

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.

STATE'S PETITION TO TRANSFER

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QUESTION PRESENTED ON TRANSFER

After the Department of Child Services took custody of his newborn and initiated a CHINS proceeding, Gerou repeatedly threatened violence against “everybody involved” in the case to take away his child, directly threatening his court-appointed counsel, the family case manager, and psychotherapist providing services through DCS. When Gerou threatened to use force against a department of state government and the people acting on its behalf, did he threaten a Government?

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INTRODUCTION

Mykal Gerou was convicted of three counts of Level 5 felony intimidation for threatening to commit terrorism by using force against the Department of Child Services (DCS). In a published opinion, the Court of Appeals reduced those convictions to Class A misdemeanors holding, 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. *Gerou v. State*, __N.E.3d__, No. 25A-CR-2601, slip op. at 5 (Ind. Ct. App. June 5, 2026). The Court declined to “define the exact contours of ‘government’ as used in Indiana Code section 35-31.5-2-329(1)(A)” but determined that it meant something other than “governmental entity.” *Gerou*, slip op. at 5 n.8. The Court reasoned that because the “government” is not defined by the legislature and “governmental entity” is, the legislature must have intended those two terms to mean two different things. *Gerou*, slip op. at 5. Consequently, because Gerou threatened a department of government, the Court found he did not threaten a government, which is a necessary element to intimidation by threatening to commit terrorism. *Id.* The Court of Appeals has decided an important question of law that has not been, but should be, decided by this Court. *See* App. Rule 57(H)(5). This Court should grant transfer to hold that a person who threatens a department of government threatens a government.

BACKGROUND AND PRIOR TREATMENT OF ISSUE ON TRANSFER

On April 27, 2024, DCS “received a report of child neglect regarding [Defendant] and his partner[]’s ... newborn child” (Tr. Vol. II 105). Mary Buxton, a

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DCS family case manager, contacted Defendant the next day at the hospital (Tr. Vol. II 103-04, 106). Buxton tried speaking with him, but he told her he would not speak to her without an attorney (Tr. Vol. II 106). When Buxton returned to the hospital the following day and told Defendant in front of hospital security that DCS would be detaining his child, Defendant told her that it “wasn’t fair the security officer could carry his gun into the hospital, but that [Defendant] could not” (Tr. Vol. II 108).

DCS detained Defendant’s child and filed a petition alleging the child was a child in need of services (CHINS) (Tr. Vol. II 108–09). When Buxton would call Defendant to discuss reunification, Defendant would “fly off in a rage in the middle of a conversation, not be able to focus on one topic,” and it “proved to be impossible at times” to “reengage him and bring him back to the topic” (Tr. Vol. II 113–14).

Defendant became a client of Stacey Cornett’s, a psychotherapist who worked as a service provider with DCS (Tr. Vol. II 88–90, 108-90). They had several calls, in which Defendant was “very agitated and argumentative,” “kept rambling and yelling,” and said, “he shouldn’t have to do any fucking assessment” (Tr. Vol. II 91-92).

Defendant met Cornett for an in-person appointment on June 3, 2024 (Tr. Vol. II 91–92). Defendant started “getting very escalated and agitated and talking all about how he’s been treated unfairly [and] kept representing Michigan as

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motherfuckers”¹ (Tr. Vol. II 92). His agitation made Cornett “very nervous” and “very scared” and put her “on high alert” (Tr. Vol. II 93). Defendant told Cornett that he had a concealed carry firearm and that “he had the right to use his second amendment” (Tr. Vol. II 93). Cornett told him that, if he had a gun, he should take it to his vehicle (Tr. Vol. II 93–94). Defendant responded, “I don’t have to fucking do anything,” and began patting his hip and ranting that he had “the right to take this wherever [he] want[s],” that he had a “concealing carry” license, and that he had “the right to do whatever it takes to use [his] concealing carry to protect [his] child, children from kidnappers” (Tr. Vol. II 94). Cornett believed Defendant was armed (Tr. Vol. II 94). Defendant also told Cornett, “[Y]ou better not be like the fuckers in Michigan and you better give me a fair report ... or you will pay” (Tr. Vol. II 95, 102). By that point, Cornett felt “absolutely” threatened (Tr. Vol. II 95).

After the meeting, Cornett called her supervisor and told her that she “felt very threatened and told her that ... [she was] not coming back” to that office (Tr. Vol. II 96). Because of her interaction with Defendant, Cornett stopped meeting with people, moved out of the state, and considered retiring early (Tr. Vol. II 96–98).

