SUPREME COURT OF THE UNITED STATES

23 - 7250



No.

**RIAN G. WATERS,**

Plaintiff - Applicant,

v.

**AIDAN KEARNEY,**

Defendants - Respondent,

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**PETITION FOR A WRIT OF CERTIORARI FROM THE**

**MASSACHUSETTS SUPREME JUDICIAL COURT**

Respectfully submitted,

RGWaters

Pro se /S/ Rian Waters dated April 1st, 2024.

ICO Springfield District Court

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## QUESTIONS PRESENTED

Whether a private plaintiff has standing to appeal a District Courts' unintelligible refusal to issue a criminal complaint, when the crimes are obstructing justice, and the plaintiff's safety, prosperity, and a fair trial is dependent on the state's prosecution.

If so, whether it was an abuse of discretion for the trial courts to approve of obvious crimes that are violating Constitutional Rights without identifying any factual or policy reason, and for the Massachusetts Supreme Judicial Court to affirm their denials without any factual reason, and without addressing the constitutional arguments presented.

## STATEMENT OF RELATED PROCEEDINGS

Rian Waters v. Meta Platforms, Inc., et al 23-15547. Ninth Circuit

42 U.S.C § 1985 (2)i & 1986 case addressing the same conspiracies but for obstructing First Circuit 21-1582, and SCOTUS 22-5133. The District Court sua sponte ignored most of the facts, and then he applied the heightened standard addressing conspiracies to obstruct state proceedings instead of federal proceedings.

RIAN WATERS vs. AIDAN KEARNEY & others 2022-P-1105 MA. Appeals Court

This is the appeal of our original lawsuit. Superior Court ruled in Kearney's favor because I was not willing to name witnesses and proceed to trial without protection for witnesses. I should win without witnesses, so I expect another reversal soon.

RIAN WATERS vs. AIDAN KEARNEY. 490 Mass. 1031

This case sought to reach and apply Kearney's assets because he dissolved his company claiming to have wound down, and because he claimed that he was sending his assets to Europe in case of a judgment against him. Kearney did not respond. The SJC decided it was moot because 1879cv344 was on appeal.

Commonwealth VS Kearney, 23BP116; 2282CR00117 Norfolk Superior Court

The state has charged Kearney with at least 17 witness intimidation related charges for harassment that is similar but not as extreme as what my witnesses faced.

COMMONWEALTH v. AIDAN KEARNEY SJ-2024-0034 SJC Bail Revocation

Kearney had his bail revoked for committing more witness intimidation and is looking for the SJC to declare his conduct legal First Amendment activity.

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## Other Authorities



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## OPINIONS BELOW

The opinion of the Supreme Judicial Court is reported: In The Matter Of Two Applications For A Criminal Complaint 493 Mass. 1002. Appendix A The Springfield District Court's decision is Appendix B. No other written decisions.

## JURISDICTION

The Massachusetts Supreme Judicial court issued its opinion and entered judgment in this matter on October 11, 2023. Justice Ketanji Jackson granted an extension to file a petition to February 8th, 2024. Application (23A589). The petition was mailed on February 8th and received by the Clerk February 13th, 2024. The petition was sent back for minor corrections to be returned within 60 days and the petition is being returned to the Court on April 1st, 2024. The jurisdiction of this Court is invoked under 28 U.S.C.§1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. Ninth Amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Fourteenth Amendment

Section 13B. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:—

"Harass", to engage in an act directed at a specific person or group of persons that seriously alarms or annoys such person or group of persons and would cause a reasonable person or group of persons to suffer substantial emotional distress including, but not limited to, an act conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, a device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system including, but not limited to, electronic mail, internet communications, instant messages and facsimile communications.

(b) Whoever willfully, either directly or indirectly: (i) threatens, attempts or causes physical, emotional or economic injury or property damage to;... or (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness;... (C) judge,... clerk,... (D) person who is or was attending or a person who had made known an intention to attend a proceeding described in this section; or (E) family member of a person described in this section, with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation at any stage,... a motion hearing,... or other criminal proceeding of any type... or any other civil proceeding of any type; or (2) punish, harm or otherwise retaliate against any such person described in this section for such person or such person's family member's participation in any of the

proceedings described in this section, shall be punished by imprisonment... Mass. General Laws c.268 § 13B

## STATEMENT OF THE CASE

This case addresses whether a court of last resort can without factual reason allow a Defendant to get away with undenied crimes that are preventing a fair trial.

