S689; S718-719, S729-733, *McConnell* S735-736, *Collins* S739)

The very worst, harshest, inflammatory, harassing, threatening, and/or terroristic language that is alleged in the cases below is not nearly as extreme, harsh, inflammatory (*"incendiary"*) (S730), harassing, threatening and/or terroristic as the language that Congress, through *Trump II*, clarified is protected speech under *U.S. Const. Amend. I.* (S616; S658-661, S668-669, S674-677, S689; S718-719, S727, S730-731, *Schumer* S734) (App. 114)

> "In Brandenburg, through—again, Bible Believers require[s] you to look at the words of the speech. You actually can't go outside the words of the speech. You are not allowed to in the analysis." (S692; S730-731; *Bible Believers v. Wayne County, Mich., 805 F.3d 228 (6th Cir. 2015))*

During *Trump II*, the US Senate was asked by the House to decide *"what the* [Constitution] *is"*. Prior to *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803),* doing so was the Senate's duty in all constitutional questions.

> *"You ask what a 'high crime and misdemeanor' is under our Constitution."* (S591; S659; S693-694)

> "...a high crime is a felony and a misdemeanor is a misdemeanor." (S601)

The Senate decided the first *"heavy and weighty constitutional question"* (S592) when it found that it has the jurisdiction to decide *"what the* [Constitution] *is"*. (S590-609; *Marbury Supra*) The Senate then heard all the evidence and arguments and ultimately clarified Congress' intent that speech previously thought by courts to be a *'high crime and misdemeanor"* is protected under *U.S. Const. Amend. I.* (S591; S659; S669, S674-677, S681, S689; S718 -719, S729-733, *Schumer* S734, S739) (App. 114)

> "...144 constitutional scholars, including Floyd Abrams, a ferocious defender of free speech; Charles Fried, President Reagan's Solicitor General; Steven Calabresi, the cofounder of the Federalist Society, released a statement calling the President's First

Amendment arguments "legally frivolous"—"legally frivolous"— adding:

> '[W]e all agree that the First Amendment does not prevent the Senate from convicting President Trump and disqualifying him from holding future office.'

They went on to say:

> 'No reasonable scholar or jurist could conclude that President Trump had a First Amendment right to incite a violent attack on the seat of the legislative branch, or then to sit back and watch on television as Congress was terrorized and the Capitol sacked.'"(S617)

All parties and the Senate agreed as to what were the facts and intent. The Senate then acquitted President Trump by clarifying that the "true threats" and "fighting words" are protected speech. (S658-666; S669, S674-675, S689) Therefore, the communications for which the Petitioner was convicted below are also protected free speech.

In the cases below, the state failed to establish that the language it alleged to be "true threats" was at least as "recklessness" as that defined by *Counterman supra, pp. 4–14.* On their very face, Pennsylvania's statutes 18 Pa. C.S. §2709 (App. 118)

and 18 Pa. C.S. §2706 (App. 119) criminalize protected speech. (*Sandstrom v. Montana, 442 U.S. 510 (1979)*)

In *Donahue v. DAUPHIN COUNTY, No. 20-2997 (3d Cir. Mar. 24, 2021)* (App. 103), the Third Circuit Court found that the Petitioner was convicted in Dauphin County, Pennsylvania for threatening lawsuits.

> "Two of the missives that a Pennsylvania jury found sufficiently harassing to warrant criminal sanction disclose Donahue's subjective intent in pursuing these subsequent civil complaints." (id) (App. 107)

Threatening lawsuits is not a "true threat" that meets the "recklessness" standard that was established in *Counterman supra.* The black letter of Pennsylvania's harassment statutes 18 Pa. C.S. §2709 (App. 118), which were used to convict below,

> *"A person commits the crime of harassment when, with intent to harass, annoy or alarm another..."* (18 Pa. C.S. §2709(a)) (App. 118)

is identical to the formerly comparable New York statute of 2012, NY Penal L §240.30 (2012) (App. 123), which, at the urging of several federal courts,

was struck in 2014 by the Appellate Court of New York in *People v. Golb, 23 N.Y.3d 455, 15 N.E.3d 805, 991 N.Y.S.2d 792. PART III, (2014).*

The NY statute was rewritten that same year. (App. 124) The previously struck language now only appears within the text of criminal statutes involving a physical act of assault or stalking. NY Penal L §240.30 (2023) (App. 124) and NY Penal L §240.26 (2023) (App. 125) only allow the previously struck language to be used within the context of a crime involving a physical act of assault or physically following another person.

