CASE NO. 24-6546

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT DORGAY

Petitioner,

vs.

PAUL REIF, et al,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT CASE NO. 23-3058

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

On the Friday before the Monday when a trial was to begin against a man accused of domestic violence allegations, the Prosecutor lost communication with its principle witness, the ex-girlfriend. Rather than start any immediate location efforts the Prosecutor waited until the following Tuesday morning, and second day of the man's trial to search for the ex-girlfriend.

The State's failure to prepare the prosecution positioned the man to receive a mistrial if he arrived in courtroom. The Prosecutor prevented the man's court ordered appearance by ordering his Probation Agent to detain him at the probation office to specifically prevent him from traveling to the Courthouse, meeting with his attorney and receiving the mistrial. And in its course, the man suffered severe psychological injuries, resulting in being tried in absentia.

This question presented in this petition goes to the status of approximately **3,668,800** probationers/parolees in the United States[1]:

1. Does the ***Samson v. California***, 47 U.S. 843 (2006), Court decision subjecting parolees' to "Suspicionless Searches" extend to "Suspicionless Seizures" that can be used by State Prosecutor's to specifically prevent the parolee from traveling to the courthouse, consulting with his attorney to receive a mistrial without violating their 1st, 4th, 5th, 6th, and 14th Amendments?

[1] Bureau of Justice Statistics, (2024, May). Probation and Parole in the United States, 2022. http://jbs.gov.;ibrary/publications/probation-and-parole-united-states-2022

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of the petition is as follows.

1. **Petitioner**: Robert Dorgay (pro-se).

2. **Respondents (Listed):** Milwaukee Police Officers Michael Dederich, Arnold Almas, Andrew Schnell and Bradley Kwiatkowski and Department of Corrections Employees Paul Reif and Steve Boehm

3. **Respondents (Unlisted):** Department of Corrections Employees Denise Syndom, Neil Thoreson, Angelique Richards, Carmen E. Robertson, Crystal Reynolds, Brenda Muench, Chad Schepp, David Paszkiewicz and Milwaukee County District Attorney Office, Assistant District Attorney Jennifer Lynn Williams.

STATEMENT OF RELATED PROCEEDINGS

- **Dorgay v. Reif, et al.**, No. 22-CV-0847, U.S. District Court for the Eastern District of Wisconsin. Judgment and Order entered on **September 20, 2022.**
- **Dorgay v. Reif, et al.**, No. 22-CV-0847, U.S. District Court for the Eastern District of Wisconsin. Decision and Order entered on **November 08, 2022**.
- **Dorgay v. Reif, et al.**, No. 22-CV-0847, U.S. District Court for the Eastern District of Wisconsin. Decision and Order entered on **January 20, 2023**.
- **Dorgay v. Reif, et al.**, No. 22-CV-0847, U.S. District Court for the Eastern District of Wisconsin. Decision and Order entered on **February16, 2023**.
- **Dorgay v. Reif, et al.**, No. 22-CV-0847, U.S. District Court for the Eastern District of Wisconsin. Judgment and Order entered on **September 27, 2023**.
- **Dorgay v. Reif, et al.**, No. 23-3058, U.S. Court of Appeals for the Seventh Circuit. Judgment and Order entered on **June 17, 2024**.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Robert Dorgay, respectfully petitions for a Writ of Certiorari to review the judgment and the opinion of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is unpublished and appear at. **(Pet.App.001-006)**. The Opinions of the District Court are unpublished and appear at **(Pet.App.008-037)**.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on **June 17, 2024. (Pet.App.001-006)**. A timely petition for rehearing was denied on **September 09, 2024. (Pet.App.007)**. Justice Barrett extended the time to file a petition for a Writ of Certiorari to **February 06, 2025**. (Application No. 24A376). This Court has jurisdiction under **28 U.S.C. §1254(1)**.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The **First Amendment** to the United States Constitution of the United States: "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 peaceable to assemble, and petition for a redress of grievance."

The **Fourth Amendment** to the Constitution of the United States provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The **Fifth Amendment** to the Constitution of the United States provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger nor shall any person be subject for the dame offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The **Sixth Amendment** to the Constitution of the United States provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense."

The **Fourteenth Amendment** to the Constitution of the United States provides in relevant part: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 any person within its jurisdiction the equal protection of the laws."

This case also involves **The Civil Rights Act of 1871, 42 U.S.C. §1983**, provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

INTRODUCTION[2]

The case presented in this petition strikes to the heart of the 1st, 4th, 5th, 6th and 14th Amendments in an unprecedented level of shocking government misconduct employed through a stalking horse scheme specifically designed to prevent the petitioner from physically accessing the courthouse and his legal counsel through an unlawful roadblock to prevent a state induced mistrial.

On Tuesday morning, **July 26, 2016** in a Milwaukee Courtroom, sat an empty defendant's chair with a Public Defender standing next to it trying to make sense to the trial court as the day stood to be his client's second day of trial. Across the isle sat the prosecutor in silence. Behind that silence was an early morning conspiracy to prevent the trial defendant, Robert Dorgay, from traveling to the courthouse to meet with his attorney and receiving a double jeopardy attached mistrial due to the prosecutor failing to prepare its case. Nearly a day and a half after, defense counsel, Attorney Nathan Opland-Dobs learned only though speaking with Dorgay's probation agent Chad Schepp, that the silent sitting prosecutor, Assistant District Attorney Jennifer Williams had contacted and directed him to detain Dorgay at the probation office until she stated otherwise. Defense counsel confronted ADA Williams who admitted it was true, she ordered the defendant detained due to failing to locate her principle witness, Dorgay's ex-girlfriend. Defense counsel immediately notified the trial court who questioned the prosecutor if it were true. ADA Williams boldly lied to the court stating, "Perhaps with my response, I can put to rest any discomfort by Defense. I did not order anyone detained. I don't have the power or authority to do that..." The trial court, without calling the probation agent to corroborate the conflicting testimony, ruled there was no legal infraction and proceeded to trial which led to the empty chair of Robert Dorgay being found guilty. (**Pet.App. 110-114; 126-129**).

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[2] Dorgay elaborates the facts within this petition consistent with the pleadings and evidence included in the appendix. **Hishon v. King, & Spalding**, 467 U.S. 69, 73 (1984), **Chavez v. Illinois State Police**, 251 F. 3d 612, 650 (7th Cir. 2001).

