

IN THE
SUPREME COURT OF INDIANA

No. 25A-CR-2601

MYKAL JAMES ALAN GEROU,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
Jefferson Superior Court,

No. 39D01-2406-F5-873,

The Honorable Blaine Goode,
Judge.

REPLY IN SUPPORT OF STATE'S PETITION TO TRANSFER

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TABLE OF CONTENTS

Table of Authorities	3
Argument:	
This Court should grant transfer to decide an important question of law whether a person who threatens a department of government threatens a government.....	4
Conclusion	7
Word Count Certificate.....	7
Certificate of Service.....	8

TABLE OF AUTHORITIES

Cases

<i>Adams v. State</i> , 960 N.E.2d 793 (Ind. 2012).....	4
<i>Cape v. State</i> , 400 N.E.2d 161 (1980).....	5
<i>Gerou v. State</i> , __N.E.3d__, No. 25A-CR-2601, slip op. (Ind. Ct. App. June 5, 2026) .	4
<i>Meredith v. State</i> , 906 N.E.2d 867 (Ind 2009)	5
<i>Mi.D. v. State</i> , 57 N.E.3d 809 (Ind. 2016)	4, 5
<i>Suggs v. State</i> , 51 N.E.3d 1190 (Ind. 2016)	5

Statutes

Ind. Code § 35-31.5-2-329(1)(A).....	4
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Other Authorities

Ind. App. Rule 57(H)(5)	4
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ARGUMENT

This Court should grant transfer to decide an important question of law whether a person who threatens a department of government threatens a government.

In a published opinion, the Court of Appeals held as a matter of first impression that a threat to use force against a department of government, such as DCS, is not terrorism because it is not a threat to a government as defined by Indiana Code section 35-31.5-2-329(1)(A). *Gerou v. State*, __N.E.3d__, No. 25A-CR-2601, slip op. at 5 (Ind. Ct. App. June 5, 2026). The Court of Appeals decided an important question of law that has not been, but should be, decided by this Court, which Gerou does not dispute. *See* App. Rule 57(H)(5).

Contrary to Gerou's assertions, the State's central argument is that the statute is unambiguous based on a plain and ordinary reading of "government" to include a department government (Pet. to Transfer 13-15). And, as argued in the Petition to Transfer, excluding a department or unit of government from the plain and ordinary meaning of "government" leads to absurd results. "Under well-established principles of statutory interpretation, a statute is ambiguous when it allows more than one reasonable interpretation." *Mi.D. v. State*, 57 N.E.3d 809, 813 (Ind. 2016) (citing *Adams v. State*, 960 N.E.2d 793, 798 (Ind. 2012)). The Court of Appeals unnecessarily limited the term to exclude a governmental entity because that term is defined elsewhere in the Code, despite the absence of limiting language by the legislature. *Gerou*, slip op. at 5-7. This alone does not create ambiguity subjecting "government" to more than one reasonable interpretation.

Reply in Support of State's Petition to Transfer
State of Indiana

Because “government” is unambiguous, Gerou’s reliance on the rule of lenity is misplaced. In criminal cases, when a court finds a statute to be ambiguous the court may resort to the rules of statutory interpretation to fulfill the legislature’s intent, including the rule of lenity which “interpret[s a] statute in the defendant’s favor as far as the language can reasonably support.” *Mi.D*, 57 N.E.3d at 813 (citing *Suggs v. State*, 51 N.E.3d 1190, 1194 (Ind. 2016); *Meredith v. State*, 906 N.E.2d 867, 872 (Ind 2009)). Even if this Court were to find the statute ambiguous, the rule of lenity does not require this Court to exclude a department of government from government because to do so would “overly narrow[]” the definition to exclude cases the statute “fairly covers”. *See Mi.D*, 57 N.E.3d at 813 (citing *Meredith*, 906 N.E.2d at 872 (quoting *Cape v. State*, 400 N.E.2d 161, 164 (1980))). As the State addressed in the Petition, the Court of Appeals’ definition excluding “governmental entity” from the definition of “government” overly narrows the term rendering it so amorphous it is difficult to imagine what conduct is covered by the statute (Pet. to Transfer 13-16). And Gerou provides no resolution to this dilemma. This Court should accept transfer to resolve the question of whether Gerou threatened the government when he threatened to use force against a department of state government and the people acting on its behalf. Even if the term is ambiguous, Gerou’s assertion that including a “government entity” in a “government” makes the term overly broad and would render other statutes specifying governmental actors meaningless does not justify the Court of Appeals’ overreach here.

And Gerou’s argument that the State’s interpretation would apply to

Reply in Support of State's Petition to Transfer
State of Indiana

governmental actors separately and apart from their governmental role is a bridge too far. It goes without saying that threatening an individual in their individual capacity separately and apart from their role or actions on behalf of a governmental entity would not be a threat to government. Here, Gerou repeatedly threatened to commit violence against “everybody involved” in the CHINS case to intimidate or coerce DCS and communicated these threats to three individuals who worked for DCS and played a primary role in the outcome of his CHINS: the case manager, the service provider, and his appointed counsel (Tr. Vol. II 93-98, 114-18, 150-53).

Gerou's intent was to intimidate the people involved in the process to interfere with and deter the DCS from moving forward in the CHINS proceeding and removing the child from his custody. Although temporary, Gerou's threats caused the case manager, the service provider, the attorneys and the judge to believe that he would carry out his threats of violence to DCS and all individuals who played a role in his CHINS case. In response, the trial court postponed the CHINS hearing to protect everyone involved and the service provider ended her professional relationship with DCS and moved out of state (Tr. Vol. II 118-20).¹

¹ To the extent, Gerou claims his convictions are otherwise supported by insufficient evidence, the State relies on the Brief of Appellee addressing generally the sufficiency of the evidence supporting Gerou's intimidation convictions.

Reply in Support of State's Petition to Transfer
State of Indiana

To the extent there is any ambiguity with the term “government”, the ambiguity is resolved after consulting these canons to include a department of government. This application does not violate the rule of lenity because to interpret “government” as the Court of Appeals did would prevent conduct fairly covered by the statute. This Court should grant transfer, hold that a department of government is a “government” for purpose of the statute defining “terrorism,” and affirm Gerou’s Level 5 felony convictions for terrorism intimidation.

CONCLUSION

This Court should grant transfer, find that “government” as used in the terrorism definition statute includes a department of government like DCS, and affirm Gerou’s felony convictions for intimidation for threatening to commit terrorism.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this Reply contains no more than 1,000 words.

/s/ Kelly A.Loy
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Reply in Support of State's Petition to Transfer
State of Indiana

CERTIFICATE OF SERVICE

I certify that on August 20, 2026, the foregoing document was electronically filed using the Indiana E-Filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

R. Patrick Magrath

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