No. 25-6769

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

In re: David J. Gottorff - PETITIONER

vs.

Executive Director of the Colorado Department of Corrections- RESPONDENT

ON PETITION FOR A WRIT OF HABAUS CORPUS TO

Ouray District Court of the Seventh Judicial District for the State of Colorado
Case 2022 CR 8

PETITION FOR WRIT OF HABEAS CORPUS

David J. Gottorff

Buena Vista Minimum Center P.O. Box 2017

Buena Vista, CO 81211

## QUESTION(S) PRESENTED

**Question 1.** Whether the arrest and prosecution of the Petitioner in Ouray District Court case 2022 CR 8 was in criminal violation of 18 U.S.C. 1512(d)(3); thereby abridging the Petitioner's First Amendment right to free speech and toseek redress with the government?

**Question 2.** Whether the Ouray District Court abridged the Petitioners' constitutional protection against Double Jeopardy secured in the Fifth Amendment by trying him a second time on the offense of 'stalking" after a prior acquittal?

**Question 3**. Whether the Ouray District Court abridged the Petitioners' constitutional protection against Collateral Estoppel secured in the Fifth Amendment of the U.S. Constitution by admitting prior act evidence from a prior acquittal to prove the 'threat" element and infer he had bad character and acted in conformity with that character.

**Question 4.** Whether the Petitioner's prosecution for "Felony Menacing;" C.R.S. 18-3-206, based on the belief that he possessed firearms for the purpose of 'self-defense" abridged the Petitioner's Second Amendment right secured in the U.S. Constitution?

**Question 5.** Whether the trial court abridged the Petitioner's right to conflict free counsel of choice secured in the Sixth Amendment of the U.S. Constitution?

**Question 6.** Whether the trial court improperly instructed the jury on Colorado's "true threat" standard as it existed prior to this Court's ruling in *Counterman v. Colorado;* thus abridging the Petitioner's First Amendment right secured in the U.S. Constitution?

**Question 7.** Whether the State of Colorado's post-conviction relief and habeas corpus review unlawfully abridged the Petitioner's right to due process and equal protection under the law secured in the Fourteenth Amendment of the U.S. Const.?

## LIST OF PARTIES

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

[X] 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 this petition is as follows:

- Moses "Andres" Stancil : Executive Director Colorado Dept. of Corrections
- Jeff Long: Warden Sterling Correctional Center
- Bryan Coleman: Warden Buena Vista Minimum Center
- Jason Lengerich: Former Warden Buena Vista Minimum Center
- Phil Weiser: Attorney General for the State of Colorado
- Jared Polis: Governor for the State of Colorado
- Ouray District Court of the Seventh Judicial District for the State of Colorado

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix O, P, & Q to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Colorado Supreme Court appears at Appendix F, O, P, Q & R; and the opinion of the Logan and Chaffee District Courts appears at Appendix A, B, C, D, & E to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

## JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was_____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on____(date) in Application No._____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from state courts:

The date on which the highest state court decided my case was September 4, 2025. A copy of that decision appears at Appendix O, P, & Q.

[X] A timely petition for rehearing was not permitted pursuant Colo. App. R. 40.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including___(date) on_(date) in Application No._____.

The jurisdiction of this Court is invoked under Supreme Ct. R. 20(2) pursuant 28 U. S. C. § 2254(a).

This petition will aid in the Court's appellate jurisdiction by ensuring that the State of Colorado maintains habeas corpus unimpaired and unsuspended.

The State of Colorado's suspension of habeas corpus has created extraordinary circumstances that warrant the exercise of this courts discretionary powers.

The Petitioner has previously filed an application for a writ of habeas corpus pursuant 28 U. S. C. § 2254(a) with the U.S. District Court of Colorado under case 24-CV-00695, which was dismissed for failure to exhaust state remedies. The Petitioner states how he has exhausted available state remedies, or otherwise comes within the provisions of 28 U. S. C. § 2254(b) in the "reason for granting the petition" section on page(s) 33 – 39 of this petition.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth and Fourteenth Amendments of the U.S. Constitution (double jeopardy) as codified in C.R.S. 18-1-301(1)(a) and 18-1-302(1)(b).

First and Fourteenth Amendments of the United States constitution (free speech and right to seek redress with the government) as codified by the United States Congress in 18 U.S.C. 1512(d)(3).

Fourteenth Amendment of the United States Const. (due process and equal protection under the law) regarding the Ouray District Court's failure to inquire into the subject matter jurisdiction of the trial court upon the Petitioner's three Colo. R. Crim. P. 35(a) motion for post-conviction review codified in C.R.S. 18-1-410; as well as the Logan and Chaffee District unconstitutional suspension of habeas corpus; and failing to compel the Respondent to meet their burden of showing that the trial court had subject matter jurisdiction in case 2022 CR 8, upon the Petitioner's five habeas corpus petitions filed pursuant C.R.S. 13-45-101; and the Colo. Supreme Courts failure to enter a swift, flexible and summary determination on the merits resolving the legality of the Petitioner's imprisonment on appeal by writ of error.

Habeas corpus suspension clause pursuant U.S. Constitution Article I, Sec. 9, Cl. 2; and Colo. Constitution Article II, Sec 21, as codified in C.R.S. 13-45-101.

First, Second and Fourteenth Amendments of the U.S. Constitution (free speech and right to bear arms in self-defense) as codified in C.R.S. 18-1-704.

Sixth and Fourteenth Amendment of the U.S. Constitution as applied to the trial courts abridgment of Petitioner's right to conflict free counsel of choice.

## STATEMENT OF THE CASE

**Prior Acquittal and Witness to Jury Tampering**

On October 6, 2022 a jury acquitted the Petitioner (Gottorff) of "Stalking;" C.R.S. 18-3-602(1)(c), and "Criminal Mischief;" C.R.S. 18-4-502, in Ouray District Court of Colorado case 2022 CR 4. During the trial Gottorff witnessed the advisory witness for the District Attorney for the Seventh Judicial District of the State of Colorado (Marshal Shane Schmaltz); and the employer of the alleged victims (Andres Michleich), conspire to commit an affirmed act of "jury tampering;" C.R.S. 18-8-609(1), on October 5, 2022. TR 7/14/23 pg. 9:13-16 and 7/19/23 pg. 167-171.

A juror had identified Michelich as having sent her several text messages about Gottorff and the case during the course of the trial. After the juror came forward and testified before the court those text messages from Michelich became threatening and the juror asked to be excused. The Court granted the jurors request.