The Superior Court of Pennsylvania opined that the Petitioner is not entitled to review of any matters simply because he is not serving a sentence. (*Donahue, Nos. 1168 MDA 2018 & 1876 MDA 2018 supra*)

REASONS FOR GRANTING THE PETITION

In Luzerne County, because the court never allowed PCRA matters to be developed through unitary review, neither court, nor counsel, could state for certain that the additional prongs of proving ineffectiveness of counsel (*Donahue, No. 1876 MDA 2018, supra pp9-10, n.11* App. 64) could not have been met.

In Dauphin County, trial and pretrial counsel failed to preserve "relatively strong issues". *(ante* p4*; U.S. v. Cronic, 466 U.S. 648(1984); Strickland v. Washington, 466 U.S. 668(1984); Ross v. Varano, 712 F.3d 784 (3d Cir. 2013); Kimball supra)* Appellate counsel should have raised the issues of previous counsel ineffectiveness under unitary review. The trial court would have then been required under Pennsylvania common law (*Holmes supra*) to grant either a *Holmes I* or *Holmes II* unitary review.

Holmes supra explicitly established *"six year[s]"* as a *"short sentence" (Holmes supra p564).* Counsel was well aware of the constraints created by that short sentence and failed to inform the Petitioner of the availability of unitary review. Counsel instead planned for the Petitioner to violate probation in order to preserve PCRA rights. (*ante* pp5-6)

Counsel was ineffective for failing to inform the Petitioner that the decision to pursue unitary review under *Holmes II* was his to make, not the decision of counsel. (*Cronic supra; Strickland supra; Varano supra; Kimball supra*)

Both Dauphin and Luzerne Counties forced an unjust *Hobson's choice* upon the Petitioner, who now turns to the Supreme Court of the United States for relief. This issue has not been addressed by the

Supreme Court of the United States and raises the federal question of whether or not a court appointed counsel can deny representation on matters for which the counsel was specifically appointed. (Pa.R.Crim.P. 904(C), App. 126). The Petitioner avers that the Court must extend the constraints of *Varano supra; Cronic supra and Strickland supra* to the circumstance in the cases below.

In light of Pennsylvania's own common law, the Pennsylvania PCRA is unconstitutional when an appellant faces a short sentence. *(Holmes supra; Commonwealth v. Delgros, 183 A.3d 352, 646 Pa. 27 (2018))*

In Dauphin County, Budman had to access the emails presente at trial via wiretap activity, which in Pennsylvania requires a wiretap warrant (*Diego supra*). Because no such warrant was ever produced the trial exhibits upon which the Petitioner was convicted are inadmissible. (*Pa. Const. Art I, §8*, App. 67; *Edmunds supra; Diego supra; U.S. Const. Amend. IV, V.* (App. 115 - 117)

In Luzerne County, the only way for the state to acquire CX-2 was through wiretap activity, which requires a wiretap warrant (*Diego supra*), which was never produced. A new warrant was also required to re-collect the previously lost evidence. No such warrant was ever produced. Because Pennsylvania

rejects the "good faith exception" to the exclusionary rule, the evidence in both Pennsylvania counties is inadmissible.