I sued Respondent Aidan Kearney in 2018 for defamation. Starting in January 2019, Aidan Kearney threatened and/or harassed me and my witnesses consistently before every court hearing. The 2018 case is still not closed, but I still consider it too dangerous to name witnesses in that case. Rian Waters vs. Aidan Kearney & others 2022-P-1105

After the civil courts refused to contain the witness intimidation, and the police all refused to help, I filed multiple applications for criminal complaints in the Massachusetts district courts.

The evidence presented in the 2019 cases unquestionably established threats, to cause emotional and financial damage to parties and witnesses, with timing routinely showing intent to obstruct court cases. It is also unquestioned that the person responsible for the threats is Kearney.

The Springfield District Court cited outdated elements in 2019 as a pretext to unintelligibly deny issuing a criminal complaint against Kearney. I filed a well written redetermination motion, but it was denied without explanation by now

retired John Payne. I asked for an explanatory memorandum, and that Payne at least cite what element of the statue needed evidence, he denied that too.

On November 19th, 2021, on the same day that Kearney was defaulted in the First Circuit and served with a short order notice to appear for a motion in 1879CV0344, Aidan Kearney conspired with three others in a Facebook group chat titled "#BlogDat, to frame me for sending rape and murder threats to his children.

One of Kearney's coconspirators, Cristina Yakimowsky, publicly released videos of Kearney's conspirator group chat showing that he orchestrated the conspiracy. Every relevant court ignored the witness's evidence and refused to protect her, so Kearney relentlessly attacked her and tried to destroy every aspect of her life. I filed a proposed complaint spelling out how the facts satisfied the elements of the statute, and I added additional witness intimidation charges in Springfield because Kearney said that he would keep harassing the witness's family and customers until she wanted to commit suicide.

Kearney lied to the clerk to delay the proceeding, but then he did not appear for the hearing. With undisputed allegations and facts, the Springfield Clerk denied the complaint without identifying any factual or policy reason supporting the decision. I filed for redetermination, but it was denied by a judge because the Clerk said he reviewed the evidence in his head, and the Court decided I lack standing to appeal.

While I had a petition in Supreme Judicial Court seeking for the SJC to subpoena Cristina Yakimowsky, Kearney blatantly reaffirmed that he was trying to cause

Yakimowsky emotional harm as a consequence of her sharing screenshots of their "private conversations." Kearney again said he was going to keep attacking her until she wanted to commit suicide, so I filed an application for a criminal complaint in the Boston Municipal Court.

The BMC allowed Kearney to yell over me, and Kearney committed perjury stating that he had no idea what the Blogdat group chat was. The BMC denied issuing a complaint without a factual reason and refused to let me get a recording of the proceeding to identify his perjury.

Kearney did not respond to any of my petitions in the Supreme Judicial Court, but they also approved of Kearney's threats without any factual reason. The only legal reasoning that the courts have given for their decisions is that in Massachusetts "'a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." In re Two Applications for a Criminal Complaint, No. SJC-13373, 2 (Mass. Oct. 11, 2023)

Neither Kearney nor any court provided any opposing arguments to any of my arguments regarding standing, and the SJC made no attempt to reconcile the fact that all of the crimes I'm alleging are crimes against justice that are denying me the Constitutional right to a fair trial and preventing me from freely making an income.

In separate matters, Kearney has been charged with at least 17 counts of witness intimidation related charges for harassment that is similar but not as extreme as the threats that my witnesses and I have received. That court has already determined

that "[the Detective's] reports demonstrate a concerted effort, and repeated pattern of conduct designed, by [Kearney] to cause or threaten economic or emotional injury to witnesses or family members of witnesses, and to harass those witnesses, to get them to change their testimony." Commonwealth VS Kearney, 23BP116

## Background:

### November 19th conspiracy

On November 19th, 2021, Kearney got served with a short order notice to appear for a hearing on my motion to attach his bank account for our MA. state case 1879CV0344, which included a note from my old therapist stating that Kearney's harassment stressed my adjustment disorder causing preoccupation and sleep disturbances.