Before Dorgay's sentencing an independent investigation occurred into the government's conduct which further revealed that ADA Williams contacted Agent Schepp early the morning of **July 26, 2016** and directed him to detain Dorgay at his office until he received further word from her to prevent an imminent mistrial. Dorgay arrived at the probation office as directed by Agent Schepp who, without any reasonable suspicion that Dorgay had violated any of his rules of supervision or broke any laws, detained Dorgay by threatening to send him to prison if he left the waiting room to travel to the courthouse and attend his trial. As Agent Schepp waited for further instructions from ADA Williams, Dorgay yielded to his authority for **68** minutes before learning through the probation office employees that he was being held at the direction of ADA Williams. The probation office employees also revealed that a specialized probation unit with Milwaukee police officers were en-route to take Dorgay into custody. Significantly, the employees within this specialized unit maliciously assaulted Dorgay the year previous and were under State and Federal investigation and made defendants in this lawsuit. The history and newly learned facts caused Dorgay to have a psychological breakdown, triggering his post traumatic stress disorder, where he believed he was going to loss his life in facing his attackers once again, causing him to run from the probation office. Dorgay was subsequently arrested after he was found guilty and held until his sentencing on **November 21, 2016** where the facts of the investigation were presented to the trial court. It was then ADA Williams reluctantly admitted to her and Agent Schepps' misconduct. Astonishingly, the trial court again ruled that no legal infraction occurred and sentenced Robert Dorgay to 30 years. 15 years in prison and 15 years extended supervision. (**Pet.App. 097-103; 110-114; 125; 128-129**).

On **July 22, 2022**, Robert Dorgay filed a 42 U.S.C. § 1983 lawsuit, *pro-se*, in the Eastern District of Wisconsin, seeking damages for, *inter alia*, ADA Williams and Agent Schepp's conspiracy to violate his First, Fourth, Fifth, Sixth and Fourteenth Amendments. (**Pet.App.089;110-114; 115-116**). The District

Court ruled that Dorgay was to blame for his trial absence and failed to state a claim. (**Pet.App.008-015**). Reconsideration attempts were denied. (**Pet.App.016-033).** The Seventh Circuit Court of Appeals affirmed the Distinct Courts ruling, radically departing from it's own, sister circuits and this courts precedent. (**Pet.App.001-006**).

STATEMENT OF CASE

A. Factual Background

The facts of this lawsuit span two years, beginning in the summer of 2014 in Milwaukee, Wisconsin. The petitioner, Robert Dorgay, had just finished school, was a partner at a construction company and volunteered at an inner-city drug treatment center. He was also in a long term relationship with a woman named A.W. who had an infant child. Like every relationship the two were challenged by their differences, but worked together to overcome them through their love for each other. Which is why on **July 25, 2014**, Dorgay invited AW to an annual family gathering in the tranquil Northern Wisconsin town of Tomahawk. Unfortunately, the weekend proved fatal to their relationship, causing Dorgay to end it upon their return to Milwaukee. A reality AW replaced with threats to destroy Dorgay's life as she stood to lose more then Dorgay did to gain in the relationship. Dorgay remained firm in his decision which drove AW to maliciously accuse him of domestic violence that allegedly occurred the weekend of **July 25, 2024**, in Tomahawk. And after several evolving police reports she included additional domestic violence allegations in Milwaukee. Consequently, Dorgay was criminally charged in both Lincoln and Milwaukee County courts. (**Pet.App.091**).

During this time Dorgay was on State Probation and supervised by Probation Agent Brenda Muench with the Wisconsin Department of Corrections. After Agent Muench learned of the allegations against

Dorgay, she immediately formed a tunnel vision belief that he was guilty before beginning any investigative efforts to corroborate or disprove the allegations against him. Instead, Agent Muench violated department investigation directives and refused to document exculpatory witness statements and secure available evidence that directly disproved the allegations against him. Rather, Agent Muench reported fictitious incriminating conversations she claimed to have had with Dorgay and shared them with the investigating police agencies. Agent Muench even went as far to fabricate a 9-11 emergency call by impersonating a "security employee" who falsely reported Dorgay to be acting in a violent manner and subsequently filed to revoke his probation. When Agent Muench was caught and cornered on this misconduct at Dorgay's revocation hearing, she testified, "I don't know why I did that, I cant give you an explanation." Dorgay was revoked and sentenced to prison for one year with one year probation to continue upon release. As Dorgay was serving his sentence, Agent Muench continued to harass him by calling each prosecutor in the pending domestic violence case's and painted Dorgay to be a high risk absconder with no job in a continuing attempt to have his bail increased despite knowing that Dorgay was a business owner and active member in his church and a community volunteer. **(Pet.App.092-094)**.

On **June 03, 2015**, ten weeks prior to Dorgay completing his one year sentence, Agent Muench, in concert with Assistant District Attorney Jennifer Williams, called Dorgay in prison through his social worker and demanded to know the details of his personal effects. When Dorgay refused to speak with Agent Muench due to her egregious misconduct paired with the fact she was listed as a state witness against him, Agent Muench threatened to have him unjustly thrown back in prison upon his release. This prompted Dorgay and his social worker to report Agent Muench's conduct to her supervisor who admitted that Agent Muench should not have contacted him and a new probation would be assigned.

Dorgay was assigned a new probation agent who was also a longtime friend of Agent Muench; Agent Chad Schepp. Upon learning of Dorgay's new assignment, Agent Muench contacted Agent Schepp to divulge her desire to harm Dorgay which Agent Schepp assured her he would continue. On **June 21, 2015**, in fear for his safety, Dorgay had filed an evidence based complaint against Agent Muench with both the regional probation supervisor, Neil Thoreson and Agent Tina Virgil with the Wisconsin Department of Justice. Regional Supervisor Thoreson responded by claiming he would address the issues raised, but yet Supervisor Thoreson refused to investigate the complaint. Agent Virgil also responded to Dorgay, claiming that the Wisconsin Department of Justice were unable to get involved and he should rely on the probation complaint process. (**Pet.App.095-096**).

On **August 19, 2015**, Dorgay completed his one year revocation sentence and posted a collective $12,500 cash bail against the two pending cases and was released to Agent Schepp on GPS monitoring. One week later, on August 26, 2015, Dorgay's ex-business partner Thomas Handeland, was seeking to extract his revenge as Dorgay assisted law enforcement in prosecuting him for crimes against the elderly, called Agent Schepp to falsely report that Dorgay had called him beginning August 18, 2015 through August 26, 2016 and threatened to harm him and AW. Agent Schepp knew Dorgay did not and could not have called Mr. Handeland due to being in jail at the time. But agent Schepp saw Mr. Handeland's lie's as an opportunity to violently assault Dorgay from his complaints and send him back to prison. (**Pet.App.097**).