Gottorff reported that he had witnessed the jury tampering occur in the courtroom to the Ouray County Undersheriff (Tammy Stroup) who was providing courtroom security at the time. The conspiracy to commit jury tampering was also recorded on the courtroom security camera. After taking Gottorff's report the Ouray Undersheriff refused to take any action citing a "conflict of interest" and deferred to the District Attorney as to how to proceed. A short time later, the Ouray Plaindealer Newspaper editor asked the District Attorney about the jury tampering; to which the District Attorney publically acknowledged that his office had opened an investigation into the jury tampering witness by Gottorff.

**Facts at Issue**

Because the jury tampering related to Gottorff being intimidated and harassed as a court endorsed expert witness in U.S. District Court of Colorado case 19 CV 01056 (Lake Irwin Coalition v. Smith, et. al.) by the alleged victims and their employer (Michleich); Gottorff reported the jury tampering to the Federal Bureau of Investigation (F.B.I.). TR 7/19/23 pg. 170-171. Accord 18 U.S.C. 1503. See *United States v. Howard, 569 F.2d 1331 (1978 U.S. App. 5th Cir.)* ("Tampering with a Witness" is divided into two parts: 1) its specific language, which forbids influencing, intimidation or impeding of any witness, juror or court official; and 2) its concluding omnibus clause, which punishes influencing, obstruction, or impeding of due administration of justice.").

The F.B.I. instructed Gottorff to file his complaint with the Ouray Sheriff's Office so the complaint could be properly referred to their agency for further investigation. Gottorff protested citing the Ouray Undersheriff Tammy Stroup's stated conflict of interest and a fear of retaliation from reporting a crime to the very government officials involved in its commission.

Gottorff during this time also took to his social media page on Instagram and published several posts asserting his right to "self-defense" as established by the Colorado Supreme Court in *Boykin v. People, 22 Colo. 496 (1896)*; pursuant C.R.S. 18-1-704, and his lawful authority to effect an "arrest by a private person" pursuant C.R.S. 16-3-201 of "corrupt law enforcement" in Ouray County. Id. Exhibits 1A - 7.

On October 19, 2022 Gottorff contacted the Ouray Sheriff's Office to follow up on his October 5, 2022 report of "jury tampering;" C.R.S. 18-8-609(1), "stalking;" C.R.S. 18-3-602(1)(c), and "intimidating a witness;" C.R.S. 18-8-704(1)(a)(I), as

directed by the F.B.I. and spoke with Ouray Sheriff's Office Administrative Assistant Shelly Kuhlman, who refused to take Gottorff complaint or place him in contact with a sheriff's deputy. Accord 18 U.S.C. 1512(b)(3). Kulman would later testify that Gottorff called to report being stalked, threatened and being placed under surveillance by his neighbors (the alleged victims in case 2022 CR 4). TR/18/23 pg. 52-60; 19-21 and TR 7/19/23 pg. 74-76. See Exhibit(s) 22, B, C, D, E, G, & H. Accord C.R.S. 18-3-602(7) ("a peace officer shall have a duty to respond as soon as reasonably possible to a report of 'stalking' and to cooperate with the alleged victim in investigating the report.").

Gottorff again contacted the Ouray Sheriff's Office a second time on October 20, 2022 attempting to follow up on his earlier complaint regarding the "stalking", "intimidating a witness" and "jury tampering" with the Ouray Sheriff's Office. Kuhlman again refused to take Gottorff's complaint and alleged Gottorff threatened to "kill" her at the end of the call. TR 7/19/23 pg. 74-76. Ouray Undersheriff Tammy Stroup then contacted Gottorff about his prior calls. Id. Exhibit 22. Gottorff denied threatening to "kill" Kuhlman; TR 7/18/23 pg. 121-122, to which Stroup claimed that the call had been recorded. Id. Exhibit 22 at 4:11. However, no recording was ever introduced into evidence by the prosecution. Gottorff asked Stroup to arrest Schmaltz, Michelich and his neighbors; and stated that if she didn't he would affect an arrest by a private person. TR 7/18/23 pg. 121:6-10. Stroup told Gottorff that he was not going to make an arrest. See C.R.S. 16-3-201 ("a person who is not a peace office may arrest another person when a crime has been or is being committed by the arrested person in the presence of the person making the arrest.").

After Gottorff's call with Undersheriff Stoup he contacted the Colorado State

Patrol requesting assistance with an "arrest by a private person" pursuant C.R.S. 16-3-201. Id. Exhibit 17. Gottorff did not attempt or effect a citizen's arrest after the Colorado State Patrol refused to provide him assistance.

Gottorff also contacted the District Attorney's Office and left a two part phone message insisting that an imminent threat existed from the ongoing "staking", "false reporting," "perjury" and "jury tampering" and that he wanted Schmaltz, Michelich and his neighbors arrested and a special prosecutor appointed. Id. Exhibit 19. Accord "state created danger doctrine;" *Estate of Reat v. Rodriguez, 824 F.3d 960 (2016 U.S. App. 10th Cir.);* and *Deshaney v. Winnebago County Dept. of Social services, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989 U.S.).* Fourteenth Amendment, Section 1, U.S. Constitution.

**Tampering With A Witness; Abridgment of First Amendment Right to Free Speech and Second Amendment Right to Bear Arms in Self Defense**

On October 24, 2022 the Ouray Undersheriff and District Attorney obtained an arrest warrant for Gottorff alleging "Felony Menacing;" C.R.S. 18-3-206, and "Attempting to Influence a Public Servant;" C.R.S. 18-8-306, which commenced Ouray District Court case 2022 CR 8. Accord 18 U.S.C. 1512(d)(3) ("whoever intentionally harasses another person and thereby hinders, delays, prevents or dissuades any person from: 3) arresting or seeking the arrest of another person in connection with a federal offense.") See *Hartman v. Moore, 547 U.S. 250, 126, S. Ct. 1695, 164 L. Ed. 2d 441 (2006 U.S.) at 256* ("Official reprisal for protected speech offends the Constitution because it threatens to inhibit exercise of the protected right and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory action, including

criminal prosecutions, for speaking out."). To meet a First Amendment retaliation claim a Petitioner must show that 1) he was engaged in constitutionally protected activity; 2) the government's actions caused him injury that would chill a person of ordinary fitness from continuing to engage in that activity; and 3) the government's actions were substantially motivated as a response to his constitutionally protected conduct. *Stonecipher v. Valles, 759 F.3d 1134 (2014 U.S. App. 10th Cir.)*

The District Attorney filed an information on the alleged offenses despite Gottorff having no contact, communication or interaction with the alleged victim (Ridgway Marshal Shane Schmaltz); TR 7/19/23 pg. 57: 1-6 and pg. 59: 9-20, nor Gottorff being in possession of a firearm, or any other weapon. See C.R.S. 18-3-206 ("a person commits the crime of menacing if, by any threat or physical action he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury. Menacing is a class 1 misdemeanor, but it is a class 5 felony if committed by the use of a firearm, knife or bludgeon."); and C.R.S. 18-8-306 ("a person who attempts to influence any public servant by means of deceit or by threat of violence or economic reprisal against any person or property, with the intent thereby to alter or affect the public servants decision, vote, opinion or action concerning any matter which is to be considered or performed by the public servant or the agency or body of which the public servant is a member.").