Kearney uploaded my motion signed by the sheriff into his Facebook group chat "#BlogDat" exactly 34 minutes after the sheriff left his house.

On November 19th, 2021, Kearney told his inner circle that "he [(Rian Waters)] knows that in order to win a lawsuit against me [(Kearney)] he needs to prove I caused him to have a disorder." Implying my therapist is an important witness.

On November 19th, 2021, Kearney had a member of his "inner circle" Cris Gagne, publicly identify my therapist's new name on his weaponized public shaming Facebook profile Clarence Woods Emerson.

At or around 6pm on November 19th, 2021, I replied to Cris Gagne's comment identifying my therapist, and stated that I intended to use the comment thread and

any resulting threats to show the courts why Kearney's Facebook profiles need to be unpublished.

At around 9:50 pm on November 19th, 2021, Kearney created a fake Facebook account in my name and wrote rape and death threats in my name directed at himself on the Clarence Woods Emerson Facebook page threatening to harm his own children.

On November 20th, 2021, Aidan Kearney publicly accused me of sending the November 19th threats on YouTube.

Kearney was one of four members in a Facebook group named #BlogDat, and the alias he used was a Facebook profile named "Clarence Woods Emerson." (The group was identified by police in Massachusetts from the town of Holden, incident # 2101-711-OF) Detectives have also confirmed Kearney is Clarence Woods Emerson in his current witness intimidation cases.

Cristina Yakimowsky provided videos scrolling the #BlogDat Facebook group chat from her perspective, which showed that Kearney orchestrated the November 19th conspiracy. The #BlogDat screenshots are admissible as evidence under hearsay exception 801(d)(2)(E)

On or around January 3rd, 2022, Kearney told the Holden Police that he was the only person with access to his public shaming Facebook account, Clarence Woods Emerson. (2101-711-OF pg. 5 at 1)

Kearney privately asked his accomplices in the Facebook group chat #BlogDat to privately send him screenshots of the fake threats.

Kearney knew when the fake profile got reported, and he was worried his plan failed after I reported the account and Facebook shut it down. But a member of Kearney's inner circle, Cris Gagne, (Diane in screenshots) told the group that they already got screenshots of the threats.

According to Kearney the fake profile was up for about 15 minutes before someone reported it, and coconspirator Laura hakes correctly presumed it was me.

At Kearney's direction, another conspirator turned witness Cristina Yakimowsky, sent Gagne's screenshots of the threats to Kearney from multiple Facebook profiles.

On November 23rd, 2021, Kearney filed a malicious harassment order in Leominster District Court. (2161RO358) Kearney and I had a hearing for the matter on December 1st, 2022.

On either November 23rd, 2021, or December 1st, 2021, Aidan Kearney presented evidence that he knew to be fabricated in attempt to convince the judge that I threatened to rape and murder his children.

On December 1st, 2021, Aidan Kearney committed perjury by telling the judge that he was sure that the fake threats (that he sent) were sent by me because he alleged when he clicked on the threats, and they led to my profile with our past messages.

As I kept pressing to get the threats investigated, Cristina Yakimowsky was getting nervous because Kearney made her "an accomplice once again."

Kearney tried to keep his conspirators abreast by telling them that there was nothing to worry about because "I'm the one who did it."

**January 15th threats**

On January 15th, 2022, Kearney told his followers that he found out someone was leaking messages from his group chat, and he threatened and extorted Cristina Yakimowsky on Facebook. The video has been deleted, but I have it recorded. In the video Kearney stated;

"I hope she is scared because she should be, cause did you forget who the f*** I am, and what the f*** I could do? Did you Hun? Did you? Are you s****ing your pants yet? Because you should be. What on earth would make you think, because you knew I was going to find out, when the screenshots came out and they're from your perspective..."

"You wanted to f*** with me? Did you forget who the f*** I am? Did you? Because I am going to remind you. Did you think [releasing screenshots] this would kill me, cause it aint"

"The other people that I have gone to war with they have nothing to lose, you have a lot to lose, you own a business... you live in a $600,000 house in Oxbridge, you have a fiancé who does not know that we talk. He is not going to like to see the messages..."

"I am going to still give you a chance to get out of this, you can call me whenever you want, if you don't, February 17th I will be there at your court date."