On June 20, 2024, during a meeting with DCS held in the DCS office building, Defendant told Buxton, “Mess with baby bear, you’re going to die” (Tr. Vol. II 114–15). Buxton believed this was threat to her and other DCS workers (Tr. Vol. II 115–16).

¹ Defendant had previously been involved with Michigan’s department of child services related to his child and his girlfriend’s children (App. Vol. III 85-90).

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During the meeting, Janet Daugherty, an animal control officer, and her partner responded to a welfare call to the DCS building; it was “90 plus” degrees outside, and there were “two dogs in the back of a truck that had a ... camper on it” (Tr. Vol. II 126-27). When they arrived, a “couple of people from the building ... were trying to give the dogs water through the side of the camper shell” (Tr. Vol. II 128). Daugherty took out one of the dogs and put him in her air-conditioned vehicle; the other dog was caged and growled at her, so she hesitated to retrieve him (Tr. Vol. II 128).

Daugherty's partner brought Defendant out of the building (Tr. Vol. II 128). Defendant “started getting in [Daugherty's] face, cussing [her] out, calling [her] all kinds of different names” (Tr. Vol. II 128). Daugherty then called Defendant an “idiot” because she had previously dealt with him for the same issue and she was frustrated that he had continued the same dangerous behavior (Tr. Vol. II 128–29). Defendant told Daugherty that he was going to “sick his dog on [her] to bite [her], the one that was acting aggressive” (Tr. Vol. II 129). Daugherty believed him because the dog had growled at her (Tr. Vol. II 129). She was scared and thought that, had her partner not been there, Defendant would have hit her (Tr. Vol. II 130).

When Defendant returned to the meeting with Buxton, he told her that an “animal control officer had threatened to kick his ass, so then he threatened her with his gun” (Tr. Vol. II 117). That made Buxton think that Defendant was armed with a weapon (Tr. Vol. II 117–18).

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On June 24, 2024, Alexa Bischoff, an attorney who represents indigent clients in DCS cases and was appointed to represent Defendant, called Defendant to discuss an upcoming CHINS fact-finding hearing on June 28, 2024 (Tr. Vol. II 150-52). Defendant was “very upset, angry and [was] talking over [her]” (Tr. Vol. II 153). He said, “[I]f you take my child, I will kill you. If you come between me and my family, you will die. People are going to die. I will kill people ... I always have a gun” (Tr. Vol. II 153). He talked about “everybody involved” in his DCS case and told Bischoff that, if Cornett testified in the way he expected her to, “she would pay for it” (Tr. Vol. II 154, 156–57). He also called women “bitches” and used the “F word a lot” (Tr. Vol. II 153–54).

Bischoff took Defendant's threats seriously (Tr. Vol. II 155, 159). Bischoff believed that Defendant's anger was directed at “Stacey Cornett, the DCS attorney, [and the] DCS case worker (Tr. Vol. II 153). As soon as the call ended, she called the sheriff's department and the DCS attorney to report Defendant's threats, and she called a “welfare check to Michigan because ... that's where [Defendant] resided and she “was concerned about what he might do to anyone around him” (Tr. Vol. II 155–56, 161). And Bischoff alerted the CHINS court and the local DCS office of Defendant's threats and her safety concerns for people involved in Defendant's case (Tr. Vol. II 156).

On June 26, 2024, the DCS attorney called the sheriff's department to report Defendant's threats (Tr. Vol. II 132–34, 144). Buxton also had a “legitimate fear” that Defendant would have a gun and try to hurt her or someone else at the hearing

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(Tr. Vol. II 121). Because Defendant continued making threats to kill DCS workers involved in his case, the trial court continued the June 28th hearing in Defendant's DCS case (Tr. Vol. II 118-20).

On June 27, 2024, the State charged Defendant with attempted obstruction of justice, intimidation, and three counts of terrorism intimidation for his threats to DCS communicated to Buxton, Bischoff, and Cornett (App. Vol. II 35–39). On June 28, 2024, officers arrested Defendant (Tr. Vol. II 134-35, 138, 144). When Defendant was arrested, he was wearing a holster on his hip and had a pistol and two loaded magazines in his vehicle (Tr. Vol. II 139). The gun matched the holster (Tr. Vol. II 139).

On July 24, 2025, the State amended its charging information to allege four counts of Level 5 felony intimidation and one count of Level 6 felony intimidation (App. Vol. II 178–85). On August 19–20, 2025, a jury found Defendant guilty as charged, including three counts of Level 5 felony terrorism intimidation against DCS (App. Vol. II 18-19, 179–80; Tr. Vol. II 202–03). The trial court sentenced Defendant to an aggregate 12-year sentence (App. Vol. II 20).