The Supreme Court of the United States has recognized "*that 13 States do not provide a good-faith exception*". (*Heien v. North Carolina, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475, n.2, (2014)*)[5] In the past, the Supreme Court has aided zealous police in getting around their state's constitutional rejection of the "good faith exception". (*Pennsylvania v. Labron, 518 U.S. 938, 116 S. Ct. 2485, 135 L. Ed. 2d 1031 (1996)*) However, the Supreme Court of the United States has never addressed Pennsylvania's rejection

---

[5] See *Heien* supra n.2: "*State v. Marsala,* 216 Conn. 150, 151, 579 A.2d 58, 59 (1990); *Dorsey v. State,* 761 A.2d 807, 814 (Del.2000); *Gary v. State,* 262 Ga. 573, 574-575, 422 S.E.2d 426, 428 (1992); *State v. Guzman,* 122 Idaho 981, 998, 842 P.2d 660, 677 (1992); *State v. Cline,* 617 N.W.2d 277, 283 (Iowa 2000), abrogated on other grounds by *State v. Turner,* 630 N.W.2d 601 (Iowa 2001); *Commonwealth v. Upton,* 394 Mass. 363, 370, n. 5, 476 N.E.2d 548, 554, n. 5 (1985); *State v. Canelo,* 139 N.H. 376, 383, 653 A.2d 1097, 1102 (1995); *State v. Johnson,* 168 N.J. 608, 622-623, 775 A.2d 1273, 1281-1282 (2001); *State v. Gutierrez,* 116 N.M. 431, 432, 863 P.2d 1052, 1053 (1993); *People v. Bigelow,* 66 N.Y.2d 417, 427, 497 N.Y.S.2d 630, 488 N.E.2d 451, 457-458 (1985); *Commonwealth v. Edmunds,* 526 Pa. 374, 376, 586 A.2d 887, 888 (1991); *State v. Oakes,* 157 Vt. 171, 173, 598 A.2d 119, 121 (1991); *State v. Afana,* 169 Wash.2d 169, 184, 233 P.3d 879, 886 (2010); see also *People v. Krueger,* 175 Ill.2d 60, 61, 76, 221 Ill.Dec. 409, 675 N.E.2d 604, 606, 612 (1996) (limiting the exception to situations where police have a warrant)".

of the "good faith exception" outside of the alleged "automobile exception".

In its recent opinions, the Supreme Court has been a friend of state sovereignty *Dobbs v. Jackson Women's Health Organization, 142 S. Ct. 2228, 597 U.S., 213 L. Ed. 2d 545 (2022)* and has recognized that it is only the individual, and not the state, who can forfeit one's protections under the sovereignty of a state constitution. This court has not addressed Pennsylvania's rejection of the "good faith exception" within the context of wiretaps and electronic interception activities.

Per *Coffin supra*, it is axiomatic that when the presumption of innocence is removed at the beginning of trial, the appropriate Standard of Proof is "beyond doubt" which, in the case below, ultimately mandates axiomatic acquittal. In applying *Coffin supra*, the Supreme Court of the United States has only addressed cases in which jury instructions lowered the standard of proof. (*Francis v. Franklin, 471 U.S. 307, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985)*) It has never addressed a case in which a jury instruction raised the standard of proof to something greater than "beyond a reasonable doubt".

The last time the Supreme Court addressed a jury trial in which the presumption of innocence was

not charged was in 1895. (*Coffin supra* p457) Post *In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970),* the Supreme Court has never addressed a case in which no objection was raised to the removal of the presumption of innocence prior to opening arguments. Per the court's incorporation of *Morehead supra,* the appropriate standard of proof in the case below is "beyond doubt".

Although Pennsylvania does not have an explicit involuntary intoxication law or common law rule that addresses involuntary intoxication, relief should be granted to the Petitioner on this point. In similar cases involving non lethal amounts of carbon monoxide intoxication, courts have found the following;

> "One of the symptoms of exposure to small amounts of carbon monoxide ... is the speech difficulty encountered. Lawyers' Medical Cyclopedia, ibid, § 24.17, states with reference to small amounts of carbon monoxide: "* * * speech difficulty (may act like drunk)." " *(Seely supra 934)*

In the instant case, the Petitioner has presented enough evidence of carbon monoxide intoxication to establish a *prima facia* case that he, more probably than not, was unknowingly involuntarily intoxicated by carbon monoxide at the

time that he is alleged to have written and sent criminal communications.

