

<input type="checkbox"/> County Court <input type="checkbox"/> District Court Jefferson County, State of Colorado 100 Jefferson County Parkway Golden, CO 80401	DATE FILED October 24, 2023 12:42 PM FILED ID: EEFD44CDD265A CASE NUMBER: 2022CR3360
<b>PEOPLE OF THE STATE OF COLORADO</b> v. <b>DESIREE GONZALEZ</b> AKA: Defendant	▲ <b>COURT USE ONLY</b> ▲
Alexis King, District Attorney Allie Galvan, Deputy District Attorney 500 Jefferson County Parkway Golden, CO 80401-6020  Phone Number: (303)271-6800 FAX Number: (303)271-6888 E-mail: Attorney Reg. 55007	Case No. D0302022CR003360  Div: 7  Ctm:
<b>PEOPLE'S RESPONSE TO MOTION TO DISMISS COUNTS</b>	

ALEXIS KING, District Attorney in and for the First Judicial District, County of Jefferson, State of Colorado, respectfully requests this Honorable Court deny Defendant's Motion to Dismiss Counts 1, 2, 3, 16, 18, 19, 20 and 21 ["Motion to Dismiss Counts"] on the following grounds:

### FACTUAL BACKGROUND

1. On December 6, 2022, Defendant emailed all city council members photos of pyrodex, firearms, and ammunition, along with multiple written communications including but not limited to:
  - a. "Those are all illegal magazines, they cost \$8. Don't worry, they're not mine and I went inactive so I'm sure the LPD is like totally on it! Oh don't mind the postal bag- that's just full of bomb making shit. I feel so free not having to worry anymore. Thank you. Good luck out there. I'm sure the authorities are like totally on it without me. Besos!"<sup>1</sup>
  - b. "This gun [will] either A. Be evidence for the FBI or B. Be evidence for the FBI after a mass shooting. Who knows! Not my problem anymore. You don't know the Lakewood I do, but you just might."<sup>2</sup>

<sup>1</sup> See Affidavit for Arrest Warrant, filed on December 7, 2022.

<sup>2</sup> *Id.*

- c. “Now please tell me what happens in an executive session that requires my name being said when I’m out here risking my life every second, or was till last night.”<sup>3</sup>
  - d. “Do I really look like I have time to care about Donna Reed and the Heather’s?! Well I do now, but I didn’t before. Thanks again for the freedom.”<sup>4</sup>
  - e. “These bomb kits- they’re spread out everywhere. I was getting all the locations. Looks like we won’t get them all. Oh well. You can’t win them all.”<sup>5</sup> This was followed by a bomb emoji.
  - f. “I was talking to the Councilors I was, to be reminded there is good and there’s a good reason to die for this. Thank you for letting me know that’s absolutely not true. Die on.”<sup>6</sup>
  - g. “. . . I heard civil war is in this season. It’s all the rage.”<sup>7</sup>
  - h. “You both screwed up, the difference is Mary is actually genuinely a good person. I’d say try it, but it’s too late for the rest of you Heather’s. You doubled down on dumb.”<sup>8</sup>
  - i. The FBI says I’m being selfish and lots of lives could still be saved by me. . .”<sup>9</sup>
  - j. “Sucks when your security level is so fucking low huh?”<sup>10</sup>
  - k. “Cheers! You’re fucked.”<sup>11</sup>
2. These emails formed the basis for the charges of retaliation against an elected official pursuant to C.R.S. § 18-8-615(1.5).
3. Defendant also messaged Victim Sophia Mayott-Guerrero directly on December 6, 2022, at 4:18 P.M. stating “You know why I quit the FBI the first time when I told you? Because I don’t want to be around guns- I hate them. I wasn’t kidding. Now yall gotta decide- National headlines and terrorists go free or leave me the fuck alone.”<sup>12</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See People’s Exhibit 1.*

<sup>8</sup> *Id.*

<sup>9</sup> *See People’s Exhibit 2.*

<sup>10</sup> *See People’s Exhibit 3.*

<sup>11</sup> *See People’s Exhibit 4.*

<sup>12</sup> *See People’s Exhibit 5.*

4. Defendant has filed a motion to dismiss all charges of retaliation against an elected official in this case, arguing the statute is unconstitutional as applied in this case and is generally overbroad, prohibiting constitutionally protected speech.<sup>13</sup>