On January 20th, 2022, Kearney punished Cristina Yakimowsky by publishing screenshots of the #BlogDat group chat from the Clarence Woods Emerson perspective proving he conspired with her on Facebook to commit witness intimidation against the alleged victim in Yakimowsky's state criminal court case.

**June 18th threats**

On June 10th, 2022, Kearney posted a picture of my motion in 1879cv0344, (for sanctions and or default) identifying Cristina Yakimowsky as a witness and he directed his followers on Facebook to harass her and her company.

On June 17th, 2022, in Milford Mass. District Court (1966CR1686) Kearney testified against Cristina Yakimowsky stating under penalties of perjury that Yakimowsky "worked" for him and that she was "an active participant" with his blog for over two years.

On June 17th, 2022, Kearney was served with a witness subpoena to appear on June 28th, 2022, for a hearing on a motion for sanctions and or default (1879CV0344)[1]

On June 18th, 2022, Aidan Kearney hosted a video on YouTube titled "Ep #493 – Worcester Softball Mom | Easton Trump Store Attack | Drag Queen | Is Crissy Going to Jail?" which can be found here https://youtu.be/85Ch9_jAGG8?t=7676 In the video Kearney said;

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[1] My time to file a cert petition was still running in 22-5133, which is the federal proceeding that I base my 42 U.S.C § 1985 (2)i & 1986 claim on in Rian Waters v. Meta Platforms, Inc., et al 23-15547

"I don't know why you thought this was a smart idea, Chrissy, because you know me, and you know what I do, and you know I'm not gonna rest, you know that right, like you own a business, I am speaking to Chrissy right now cause I know she's listening. So, you own a business, you have a couple kids or whatever, and a family and it's called Royal Thermal View, did you think I wasn't gonna make it like my mission to take all that away from you? Did you think that?"

"Yeah Chrissy, you are going to – – I am never going to stop until you are destitute, until you are in jail. I'm not going to break any laws to do it. I'm not going to threaten you, I'm just going to do what I always do, I am going to remind you every ******* day, when you're alone, and sad, and crying, that you were the dumbest ******* person, who made the biggest mistake of your life when you decided to f*** with me, me of all people, me the most vindictive **** on the planet, and you're like I'm gonna go f*** with that guy..."

"You're gonna lose your lawyer now too, you are losing everyone, cause that's what I do to people, Chrissy, who **** with me, and maliciously, I don't take it on the chin, I'm not one of those people that just moves on, I'm a vindictive ****. And I'm not gonna stop, we're just beginning here. I'm not gonna stop destroying your life, just destroying it, like I am gonna take everything away from you that you love, I want you to feel as low as I did in early January when I found out that you betrayed me. I want you to feel that pain, and you're gonna feel it."

"I will not stop until you beg for mercy, and then I'm going to do it twice as much, you're gonna feel the way I felt when I was in my garage when I wanted to kill myself."

**Additional facts**

In 2019 Kearney promised that he would attack anyone I work with, which has dramatically limited my ability to earn an income.

I did not renew my driver's license because Kearney has consistently harassed the people I live with, and he has routinely had state employee's lookup his targets information for him.[2]

Kearney's gang attacks journalists almost as severe as they attack witnesses. "'I have been routinely harassed, both online and in person; have received text messages from strangers to my private cell phone containing photographs of my children and indirect threats against them ... the likes of which I have never before experienced in my over 25 years of journalism,' she wrote."[3]

On September 24th, 2020, while being interviewed Kearney says that his followers have a pack mentality, and that he knows when he hits publish on Facebook there will be an immediate effect on the person that was written about and that there will then be a large group of people that will go to that person.

On November 7th, 2021, Kearney was talking about a lawsuit against Dave Portnoy, and he said, "People don't like victims, they like winners. They like people

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[2] https://www.masslive.com/news/2023/10/messages-between-turtleboy-avon-police-dispatcher-detailed-in-court-records.html

[3] https://www.bostonglobe.com/2024/01/18/metro/karen-read-due-in-court-thursday/ By Ivy Scott and Travis Andersen Globe Staff, Updated January 18, 2024

who punch the cancel mob in the face instead of playing defensive. What your fans want is for you to sink to your enemy's level. That's the Turtleboy philosophy at least. Principles get you nowhere against these people they want to make you destitute and harm your families and for that they must be destroyed, nothing is off limits. Find out everything about them. Learn what their vulnerabilities are. Attack that. Don't even go after them go after their employers, friends, and people they love. Those unrelated parties won't want to deal with it and will begin to pressure them to stop. Ruin their lives as best as you can and make them regret the day, they ever thought it was a good idea to poke you."