> "As the Seventh Circuit... explained, a complaint must give "enough details about the subject-matter of the case to present a story that holds together." *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010); *see also Sanjuan,* 40 F.3d at 251 [*Sanjuan v. Amer. Bd. of Psychiatry and Neurology, Inc., 40 F.3d 247 (7th Cir. 1994).*](explaining a plaintiff does not need to allege facts establishing each element of a cause of action; at the pleading stage, "the plaintiff receives the benefit of imagination, so long as the hypotheses are consistent with the complaint")." *(Nikolic v. ST. CATHERINE HOSPITAL, No. 2: 10 CV 406, Part II.(B)(1), (N.D. Ind. Sept. 28, 2011))*

The Petitioner avers that once the state discovered the presence of carbon monoxide gas, the police bore the burden of both investigating and developing the facts of how carbon monoxide affected the Petitioner in both cases. *(Kruger v. Lancaster County, Civil Action No. 12-cv-06248, Part III(B) & III(C), (E.D. Pa. Mar. 9, 2015); Albanese supra 483)* The Supreme Court of the United States has never

addressed the issue of involuntary intoxication outside of vehicular related cases.

On January 12, 2015, criminal charges were filed against the Petitioner in Dauphin County, Pennsylvania, by law enforcement officers and the government officials who alleged to have been victims of true threats communicated to them via email from November 26-28, 2014. The fact that they waited until January 12, 2015 to initiate criminal charges serves to forfeit their right to claim that a "true threat" ever existed. The decision to first take the Thanksgiving, Christmas and New Year's holidays, and to wait until after all three holidays were over before initiating criminal charges, proves that both the police and the government officials involved in the case below consciously decided that the alleged threats were not "true" enough to interfere with the holiday season. Therefore, the conviction should be quashed as being unconstitutional. (Evidence by the four corners of the charging documents on record at the Clerk of Courts of Dauphin County, Pennsylvania; *Franks supra; Edmunds supra; Counterman supra, pp 4-14*)

On Aug 17, 2012, law enforcement officials received and read an allegedly illegal communication from the Petitioner and ultimately decided, that same day, that the communication did not constitute

a threat or an emergency, and then took a four day weekend, ultimately forfeiting their right to claim that a "true threat" ever existed. Using their own interpretation of the language used in the allegedly illegal communication and their interpretation of 18 Pa. C.S. §2706 (App. 119; Charging documents on file with the Clerk of Courts of Luzerne County, Pennsylvania), the communication was not a "true threat". (*Counterman supra*)

The United States Supreme Court has never ruled on whether or not the constitutional findings and rulings of the United States Senate in an impeachment proceeding are binding on the judiciary. The Petitioner now seeks a ruling from the Supreme Court that the US Senate's constitutional findings in *Trump II* are binding on the judiciary and that an act of legislative impeachment supersede all rulings of the Supreme Court regarding the same issues. In the case of *Trump II*, the U.S. Senate struck down the "true threat" doctrine of the Supreme Court.

In the cases below, Pennsylvania failed to establish that the language it alleged to be "true threats" was at least as "recklessness" as that defined by *Counterman supra.* Threatening lawsuits, as was found by the Third Circuit Court in *Donahue No. 20-2997 supra,* is not a "true threat"

and does not meet the "recklessness" standard established in *Counterman supra.*

The Supreme Court's ruling in *Counterman supra* requires the court to compel Pennsylvania to apply the standard established in *Golb supra, PART III,* to each of its "true threats" statutes. This further requires that 18 Pa. C.S. §2709 (App. 118) and 18 Pa. C.S. §2706 (App. 119) be struck.

The Petitioner turns to the Supreme Court of the United States to seek relief *nunc pro tunc.*

CONCLUSION

The Petition for a *writ of certiorari* should be granted.

The foregoing document is true in fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Due Date:
April 8, 2024

Sean M. Donahue
625 Cleveland Street
Hazleton, PA 18201
(570) 454 5367
seandonahue630@gmail.com
pro se