This expanded "Felony Menacing" and "Attempting to Influence a Public Servant" well beyond the plain language of the statute and past legal precedent.

The basis for the "Attempting to Influence a Public Servant" charge was Gottorff's October 20th phone call with Ouray Undersheriff Stroup (Id. Exhibit 22) and Gottorff's call to the Colorado State Patrol requesting an agency assist on a "citizen's

arrest." Id. Exhibit 17. Accord 18 U.S.C. 1512(d)(3) and C.R.S. 16-3-201.

The basis for the "Felony Menacing" charge was Marshal Schmaltz; upon his own initiative, searching Gottorff's social media page on Instagram and seeing a post with a picture of Gottorff holding a firearm that made no threat in the posts' caption and did not mention Schmaltz. Id. Exhibit 2A. TR 7/19/23 pg. 41:20, 44:17, 45: 7, 46:19, 47:15.

It is a note of significance that no Colorado court has ever previously held that a person seeing a picture in a social media post of someone holding a firearms satisfied the elements of "Felony Menacing." Accord *People v. Adams, 867 P.2d 54, 55 (Colo. App.) at 57* ("the term 'use' in C.R.S. 18-3-206 is broad enough to include the act of holding the weapon in the presence of another, without pointing the firearm at the person, in a manner that causes the other person to fear for his or her safety.")

While the maxim that ignorance of the law is not a defense, Gottorff could not have reasonably known that his conduct met the elements of the "Felony Menacing" or "Attempting to Influence a Public Servant" because he was not in possession of a firearm, or other weapon, had no in personal interaction with Schmaltz that would have put him in threat of imminent serious bodily injury, nor did Gottorff attempted to influence some future act or decision on behalf of Schmaltz by or through a threat made to Schmaltz. Accord *Elonis v. United States, 575 U.S. 723, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015 U.S.) at 342* ("a defendant generally must know the facts that make his conduct fit the definition of the offense.").

The prosecution, in part, secured a conviction based upon Gottorff's social media post of the Colorado Supreme Court's ruling in *Boykin v. People, 22 Colo. 496 (1896)* affirming Colorado "self-defense" statute; C.R.S. 18-1-704. Id. Exhibit 4. This

was impermissible and abridged Gottorff right to free speech secured in the First Amendment of the U.S. Constitution because it made Gottorff's faithful reproduction and publication of the *law* as established by the Colorado Supreme Court a criminal act punishable by imprisonment. Accord *Griffin v. United States, 502 U.S. 46, 53 (1991 U.S.)* ("Where a provision of the Constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that may have rested on that ground.")

Additionally, Gottorff's social media posts asserting that the issue of corrupt law enforcement in Ouray County could be addressed through "citizen's arrest" pursuant C.R.S. 16-3-201 was a matter of public concern; and thus, abridged Gottorff's right to free speech secured under the First Amendment and imprisoned him for "Attempting to Influence a Public Servant;" C.R.S. 18-8-306, for engaging in a public debate about lawfully holding corrupt law enforcement officers criminally liable for misconduct. Accord *New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed 2d 686 (1964 U.S.) at 270* ("thus we consider this case against the backdrop of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."). The prosecutions own expert witness testified at trial that Colorado law allows citizens such as Gottorff to make an "arrest by a private person" pursuant C.R.S. 16-3-201 provided that "the crime has occurred in the presence of the citizen." TR 7/19/23 pg. 112:6-12. Accord *Watts v. United States, 394 U.S. 705, 708, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1964 U.S.)* where this court established that "true threats" are "serious expressions conveying that a speaker means to commit an act of

*unlawful* violence to a particular individual or group or individuals." Gottorff's social media post did not constitute a 'true threat" because Gottorff had the *lawful* authority to arrest Schmaltz, or other 'corrupt law enforcement" pursuant C.R.S. 16-3-102.

Furthermore, while the Second Amendment only applies to the federal government restricting the right to bear arms in self-defense of a person and home; by the State of Colorado convicting Gottorff of "felony menacing;" C.R.S. 18-3-206, based solely on a belief that he possessed firearms for the purpose of self-defense, the State made Gottorff's purchase and possession of firearms for the purpose of "self-defense" a crime pursuant 18 U.S.C. 922(g); thereby abridging Gottorff's Second Amendment right to keep and bear firearms for self-defense. Accord *McDonald v. City of Chicago, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010 U.S.) at 750* ("the second amendment protects the right to keep and bear arms for the purpose of self-defense.") See also *District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008 U.S.).*

**Collateral Estoppel**

Prior to trial, the District Attorney amended the information to include a count of "stalking;" C.R.S. 18-3-602(1)(c), against Marshal Schmaltz. Accord *Counterman v. Colorado, 600 U.S. 66, 74 (2023 U.S.)*("Counterman send C.W. hundreds of Facebook messages); and *Pellegrin v. People, 2023 CO 37 at paragraph 40* ("stalking can be established by showing that the defendant [repeatedly] made 'any form of communication' with the victim"). See C.R.S 18-3-602(1)(c). The Amended Information also included two additional counts of "Attempting to Influence a Public Servant;" C.R.S. 18-8-306, against Ouray Sheriff's Office Asst. Shelly Kuhlman and Ouray Sheriff's Investigator Bernie Chism. Accord *People v. Norman, 703 P.2d 1261,*

*1269 (Colo. 1985) at 1269-70* ("however improper defendant's comments [on social media] might have been they did not.... indicate an intent to alter or affect [Schmaltz, Kuhlman or Chism's] decision.").

The District Attorney also moved to admit prior act evidence pursuant C.R.E. 404(b), including video evidence already litigated in case 2022 CR 4; where the "threat" element had already been determined by a jury, resulting in Gottorff's acquittal. Id. Exhibits 9A -12. Accord *Wingate v. Wainwright, 464 F.2d 209 (1972 U.S. App. 5th Cir.)*("The Government is free, within the limits set by the Fifth Amendment .... To charge an acquitted defendant with other crimes claimed to arise from the same or related conduct, but it may not prove the new charge by asserting facts necessarily determined against it on the first trial no matter how unreasonable the government may consider the prior determination to be."). See also *Ashe v. Swenson, 397 U.S. 436, 90 S. Ct. 1189 (1970 U.S.)* ("collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.").