On, December 8th, 2021, Kearney explained that the reason he is unable to let Turtleboy end, is because he created Turtleboy and used it to destroy so many lives, and that he would never be able to have a job outside of Turtleboy as his victims would do to him what Turtleboy did to them.

The SJC knew that Kearney's harassment of witnesses was a lot more profitable than his other content and that he was using the threats against my witnesses to advertise a subscription service. Rian Waters vs. Aidan Kearney. 490 Mass. 1031

## REASONS FOR GRANTING THE PETITION

**The SJC decided an important federal question in a way that conflicts with relevant decisions of this Court.**

This court has already indirectly determined that the case law the SJC used to deny my petition is based on an incorrect interpretation of a Supreme Court case

regarding Article III standing. The SJC cited Bradford v. Knights, 427 Mass. 748, (1998) as the source of the precedent that I lacked "a judicially cognizable interest in the prosecution of another." The Bradford Court cited Whitley v. Commonwealth, 369 Mass. 961, 962 (Mass. 1975) The Whitley court grounded their decision with a cherry-picked citation of Linda R.S. v. Richard D. 410 U.S. 614, 619 (1973).

When the Supreme Court decided in Linda that "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." They did so because that particular "appellant ha[d] made an insufficient showing of a direct nexus between the vindication of her interest and the enforcement of the State's criminal laws." Id.

A few years later the Supreme Court clarified their decision. "Upon careful reading, however, it is clear that standing was denied not because of the absence of a subject-matter nexus between the injury asserted and the constitutional claim, but instead because of the unlikelihood that the relief requested would redress appellant's claimed injury." Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59, 79 n.24 (1978) ("We continue to be of the same view and cannot accept the contention that, outside the context of taxpayers' suits, a litigant must demonstrate something more than injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury to satisfy the 'case or controversy' requirement of Art. III")

In this case, Kearney's crimes have been preventing me from presenting evidence in multiple court cases, intimidating witnesses, and causing extreme emotional and

financial damage to me and all my witnesses in a direct violation to my 14th Amendment right to a fair trial, and my concomitant 9th amendment right to protection in the courts, which certainly is an injury in fact.

Additionally, the Whitley Court had reasoned their decision with the fact that "if aggrieved, [the Complainant could] have recourse to relief through administrative procedures or civil suit. It may further be stated that there is nothing before us which indicates any impropriety in the failure to issue process in th[o]se cases." Whitley v. Commonwealth, 369 Mass. 961, 962 (Mass. 1975)

In this case every charge in the proposed criminal complaint is for a crime against justice that is preventing me from having recourse to a constitutionally fair civil suit. The courts are consistently having ex parte conversations with Kearney and allowing violations to my rights without any intelligible excuse.

Additionally, the non-prosecution of Aidan Kearney has emboldened him to commit even more heinous crimes and he has promised that he will not stop until my witnesses are destitute or in jail.

"The force of stare decisis is at its nadir in cases concerning procedural rules that implicate fundamental constitutional provisions." Doe v. Sex Offender Registry Bd., 41 N.E.3d 1058, 1062 (Mass. 2015) quoting Alleyne v. United States, – U.S., 133 S.Ct. 2151, 2163 n. 5, 186 L.Ed.2d 314 (2013) "It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." Marbury v. Madison, 5 U.S. 137, 147 (1803) "When new insight reveals discord

between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed." Obergefell v. Hodges, 576 U.S. 644, 664, 135 S. Ct. 2584, 2598, 192 L. Ed. 2d 609 (2015)

**The SJC decided an important federal question in a way that conflicts with the decision of another state court of last resort.**

According to the Boston Globe, Massachusetts is the only state that has secret show cause hearings, but in Pennsylvania they have a comparable process where private complainants first must request the district attorney's approval to file a complaint. Pennsylvania gives the DA broad discretion, but unlike Massachusetts Pennsylvania requires the decision to be in good faith and in compliance with the Constitutions.