Agent Schepp contacted Probation Agents Steve Boehm and Paul Reif who worked in the M.C.O.R.P. Unit[3], informing them about Dorgay's complaints against Agent Muench and stating that he needed to go back to prison on new charges. Agent Schepp agreed to not send the warrant to the

[3]Milwaukee Collaborative Offender Reentry Program (MCORP) is a unit of probation agents and Milwaukee Police Officers that work to apprehend offenders who are alleged to have violated their probation.

MCORP until later in the day so both Agents could plan their assualt on Dorgay. Four hours after, Agent Paul Reif, Steve Boehm and Milwaukee Police Officers Michael Dederich, Harold Almas, Bradley Kwiatowski and Andrew Schnell sat outside Dorgay's residence finalizing their attack on Dorgay. The agreed plan was to get him in handcuffs, then beat him to ground and claim he resisted arrest to file more criminal charges and to falsely claim he possessed a "black knife" to justify trashing his residence. However, Agent Reif would reveal the units conspiracy by prematurely calling his supervisor 20 minutes before ever meeting Robert Dorgay to falsely claim that he was in possession of a black knife, and requested permission to search his residence. The supervisor denied the request. (**Pet.App.098-099**).

Twenty minutes after that call, as Dorgay was peacefully preparing for his sisters wedding the following weekend, the MCORP unit knocked on his door. After Dorgay welcomed each officer into his home, Agent Reif and Officer Dederich - with complete compliance - placed Dorgay against the wall and into handcuffs, as planned. Unprovoked, Agent Reif violently extended the handcuffs chain links upward while kicking Dorgay's legs from under him, sending him face first into the kitchen tile where Agent Reif and Offier Dederich started punching Dorgay in the head and face as Officer Almas and Schnell pinned his lower body against he ground. After sustaining numerous blows, Dorgay pleaded for the officers to stop. One by one each got off and stood Dorgay up against the wall. Dorgay had asked why they attacked him? Agent Reif claimed it was because he "moved his arm." Dorgay replied by calling Agent Reif a liar and a coward and that he "never moved an inch." Office Almas and Schnell then transported Dorgay to the emergency room. Due to Dorgay requiring medical treatment, Officer Dederich had to notify his supervisor, Milwaukee Police Sergeant David Paszkiewicz, of the use of force. Sergeant Paszkiewicz arrived minutes after and started interviewing Dorgay's roommate, Steve Sova and friend, Brian Kelly who witnessed the assault. Both reported that they never witnessed Dorgay

resisting, even after Dorgay's face was smashed into the ground. Sergeant Paszkiewicz then drove to the hospital to speak with Dorgay who informed him that he was instantly surround by the Agents and Officers before being cuffed and slammed face first into the kitchen tile and that he never resisted. **(Pet.App.100-101)**.

While Dorgay was at the hospital Agent Reif and Boehm and Officer Dederich, and Kwiatowski remained at Dorgay's residence. Agent Reif then called a different supervisor and repeated the same false claim that Dorgay was in possession of a "black knife" and requested permission to search his residence while failing to notify them of the applied use of force, a mandatory supervisory notification. The supervisor grew suspicious of the second request as it was made aware of Agent Reif's first request and denied the search. Agent Reif and Officer Dederich disobeyed the supervisory directive and trashed Dorgay's residence, destroying electronics and stealing his jewelry. After, Officer Dederich met with Sergeant Paszkiewicz to discuss how they were going to align their reports to ensure Dorgay would be charged with crimes he did not commit while protecting the MCORP unit from its unlawful conduct. Sergeant Paszkiewicz agreed that he would undercut the Steven Sova's and Brian Kelly's statements by reporting they didn't see what happened – despite each being less then 10 feet away from Dorgay while he was assaulted. Officer Dederich would falsely report that Dorgay, before being placed in cuffs, violently fought officers to avoid arrest where he was subdued to the ground and placed in cuffs. Both reports led Dorgay to be criminally charged with resisting arrest and felony bail-jumping which were joined to his then pending Milwaukee Domestic violence case. Further, Agent Reif and Boehm agreed that they would not notify their supervisor or file the use of force report despite department policy requiring them to do so. Significantly, no black knife was ever secured as evidence or produced as it did not exist. **(Pet.App.102-103)**.

Consequently, Dorgay was forced to missed his sisters wedding as he remained in jail pending yet another revocation hearing. As Dorgay waited for the revocation hearing, he and the witnesses present to the assault, filed a complaint with Regional Probation Supervisor Neil Thoreson and the Milwaukee Police Department – Internal Affairs Division – to the unprovoked assault and theft he fell victim too. Supervisor Thoreson responded:

> "...it is my feeling that your concerns can be most effectively arbitrated by the Milwaukee County Circuit Court and the administrative law judge that will be assigned to oversee your upcoming revocation hearing. Those two entities are legally charged with fact finding and are tasked with weighing evidence both for and against you." (**Pet. App. 106**).

The Milwaukee Police Internal Affairs relied solely on Officer Dederich and Sergeant Paszkiewicz falsified reports, and decline to investigate the incident further. (**Pet.App.104-106**).

Days before Dorgay was to attend his revocation hearing, and in effort to prevent Dorgay from presenting exonerating evidence and to protect Agent Reif and Boehm from being deposed on their misconduct, Agent Schepp delayed the hearing date by 60 days and again by another 60 days so that it would exceed past Agent Shepp's 218 day revocation reconfinement request. To prevent further undue incarceration, Dorgay waived his revocation hearing date so he could be released on the 218th day, but not before being required to post a $7,500.00 cash bail, totaling a collective $20.000.00. (**Pet.App.107**).

Agent Schepp placed Dorgay back on GPS monitoring for his remaining 5 ½ months of probation with the threat of more assaults and criminal charges if he didn't stop filing complaints. Dorgay, in fear of greater harm, agreed he wouldn't and worked two jobs while traveling to be with his family in northern, Wisconsin. Despite agreeing to Agent Schepp's terms, his Supervisor, Crystal Reynolds, while Dorgay was with his family on **July 03, 2016**, entered a blank warrant to have Dorgay arrested without cause. Dorgay was arrested at 11:55pm and spent **3** days in jail for no wrongdoing. After being released, Dorgay returned to Milwaukee where Supervisor Reynolds taunted Dorgay during a cryptic call. Agent

Scehpp covered Supervisor Reynolds unlawful detainment by falsely reporting Dorgay's GPS malfunctioned, adding that Dorgay also failed to charge his GPS. However, the GPS technician who examined the GPS unit and its digital recordings, informed Dorgay that there was never any type of malfunction and was always charged and operational. (**Pet.App.107-109**).