"In Colorado the doctrine of collateral estoppel is a principle of constitutional dimension under the state criminal law as well as federal law. U.S. Const. Amend. V; Colo. Const. Art. II, Sec. 18. The application of the doctrine of collateral estoppel to evidence of similar transactions for which a defendant has been acquitted is consistent with fundamental fairness and upholds the bedrock dignity accorded an acquittal under our criminal justice system. This is particularly so 'bearing in mind that evidence of similar acts has inhering in it damming innuendo likely to beget prejudice in the minds of jurors, and such evidence tends to inject collateral issues

into a criminal case which are not unlikely to confuse or lead astray the jury....") *People v. Arrington, 682 P.2d 490 (1983 Colo. App.) at 492.* The prosecutions motion broke the evidence into 9 paragraphs. The court allowed evidence from paragraph 1 to prove "motive;" paragraphs 2, 3, & 7 "to show identity if necessary" and evidence in paragraph 2 & 7 to "be used to show knowledge and intent." The trial court conducted no analysis or test of the admissibility of the evidence in paragraphs 4, 5, 6, & 8. Accord *Rojas v. People, 2022 CO 8* at P33 ("[because the evidence] was an act separate from the charged offense, [ ] its admissibility should have been considered under 404(b) and [the four part test in] *Spoto.*"). This was impermissible because the evidence was not used to show motive, intent or identify, but to infer that Gottorff had bad character and acted in conformity with that bad character in lieu of any "direct proof" that Gottorff had actually committed the charged offenses. See *Old Chief v. United States, 519 U.S. 172, 11 S. Ct. 644 (1997 U.S.*)("Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith."). Accord C.R.S. 18-1-302(1)(b).

**Conflict Free Counsel of Choice**

Four days before trial, Gottorff's council moved to withdraw from the case (CF, pg. 325) contending that "undersigned council is a necessary witness to jury tampering" at issue in the case; and that he also wanted to move to disqualify the District Attorney as a witness to the jury tampering as well. TR 7/14/23 pg. 5:5 -17. See *Pease v. District Court, 708 P.2d 800 (Colo. 1985) at 802* ("disqualification proper if district attorney from office is a material witness in the case.").

Gottorff's counsel informed the trial court that Gottorff was adamant that he withdraw so that he could be represented by conflict free counsel and that he has

already spoken with another attorney about representing him in this matter. TR 7/14/23 pg. 5: 5 -17. See *Ronquillo v. People, 2017 CO 99, 404 P.3d 264 (2017 Colo.)* (The Sixth Amendment of the U.S. Constitution includes "the right to hire counsel of choice," which "includes the right to fire retained counsel. A Defendant who wishes to discharge retained counsel may do so without good cause.") The trial court refused to let Gottorff's counsel withdraw, or move to disqualify the district attorney, and denied Gottorff's motion to be represented by conflict free council of his choice. TR 7/14/23/ pg. 12-18. Accord *People v. Gilbert, 2022 CO 23, 510 P.3d 538 (2022 Colo.) at P. 29* (court erred "when it purported to require Gilbert to establish good cause to discharge his retained counsel and refused to allow counsel to withdraw."). Accord *Powell v. Alabama, 287 U.S. 45, 53, 53 S. Ct. 55, 77 L. Ed. 158 (1932 U.S.)* ("A defendant should be afforded a fair opportunity to secure counsel of his own choice."). See also *Wheat v. United States, 486 U.S. 153, 160, 163-64, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988 U.S.)*("A defendant's right to be represented by counsel of choice is grounded in the jurisprudence of the Sixth Amendment of the U.S. Constitution and is entitled to great deference.")

The trial court also neglected to advise Gottorff of his right to proceed pro se or inquire as to how Gottorff wished to proceed. See *People v. Brown, 2014 CO 25, 322 P.3d 214 (2014 Colo.).* Gottorff never waived his right to conflict free counsel of choice. Accord *People v. Harlan, 54 P. 3d 871 (2002 Colo.) at 877* ("a court must evaluate the defendant's preference of particular counsel and the public's interest in maintaining the integrity of the judicial process as well as the nature of the particular conflict of interest involved."). "This guarantee reflects the substantial interest of a defendant in retaining the freedom to select an attorney the defendant trusts and in

whom the defendant has confidence." *Rodriguez v. District Court for Denver, 719 P.2d 699 (1986 Colo.).* This was structural error by the trial court. Accord *United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006 U.S.)* ("erroneous failure to allow defendant to be represented by conflict free counsel of his choosing at trial is structural constitutional error requiring reversal.").

**Double Jeopardy**

Between July 16th and 20th, 2023 a trial was held on the amended information in Ouray District Court of Colorado case 2022 CR 8. At trial, the District Attorney moved to admit the prior act evidence from paragraphs 4, 5, 6 and 8. TR 7/17/23 pg. 156:11, 161:14-16. The trial court subsequently erred when it allowed the prosecution to admit the 404(b) evidence without conducting an analysis of its admissibility under C.R.E. 404(b) or the four part test in *People v. Spoto*; and rested it ruling on a finding that the evidence "go[es] towards a common scheme" and "put into context how [ ] Schmaltz ended up in the area during [prior incidents]. TR 7/17/23 pg. 156:11, 161:14-16. The trial court also allowed this noting "the necessity of showing some.....context during the course of the trial." TR pg. 162:12-16. Accord *Rojas v. People, 2022 CO* 8 at P.48 regarding the admissibility of evidence for "context" of [the defendant's] conduct: "such a broad view of 'intrinsic' [evidence]... is to 'flimsy a basis for jettisoning Rule 404(b) entirely." See *United States v. Bowie, 232 F.3d 923 (2000 U.S. App.) at 929* ("there is no general 'complete the story' or 'explain the circumstances' exception to Rule 404(b)"). See also *Yusem v. People, 210 P.3d 458 (Colo. 2009)* (where the Colorado Supreme Court reversed a felony menacing conviction based on improperly admitted Rule 404(b) evidence inferring bad character to prove the defendant's alleged conduct.).

The trial court's admission of prior act evidence was impermissible because the evidence was not used to establish motive, intent, or identity; but admitted to prove the *"threat"* element in counts 1-5 of the information. Because the evidence was of little probative value to the actual allegations and provided no "direct proof" of the crimes charged, the admission of Exhibits 9A-12 was highly prejudicial because of the inference that Rule 404(b) is intended to prevent; which could not be eliminated in light of Gottorff's acquittal in case 2022 CR 4 where a jury had determined that the evidence did not meet the *"threat"* element of the stalking offense. Accord *People v. Arrington, 682 P.2d 490 (1983 Colo. App.)*. In allowing the Rule 404(b) evidence from case 2022 CR 4 to be admitted during the trial of case 2022 CR 8, the trial court abridged Gottorff's Fifth Amendment protection against double jeopardy by trying him a second time on the offense of "stalking; C.R.S. 18-3-602(1)(c), based on the same conduct and evidence that had resulted in his acquittal in case 2022 CR 4. See *Ashe v. Swenson, 397 U.S. 436, 90 S. Ct. 1189 (1970 U.S.)*. Accord C.R.S. 18-1-301(1)(a).