## **LEGAL AUTHORITY AND ARGUMENT**

### **I. The Statute is Not Unconstitutional as Applied**

5. The elements of retaliation against an elected official are as follows:
  1. That the defendant,
  2. in Colorado, at or about the date and place charged,
  3. knowingly,
  4. made a credible threat,
  5. as retaliation or retribution against an elected official or arising out of the status of the person as an elected official, and
  6. the threat was directed against or committed upon,
  7. the elected official.<sup>14</sup>
6. Credible threat is defined as “a threat, physical action, or repeated conduct that would cause a reasonable person to be in fear for the person’s safety or the safety of his [her] immediate family or of someone with whom the person has or has had a continuing relationship. The threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.”<sup>15</sup>
7. The First Amendment’s protection of free speech is not absolute.<sup>16</sup> “True threats” have historically been found as unprotected communications under the First Amendment.<sup>17</sup>
8. Colorado courts have held that C.R.S. § 18-6-615 “must be interpreted to limit criminal culpability to statements constituting ‘true threats.’”<sup>18</sup> A true threat is a “serious expression[s] conveying that a speaker means to ‘commit an act of unlawful violence.’”<sup>19</sup>
9. The speaker of a true threat “need not actually intend to carry out the threat,” as the purpose of the prohibition on true threats is to “protect individuals from the fear of

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<sup>13</sup> See Motion to Dismiss Counts at p.2, filed by Defendant on September 26, 2023.

<sup>14</sup> COLJI 8-6:16.5

<sup>15</sup> COLJI F:77

<sup>16</sup> See *People v. Brown*, 510 P.3d 579, 586 (Colo. App. 2022).

<sup>17</sup> *Id.*; see also *Counterman v. Colorado*, 600 U.S. 66, 73 (2023).

<sup>18</sup> *Brown*, supra note 12.

<sup>19</sup> *Counterman*, supra note 13 at 74/

violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur.”<sup>20</sup>

10. The Court can consider five factors when determining whether statements constitute a true threat: “(1) the statement's role in a broader exchange, if any, including surrounding events; (2) the medium or platform through which the statement was communicated, including any distinctive conventions or architectural features; (3) the manner in which the statement was conveyed (e.g., anonymously or not, privately or publicly); (4) the relationship between the speaker and recipient(s); and (5) the subjective reaction of the statement's intended or foreseeable recipient(s).”<sup>21</sup>
11. In applying the factors laid out in *R.D.*, Defendant’s emails show that her intent was to make the Lakewood City Council members believe they would soon be subject to a bombing and/or mass shooting.
  - a. Her statements included the words ‘mass shooting,’ ‘illegal magazines,’ ‘bomb making,’ ‘Die on,’ ‘Sucks when your security level is so fucking low,’ and ‘you’re fucked.’ These are incredibly inflammatory words specifically chosen by Defendant. Additionally, the photographs sent as attachments show Defendant wanted the victims to believe this was not a hypothetical action, but that rather these guns and bombs were in the vicinity of the building and the victims would soon “know the Lakewood I do.” This was furthered by her statement that they should ‘die on.’
  - b. While Defendant’s words contained no “I will” statements, they clearly indicate that the city council members are subject to a potential bombing and/or mass shooting due to actions or lack of actions by Defendant. This is evidenced by her statements that “[t]he FBI says I’m being selfish and lots of lives could still be saved by me” and “national headlines and terrorists go free or leave me the fuck alone.” Defendant attempts to argue that because she has ties with the FBI the statements are not true threats, but the statements actually validate the pictures and hence work to make the victims more fearful that a bombing and/or mass shooting will occur.
  - c. The statements were sent via email specifically to members of the Lakewood City Council; if Defendant meant her statements to be a warning generally reaching out to the FBI or police would have better served the purpose. But her targeted email and the use of pictures as attachments was meant to instill further fear into the city council members which she had an issue with. Furthermore,

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<sup>20</sup> *Brown*, supra note 12 at 586-87 (internal quotations and citations omitted).

<sup>21</sup> *People In Interest of R.D.*, 464 P.3d 717, 721 (Colo. 2020).

Defendant conveyed the statement under her own name as opposed to anonymously.

- d. Defendant had been a problematic and unpredictable figure for the Lakewood City Council members for some time. Defendant was obviously upset that her name was mentioned in the council meeting from the prior night and so was acting in retaliation here. The timing of the messages also support retaliation—the emails were sent hours after the city council meeting where her name was mentioned and she became angry.
  - e. The victims named in the remaining counts expressed feeling threatened and afraid by Defendant’s emails that day.<sup>22</sup> Adam Paul and Jeslin Shahrezaei expressed fear initially as they are the only ones Detective Saville had reached out to on that day.<sup>23</sup> The city office was shut down for the day and SWAT was assigned to inspect the building, which shows the subjective reaction of Defendant’s targets was one of extreme fear. Regardless, the elements of the charge do not require that all intended victims actually felt threatened, only that a reasonable person would.
12. Accordingly, Defendant’s statements are true and credible threats and are not protected by the First Amendment.
13. Counsel also relies on *Counterman v. Colorado* to argue that Defendant was not attempting to threaten the victims, however *Counterman* dealt with the charge of stalking which had no mens rea for the ‘serious emotional distress’ element.<sup>24</sup> As mentioned above, the element ‘knowingly’ clearly applies to ‘made a credible threat’ for the charges Defendant seeks to have dismissed.<sup>25</sup>
- a. In any event, Defendant’s text messages indicate a clear intent to retaliate against the victims and make them feel threatened.
  - b. On December 5, 2022, at 6:42 P.M. Defendant sent a message to her mother stating, “the city stopped the biggest meeting of the year because my name came up.”<sup>26</sup>
  - c. Beginning at 7:56 P.M. that same night, Defendant messages Anita Springsteen the following:<sup>27</sup>
    - i. “Let em blow up.”