On **July 14, 2016**, Dorgay, in a growing fear for his life having been repeatedly lied against, threatened, brutally assaulted, stolen from and thrown in jail unjustly, all with his petitions for redress ignored, took all the evidence he had accumulated and brought it to the Federal Bureau of Investigation – Milwaukee Division. Dorgay was interviewed by Special Agent Clay Wibel with the Crimes Against Government Division, where Dorgay expressed a concern for his life to the corrupt government actors, specifically detailing the events that occurred from Agent Muench's falsified state reports, fabricating 9-11 calls, the threats leading to the assault involving a black knife that never existed and the blank warrants. Dorgay specifically stressed a belief that the MCORP unit was going to shoot and kill him which is why they falsely labeled him to carry a "black knife." Dorgay further offered to take a truth test to help establish the facts and aid the investigation. At the conclusion of the two hour interview, Agent Wible informed Dorgay that he would be assigning his complaint to another Agent for investigation. (**Pet.App.109-110**).

Twelve days after, on **July 25, 2016**, Dorgay arrived at the Milwaukee County courthouse to begin the first day of his elected trial. The following morning, **July 26, 2016**, at 6:00am, ADA Williams called Agent Schepp and informed him that she was out of contact with "AW" since the previous Friday, **July 22, 2016**, and was position to received a mistrial if Dorgay arrived at the courthouse. ADA Williams then ordered Agent Schepp to use his authority over Dorgay and keep him at the probation office until she stated otherwise. Despite knowing that Dorgay was court ordered to appear before the court and his rules

of supervision demanding him obey all rules, laws and court orders, and without any reasonable suspicion that he violated any of his rules of supervision, Agent Schepp agreed to detain Dorgay. **(Pet.App.110)**.

Dorgay was ordered to report to Agent Schepp at 8:00am which he arrived at 7:40am. After Dorgay waited in the lobby for **30** minutes, he called Agent Schepp and pleaded to be seen or allowed to attend his trial, however, he informed him that he would not be leaving for trial, and he would be sent to prison if he did. As Dorgay yielded to Agent Schepp's authority for **38** minutes, he became aware through the lobby receptionist's that ADA Williams ordered Agent Schepp to keep him from attending his trial to prevent a mistrial due to failing to locate "his ex-girlfriend," and that "Agent Schepp had called the MCORP Unit to take him into custody." In that moment, Dorgay worst fear came true in believing that he would be face with the MCORP again which was certain to end with being fatally shot with a planted "black knife" his pocket. Dorgay suffered a psychological breakdown and in fear of losing his life, ran out of the office and could not return to trial. **(Pet.App.111)**.

When Dorgay's trial was called to begin that morning, Dorgay's Attorney, Nathan Opland-Dobs was unable to make sense as to why Dorgay was missing to the trial court. Across the isle, ADA Williams sat in silence. The trial court, having a sworn jury, continued to trial. The following afternoon, on **July 27, 2016**, Attorney Opland-Dobs, learned from speaking with Agent Schepp that ADA Williams called him and directed him to keep Dorgay at the probation office until she stated otherwise. Attorney Opland-Dobs confronted ADA Williams who admitted it were true. Attorney Opland-Dobs immediately notified the trial court. The trial court asked ADA Williams if what Counsel said was true when ADA Williams boldly lied in stating:

> "Perhaps with my response, I can put to rest any discomfort by Defense. I did not order anyone detained". I don't have the power or authority to do that." **(Pet. App. 111)**.

The trial court took ADA Williams at her word and did not call Agent Schepp to confirm what he stated to Attorney Opland-Dobs and continued into trial without Dorgay which led him to be found guilty of AW's domestic violence allegations and not guilty of the resisting arrest and felony bail jumping resulting from the August 26, 2015 MCORP assault. In preparation for Dorgays' sentencing, he was given a forensic psychological evaluation by Dr. Diane M. Mosnik, a Clinical Neuropsychologist and Forensic Psychologist, which diagnosed Dorgay with having an existing Post Traumatic Stress Disorder whose symptoms intensified over the two previous years and especially triggered on the morning of July 26, 2016 by the defendants misconduct.

On **November 21, 2016**, during Dorgay's sentencing, ADA Williams, faced with Agent Schepp's authored state probation report, detailing her directives to keep Dorgay from leaving his office, reluctantly admitted to her motive and intent in detaining Dorgay by telling the court:

> "I can tell the Court that—and I don't think I mentioned this while we were in trial, but Tuesday morning we didn't know where the victim was, and I had a sworn jury, and I was concerned that the Defendant would be – would benefit from a mistrial..." "...I was concerned that maybe her inability to be located was that he had something to do with it. Ultimately I was proven wrong..." **(Pet. App. 113)**.

The trial court found no error in ADA Williams actions and sentenced Dorgay to **30** years. **15** years in prison and **15** years extended supervision.

B. Statement On The Proceedings

On **July 21, 2022** Robert Dorgay, pro-se, filed a § 1983 civil rights lawsuit in the Eastern District of Wisconsin, alleging between **July 29, 2014 – December 09, 2016**, 15 Defendants within the Wisconsin Department of Corrections, the City of Milwaukee Police Department and the Milwaukee County District Attorney's Office had, *inter alia*, conspired to violate his 1st, 4th, 5th, 6th, and 14th

Amendments rights while preventing him from attending his trial. **(Pet.App.088-122)**. On **September 20, 2022**, District Judge William C. Griesbach, dismissed the complaint claiming Dorgay failed to state a claim and specifically did so without giving him the opportunity to amend the complaint. **(Pet.App.008-015)**. Reconsideration was granted in-part, but only with respect to proceed on the excessive use of force and failure to intervene claims against the MCORP unit. **(Pet.App.016-024)**. Dorgay moved to amend his complaint but was denied along with subsequent motions for reconsideration. **(Pet.App.025-033)**. The District Court isolated the **August 26, 2015** assault to just that, and refused to recognize the relentless harassment, threats and conspiracy that led to Dorgay being assaulted and the cover-up, illegal detainment's and malicious prosecution that occurred after. The District Court limited the summary judgment to only address the defendants "statute of limitations" defense, where it dismissed it on the grounds. **(Pet.App.034-037)**.