Under Colorado law how the trial court proceeded statutorily barred the prosecution in case 2022 CR 8 pursuant Colo. Rev. Statute(s) 18-1-301(1)(a) and 18-1-302(1)(b). See *Jeffrey v. District Court of Eighth Judicial District, 626 P.2d 631 (1981 Colo.) at 636* ("The United States and Colorado Constitutions prohibit placing an accused twice in jeopardy for the same offence. U.S. Const. Amend V; Colo. Const. Art. II, Sec. 18. The circumstances under which and accused is considered to have been twice placed in jeopardy are codified in sections 18-1-301 and 18-1-302.")

On July 20, 2023 a jury entered a guilty verdict in all five counts of the information in Ouray District Court case 2022 CR 8. Gottorff was immediately taken into custody and subsequently sentenced to an 8 year term in the custody of the

Colorado Department of Corrections on September 14, 2023 by Ouray District Court Judge D. Cory Jackson.

**Denial of Due Process in Habeas Corpus and Post-conviction Review**

Gottorff timely filed a notice of appeal with the Colorado Court of Appeals. That direct appeal is currently pending review under case 2023 CA 1857. See "Opening Brief" filed February 20, 2025. The Colorado Attorney General's "Answer Brief" is currently due to be filed on or before January 2, 2026.

Initially Gottorff directly petitioned the Colorado Supreme Court for a writ of Habeas Corpus pursuant C.R.S. 13-45-101 on January 22, 2024 under case 2024 SA 25. The Colorado Supreme Court denied the petition on February 22, 2024. Gottorff appealed to the U.S. District Court of Colorado pursuant 28 U.S.C. 2254 under case 24 CV 00695. The Colorado Attorney General opposed the application for a writ of habeas corpus asserting that Gottorff had not exhausted his remedies in state court. The U.S. District Court agreed and dismissed the application for a writ of habeas corpus pursuant 28 U.S.C. 2254 on June 9, 2024. (Appendix J). Gottorff sought review with the Tenth Circuit Court of Appeals under case 24-1307, but withdrew his petition for a Certificate of Appealability on February 12, 2025 to return to the state courts to pursue his habeas corpus claim. The Tenth Circuit Court of Appeals granted Gottorff's Motion to withdrawal on June 23 2025. (Appendix K).

Gottorff had moved the trial court to be released on bail pending his direct appeal pursuant Colo. App. Rule 9 in December of 2023. The trial court denied the motion in its "Order on Motion for Release Pending Appeal from Judgment of Conviction" issued March 14, 2024. Gottorff then sought review of the trial courts denial by a "Petition for Review of denial of Appeal Bond Pursuant C.R.S. 16-4-204"

with the Colo. Court of Appeals; which in an "Order of Court" issued July 15, 2024 also denied Gottorff's request to be admitted to bail pending direct appeal. (Appendix L.) Accord C.R.S. 13-45-101(1) ("The court to which the application is made *shall* forthwith award the writ of habeas corpus, unless it appears from the petition itself, or from the documents annexed, that the party can neither be discharged *nor admitted to bail* nor in any other manner relieved.")(italics added for emphasis).

On August 26, 2024 Gottorff filed a "Motion to Set Aside Judgment" with the Ouray District Court asserting that the trial court's prosecution was statutorily barred pursuant C.R.S. 18-1-301(1)(a) and 18-1-302(1)(b); thus depriving the trial court of subject matter jurisdiction and voiding its September 14, 2023 sentencing order. The trial court refused to consider the motion and took "no action." Id. "Order Motion to Set Aside Judgment" issued September 23, 2024. Accord *Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963 Colo.) at 73* ("should the defendant so elect, his petition for habeas corpus may be treated as a petition for the entry of a proper judgment, and for that purpose the trial court may retain jurisdiction.")

On December 10, 2024 Gottorff moved the Ouray District Court to set aside the judgment of conviction pursuant Colo. R. Crim. P. 35(c)(1) claiming that the jury instructions contained language describing Colorado's "true threat" standard as it existed prior to the U.S. Supreme Court's ruling in *Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106, L. Ed. 2d 775 (2023 U.S.);* which was issued a month prior and established that Colorado's previous "true threat" standard abridged a Defendant's First Amendment free speech right.

On November 26, 2024 Gottorff again moved the Ouray District Court to for post-conviction relief in a "Second Motion to Correct Illegal Sentence Pursuant Colo.

R. Crim. P. 35(a) for Lack of Jurisdiction." The Ouray District Court denied both Gottorff's second motion for post-conviction relief pursuant Rule 35(a) and his motion pursuant Rule 35(c)(1) in the trial courts "Order: on Pending Motions Pursuant to Crim. P. 35" issued January 28, 2025.

After moving the Ouray Trial Court to set aside the judgment of conviction; and having been denied bail, Gottorff petitioned the Chaffee District Court twice; and the Logan District Court three times, to issue a writ of habeas corpus pursuant Colo. Rev. Stat. 13-45-101 et. seq.

The Chaffee District Court denied to issue a writ of habeas corpus in Gottorff's two petition(s) in case(s) 2024 CV 9 and 2025 CV 7. The Chaffee habeas court found, in error, that Gottorff's petition(s) filed pursuant Colo. Rev. Stat. 13-45-101 were a "civil action;" and thus, an "inmate lawsuit" governed by Colo. Rev. Stat. 13-17.5-101 et. seq., which erroneously permitted the Chaffee habeas court to dismiss Gottorff's petition(s) pursuant C.R.S. 13-17.5-103 for "failing to state a claim upon which relief could be granted," under Colo. R. Civ. P. 12(b)(5); and ordered Gottorff to pay the $235.00 filing fee. (Appendix A & B).

Colo. Rev. Stat. 13-17.5-102(1) ("Definitions") plainly states that petition's for writs of habeas corpus brought pursuant Article 45 of Title 13 are not "civil actions;" and thus, are not "inmate lawsuits." The Chaffee Habeas Court proceeding as it did constituted "invidious discrimination" as established by the Colorado Supreme Court in *Williams v District Court of Eighth Judicial Dist., 160 Colo. 348, 417 P.2d 496 (1966).* Accord *Smith v. Bennett, 365 U.S. 708, 81 S. Ct. 895, 6 L. Ed. 2d 39 (1961 U.S.)* ("to assess any financial burden on a habeas corpus petitioner would create a situation where petitions are discouraged to the point where it may be said that, in

effect, the writ of habeas corpus has been unconstitutionally suspended.").