Defendant appealed and claimed, in part, that the evidence was insufficient to support the three Level 6 felonies for terrorism intimidation because DCS is not a government. *Gerou*, slip op. at 5. The Court of Appeals agreed. *Id.* The Court recognized that it must give words their plain and ordinary meaning but found “government” in the terrorism statute means something other than a “governmental entity” because governmental entity is defined and “government” is not. The Court

found insufficient evidence to support Defendant's Level 5 felony terrorism intimidation convictions and reduced them to Class A misdemeanors.

ARGUMENT

A threat against a department of government is a threat against a government.

The Court of Appeals decided an important question of law that has not been, but should be, decided by this Court when it determined that a threat to DCS was not a threat to a government and did not support a conviction for terrorism intimidation. *See Gerou*, slip op. at 5. Defendant challenged the sufficiency of the evidence arguing that a department of government was not a government for purposes of the terrorism statute. Because a determination of what the statute means presents a matter of statutory interpretation, this Court reviews the question de novo. *Mi.D. v. State*, 57 N.E.3d 809, 811 (Ind. 2016) (citing *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016)). When determining legislative intent, the “best evidence” is the statute’s language and the rules of statutory construction. *Mi.D.*, 57 N.E.3d at 812. The Court of Appeals properly recognized that when a statute’s language is “clear and unambiguous, [this Court] simply appl[ies] its plain and ordinary meaning, heeding both what it ‘does say’ and what it ‘does not say’” *Id.* (citing *State v. Dugan*, 793 N.E.2d 1034, 1036 (Ind. 2003)). This Court will presume that the legislature intended logical application of the language used in the statute

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to avoid unjust or absurd results. *State v. Prater*, 922 N.E.2d 746, 748 (Ind. Ct. App. 2010), *trans. denied*.

The Court of Appeals' application of the canons of statutory construction did not determine the legislature's intent in the intimidation statute. A person commits Class A misdemeanor intimidation if he "communicates a threat with the intent ... that another person be placed in fear that the threat will be carried out." Ind. Code § 35-45-2-1(a)(4), (c) (2022). Intimidation is a Level 5 felony if the threat is "to commit terrorism." I.C. § 35-45-2-1(b)(2). "Terrorism" is "the unlawful use of force or violence or the unlawful threat of force or violence to ... intimidate or coerce ... a government" or "affect the conduct of a government by use of a weapon of mass destruction, assassination, or kidnapping." Ind. Code § 35-31.5-2-329 (2019). The legislature, however, did not further define "government."

A correct application of the principles of statutory construction shows the legislature intended for "government" to include a department of government, not exclude it. The first rule of statutory construction is to give words and phrases "their plain, or ordinary and usual, sense." *Prater*, 922 N.E.2d at 749 (quoting Ind. Code § 1-1-4-1(1)). Generally, "government" is defined as "the body of persons that constitutes the governing authority of a political unit or organization" or "the organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usually classified according to the distribution of power within it." *Government*, Merriam-Webster Dictionary.com (July 16, 2026), <https://www.merriam-webster.com/dictionary/government>. So the

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plain and ordinary meaning of “government” includes an organization, the machinery, or an agency through which a political unit exercises authority and performs functions. *See Noblesville, Indiana Bd. of Zoning Appeals v. FMG Indianapolis, LLC*, 217 N.E.3d 510, 514-15 (Ind. 2023) (considering the Merriam-Webster’s definition to determine the plain meaning of the terms); *Senter v. Kosciusko_Cnty. Bd. of Zoning Appeals*, 251 N.E.3d 584, 589 (Ind. Ct. App. 2025) (applying Merriam-Webster’s definition of “retail business” to determine the plain meaning because it was not defined in the Zoning Ordinance).

The definition of “foreign government” in other titles tracks the plain and ordinary meaning of “government.” One statute provides that “‘foreign government’ means the government, or an agent or a political subdivision of the government, of a country, nation, or group of nations other than: (1) the United States; or (2) a state, territory, or protectorate of the United States.” Ind. Code § 24-4-25.5-2. In a different title, another statute defines “foreign government” as “the government, including an agent of the government, of any country, nation, or group of nations, or any province or other political subdivision of any country or nation, other than the government of the United States or a state, territory, or protectorate of the United States.” Ind. Code § 21-30-7-5. Both definitions define “government” (albeit foreign) to include an agent of government.