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<sup>22</sup> See People’s Exhibit 6.

<sup>23</sup> Supra note 1.

<sup>24</sup> *Counterman v. Colorado*, 600 U.S. 66, 71 (2023).

<sup>25</sup> Supra paragraph 4.

<sup>26</sup> See People’s Exhibit 7.

<sup>27</sup> See People’s Exhibits 8-15.

- ii. “The trash can take out the trash and I’ll give Sophia a 10 second heads up. But she’ll probably tell everyone and be the only one who dies.”
  - iii. “It’s time—they’ve gone too far—a long time ago.”
  - iv. “Enough is enough. They need to be dropped to their knees.”
  - v. “Seriously someone needs to ducking [sic] do something.”
  - vi. “I’m bout to go put a cross on the corner of alameda and kipling and light that shit on fire.”
  - vii. “Fucking pieces of shit. They’re getting my full attention from now on.”
  - viii. “I wanted to make sure before I go after them – because I am going after them. HARD. Methodical. Calculated.”
- d. The messages continued into December 6, 2022:<sup>28</sup>
- i. “I’m dedicating the rest of my life to ending them.”
  - ii. “This stops when they’re done or they kill me. Protest time.”
  - iii. “I sent my flurry of city council emails today. Now I’m done. Now we destroy them. I mean full time- for me.”
- e. Anita’s responses show that opposite to Defendant’s claims, she believed the members would view her emails as threatening:<sup>29</sup>
- i. “I’d hate to see them try to say you’re threatening Adams or anyone else. “Expect consequences” seems like it’s on the edge. Be careful.”
  - ii. “I can see why it scared people.”

14. These messages show Defendant was angry with the victims and wanted to “end” them. She wanted to go after them “HARD. Methodical. Calculated.” This goes above and beyond a reckless standard and satisfies the knowingly element of the charge.

## **II. The Statute is Not Unconstitutionally Overbroad**

15. Defendant also argues that the statute is unconstitutional on its face. Pursuant to C.R.S. § 16-9-501, “[i]f a defendant in a criminal proceeding files a motion or other pleading that includes a claim alleging a state statute or municipal ordinance is unconstitutional, the defendant shall serve the attorney general with a copy of the motion or pleading. The attorney general shall be entitled to be heard on the matter.”

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<sup>28</sup> See *People’s Exhibits 16-18*.

<sup>29</sup> See *People’s Exhibits 19-20*.

16. Defendant argues that the term “credible threat” is overbroad because it only focuses on what a person could interpret the statements to be.
17. A “party challenging a statute on constitutional grounds bears the burden of establishing the statute’s unconstitutionality beyond a reasonable doubt.”<sup>30</sup>
18. In *People v. Baer*, the Colorado Supreme Court held that Colorado’s ‘credible threat’ is in essence the same thing as First Amendment analysis’s ‘true threat’ and that “burdening only those communications furthering, promoting, or advancing an expressed credible threat . . . does not reach protected conduct.”<sup>31</sup>
19. *Baer* examined ‘credible threat’ in the context of stalking, however in *People v. Brown* the Colorado Court of Appeals expressly upheld ‘credible threat’ in the context of the statute at issue here, C.R.S. 18-8-615, as passing constitutional muster.<sup>32</sup>
20. Accordingly, the issue of constitutionality has been settled by the Courts and Defendant has not presented sufficient evidence to overcome her burden. The statute is constitutional on its face.

Therefore, the People respectfully request this Court DENY Defendant’s Motion to Dismiss Counts.

Respectfully,

ALEXIS KING  
District Attorney

By: /s/ Allie Galvan  
Allie Galvan  
Deputy District Attorney  
Registration No. 55007

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<sup>30</sup> *People v. Baer*, 973 P.2d 1225, 1231 (Colo. 1999).

<sup>31</sup> *Id.*

<sup>32</sup> *Brown*, supra note 12.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing RESPONSE TO MOTION TO DISMISS COUNTS was served on October 24, 2023 via

☐ First Class U.S. Mail, postage pre-paid

☒ Colorado Courts E-Filing

☐ Inter-Office Mail

☐ Hand Delivery

Properly addressed to the following:

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/s/ Allie Galvan

\*Original signatures on file at Jefferson County District Attorney's Office.