The Logan District Court also denied to issue a writ of habeas corpus in Gottorff's three habeas corpus petition(s) pursuant C.R.S. 13-45-101 in case(s) 2024 CV 14; 2024 CV 15 & 2025 CV 2, but for a different reason. The Logan Habeas Court found, in error, that Gottorff's petitions for habeas corpus were improperly framed as motions for post-conviction relief; and that Gottorff needed to exhaust his post-conviction remedies under Colo. R. Crim. P. 35 with the trial court prior to petitioning the Logan District Court for a writ of habeas corpus, resting its determination on *Graham v. Gunter, 855 P.2d 1384 (1993 Colo.)* and *Kailey v. Colorado State Dept. of Corr., 807 P.2d 563 (1991 Colo.).* (Appendix C, D & E). Accord *United States v. Cotton, 535 U.S. 625, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002 U.S.) at 630 ("Defects in subject matter jurisdiction require correction regardless of whether the error was raised with the district court.")*

The Logan District Court entered its ruling despite taking notice that the Ouray District Court (as the trial court) had already refused to consider Gottorff's prior motions for post-conviction relief under Colo. R. Crim. P. 35(a). The Ouray District Court had, in error, cited a lack of jurisdiction to rule on Gottorff's motions for post-conviction relief pursuant Rule 35(a) citing Gottorff's pending direct appeal under Colo. Court of Appeals case 2023 CA 1857. Accord Post-conviction review pursuant C.R.S. 18-1-410 under Colo. R. Crim. P. 35; *People v. Thomas, 185 Colo. 395, 525 P.2d 1136 (1974) at 397* ("appellant filed his motion before his conviction had become final. The court therefore had jurisdiction to entertain his motion for relief."); and *Downing v. People, 895 P.2d 1046 (1995 Colo.) at 1050* ("Crim. P. 35(a) authorizes a trial court to correct and illegal sentence 'at any time.' Crim. P. 35(a). Allegations that

a particular sentence is 'void' or 'illegal' require inquiry into the subject matter jurisdiction of the sentencing court and may not be waived."); and *People v. Emig, 177 Colo. 174, 493 P.2d 368 (1972 Colo.) at 177* ("a trial court, of course, has the right and duty to set aside, at any time, a sentence which is void."); as well as *Woo v. El Paso Cnty. Sheriff's Office, 2022 CO 56 at P 42* (a trial court reacquires jurisdiction during post-conviction proceedings.). Colo. Const. Art. VI, Sec. 9.

Gottorff subsequently commenced an original proceeding seeking a writ of mandamus pursuant Colo. App. R. 21 with the Colorado Supreme Court to compel the Ouray District Court to inquire into the subject matter jurisdiction of the trial court upon his "second" motion for post-conviction relief under cases 2025 SA 48. The Colorado Supreme Court denied to issue the writ on March 10, 2025. (Appendix H.) Gottorff again commenced a second original proceeding pursuant Colo. App. R. 21 with the Colorado Supreme Court under 2025 SA 302 seeking to compel the Ouray District Court to inquire into the subject matter jurisdiction of the trial court after his 'third" motion for post-conviction relief was denied on April 18, 2025; and the Logan and Chaffee Habeas Courts had denied his petitions for habeas corpus.

Between November of 2024 and August of 2025 Gottorff appealed the Chaffee and Logan District Courts denial of his petition(s) for the issuance of a writ of habeas corpus by writ of error to the Colorado Supreme Court under case(s) 2024SA315; 2024SA322; 2025SA17; 2025SA50 and 2025SA256.

The Respondent, through the Colorado Attorney General as counsel, failed to make and appearance or file an "Answer Brief" in the three writs of error from the Logan District Court to the Colo. Supreme Court despite a statutory requirement to do so established by the Colorado General Assembly in C.R.S. 24-31-101(1)(c). Accord

*People v. Jachnik, 116 P.3d 1276 (2005 Colo. App.) at 1277* ("If the [trial] court's jurisdiction is put at issue, the burden is on the State to show that the [trial] court, whether district or county, ha[d] jurisdiction to hear the case."). See also *People v. Dunaway, 88 P.3d 619 (Colo. 2004).*

While the Colorado Attorney General did make an appearance and file an "Answer Brief" in the writ of error appealed from the Chaffee District Court in Colo. Supreme Court case 2024 SA 315; that responsive pleading did not deny Gottorff's claim that he is unlawfully detained by a void sentencing order issued without subject matter jurisdiction issued in a statutorily barred prosecution; thereby admitting Gottorff's claim pursuant Colo. R. Civ. P. 8(d). ("Averments in a pleading to which a responsive pleading is required [ ] are admitted when not denied in the responsive pleading."). However, the Attorney General, in its "Answer Brief" did assert that Gottorff was required to exhaust the remedies of direct appeal and Colo. R. Crim. P. 35 prior to obtaining relief by habeas corpus. Id. "Answer Brief" filed April 16, 2025; pg. 14 -16. Accord *Horton v. Suthers, 43 P.3d 611 (2002 Colo.) at 616-17* ("to impose conditions on issuance of the writ, such as exhausting other available remedies [ ] is pro tanto a suspension of the writ... we are not unmindful of Rule 35 of Colorado Rules of Criminal Procedure... and observe that the rule in no way seeks to impose any conditions on the issuance of habeas corpus writs – it only affords a remedy for those seeking a proper sentence, a remedy which the prisoner may seek or not seek at his election.....In determining what constitutes a 'void' or 'illegal' judgment for purposes of subject matter jurisdiction vis-à-vis the writ of habeas corpus, the allegation that a petitioner is entitle to immediate release has been recognized by the [Colorado Supreme Court] as a proper basis for petitioning for the

writ."). The Colorado Supreme Court entered this ruling relying on *Castille v. People, 489 U.S. 346, 349, 103 L. Ed. 2d 380, 109 S. Ct. 1056 (1989 U.S.); Granberry v. Greer, 481 U.S. 129, 131, 95 L. Ed. 2d 119, 107 S. Ct. 1671 (1987 U.S.);* and *Bowen v. Johnston, 306 U.S. 19, 27, 83 L. Ed. 455, 59 S. Ct. 442 (1939 U.S.).*

Gottorff moved the Colo. Supreme Court to "Find [the] Claims Admitted and [to] Enter Judgment" in case 2024 SA 315. The Colorado Supreme Court denied the motion on August 28, 2025. (Appendix R). The Colorado Supreme Court then Affirmed the Logan District Courts rulings in case(s) 2024 SA 322; 2025 SA 17 and 2025 SA 50 on September 4, 2025. (Appendix O, P & Q).