"The private criminal complainant has the burden to prove the district attorney abused his[/her] discretion, and that burden is a heavy one. In the Rule 506 petition for review, the private criminal complainant must demonstrate the district attorney's decision amounted to bad faith, fraud or unconstitutionality. The complainant must do more than merely assert the district attorney's decision is flawed in these regards. The complainant must show the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore not in the public interest. In the absence of such evidence, the [court of common pleas] cannot presume to supervise the district attorney's exercise of prosecutorial discretion and should leave the district attorney's decision undisturbed.

Thereafter, the appellate court will review the court of common pleas' decision for an abuse of discretion, in keeping with settled principles of appellate review of discretionary matters." In re Ajaj, 55 MAP 2021, 5 (Pa. Jan. 19, 2023)

Since neither the court nor Kearney can come up with an intelligible excuse for why his threats are legal, it's obvious that the decisions were patently discriminatory, arbitrary or pretextual, and therefore not in the public interest.

Imagine you get a traffic ticket upon being pulled over, and you ask the officer why, and he says; "I don't have to tell you anything because a driver has no right to appeal my decision." With careful reading that is the only factual reasoning Springfield has ever given me for their decision, Vol. III 57, which is notably better than what the BMC gave. Vol. III 41

"The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but

experience has taught mankind the necessity of auxiliary precautions." The Federalist, ed. 1864, No. 51 Hamilton

**I have a Constitutional right to safely have witnesses in court.**

"Due process' requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard" Boddie v. Connecticut, 401 U.S. 371, 377 (1971) "Those requirements relate not only to the taking and consideration of evidence but also to the concluding, as well as to the beginning and intermediate, steps in the procedure." Morgan v. United States, 304 U.S. 1, (1938)

The First Amendment's right to litigation, the Ninth Amendment's reservation of unenumerated rights to the people, and the Fourteenth Amendment's rights to due process and equal protection imply a concomitant right to protection for witnesses who are participating in court proceedings. "[A]n eventual trial that reflects witness intimidation or jury tampering is as bad as not trial at all." United States v. Acevedo-Ramos, 755 F.2d 203, 206 (1st Cir. 1985)

All courts are bound by the Constitution, including this one. Marbury v. Madison, 5 U.S. 137, 180 (1803) "[A] provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment." Gideon v. Wainwright, 372 U.S. 335, 342 (1963) "[S]tate courts have

the solemn responsibility equally with the federal courts to safeguard constitutional rights." Burt v. Titlow, 571 U.S. 12, 19, 134 S. Ct. 10, 15, 187 L. Ed. 2d 348 (2013)

"The First Amendment does not supersede the proper administration of justice and the court's obligation to ensure a fair trial, including protecting witnesses from intimidation. See Commonwealth v. McCreary, 45 Mass. App. Ct. 797, 799 (1998) (purpose of witness intimidation statute 'is to protect witnesses from being bullied or harried so that they do not become reluctant to testify or; to give truthful evidence in investigatory or judicial proceedings. . . [and] to prevent interference with the administration of justice'). The right to a fair trial is just as important to the functioning of democracy as the First Amendment." Commonwealth vs. Aidan T. Kearney 23BP11 (Nov 19, 2023) Memorandum and order on defendant's bail petitions.

The Massachusetts Constitution says that the right to protection in the courts was already included in the Massachusetts Constitution, even though it had not yet been specifically mentioned. "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition... the right of access to and protection in courts of justice..." Massachusetts Constitution 48, Init., Pt. 2, § 2

"It is essential to the preservation of the rights of every individual, his life, liberty, property, and *character*, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free,

impartial and independent as the lot of humanity will admit." Mass. Const. Pt. 1, art. XXIX *Emphasis added*

"By insisting that courts comply with the law, parties vindicate not only the rights they assert but also the law's own insistence on neutrality and fidelity to principle. Those systematic interests are all the more evident here, where the lack of a regular rule with proper standards to determine the guidelines..." Hollingsworth v. Perry, 558 U.S. 183, 196-97 (2010)

"It may be that it is the most obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure... It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Coolidge v. New Hampshire, 403 U.S. 443, 454, 91 S. Ct. 2022, 2031, 29 L. Ed. 2d 564 (1971)

**This is a matter of public concern.**

Kearney's other witness intimidation conspiracies obstructing a murder trial for profit have received national attention. Kearney being in jail has slowed the harassment of witnesses, but the court has not been able to stop the harassment.

https://www.bostonglobe.com/2024/01/31/metro/affidavit-investigators-outline-communication-between-turtleboy-karen-read/

Unchecked "instances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and

government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police," (and Plaintiff's) "which in turn impedes the ability of the police to gather evidence in attempt to stop criminal behavior. Thus, the cycle is vicious and invidious...