On appeal Dorgay reintroduced his claims and specifically argued how ADA Williams and Agent Schepp conspired to violate his 1st, 4th, 5th, 6th and 14th Amendments during a stalking horse scheme to prevent him from traveling to the courthouse, consulting with counsel and attending his trial. **(Pet.App.038-087)**. Dorgay specifically identified that the **6** minute detainment was not that from within the Wisconsin Department of Corrections objectives or goals, but rather ADA Williams self-serving interests that lacked reasonable grounds to detain him. Dorgay contrasted the defendants actions to both State Supreme and Federal Courts who have identified probable cause lacking "delays" to be unconstitutional under the 4th Amendment and specifically designed it to violate his 1st, 4th, 5th, 6th, and 14th Amendments. **(Pet.App.073-079)**. The Seventh Circuit affirmed:

> "Dorgay next challenged the dismissal at the screening of come of his timely claims. He first argues that he state a claim of unlawful detention under the Fourth Amendment by alleging that, on the second day of his trial, Schepp directed him to report to the probation office for a "scheduled visit" and then made him wait. Dorgay appears to

content that this "dentition" was unlawful because, he alleges, Schepp arranged the meeting at the prosecutors' request to keep Dorgay away from the battery victim at trial. But regardless of motive Schepp had the authority to order Dorgay to attend regular meetings and charge a violation if he should fail to attend. See Wis. Adm. Code Doc § 328.04 (2024). Further, the hallmark of the Fourth Amendment is the reasonableness requirement, see **Riley v. California**, 573 U.S. 373, 381-82 (2014), and Dorgay is a probationer with a diminished liberty interest; he does not retain the absolute right to come and go as he pleases." **Alston v. City of Madison**, 853 F. 3d 901, 909 (7th Cir. 2017) (Citing **Griffin v. Wisconsin**, 483 U.S. 868, 874 (1987).

"To the extent that Dorgay contends that the appointment became an unlawful seizure when it did not start on time, his assertion lacks any support. He says that he waited a total of 40 minutes (20 minutes before and after scheduled time) before fleeing. But he cites no authority for his premise that a lawfully ordered probation meeting could be an unreasonable seizure upon a short delay, even if intention... Dorgay also suggests that the delayed meeting kept him from his trial, infringing his rights to due process, counsel, and access to the courts. But we agree with the district Court that he failed to state a claim because neither Schepp nor the prosecutor can be responsible for his decision to flee, rather than attend his trial. Moreover, his decision to leave before the meeting began also underscores that Dorgay was not in fact, "detained," even if he would incur consequences for missing the meeting." **(Pet.App.005)**

Dorgay's timely petition for rehearing/en banch was denied. **(Pet.App.007)**

REASON FOR GRANTING THE PETITION

The Seventh Circuits' decision completely waives every parolees' 1st, 4th, 5th, 6th and 14th Amendments in violation of the United States Constitution and this Court's well established precedent, giving this Court the opportunity to not only correct it, but to also establish a "stalking-horse" doctrine to identify and deter the government misconduct the petitioned constitutional violations were executed from.

I. A Parolee's Diminished Fourth Amendment Still Prohibits The Government From Detaining Them Without Reasonable Suspicion.

The panel's decision ignores both the stalking horse[4] and the affected 4th Amendment principles present. The Wisconsin Supreme Court has held a "stalking horse is a probation officer who uses his or her authority to help police evade the Fourth Amendment warrant requirement." **State v. Hajieck**, 240 Wis. 2D 349, 361 (2001) (citing **United States v. Harper**, 928 F. 2d 894, 897 (9th Cir. 1991). The Seventh Circuit followed in **United States v. Price**, holding, "When a parole or probationary search operates as a subterfuge for criminal investigation to evade the Fourth Amendment warrant and probable cause requirement, such searches violate the Fourth Amendment." 28 F. 4th 739, 750 (7th Cir. 2022). And while there is no federal Supreme Court case yet that defines a legal stalking horse doctrine, the defendant's actions fit squarely within this interpretation as Agent Schepp documented and testified under oath how ADA Williams contacted and directed him to detain Dorgay at the probation office by refusing to see him for the supposed "meeting." (The Decoy). This was until Agent Schepp "received further word from her [ADA Williams]." (The Evading Fourth Amendment Requirement). Which was to prevent Dorgay from traveling to court, consulting with his attorney and receiving the State induced mistrial. (To Cover Up One's True Purpose).

The panel's reliance on Agents Schepp's independent authority to order Dorgay "to attend regular meetings" in **Altson v. City of Madison** is factually distinguishable. *Altson* was ordered to attend a meet and greet with a specialized police task force created to give additional monitoring to repeat violent offenders on parole. 853 F. 3d 901, 907 (7th Cir. 2017). A meeting guided by legitimate government interest in supervising parolees. **Pennsylvania Bd. Of Probation and Parole**, 542 U.S. 357, 365 (1998)

[4]**Stalking Horse**: is something used to cover up one's true purpose; a decoy. (The American Heritage Dictionary 1751 (3d ed. 1992).

(explaining that the interest in combating recidivism is the very premise behind the system of close parole supervision.).

Dorgay, however, was ordered to attend a "meeting" that was specifically designed by a criminal prosecutor to prevent him from exercising his right to attend his criminal trial and all that it entailed under the constitution. A "meeting" that violated his court order appearance, State law[5] and his rules of supervision.[6] All of which went contrary to the rehabilitation objectives this Court envisioned the probation department operate behind in **Griffin v. Wisconsin**, and what it has viewed as a parolee's "diminished liberty interests." 483, U.S. 868, 875 (1987).

Restrictions on a parolee's liberty are not unqualified but limited as this Court concluded that, "the special needs of Wisconsin probation system make the warrant requirement impracticable and justify replacement of the standard of probable cause by reasonable grounds as defined by the Wisconsin Supreme Court." *Id.* At 876-77. See also **United States v. Knights**, 534 U.S. 112, 118-120 (2001). This Court later concluded in **Samson v. California** that the Fourth Amendment does not prohibit law enforcement from conducting suspicionless searches of parolees, but left the "reasonable grounds" requirement to detain parolees' still intact. 547 U.S. 843, 857 (2006). This allows for Dorgay to be taken into custody without a judicial warrant, but there still must be "reasonable grounds" to do so. **Knights**, 534 U.S. at 121, *supra*. The Seventh Circuit grounded this rule in **Knox v. Smith**, holding, "The seizure

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[5] **Wis. Stat. § 940.47** (Court Orders); **Wis. Stat. § 940.48** (Violation of Court Orders); **Wis. Stat. § 946.49** (Felony Bail-Jumping). See also **18 U.S.C. 3146** (Penalty for Failure to Appear); **Fed R. Crim.P. 43(a)** (Defendant's Presence).

[6] Pursuant to **Fed. R. Evid. 201** Judicial Notice is requested to take notice of Dorgays Rule of Supervision made part of his **December 07, 2016** adjudicated probation revocation hearing. (**Pet.App.123-124; See No. ST001, ST018**).

of a parolee requires something less than probable cause to be reasonable under the Fourth Amendment." 342 F. 3d 651, 657 (7th Cir. 2003).