Aggrieved by the year long delay with no answer by the State of Colorado meeting its burden of showing how the Ouray District Court overcame the statutory prosecution bar and the constitutional protection against double jeopardy to presume subject matter jurisdiction; the Colorado Supreme Court's failure to issue a speedy, flexible and summary determination on the merits; the Ouray District Court's failure to inquire into the subject matter jurisdiction of the trial court pursuant C.R.S. 18-1-410 under Colo. R. Crim. P. 35(a); as well as the Chaffee and Logan Habeas Courts suspension of habeas corpus, Gottorff filed an application for habeas corpus with this Court pursuant 28 U.S.C. 2554 claiming an abridgment of his right to due process and equal protection under the law secured in the Fourteenth Amendment, Section 1 of the U.S. Constitution in asserting a constitutional and statutory protection against double jeopardy and collateral estoppel secured in the Fifth Amendment; freedom of speech and right to seek redress with the government secured in the First Amendment; the right to possess firearms for the purpose of self-defense secured in the Second Amendment; and the right to conflict free counsel of choice secured in the

Sixth Amendment, against the State of Colorado.

The Tenth Circuit Court of Appeals in *Stines v. Martin, 849 F.2d 1323 (1988 U.S. App. 10th Cir.) at 1324* "declared that when the Governments delay itself rises to the level of a due process violation, default is appropriate.....Where the respondent is guilty of long and inadequately explained delay it may be presumed that the petitioner is being illegally confined.....In those situations, the petitioner's due process rights would be denied, and the writ of habeas corpus, challenging illegality of detention...reduced to a sham if the [ ]courts did not act within a reasonable time."

The State of Colorado's habeas corpus process failed to provide a speedy, flexible or summary determination of Gottorff's claim that he is unlawfully imprisoned under a void sentencing order issued without subject matter jurisdiction; accord *Browder v. Director Dept. of Corrections, 434 U.S. 257, 271, 98 S. Ct. 556, 564, 54 L. Ed. 2d 521 (1978) at 271*; and unconstitutionally suspended habeas corpus by imposing a financial deterrent to Gottorff petitioning for the writ, as well as placing the additional requirements of exhausting the remedy of direct appeal and post-conviction relief on the issuance of the writ . Accord Suspension Clause: U.S. Constitution Article I, Section 9, Ct. 2.; Colo. Const. Art. II, Sec. 21.

## REASONS FOR GRANTING THE PETITION

**AUTHORITY**

The authority of the United States Supreme Court to review state court adherence to U.S. Constitutional rights and prior supreme court decisions is vested in the U.S. Constitution; Article III, Section 1. The "purpose of the writ of habeas corpus is to safeguard a person's freedom from detention in violation of constitutional guarantees, and a prisoner in custody [ ] is entitled to avail himself of the writ in

challenging the constitutionality of his custody. *Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L. ed. 2d 136 (1977 U.S.).* "In a case where the [habeas corpus] procedure is shown to be inadequate or ineffective;' [28 U.S.C. 2254] provides that the habeas corpus remedy *shall* remain open to afford the necessary hearing." *Swain v. Pressley, 430 U.S. 372, 97 S. Ct. 1224, 51 L. ed. 2d 411 (1977 U.S.)* quoting *United States v. Hayman, 343 U.S. 205, 72 S. Ct. 263, 96 L. Ed 232 (1952 U.S.) at 223.* "The Writ of habeas corpus does not empower lower federal courts to conduct direct review of appeal from state criminal conviction; that authority is reserved for the U.S. Supreme Court." *Evans v. Thompson, 518 F. 3d 1 (2008 U.S. App. 1st Cir.)* cert. denied *555 U.S. 911, 129 S. Ct. 255, 172 L. Ed 2d 192 (2008 U.S.).* The standard of review pursuant 28 U.S.C. 2554(d)(1) was established by the U.S. Supreme Court in *Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 389 (2000 U.S.) at 376.*

Supreme Ct. R. 20(a) permits the Petitioner to apply to the United States Supreme Court for a writ of habeas corpus pursuant 28 U.S.C. 2254(a). The Petitioner has set forth herein how he has exhausted the State of Colorado's habeas corpus review process pursuant Colo. App. Rule 21 and Colo. Rev. Stat. 13-45-101, or otherwise comes within the provisions of 28 U.S.C. 2254(b).

**28 U.S.C. 2254(b)(1)B)(ii)**

Notwithstanding the procedural fact that Gottorff has a direct appeal of his criminal conviction in Ouray District Court case 2022 CR 8 pending review before the Colorado Court of Appeals under case 2023 CA 1857; Gottorff asserts that "circumstances exist that render such process ineffective" to protect his rights secured in the U.S. Constitution.

Specifically, Gottorff is unable to assert on direct appeal that his arrest and prosecution in Ouray District Court case 2022 CR 8 was in criminal violation of 18 U.S.C. 1512 (d)(3); and thereby and abridgment of this First Amendment rights enforceable against the State of Colorado through the Fourteenth Amendment.

Additionally, as set forth by the Colorado General Assembly in C.R.S. 13-4-102(1)(e); the Colorado Court of Appeals does not have jurisdiction to hear habeas corpus petitions brought pursuant C.R.S. 13-45-101, nor appeals of those petitions by writ of error, so the Colorado Court of Appeals is unable to review or consider Gottorff's claim that he is unlawfully detained by a void sentencing order issued without subject matter jurisdiction and entitled to immediate release pursuant C.R.S. 13-45-103(2)(a);(f).

Because the Chaffee and Logan District Courts, along with the Colorado Supreme Court, abridged Gottorff's substantive and procedural due process rights by failing to hold a hearing or consider his habeas corpus petition(s) on the merits; and imposing a financial deterrent to petitioning for a writ of habeas corpus, thereby suspending habeas corpus, direct appeal is an inadequate review process for protection Gottorff's right to habeas corpus. See *Kentucky Dept. of Corr. v. Thompson, 490 U.S. 454, 109 S. Ct. 1904, 104 L. Ed 2d 506 (1986 U.S.) at 460* regarding a reviewing Courts examination of a due process violation.

Therefore, circumstances exist that render the State of Colorado's corrective processes ineffective at protecting Gottorff's constitutional rights secured in the U.S. Constitution as establish by this honorable Supreme Court.