Community intimidation is characterized by an atmosphere of fear and noncooperation with the police. It is generated by a history of community members witnessing incidents of gang violence, crimes, and retaliation against cooperating witnesses. Each instance of witness intimidation by gang violence or threat of violence reinforces the perception that cooperation with the ~~criminal~~ justice system is dangerous."[4]

If you knew that bringing your vehicle to a state sponsored mechanic would likely subject you and your family to unrelenting harassment campaigns, and that a mob would attack anyone that supports you, would you not consider instead taking your car to a strong unlicensed mechanic who guarantees both protection and dependable service? "[W]here the state fails to get the institutions 'right,' it invites dark-side private ordering to fill in the gap."[5]

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[4] Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado, 39 San Diego L. Rev. 1165, 1195-1196

[5] Milhaupt, C. J., & West, M. D. (2000). The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime. The University of Chicago Law Review, 67(1), 41–98. https://doi.org/10.2307/1600326

"The Court's interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of judicial processes." Hollingsworth v. Perry, 558 U.S. 183, 196 (2010)

"For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered." United States v. Rabinowich, 238 U.S. 78, 35 S.Ct. 682, 59 L.Ed. 1211 (1915)

**Kearney obviously violated the witness intimidation statute.**

"Probable cause to sustain an indictment is a decidedly low standard... Probable cause has been defined as reasonably trustworthy information sufficient to warrant a prudent man in believing that the defendant had committed or was committing an offense." Commonwealth v. Hanright, 466 Mass. 303, 311-12 (Mass. 2013)

Kearney's threats to harass my witness's customers and make her want to commit suicide are plainly threats to cause financial and emotional damage.

The timing of Kearney's actions shows intent and/or reckless disregard to obstruct our court proceedings. The November 19th conspiracy and the June 18th threats happened shortly after Kearney was served by the sheriff to appear in court for a

hearing, and both crimes started by targeting a relevant witness about ten days before the hearing. "The timing of the defendant's actions makes it more, rather than less, likely that he was trying to intimidate [or punish] the witness." Commonwealth v. Robinson, 444 Mass. 102, 109, 825 N.E.2d 1021 (2005).

Cristina was clearly a witness. Aidan Kearney testified that Cristina Yakimowsky worked for him for two years and that she used his blog to intimidate the victim of a different criminal case. To prove this, Kearney presented to the Milford District Court screenshots between him and Cristina from their #BlogDat group chat. Cristina released videos of the same #BlogDat group chat showing that he tried to frame me for threatening his children to obstruct our court case. Cristina was also identified by the Holden police as an "inner circle" member of Kearney's organization.

"The term 'witness' is broadly used to characterize an individual with information that is pertinent to an investigation or case and is often used interchangeably with 'potential witness.' See Commonwealth v. Rakes, 478 Mass. 22, 41, 82 N.E.3d 403 (2017) (describing individuals who might testify in future as 'witnesses' and 'potential witnesses')" Commonwealth v. Brown, 479 Mass. 163, 167 (Mass. 2018)

**I should have gotten notice of opposing arguments.**

It is a violation of my due process rights to approve of obvious crimes that are causing violations to my constitutional rights without informing me of the reasoning. If any court identified a perceived deficiency, I could have cured it or explained their miscomprehension. Each court case is the result of the last court's abstention.