Reasonable suspicion exists to justify an investigative detention only when an officer can objectively point to specific and articulable facts when taken together with rational inferences from those facts, reasonably warrant that intrusion; thus, "while reasonable suspicion requires something less than what is necessary to show probable cause, it requires more than a mere hunch." **Terry v. Ohio**, 392 U.S. 1, 27 (1968). However, a "hunch" was the only thing ADA Williams admitted to having when she finally admitted, "I was concerned that maybe her [AW] inability to be located was that, he had something to do with it. Ultimately I was proven wrong wrong." (**Pet.App.113**). Furthermore, Agent Schepp's probation report and revocation testimony did not indicate any suspicion of wrong doing by Dorgay but authored it specific to ADA Williams demands. (**Pet.App.125-129**[7]). *C.f.* **Brown v. Tex.,** 443 U.S. 47, 51-52 (1980) (No reasonable suspicion to conduct investigatory stop because officer unable to point to any facts supporting reasonable suspicion of criminal conduct.). The panel avoided ADA Williams' self admitted hunch despite recognizing and enforcing its underlying principles in **United States v. Cole**, holding, "A police officer cannot launder flimsy speculation into reasonable suspicion for an investigatory stop through the mere act of voicing a hunch to another officer." 994 F.3d 844 (7th Cir. 2021).

The panel erred by claiming Dorgay did not argue how delayed meetings can be unconstitutional and concluded that since he was able to leave underscores that he was ever detained at all, thereby departing even further from this Courts precedent. (**Pet.App.005**). In **United States v. Mendenhall**, this Court held the test to determine when an individual has been seized is "whether the techniques use by the police overcame a detainees freewill." 446 U.S. 544, 554-55 (1980). Agent Schepp's technique was a

[7] Pursuant to **Fed. R. Evid. 201** Judicial Notice is requested to take notice of Agent Schepp's Probation Report made part of Dorgay's **December 07, 2016** adjudicated Probation Revocation hearing.

"show of authority" by threatening Dorgay with prison if he left the probation office (which he subsequently was), forcing him to remain in the waiting room for **37** addition minutes to the already **30** sat. (**Pet.App.110-111**). Agent Schepp confirmed ADA Williams detaining efforts by testifying that he "had agreed to stall Dorgay at the probation office." (**Pet.App.112**). The Wisconsin Supreme Court has addressed the defendants underlying objectives in **State v. VanBeek**, and held that, an Officer who purposely delayed the traffic stop by keeping his identification to prevent the driver from leaving so that the K-9 unit could arrive was deemed an illegal seizure and reversed. 397 Wis. 2d 311, 960 N.W. 2d 32 (Wis. 2021). *C.f.*, **United States v. Sharpe**, 470 U.S. 675, 686-88 (1985) (Unrelated activities cannot prolong stop beyond the time necessary to handle the matter for which the stop was made.)

The Court in **Brower v. City of Inyo**, said "Fourth Amendment protections occur only when government actors have "by means of physical force or show of authority, ... in some way restrained the liberty of a citizen." 489 U.S. 593 (1989). The ***Brower*** court is analogous to the defendants actions as Justice Scalia held, "the defendants' intentional and successful use of a roadblock to stop the plaintiff constituted a seizure for Fourth Amendment purposes." *Id.* at 597. The fact that Dorgay subsequently became non-complaint to Agent Schepp's show of authority **68** minutes *after,* does not negate the seizure. In **Torres v, Madrid** this court recognized that a seizure "is a single act, not a continuous one," even if the individual is not subdued. 141 S. Ct. 989, 1006-1007 (2021); **California v. Hordari**, 499 U.S. 621, 626 (1991). *C.f.* **United States v. Brodie**, 742 F. 3d. 1058, 1061 (D.C. Cir. 2014) (Seizure when defendant submitted to officers demand to put hands on nearby car, even though defendant submission was brief before deciding to flee.); **United States v. Brown**, 401 F. 3d. 588, 595 (4th Cir. 2005)("We concluded that Brwon submitted to the officers' show of authority when, at the officers command, he first leaned over and placed his hands on the car.") **United States v. Brown**, 448 F. 3d

239, 246 (3rd Cir. 2006)("We held that the defendant initially yielded to the officer's authority by sitting back down, and there was thus a seizure "even though he fled so thereafter.")

Every 4th Amendment principle identified has been ignored due to an erroneous belief that Dorgay is responsible for the defendants unlawful conduct. The panel's decision is contrary to the bedrock principle that §1983 incorporates the "background of tort liability that makes a man responsible for the natural consequences of his actions." **Monroe v. Pape**, 365 U.S. 167, 187 (1961). See also **Richman v. Sheahan**, 512 F. 3d 876, 844 (7th Cir. 2008)(explaining the "egg-skull" doctrine make the defendants responsible for the effects of their unlawful conduct.). Accordingly, this petition should be granted to prevent the Seventh Circuit from deviating any further down its unconstitutional path.

II. The Constitution Prohibits The Government From Denying Parolees' Access To the Courts.

The right to access the court is integrated in the First, Fifth, Fourteenth Amendments and Article IV Privileges and Immunities Clause. **Christopher v. Harbury**, 536 U.S. 403, 414-15, n.12 (2002). This right is the most sacred as it protects all other rights guaranteed by the United States Constitution. **McCarthy v. Madigan**, 503 U.S. 140, 153 (1992). The right is fundamental to our system of government and firmly grounded in the Constitution as this Court said over 100 years ago:

> "The right to sue and defend is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizen of all other states to the precise extent that it is allowed to its own citizens. Equality of this treatment in this respect is not left to depend upon comity between states, but is granted and protected by the federal constitution."
>
> **Chambers v. Ohio Railroad**, 207 U.S. 142, 148 (1907).

This constitutional guarantee does not depend on the type of legal matter involved[8], however this Court has recognized the right of access to be at its strongest in criminal matters. **Argersinger v. Hamlin**, 407 U.S. 25 (1972). This right goes to the individual, whether free or incarcerated, each status guarantees access to the court without undue interference. **Johnson v. Avery**, 393 U.S. 483, 485 (1969). The Seventh Circuit has held, "Those seeking to vindicate their rights in court enjoy a constitutional right of access to the courts that prohibits state actors from impeding one's efforts to pursue legal claims." **May v. Sheahan**, 226 F. 3d 876, 883 (7th Cir. 1995). And when the individual is incarcerated, or on parole, which is a continuum of a state imposed punishment/incarceration[9], the State is required to add a layer of protection to that right. This State assisted access "must be more then merely formal; it must also be adequate, effective, and meaningful." **Bounds v. Smith**, 430 U.S. 817, 828 (1977).