**28 U.S.C. 2254(d)(1)**

"A state prisoner can win a federal writ of habeas corpus only upon a showing

that the state participated in the denial of a fundamental right protected by the Fourteenth Amendment." *Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 2963, 41 L. Ed. 333 (1980 U.S.) at 342 – 43.* "Liberty interest protected by the Fourteenth Amendment may arise from two sources – the Due Process Clause itself and the laws of the state." *Hewitt v. Helms, 459 U.S. 460, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983 U.S.) at 466.* "When a state ops to act in a field where its actions has significant discretionary element, it must none the less act in accord with the dictates of the Constitution; and in particular, in accord with the Due Process Clause." *Evitts v. Lucy, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed 2d 821 (1985 U.S.)*

Gottorff's conviction in Ouray District Court case 2022 CR 8 was contrary to; and involved an unreasonable application of, clearly established Federal law and fundamental rights enforceable against the State of Colorado through the Fourteenth Amendment as established by this Supreme Court of the United States in the following decisions:

1) The Ouray District Court abridged Gottorff's protection against Double Jeopardy secured in the Fifth Amendment of the U.S. Constitution by trying him a second time on the offense of "stalking;" C.R.S. 18-3-602(1)(c), in case 2022 CR 8 utilizing evidence from Gottorff's prior acquittal on the offense of "stalking;" C.R.S. 18-3-602(1)(c), in case 2022 CR 4. This was contrary to the U.S. Supreme Court's decision in *Ashe v. Swenson, 397 U.S. 436, 90 S. Ct. 1189, 25 L. Ed 2d 469 (1970 U.S.)*; and enforceable against the State of Colorado through the Fourteenth Amendment under *Benton v. Maryland, 395 U.S. 784, 89 S. Ct. 2056 (1969 U.S.).*

2) The Ouray District Court abridged Gottorff's protection against Collateral Estoppel secured in the Fifth Amendment of the U.S. Constitution by trying

him on the offense(s) of "felony menacing;" C.R.S. 18-3-206, and "attempting to influence a public servant;" C.R.S. 18-8-306, in case 2022 CR 8 utilizing evidence from Gottorff's prior acquittal on the offense of "stalking;" C.R.S. 18-3-602(1)(c), in case 2022 CR 4 to prove the "threat' element in those offenses when a prior jury in case 2022 CR 4 had rendered a final determination that the evidence did not satisfy the element of a "threat." Additionally, the admission of prior act evidence was used to establish Gottorffs' bad character and that he acted in conformity with that character. This was contrary to the U.S. Supreme Court's decision in *Old Chief v. United States, 519 U.S. 172, 11 Ct. 644, 136 L. Ed. 2d 574 (1997 U.S.)* and *Ashe v. Swenson, 397 U.S. 436, 90 S. Ct. 1189, 25 L. Ed 2d 469(1970 U.S.)* which is enforceable against the State of Colorado through the Fourteenth Amendment under *Benton v. Maryland 395 U.S. 784, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969 U.S.)*

3) Gottorff's arrest and prosecution in Ouray District Court case 2022 CR 8 was in criminal violation of 18 U.S.C. 1512(d)(3); and a retaliatory act that abridged Gottorff's First Amendment right to free speech and to seek redress with the government contrary to the United States Supreme Courts prior ruling in *Crawford-El v. Britton, 523 U.S. 574, 588, 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998 U.S.);* and *Hartman v. Moore, 547 U.S. 250, 126 S. Ct. 1695, 164 L. Ed. 2d 441 (2006 U.S.)* because: 1) Gottorff was engaged in the constitutionally protected activity of publishing on social media the faithful reproduction of the law as established by the Colorado Supreme Court in *Boykin v. People* (Id. Exhibit 4); and asserting his lawful authority pursuant C.R.S. 16-3-201 to effect an "arrest by a private person." (Id. Exhibits 4-7); 2) the government's actions caused Gottorff irreparable injury through imprisonment, which would chill a person of ordinary fitness from continuing to

engage in said protected speech; and 3) the government's actions were substantially motivated as a response to Gottorff's constitutionally protected conduct of seeking the alleged victims arrest. Gottorff's conviction is contrary to this courts prior rulings on what constitutes a "true threat" as established in *Watts v. United States, 394 U.S. 705, 708, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969 U.S.)* and *Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023 U.S.)*, which is enforceable against the State of Colorado through the Fourteenth Amendment as established in *Thornhill v. Alabama, 310 U.S. 88, 95, 84 L. Ed. 1093, 60 S. Ct. 736 (1940 U.S.).*

4) Gottorff's prosecution in Ouray District Court case 2022 CR 8 for "felony menacing;" C.R.S. 18-3-206, based on Gottorff's October 14, 2022 social media post showing a photo of him holing a firearm with a caption asserting his right to act in "self-defense" (Id. Exhibit 2A) as permitted under C.R.S. 18-1-704 abridged Gottorff's Second Amendment rights secured in the U.S. Constitution as established in *McDonald v. City of Chicago, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010 U.S.); and District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008 U.S.),* which is enforceable against the State of Colorado through the Fourteenth Amendment as established in *N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2002 U.S.)*

5) The Ouray District Court abridged Gottorff Sixth Amendment right to conflict free counsel of choice by refusing to allow Gottorff to fire his retained counsel, or allow counsel to withdraw due to a conflict of interest as established by the United States Supreme Court prior ruling in *United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006 U.S.)* and enforceable against the State of Colorado through the Fourteenth Amendment as established in *Powell v. Alabama,*

*287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932 U.S.).*

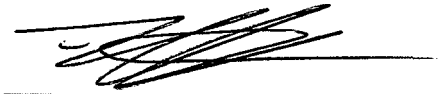
6) The Ouray District Court improperly included language in the jury instructions relating to Colorado's "true threat" standard in the offense of "stalking;" C.R.S. 18-3-602(1)(c), as it existed prior to the United States Supreme Court's ruling in *Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106, 216 L. Ed. 2d 775 (2023 U.S.);* thereby abridging Gottorff's First Amendment right to free speech secured in the U.S. Constitution and enforceable against the State of Colorado through the Fourteenth Amendment as established in *Thornhill v. Alabama, 310 U.S. 88, 95, 84 L. Ed. 1093, 60 S. Ct. 736 (1940 U.S.).*

7) Additionally, the Chaffee District Court of the Eleventh Judicial District for the State of Colorado unconstitutionally suspended habeas corpus; and abridged Gottorff constitutional right to due process and equal protection under the law secured in the Fourteenth Amendment, Section 1 of the U.S. Constitution, by imposing additional conditions on the issuance of the writ not set forth in C.R.S. 13-45-101; and interposing a financial burden and consideration on Gottorff challenging the legality of his imprisonment by habeas corpus, which was contrary to the United States Supreme Court's legal precedent established in *Smith v. Bennett, 365 U.S. 708, 81 S. Ct. 859, 6 L. Ed. 2d 39 (1961 U.S.).*

## CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted on this 2nd day of October, 2025.



David J. Gottorff, Esq.