"[I]t is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." Hormel v. Helvering, 312 U.S. 552, 556 (1941) If the Court identified a policy issue, I would know not to waste any more effort presenting evidence, and I could use the decision to address Kearney's next crime. "[A] court should let the parties and an appellate court know why it acts, and on what factual basis." Ben David v. Travisono, 495 F.2d 562, 563 (1st Cir. 1974) "Where no judicial resources have been spent on the resolution of a question, trial courts must be eroding the principle of party presentation so basic to our system of adjudication." Arizona v. California, 530 U.S. 392, 412-13 (2000) "It would be reckless to affirm on a ground that the appellant had never had a chance to address because the appellee had failed to raise it." Frederick v. Marquette Nat. Bank, 911 F.2d 1, 2 (7th Cir. 1990)

**Self-Preservation**

Judges have been using sua sponte lies and plain errors to deny me protection and prevent me from presenting evidence for far too long.[6] Just as you would not give up on your car because the mechanic refused to listen to you when you told him what was wrong with your car, or if they refused to use the correct tool, I am not going to give up on justice.

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[6] This court affirmed without reason a sua sponte decision that applied the heightened standard of the second clause of section 1985(2), when in fact it was alleged that the conspiracies were to obstruct a federal proceeding pursuant to the first clause of section 1985. Rian G. Waters, Petitioner v. Facebook, Inc., et al. 22-5133

Meta's and the courts' protection of Kearney's crimes has also been preventing me from properly eating, sleeping, and earning an income, which collectively has become the root cause of a variety of health issues. I see no reason to seek medical attention (even if I could afford to do so,) until my claims are taken seriously or until I know that the cause of my injury is going to cease.

As a consequence of the courts approving of Kearney's harassment towards me and my witnesses, Kearney's gang has still been harassing us with Kearney in jail, and even sexually harassing a 10-year-old girl who was caught giving me a hug. One way or another Kearney's videos harassing that child will be unpublished and I will stop Kearney's gang from harassing people that associate with me.

Additionally, Kearney exhibits all the features of a psychopath who commit heinous crimes at a much greater frequency, and he has threatened to harm my daughter three years in a row. If I succeed in one of my court cases against him, or if all the court cases conclude and Kearney is a free man, my daughter would be put in unacceptable danger. Therefore, to secure my family's future I need Kearney and his criminal organization to be destroyed, and not just wounded and angry.

But because I reasonably exhausted all governmental avenues for relief without ever being given a fair opportunity to be heard, both common law and the Massachusetts Constitution give me the right to take necessary measures to defend my safety prosperity and happiness.

The common law right of self-preservation allows me "to 'repel force by force' when 'the intervention of society in his behalf, may be too late to prevent an injury.'" District of Columbia et al. v. Heller, 554 U.S. 570, 595 (2008) quoting 1 Blackstone's Commentaries 145–146, n. 42 (1803)

My understanding of this right as it relates to my case, is that the government's consistent refusal to faithfully do their job, gives me the right to take action that would otherwise be considered unlawful or tort worthy, if I can show that such actions have a high likelihood of preventing me from receiving further injury.

Had I not extensively exhausted all government avenues for relief, and had my health not been dependent on urgent action, then this right would not apply as I could reasonably expect that the government would stop witness intimidation and allow my dispute to reach conclusion as the Constitutions command.

The Massachusetts Constitution takes it a step further, and states that after a complete failure in government, I have a right to take action not only to protect my safety, but also my future prosperity and happiness.

"The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness." Preamble of the Massachusetts Constitution

Preambles generally do not have legal effect on their own, but in this instance the right to self-preservation is given effect by Article 1 of the Massachusetts Declaration of Rights.

"All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness." Art 1 Massachusetts Declaration of Rights. See also, California Constitution art. I § 1

Before Kearney's arrest, I informed both the 9th Circuit and Justice Ketanji Brown Jackson that I intended to publish Waters VS Facebook in parts, ensuring it was only as provocative as necessary. My plan was to progressively release and expose advanced criminal processes that no Government wants released, naming them after the corrupt judges who lied about the facts to deny me a fair trial, in an escalating fashion until my witnesses receive protection and Facebook releases the evidence of Kearney's November 19th conspiracy.

It is harder to justify using such extreme measures now that Kearney is in jail, but my health is going to continue getting worse regardless of where Kearney is until I receive resolution, and the judges' corrupt decisions do more damage to me than Kearney's actions ever did.

Balancing these factors, I have decided to release the book[7] up to right before the first provocative part, which I will have ready the next time I get a corrupt decision or Kearney attacks someone I know.

## Conclusion

This Court should grant review and settle this matter with facts instead of tyranny.

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[7] The First Circuit, Rian Waters (January 2024) https://www.amazon.com/gp/aw/d/B0CSX7VFJ1