Access to the court claims are divided in two categories; (1) forward looking, where official misconduct hindered a plaintiff in preparing, filing or maintaining court access case in the present, or; (2) backward looking, where court access case cannot be tried no matter what official action may be in the future. **Christopher v. Harbury**, 536 U.S. at 413-15. The claim must further demonstrate how the state action hindered his or her efforts where an injury occurred as a result. **Lewis v. Casey**, 518 U.S. 343, 350-54 (1996). Dorgay's complaint identified a "backward looking claim" detailing how the defendants' set an unlawful roadblock to physically stop him from advancing to the courthouse, consult with his attorney, attend his trial and exercise his confrontation clause rights to obtain a mistrial (1st, 4th, 5th, and 14th Amendment Claims / Injury / **Pet.App.115-116**); where consequently, he suffered severe

[8] **Cruz v. Beto**, 415 F. 2d 325 (5th Cir. 1969) ("legal matters"); **Jenks v. Henys**, 378 F. 2d 334, 335 (9th Cir. 1967) ("legal actions"); **Lee v. Tahash**, 352 F.2d 970, 972 (8th Cir. 1965)("presentation of alleged legal wrongs."); **Cross v. Powers**, 328 F. Supp. 889 (D.Wis. 1971)("whatever the nature of the legal proceedings involved").

[9] **U.S. v. Knights**, 534 U.S. 112, 119 (2001) (Parole in a continuation of state imposed punishment/incarceration)

psychological harm resulting in his absence from trial. (8th Amendment Claim / Injury /**Pet.App.117**). Thus, a claim was properly stated.

The Seventh Circuit held in **Gentry v. Duckworth**, "Prejudice to the right of access to the courts occurs where the actions of prison officials cause court door to be actually shut on a complaint, regardless of whether the suit would ultimately have succeed." 65 F. 3d 555, 559 (7th Cir. 2000). A guiding principle found in **May v. Sheahan**, when a hospitalized pre-trial detainee alleged that the defendant's refusal to take him to court impeded upon his access to his attorney and ability to assist with his own defense which resulted in delayed dispositions, resulting in longer incarceration, inability to seek lower bail, and a delay in other motions stated a claim with injury. 226 F. 3d at 883, *supra. C.f.* **Simpson v. Gallant**, 231 F. Supp. 2D 341, 348-49 (D.Me. 2002) (**Restrictions that prevented plaintiff from making bail and proceeding with a scheduled trial stated a court access claim**.).

The Panel's departure from this standard detaches from its sister circuits who have embodied the notion that, "every person must be free to vindicate in the court the rights secured by the constitution and no one, including prisons officials, may impede up that right.[10]" One can hardly conceive of a more egregious scenario where and when an individual is denied absolute access to the court. As this Court said, "In no world may a government entity's concerns about phantom constitutional violations justify actual violations of an individuals First Amendment." **Kennedy v. Bremerton School District**, 597 U.S. 507 543 (2022). Words that once echoed loudly within the Seventh Circuit have now fell silent which is why this petition should be granted.

[10] **US v. Simpson**, 436 F. 2d 162, 166-70 (D.C. Cir. 1970); **Conway v. Oliver**, 429 F. 2d 1307, 1308 (9th Cir. 1970); **Burns v. Swenson**, 430 F. 2d 771, 777 (8th Cir. 1970); **Walker v. Pate**, No. 18671 (7th Cir. 1971); **Smatt v. Avery**, 370 F. 2d 788 (6th Cir. 1967); **Beard v. Alabama Board of Corrections**, 413 F. 2d 455 (5th Cir. 1969); **Coleman v. Peyton**, 362 F. 2d 905, 907 (4th Cir. 1966), cert denied 385 U.S. 905 (1966); **Gittlemacker v. Prasse**, 428 F.2d 1, 7 (3rd Cir. 1970); **Marello v. James**, 810 F. 2d 344, 347-48 (2nd Cir. 1987); **Nolan v. Scafati**, 430 F. 2d 548, 551 (1st Cir. 1970)

III. The Constitution Prohibits The Government From Intentionally Interfering With Attorney Client Relations.

A. First Amendment Protection

The First Amendment is the guardian of all constitutional rights as it promises; "congress shall make no law... prohibiting the free exercise... the freedom of speech... or the right of the people peaceably to assemble...and to petition..." The right to hire and consult with an attorney, on any legal matter, is fiercely protected by the First Amendment and the State is strictly prohibited from impeding upon this right. **Bates v. State Bar of Ariz.**, 433 U.S. 350, 376 n.32, (1977). This right extends into both criminal and civil matters. **United Mine Workers v. Illinois State Bar Ass'n**, 389 U.S. 217, 223 (1967). The ability to maintain privileged attorney-client communications is an important component of the right to obtain legal advice."The right to confer with counsel would be hollow if those consulting counsel could not speak freely about their legal problems." **Martin v. Lauer**, 686 F.2d 24, 32. (D.C. 1982). This privilege not only protects the interest of the client in receiving the best legal advice but also "promotes broader public interests in the observance of law and the administration of justice." **Upjohn Co. v. United States**, 449 U.S. 383, 389 (1981). Because the maintenance of confidentiality in attorney-client communications is vital to the ability of an attorney to effectively counsel his client, interference with this relationship impedes the client's 1st Amendment right to obtain legal advice. **Denius v. Dunlap**, 209 F.3d 944, 954 (7th Cir 2000).

The Seventh Circuit enforced these protections in **Hawkins v. Mitchell**, when (Hawkins) was approached by police investigating domestic violence allegations and attempted to enter his home without a warrant. Hawkins called his attorney, who remained on the phone with him which upset the officers who threatened to arrest Hawkins. Hawkins continued to consult with his attorney which led the officers to physically force him off his phone. Hawkins filed a lawsuit alleging, *inter alia*, that the officers retaliated

through excessive force for exercising his protected speech right while consulting with his attorney. The District Court granted summary judgment for the defendants and the Seventh Circuit reversed ruling, "The right to... consult an attorney is protected by the First Amendment guarantee of freedom of speech, association and petition... The state cannot impeded an individual ability to consult with counsel on legal matters." 756 F. 3d 983, 997 (7th Cir. 2014).