DCS falls squarely within the plain and ordinary meaning of the definition of “government.” Although the Court of Appeals identified the dictionary definition of government, the court did not apply it because the legislature defined

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“governmental entity” and did not use that term in the definition of terrorism.

Gerou, slip op. at 8. The court reasoned that because they must give meaning to the language the legislature used and did not use, the legislature must have intended “government” to mean something different than “governmental entity.” *Id.* While it is important to consider the language used and not used, this consideration does not warrant a retreat from applying the plain and ordinary meaning to the term “government.” To do so produces an absurd result, which we must avoid. *Pabey v. Pastrick*, 816 N.E.2d 1138, 1148 (Ind. 2004) (recognizing that in “interpreting a statute, we must seek to give it a practical application,’ an approach designed to ‘prevent absurdity, hardship, or injustice, and to favor public convenience.’”) (quoting *Baker v. State*, 483 N.E.2d 772, 774 (Ind. Ct. App. 1985).

“Governmental entity” means (1) “the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation”; (2) “any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of those entities”; or (3) “a state assisted college or state assisted university.”

I.C. § 35-31.5-2-144(a). This definition is so broad that it is difficult, if not impossible, to identify any part of a government that is not covered by “governmental entity” but would instead meet the meaning of “government” in the terrorism statute. And the court declined to identify the parameters of the meaning of the term. Specifically within the context of the intimidation statute, it appears contrary to the intent of the legislature and purpose of the statute to limit terrorism

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intimidation only to those threats against an unspecified government or to a broad concept of government such as the United States or Indiana. The court's definition that excludes a department or governmental entity fails to ascertain the legislatures' intent and renders the terrorism statutes meaningless.

The Court of Appeals attributed unwarranted significance to the legislature's decision not to use the word "entity", which has resulted in a definition of "government" that is different from the plain and ordinary meaning of the term and definitions of government used by the legislature in other contexts. "Mindful of what the statute says and what it doesn't say, [the courts] 'avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results.'" *Gierek v. Anonymous 1*, 250 N.E.3d 378, 385 (Ind. 2025) (citing *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016) (internal citation and quotation marks omitted)). "What's more, we read the statutory language 'logically and consistently with the statute's underlying policy and goals.'" *Id.* (citing *Culver Cmty. Tchrs. Ass'n v. Ind. Educ. Emp. Rels. Bd.*, 174 N.E.3d 601, 604–05 (Ind. 2021) (internal quotation marks and citation omitted)).

By interpreting "government" to mean something other than "governmental entity" and to exclude a department or agent of government in this context, the Court of Appeals has rendered "government" meaningless, or to be so amorphous that one cannot discern the parameters of the term. The definition of "governmental entity" is so expansive and comprehensive that it is difficult to identify any part of a government not covered by it but that would fall within an alternative definition of

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government within the terrorism statute. A government only exists in the world through its constituent entities and the people who act on their behalf—its agencies, officers, courts, and employees. To say that those entities are not part of that government merely because they were listed in another statute for another purpose produces an absurd result. This result is contrary to the underlying policies of the terrorism statutes and creates “absurdity, hardship, or injustice” which does not “favor public convenience.” *See Pabey*, 816 N.E.2d at 1148. And this interpretation has broader implications because this definition of “terrorism” is not limited to the intimidation statute. *See, e.g.*, I.C. §§ 35-46.5-1-1, 36-46.5-1-1, 35-46.5-2-4, 35-46.5-2-5, 36-46.5-2-6.

This absurd result is more apparent when considering the facts of this case. Defendant made threats to commit violence to intimidate or coerce DCS 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). He did this to control their actions and the outcome of the CHINS case. After Defendant made multiple threats to DCS, the trial court postponed the CHINS hearing to protect everyone involved (Tr. Vol. II 118-20). Although temporary, Defendant'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.

Although penal statutes must be strictly construed against the State, this principle applies “only when ambiguity remains after consulting traditional canons

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of statutory construction.” *Cupp v. State*, 267 N.E.3d 1018, 1026 (Ind. Ct. App. 2025) (citing *Falletti v. State*, 209 N.E.3d 456, 462 (Ind. Ct. App. 2023)). 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 Court should grant transfer, hold that a department of government is a “government” for purpose of the statute defining “terrorism,” and affirm Defendant’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 Petition to Transfer contains no more than 4,200 words.

/s/ Kelly A.Loy
Kelly A. Loy
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CERTIFICATE OF SERVICE

I certify that on July 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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