B. Sixth Amendment Protection

The 6th Amendment and it underlying values are a central feature in the adversarial system of justice and "has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact finding process." **Herring v. NY**, 422 U.S. 853, 857 (1975). Once once criminal proceedings have initiated against an individual, the 6th Amendment also vigorously protects their right to freely consult with counsel. **McNeil v. Wisconsin**, 501 U.S. 171, 175 (1991); **Weatherford v. Bursey**, 429 U.S. 545, 552 (1977) (recognizing that state interference with attorney-client communications implicates a defendant's Sixth Amendment right to effective assistance of counsel.). The 6th Amendment further demands that defendants facing incarceration will have his counsel at "all critical stages of the criminal process." **Lee v. United States**, 137 S.Ct. 1958, 1964 (2017). This Court has described a critical stage as a "moment in which the accused requires "aid in coping with legal problems or assistance in meeting his adversary." **United States v. Ash**, 413 U.S. 300, 313 (1973). A "defendant in felony case has right to attend all stages of trial from impaneling of jury to delivery of verdict" **Diaz v. United States**, 223 U.S. 442, 453-55 (1912). Once the right to counsel has attached and asserted, the government must not only honor it, but "have an affirmative obligation not to act in a

manner that circumvents and thereby dilutes the protection afforded by the right to counsel." **Maine v. Moulton**, 474 U.S. 159, 170-71 (1984).

The Court in **Perry v. Leeke**, held that the "Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense. 488 U.S. 272, 280 (1989) (citing **Gerders v. United States**, 425 U.S. 80, 92 (1976)). The **Wolff v. McDonnell** Court described the 6th Amendment right for prisoners as designed to "protect the attorney-client relationship from intrusion in the criminal setting." 418 U.S. 539, 576 (1974). And "when the government deliberately interfered with the confidential relationship between a criminal defendant and defense counsel, that interference violates the Sixth Amendment to counsel if it substantially prejudices the criminal defendant." **Williams v. Woodford**, 384 F. 3d. 567, 584-85 (9th Cir. 2024).

The Seventh Circuit enforced these constitutional protections on reversal in **Harris v. Pate**, where Harris' efforts to defend against criminal charges and a criminal appeal where frustrated by the prison administration's deliberate misconduct. The Seventh Circuit held, "actions that interfere with the ability to prepare a defense in court violates the constitution. 440 F. 2d. 315, 316-17 (7th Cir. 1971).

C. Due Process Clause Protection

While largely rooted in the confrontation clause of the Sixth Amendment, the defendants constitutional right to be present in court also has a due process component. **United States v. Gagnon**, 470 U.S. 522, 526 (1985). It is not restricted to those parts of trial in which the defendant is "actually confronting witnesses or evidence against him," but encompasses all trial-related

proceedings at which defendants presence "has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge." See also **Painter v. Tex.**, 380 U.S. 403 (1964) ("This clause further grants the defendant the additional right to be present at any stage of the proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.").

The Seventh Circuit once grounded these basic principles in **United States. v. Watkins**, explaining that the rights of the accused have the right to attend trial under the 5th, 6th, and 14 the Amendment. 983 F.2d 1413, 1417-18 (1993) (citing **Illinois v. Allen**, 397 U.S. 337, 338 (1970)); **Bell v. Milwaukee**, 746 F. 2d 1205, 1261 (7th Cir. 1984) (The Fourteenth Amendment entitles the individual to a fair opportunity to present his or her claim.) These combined rights ensure that defendants facing incarceration will have counsel at "all critical stages of the criminal process." **Marshall v. Rodgers**, 569 U.S. 58, 62 (2013).

D. The Panel's Ruling That The Petitioner Did Not State A Claim Does Not Hold Up Against This Courts Standard of Law.

To establish when the function of the Attorney-Client relationship has been impeded upon by the State, a plaintiff must show that; **1)** the government intentionally intruded into the defense came, and; **2)** that intrusion caused prejudice. **United States v. Morrison**, 449 U.S. 361, 365 (1981). In addition, when a plaintiff further claims the government violated his right to counsel at a critical stage, the Court must consider; **1)** when "adversary judicial proceeding" were initiated against plaintiff, and; **2)** after such proceeding were initiated against plaintiff, whether plaintiff "was denied the presence of counsel at a "critical stage." **United States v. Henry**, 447 U.S. 264, 269 (1980).

As detailed throughout this petition, each of these elements has been featured in Dorgay's complaint/appeal, detailing how the government deliberately obstructed his ability to access the court,

his counsel, and criminal trial to prevent him from exercising his right to confront his accuser to obtain the waiting mistrial. Actions that caused him sever psychological harm and trial prejudice by ensuring he wasn't able to participate in his defense. (**Pet.App.115-116**). And rather see the defendants actions as a betrayal of the most basic principle of constitutional law, the right to be heard in a meaningful manner, the Panel choose to not take the facts plead as true, as required by **Bell Atlantic Corp. v. Twombly**, 550 U.S. 554, 572 (2007), but rather erroneously blamed Dorgay for the consequences of the defendants misconduct.

The facts presented in this case demonstrate that there can in fact be a situation when a criminal defendants' absence from trial is truly of no fault of their own, but rather entirely due to the governments outrageous misconduct. This Court observed long ago that, "...the constitutional provisions for the security of person and property should be liberally construed. It is the clear duty of the courts to be watchful for the constitutional rights of citizen, and against any stealthy encroachments thereon." **Boyd v. United States**, 6 S. Ct. 524, 535 (1886). Instead of the Seventh Circuit enforcing this guiding principle, it has done the opposite by ignoring the governments "stealthy encroachments" in stripping Dorgay of his 1st, 4th, 5th, 6th, and 14th Amendments in effort to prevent a government induced mistrial. No ruling should shield the defendants for answering for this misconduct. And certainly no ruling prevents this court from weighing in, clarifying critical question of constitutional law and preventing this unthinkable scenario reoccurring. "Nothing can destroy a government more quickly than its failure to observe its own law, or worse, its disregard of the charter of its own existence". **Mapp v. Ohio**, 367 U.S. 643, 81 S.Ct.1684 (1961).

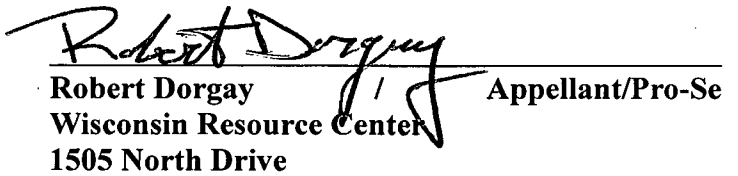
CONCLUSION

The Seventh Circuit's decision did not examine the relevant facts, apply the proper standards of law set by this Court or use a demonstrative rational process to reach the reasonable conclusion that the panel could reach, thereby radically departing from over 100 years of this Court's devoted attention and protection to every individuals guaranteed right to access the court, legal counsel and their right to Due Process. Without immediate correction from this Court, the vulnerable probationers diminished 4th Amendment right will evolve into a complete waiver of their 1st, 4th, 5th, 6th and 14th Amendments.

And for these reasons, this petition should be granted.

Dated this 03rd day of February, 2025.

Respectfully,



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